Research Note

on

Recent Developments at the WTO
At a Glance

1.) India is looking forward to the Twelfth Ministerial Conference of the WTO to be held in Nur-Sultan, Kazakhstan in June 2020 and believes that there is a need to preserve the basic principles of the WTO including non-discrimination, consensus-based-decision making and special and differential treatment for the developing countries including the least-developed countries (LDCs).

2.) India strongly supports reform of the multilateral trading system enshrined in the WTO and is voicing that the process should be more inclusive in a manner which can address the developmental concerns of developing and least-developed countries.

3.) Many WTO members, including India, have expressed concerns on the blocking of the appointment of members to WTO Appellate Body by the United States on the pretext of some systemic and procedural issues. Such impasse is detrimental for the survival of the WTO which works on the principles of consensus and inclusivity.

Introduction

WTO is a consensus-based multilateral trade negotiating forum which strives to provide a level-playing field to all member countries. WTO is in fact an epitome of global economic edifice, operating through a prudent set of rules for global trade, and has played an instrumental role in uplifting the poor and developing countries. However, today there is a dire need for addressing the impasse at the global forum in terms of unilateral measures and counter measures by some members, deadlock in important areas of negotiations, which is proving detrimental for the economic development of poor and developing countries. Recently, the US has systematically blocked the appointment of new members to
the Appellate Body (judges) and *de facto* impeded the work of the WTO disputes settlement mechanism. The harm caused to the institution due to the apparent collapse of the Appellate Body will affect the developing countries including LDCs more as the Dispute Settlement Mechanism seeks to provide redressal against the unfair trade practices.

An informal WTO Ministerial Meeting of the Developing and the Least Developed Countries was hosted by India in New Delhi on 13-14 May 2019. It gave an opportunity to the participating developing countries to share their ideas on WTO reforms and other issues of priority and interest for them. The Outcome Document of the Meeting endorsed by seventeen member underscored the importance of multilateralism special and differential treatment, the need for resolving the Appellate Body impasse among other concerns faced by the developing countries. India is looking forward for the Twelfth Ministerial Conference of the WTO to be held in Nur-Sultan, Kazakhstan in June 2020 and believes that this Ministerial meeting will deliver a constructive mechanism and directions to engage in various crucial agenda of discussion being tabled at the WTO.

**Important Events at WTO Forum**

*The Doha Round of Trade Negotiations (November 2001)*

With the objective of improving the trading prospects of developing countries including LDCs, the Doha Round of trade negotiations commonly referred to as the Doha Development Round was initiated in 2001. It is, in fact, one the most significant initiatives/decisions of the WTO so far. The Doha
Development agenda focuses on negotiations on a number of issues including in agriculture, Non-Agricultural Market Access (NAMA), services dispute settlement, anti-dumping duties and subsidies. No consensus could be achieved on certain specific issues in the modalities related to Agriculture and Non-Agriculture Market Access.

The Ministerial Conference is the highest decision making body of the WTO. The last Ministerial Meeting of the WTO was held in Buenos Aires, Argentina in December 2017. In recent years, it has become increasingly evident that the developed countries, primarily the United States, no longer perceive the Doha Round of trade negotiations as beneficial for them. They have been making concerted attempts to close the Round and introduce new issues of their interest in the WTO’s negotiating agenda such as E-Commerce, Investment, MSMEs, Gender, Environment, Labour Standards, Energy Security and Global Value Chains.

Eleventh Ministerial Conference, Buenos Aires, December 2017 (MC11)

As there were wide differences among members, with a few members not supporting acknowledgment and reiteration of key underlying principles guiding the WTO and various agreed mandates, Ministers could not arrive at an agreed Ministerial Declaration. There was, however, wide support for the multilateral trading system and the commitment to move forward on various areas of work in the WTO. India strongly expressed its stand on strengthening the fundamental principles of the WTO including multilateralism, rule-based consensual decision-making, an independent and credible dispute resolution mechanism and appellate
process, the centrality of development, which underlies the Doha Development Agenda and special and differential treatment for all developing countries. An analysis of the outcomes of MC11 is at Annexure I.

**Recent Developments in the WTO**

**Informal WTO Ministerial Meeting, New Delhi, on 19-20 March 2018**

In order to continue political engagement on the multilateral trade issues in the aftermath of MC11, India hosted a two-day Informal WTO Ministerial Meeting in New Delhi on 19-20 March 2018. Ministers and officials from 52 member countries of the World Trade Organization (WTO) and the Director General of the WTO attended the meeting. Discussions were held with the aim of providing political guidance for further work in the WTO and the way forward on development. During the Meeting, members expressed their concerns regarding the threat posed to the credibility of the WTO and its cardinal principles such as non-discrimination, by the cycle of recent unilateral trade measures and proposed counter measures. In order to continue political engagement on the multilateral trade issues in the aftermath of MC11, India hosted a two-day informal WTO Ministerial Meeting in New Delhi on 19-20 March 2018. Ministers and officials from 52 member countries of the WTO and the Director-General of the WTO attended the Meeting. Discussions were held with the aim of providing political guidance for further work in the WTO and the way forward on development, Participants stressed on the need to preserve and enhance the functioning and credibility of the rules-based multilateral trading system as embodied in the WTO. Majority of the participants sought expeditious
and immediate resolution of the impasse in the appointment of Appellate Body members - an issue that was viewed to be adversely affecting the credibility and functioning of the WTO.

**WTO Ministerial Meeting of Developing Countries, New Delhi, 13-14 May 2019**

India hosted a two day WTO Ministerial Meeting of trade Ministers on 13-14 May 2019 in New Delhi wherein sixteen developing countries and six LDCs along with the Director-General of the WTO, Roberto Azevedo participated. The aim of the Ministerial Meeting was to re-energise and strengthen multilateralism and put in place a more inclusive decision-making process. The meeting contained an outcome document (Annexure II). The two-day meet gave an opportunity to the participating countries of developing a shared WTO reform proposal on issues of priority and interest for developing countries and it helped in building a common narrative on issues of importance for Developing Countries including LDCs. India along with South Africa and seven developing countries has submitted a paper in the General Council of the WTO on 11th July 2019 spelling out the priorities that can enhance a strong discourse for reforming the WTO, which unfortunately is characterised by a complete lack of balance today.

**Appellate Body Crisis**

The WTO Appellate Body is a standing body for hearing appeals on issues of law and legal interpretation arising from the decisions of the WTO dispute resolution panels. It is an integral part of the Dispute Settlement Body (DSB) of

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the WTO which is the central element in enforcing the rights and obligations of the WTO members.

The Appellate Body is composed of seven permanent members appointed by WTO members by consensus. While the process of appointment of Appellate Body members was generally smooth in the past, in recent months, the United States has blocked the selection of all new members to the Appellate Body, and has precipitated a precarious situation. At this juncture, only three members are left to serve the Appellate Body. Very soon, the Appellate Body would be rendered defunct, as only one member would be left.

Despite the launch of a dedicated process in the General Council of the WTO, to address the Appellate Body issue and Director General’s efforts to hold informal consultations in different configurations, the United States is holding filling vacancies in the Appellate Body hostage and seems to have a strategy to link the Appellate Body issue to other areas including transparency, notifications, development gaps in rulemaking (industrial subsidies and forced technology transfer), addressing China’s non-market oriented practices and an overarching reforms agenda in the WTO. The USTR has made it known at various fora that US has blocked nominations to force WTO reforms.

**Special and Differential Treatment (S & DT)**

Special and Differential Treatment (S & DT) for developing members including LDCs, recognizes the enormous difference in the levels of development among different members of the WTO and allows developing members the space to formulate their domestic policies in a way that helps them to reduce poverty,
generate employment and integrate meaningfully into the global trading system. Special and differential treatment (S&DT) has been underpinning the WTO agreements since its inception, starting from pre-WTO GATT days to Marrakesh Preamble, culminating in the Doha Development Agenda and is enshrined in Para 44 of the Doha Declaration. Some of its elements are less than full reciprocity, longer implementation period, and better access to developed country markets through preferential arrangements. Developed countries like the United States are also seeking to ensure that developing countries such as India, China, Brazil and Indonesia are moved out of the coverage of provisions for special and differential treatment which allow developing countries to enjoy concessions in agricultural subsidies, import duties, pharmaceuticals, and enable them to provide subsidies on inputs in agriculture such as power, irrigation and fertilizers. In fact, the developed countries (and with their encouragement, some LDCs) are of the view that such treatment should be confined only to LDCs. In the run up to MC11, there were stronger and more concerted efforts in this direction.

Reforming the WTO

Recent developments, which include increasing unilateral measures resorted to by the United States in the name of invoking national security provisions in the WTO agreements and counter measures undermine the very basis of the multilateral trading system embodied in the WTO. India has also been affected by such measures of the United States when it imposed unlawful tariffs on import of Indian steel and aluminium on grounds of national security. Non-cooperation in the WTO by some of the members in negotiations as well as
on institutional issues will further erode the trust of membership in multilateralism. Various members, especially from the developed countries, including the European Union want to reform the WTO. The EU has also floated a concept paper on the issue and wants reforms on the negotiations, procedural, transparency and Dispute settlement mechanism (DSM) of the WTO. India is also working positively to contribute in the process and collaborating on the issues of strengthening the DSM. While, there cannot be any difference of opinion that WTO has not been working in the manner it was supposed to, however, the institutional reforms should not cause any harm to the interest of the developing countries.

The European Union, the US, Japan and other countries continue to pitch strongly for overarching reforms in the system. This would increase pressure on the developing countries to engage in areas like industrial subsidies, transparency and notification obligations and other systematic issues. It is anticipated that flowing from the various initiatives, there will be a spate of proposals on WTO reforms including strengthening the deliberative function work of regular bodies and strengthening the role of the Secretariat. These proposals are highly problematic for developing countries with intrusive and onerous suggestions which would need to be countered effectively. From India’s and other developing countries perspective, the principles of non-discrimination, special and differential treatment are critical for the integration of developing countries in the global trading system and need to be preserved during the reform process. WTO has one of the most robust enforcement mechanism in the form of dispute
settlement mechanism, and the impasse in selection of Appellate Body members will make the commitments in the form of WTO rules and decisions redundant.

**Joint Ministerial Statement (JMS) on E-commerce**

A Joint Statement on E-commerce was issued at the MC11, on behalf of around 70 WTO Members, including the United States supporting rule making on e-commerce. At the WEF meeting at Davos in 2019 China decided to formally be a part of the JMS. Shinzo Abe, the Japanese Prime Minister, emphasized his priority on commencement of the Osaka Track on data governance during his chairmanship of G 20 at the same event. India did not sign the Joint Ministerial Statement (JMS) on E-commerce as it is in favour of continuing the exploratory discussions on E-commerce as per the 1998 Work Programme and as agreed to in the MC11 Decision. India is actively participating in these discussions at the WTO under the mandated bodies as per the Work Programme on E-commerce.

**Discipline on Fisheries**

Discipline on fisheries subsidies are currently under negotiation at the WTO with intense engagement to understand the issues and work out a meaningful agreement by December 2019. The MC11 decision on fisheries subsidies clearly mandates that there should be an appropriate and effective special and differential treatment for developing countries. It is important for developing countries including LDCs to collectively work for a fair and equitable agreement on disciplines in fisheries subsidies, which takes into consideration the livelihood needs of subsistence fishermen and ground realities in our countries,
and protects our policy space to develop capacities for harnessing our marine resources.

**India's Intervention**

Some recent developments suggest a trend towards inward looking policies by some major economies in terms of non-tariff barriers and unilateral actions. It is worrying that some countries are trying to bypass the arduously crafted and nurtured international governance systems embodied in the WTO. Efforts are also being made to shift the focus from fundamental principle of multilateralism towards plurilateralism in the name of reforms. Plurilaterals could weaken the multilateral trading system and undermine the inclusive institutional structure of the WTO.

Also it has become increasingly evident that the developed countries, primarily the United States, no longer perceive the Doha Round of trade negotiations as beneficial for them. They have been making concerted attempts to close the Round and introduce new issues of their interest in the WTO’s negotiating agenda such as E-Commerce, Investment, MSMEs, Gender, Environment, Labour Standards, Energy Security and Global Value Chains. It is time to take forward the fundamental principles of the WTO including multilateralism, rule-based consensual decision-making, an independent and credible dispute resolution and appellate process, centrality of development, which underlies the Doha Development Agenda and special and differential treatment (S&DT) for all developing countries.

Annexure-I
Outcomes of the Eleventh Ministerial Conference, Buenos Aires, December 2017 (MC11)

There was no decision on agriculture issues including on a permanent solution on public stockholding for food security purposes. The impasse in agriculture continues due to the strong position taken by the US against agricultural reforms based on current mandates and rules.

During the Conference, Ministerial decisions were taken on a Work Programme on disciplines on Fisheries Subsidies with a view to arriving at a decision by the Twelfth Ministerial Conference (in 2019).

It was also decided to continue with the non-negotiating mandate of the existing Work Programme on E-commerce. As was done in the last Ministerial Conferences, an existing moratorium on imposing customs duties on electronic transmission was extended for two years along with another moratorium on TRIPS non-violation complaints, which, \textit{inter alia}, prevents ‘ever-greening’ of patents in the pharmaceuticals sector, thereby ensuring accessibility and affordability of generic medicines.

Ministerial Decisions on new issues like Investment Facilitation, MSMEs (Micro, Small and Medium Enterprises), gender and trade, which lacked a mandate or consensus, were not taken forward.
Outcome of WTO Ministerial Meeting of Developing Countries 13-14th May 2019

We, the Ministers and high-level officials from Arab Republic of Egypt, Barbados, Central African Republic, Federal Republic of Nigeria, Jamaica, Kingdom of Saudi Arabia, Malaysia, People's Republic of Bangladesh, People's Republic of China, Republic of Benin, Republic of Chad, Republic of India, Republic of Indonesia, Republic of Malawi, Republic of South Africa, Republic of Uganda and Sultanate of Oman met in New Delhi, on 13 and 14 May 2019, to discuss recent developments at the WTO and explore ways for working with all Members to strengthen the multilateral trading system.

We reaffirm the pre-eminence of the WTO as the global forum for trade rules setting and governance. We note with concern the multiple challenges confronting the rules-based multilateral trading system and agree to work together with all WTO Members to strengthen the WTO, make it more effective and continue to remain relevant to the diverse needs of its Members, in line with objectives of the WTO.

We re-affirm that the dispute settlement system of the WTO is a central element in providing security and predictability to the multilateral trading system. This has proved to be more effective and reliable as compared to its predecessor, GATT. We note with concern that Members have failed to arrive at a consensus in the selection process to fill vacancies in the Appellate Body. This ongoing impasse has weakened the dispute settlement system and threatens to completely paralyze it by December 2019. We, therefore, urge all WTO Members to engage constructively to address this challenge without any delay in filling the vacancies in the Appellate Body, while continuing discussions on other issues relating to the functioning of the dispute settlement mechanism.

An inclusive multilateral trading system based on equality and mutual respect should ensure that all WTO Members abide by WTO rules and abjure any form of protectionism. The core value and basic principles of the multilateral trading system must be preserved and strengthened, particularly with a view to building trust among Members. To this end, we urge WTO Members to adopt measures that are compatible with WTO rules to avoid putting the multilateral trading system at risk.

We recall that international trade is not an end in itself but a means of contributing to certain objectives, including raising standards of living. Special and Differential Treatment is one of the main defining features of the multilateral trading system and is essential to integrating developing Members into global trade. Special and Differential Treatment provisions are rights of developing Members that must be preserved and strengthened in both current and future WTO agreements, with priority attention to outstanding LDC issues.

We stress the importance of technical assistance and capacity building provided to developing Members, in particular LDCs, including through the Enhanced Integrated Framework, Aid for Trade and other tools. We urge Members to continue doing so. Multilateral avenues, based on consensus, remain the most effective means to achieve inclusive development-oriented outcomes. Members may need to explore different options to address the challenges of contemporary trade realities in a balanced manner. We note that in the post-MC 11 phase, many Members have evinced interest in pursuing outcomes in some areas through joint initiatives approach. The outcomes of these initiatives should be conducive to strengthening the multilateral trading system and be consistent with WTO rules.

The process of WTO reform must keep development at its core, promote inclusive growth, and fully take into account the interests and concerns of developing Members, including the specific challenges of graduating LDCs. The way forward must be decided through a process that is open, transparent and inclusive. We agree to work collectively with
the aim to develop proposals to ensure that our common interests are reflected in the WTO reform process.

WTO rules seek to foster an open and non-discriminatory trade regime. In order to instill confidence among the Members, it is imperative that the Ministerial Conferences of the WTO are organized in a more open, transparent and inclusive manner. WTO notification obligations must consider the capacity constraints and implementation related challenges faced by many developing Members, particularly LDCs. In the WTO, a more cooperative and gradual approach is the best way in dealing with the issue of transparency, where many developing Members struggle to comply with their notification obligations.

Some WTO agreements, for example the Agreement on Agriculture, contain imbalances and inequities that prejudice the trade and development interests of developing Members. There is a need to provide adequate policy space to the developing Members to support their farmers through correcting the asymmetries and imbalances in this Agreement on priority. This should be undertaken on the basis of work done and progress already made in the past, and provide further flexibilities to the LDCs and Net Food Importing Developing Countries. It is really time that cotton receives concrete and appropriate responses it deserves.

We agree to consult on various issues of common interest to developing Members, including comprehensive and effective disciplines on fisheries subsidies with appropriate and effective Special & Differential Treatment provisions for developing Members.

We urge WTO Members to expedite the process of accession of new Members.

We reiterate our commitment to work towards strengthening WTO by promoting development and inclusivity for the benefit of all Members.