



## STRENGTHENING THE WTO TO PROMOTE DEVELOPMENT AND INCLUSIVITY

### COMMUNICATION FROM THE AFRICAN GROUP, CUBA AND INDIA

#### *Revision*

The following communication, dated 10 February 2022, is being circulated at the request of the African Group, Cuba and India.

#### **1 IMBALANCES AND DEVELOPMENT CHALLENGES AT THE WTO**

1.1. The Uruguay Round was concluded with many imbalances in the rules for developing countries. Over the course of time, these imbalances have become even more problematic for developing countries many of whom were already facing financial crisis before the onset of COVID-19. Unlike the previous financial crises, the COVID-19 pandemic exerted a much more radical and abrupt effect on both supply and demand, putting the real economy to a halt.

1.2. The preamble to the Marrakesh Agreement establishing the WTO recognizes that international trade is not an end in itself, but a means towards "raising standards of living and ensuring full employment". More importantly, it recognizes that "there is a need for positive efforts designed to ensure that developing countries, and especially the least developed among them, secure a share in the growth in international trade commensurate with the needs of their economic development".

1.3. For the fulfilment of these founding objectives of the WTO, all Members, no matter their trade share, must have an equal say in decision-making.

1.4. Throughout its history, the World Trade Organization (WTO) has experienced a number of challenges. Recently, some of these relate to a wider 'crisis of multilateralism', but others can be understood as the result of a confluence of factors rooted in the legal commitments that WTO Members undertook at the establishment of the Organization in 1995. Specifically, inequities and imbalances in some of the existing multilateral trade rules have provided an inherent advantage mainly to the developed Members. Thus, whilst WTO rules such as those on border trade measures have helped developing countries by providing certainty to trade, more often than not, developing Members found themselves constrained from pursuing their development and industrialization objectives due to other rules which have been overly intrusive or imbalanced. Trade-Related Intellectual Property Rights (TRIPS) rules, for instance, have facilitated monopoly rents, and diminished the possibility for technology transfer. The Trade-Related Investment Measures (TRIMS) Agreement has disallowed Members to use local content requirements. Trade rules on subsidies constrain the policy space developing countries need to nurture their industries. However, they allowed advanced economies to provide substantial support throughout their industrialization history, and yet they are using them now to encourage the reshoring of traditional manufacturing and to keep the leading position in emerging industries including high-tech, knowledge-intensive industries deemed critical to their future prosperity. The Agreement on Agriculture has allowed developed countries to continue their high subsidies on agriculture products, including those exported to developing countries, impacting their small farmers' livelihoods and food security. This has been compounded by the lack of inclusiveness and transparency in the process of WTO negotiations.

1.5. Developing Members have called for certain reforms in the WTO since 1996 in an effort to address asymmetries and bring balance to the WTO rules, as well as create more policy space for themselves to pursue development and to use the same policy tools as developed countries to industrialize. The reform agenda put forth by developing Members was incorporated into the Doha Development Agenda in 2001. This included the strengthening of Special and Differential Treatment Provisions, Implementation Issues, addressing the existing asymmetries in the WTO Agreements, particularly in Agriculture with a view to facilitating the realization of the SDGs on food security and alleviation of rural poverty. As well as agreement that the TRIPS Agreement does not and should not prevent members from taking measures to protect public health. However, increasingly the WTO is moving away from the principles entailed in the Marrakesh Agreement and the negotiations mandate contained in the Doha Development Agenda which sought to place the needs and interests of developing countries at the heart of the Work Programme.

1.6. In the last three years, some Members have suggested a broad range of reforms at the WTO including a slate of new rules, even though existing mandates from the DDA remain unaddressed. **"WTO reform" does not mean accepting either inherited inequities or new proposals that would worsen imbalances. Reforms must be premised on the principles of inclusivity and development** and respond to the underlying causes of the current backlash against trade and the difficulties that developing Members continue to face *vis-à-vis* their industrialization challenges. Inclusivity would require, at a minimum, preserving consensus decision making in the WTO.

1.7. In addition to these challenges, the WTO is now confronting immediate existential crises: The resort to unilateral and protectionist measures and the breakdown of the Appellate Body (AB). Clearly reform is needed in these areas.

1.8. Through this concept paper, we seek to identify the issues that must be addressed if the WTO is to be strengthened in a balanced manner. In some areas, no change may be required but simply a reinforcement of existing rules and architecture as some of the existing foundational WTO rules are currently being sought to be changed or adjusted. The final section of this paper will address COVID-19 and how the WTO must be strengthened to support developing countries in their response to this very serious pandemic and economic crisis.

1.9. In various discussions, the functions of the WTO have sometimes been looked at from the viewpoint of 3 areas. We will also use this categorization for this paper:

- a. The negotiating function of the WTO.
- b. The dispute settlement function.
- c. The monitoring function of regular bodies.

## **A. THE NEGOTIATING FUNCTION OF THE WTO**

The WTO serves as a forum to negotiate, administer and monitor WTO agreements, including further negotiations concerning multilateral trade relations as decided by the Ministerial Conference. The negotiating function of the WTO is underpinned by the following:

- a. the core principles of the Multilateral Trading System including rules on decision-making and how amendments are made;
- b. the Special and Differential Treatment architecture; and
- c. rule-making and the central role of development.

## **2 PRESERVING CORE PRINCIPLES OF THE MULTILATERAL TRADING SYSTEM**

2.1. Recent actions by some WTO Members indicate a weakening of the commitment to the multilateral trading system. Preserving and strengthening the WTO must include:

2.2. First, laws and regulations of WTO Members which mandate unilateral action on trade issues that are inconsistent with WTO rules would need to be amended. This will ensure that WTO Members are not perpetually under threat of unilateral action on trade issues by some Members.

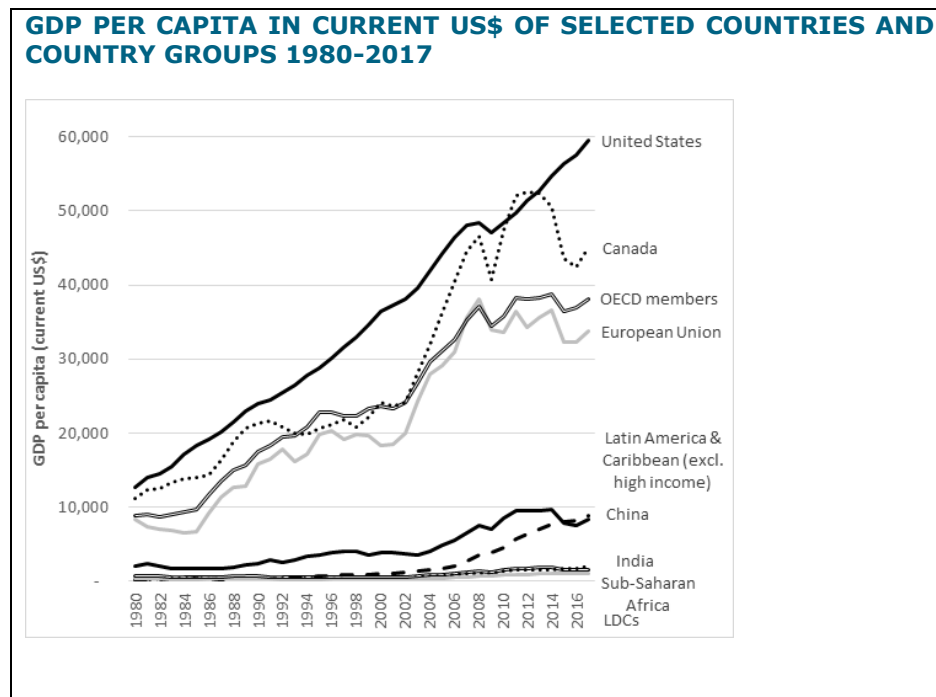
2.3. Second, the following rules in the Marrakesh Agreement are fundamental and must be respected:

- a. Articles II and III on the multilateral functions of the WTO;
- b. Article IX on the continuation of the practice of decision-making by consensus;
- c. Article X – when there are amendments (additions or changes) to WTO rules, there must be consensus, followed by ratification by Members. New rules enter into force only when the ratification numbers required have been attained.

2.4. Third, multilateral avenues, based on consensus, remain the most effective means to achieve inclusive development-oriented outcomes. In the post-MC11 phase, many Members have evinced interest in pursuing outcomes in some areas through joint statement initiatives (JSIs). Provisions governing plurilateral agreements in the Marrakesh Agreement must be adhered to. If they are to be multilateral agreements, the outcomes of these initiatives, by way of new rules, can be introduced into the WTO when there is consensus; and Art. X of the Marrakesh Agreement on amendments must govern any changes or additions to the WTO Agreement. The JSIs should not change the fundamental multilateral architecture of WTO and should not change consensus-decision making - a key principle that should continue to govern multilateral relations. In addition, JSIs should be without prejudice to the rights and obligations of non-participating Members in WTO Agreements.

### 3 THE ARCHITECTURE OF SPECIAL AND DIFFERENTIAL TREATMENT MUST BE PRESERVED

3.1. Special and Differential Treatment (S&D) is a treaty-embedded and non-negotiable right for all developing Members.<sup>1</sup> The available data indicates that the gap in the standards of living between developing and developed countries has not narrowed since the establishment of WTO.<sup>2</sup> In fact, the GDP per capita between developed and developing countries has widened considerably.



Source: World Bank, <https://data.worldbank.org/indicator/NY.GDP.PCAP.CD>

<sup>1</sup> See WT/GC/202/Rev.1.

<sup>2</sup> See WT/GC/W/765/Rev.2.

3.2. Most of the world's poor also live in non-LDCs: 61.8 per cent (non-LDCs) versus 38.2 per cent (in LDCs). These non-LDCs are called the "new bottom billion".<sup>3,4</sup>

3.3. The development gap between developed and developing countries continues to be very wide.<sup>5</sup> This necessitates the preservation and strengthening of the S&D provisions in both current and future WTO agreements, with priority to outstanding LDC issues.

3.4. The pursuit of S&D does not mean that developing countries are seeking unlimited carve-outs from the MTS. Developing countries have consistently made a contribution to international trade commensurate with their level of development. This contribution is recognized and was acknowledged as far back as the Marrakesh Declaration of 15 April 1994 that acknowledged the notable active role played by developing countries in delivering on the wide mandate of the Uruguay Round, including the significant measures of economic reform and autonomous trade liberalization implemented by developing countries.

3.5. There is an indivisible relationship between developing country status and S&D. Any unilateral action depriving developing Members, including LDCs of treaty-embedded rights would be inconsistent with Members' obligations, and would in fact erode the foundation of the multilateral trading system, which functions on the basis of being 'rules-based'. This will cause lasting and systemic damage to the trading system.<sup>6</sup>

3.6. Thus the following principles must be upheld:

- Developing countries' unconditional rights to S&D must continue;
- Developing countries must be allowed to make their own assessments regarding their own developing country status (self-determination);
- Existing S&D provisions must be upheld;
- S&D must be provided in current and future negotiations.<sup>7</sup>

#### **4 RULES MUST SAFEGUARD DEVELOPMENT CONCERNS**

4.1. The multilateral trading system must give policy space for developing Members to fulfil their development goals including industrialization. Developing Members continue to confront many formidable challenges and capacity constraints, which underscores the continued relevance of S&DT provisions in their favour.

4.2. The long-awaited outstanding 'development' issues from the Doha Round continue to be paramount and include:

- Implementation Issues<sup>8</sup> – aimed at rebalancing the imbalanced rules from the Uruguay Round such as in the areas of agriculture, TRIMS, TRIPS, Subsidies Agreement<sup>9</sup> etc. Developing countries should be enabled to support their industries under the Subsidies Agreement. Developed countries are doing so through stimulus packages and incentives for manufacturing and reshoring of medical and related products. Local content requirements are another critical policy instrument – hence the need for flexibilities under the TRIMS Agreement and GATT Articles III and XI. There must be more technology transfer and access to technologies i.e.

<sup>3</sup> See WT/GC/W/765/Rev.2.

<sup>4</sup> See Bellagio Initiative on "Poverty in Middle-Income Countries", in November 2011, [www.cbm.org/article/downloads/82788/Summary\\_Poverty\\_in\\_MIC.pdf](http://www.cbm.org/article/downloads/82788/Summary_Poverty_in_MIC.pdf), accessed on 25 January 2019.

<sup>5</sup> A broad range of these statistics are provided in WT/GC/W/765/Rev.2.

<sup>6</sup> This paragraph is from WT/GC/202/Rev.1 "Statement on Special and Differential Treatment to Promote Development", Cosponsored by the African Group, the Plurinational State of Bolivia, Cambodia, China, Cuba, India, Lao People's Democratic Republic, Oman, Pakistan and the Bolivarian Republic of Venezuela, 14 October 2019.

<sup>7</sup> This paragraph is also from WT/G/202/Rev.1, *ibid*.

<sup>8</sup> Developing countries' requests are contained in the Implementation issues agenda or Para. 12 of the Doha Declaration, WT/MIN(01)/DEC/1.

<sup>9</sup> See Para. 5.8 of the developing country submission WT/GC/W/765/Rev.2.

the TRIPS agreement needs re-examination. WTO safeguards and countervailing duties should well address developing members' concerns and be accessible. There should also be fewer conditions and constraints on the use of GATT Art. XVIII particularly regarding assistance to infant industries and balance of payments difficulties.

- S&D – strengthening and making effective and operational the S&D provisions in WTO Agreements, in accordance with paragraph 44 of the Doha Declaration.
- Cotton – the imbalances in Agriculture Domestic Support due to Aggregate Measures of Support (AMS) beyond *de minimis* must be addressed. These supports, leading to subsidized exports by some, show up clearly in the area of cotton, where cotton prices have been depressed. This has impacted negatively on rural livelihoods and employment across many developing countries including the C4 Members.
- Public Stockholding (PSH) – a permanent solution must be agreed upon and adopted by MC12 which contains less onerous safeguard conditions, including less exacting transparency requirements. It must also allow for new programmes to be covered.
- Special Safeguard Mechanism (SSM) – Ministers in Nairobi (MC10, 2015) mandated Members 'To pursue negotiations on an SSM for developing country Members in dedicated sessions of the Committee on Agriculture in Special Session'. An effective and easy to use SSM should be adopted in MC12.
- Agriculture Domestic Supports – to rectify the imbalances in the existing rules due to some Members having AMS entitlements whilst others do not. High per farmer subsidies by OECD countries, with huge flexibility continue to have serious implications on food insecurity and rural poverty in developing countries.<sup>10</sup> The first step - eliminating AMS entitlements is urgent, with S&D for developing Members.

4.3. In addition to the issues mentioned above, work should also continue on the following issues emphasizing the development components and in accordance with existing mandates:

- Fisheries Subsidies – in accordance with the Doha, Hong Kong and MC11 Ministerial Declarations. All of these emphasize the importance of S&D in the outcome of these negotiations because of the 'importance of this sector to development priorities, poverty reduction, and livelihood and food security concerns.<sup>11</sup> SDG 14.6 also reinforces S&D. Due to the COVID crisis which continues to unfold across many developing countries, the conclusion of the negotiations should be based on meaningful progress made that fulfills the mandate set out in SDG 14.6.
- E-Commerce discussions under the 1998 Work Programme<sup>12</sup> – E-commerce and digital trade must be pursued in an inclusive manner or it will exacerbate existing imbalances in global trade. COVID-19 has demonstrated the importance of the 1998 Work Programme and the need to address the digital divide. We must reinvigorate the work under the Work Programme to inform decision-making in MC12. This necessitates that all the relevant bodies take up this discussion based on their mandate, so as to make progress by MC12. We must also prioritise the work of the CTD that is mandated to discuss the developmental aspects that are key to ensuring inclusive participation in the digital economy.

Particularly important is the issue of the E-Commerce moratorium. As more goods are transmitted electronically, i) the loss of customs duties and ii) loss of the possibility to use tariffs to support domestic industries, will be increasingly costly. It is important for the Membership to come to a common understanding on the scope of the moratorium. Without clarity on this, there can be no predictability for business, trade and industry. Importantly, Members would also not know their obligations and rights. Only a clear understanding on

<sup>10</sup> See Graph 5 of WT/GC/W/765/Rev.2 for a comparison of agriculture subsidies between some developed and developing Members.

<sup>11</sup> WT/MIN(05)/DEC 2005 "Hong Kong Ministerial Declaration", Annex D para. 9.

<sup>12</sup> WT/L/274 1998 'Work Programme on Electronic Commerce' adopted by the General Council on 25 September 1998.

scope and an appreciation of its impact would help Ministers take a well-considered decision at MC12.

4.4. Another issue that must be addressed in any reform process relates to the alleged theft of traditional knowledge that is held, preserved and developed by traditional communities/indigenous people. The rules of the multilateral trading system must also support developing countries in building their technological capacities, and their access to affordable medicines and medical technologies.

4.5. The SDGs articulate important development challenges still confronting developing countries, including overcoming poverty and hunger. WTO rules must be supportive, rather than a constraint to these efforts.

## **B. THE DISPUTE SETTLEMENT FUNCTION OF THE WTO**

### **5 RESOLVING THE DISPUTE SETTLEMENT ISSUES**

5.1. A functioning, independent and effective dispute settlement system is indispensable for preserving the rights and obligations of all WTO Members and for ensuring that the rules are enforced in a fair and even-handed manner. Hence, a *sine qua non* for strengthening the WTO system is the restoration of the AB. This is an urgent priority since without such a system the rationale for negotiating new rules or to undertake reforms remains questionable. Therefore, the resumption of the appointment process of the AB members must be high on the agenda of reforms and in fact needs to precede other reforms.

5.2. As per Articles 17.1 and 17.2 of the Dispute Settlement Understanding (DSU), all WTO Members have a collective duty to ensure the maintenance of a standing AB. It would be disingenuous to use the pretext of the Appellate Body's alleged digression from the clear mandate of the DSU to justify wilful non-compliance with the same by the Membership.

5.3. Attempts at addressing the crisis in the dispute settlement system must preserve its essential features namely an independent, two-tier dispute settlement system, automaticity in the launch of proceedings and decision-making by the Dispute Settlement Body (DSB) by negative consensus, where provided. Developing Members' concerns about affordability and equitable access to the use of the dispute settlement system are also very important.

5.4. The priority for the membership must be to find a permanent multilateral solution. Abandoning the AB will fragment the dispute settlement system and will have a negative impact on the balance of rights and obligations that have been carefully negotiated in the DSU. A two-stage dispute settlement system is essential to ensure security and predictability of the multilateral trading system, including prompt, efficient and effective resolution of disputes to the benefit of all Members.

5.5. There is also a need to reflect on the structural imbalances underlying the dispute settlement system, and the challenges faced by developing countries in accessing the dispute settlement system. The imbalances and challenges will remain as long as the dispute settlement system is not cost-effective for developing countries to deploy and if the ultimate remedies are insubstantial.

## **C. THE MONITORING FUNCTION OF REGULAR BODIES**

The functioning of its Councils and Committees i.e. the regular work of the WTO, was carefully negotiated in the Uruguay Round. Mandates were agreed to. These were negotiated outcomes that must be respected.

### **6 NO ADDITIONAL TRANSPARENCY AND NOTIFICATIONS OBLIGATIONS UNDER EXISTING AGREEMENTS**

6.1. Developing countries face challenges in complying with all their notification obligations due to human resource and institutional capacity constraints. Any non-compliance is not willful. Treaty obligations must be performed in good faith. Yet despite the best of intentions, the ability to fulfill all notification obligations inevitably depends on capacities that are commensurate with a Member's level of development and resources available. In light of these difficulties, we do not agree to

additional transparency obligations. Any work in this area must be in the provision of capacity building to developing countries.

6.2. Developed Members themselves should lead by example in submitting comprehensive, timely and accurate notifications. They have not always done so, as seen below. Given this, surely the resource constraints of developing countries should be well appreciated?

- In the area of Agriculture, developed Members that have Final Bound AMS entitlements should submit their notifications within three months of the end of each year (calendar, marketing or fiscal year).<sup>13</sup> Many developed Members have taken up to two years or more to do so.
- In the area of Services, GATS Art. III.3 requires Members to 'promptly and at least annually inform the Council for Trade in Services of the introduction of any new, or any changes to existing laws, regulations or administrative guidelines which significantly affect trade in services covered by its specific commitments under this Agreement'. Some developed Members have not been implementing this.<sup>14</sup>

6.3. Some Members have found innovative ways to undermine their WTO commitments, or not implement the spirit of those commitments. If the discussion on Transparency goes beyond addressing capacity issues, the first step must tackle the undermining of WTO commitments through:

- Regular notification of entry-related measures affecting existing Mode 4 commitments of Members;
- Article 66.2 of the TRIPS Agreement. Developed countries have a legal obligation in the area of technology transfer towards LDCs. More transparency would be supportive of LDCs' efforts to build a viable technological base;
- Disclosure of origin of traditional knowledge and genetic resources in patent applications;
- Transparency in tariffs – non-ad valorem tariffs should be notified in ad valorem terms or converted to ad valorem tariffs.

6.4. Transparency must also permeate the entire functioning of the WTO including:

- Taking note of the resource constraints of small delegations and thus rationalizing meetings at the WTO so that there are no overlaps. In areas where there are active negotiations for outcomes, these meetings should as far as possible take place in formal mode. They should always be open, inclusive and transparent and take seriously the resource constraints of developing countries.
- Ministerial Conferences (MCs) and the processes preceding them in Geneva. The basic principles and procedures for this Member-driven organization need to be agreed upon. For instance, all meetings in the MC, which is the body for decision-making, should be open to all Members without restricting the decision-making process to smaller Green Rooms.

## **7 REGULAR COMMITTEES ARE ALREADY FUNCTIONING WELL**

7.1. It has been suggested that there should be a "strengthening" of the WTO's regular committees.

7.2. We support improving upon meeting arrangements: making available documents to be considered at a formal meeting available 15 days before the meeting; circulating at the end of each year, an indicative yearly schedule of meetings for each of the WTO bodies for the following year; and timely circulation of the agenda and minutes of meetings.

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<sup>13</sup> See p. 11 of G/AG/2, 1995 "Notification Requirements and Formats" adopted by the Committee on Agriculture on 8 June 1995.

<sup>14</sup> See p. 6 of JOB(09)/10/Rev.10, 2020 "Overview of Notifications Made Under Relevant GATS Provisions: Informal Note by the Secretariat", 20 February.

7.3. With regards to mandates for committees, these were carefully negotiated in the Uruguay Round. We cannot give new mandates that upset the delicate balance that was struck.

7.4. There is also the suggestion to bring up trade concerns in every committee. Addressing specific trade concerns (STCs) is provided for under certain agreements. Mainstreaming of STCs across all committees and councils is likely to prompt Members to raise STCs very frequently. This will increase the paralysis in the operation of the organization and will negatively impact developing countries who already do not have the capacity to cope with current challenges. We therefore do not believe that the horizontal implementation is acceptable.

7.5. The existing procedures already allow for trade concerns to be addressed. Additional obligations and onerous burdens on developing Members e.g. encouraging submission of written questions and replies within a specified period will overstretch our limited human and institutional capacities.

7.6. The WTO is a Member-driven organization. Chairpersons have an obligation to maintain impartiality in accordance with the rules of procedures governing the respective WTO bodies they preside over. This is also applicable to the WTO Secretariat who are required in terms of Article VI of the Marrakesh Agreement and read together with the Staff Regulations and Rules under the Standards of Conduct<sup>15</sup> to maintain their international character and remain neutral. Their roles cannot be increased from their current mandates and functions.

7.7. The role and presence of other stakeholders, intergovernmental or International Organizations in the WTO must be limited to preserve the Member-driven nature of work and with due respect to their competences, mandates and limitations.

7.8. The goals of development have not been raised in the discussion. Especially in the current COVID pandemic and economic crisis, discussions on the role of Regular Bodies must be seen through the lens of development.

## **8 ALLOWING FOR DIFFERENT ECONOMIC MODELS**

8.1. The objectives of the WTO were negotiated and are entailed in the Marrakesh Agreement. It is expected to contribute to strengthening the world economy and promote a rules based multilateral trading system, improve investment, employment, living-standards and income growth throughout the world in a fair and just manner.

8.2. The WTO consists of diverse countries with different levels of development, national challenges and development priorities. Its contribution is important, distinct and clearly defined. It provides a legal framework for the conduct of international trade, a more effective and reliable dispute settlement mechanism and a forum for negotiations. The WTO was never conceptualized as a forum that will define nor change economic models of Members.

8.3. Whilst the role of the market is important, government policies are required to address market failures or to achieve development objectives. This is clearly seen in the context of COVID-19 where many governments have stepped in to support businesses as well as give direction, incentives, and subsidies regarding production decisions. The role of the State is further amplified in a consensus resolution passed at the United Nations Human Right Council entitled 'The central role of the State in responding to pandemics and other health emergencies, and the socioeconomic consequences thereof in advancing sustainable development and the realization of all human rights' (A/HRC/44/L.23/Rev.1 of 15 July 2020).

## **9 COVID-19 AND DEVELOPING COUNTRIES – MEASURES TO ADDRESS THIS CRISIS**

9.1. The world is facing its worst recession since the 1930s. Developing countries are disproportionately affected. The pandemic is exposing the fundamental weaknesses in our global system. The profound social and economic fragilities across developing countries, already very present pre-COVID, are now being exposed and further exacerbated with the crisis. These include entrenched poverty (SDG 1), hunger and food insecurity (SDG 2), lack of clean water and sanitation

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<sup>15</sup> See Annex B of the Decision of the General Council and the ICITO Executive Committee on 16 October 1998 on the Conditions of Services Applicable to the Staff of the WTO Secretariat in WT/L/282.



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(SDG 6), weak economic growth and the absence of decent work (SDG 8), pervasive inequalities (SDG 10).

9.2. Even prior to the crisis, developing countries were already experiencing deepening financial and debt vulnerabilities in the context of tepid economic growth, slowing trade, sluggish real investment and growing income inequalities. Almost half of poorer economies were assessed by the IMF to be at high risk of debt distress, or already in debt distress by end 2019. In 2018, the total debt of developing countries reached 191 per cent of their combined GDP, the highest level on record.<sup>16</sup> The UNCTAD concludes that "the current levels of reserves on average, cast a question mark over the ability of developing countries to stave off the COVID-19 shock, in particular where reserve accumulation has occurred through borrowing rather than (or in addition to) export earnings". COVID-19 thus exposes the importance of the trade, debt and finance nexus.

9.3. One hundred million people could be pushed into extreme poverty in 2020 (below \$1.90 a day). A few more hundred million will join the ranks of the poor if the yardstick of \$3.20 or \$5.50 is used. We could see famines of historic proportions. Economic activity across the world has plummeted, and unemployment has soared. These impacts are especially bad for LDCs, Sub-Saharan Africa and countries in South Asia. 70 per cent of LDC labour force is self-employed; 60 per cent in South Asia are in the informal sector; and the same is true for over 60 per cent in Sub-Saharan Africa. There is a need to preserve policy tools that are necessary to weather the health crises, promote economic recovery and economic resilience.<sup>17</sup>

9.4. According to the 2021 FAO report on the State of Food Security and Nutrition in the World Report, there is an exponential increase in moderate or severe food security with one in three people in the world not having access to adequate food in 2020 – an increase of almost 320 million in just one year. The high cost of healthy diets coupled with persistent high levels of income inequality put healthy diets out of reach for around 3 billion people in 2019 across all regions, likely increasing in 2020.

9.5. The combination of very tight fiscal space, weak and fragile health care and social protection systems mean that developing countries will experience a much higher human and financial toll. Add to this the need to import specialised goods and services to deal with COVID-19 means that developing countries face huge pressures in their balance of payments situation.

9.6. There is a need to reflect on the role of the MTS in promoting economic recovery and in addressing the current and future health crisis. Multilateral cooperation is needed now more than ever to enable Members to effectively respond to the crisis based on their needs. One size fits all approaches are unhelpful. Such cooperation should:

- a. ensure timely access to affordable medical products including the vaccine, diagnostic kits, PPE and ventilators;
- b. preserve policy tools to promote economic recovery;
- c. provide policy flexibility with a view to rebalance global rules and national economic development imperatives; and
- d. ensure that trade rules support production-led growth, jobs and structural transformation.

9.7. Developing countries should preserve policy space to respond to the pandemic and to boost productive capacity to respond to their development objectives and needs. This includes key policy tools such as tariffs and export restrictions which must be implemented in accordance with their obligations under the covered Agreements.

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<sup>16</sup> UNCTAD 2020 "The Coronavirus Shock: A Story of another Global Crisis Foretold", p. 5.

<sup>17</sup> UNCTAD 2020 *ibid.*

## **A Moratorium on Trade Measures and Sufficient Flexibilities on Intellectual Property Disciplines**

9.8. The severity of the COVID crisis requires that governments are enabled to take the measures needed to limit the human toll caused by the pandemic on their people.

9.9. The policy space is particularly important for developing countries since they lack the fiscal space developed Members have to support their economies and people such as through historically large stimulus packages. In contrast, developing countries have no other choice but to be more creative in their responses, including through the use of trade measures if these can be helpful. The trade regime should not penalize developing countries for taking action to support their citizens during such an extraordinarily difficult time. Developing countries should therefore be exempt from being taken to the WTO's DSB if they implement trade measures that are essential and necessary in response to the pandemic.

9.10. Such a moratorium on trade measures and flexibilities on intellectual property disciplines shall have a clearly defined scope and should be maintained only temporarily for the duration of the COVID crisis. It is recognised that intellectual property rights should be interpreted and implemented in a manner supportive of the right of members to protect public health, and in particular, to promote access to medicines for all and to ensure that IPRs are protected for the benefit of all.

9.11. The exact measures useful to individual Members to respond to the pandemic will depend on their individual circumstances.

## **10 IN CONCLUSION**

10.1. The priorities for reform at the WTO must include:

- a. The negotiating function of the WTO.
  - Strengthening the multilateral character of the WTO. Critically, this must include the preservation of consensus decision-making and respecting Art. X of the Marrakesh Agreement on Amendments with regards to new rules;
  - Addressing the unilateral and protectionist actions taken by some Members;
  - Reaffirming the principle of S&D, which is a treaty-embedded, non-negotiable right for all developing countries in the WTO; and promoting inclusive growth, widening spaces for states to pursue national development strategies in the broad framework and principles of a rules-based system;
  - Keeping development at its core through delivering on the long-promised development concerns, in particular the outstanding development issues of the DDA; as well as address the asymmetries in WTO Agreements such as those in Agriculture, the Subsidies Agreement, TRIMS and the related GATT articles (Art. III and XI), TRIPS and other areas; continuing with the on-going multilaterally mandated negotiations; reinvigorating the discussions in the 1998 E-Commerce Work Programme particularly looking at the E-Commerce Moratorium and the issues of digital divide.
- b. The dispute settlement function.
  - Restoring the AB and the two-tier WTO DSU, and addressing challenges of access to the dispute settlement system by developing countries.
- c. The monitoring function of regular bodies.
  - Reaffirming existing commitments and not adding more obligations in the areas of transparency; specific trade concerns and the functioning of regular bodies. The WTO must also allow for different economic models rather than push for one form or another.

d. COVID-19

- Responding to the COVID-19 pandemic, including through introducing a Moratorium on trade measures and providing sufficient flexibilities on intellectual property disciplines for developing countries. Such a Moratorium will be in place for the duration of the pandemic for governmental action taken to directly respond to the pandemic. Unlike developed countries, developing countries without deep pockets must be more creative, including by using trade policy measures to provide medicines, diagnostics, health equipment, and to address the serious balance of payments crises many developing countries now find themselves in.
  - To address COVID-19, developing countries should not be asked to relinquish their required trade policy space such as through the permanent liberalization of tariffs or agreement to end the use of export restrictions.
-