

WTO Reform: Structuring a Positive Agenda for Developing Countries

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Abstract

This Working Document outlines a structured contribution to the WTO reform process from a legal and developmental perspective. It organises the wide range of reform issues into seven categories, based on their legal character, institutional handling, and the procedural steps required for meaningful resolution. The aim is to support a more coherent and inclusive reform process by offering a logical framework grounded in the Marrakesh Agreement and reflective of the WTO's foundational principles. It is intended to assist Members in navigating reform discussions in a manner that is principled, transparent, and responsive to the priorities of developing countries.

Introduction: A Structured Approach to WTO Reform

As WTO Members reflect on the next phase of reform, there is value in advancing a framework that offers greater legal and institutional coherence. While the current three-track approach proposed by the Facilitator for WTO Reform, Ambassador Petter Ølberg, provides a starting point for discussion, developing countries may also wish to consider alternative structuring options that are more clearly grounded in the Marrakesh Agreement, responsive to institutional realities, and attentive to the developmental objectives of the multilateral trading system.

This working framework organises the diverse set of reform issues into seven categories. It is guided by the legal nature of each issue, the institutional body responsible, and the appropriate procedural path for resolution. In doing so, it draws clear distinctions between matters of institutional practice, issues already under active negotiation, those requiring formal treaty amendment, and areas suitable for exploratory dialogue that does not create new obligations. The approach recognises that reform is both necessary and ongoing, but that it must proceed in ways that are inclusive, legally coherent, and reflective of the WTO's foundational principles. Its realisation, of course, remains subject to the political will of Members. Nonetheless, it aims to support constructive engagement on institutional and substantive challenges, with a view to advancing unresolved development priorities and fostering meaningful reform of the multilateral trading system.

Clarifying the Reform Landscape: Seven Categories for Consideration

Category 1: Institutional and Procedural Reforms (No change to the Marrakesh Agreement required)

This category focuses on improving the WTO's internal functioning through procedural reforms that can be implemented without any change to Members' rights or obligations. These are matters of practice, not law.

Examples of issues:

- Reforming working methods of WTO bodies and committees (a process that is ongoing);
- Limiting the use of exclusive informal formats such as green rooms and small group formats of negotiations and ensuring open-ended participation;
- Establishing clear and transparent rules of engagement for Facilitator-led processes. Alternatively, the established conduct and rules of procedure applicable to the General Council and its subsidiary bodies, particularly in relation to the role of Chairs, could apply mutatis mutandis to Facilitator-led processes, pending the development of specific guidelines;
- Clarifying the international character of the WTO Secretariat responsibilities (Article VI of the Marrakesh Agreement), including its support functions to all Members in a neutral manner;
- Enhancing the functioning of the notification and monitoring system where agreed, taking the limitations faced by developing countries into account.

Legal basis: These reforms fall within the authority of the GC under Article IX of the Marrakesh Agreement. No treaty amendment is required.

Next steps: These reforms could be implemented immediately. Members can agree on procedural improvements through GC decisions or guidelines before MC14.

Category 2: Substantive Negotiating Issues with Existing Mandates

This category includes issues that are already subject to agreed Ministerial mandates but remain unresolved or require momentum. They require renewed political will (not new mandates) to advance or complete.

Examples of issues:

- Public stockholding for food security purposes, special safeguard mechanism, and other unresolved agriculture pillars including elimination of AMS entitlements;
- Remaining elements of the fisheries subsidies negotiations;
- Implementation of the services waiver for LDCs;
- Negotiations under Paragraph 44 of the Doha Declaration on S&DT;
- Longstanding implementation issues identified in the Doha Work Programme.

Legal basis: These mandates are grounded in Ministerial decisions (e.g. Doha, Hong Kong, Bali) and remain legally binding and institutionally valid unless formally superseded by consensus. No such decision has been taken. Paragraph 44 of the Doha Declaration and subsequent Ministerial reaffirmations confirm their continued relevance.

Next steps: Developing countries should press for clarity: is there political will to advance these issues, or do some Members wish to formally close it? Until then, they remain on the agenda and cannot be displaced by newer priorities.

Category 3: Issues requiring formal amendment or procedural incorporation into the WTO Legal Framework (Marrakesh Agreement and/or other covered agreements)

Some reform proposals touch on the fundamental institutional architecture of the WTO and can only be addressed through formal amendment procedures under Article X of the Marrakesh Agreement. In other instances, changes may take the form of procedural incorporation into the WTO legal framework, resulting in the effective modification of covered agreements or the creation of new obligations.

Examples:

- Any proposal to alter or reinterpret consensus decision-making under Article IX:1;
- Redesign or substantive alteration of S&DT provisions (depending on the nature and scope of change);
- Amendments to the DSU in accordance with Article X:8 of the Marrakesh Agreement;
- Introduction of new legally binding rules or obligations not currently reflected in the covered agreements.

Legal basis: Formal treaty amendment under Article X of the Marrakesh Agreement. Requires consensus or qualified majority to submit and threshold-based ratification.

Next steps: Reform discussions must avoid creating new legal obligations or eroding core principles through cumulative informal practices or negotiated outcomes that bypass Article X procedures. Proposals in this category must be subjected to full procedural discipline that are formally notified, legally justified, and adopted following Article X procedures.

Category 4: Plurilateral initiatives without a multilateral mandate

This category covers plurilateral negotiations initiated without a mandate of the Ministerial Conference and that are conducted outside the “single undertaking”.

Examples of issues:

- Joint Statement Initiative (JSI) on E-commerce/Agreement on E-commerce;
- Investment Facilitation for Development.

Legal basis: There is no Ministerial mandate to treat these as multilateral negotiations. Their integration into WTO law must occur through the legal pathways under the Marrakesh Agreement:

- As Annex 4 agreements (requiring consensus, Article X.9 of the Marrakesh Agreement).

Next steps: Members should agree that new plurilateral negotiations should proceed with a prior multilateral mandate to prevent undermining of the single undertaking and weakening of the integrity of the multilateral system, without pre-empting negotiations - which must be conducted within a transparent and inclusive framework on emerging issues that may be relevant to Members’ ‘multilateral trade relations’ in line with Article III.2 of the Marrakesh Agreement.

Category 5: New Issues for Dialogue only (No Mandate for Negotiation)

This category includes emerging or politically salient topics that have not been mandated for negotiation but may be the subject of discussion in the General Council. Any such discussions must remain exploratory and non-negotiating in nature. A forward-looking agenda cannot be confined to the priorities of a few Members. It must also reflect the pressing concerns of developing countries, including food security, policy space for green industrialisation, and the equitable treatment of climate-related trade measures in line with development needs and differentiated responsibilities.

In determining whether a new issue is appropriately taken up by the General Council, it must fall within the scope of the Council's functions as set out in Article IV:2 of the Marrakesh Agreement, and be consistent with the objectives of the WTO as provided in Article III:2. Discussions outside this remit risk diluting the multilateral agenda and diverting attention from unresolved development mandates.

Legal basis: These discussions are permissible under GC functions but do not carry a mandate for negotiation of new rules. Binding outcomes require a new Ministerial decision.

Next steps: Members should agree to continue these discussions only on a non-negotiating basis. Discussions should be structured, transparent, and framed around development perspectives. No conversion into binding rulemaking should occur without explicit consensus.

Category 6: Systemic disruptions and institutional integrity

This category addresses persistent disruptions that threaten the legal foundations and effective functioning of the WTO. These are not "new" or exploratory issues, but active behaviours, including by an influential Member, that challenge existing treaty commitments, undermine core institutional norms, and erode the credibility of the multilateral trading system.

The issues grouped under this category are not prospective reform topics. They constitute active and ongoing deviations from agreed treaty obligations, including under the GATT, the DSU, and the Marrakesh Agreement. These are not matters of policy preference or thematic alignment. They implicate the functioning of core legal provisions, such as the obligation to resolve disputes exclusively within the WTO framework (DSU Article 23), the circumscribed scope of national security exceptions (GATT Article XXI), and the requirement for decisions and amendments to be adopted through agreed procedures (Articles IX and X of the Marrakesh Agreement). To integrate these concerns across other reform tracks, as has been done in the Facilitator's framing, risks obscuring their legal character and minimising the institutional consequences of non-compliance. Treating them as a separate category allows for a targeted and legally coherent response, grounded in Members' existing obligations rather than in new negotiations. It also reinforces the principle that institutional integrity is a precondition for reform, not simply one issue among many.

Examples of issues:

- Expanded use of national security exceptions beyond the intended and narrowly defined scope of Article XXI of GATT, raising concerns about unchecked unilateralism and the erosion of legal predictability;
- Application of unilateral trade measures (e.g. Section 301 investigations, retaliatory tariffs, discriminatory restrictions) outside the WTO framework, in contravention of the WTO's rules-based enforcement system;

- Disregard for established mandates while selectively advancing other reforms, which fragments Member trust and undermines the principle of consensus-based multilateralism. This selective adherence to rules creates a credibility gap in the reform process, wherein developing countries are asked to re-negotiate long-standing rights while core obligations are disregarded by others;
- Proliferation of MFN-inconsistent bilateral arrangements, which contribute to systemic fragmentation and legal uncertainty for non-participating Members.

Legal basis: These issues reflect breaches or disregard of binding treaty obligations. Relevant legal provisions include:

- GATT Articles I, II, and XXIII: Upholding non-discrimination, tariff bindings, and remedies for nullification or impairment;
- Article XXI of GATT: Restricting national security exceptions to narrowly defined cases and subject to review based on accepted principles of treaty interpretation;
- Articles IX and X of the Marrakesh Agreement: Governing decision-making and amendment procedures, ensuring institutional rules are not unilaterally altered;
- GATT Article XXIV: Regulating regional trade agreements to prevent erosion of MFN principles.

Next steps: Convene a High-Level Dialogue at Ministerial Level to establish a focused political discussion on systemic integrity. This dialogue should reaffirm core principles of the multilateral trading system and explore institutional mechanisms to respond to these challenges.

Category 7: Restoring and strengthening the WTO Dispute Settlement System

This category addresses the urgent need to restore a fully functioning two-tier dispute settlement mechanism, as mandated by the DSU. The crisis created by the prolonged blockage of Appellate Body appointments has disrupted the legal enforcement function of the WTO, created a patchwork of alternative mechanisms, and weakened Members' confidence in the system's predictability, impartiality, and universality.

Next steps: Resume DS Reform discussions/negotiations established under a separate track.

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Summary of Reform Categories and Sub-Issues

Category	Sub-Issues
1. Institutional and Procedural Reforms	<ul style="list-style-type: none"> • Reform of WTO bodies and committee working methods • Limiting exclusive informal formats • Transparent rules for Facilitator-led processes • Clarifying Secretariat neutral support functions • Enhancing notification and monitoring systems
2. Substantive Negotiating Issues with Existing Mandates	<ul style="list-style-type: none"> • Public stockholding, SSM, AMS elimination • Remaining fisheries subsidies elements • LDC services waiver implementation • S&DT under Paragraph 44 • Implementation issues under the Doha Work Programme
3. Issues Requiring Formal Amendment or Procedural Incorporation into the WTO Legal Framework (Marrakesh Agreement and/or other covered agreements)	<ul style="list-style-type: none"> • Reinterpretation or change of consensus rule (Article IX:1) • Redesign of S&DT (depending on the nature of the change) • Amendments to the DSU in accordance with Article X:8 of the Marrakesh Agreement • New rules
4. Plurilateral Initiatives Without a Multilateral Mandate	<ul style="list-style-type: none"> • Procedures set out in Article X:9 of the Marrakesh Agreement to integrate plurilaterals into Annex 4
5. New Issues for Dialogue Only	<ul style="list-style-type: none"> • Digital trade, AI, algorithmic governance • Climate measures, CBAM • Green industrial policy and support • Supply chain resilience • Development-oriented topics
6. Systemic Disruptions and Institutional Integrity	<ul style="list-style-type: none"> • Broad use of national security exceptions (Article XXI) • Unilateral measures (e.g., Section 301, tariffs) • Disregard of binding rules and agreed mandates • Proliferation of MFN-inconsistent bilateral deals
7. Restoring and Strengthening the WTO Dispute Settlement System (in a separate track)	<ul style="list-style-type: none"> • Paralysis of the Appellate Body • Absence of a functioning two-tier dispute system • Fragmentation through alternative mechanisms (e.g. MPIA) • Need to reaffirm binding nature of DSU outcomes