

## Chapter 6

# Reshaping the WTO: Some Reflections on a Way Forward

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### 6.1 Introduction

The arrival of the WTO marked a new era for the multilateral trading system. When it was set up in 1995, a new set of multilateral trade agreements was established, designed to bring greater transparency, predictability and stability to the global trading system; to provide improved market access for trade in goods and services; and to promote fairer world trade by disciplining unfair trade practices and protecting intellectual property rights and investment. A comprehensive and effective Dispute Settlement Mechanism was also embodied. Importantly, the Preamble to the 1994 Marrakesh Agreement Establishing the WTO recognised the objective of ‘sustainable development.’<sup>1</sup> The creation of this new multilateral organisation, with the capacity to effectively adjudicate trade disputes, to provide a forum for trade agreement negotiations and implementation, to review trade policy and to deliver technical assistance to developing and least developed countries (LDCs), signified a landmark feat in global trade governance.

However, as the WTO approaches its 25th anniversary in 2020, there is a sense of crisis rather than celebration about the organisation’s performance and functioning. Trade multilateralism stands at a crossroads, with serious questions about the WTO’s continuing role and relevance in 21st century global economic governance. The centre-piece of the WTO, the Doha Round of multilateral trade negotiations, launched in 2001, is the longest-running trade round in the history of the multilateral trading system, with no clear sense of *when/how/if* it can be concluded. In fact, the WTO has delivered only one landmark multilateral trade agreement – namely, the Trade Facilitation Agreement (TFA), adopted at the Bali Ministerial Conference in 2013.

In more recent years, there has been a proliferation and deepening of Regional Trading Arrangements (RTAs) covering new and broader areas and trade rules, as well as a rise in plurilateral initiatives among subsets of WTO members, most

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recently the decision by 76 WTO members to begin negotiations on the trade-related aspects of e-commerce.

Today, the WTO's role and relevance in further opening up world trade and in providing governance are under increased scrutiny, and calls for reform have intensified. Against this backdrop, this chapter outlines some of the recent challenges confronting trade multilateralism and then presents some practical recommendations that could help the WTO move forward. It focuses on two of the WTO's discrete functions: the negotiating function of the organisation and its adjudicating role on trade disputes.

## 6.2 The WTO: From confidence to crisis

The initial operating years of the WTO as a new member-driven multilateral organisation were successful in terms of it achieving its mandate and global outreach. Many countries that were not founding members rapidly applied to join. Today, the WTO's membership is near universal, with 164 member countries, as against the 128 contracting parties to the General Agreement on Tariffs and Trade (GATT) at the end of 1994. During this early period, WTO members explored new areas for multilateral cooperation, including the so-called 'Singapore issues',<sup>2</sup> while some member countries adopted further commitments on trade in services, notably financial services, or launched plurilateral initiatives to deepen liberalisation, such as the Information Technology Agreement.

However, the new organisation was not immune to critique, crisis or challenge. The Seattle protests in 1999 and the failure to launch the 'Millennium Trade Round' represented the first reckoning for the WTO with regard to its actual and perceived participatory and legitimacy deficits. The WTO quickly learnt from this setback, and perceptions of it being a closed 'rich man's club' like the GATT, and sought to embrace greater internal and external transparency, openness and inclusivity. Resultantly, developing countries started to exert greater voice, influence and agency in the decision-making process (Narlikar, 2010). Civil society, once opposed to the system and critical of its perceived corporate-led model of globalisation, also began working more constructively with the organisation by sharing its views on trade issues during events such as the WTO Public Forum. Non-governmental organisations (NGOs) began attending Ministerial Conferences, and trade dispute proceedings were opened for NGOs and the public to observe. The organisation's success continued, with major world economies obtaining membership, most notably China in 2001.

China's accession to the WTO coincided with the launch of the WTO's maiden round of multilateral trade negotiations, the Doha Development Agenda (DDA). Hopes were high for the Doha Round, and it was expected to bring a development face to the multilateral trading system. However, the rise of emerging economies like Brazil, China and India, as well as the more assertive role of developing country coalitions in trade negotiations, further intensified the more multipolar balance of power in the WTO. Such imbalance has since complicated collective global action on trade, as was apparent in the deadlock at the conclusion of the 2003 Cancún Ministerial

Conference. Deep divides were revealed between the ambitions and aspirations of developed countries and those of developing countries, which, in turn, highlighted the inability of the organisation to advance negotiations on traditional issues or to embrace new trade issues. Setbacks for the WTO began accumulating one after the other, beginning with the failure of the membership to conclude the DDA negotiations on time, with endless extensions being put in place.

Despite the Doha impasse, there have been some noticeable achievements, including the decision in 2003 on flexibilities in Trade-Related Aspects of Intellectual Property Rights (TRIPS) in dealing with public health issues and the subsequent amendment of the TRIPS Agreement; a Transparency Mechanism for RTAs established in 2006 that has been operationalised on a provisional basis; various decisions in favour of LDCs, including duty-free quota-free market access for goods and provision of preferences in services for LDCs and its operationalisation; and the decision to abolish export subsidies for agriculture. Another significant achievement of the Round has been the launch of a multilateral Aid for Trade initiative and establishment of the Enhanced Integrated Framework for LDCs and other dedicated funds for technical cooperation. Developed countries, as well as the development (donor) community, have provided substantial resources to support least developed and developing countries to implement agreements.

The WTO's implementation, monitoring and dispute settlement functions have progressed relatively well and delivered results. Some functions have evolved in tandem with shifting global trade dynamics. For example, two initiatives have improved the WTO's monitoring role: a 2006 decision by the General Council to provisionally establish a new transparency mechanism for RTAs; and an initiative under the auspices of the Trade Policy Review to monitor trade policy responses to the financial crisis that had erupted in late 2008. The major challenge and aforementioned initial cracks were primarily in relation to the WTO's negotiating – or legislative – function.

Without tangible progress in negotiations, however, the organisation began losing credibility on its capacity to deliver. Given the dynamics of modern global trade issues, the redundancy of the WTO has been raised to an extent as countries embrace new development paradigms and as technology and globalisation shape new ways of trading and doing business.

On top of this, major economies such as the USA have started to engage in trade wars with major trading partners, taking unilateral actions as a way to correct supposedly alleged trade malpractices. The cracks have widened and spread to the hitherto successful WTO Dispute Settlement Mechanism, with the USA blocking the nomination of members of the Appellate Body – the highest adjudicating body of the WTO. With major deadlock and disruption to both its legislative and its judicial functions, the WTO has stalled and is in existential crisis.

Could the WTO have been a victim of its initial years of success in creating an attractive global trade order with an effective dispute settlement system? History is suggesting this could have been the case – but it may not be the sole reason; rather,

an amalgamation of factors could have been at play. After the long and protracted negotiations of the Uruguay Round, the creation of the WTO led to a new dynamism, with global trade governance with quasi universal membership. While this is central to the WTO principle of inclusiveness, it has become increasingly difficult for all member countries to come to agreement. Furthermore, the inclusion of major economies such as China and Russia has not only added a new dynamism but also made it increasingly difficult to accommodate developing countries' concerns.

Countries from all quarters of the globe have become well versed in WTO negotiations, prompting them to be more forthcoming with proposals to address concerns and interests. The model of a multilateral agreement that is decided among a few and imposed on others is long gone and, in essence, to command success today, a trade agreement must accommodate the varying concerns of all 164 member countries, developed, developing, least developed, small, newly acceded and so on.

Thus, it will be absolutely necessary to reshape the organisation to contemporary realities if it is to remain the premier trade organisation and, above all else, relevant. Some members have already submitted proposals for modernisation and reform. In the past, such attempts, building on reports from eminent people, have attracted harsh opposition; nowadays, by contrast, the looming danger is compelling everyone to have a fresh look at the organisation. While it is extremely important to reform the organisation, it is also crucial to maintain those core values that, forged over several years, have been its major strength – namely, universality and inclusivity. While this combination is difficult to achieve, the membership has at times shown its capacity to bridge differences and be creative, as was evident in the aforementioned decisions on TRIPS and public health and in the TFA.

### 6.3 The WTO as a negotiating forum

Article III (2) of the Marrakesh Agreement establishes the WTO as a negotiating forum. However, apart from the landmark TFA and some substantive outcomes in other areas, especially important decisions favouring LDCs, the WTO has achieved few concrete results. The reasons for this poor rule-making performance are both structural and systemic: structural, because of the structure of the negotiations and the agreements; and systemic, because negotiation principles have not been adapted to modern-day realities.

#### Single undertaking vs. reasonable and balanced negotiating mandate

The Uruguay Round introduced the notion of the 'single undertaking', which was subsequently carried into the Doha Round. This is the procedural notion that 'nothing is agreed until everything is agreed', in order to maximise cross-linkages and trade-off possibilities within a 'grand bargain' package deal. The premise is that all parties will obtain a net benefit from an overall deal. However, given the number of WTO member countries and the increasing breadth and scope of the 21st century trade agenda, it is worth questioning whether the single undertaking approach is still feasible and practical for modern trade negotiations, especially given the different issues and challenges being tackled in an omnibus trade round like the DDA.

With the entry into force of the TFA, there is already some departure from the single undertaking principle that has been the hallmark of previous decision-making.<sup>3</sup> Looking towards future trade rounds, it would be helpful to have a more realistic and balanced mandate on what could be achieved within a reasonable time period, and which would be reflective of the interests of the wider membership. Given the experience of the DDA negotiations, an ambitious mandate will not deliver results within a reasonable period of time.

### Single undertaking vs. plurilaterals

Another alternative to the single undertaking is to provide for plurilateral discussions among subsets of WTO members, as with the launch of the joint initiatives at the Buenos Aires Ministerial Conference in 2017; and, in January 2018, announcement by 76 WTO members of their decision to launch negotiations on the trade-related aspects of e-commerce. Plurilateral discussions that involve a critical mass of WTO members or substantial world trade coverage could be provided with the necessary space to evolve, with any decisions left to participating members, so long as these outcomes do not have multilateral implications. Should these discussions progress to rule-making, plurilateral agreements can take two forms.

The first is critical mass agreements. These are open plurilateral initiatives under which a group of countries agree to specific trade policy commitments they inscribe into their WTO schedules and apply on a most-favoured nation (MFN) basis to all WTO members. In other words, the benefits of such agreements apply to all WTO members, including those that did not sign them. The foremost example is the Information Technology Agreement, where the participating WTO members represent about 97 per cent of world trade in IT products and aim to abolish tariffs on products covered by the Agreement.

The second is plurilateral trade agreements under Article II (3) of the Marrakesh Agreement. These differ from critical mass agreements in that they may be applied on a discriminatory basis – that is, benefits need not be extended to non-signatories. Two such agreements currently exist – namely, the Agreement on Civil Aircraft and the Government Procurement Agreement (GPA). Both are inscribed in Annex 4 of the WTO Agreement. Given the discriminatory nature of plurilateral agreements, they require consensus to be incorporated into the WTO, as stipulated in Article X (9) of the Marrakesh Agreement.

There are potential benefits to pursuing plurilateral approaches. This option allows subsets of like-minded countries to agree to rules in a policy area that is not covered by the WTO, or goes beyond existing disciplines, as long as the membership as a whole perceives that this is not detrimental to their interests. This could reduce the diversion of liberalisation initiatives to RTAs outside the WTO; provide more efficient differentiation in the levels of rights and obligations among a community of highly diverse economies; and offer a mechanism for promoting greater efficiency at lower cost in WTO negotiations. For example, the GPA allows non-signatories such as China to steadily negotiate their access and commitments, providing a ‘building block’ for multilateralism.

However, there are also concerns that plurilateral agreements could create a two-track/speed system in the WTO with differentiated commitments and some erosion of the MFN principle. It is advisable that any future plurilateral initiatives in the WTO, including the intended negotiations on the trade-related aspects of e-commerce, be open and inclusive and entail some elements of non-discrimination, as discussed later (under *Structure of trade agreements: A progressive geometry approach*). This will help counter the perception that these processes resurrect the old Principal Supplier Principle of the GATT era, which had the effect of locking out developing countries and marginalising them from the negotiations.

### Clear guidelines for submitting negotiation proposals

When initiated, the Doha Round negotiating agenda included almost all the trade issues of interest to both developed and developing countries. However, it also established a clear hierarchy among them. The so-called 'development issues'<sup>4</sup> were to be dealt with first, to be followed by the WTO Built-In Agenda (BIA)<sup>5</sup> and thereafter other issues (e.g. trade and environment, fisheries subsidies and rules for RTAs). The Doha Ministerial Declaration was replete with references to 'development' and undertook to place developing countries' needs and interests at the heart of the Work Programme adopted in the Declaration. This is why it was dubbed the 'Doha Development Agenda'. However, in hindsight, the Doha mandate was overly ambitious in terms of the results to achieve. The process made the negotiations much more complex, resulting in the emergence of various interpretations of the mandate and expansion on existing approaches, such as the proposed sectoral tariff negotiations for Non-Agricultural Market Access, or specific issues such as food security in the context of the agriculture negotiations. Member countries have the legitimate right to submit proposals on what they consider necessary to achieve the given mandate. However, without checks and balances, this can easily run out of control, resulting in loss of intent of the original mandate.

To this effect, stricter guidelines should be utilised for the submission of negotiating proposals, which should respect the agreed mandate. The chairs of the negotiating bodies, as well as the Trade Negotiations Committee, should also have a greater role in terms of accepting/rejecting proposals for negotiations that are outside of the mandate. Alternatively, a critical mass support or a certain degree of representativeness of member countries should be required to push for a proposal in a negotiating body.

### Consensus as a core 'multilateral' principle

Multilateral trade negotiations should remain as inclusive as possible, with consensus providing the necessary comfort to member countries to proceed in the negotiations. Consensus-based decision-making is a cardinal principle of the WTO and has distinguished the WTO as a more formally democratic forum than the International Monetary Fund (IMF) or the World Bank, where a system of weighted voting is used.<sup>6</sup> Consensus forces WTO members to build convergences in their positions and make compromises in the interests of the system as a whole. It may not be politically feasible at this stage to eliminate the consensus principle when

adopting multilateral decisions that are binding on all WTO members. However, consideration could be given to whether consensus is required for every decision in the WTO.

The Sutherland Report, for example, recommended strengthening the consensus principle. The report's authors proposed a procedural change that would require WTO members blocking adoption of a measure in instances where the majority is in favour of proceeding to declare in writing that the matter was one of vital national interest to it (Consultative Board, 2004). This recommendation, if implemented, could help the WTO strengthen the consensus approach to decision-making and neutralise the efforts of some members to block consensus where the underlying reasons are extraneous to trade issues.

### Structure of trade agreements: A progressive geometry approach

Another element to take into consideration is the structure of multilateral trade agreements. Currently, it is very difficult to negotiate multilateral agreements that can accommodate the concerns of all member countries. The solution potentially lies in the structure of trade agreements. Adopting a 'progressive variable geometry' approach, whereby members have different rights and obligations under the agreement, can help solve this problem. The agreement could be structured in two parts.

The first part provides a basic framework agreement on a given issue with core principles, including but not limited to definitions, transparency, a 'no rolling back' clause, technical assistance and capacity-building, partnership and collaboration. This section may not be subject to the usual WTO dispute provisions, but the intention is to allow certain categories of member countries to familiarise themselves with certain issues, to build capacity and to garner support from other organisations in this initial process. This could include all member countries and be as inclusive as possible.

The second part broadens and deepens the ambition of the agreement in terms of allowing member countries that are willing and able to join to elevate their participation by undertaking specific commitments that are binding and subject to dispute settlement. Members that gain interest in the course of participation in the first step can join as and when ready. The agreement would become a multilateral agreement only once all member countries join. The specific commitments in the second section will not be extended on an MFN basis, to avoid free-riding. However, as a way to encourage more members to join, the first section will get much attention from participating members.

The advantage of the above approach is that it allows those members that are able and willing to proceed without leaving behind other members that cannot, through the provision of a mechanism allowing participation and capacity-building to let them 'catch up' and accede to the agreement when ready. Those who are part of it would also have an interest in ensuring greater participation in order for the agreement to succeed. This will create greater dynamism in the negotiations and promote inclusivity.

## Descaling the Doha Round with a balance

Continuing with the Doha mandate in its current form is unlikely to achieve success. Trade ministers would need to take the unenviable position of descailing the Doha mandate to manageable proportions, by including a mix of issues that would satisfy all members, including incorporating some new ones. These would include issues of extreme urgency, such as fisheries subsidies, and inevitable issues, such as e-commerce. Further, recognising the importance of special and differential treatment (S&DT) would also be necessary, and it may be useful to take a fresh look at what a development package in the WTO would look like today. In that regard, the S&DT model in the TFA provides a useful approach that could be replicated or adapted in other areas under the current or future trade rounds. Under the TFA, implementation of members' obligations is linked directly to their capacities and to the extent of availability of the assistance they require to meet their obligations.

## Partnership, coordination and collaboration

The WTO negotiating forum provides for partnership, coordination and collaboration with other international bodies. However, the latter remains an untapped and under-utilised resource for supporting multilateral trade negotiations, given the lack of a formal structure for engagement among the organisations on the one hand, and between the organisations and the member countries on the other hand. Many of these organisations lead the substantive policy and technical work in areas that now feature prominently on the WTO's agenda, including climate change; e-commerce; investment facilitation; and micro, small and medium enterprises and entrepreneurship. Consideration should therefore be given to whether these organisations and specialised agencies could play a more proactive role in supporting the negotiations on specific issues.

For example, the negotiations for the TFA engaged a range of specialised agencies with expertise in this area – such as the World Customs Organization, the World Bank, the UN Conference on Trade and Development and the IMF. These agencies, together with the WTO, undertook assessments at country level of the trade facilitation situation, gaps and priorities; raised national awareness of the importance of trade facilitation; and helped mobilise development (donor) community resources. This demonstrates how such organisations have a stronger interest and more buy-in for particular WTO agreements compared with others. Where appropriate, and to ensure greater coherence in global governance, the active support and cooperation of other organisations in negotiating WTO agreements can be better structured and, to a certain extent, formalised.

## Increase resources to the WTO Secretariat

The WTO Secretariat confronts staffing and resource constraints in its efforts to effectively support member countries in administering the agreements, dispute settlement cases and the negotiating rounds. Given the increasing breadth and scope of the 21st century trade agenda, the WTO Secretariat should be provided

with additional resources when being asked to tackle new negotiating issues. In the same vein, putting all the responsibility on individual chairs for the Negotiating Committees, and the director-general as the chair of the Trade Negotiations Committee, is a daunting challenge. It may help if the chairs are assisted by co-chairs, who would be given specific responsibilities for consultations. Chairs can also assign more substantive assignments to the Secretariat, such as preparing 'non-papers' and other material summarising areas of agreement/disagreement, and making contributions on selected topics. Thus, the workload can be shared and more time devoted to specific issues for consultations and deliberations on a way forward. If agreement cannot be reached on an issue within a given timeframe, then this simply should be 'parked until more favourable days'. This would leave space for other issues where there is greater possibility for convergence towards consensus, rather than drawing on the Secretariat's limited resources. Issues that have been parked may then be revived, after a given time, to see whether there has been any movement on positions. The chairs will have a critical role in this process.

### A managed process for Ministerial Conferences

The WTO has formal Ministerial Conferences that are required to take place at least every two years. Ahead of the Ministerial Conference, the General Council is tasked with preparing outcomes for trade ministers, including many issues that are still under negotiation in the Trade Negotiations Committee. The success of a Ministerial Conference is too often measured by whether trade ministers are able to resolve outstanding negotiating issues and adopt new multilateral decisions – like the TFA at Bali in 2013 or the decision to abolish export subsidies for agriculture at Nairobi in 2015. In some cases, the Ministerial Conference prematurely takes up negotiating issues without fully exploring and exhausting the possible trade-offs and convergence of positions in Geneva, as part of the normal course of negotiations. In reality, it is simply not conceivable to defer most decisions to be thrashed out in the politically pressured environment of a two- or three-day Ministerial meeting.

The Ministerial Conferences should be limited to making decisions that the General Council believes are ripe for adoption or that require political guidance at the highest level for finalisation by the Trade Negotiations Committee in Geneva. These decisions should be jointly agreed to by the WTO director-general, as the chair of the Trade Negotiations Committee, the General Council chair and the chair of the Ministerial Conference, in consultation with member countries. A work plan, prepared by the chair of the General Council, leading up to a Ministerial Conference, will help in providing guidance, clear milestones and reasonable expectations for all parties. In this way, associating results of Ministerial Conferences with failures of the organisation or the multilateral trading system is minimised.

## 6.4 The dispute settlement function

During its initial years, the WTO Dispute Settlement Mechanism worked formidably well, and, as mentioned above, may now be a victim of its own success. Why reinvent

something that has proven its effectiveness? Similar to the negotiating forum, much has changed over the past two decades and, if one is to revisit the other functions of the WTO, one must also improve its dispute resolution function. When it comes to the remits of the dispute settlement body – namely, the panels and the Appellate Body – the Dispute Settlement Understanding (DSU) is fairly comprehensive. The recent deadlock and enduring lack of consensus, led by the US administration's refusal to reach a consensus on replacement appointments to the Appellate Body, have illustrated underlying frustrations members have had concerning the DSU.

During the Doha Round, member countries committed to negotiate on improvements and clarifications on the DSU. Amendments to certain provisions are currently being reviewed and innovative ideas have been submitted as part of the reform process.<sup>7</sup> This process should be allowed to continue, with a view to ensuring the process is inclusive, preserves the essential features of the system and is given due attention by all members.

### Enhancing capacity and efficiency

The DSU has been actively used since its inception, with a total of 573 requests for consultations, 282 panels established and 334 disputes covered by panels established from 1995 to 2018.<sup>8</sup> The increasing activity of the system has led to apprehension about the efficiency and capacity of the Appellate Body on issues concerning the timelines for proceedings, and, ultimately, adhering to the required 90-day timeframe stipulation.<sup>9</sup> In this regard, the resources of the Legal and Appellate Body should be increased to enable its ability to undertake an increasing number of cases. The EU-led coalition of states<sup>10</sup> reform proposal, including China and India, calls for extended terms for members from six to eight years and an increase in the number of Appellate Body members from seven to nine. It is also noted that this reform would improve the 'geographical balance on the appellate body after numerous accessions to the WTO since 1995' (EU et al., 2018). Additionally, strengthening the mediation and consultation processes will alleviate the burden on the constituent bodies.

### Maximising the use of the DSU by small states and LDCs

Small countries and LDCs have remained fairly poor users of the system (Nottage, 2015). Financial, technical and domestic capacity constraints, among others, mean they require support to enable them to benefit and participate more meaningfully at all stages of the process. Solutions to address the cost constraints include the establishment of a separate dispute settlement fund, within the WTO, for small states and LDCs (ibid). The support of international organisations, such as the Commonwealth Secretariat, could be broadened to include such dispute resolution support. Other legal resources, such as those provided by the Advisory Centre on WTO Law (AOWL), are accessible, for a fee. It is critical nowadays to recognise the universality of the WTO in terms of membership capacity when providing support. Some organisations are trusted partners of certain member countries and provide critical support to them when tackling disputes. These organisations should be better supported. Other concerns, such as elements of cross retaliation and the possibility for the DSU to recommend measures that could have a proportional effect, could

be a way of compensating for the low trade of certain countries, or their inability to retaliate could be further discussed in the context of an overall DSU review.

## 6.5 Conclusion

This chapter has touched on the potential reforms of two main functions of the WTO. Achieving successful reform will require these two functions to be addressed in a balanced way, from within the specific roles as well across the board, to ensure the equilibrium is maintained. Trust is the underlying principle of any agreement, be it between two individuals or a multilateral agreement, and it works only if every member state trusts the system. Otherwise, it will be highly skewed. It has now become the priority of all member countries to ensure the efficiency of the WTO and to maintain its preeminent role in the global trading system.

## Endnotes

- 1 The Preamble recognises the importance of 'raising standards of living, ensuring full employment and a large and steadily growing volume of real income and effective demand, and expanding the production of and trade in goods and services, while allowing for the optimal use of the world's resources in accordance with the objective of sustainable development, seeking both to protect and preserve the environment and to enhance the means for doing so in a manner consistent with their respective needs and concerns at different levels of economic development.'
- 2 These refer to four working groups set up during the WTO's Ministerial Conference in Singapore in 1996 covering transparency in government procurement; trade facilitation (customs issues); trade and investment; and trade and competition.
- 3 However, the Doha Ministerial Declaration recognises that reaching a consensus agreement on all the DDA issues could be challenging and therefore allows provisional agreement on certain issues in advance of the overall agreement. Paragraph 47 of the Declaration states that, 'Agreements reached at an early stage may be implemented on a provisional or a definitive basis' and 'Early agreements shall be taken into account in assessing the overall balance of the negotiations.'
- 4 At the outset of the Round, a set of three issues – TRIPS and public health, implementation-related issues and concerns and special and differential treatment (S&DT) – were considered priority development issues in the DDA.
- 5 The BIA refers to planned negotiations on agriculture and services, as well as various reviews of several Uruguay Round Agreements that were already mandated at the start of the WTO.
- 6 In the absence of consensus, Article IX of the Marrakesh Agreement provides for voting for particular circumstances, each requiring specified majority thresholds ranging from unanimity to a two thirds majority. However, voting has almost never been used in the WTO and is considered 'counter cultural' (Consultative Board, 2004: 29) to the organisation's consensus-based approach.
- 7 Proposals have been submitted by the EU-led coalition of states.
- 8 See disputes at [https://www.wto.org/english/tratop\\_e/dispu\\_e/disputats\\_e.htm](https://www.wto.org/english/tratop_e/dispu_e/disputats_e.htm)
- 9 Article 17.5 of the DSU.
- 10 Countries include Australia, Canada, China, Costa Rica, the EU, Iceland, India, Mexico, Montenegro, New Zealand, Norway, Republic of Korea, Singapore and Switzerland.

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