WTO Reform Feasibility in Times of International Crisis: A Position from Below

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WTO Members have discussed WTO reform since the collapse of the WTO Appellate Body (AB) in 2019, which was caused mainly by the US opposition to appointing new AB members. The US attacked the AB for its performance and its interpretation of WTO rules. The US has also consistently criticized the WTO's incapability to reach agreements and reform itself. Nonetheless, this Western discomfort towards the organisation and the AB began at the Third Ministerial Meeting in Seattle (1999) when developing countries opposed the Global North's attempt to open new trade negotiations. This push continued during the Fourth Ministerial Conference in Doha(2001), where the membership loosely agreed on a mandate for "Global and Sustainable Development", albeit one without clear expectations to cut a deal in line with such a mandate of achieving a fair balance between trade and development at the multilateral trading system. One ministerial conference after the other, there was a failure

to agree on Western driven “Development Agenda” until the Members agreed on the Trade Facilitation Agreement and the agricultural subsidies exports prohibition in Bali (2013) and Nairobi (2015), respectively. However, and even after the collapse of the AB, a criticised agreement on fishery subsidies (2022) was reached with a sunset clause of 5 years, making it in turn a chimera because of the short term.

The China-US is a major factor in current geopolitical dynamics, with the EU, the Commonwealth, India, Indonesia, Brazil, and Mexico, also seeking to exploit the current weaknesses in the WTO’s legal-political system. China has consistently embraced a non-market economy policy exercising significant governmental control over the financial market and the foreign supply and demand of commodities, agricultural, raw materials, rare earth, and industrial products, which has been a source of concern for WTO Members for decades. In more recent times, and under the guise of climate migitation policies and decarbonisation programmes, the US and Europe have decided to put forward massive subsidization programs and major legislation such as the Reduction Inflation Act (RIA) and the CHIPs Act, in the case of the US and in the EU Green Deal Plan, as well as trade restrictions in several sectors, harming not only China but mainly most vulnerable developing countries.

Across the Global South, governments in India, Indonesia, South Africa, Brazil, and Mexico have been adopting their own strategic approaches which challenge the WTO rules, specifically in respect of industrial, IT, and energy transition subsidies. In the cases of India and Indonesia, such massive subsidy programs also cover agriculture and fisheries, which have been the source of controversy. In sum, the said players are raising their stakes against the multilateral trade regime imposing WTO-incompatible policies such as local content requirements and import restrictions. These actions breach the core principle of non-discrimination that underpins the multilateral trade system. After such backlash to the "the Trade Based Rules System" and the increasing tensions in U.S.-China rivalry the need to rethink the system and find alternatives is unavoidable. It will require Global South Countries to to come together in the form of a second Bandung Conference, this time focused on the challenges of the international trade regime, to agree on the steps to follow prioritizing their interests and concerns.

Accordingly, there are three paths that Global South countries could follow: i) to push for a structural reform of the WTO that creates more equitable frameworks for the integration of Global South countries into the global economy; ii) to exit the WTO and create a new organization made not only by Global South countries but also by Global North Countries willing to honor their International Trade and Development Law commitiments; iii) to play with the existing rules to counteract the actions taken by disruptive WTO members (not willing to honor their international law commitments), independently on whether they belong to the Global South or the Global North. Bearing in mind the difficulties of pushing for a structural WTO reform in the short term, and the need for a multilateral organization that disciplines all the members on an equal footing, the Global South countries must concentrate on developing alternatives for enforcing WTO law under the existing normative framework(s). In doing so, some questions must be asked, including why some WTO members are so keen to undermine the WTO system? Has the WTO structure for political decision-making (of one country one vote, and positive consensus) served enabled developing small countries to protect their economic interests against the pressure of powerful countries? Should the WTO move from a dispute settlement system that sanctions authorizing individual retaliation towards one that orders collective enforcement and trade retaliation by the whole membership?

Within the legal architecture of the WTO, there exists provision that might be invoked by the Global South countries to advocate for change. For example, Article XXV GATT 1994 provides for joint action by the contracting parties (now, the WTO Members) aiming to address any situation that may be impairing the effective functioning of the WTO. This provision could serve as a basis for the Global South to come together and advocate for their specific needs and concerns for WTO Law enforcement and within the reform discussion. By leveraging their collective strength, they can ensure that their voices are heard, and their interests are considered, ultimately contributing to a more inclusive and balanced WTO framework. However, to effectively contest the existing WTO structures using Article XXV will require the up-skilling of ministerial departments and missions to the WTO from the Global South.

Another example can be found in Article XXIII.2 GATT 1994, which states that if no satisfactory adjustment is made concerning a particular trade concern,

members must investigate, make recommendations, and under serious circumstances, authorize the suspension of concessions or obligations. If no positive result is achieved, the contracting party in question can give written notice to the Executive Secretary, stating their intention to withdraw from the agreement.

Under the said provision, the Global South could embrace collective action toward achieving a multilateral outcome by inviting members to comply with International Trade Law honoring their obligations, or leaving the membership. In more concrete terms, under this provision, Global South members must reflect on devising a particular plurilateral understanding to collectively retaliate, sanctioning massive disruptions of WTO Law. Thus, this grandfather dispute settlement provision can serve as a vehicle to effectively enforce the WTO Law. Ultimately, the Global South must reflect on ways to leverage their collective strength to achieve a fair and balanced multilateral outcome that brings back to the table all disruptive players.

In sum, by collective action, enforcing WTO Laws against the Global North, and powerful disruptive members such as China, Global South Members can send a strong message to the WTO about the seriousness of their concerns.

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