



## BACKGROUND NOTE ON PANEL DISCUSSIONS

### WTO CHAIRS PROGRAMME INAUGURATION EVENT

*organised by*

*Indian Institute of Foreign Trade, New Delhi*

*with the support of*

*Centre for Trade and Investment Law and Centre for WTO Studies*

**14 October 2022**

*Auditorium, Indian Institute of Foreign Trade, New Delhi*

The World Trade Organization (WTO) Chairs Programme (WCP), launched in 2010, aims to support, promote and enhance knowledge and understanding among academics and policy makers in developing and least developed countries by encouraging and supporting trade-related academic activities undertaken by research institutions and universities.

Academic institutions which are awarded the WTO Chairs receive support in the areas of research, curriculum development, and outreach activities. The chair-holders are selected through a competitive process. Fourteen institutions were originally selected as WTO Chairs for a four-year term in 2009. Seven institutions were added to the Programme in May 2014. Following a call for applications for Phase 3 of WCP, over 120 applications were received by the WTO. After the selection process 17 institutions were chosen to join the network of WCP Chairs in December 2021.

The Indian Institute of Foreign Trade (IIFT) has been selected as the India Chair in Phase 3 of the WCP on the basis of a joint application by two centres of IIFT viz., the Centre for Trade and Investment Law and the Centre for WTO Studies.

The inauguration event scheduled on 14 October 2022 will launch the India Chair of the WCP at IIFT. It will be followed by three panel discussions on the following topics: (i) 'Reinvigorating the Dispute Settlement Mechanism of the WTO'; (ii) 'Balancing Preferential and Multilateral Approaches to Free Trade', and (iii) 'Macroeconomic Crisis and Trade Policy'.

*(DISCLAIMER: This note is prepared to provide some background and context to help the discussions and does not represent the views of the WCP, the IIFT Centres or the Department of Commerce, Government of India).*

### PANEL DISCUSSION 1

#### *Reinvigorating the Dispute Settlement Mechanism of the WTO*

Dispute settlement is the central pillar of the multilateral trading system. Since its establishment, the WTO dispute settlement system has received more than 600 dispute consultation requests, making it one of the most active international law tribunals.<sup>1</sup> However, since December 2019, the WTO dispute settlement system has been in a state of crisis as the vacancies in the Appellate Body (AB) have not

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<sup>1</sup> WTO, *Dispute Settlement Activity – Some Figures*, Dispute Settlement: The Disputes, [https://www.wto.org/english/tratop\\_e/dispu\\_e/dispustats\\_e.htm](https://www.wto.org/english/tratop_e/dispu_e/dispustats_e.htm).



been filled up. This has led to 13 Panel Reports being ‘appealed into the void’. Some of the oft-repeated criticisms of the functioning of the AB are as follows:<sup>2</sup>

- (a) failure to conclude appeals within the 90-day deadline;
- (b) practice of AB members serving on appeal after the expiry of their term;
- (c) legal ruling on the issues not necessary to resolve the dispute or the issue of ‘advisory opinions’;
- (d) review of facts and review of a WTO Member’s domestic law even after the panel’s evaluation;
- (e) jurisprudence of the AB that effectively leads to a system of precedent in the WTO dispute settlement; and
- (f) judicial overreach by the AB on the grounds that it was adding to the text of the covered agreements rather than interpreting them.

There is wide spread concern over the current situation in the AB which is seriously impacting the functioning of the WTO dispute settlement system. However, on the positive side, the WTO dispute settlement panels continues to function.

Some WTO Members have invoked the arbitration provision in Article 25 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU) as an appeal mechanism for Panel decisions to prevent appeals ‘into the void’. This was seen in the *Turkey- Pharmaceutical Products* dispute between EU and *Türkiye*.<sup>3</sup> The most prominent example of the use of Article 25 of the DSU is the creation of the Multi-Party Interim Appeal Arbitration Arrangement (MPIA), put in place by the EU and 15 other WTO Members as an interim ad-hoc mechanism to preserve the two-tier structure of the WTO dispute settlement body.<sup>4</sup> The MPIA seeks to provide provisional complementary mechanism to review the appealed findings of the panel report, but is not considered as a long-term solution.

However, with the WTO Members reaching an agreement on a package of key trade initiatives during the 12<sup>th</sup> WTO Ministerial Conference (MC12) held in Geneva in June 2022. The MC12 is widely regarded as a success, and is considered by many as a turning point at a time when the WTO Members find it difficult to reach a common understanding on a number of issues, including the impasse on the WTO AB appointments. The MC 12 Outcome Document notes as follows: “[w]e acknowledge the challenges and concerns with respect to the dispute settlement system including those related to the AB, recognize the importance and urgency of addressing those challenges and concerns, and commit to conduct discussions with the view to having a fully and well-functioning dispute settlement system accessible to all Members by 2024.”

In the above backdrop, the panel discussion will examine the criticisms that led to the present AB crisis and analyse the challenge of re-establishing a functioning WTO dispute settlement system. It will assess the interim solutions such as the MPIA and examine the viability of arbitration under Article 25 of the DSU as an appeal mechanism for panel decisions. The discussion will also seek to suggest innovative solutions to reform the WTO dispute settlement system.

At a Dispute Settlement Body meeting in April 2022, the United States expressed that it supports WTO dispute settlement reform and that it is prepared for continued and deepened engagement with members. However, such discussions should aim to ensure that WTO dispute settlement reflects the real interests of members and not prejudice what a reformed system would look like. What should be the nature of

<sup>2</sup> James J Nedumpara & Leila Choukroune, *International Economic Law: Texts, Cases and Materials*, CUP (2022), pg. 449-450.

<sup>3</sup> Article 25 DSU Arbitration report, *Turkey – Certain measures concerning the production, Importation and marketing of pharmaceutical products*, WTO Doc. WT/DS583/ARB25 (25 July 2022).

<sup>4</sup> Multi-Party Interim Appeal Arbitration Arrangement Pursuant to Article 25 of the DSU, WTO Doc. JOB/DSB/1/Add.12, dated 30 April, 2020.



participation of the developing countries in these discussions? How should the discussions be structured to enable maximum participation and representation of view? Since the criticisms are largely on the functioning of the Appellate Body, is there a need to reform the entire WTO dispute settlement mechanism? The WTO DSU was negotiated 3 decades back and the global trading system has evolved significantly since then. Are only WTO dispute settlement reforms sufficient to address the criticisms and their basis? What should be the immediate focus of these discussions, namely, immediate resolution of the impasse or “deep reforms” which could take time?

## **PANEL DISCUSSION 2**

### ***Balancing Preferential and Multilateral Approaches to Free Trade***

Regional Trade Agreements (RTAs) facilitate preferential treatment between two or more partner countries based on reciprocal negotiations. The WTO recognises the role played by free trade areas in the promotion and liberalisation of international trade. The exception provided for WTO Members to enter into an FTA is supported by Article XXIV of the General Agreement on Tariffs and Trade (GATT), Article V of the General Agreement on Trade in Services (GATS), and the Enabling Clause. Article XXIV of GATT and Article V of GATS facilitate the creation of reciprocal trade agreements between WTO Members, while the Enabling Clause provides for a Generalised System of Preference (GSP) where developed countries can provide non-reciprocal preferential treatment to developing countries.

In addition to the economic benefits that FTAs may bring to trade partners of the agreement, they can also serve as an effective tool to complement the Most Favoured Nation (MFN) principle in the multilateral system. The pursuit of free trade through preferential trade agreements level may help developing countries implement domestic reform and be open to competitive markets to facilitate the integration into the global economy.<sup>5</sup> However, pursuing the preferential trade agreement track entails challenges as well. Modern FTAs cover a complex number of areas beyond tariff measures, including subjects that have been too politically sensitive to agree upon at a multilateral level like labour, environment, competition, investment, digital trade, government procurement, state-owned enterprises and gender, to name a few.<sup>6</sup>

The proliferation of preferential trade agreements may create a complex system of overlapping regional agreements with numerous sets of rules and market access requirements.<sup>7</sup> Preferential trade agreements may also lead to inefficient trade diversion, as the removal of tariffs may shift imports from the most efficient suppliers in the trading system to only the suppliers from a country receiving preferential treatment.<sup>8</sup> In short, how can WTO members ensure that pursuing the preferential trade agreement route complements the multilateral approach. A supportive argument in the context preferential agreement is that it is the second-best solution as FTAs offer an incremental movement towards a rule-based liberalised trading regime.<sup>9</sup> Again, what should be the considerations in choosing FTA partners?

What should be the ideal approach for large developing countries while approaching trade liberalisation? Can preferential trade agreements be used as laboratories for testing difficult issues. How can vital policy space be preserved while approaching new and untested areas? Should there be alignment in approach while addressing such issues under the preferential vis-à-vis multilateral tracks?

<sup>5</sup> Jo-Ann Crawford & Roberto V. Fiorentino, *The Changing Landscape of Regional Trade Agreements*, WTO Discussion Paper No. 8 (2005).

<sup>6</sup> Aditya Mattoo, Nadia Rocha and Michele Ruta, *Handbook of Deep Trade Agreements*, World Bank Group (2020).

<sup>7</sup> Sherry Stephenson and Maryse Robert, *Evaluating the Contributions of Regional Trade Agreements to Governance of Service Trade*, ADBI Working Paper Series No. 307 (2011).

<sup>8</sup> Carolind Freund & Ammanuel Ornelas, *Regional Trade Agreements*, World Bank Policy Research Working Paper 5314 (2010).

<sup>9</sup> RBI, 2019, Free Trade Agreements: An Analysis, <[https://rbidocs.rbi.org.in/rdocs/Bulletin/PDFs/04AR120919\\_028BA1821849674D13AD24B6A410AD6EC4.PDF](https://rbidocs.rbi.org.in/rdocs/Bulletin/PDFs/04AR120919_028BA1821849674D13AD24B6A410AD6EC4.PDF)>.



Or, in the alternative, is it preferable to keep the approaches under both the tracks separate and distinct, and expect that both the paths could possibly merge at a future time?

Most preferential trade agreements require certain regulatory coherence at the domestic level. Considering that behind the border issues constitute the major challenge to international trade and capital flows, what is the best way to address them? Are the approaches pursued at the multilateral as well as the regional levels adequate to address such concerns?

Finally, engaging in multilateral and preferential trade agreements require State capacity. How can governments re-gear its existing institutional and administrative mechanisms to buttress capacity and thereby creating an enabling ecosystem. How can programmes such as the WCP Chair programme contribute to State capacity including adequate capacity within the private sector to understand and respond to new and emerging areas of trade?

The chair-holders in the WCP network are academic institutions in countries that are simultaneously engaging in preferential trade agreements as well as multilateral negotiations at the WTO. The discussion will feature key Indian policy makers and trade experts who would provide their perspective on the issues identified above.

### **PANEL DISCUSSION 3** **Macroeconomic Crisis and Trade Policy**

Macroeconomic policies form an important foundation for a thriving economy. In broad terms, the aim of a robust macroeconomic policy is to provide a stable economic environment that is conducive to foster strong and sustainable economic growth, driven by creation of jobs, wealth and improved living standards. The key pillars of macroeconomic policy are: fiscal policy, monetary policy and exchange rate policy.<sup>10</sup> Formulating macroeconomic and trade policies is an integral function of a sovereign state. However, discussions on their interactions and relationship with one another have remained infrequent. There is often a tendency to view trade policy merely from the view of promoting exports, or as a bargaining strategy in trade negotiations.

It is important to be cognisant that trade revenue in the form of tariffs is an important source of government revenue, especially in developing nations, where tax revenue may be inadequate to carry out public spending. Similarly, in fiscal and monetary policies, we must go beyond the traditional treatment of trade purely in terms of foreign exchange earnings and balance of payment calculations. Central Banks and finance ministries must look beyond domestic monetary targets of inflation by including trade in their macroeconomic analyses.<sup>11</sup>

Following the Great Depression in the 1930s, multilateral institutions such as the IMF, GATT/WTO were created in response to a lack of policy coordination when international trade relations suffered from the contagion of a financial crisis, fuelled by the unilateral devaluations of major currencies and the erection of trade barriers - all of which led to the creation of disciplines to treat national economic, financial and exchange rates policies as a matter of common interest.

However, even after the creation of the IMF and GATT/WTO, issues such as exchange rate stability, underlying macro-financial crises and uneasy adjustments of the balance of payments still remain at large. Such instabilities can have consequences on the long-term price environment of traders, their

<sup>10</sup> Robert Dolamore, *The tools of macroeconomic policy – a short primer*, Parliamentary Library Briefing Book - 44<sup>th</sup> Parliament of Australia, [https://www.aph.gov.au/About\\_Parliament/Parliamentary\\_Departments/Parliamentary\\_Library/pubs/BriefingBook44p/MacroeconomicPolicy#:~:text=Macroeconomic%20policy%20is%20concerned%20with,and%20improved%20living%20standards%20depend](https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/BriefingBook44p/MacroeconomicPolicy#:~:text=Macroeconomic%20policy%20is%20concerned%20with,and%20improved%20living%20standards%20depend).

<sup>11</sup> World Trade Organisation, *World Trade Report 2004: Exploring the linkage between the domestic policy environment and international trade*, World Trade Report 2004, [https://www.wto.org/english/res\\_e/booksp\\_e/anrep\\_e/world\\_trade\\_report04\\_e.pdf](https://www.wto.org/english/res_e/booksp_e/anrep_e/world_trade_report04_e.pdf)





production function, and the stability of the negotiated market access conditions. One of the arguments made during the early discussions at the WTO was about the ways an open trade can contribute in providing stability and security to economies in financial crisis, which can rely on exports for foreign exchange earnings as a source of income growth.

Despite initial efforts to discuss the interplay between trade and economic policies, the relevance of trade to address macroeconomic crises remains an important conversation during the present times. The current macroeconomic and financial conditions place developing economies in a vulnerable position, as they are exposed to ever more frequent shocks from commodity markets, capital flows, inflationary bursts, exchange rate instability and debt distress.<sup>12</sup>

The disruption caused by the COVID-19 pandemic and the food crisis caused by the conflict in Ukraine have led trade relations to enter a new age of insecurity. Trade relations are being redrawn, with a rapid proliferation of preferential trade agreements which have caused the fragmentation of the global trading system. This has created new trade challenges such as the return of protectionist tendencies and disruption in global supply chains in addition to existing trade issues such as rising tariff and non-tariff barriers. Approaching these trade issues from a macroeconomic perspective is imperative since countries prefer to export and negotiate with a clear and effective domestic position, which among other factors includes, strong and stable macroeconomic fundamentals of the country's economy.

A government's fiscal position significantly dictates its outlook on trade. A large fiscal deficit owing to ballooning imports may cause governments to raise tariff barriers and subsidise domestic industry to protect them from outside competition while also aiding them in increasing exports. These can have trade-distortion effects. The same holds true for monetary policy as well, where central banks may artificially depreciate the value of their currencies to make exports more competitive.

The effects of economic growth on trade are both short-term and long-term. Short-term effects include variations in imports, cause by changes in relative commodity prices leading to alteration in the level and composition of domestic expenditure due to changes in relative commodity prices. Long-term effects of economic growth reflect the changes in technological conditions of production as well as more permanent changes in demand.<sup>13</sup>

In light of the above, the panel session will feature experts in macroeconomics to examine the relationship between macroeconomic policies and the promotion of international trade. The session will further explore the changes needed at a macroeconomic level to permit countries to effectively utilise the opportunities available in the global trading network. The panel aims to address the following questions: What are the elements of a macroeconomic crisis and the reasons behind such crises? How can trade policy assist countries in distress due to macroeconomic crises? How is the topic of macroeconomic imbalances and trade policy approached in the WTO? Can FTAs or liberalisation of policies be helpful in avoiding macroeconomic crises? How can countries which are primarily dependent on imports implement fiscal or monetary policy for them to avoid such crises? What is the role of the industry during a macroeconomic crisis? Could there be flexibilities which can be provided in the country's industrial policy to address issues such as inflation, backlog in supplies, etc.? Is there a need to revisit the approach towards factors of production for economies to recover from COVID pandemic and on the ongoing Ukraine crisis?

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<sup>12</sup> UNCTAD, Trade and Development Report 2022, 3 October 2022, available at <[https://unctad.org/system/files/official-document/tdr2022\\_en.pdf](https://unctad.org/system/files/official-document/tdr2022_en.pdf)>, pg. 17.

<sup>13</sup> World Trade Organisation, World Trade Report 2004, "Exploring the linkage between the domestic policy environment and international trade", International Trade and Macroeconomic Policy, [https://www.wto.org/english/res\\_e/booksp\\_e/anrep\\_e/world\\_trade\\_report04\\_e.pdf](https://www.wto.org/english/res_e/booksp_e/anrep_e/world_trade_report04_e.pdf)