

**General Council Meeting**  
**March 01-02, 2021**

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**Statement by India - Delivered by Ambassador & PR to the WTO**

**Agenda Item 10 - ‘The Legal Status of Joint Statement Initiatives and their Negotiated Outcomes’ – paper by India and South Africa**

Thank you Chair for giving me the floor.

2. India and South Africa have submitted the paper, WT/GC/W/819 dated 19 February, 2021, titled “The Legal Status of ‘Joint Statement Initiatives’ and their Negotiated Outcomes’. Chair, at the outset India, as cosponsor to this paper, will like to state that we are not questioning the right of Members to meet and discuss any issue. However, when such discussions turn into negotiations and their outcomes are to be brought into the WTO, the fundamental rules of the WTO must be followed.

3. Chair, the WTO was established as forum concerning multilateral trade relations in matters dealt with under agreements in the Annexes to the Marrakesh Agreement [MA] and for further negotiations among its Members concerning their multilateral trade relations and to provide a framework for implementation of results of such negotiations.

4. The Marrakesh Agreement defines 'Plurilateral Agreements' as the agreements and associated legal instruments that are included in Annex 4 to the Agreement. The Ministerial Conference, upon the request of the Members party to a trade agreement, decides exclusively by consensus to add that agreement to the said Annex 4.

5. Procedures for amending rules are enshrined in Article X of the Marrakesh Agreement. On the other hand, the GATT and GATS contain specific provisions for modifications of Schedules, containing specific commitments of Members. Amendments or additions to the rules are governed by multilateral consensus based decision-making [or voting], right from the outset when a new proposal for an amendment is made. On the other hand, negotiations on modifications or improvements to Schedules can arise either as the outcomes of consensual multilateral negotiations pursuant to Article XXVIII of GATT or Article XXI of GATS or be reached through a bilateral request and offer process, or as a result of a dispute. In fact, even changes to Schedules cannot be made unilaterally, as other Members have the right to protect the existing balance of rights and obligations.

6. The GATS read in concert with the Marrakesh Agreement provides for different rules and procedures for amendment of rules and modification of Schedules. While the GATS rules are governed by the GATS Part II, 'General Obligations and Disciplines', Part III of the GATS contains provisions concerning Members individual 'Specific Commitments' pertaining to distinctly identified services sectors, which are inscribed in Member's Schedules.

7. In the case of conflict in interpretation, Article XVI.3 of the Marrakesh Agreement provides that in the event of a conflict between a provision of the Marrakesh Agreement and a provision of any of the Multilateral Trade Agreements, the provisions of Marrakesh Agreement shall prevail.

8. Chair, each of the JSIs is likely to pose different legal challenges to the existing WTO rules and mandates, given the differences in the nature and scope of issues covered under each of these initiatives. However, any attempt to bring in the negotiated outcomes of the JSIs into the WTO by appending them to Member's Schedules, even on MFN basis, following modification of Schedules procedures, bypassing multilateral consensus would be contrary to the provisions of Marrakesh Agreement.

9. Chair, any attempt to introduce new rules, resulting from JSI negotiations, into the WTO without fulfilling the requirements of Articles IX and X of the Marrakesh Agreement, will be detrimental to the functioning of rule based multilateral trading system. Among others it will erode the integrity of the rule-based multilateral trading system; create a precedent for any group of Members to bring any issue into the WTO without the required mandate; bypass the collective oversight of Members for bringing in any new rules or amendments to existing rules in the WTO; usurp limited WTO resources available for multilateral negotiations; result in Members disregarding existing multilateral mandates arrived at through consensus in favour of matters without multilateral mandates; lead to the marginalization or exclusion of issues which are difficult but which remain critical for the multilateral trading system, such as agriculture, development, thereby undermining balance in agenda setting, negotiating processes and outcomes; and fragment the multilateral trading system and undermine the multilateral character of the WTO.

Our document lists various options to move ahead:

10. As per the provisions of the Marrakesh Agreement, for bringing in their negotiated outcomes in the WTO the JSI Members can seek consensus amongst the whole WTO Membership, followed by acceptance by the required proportion of Members according to Article X of the Marrakesh Agreement. Alternatively, they can get the new agreements included in Annex 4 following Article X.9 of the

Marrakesh Agreement. They also have option to pursue agreements outside the WTO Framework, as was envisaged in the Trade in Services Agreement (TISA) or as has been done in multiple bilateral or plurilateral Free Trade Agreements (FTAs) or Regional Trade Agreements (RTAs). The proponents of 'Flexible Multilateral Trading System' can even seek amendment to Article X of the Marrakesh Agreement, following procedure enshrined therein, to provide for such an approach.

11. Chair, to sum up, through our paper WT/GC/W/819, we reiterate that basic fundamental principles and rules, of rule based multilateral trading system, as enshrined in the Marrakesh Agreement, should be followed by all Members, including the participants of various JSIs. Negating the decisions of past Ministerial Conferences, by decisions taken by a group of Ministers on the sidelines of Ministerial Conference or sidelines of any other event would be detrimental to the existence of rule-based MTS under the WTO.

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**Statement at the End of Discussion on this agenda item:**

Thank you Chair for giving me the floor again. India would also like to thank Members for their engagement today on this agenda item. It is sad that those who had objected to moving forward on mandated issues and now complaining of WTO being in a limbo.

2. I understand that proponents of JSI may take time to respond/reflect on legal issues raised in our paper. We have not heard much on legal arguments in various statements; except for phrase “we don’t agree”.

3. There is a difference in “improvement” and “changes”. In the name of improvement, changes cannot be made. As far as JSI on domestic regulations is concerned, we are still awaiting responses from proponents of JSI on domestic regulations in concerns raised in Working Party on Domestic Regulation.

4. If numbers are the only way to show acceptance, then we should have agreed on G90 proposal on special and differential treatment, TRIPS Waiver proposal with 57 co-sponsors, and many more such proposals.

5. Negotiating function is important as it brings new rights and obligations. But without Dispute Settlement System, even existing negotiated outcomes will lose their purpose.

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