



Indonesia for Global Justice

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The Future of The WTO



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General Overview of the WTO

The World Trade Organisation ('WTO') is an international institution aimed at setting the norms and rules of international trade. Its operation centres on three limbs: monitoring compliance of international trade rules, negotiation of new trade agreements, and dispute resolution between states. The primary aims of the organisation are to ensure a more equitable playing field for international trade, provide certainty with consistent uniform trade laws, and guarantee flexibility with special and differential treatment. Fundamental to the WTO's role is the promotion of free trade and global access in the international marketplace.

Established in 1995, the WTO is based in Geneva, Switzerland, and currently it has 164 member countries, two-thirds of which are developing countries. The predecessor of the WTO was the 1948-1995 General Agreement on Tariffs and Trade (GATT) which was a multilateral treaty which countries could become a contracting party to and was never a formal international organisation. The WTO came into existence to fill in the lack of an institutional structure of GATT. Moreover, the WTO was intended to accommodate former non-GATT communist nations into the international trade order. These nations had previously traded within their own communist trading blocks, or did not extensively trade at all before the collapse of global communism in 1989. This was due to the possibility of conflict between the main GATT member, the United States, and other communist nations.

As the successor of GATT, the WTO has major differences. The first difference is that the WTO provisions apply universally to all signatories, while there were no universal provisions to be applied to GATT members. Another major difference is the dispute settlement area, that the adoption of panel reports and the authorisation to retaliate in WTO requires no consensus from the parties, while previously panel decisions in GATT needed consensus to be binding on the parties. A third difference is the WTO has a stronger mandate to pursue transparency and surveillance functions through the Trade Policy Review Mechanism. The WTO is managed by its member governments, with the General Council being the highest-level decision-making body. Additionally, it operates by consensus that all member countries have equal decision-making authority and meet regularly with other nations for trade negotiations.

The preamble of GATT provides that its objectives are '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 the resources of the world and expanding the production and exchange of goods, and promoting the progressive development of economies of all the contracting parties'. The WTO inherited these values as the successor of GATT. The core principles of the WTO include its economic equity practices between developed and undeveloped countries, creating a more free and fair international economy, especially for developing nations, and environmental protectionism.

1. Students from Australia who take part in the ACICIS internship program at the Indonesia for Global Justice 2021

The WTO is the organisational and legal basis of the international trade system. The WTO is also the monitor of numerous trade agreements and adjudicates trade negotiations and disputes. The institution is one of the most important international economic organisations, and its members account for the vast majority of the world's trade and is therefore known as the 'Economic United Nations'.

Current events at the WTO

Multilateralism is now under severe threat across the world, with the WTO's future being highly uncertain. President Trump's presidency from 2017-2021 played a highly active role in criticising China and the WTO for allowing unfair trade practices to occur. On 10 December 2019, the Trump administration blocked new appointments to the WTO Appellate body, thereby bringing WTO appeals to a standstill due to the lack of available judges. However, it is not only the US' blocking of new appointments to the WTO appellate body that has resulted in the decreased effectiveness of the WTO. Unilateralism is on the rise as major powers, such as the United States and China increase tariffs on national products, negotiating bilateral or multilateral trade agreements as opposed to international agreements that bind all nations. This has left the WTO with an inefficient dispute resolution system.

In addition, the Covid-19 pandemic has further escalated the global shift towards unilateralism and the 'state as king,' especially as nations seek to enact protectionist measures for their own national security. This is because countries across the world have become conscious of their overreliance on international supply chains which have been critically threatened by the lockdowns induced by the Covid-19 pandemic. Moreover, the geopolitical tensions between China and the United States over trade, and the rising support of populism across the world, have impelled nations to secure sufficient levels of autarky.

The model of liberalism that the WTO seeks to uphold appears to be rapidly disappearing, and irrespective of how many nations stay in the WTO if the United States withdraws from the organisation, the WTO will be rendered largely ineffective. This is because the United States maintains strong trade relations internationally. Furthermore, in almost every WTO negotiation, the largest obstacle to any agreement is the 'special and differential treatment' that developing nations argue are essential to equalising global trade, and developed nations criticise as unfair.

After fifteen years of negotiations, China joined the WTO in 2001 as a developing country. Twenty years after that, China is still claiming itself as a developing country based on its level of GDP per capita, percentage of population living in poverty, and level of environmental pollution. However, some members of the WTO do not agree with Beijing's claim, alleging that China, being the second largest economy in the world, is taking advantage of the WTO rules by enjoying the special and differential treatment for developing countries. This allows China to continue subsidising its agriculture and set higher tariffs for Chinese imports than more developed economies.

Some developed countries, such as the United States and Australia, are calling for the change of the WTO's statute so that China can be classified as a 'developed country'. However, the WTO does not define whether a member is a 'developed' or 'developing' country, and it is left to the individual members to self-declare their status. In its 2019 WTO position paper, China made a clear declaration that it 'will never agree to be deprived of its entitlement to special and differential treatment as a developing country', while identifying itself as the largest developing country.

On 29 January 2021, the Biden administration suggested previous resistance to WTO appellate appointments would soon end as the top US official to the UN, David Brisbee, noted that the US was "fully committed to engaging with our trading partners" during a 2021 WTO meeting. However, whilst the Biden administration has removed previous blocks to appoint a new UN director, there is still strong

mistrust of the WTO across both major political parties in the United States which will be challenging to handle moving forward.

There are strong calls for WTO reforms by member nations as trade negotiations appear to stagnate, and national economies move towards increased protectionism. These proposed reforms aim to address the key issues in the WTO's functions regarding multilateral trade negotiations, dispute settlements and trade policy supervision. The WTO rules system has not adapted to the new international geopolitical environment, resulting in the low efficiency of its negotiation ability, and decision-making and dispute settlement procedures. Through submissions of papers and initiatives, member countries are seeking to strengthen the work of the WTO, improve areas such as transparency and notifications, improve the dispute settlement system, and address the impasse in the judicial appointments to the Appellate Body.

Doha Development Agenda

In 2001, a new round of multilateral trade negotiations, launched at the Fourth Ministerial Conference of the World Trade Organisation, was held in Doha, Qatar, which is known as the Doha Development Agenda, or Doha Round for short. The round identified eight negotiating areas, namely agriculture and 'non-Agricultural Market Access' (NAMA), trade in services, rule negotiations, intellectual property rights, dispute settlement, trade and environment, and trade and development issues. The Doha Round was viewed by international commentators as consequential and ambitious, and the Ministers agreed on a Work Program to address the challenges associated with the negotiations.

There were 21 subjects on the Doha Round agenda list, first of which were the issues raised by developing countries regarding the implementation of the Agreement. Addressing developing countries' concerns will be an integral part of the Work Program. Among these issues, agricultural subsidies and NAMA were considered to be the two most critical and most divisive issues among WTO members. Without a solution to these two issues, negotiations on the other issues will not be able to move forward. The issue of agriculture and NAMA is complex and basically grouped into three main areas: agricultural subsidies, agricultural tariffs, and industrial tariffs. WTO members have long been unable to agree on the methods, magnitude, and formula of the reduction of agricultural subsidies, agricultural tariffs, and industrial tariffs. Despite the complexity of the differences, the main differences were caused by the various levels of development between member countries and therefore different interests and needs.

The 1995 'General Agreement on Trade in Services' (GATS) committed members to undertake negotiations on specific issues to progressively liberalise trade in services. The Doha Declaration affirmed the negotiation procedures and guidelines under GATS and established the deadline for concluding the negotiations. For trade-related aspects of intellectual property rights (TRIPS), the declaration stressed the importance to support public health by promoting both access to existing medicines and the development of new medicines. The working group also focused on clarifying the WTO's core principles including non-discrimination, transparency, consultation, dispute settlement, development concerns, technical assistance, and capacity building.

One important negotiation launched at the Doha Round was the fishery subsidies negotiation. Global fisheries are suffering from overfishing, and more than one-third of the world fishing stocks are being exploited at unsustainable levels. From a sustainability perspective, the WTO negotiations aim at disciplining fishery subsidies in order to eliminate harmful fishery subsidies which encourage people to overfish. For developing countries and least developed countries, fisheries are an important food source to ensure food security, livelihoods, employment, and economic viability. Unlike the many developed countries that have expanded their fishing fleet capacity through subsidies, fisheries in many coastal developing countries depend on fishery subsidies to survive, and the current proposals for 'Special and

Differential Treatment' are not likely to be sufficient to support the vulnerable population and economies in developing countries.

In terms of agriculture, the most important negotiations are centred on reforming the 1995 'Agreement on Agriculture'. In 2018, developed countries' food tariffs were almost double the price of tariffs on non-agricultural products, making it expensive for developing countries to gain access into developed countries' consumer markets. Current negotiations are centred on agricultural subsidy rules which currently allow developed countries a greater ability to utilise subsidies to protect food sources compared to developing countries. Several exemptions to subsidy limits are currently employed by developed countries to the frustration of many developing countries.

Another important negotiation was the 'Trade in Services Agreement' which was originally proposed by Australia, the European Union, and the United States of America, seeking to address barriers to international services trade and service exports. Originally seen as a promising plurilateral negotiation, there are currently twenty-three potential parties to the agreement, accounting for 70% of the world's services trade. The last round of negotiations was held in December 2016 and whilst the agreement still holds great potential for further negotiation and support, the negotiations for the agreement have currently been suspended. It is unlikely to be discussed at the 2021 Twelfth WTO Ministerial Conference (MC12 2021) agenda.

The Doha Round aimed to facilitate the economic growth of developing nations and promote the development of the global economy by promoting international free trade. However, the lack of consensus and the failure of negotiations between members contributed to the minimal achievement of such objectives.

Developing Countries' Stances

Developing nations constitute two-thirds of the WTO's 164 members. Consequently, they therefore have the potential to play a highly active role in shaping the WTO and its negotiations. At every negotiation, the largest challenge to any consensus is the perceived special and differential treatment for developing nations which certain developed nations view as unfair and unequal.

For many developing countries, the role of the WTO was originally to equalise regulations and conditions for trade, allowing for greater fairness when countries engage in the importation and exportation of goods and services. It was also designed to accommodate for special and differential treatment, recognising that it was frequently more difficult for developing nations to compete at on an international level with wealthier nations. Therefore, the current shift towards protectionism and bilateralism, outside of the rules of the WTO, poses a significant threat to the prospects that the WTO could improve greater economic access for developing nations. A divided international community weakens the overall operation and influence of the WTO.

How do developing countries move forward?

There are undoubtedly problems precipitated by the WTO including the requirement for consensus for a decision to be made and the difficulty of preventing divisions between developing countries and developed countries. These issues can be highly challenging for developing countries to negotiate and manoeuvre in the international forum. However, as frustrating as the WTO may be, it nevertheless still holds potential for developing countries to reshape and realign global politics. The most important question for developing countries is therefore:

How do we move forward?

It is necessary for developing countries to take a more active role in the WTO, vocalising violations of the very principles the organisation was founded upon, ideals of liberalism and free trade. This can be accomplished through three prongs of action:

1. Increased participation in WTO negotiations.
2. Consultation with civil society and NGOs; and
3. Closer engagement with other developing nations, allowing for the formation of robust blocs of support.

In terms of the first approach, the greater participation by developing countries in once stalled negotiations have the potential to revitalise previously stalled discussions. As of now, several MC12 conferences are, if not on hold, held with little meaningful progress. States repeat old positions and statements, stuck on the same provisions and clauses. Instead of allowing this to repeat in the future, developing states should clearly state the aims they believe hope can be accomplished by each negotiation. They should also encourage one another to participate more actively in the negotiations, brainstorming new and more innovative ways to approach the international trade of goods and services. This can be done through the support of the second prong: consultation from civil society.

Non-governmental organisations (NGOs) have the potential to play a major role in mobilising domestic support for WTO proposals in both developing and developed countries. NGOs also possess the intellectual capital to be able to consider new approaches to problems within the WTO. For developing countries, utilising the support and manpower of civil organisations can allow them to gain greater support. This is applicable not only to their domestic states, but also to international support as well. For example, if a civil society group in Indonesia was able to lobby for a preferential treatment clause, they could also use their networks to reach European and American NGOs who could then lobby their own governments and society. This method would require developing states to rethink their traditional approaches to the WTO, and more actively seek the support and advice of civil organisations. However, it could also be the key to garnering greater public support for proposals, allowing developing countries to play a more active role in the WTO.

The third way developing countries can move forward is to work closely with other developing countries, utilising their majority in the WTO to push their agenda. What this involves is having state delegations coordinate more closely with one another on resolving issues of mutual interest, increasing co-sponsors of proposals or agreements, and utilising the large manpower of developing states to increase support for their proposals.

Conclusion

The current future of the WTO is highly uncertain as negotiations remain largely cyclical and divisive in nature, unable to move forward. Whilst this presents a significant challenge to the principles of liberalisation and free trade, it still opens the potential for developing nations to play a key role. The MC12 talks in June 2021 may prove to be promising if WTO member states engage in increased consultation, closer engagement, and vocal decision-making.

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