

**India's Statement at the General Council meeting held on
October 15-16, 2019**

Agenda Item 5: Procedural guidelines for WTO Councils and Committees addressing trade concerns – Communication from Australia, European Union, Hong Kong, China, Republic of Korea, New Zealand, Norway, Panama, Singapore, Switzerland and Turkey (WT/GC/W/777.Rev3)

India thanks the European Union and other proponents for putting forward the draft General Council decision on 'procedural guidelines for WTO councils and committees addressing trade concerns' as contained in document WT/GC/W/777/Rev.3.

2. We support the idea of improving the meeting arrangements of WTO bodies with a view to making them more efficient. An indicative yearly schedule of meetings for each WTO body and advance notifications of all documents to be discussed at a meeting would allow for more effective participation from small delegations with limited resources. As things stand, proposals to be discussed at a meeting are often circulated at the eleventh hour, impeding meaningful engagement by most delegations. We also support the proposal for the timely circulation of the minutes of meetings of WTO bodies by the Secretariat.

3. We agree that it is in the interests of all Members to make full use of the council and committee procedures within the WTO to seek satisfactory outcomes of their trade concerns. Having said that, it is important to ensure that any proposal in this regard does not, in effect, end up adding to or diminishing Members' rights and obligations under the covered Agreements.

4. In this context, while we support strengthening the existing processes in the various WTO councils and committees, and addressing the issues and concerns, especially of developing countries and LDCs in a time-bound manner, we would also like to make a few comments with respect to the communication circulated by the EU and other proponents:

First, the Marrakesh Agreement lays emphasis on the neutrality and need for the Secretariat not to align itself or take positions of particular Members or groups. We would advise caution regarding attempts to confer an enhanced role for the Secretariat in the resolution of trade concerns between Members, as this would impinge on the Secretariat's neutrality, and diminish the Member-driven nature of this Organization. This also applies to proposals that suggest an enhanced role for the Chair of a WTO body/ committee.

Second, the limited technical and financial capacity of developing Members should be borne in mind. We cannot support any proposal that seeks to, in practice, add to the existing obligations of developing Members, vis-à-vis consultation requirements, provision of inputs, or other burdensome rules such as requiring the participation of capital-based experts.

Finally, we believe that the appropriate forum for discussing procedural guidelines for trade concerns is the relevant committee dealing with the specific trade concern, as per the scope of the relevant WTO agreement. Therefore, while we are open to discussing all possible suggestions aimed at improving the existing processes, we would not like to take away the role of the relevant bodies.

Agenda Item 7: Procedures to strengthen the negotiating function of the WTO- Statement by the United States

We thank the US for their statement and clarification.

2. We have made detailed statements on this item in previous GC meetings and do not wish to repeat them.
3. Suffice it to say, if the objective is to make trade more inclusive, less disruptive and fulfil the promise of not leaving anyone behind on the path to development, special and differential treatment for all developing country Members, including LDCs, is the obvious answer. It must be preserved in all current and future negotiations.
4. We do not agree with the premise that onerous S&DT provisions are impeding negotiations and making the WTO irrelevant.
5. We will address other aspects of this issue in our statement in Agenda Item 11.

Agenda No. 8: Transparency in Dispute Settlement - Statement delivered by the United States on the importance of Transparency in WTO Dispute Settlement

We thank the United States and co-sponsors for making this proposal. India believes that enhanced transparency can improve the effectiveness of the WTO. However, requirements of transparency must be looked at together with issues of capacity of developing countries including LDCs. As a first step, developed Members could lead by example in the area of transparency in dispute settlement.

2. India refers to its previous statements on transparency in dispute settlement and reiterates that the existing provisions contained in the DSU and the rules followed by Panels and the Appellate Body on transparency appear to be working and do not need a fix. However, we suggest that the issue of enhanced transparency could be discussed in the DSB-Special Session where it is one of the 12 issues being negotiated.

3. At present the WTO Dispute Settlement System is facing an existential crisis which is crying for resolution. Discussion on any other issue may divert the attention of Members.

Agenda item 9: Work Programme and Moratorium on Ecommerce – Communication WT/GC/W/782

We thank the proponents for their proposal.

As the digital revolution is still unfolding, we have on a number of occasions reiterated that it is important to first understand the complex and multi-faceted dimensions of issues related to e-commerce. We still do not comprehend the full implications of effects of e-commerce on competition and market structures, issues related to transfer of technology, automation and robotization and its impact on traditional jobs and the gaps in policy and regulating frameworks in developing countries. Therefore, we have been proponents of strengthening our multilateral work under the non-negotiating and exploratory work programme on e-commerce.

2. Under this multilateral WP and with the intention of understanding the implications of the moratorium on customs duties on electronic transmissions, India along with South Africa has introduced two submissions in July 2018 and in June 2019.

3. Let me briefly reiterate the key issues:

- When the moratorium was first agreed upon there was limited understanding about ecommerce and it has been mechanically extended. However, today, we have access to better expert inputs. With the advent of industry 4.0 and the advance of 3D printing technologies, the moratorium will erode the existing GATT bound rates, which are typically higher in developing countries, and bring them to zero. This could have a catastrophic effect on the nascent domestic digital industries and jobs in developing countries.
- The existing literature and research also unequivocally point out that developing countries would bear the brunt of losses of revenue due to the moratorium. The UNCTAD Trade and Development Report of 2019 confirms that this moratorium implied a loss in fiscal revenue of more than \$10 billion globally, 95 per cent of which was borne by developing countries.
- It is also important to keep in mind that the estimate of \$10 billion as the potential tariff revenue loss per annum is only the tip of the iceberg, as this estimate is based on only a small number of products (that is, 49 identified HS-6-digit products). On the other hand, digitalization is rapidly affecting an increasing number of products and therefore this estimate of foregone fiscal revenue could rapidly multiply.

4. In view of the above, we believe that the E-Commerce Moratorium is asymmetrical for developing countries both from the revenue point of view and because of the severe negative impact on efforts of developing countries towards digital industrialization.

5. Nevertheless, we are willing to engage with an open mind on this proposal. We have also suggested that the WTO Secretariat organize another workshop on the e-commerce moratorium well before December 2019 to better understand the definition, scope and impact of the moratorium so that Members can take an informed decision on this issue.

Agenda Item 10: TRIPS Non-Violation and Situation Complaints Moratorium

We thank Child and the co-sponsors for their proposal.

2. India believes that introducing non-violation and situation complaints into the TRIPS Agreement is unnecessary and inconsistent with the interests of the WTO members. As such, any benefits arising from the Agreement can be adequately protected by applying the text of the Agreement in accordance with accepted principles of international law, without any need for introducing the legally uncertain notion of non-violation and situation complaints.
3. Serious concerns remain on the debilitating impact that non-violation complaints in TRIPS can have on the regulatory policy space of Members, on TRIPS flexibilities, thereby increasing the complexity in interpreting the TRIPS provisions. It can not only have a chilling effect on Member's exercise of their IP flexibilities but also severely restrain ability of Members to achieve other public policy objectives.
4. India looks forward to working with like-minded Members in making non-violation complaints inapplicable to TRIPS.
5. However, till this happens, we can support the extension of the moratorium on applicability of NVSC to TRIPS Agreement.

Agenda Item. 11: Statement on Special and Differential Treatment to Promote Development

I take this opportunity to introduce our submission which is a '*Statement on special and differential treatment to promote development*'. This joint submission by the African Group, the Plurinational State of Bolivia, Cambodia, China, Cuba, India, Lao Peoples Democratic Republic, Oman, Pakistan and the Bolivarian Republic of Venezuela, a total of 52 Members, in WTO document WT/GC/202 is a response to the Presidential Memorandum issued by the United States on 26th July 2019. Our submission reaffirms that the developing countries' unconditional rights to S&D in WTO rules and negotiations must continue; they must be allowed to make their own assessments regarding their developing country status; existing S&D provisions must be upheld and S&D must be provided in current and future negotiations.

2. This statement has the support of more than 50 WTO Members of which only 4 have been targeted for graduation by the US, while the rest support it for its systemic value and intrinsic merit. This support extends across the so called development spectrum. Clearly the attempt to divide developing countries is not working ! Many more Members have expressed support and are seeking capital clearance to co-sponsor this paper. Our statement reminds Members that the Marrakesh Agreement establishing the WTO recognizes that international trade is not an end in itself, but a means of contributing to certain objectives, including ensuring that developing countries and LDCs secure a share in international trade commensurate with the needs of their economic development.

3. Special and Differential Treatment (S&DT) is a right of the developing countries, and is as much treaty-embedded as the other core principles of our rule based multilateral system, such as the MFN and National Treatment. Till the development challenges and difference in levels of development persist, developing countries and LDCs should continue to benefit from their right to S&DT in WTO rules and negotiations. Any unilateral attack on S&DT is an onslaught on the very tenets of multilateralism that WTO seeks to protect. This will cause lasting and systemic damage to the multilateral trading system.

4. The rationale behind S&DT is simple and obvious – it recognizes the enormous difference in the levels of development between different Members of the WTO, and allows developing Members space to formulate their domestic trade policy in a way that helps them to reduce poverty, generate employment and integrate meaningfully into the global trading system.

5. But for the existence of S&DT provisions, many developing Members and LDCs would not have signed and ratified the Marrakesh Agreement. Now, depriving them of their rightful policy space in future agreements, a policy space that has been enjoyed by developed Members in their process of structural transformation and economic growth, would be a gross violation of the basic

tenets of equity and justice and would strike at the very legitimacy of the rules-based system. This would compound the wrong which has resulted from the non-completion of the Doha Work Programme which sought to mainstream development in the multilateral trading system and make provisions of the Uruguay Round Agreements more precise, operational and enforceable.

6. Members need to be cognizant that developing economies themselves, and they alone, have adequate knowledge of their local conditions to decide whether they should be categorized as developing Members to avail S&D or not. There is no 'one size fits all' definition of development, and any attempts at differentiating between developing Members based on arbitrary and selective criteria must be avoided at all costs.

7. The US Presidential memo and submissions in February, seek to reduce special and differential treatment from a treaty embedded right available to all developing Members including LDCs, into a plea for mercy based on arbitrary and changing parameters. Given the broad language of the US proposals, there is no guarantee that other developing Members would not be targeted for graduation on the basis of a growing set of conditions, in the near future. The large developing economies are sought to be graduated in the first instance, so that the collective negotiating ability of the South is weakened and smaller developing countries are saddled with the burden of proving, on a case to case basis, that they need S&D, sector by sector, product by product and maybe line by line as is happening in the case of accessions. The President's Memo of 26 July, 2019, thus strikes a death knell for the principle and practice of S&DT which will become extinct at the WTO.

8. Significant gaps present between developing and developed countries remain, and in many cases these have widened. Catching-up is a challenge because of the non-level playing field and structural obstacles faced by developing countries. It is, therefore, essential to preserve the S&DT for allowing developing Members the space to formulate their trade policies in a way that helps them to integrate meaningfully into the global trading system. It is a necessary condition for inclusive development and for taking everybody along.

9. We would also like to reiterate that S&D is not derailing the negotiations. A lack of attention to mandates is ! Any attempt to water down the core principle of S&DT would be a recipe for intractable deadlock at the WTO. It is in the interest of the entire membership to avoid this situation.

10. Chair, to conclude, I would like to summarize the key points:

(i) S&DT for developing countries, including LDCs, is a right for which we have made payments in the form of obligations in the UR Agreements like Agreement on Agriculture and TRIPS.

(ii) It is part of the basic structure of the multilateral trading system and abandonment of S&DT would imply abandoning a core principle of the WTO agreement.

(iii) The US is using arbitrary parameters, many of them unrelated to the development, together with unilateral enforcement to target the Members and to divide developing countries. While some developing Members may have made progress in overall or per capita GDP, huge gaps between developed and developing countries remain, and have in many cases widened, as outlined in our submission to the GC in February, 2019, WT/GC/W/765 Rev.II. A country like India with a per capita income of about US\$ 2000, and home to 35% of the global poor, cannot be placed in the same development category as the US with a per capita GDP of more than US\$ 70,000.

(iv) 52 developing Members, representing more than 75% of the people of Africa and Asia, across the development spectrum, have rejected the US narrative as unacceptable. Their voice cannot be ignored.

(v) Finally, pursuing the course of action, outlined in the Memo, will result in a complete breakdown of trust in the WTO, raise unilateralism to a new height and jeopardize current and future negotiations, including those on fisheries subsidy disciplines.

Agenda Item No. 13 (A): Preferential Tariff Treatment for Least Developed Countries – Extension of Waiver – Draft Decision (G/C/W/764)

India is a co-sponsor of the proposal on extension of waiver of preferential tariff treatment for least developed countries. My delegation would like to thank Members for their consent for extension of LDC waiver, providing the legal basis for continuing providing Preferential tariff treatment for LDCs. It will go a long way in helping LDCs to catch up.
