

GUEST EDITORIAL

Radhika Parthasarathy & Ipsiatia Gupta, *Looking to the Future- Development in a Changing World*

Yonov F. Agah, *Trade and Development in the WTO*

ARTICLES

V.S. Seshadri, *Treatment of Trade in Korea's FTAs*

Rafael Leal-Arcas et al., *Aiming at Sustainable Trade in the Context of the Rule of Law: What Role for Citizens and How International Trade Can Help Reduce Fossil-Fuel Consumption*

Joshua P. Meltzer, *The United States-Mexico-Canada Agreement: Developing Trade Policy for Digital Trade*

Jesse Liss, *China's Investment Treaties with Latin America and Implications for South-South Cooperation: Evidence from Firm-Level Data*

Alisher Umirdinov & Valijon Turakulov, *The last bastion of protectionism in Central Asia: Uzbekistan's auto industry in post WTO accession*

Alec Dawson, *Safeguarding the Planet? Renewable Energy, Solar Panel Tariffs, and the World Trade Organisation's Rules on Safeguards*

Michael Goodyear, *Helping David Fight Goliath: Preserving the WTO in the Trump Era*

BOOK REVIEW

Faris Nasrallah, *Book Review of Mesut Akbaba, Giancarlo Capurro (eds.), International Challenges in Investment Arbitration*

The logo for the journal 'Trade, Law and Development' consists of the letters 'TL' stacked above '&D' in a large, bold, red serif font.

Trade, Law *and* Development

Vol. 11, No. 2

2019

PATRON

Hon'ble Prof. Poonam Saxena

FACULTY-IN-CHARGE

Rosmy Joan

EDITORS-IN-CHIEF

Ipsiata Gupta

Radhika Parthasarathy

EDITORS

Gautami Govindrajan

Ayushi Singh

(MANAGING)

(SENIOR EDITOR)

Apoorva Singh

Sarthak Singla

ASSOCIATE EDITORS

Abilash V.

Abhinav Srivastav

Alice Kumar

Amogh Pareek

Anjali Sasikumar

Sabil Verma

Sukanya V.

Tania Gupta

COPY EDITORS

Aastha Asthana

Aniketa Jain

Neerali Nanda

Rashmi John

Shlok Patwa

Suvam Kumar

Swikruti Nayak

CONSULTING EDITORS

Ali Amerjee

Aman

Disbi Bhomawat

Meghana Sharafudeen

Prateek Bhattacharya

Shashank P. Kumar

BOARD OF ADVISORS

B. S. Chimni

Daniel Magraw

Glenn Wiser

Jagdish Bhagwati

M. Sornarajah

Raj Bhala

Ricardo RamírezHernández

Vaughan Lowe

W. Michael Reisman

Published by:

The Registrar, National Law University, Jodhpur

ISSN : 0976-2329 | eISSN : 0975-3346

TRADE & DEVELOPMENT IN THE WTO

YONOV F. AGAH*

TABLE OF CONTENTS

- I. INTRODUCTION
- II. TRADE AND DEVELOPMENT IN THE MULTILATERAL TRADING SYSTEM
- III. THE AID-FOR-TRADE: A ROADMAP OF SUCCESS
- IV. AID-FOR-TRADE: SOUTH-SOUTH COOPERATION
- V. CONCLUSION

I. INTRODUCTION

Trade has generally been recognised as the critical lynchpin for growth, income and job creation, contributing to improved standards of living. The United Nations' 2030 Agenda for Sustainable Development has also acknowledged trade as an engine for inclusive economic growth, poverty reduction and sustainable development.

Trade can spur economic growth through several channels. It allows countries to specialise in activities where they have a comparative advantage, resulting in more efficient allocation of resources within and across countries. It also increases the size of the market and thereby allows companies to exploit economies of scale. Further, it spurs productivity and innovation by enhancing competition, as well as by fostering the transfer of technology and knowledge. Finally, trade also supports the demand side of the economy, as it allows consumers to access a broader variety of goods at competitive prices.

Trade is also an important force for inclusive development as it can create jobs for women, youth, and people living in rural areas. Moreover, new economic realities such as the rise of global value chains, the services economy, or e-commerce

* The author is a Deputy Director-General at the World Trade Organization. The views expressed are those of the author and do not necessarily reflect positions of the World Trade Organization. The author may be contacted at [yonov.agah\[at\]wto.org](mailto:yonov.agah[at]wto.org). The usual disclaimer applies.

provide opportunities for developing countries and least developed countries (LDCs) to use trade as a tool for their development.

Nevertheless, it should be stressed that the benefits from trade are not automatic. A significant range of coherent and properly sequenced complementary policies are required to make trade work for development. This largely explains why every country has not been able to exploit the benefits of trade to the same extent. While many developing countries have done very well by integrating into the global trade, others continue to remain on the fringe. In particular, many of the forty-seven countries that belong to the category of LDCs are yet to draw all the benefits that trade offers.

To make trade work for development, reducing trade costs is very important, but not enough. At the national level, countries need to create a business environment and trade-related infrastructure that allow its companies to compete in international markets. Furthermore, while trade brings overall welfare gains for a country, certain individuals might be negatively impacted as international competition puts pressure on their wage or requires them to change jobs. It is, therefore, crucial that governments put policies in place that help people adjust to a changing economy and prevent them from falling into poverty.

The multilateral trading system has played a fundamental role in spreading the benefits of trade across countries. Its rules have provided predictability and transparency to governments and businesses. At the same time, various rounds of trade negotiations have lowered trade costs by significantly lowering global tariffs. Over time, governments have recognised that trade liberalisation alone would not be sufficient to create a level playing field for countries and that the needs and interests of developing countries would require special attention.

Recognising this, WTO rules provide for special and differential treatment (S&D) for developing countries and LDCs. These S&D provisions, *inter alia*, come in the form of transition periods and technical assistance to address capacity constraints; preferential market access to increase trade opportunities; provisions to safeguard the interests of developing countries; and flexibilities regarding commitments as well as the use of policy instruments to increase policy space.

II. TRADE AND DEVELOPMENT IN THE MULTILATERAL TRADING SYSTEM

The Doha Development Agenda (DDA), launched in November 2001, espouses the vision that world trade would prosper with “enhanced market access, balanced

rules, and well targeted, sustainably financed technical assistance and capacity-building programmes".¹

However, even before this round of negotiations was launched, several structures of the WTO focused on a rule-based approach to align the economic realities of developing countries at the multilateral level. S&D provisions have been inserted in almost all WTO Agreements, which confer special rights to developing and least developed countries.

Overall, WTO Agreements include 155 S&D provisions. These provisions span across the WTO Agreements on goods, services, and intellectual property; and help developing countries and LDCs to access international markets, protect their interests, overcome capacity constraints, and retain policy space.

In the last many years, WTO Members have taken important decisions in many areas, including the conclusion and coming into effect of the Trade Facilitation Agreement (TFA); the decisions on Tariff Rate Quota (TRQ) administration and export competition in agriculture; as well as several other decisions in favour of LDCs on market access, preferential rules of origin, and the services waiver. Presently, Members are working to conclude the fisheries subsidies negotiations, as mandated by Ministers at Buenos Aires.

There has also been some progress in a few areas outside the DDA, particularly with respect to the amendment to the TRIPS Agreement to allow greater access to essential medicines for developing countries and LDCs, Information Technology Agreement (ITA) expansion, and the Work Programmes on Small Economies and Electronic Commerce.

The persisting challenges in the negotiating function of the WTO have had some negative spillover into other areas of WTO work, leading to the ongoing trade tension. These discussions, including the ones on WTO reforms, are bound to touch on how development is perceived in the and the manner in which the membership responds to the application of multilateral trade rules to meet the development aspirations of developing countries and LDCs.

To begin with, development and the treatment of developing countries has become an important part of the ongoing discussions on WTO reform. Specifically, the delegation of the U.S. has put forward a proposal calling on Members to move away from the principle of "self-designation" in determining

¹ World Trade Organization, Ministerial Declaration of 14 November 2001, WTO Doc. WT/MIN(01)/DEC/1, 41 ILM 746 (2002), ¶ 2, https://www.wto.org/english/thewto_e/minist_e/min01_e/mindecl_e.htm.

who is a developing country. Rather, it has proposed that certain categories of countries should not receive S&D under the existing Agreements or in any future negotiations — namely, OECD members or acceding countries; members of the G20; high income countries, according to criteria by the World Bank; and countries that have reached more than 0.5% of global merchandise trade. Consequently, the U.S. posits that S&D should only be provided to those developing countries which truly need it; and that appropriate criteria should be established for this purpose.

The U.S. proposal, however, has encountered opposition from many developing countries, including China, South Africa, India and Venezuela who have argued that S&D is a core pillar of the development dimension of WTO rules; and that it should remain available to all developing country members of the WTO. A possible pragmatic option to look at would be something like what was done for the TFA, whose pragmatic approach provided countries the flexibility in taking on obligations. Yet, many of the larger developing countries took on obligations broadly similar to those of developed countries.

In the face of these differences, it is now important that Members engage in an open and frank discussion to ensure that the multilateral trading system adapts to the new trading and geopolitical realities in a balanced manner in order to enhance its contribution towards economic growth and development, including advancing the envisaged role of the WTO in the realisation of the Agenda 2030 for Sustainable Development.

Despite the ongoing discussions, it is important to understand that development is intrinsic to the foundation and objectives of the Organization. In the preamble of the Marrakesh Agreement establishing the WTO, Members recognise the "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".

While it is still too early to say what the outcome of the ongoing debate on trade and development will be, two trends are now discernible.

First, groups of Members are now pursuing Joint Initiatives on various issues that they consider important to them within the context of the current trade and global economic landscape. There are Joint Initiatives on e-commerce, investment facilitation, small businesses, women's economic empowerment, and domestic regulation services. A positive aspect of the Joint Initiatives is the fact that they all have a strong development component, which could help make trade more inclusive; which is one reason why many developing and least developed countries from all parts of the world have signed up for them.

Second, there has been an increase in the number of Regional Trade Agreements (RTAs) in recent years. These include not only agreements between developed countries such as the recent EU-Japan Economic Partnership Agreement, but also between developed and developing countries such as the Progressive Agreement for Trans-Pacific Partnership (CPTPP), as well as between developing countries such as the African Continental Free Trade Area (AfCFTA). This can also be a challenge for LDCs and smaller developing countries not only in terms of increased trade costs but also the challenge of their weaker negotiating power in bilateral or regional trade negotiations *vis-à-vis* the developed countries or more advanced economies.

At the end of it all, it is important that a pro-development agenda takes into account the cross-cutting nature of trade, from environmental issues such as global warming and marine pollution to social issues such as gender disparity and rural poverty. Developing countries and LDCs also need mainstream trade in their national development strategies and all aspects of economic governance. This would ensure that all the trade negotiations, including the reforms that they may need to implement, take into account all the broader development issues that are important to them.

III. THE AID-FOR-TRADE: A ROADMAP OF SUCCESS

To ensure that development remains at the heart of all trade negotiations and the work of the WTO, the Aid-for-Trade (AfT) Initiative was launched at the Hong Kong Ministerial Conference in 2005. The core objective of the Initiative is to help developing countries and LDCs address their supply-side constraints in order to increase their participation in international trade. As stated in the Hong Kong Ministerial Declaration (WT/MIN(05)/DEC), the AfT seeks to increase the supply-side capacity and trade-related infrastructure of developing countries, particularly the least developed among them, to further enable them to implement WTO Agreements, benefit from such agreements and more generally, expand their trade.

The importance of AfT in supporting infrastructure development in the LDCs was reaffirmed by WTO Members in 2015 in the Nairobi Ministerial Declaration. At the 2019 Global Review of Aid for Trade, WTO Director-General Roberto Azevêdo also reiterated that “considering the huge economic, and often technologically-driven changes faced by the world, the Aid-for-Trade Initiative would need to adapt, go from strength-to-strength, and remain effective and beneficial to developing and least developed countries”.

In line with its primary objectives, more than USD 409 billion has been disbursed to about 146 countries and territories under the AfT, since it was launched in

2005. However, AfT has not only been about monetary assistance, as it encompasses technical assistance, information sharing, procedures and policies development, creation and strengthening of institutions, and infrastructure building. Thus, AfT seeks to improve standards of living by enabling trade, empowering the weaker groups in society, analysing economic patterns, sharing best practice and, as an outcome, inducing growth and reducing poverty.

AfT can also lead to the support and inclusion of gender in trade and of women empowerment, an ideal embodied in the 2017 Buenos Aires Declaration on Women and Trade. The Aid-for-Trade Task Force, which had been created by Members to operationalise the AfT, had provided a clear mandate for gender equality to be included as an objective of the initiative. Even today, women are at a risk of lesser opportunities, lower pay, and more unfavourable and dangerous working conditions. The biennial Monitoring and Evaluation Exercises undertaken as part of the AfT, found that more than three quarters of donors feel that women's economic empowerment was (and should be) a priority in AfT or development policies. This matters even more to LDCs, as the inclusion of women, as a specific target of the aid they receive, leads to greater investment in health and education, greater spill over benefits for families and communities, and ultimately to higher and more sustainable levels of economic growth.

The WTO, through its cooperation with the OECD, has shown the effectiveness of the AfT in poverty reduction. One of these studies shows that for every dollar invested in AfT, nearly eight additional dollars are generated in exports from developing countries and the figure could even reach USD 20 in case of the poorest countries. This flows from the proposition that trade increases the returns to the most abundant factor of production, which in developing countries tends to be low-skilled labour. This impact is strengthened if developing countries and LDCs draft national policies that build their capacity and help them better integrate into the world economy by reducing levels of poverty.

IV. AID-FOR-TRADE: SOUTH-SOUTH COOPERATION

In 2019, the Aid for Trade Monitoring and Evaluation exercise, captured the increasing role that providers of South-South assistance play in the global AfT landscape. Out of the thirty South-South partners that were flagged by fellow developing countries as most prolific, China (70%) and India (41%) came on top. LDC-responses proved to be even more concentrated on South-South cooperation with 75% of them pointing to China and 56% to India as their most important supporters. Although measuring volumes of South-South cooperation continues to be a challenge, these findings align with positions that have long been held by members of the United Nations. In fact, forty years after the launch of the Buenos Aires Plan of Action (BAPA), nations continue to underscore the

importance and complementarity of South-South and Triangular cooperation to fulfil the 2030 Sustainable Development Agenda, not only with regards to trade and economic development, but also in other areas.

A large body of literature is currently seeking to shed light on South-South cooperation emanating from China and India, which together account for well over a third of the planet's population. China's global engagement has already made deep inroads into developing countries – notably because of the Belt and Road Initiative which promises to create infrastructure corridors encompassing sixty countries in three continents at an estimated cost of USD 4-8 trillion. Such huge volumes simply dwarf the USD 5.8 billion in AfT received by China in the period 2006-2017.

Similarly, although to a lesser extent, India's development course is also marked by the receiver-provider dichotomy. Historically, it has been one of the highest recipients of global AfT. In 2017, for example, the country was the largest recipient of such support, which amounted to USD 3.7 billion. At the same time, India has also been a major provider of AfT through its South-South cooperation policies. In fact, the wide support that India provides often goes beyond support to trade, touching on emergency relief, health, education, sanitation, etc. Overall, this assistance has increased many-fold over the years as a result of the increased integration of the Indian economy into the international trading system, including its deeper engagement with international governance frameworks, notably the WTO, G20, BRICS, etc.

In 2018, an Oxfam India study estimated that development assistance from India had grown four-fold over the last decade, with the country's development cooperation budget growing from Rs. 1,769 crore in 2007-08 (approx. USD 246.2 million) to Rs. 5,895 crore in 2017-18 (approx. USD 820.3 million). Possibly, this does not include budgetary allocations relating to development cooperation by other ministries and the role of Indian investments abroad.

The Indian government had introduced the Indian Technical and Economic Cooperation (ITEC) Programme in 1964, which has now become one of the largest aid providers to the Asian continent and has been growing even more impactful since the 2000s. The Chabahar Port in Iran and the Salma Dam in Afghanistan only reached completion after receiving aid from the Indian government. India, along with the other BRICS nations, also launched the New Development Bank in July 2014 to fund infrastructure development in other developing countries. In the same year, India also launched its Neighbourhood Policy to further expand the aid and assistance given to the South-Asian region.

Indian development cooperation is also vibrant in Africa. The 14th CII- EXIM Bank Conclave on India-Africa Project Partnership was held in March 2019. This yearly event shows commitment from the Indian government to expanding its trade partnership with Africa. Results are evident in the increasing bilateral trade between the two blocs by some 22%, which reached USD 62.7 billion in 2017–18.²

Other efforts by India serve to reinforce its position as an important provider of South-South assistance. To name a few, in 2019 the India-UN Development Partnership Fund, worth \$150 million, counted thirty-three active projects implemented by seven UN agencies. Its role consists in actively pursuing achievement of the Sustainable Development Goals across the globe.

Other striking examples include the assistance provided to Nepal after the earthquake that affected it in 2015. Back then, the total Indian relief assistance reached USD 67 million. In addition, a post-earthquake reconstruction package of \$1 billion,³ was approved by the government.

Global relations are undergoing transformation. Development, cooperation and aid is no longer viewed as a strict North-South dichotomy. South-South and Triangular cooperation are playing an increasingly important role. The Global South, which includes India, seems to have caught up with some countries of the North in the field of development assistance; all of which points to the increasingly important role that South-South cooperation is going to play in the future also.

V. CONCLUSION

The current challenges facing the multilateral trading system and the WTO, especially the trade tensions between the major players, all go to the heart of the ability of the system to achieve its trade and its SDG development mandate.

The persistence of these tensions has added to the uncertainty surrounding the global economy. Trade cannot play its full role in driving growth under an uncertain environment which is seeing a surge in restrictive trade measures and the impasse in the appointments to the WTO's Appellate Body. There is also no doubt that the current trade tensions and protectionist tendencies are impeding

²14th CII-EXIM Bank Conclave on India-Africa Project Partnerships to be held in New Delhi on March 17 – 19, GOVERNMENT OF INDIA: MINISTRY OF COMMERCE & INDUSTRY (Mar. 11, 2019), <https://pib.gov.in/newsite/PrintRelease.aspx?relid=189383>.

³*India-Nepal Relations*, MINISTRY OF EXTERNAL AFFAIRS (Nov., 2018), https://mea.gov.in/Portal/ForeignRelation/India-Nepal_bilateral_brief_02.11.2018.pdf.

the efforts to make progress in the negotiations and are also coming in the way of a productive discussion on WTO reform.

It is, therefore, important that Members urgently engage in finding creative solutions that would facilitate the charting of a positive path forward for global trade. Indeed, the early resolution of these issues is all the more important since they are having a major negative impact on trade and the world economy. In October, the WTO lowered its forecast for merchandise trade growth significantly from 2.7% in April 2019 to 1.2%.

It is imperative to congregate efforts and focus on trade-related development across all sectors and countries. The predictability and openness of the multilateral trading system has proven to be advantageous for all countries. A more conducive and predictable environment, however, is necessary for creating additional market access openings. These openings along with stronger AfT to build supply-side capacity and infrastructure, will help developing countries and LDCs further diversify their economies, achieve economic growth and reduce poverty. In spite of the prevailing challenges, the multilateral trading system is still highly valued and supported by the large majority of Members. This provides hope and confidence that multilateral collaboration and development will eventually regain its supremacy on the WTO canvas.