

Multilateral Trade Law at a Crossroads: Legal Perspectives on WTO Reforms and Institutional Resilience or Multilateral Trade Law at a Crossroads: WTO Reform, Pandemic Lessons, and Legal Resilience

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ABSTRACT

The World Trade Organization (WTO) has long functioned as the central forum for global trade governance. However, in recent years, its efficacy has been increasingly questioned, particularly with the paralysis of its Appellate Body. This paper critically examines the institutional deficiencies of the WTO's Dispute Settlement Mechanism (DSM), the rise of plurilateral negotiations, and contentious debates surrounding special and differential treatment. The analysis draws on recent ministerial outcomes, including those from the 13th Ministerial Conference (MC13), and recent developments such as the resurgence of tariff-based trade conflicts involving the United States. The study argues for a comprehensive and inclusive reform agenda, emphasizing procedural functionality, legitimacy, and adaptability to evolving trade dynamics.

Research Methodology

This study employs a qualitative legal analysis combined with a policy-based approach. Primary sources include WTO ministerial declarations, official documents, and agreements, particularly outcomes from the 13th Ministerial Conference (MC13). Secondary sources encompass peer-reviewed journal articles, institutional policy briefs, and reports from global economic organizations. The research critically evaluates the legal structure of WTO mechanisms, interprets member positions on reform, and identifies systemic challenges through a combination of doctrinal analysis and comparative assessment. This methodology provides both normative insights and contextual understanding of evolving multilateral trade dynamics.

Keywords: WTO reforms, Dispute Settlement, plurilateral agreements, Special And Differential Treatment, trade governance, MC13, International Trade Law, digital trade, TRIPS waiver, Tariff tensions

1. INTRODUCTION

Since its inception in 1995, the World Trade Organization has underpinned the rules-based multilateral trading system. Building upon the General Agreement on Tariffs and Trade (GATT), the WTO introduced a legally binding dispute settlement system and expanded trade disciplines. However, global economic shifts, rising protectionism, and institutional inertia have exposed the WTO to growing criticism. The collapse of the Doha Development Round and the growing resort to regional trade agreements have further eroded its centrality. Increasing geopolitical competition and the shifting balance of power among developed and emerging economies have also compounded the WTO's challenges. Moreover, technological disruption, environmental concerns, and pandemic-related supply chain shocks have demanded new forms of governance, yet WTO reform efforts have often lagged behind such developments.

This paper seeks to examine the institutional and political obstacles undermining the WTO, with a focus on the breakdown of its dispute resolution system, the rise of plurilateral initiatives, and debates surrounding the special and differential treatment regime. In doing so, it interrogates the possibilities for revitalizing the WTO in a multipolar trade environment, while exploring how new trade paradigms might reshape the future of multilateral cooperation.

2. THE DISPUTE SETTLEMENT CRISIS: INSTITUTIONAL BREAKDOWN AND ITS CONSEQUENCES

The Dispute Settlement Mechanism (DSM) was envisioned as a robust legal framework that would ensure the consistent and fair resolution of disputes among WTO members. Its key innovation was the shift from diplomatic negotiations to quasi-judicial processes, enabling even smaller or less powerful countries to hold larger trading partners accountable. The mechanism's credibility lay in its structured process, comprising a panel ruling followed by the possibility of appeal to a standing Appellate Body, which rendered binding decisions based on legal reasoning and precedent.

However, the paralysis of the Appellate Body since 2019 has fundamentally weakened the system. The U.S. has refused to approve new appointments, citing concerns over judicial overreach, inconsistency with WTO rules, and insufficient transparency. This impasse has led to a scenario in which disputes can be appealed "into the void," leaving enforcement suspended indefinitely. Such dysfunction has emboldened unilateral measures and retaliatory tariffs, eroding trust in multilateralism.

In response, the EU and a coalition of over 50 members established the MPIA as a temporary substitute. While this effort reflects a commitment to rule-based trade, the MPIA lacks universal participation and does not possess the institutional legitimacy of the WTO's formal DSM. At MC13, members recommitted to restoring the DSM by 2024, but deep divisions remain over the scope and nature of proposed reforms. Restoring this system is imperative for the WTO to reclaim its status as the guardian of fair global trade.

3. PLURILATERALISM: FUNCTIONAL ADAPTATION OR INSTITUTIONAL FRAGMENTATION?

With multilateral consensus becoming increasingly elusive, plurilateral negotiations have emerged as a pragmatic alternative for member-driven progress. JSIs—such as those on e-commerce, domestic regulation of services, and investment facilitation—enable like-minded countries to negotiate trade rules relevant to emerging challenges. These agreements offer a flexible pathway for advancing specific agendas without requiring unanimity from all WTO members.

Nonetheless, this model introduces structural challenges. Plurilateralism risks reinforcing inequality by privileging countries with greater capacity and resources to engage in negotiations. It may sideline developing countries and LDCs, many of whom lack the institutional capacity or negotiating leverage to participate effectively. Additionally, plurilateral initiatives may fracture the unity of WTO rules by creating parallel norms that are not universally applicable or enforceable.

The legal integration of these agreements into the WTO framework remains ambiguous. India and South Africa have vocally opposed their inclusion without consensus, arguing that it undermines the foundational principles of the WTO. While MC13 saw progress on the IFDA, ongoing disputes over the legitimacy of these initiatives reflect deeper concerns about governance, transparency, and the future coherence of the multilateral trading system.

4. SPECIAL AND DIFFERENTIAL TREATMENT: RECALIBRATING DEVELOPMENT FLEXIBILITIES

SDT has historically enabled developing and least-developed countries to participate in global trade on more equitable terms by granting them longer implementation periods, reduced obligations, and capacity-building support. These provisions recognize asymmetries in development and aim to foster inclusive economic integration.

However, as global trade dynamics evolve, so too does the relevance of the SDT paradigm. Developed members argue that current SDT classifications are outdated and susceptible to misuse. In particular, the designation of large economies such as China, with substantial export surpluses and industrial capacity, as "developing" raises concerns. The U.S. and EU advocate for the adoption of objective, measurable criteria to determine eligibility, such as income levels, trade volumes, and competitiveness metrics.

Developing countries reject a one-size-fits-all model, emphasizing the multidimensional nature of development. Many still grapple with structural vulnerabilities, commodity dependence, weak institutions, and limited access to technology. They assert that SDT remains a vital policy tool for economic transformation and resilience-building.

This debate is more than a technical dispute; it reflects broader tensions around equity, representation, and the distribution of benefits within the trading system. Resolving it will require innovative compromise that balances developmental needs with the integrity and effectiveness of WTO disciplines.

5. ADDRESSING CONTEMPORARY CHALLENGES: DIGITAL TRADE, CLIMATE CHANGE, PUBLIC HEALTH, AND ESCALATING TRADE TENSIONS

The global trade landscape has become increasingly complex, shaped by the digital revolution, climate imperatives, and global health emergencies. The WTO must evolve to address these multi-dimensional challenges or risk obsolescence. Each of the following sub-sectors illustrates the shifting nature of global trade and the corresponding need for institutional adaptation.

5.1 Digital Trade

Digital technologies have transformed how goods and services are produced, exchanged, and consumed. Yet, WTO disciplines remain rooted in pre-digital era assumptions, leading to regulatory gaps. E-commerce now drives a significant share of cross-border transactions, raising questions about data localization, privacy rights, digital taxes, and intellectual property enforcement.

The e-commerce JSI, launched in 2017, aims to establish common ground among members, but divergent priorities pose hurdles. The U.S. advocates for unrestricted data flows and bans on customs duties for digital products, while the EU emphasizes consumer protection and data privacy, aligned with its GDPR framework. China, meanwhile, calls for national oversight over digital infrastructure, citing security concerns.

Developing nations face a digital divide that limits their ability to participate. Infrastructure deficits, regulatory fragmentation, and lack of technical expertise hinder their engagement. MC13 extended the moratorium on e-transmission tariffs and reaffirmed commitments to technical assistance—yet a binding, inclusive digital trade agreement remains elusive.

5.2 Environmental Sustainability

Climate change and environmental degradation have become central to trade policy. The WTO is increasingly viewed as a platform to align economic incentives with sustainability objectives. The Agreement on Fisheries Subsidies, concluded in 2022, prohibits subsidies that contribute to illegal, unreported, and unregulated fishing.

At MC13, talks advanced on Phase II, focusing on curbing capacity-enhancing subsidies that lead to overfishing. Members also discussed aligning trade policies with climate targets, including fossil fuel subsidy reform and circular economy standards.

However, differing levels of environmental ambition, financial resources, and technological capabilities complicate consensus. Developing countries seek flexibility and support, while developed members push for enforceable environmental commitments. Balancing ecological integrity with development needs remains a complex but critical challenge.

5.3 Pandemic Response

The COVID-19 pandemic laid bare the vulnerabilities in global supply chains, health infrastructure, and the multilateral trading system's preparedness for global emergencies. The pandemic disrupted production and transportation of goods, imposed export restrictions on essential medical supplies, and created urgent demands for equitable access to vaccines, therapeutics, and diagnostics. As governments scrambled to secure life-saving resources, it became evident that existing WTO rules, particularly under the Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement, were not sufficiently flexible to address a crisis of this magnitude.

In response to international pressure and advocacy, WTO members agreed at the 12th Ministerial Conference (MC12) to adopt a temporary waiver of certain TRIPS obligations related to COVID-19 vaccines, enabling greater flexibility for developing countries to manufacture and distribute vaccines without risking trade disputes. While this was a milestone in international cooperation, the waiver did not extend to therapeutics and diagnostics.

At MC13, attempts to broaden the TRIPS waiver to include COVID-19 diagnostics and therapeutics proved contentious. Countries supporting the expansion emphasized that access to testing and treatment was as crucial as vaccines, particularly for managing future outbreaks and achieving equitable healthcare. However, others—especially from developed countries with strong pharmaceutical sectors—argued that the existing TRIPS flexibilities under Articles 30 and 31 were sufficient and that a broader waiver could discourage innovation.

Beyond intellectual property, the pandemic spurred broader reflection on the WTO's role in emergency preparedness. Proposals emerged to introduce new disciplines on export restrictions for essential goods, mechanisms for expedited cross-border movement of medical supplies, and frameworks for cooperation with organizations like the World Health Organization (WHO). Discussions also touched on building pandemic response capabilities in developing countries, which often face the greatest supply and logistical challenges.

Although no formal agreement was reached at MC13 on these wider reforms, the discourse signaled a shift toward recognizing the WTO's responsibility in supporting global health security. The lessons from the pandemic highlight that trade rules must be more agile and humane, capable of prioritizing public interest over rigid legalism during times of crisis.

5.4 Rising Tariff Tensions and Plurilateralism

The re-escalation of tariff tensions in 2025, particularly spearheaded by the United States in retaliation against the imposition of digital services taxes (DSTs) by several trading partners and the use of foreign subsidies, has reignited global fears over a return to aggressive protectionist trade practices. In response to what it perceives as discriminatory tax regimes targeting U.S.-based technology firms and anti-competitive industrial support in sectors such as clean energy and semiconductors, the U.S. has levied a new wave of tariffs on imports from countries including the European Union, India, and others in Asia and

Latin America.

These retaliatory measures have triggered a domino effect, with affected countries announcing counter-tariffs on key American exports such as agricultural goods, aircraft components, and electronics. The tit-for-tat measures have disrupted cross-border supply chains and heightened volatility in global markets, particularly in technology-intensive and high-value-added sectors. The revival of these unilateral trade actions—reminiscent of the 2018–2019 U.S.-China trade war—has drawn criticism from trade observers and WTO members alike.

The inability of the WTO's Dispute Settlement Mechanism to function effectively has compounded the situation. With the Appellate Body non-operational, disputes brought to the WTO are often left unresolved, leaving member states to either reach ad hoc settlements or escalate tensions. The recent wave of tariff wars has exposed the limitations of existing enforcement tools and the inadequacy of voluntary interim arrangements like the MPIA for broader conflict resolution.

At MC13, numerous delegations expressed grave concern over the proliferation of unilateral trade remedies and emphasized the urgent need to restore a binding, independent, and universally trusted adjudication system. Suggestions ranged from temporary arbitration frameworks to expedited reforms of the appellate process. However, no binding resolution was reached. The rising tariff tensions underscore a systemic risk: without credible enforcement, the rules-based trade order risks erosion from within, incentivizing power-based over rule-based negotiation.

The absence of a functioning DSM exacerbates these tensions, leaving members with limited options for peaceful resolution. The proliferation of unilateral tariffs contravenes WTO principles and risks further fragmenting the trade landscape.

Urgent calls have been made to establish interim arbitration mechanisms and prioritize DSM reform. These developments underscore that without enforcement credibility, even the most well-crafted trade rules remain vulnerable to political expediency.

6. KEY TAKEAWAYS FROM THE 13TH WTO MINISTERIAL CONFERENCE (MC13)

The 13th Ministerial Conference (MC13) provided important signals on the direction of WTO reform and global trade governance. The key outcomes are as follows:

i. **Recommitment to Dispute Settlement Reform:**

WTO members reaffirmed the goal of restoring a fully functional dispute settlement system by 2024. Although specific solutions were not finalized, there was a collective recognition that the current paralysis of the Appellate Body undermines the credibility of the entire system.

ii. **E-Commerce Moratorium Extended:**

The moratorium on imposing customs duties on electronic transmissions was extended until the next ministerial meeting. This provides breathing room for further negotiations and reflects the ongoing importance of digital trade to the global economy.

iii. **Progress on Fisheries Subsidies Agreement:**

Several countries formally accepted the 2022 Agreement on Fisheries Subsidies. Negotiations on Phase II of the agreement—targeting subsidies that contribute to overcapacity and overfishing—were advanced, with the aim of reaching consensus on stronger sustainability provisions.

iv. **TRIPS Waiver Expansion Stalled:**

Proposals to extend the COVID-19-related TRIPS waiver to therapeutics and diagnostics failed to reach consensus. Nonetheless, members agreed to continue consultations, illustrating persistent divisions over IP rights and public health priorities.

v. **Growth of Plurilateral Initiatives:**

The Investment Facilitation for Development Agreement (IFDA) garnered increased support, with over 120 members now participating. However, debates remain over how plurilateral deals should be integrated into the WTO's legal framework.

vi. **SDT Discussions Remain Contentious:**

No consensus was reached on reforming the criteria for Special and Differential Treatment. However, there was broad acknowledgment of the need to align SDT provisions with current global economic realities while maintaining support for developing countries.

vii. **Tariff Tensions and Unilateral Measures:**

The resurgence of tariff-based trade conflicts, especially involving the United States, drew significant attention. The absence of an effective dispute resolution system was cited as a key factor fuelling this trend and as an urgent area for reform.

7. CONCLUSION

The current crossroads at which the WTO stands is emblematic of broader shifts in global governance. Its foundational role as a multilateral forum for rules-based trade is now under intense pressure from rising protectionism, digital transformation, climate imperatives, and global health threats. The paralysis of the Dispute Settlement Mechanism, coupled with divergent perspectives on Special and Differential Treatment and the growing prevalence of plurilateral agreements, illustrates the deep institutional challenges confronting the organization. Yet, the WTO's comprehensive membership and institutional legacy continue to offer a unique platform for inclusive dialogue and cooperative problem-solving.

To restore the WTO's relevance and reinforce the credibility of its rule-based system, member states must move decisively to implement holistic reforms. These reforms must balance respect for sovereign policy space with the imperative of fair, predictable, and enforceable trade disciplines. They must also foster a development-oriented approach that ensures the equitable participation of all members, particularly those with limited institutional and economic capacity. A revitalized WTO must evolve from being merely a negotiating forum to a dynamic institution capable of responding to cross-cutting global challenges.

8. RECOMMENDATIONS

Accordingly, the following policy recommendations are proposed:

Revive the Appellate Body by prioritizing immediate negotiations to rebuild the WTO's dispute settlement architecture by 2024. Address procedural criticisms, including concerns about overreach and transparency, while preserving the integrity, independence, and binding nature of the appellate review process.

Institutionalize plurilateral agreements by developing formal legal pathways for incorporating JSIs into the WTO's institutional framework, including establishing inclusive opt-in mechanisms, transparency requirements, and compatibility assessments with core WTO principles to prevent systemic fragmentation.

Modernize Special and Differential Treatment (SDT) by creating a multi-tiered framework that reflects economic and structural realities across the development spectrum. Integrate criteria such as human development indicators, trade vulnerabilities, and industrial maturity to ensure that SDT benefits are targeted, accountable, and developmentally effective. Advance digital and environmental rulemaking by establishing dedicated negotiating tracks on digital commerce and climate-responsive trade policies. Encourage the integration of sustainability standards in trade disciplines and promote fair digital rules that close the technology gap while safeguarding data rights.

Enhance crisis responsiveness by equipping the WTO with institutional protocols to respond to global emergencies, including public health crises and food insecurity. This includes fast-track negotiation processes, temporary waivers for essential goods, and flexible financing mechanisms for affected members. Address tariff retaliation and unilateralism by developing interim arbitration systems and multilateral peer-review mechanisms to deter trade disputes from escalating into retaliatory tariff wars. Reaffirm the centrality of negotiated solutions over ad hoc measures that undermine global trust.

Advance Digital and Environmental Rulemaking by establishing dedicated negotiating tracks on digital commerce and climate-responsive trade policies. Encourage the integration of sustainability standards in trade disciplines and promote fair digital rules that close the technology gap while safeguarding data rights.

Address Tariff Retaliation and Unilateralism to develop an interim arbitration systems and multilateral peer-review mechanisms to deter trade disputes from escalating into retaliatory tariff wars. Reaffirm the centrality of negotiated solutions over ad hoc measures that undermine global trust.

MC13 marked a step forward, but momentum must be sustained through clear timelines, targeted follow-up negotiations, and political commitment by member states. The establishment of working groups to address dispute settlement reform, continuation of technical discussions on e-commerce, and the encouragement for members to ratify the Fisheries Subsidies Agreement are tangible steps that emerged post-MC13. These actions indicate that while consensus may take time, there is now a structured roadmap to guide ongoing efforts toward institutional renewal and modernization of the WTO. The WTO's survival and success will depend on whether it can adapt to the realities of a multipolar, digital, and environmentally precarious world.

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