

The real blockers of the WTO system

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A narrative is being created by the developed countries and a few developing countries that the practice of decision-making by consensus has “contributed to paralysis” in international trade negotiations at the World Trade Organization (WTO).¹ An integral part of this narrative is the claim of “growing frustration with the use of consensus as a de facto veto, even when proposals enjoy overwhelming support”.² Further, decision-making by consensus is being depicted as coming in the way of “the urgency to achieve timely and effective results”.³

This narrative seeks to hold some developing countries responsible for “blocking” consensus and preventing negotiations and reforms from moving ahead. It focuses attention narrowly on a few issues where the objections seek to uphold the constitution of the WTO itself, and ignores the history of the past 30 years of the WTO whereunder it was the developed countries, especially the United States and the European Union, who blocked progress in multilateral trade negotiations on issues that could have delivered meaningful benefits for a large number of developing countries.

Thus, the narrative not only seeks to divert attention from the real blockers of the multilateral trading system – the developed countries, especially the more powerful among them – but also absolves them of any responsibility in creating the repeated and persistent impasse in the negotiating and dispute resolution functions of the WTO. Taking advantage of this narrative, the powerful countries are now attempting to remould the multilateral trading system in ways that would further skew it against the interests of the developing countries.

This short note attempts to set the record straight by discussing a few egregious instances where, especially on issues of interest to the developing countries, it was the developed countries who stalled progress by either not engaging constructively in multilateral negotiations, or outrightly preventing outcomes. In addition to the issues discussed in this paper, there are many other examples where progress at the WTO was blocked by the developed countries.

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Doha Round

In November 2001 in Doha, WTO Members launched an ambitious round of multilateral trade negotiations.⁴ Technically called the Doha Work Programme, it was frequently referred to as the Doha “Development” Round, reflecting the understanding of developing countries that a new round would balance concessions they had made in the previous Uruguay Round. The negotiations were expected to be concluded not later than 1 January 2005. By the closing months of 2007, however, the developed countries found themselves in a double bind: unable to secure most of their interests, such as combined attempts by the US-EU to negotiate binding rules on three “Singapore issues” – investment, competition and government procurement – but at risk of having to make concessions on some of their defensive sensitivities in agriculture. Continuing with the Doha Round was no longer in their interests.⁵ Eventually, at the 10th Ministerial Conference of the WTO, held in Nairobi in 2015, the US refused to join other Members in reaffirming commitment to concluding the Doha Round based on the Doha mandates, and called for a new approach.⁶ As a result, **the US freed itself “from the strictures of Doha”, an objective strongly advocated by the US,⁷ and the need to undertake sensitive commitments, particularly in respect of farm support, but chose to put the blame on developing countries for the breakdown in the negotiations.**

Implementation issues

Within a few years of the coming into force of the WTO agreements, many developing countries raised around 100 issues related to the problems arising from the implementation of the Uruguay Round agreements – commonly referred to as the “implementation issues”. In the 2001 Doha Ministerial Declaration, the Ministers attached “the utmost importance” to these issues and expressed their determination to find appropriate solutions to them.⁸ Further, Paragraph 39 of the Hong Kong Ministerial Declaration in 2005 reiterated the call made to “the Trade Negotiations Committee, negotiating bodies and other WTO bodies concerned to redouble their efforts to find appropriate solutions as a priority to outstanding implementation-related issues”. **Despite these strong ministerial mandates, no final decision could be taken in respect of at least 72 issues.⁹ This was mainly on account of persistent opposition from the developed countries to the proposals made by the developing countries.** Among the issues on which final decisions were taken by the WTO Members, most were procedural in nature without any significant commercial implications.

Appellate Body

A core function of the WTO is to administer the Dispute Settlement Understanding (DSU),¹⁰ with the WTO’s General Council convening as the Dispute Settlement Body (DSB).¹¹ The two-tier dispute system has a standing Appellate Body of seven members, three on each hearing, appointed by the DSB for four-year terms, reappointable once. Any amendment to the DSU requires consensus.¹² **The US has single-handedly sabotaged the WTO dispute settlement regime.** That began in 2011 when President Obama refused to reappoint US judge Jennifer Hillman to the Appellate Body. In 2016 Obama blocked the reappointment of South Korean Seung Wha Chang, and in 2017 the Trump administration began blocking new appointments. By late 2019, the Appellate Body had insufficient members to hear appeals and the US had begun blocking its funds. In November 2020, the term of the last remaining Appellate Body judge expired. In 2019, US Trade Representative Robert Lighthizer said the US would continue to block appointments to the Appellate Body “in order to force members to deal with much-needed WTO reforms ... It’s the only way to get countries’ attention.”¹³ **As of June 2025, the US had blocked Appellate Body appointments 88 times.¹⁴ The US has ensured that any Member losing a panel dispute, including the US itself, can appeal into the void, making WTO obligations unenforceable.**

Reform of the DSU

A Ministerial Decision on the Application and Review of the Understanding on Rules and Procedures Governing the Settlement of Disputes¹⁵ formed part of the legal texts concluding the Uruguay Round. The Decision mandated a “full review” of dispute settlement rules and procedures within four years after entry

into force, and a decision at the first meeting of the Dispute Settlement Body after completing the review on whether to continue, modify or terminate such dispute settlement rules and procedures. The Doha mandate in 2001 said the review should continue and conclude by 2003. That deadline was extended to 2004, then extended again without specifying any date. The review never formed part of the single undertaking of the Doha Round. Twelve thematic issues were identified. These included a number of matters critically important to developing countries, including costs, remedies, lack of equitable representation on panels, and the power of the secretariat and Director of the Appellate Body. Thirty years on from the Decision mandating the review, there is still no outcome. Instead, the US has torpedoed the Appellate Body and demanded the adoption of its own reform agenda as a price for even remaining in the organization. Another group of WTO Members have created their own de facto appeal system, again not addressing developing countries' priority concerns.

Cotton subsidies

Historically, the US has provided extremely high subsidies to its cotton farmers. In 2001, subsidies targeted specifically to US cotton farmers reached as high as 74% of the value of cotton production in that year. High cotton subsidies have depressed world prices and devastated the economies of some African countries which are overwhelmingly dependent on cotton for their development. These included Benin, Burkina Faso, Chad and Mali, commonly referred to as the C-4 countries. The pathetic plight of cotton farmers in these countries stirred the passions of some WTO Members and there was a concerted demand from many countries that the US should give a commitment to reduce its cotton subsidies. Eventually, at the Hong Kong Ministerial Conference in 2005, Ministers decided to "address cotton ambitiously, expeditiously and specifically, within the agriculture negotiations".¹⁶ This mandate would have, *inter alia*, required the US to make substantial reductions in its subsidies to cotton. At the Nairobi Ministerial Conference in 2015, the Ministers acknowledged "the efforts made by some Members to reform their domestic cotton policies", but emphasized that "more efforts remain to be made and that these positive steps are not a substitute for the attainment of our objective".¹⁷ **While the US has reduced its product-specific support to cotton, it continues to provide high subsidies to cotton through non-product-specific schemes. Thus, some of the poorest countries continue to suffer due to the US refusal to make any meaningful reduction in its subsidies to cotton.**

Special Safeguard Mechanism

Under the WTO Agreement on Agriculture, countries that were blocking imports through a plethora of non-tariff barriers acquired the right to use a policy instrument called Special Safeguards (SSG) to counter import surges and import price dips. Canada (10%), the EU (31%), Japan (10%), Norway (49%), Switzerland (59%) and the US (10%) were the prominent developed Members who could invoke SSG on a large number of agriculture products to justify shielding them from import competition. (The figures in brackets indicate the percentage of agricultural products on which these Members could invoke SSG.) Because most of the developing countries did not maintain non-tariff barriers, they did not acquire the right to invoke SSG. To address this asymmetry, during the Doha Round a large number of developing countries sought a similar policy instrument. At the Hong Kong Ministerial Conference in 2005, it was decided that the developing countries could have recourse to a Special Safeguard Mechanism (SSM) to impose additional duties in case of a surge in imports of agricultural products or dip in their prices.¹⁸ Considerable technical work was undertaken and a detailed legal text was ready by December 2008.¹⁹ At the Nairobi Ministerial Conference in 2015, it was decided to "pursue negotiations on an SSM for developing country Members in dedicated sessions of the Committee on Agriculture in Special Session".²⁰ Despite this decision, **most of the developed countries did not engage meaningfully on the SSM after the Nairobi meeting, thereby blocking any further progress on this issue. Consequently, the livelihoods of hundreds of millions of farmers in many developing countries remain vulnerable and under threat from imports of subsidized agricultural products from the developed countries.**

TRIPS waiver for COVID-19

In October 2020, South Africa and India proposed a “waiver from certain provisions of the TRIPS Agreement for the prevention, containment and treatment of COVID-19”, with support from over 100 lower-income Members. The waiver was intended to allow temporary suspension of certain provisions of the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)²¹ in order to ramp up manufacture of generic COVID-19 vaccines, tests and treatments. That proposal was **blocked by WTO Members that have large pharmaceutical industries, led by the Trump administration and the EU. A highly restricted waiver was eventually agreed** in the form of a Ministerial Decision at the WTO Ministerial Conference in Geneva in 2022, which was limited to certain requirements for compulsory licensing and to patents for COVID-19 vaccines. It was applicable only for five years, with possible extension by the WTO General Council for exceptional COVID-19-related reasons.²² No Member has notified its adoption. Members were also required to decide within six months of the Ministerial Decision if the waiver would extend to COVID-19 diagnostics and therapeutics. Proposals to do so, co-sponsored by 65 Members in 2022 and 2023,²³ were strongly opposed by Big Pharma²⁴ and **were blocked by the US.**²⁵ The deadline for reaching a decision has been repeatedly extended.²⁶

Review of the TRIPS Agreement

The US had insisted that the issue of intellectual property rights be included in the Uruguay Round “trade” negotiations, culminating in adoption of the TRIPS Agreement. The dominance of US corporations in developing the Agreement is indisputable.²⁷ In return for accepting the Agreement as part of the single undertaking in the Uruguay Round, developing countries made it a condition that implementation of the Agreement would be reviewed within five years of entry into force and in light of any new developments.²⁸ Thirty years later, and despite massive challenges raised by health, climate and technological developments, among others, to intellectual property rights, the Agreement has still not been reviewed. **It is the US, the EU and Switzerland that have blocked proposals from developing countries to meet this legal requirement.**

Unfinished business in the GATS

The WTO’s General Agreement on Trade in Services (GATS) was negotiated on a separate track to the rest of the Uruguay Round. That reflected developing countries’ concerns that the GATS was de facto an investment agreement which did not address their priorities, notably labour mobility, and had ineffective safeguards. **The final text of the GATS contained unfinished business on matters that the US and other developed country Members have continued to block:**

- Multilateral negotiations on non-discriminatory emergency safeguard measures were mandated, with the results to take effect no later than January 1998.²⁹ Despite two extensions of time, these negotiations have been persistently blocked by the US and the EU, among others, who claim such measures are neither necessary nor feasible.³⁰ The Working Party on GATS Rules that is responsible for these negotiations last met in October 2016.³¹
- The Decision on Negotiations on Movement of Natural Persons,³² adopted as part of the GATS, extended negotiations on “Mode 4” commitments for six months after the GATS’ entry into force. Under the resulting annex to the Third Protocol to the GATS,³³ only six Members improved their commitments, including India which was a proponent. Moves to extend Mode 4 commitments through the GATS 2000/Doha Round negotiations were consistently rebuffed by developed countries and were effectively abandoned by 2011.
- By contrast, negotiations on additional disciplines on financial services³⁴ and telecommunications,³⁵ which the US had demanded to benefit its multinational corporations that dominated these sectors, had been concluded by mid-1996, and the resulting protocols had entered into force by 1998.

Conclusions

This paper has highlighted many instances where it was the developed countries who blocked progress in multilateral trade negotiations on issues of interest to the developing countries. Not only are the developed countries the real blockers of the system, but they are now attempting to leverage the roadblocks created by them to make fundamental changes to the system in ways that would make the WTO more imbalanced and asymmetric for the developing countries.

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Notes

- ¹ Communication from H.E. Petter Ølberg, Facilitator on WTO Reform, dated 31 October 2025.
- ² Communication from H.E. Petter Ølberg, Facilitator on WTO Reform, dated 31 October 2025.
- ³ WTO document JOB/GC/399 dated 28 June 2024, communication from H.E. Petter Ølberg, Chairperson of the General Council.
- ⁴ WTO document WT/MIN(01)/DEC/1 dated 20 November 2001, Ministerial Declaration adopted on 14 November 2001.
- ⁵ J.P. Singh, Sweet Talk, 48.
- ⁶ Paragraph 30 of WTO document WT/MIN(15)/DEC, dated 21 December 2015.
- ⁷ See, for example, the statement by US Trade Representative Michael Froman at the plenary session of the Nairobi Ministerial Conference of the WTO, available at https://www.wto.org/english/thewto_e/minist_e/mc10_e/mc10_planarysessions_e.htm#USA
- ⁸ WTO document WT/MIN(01)/DEC/1 dated 20 November 2001.
- ⁹ See, for example, the following WTO documents: WT/BOP/R/66; WT/COMTD/45; G/TBT/W/191; G/L/588; G/VAL/49; TN/C/M/5; G/VAL/M/25–33; WT/GC/W/633-TN/C/W/61; WT/GC/W/591-TN/C/W/50.
- ¹⁰ Article III.3 of the Agreement Establishing the World Trade Organization (Marrakesh Agreement).
- ¹¹ Article IV of the Marrakesh Agreement.
- ¹² Article X.8 of the Marrakesh Agreement.
- ¹³ C. Raghavan, *The WTO and Its Existential Crisis*, TWN, 2019, p. 3, available at <https://twon.my/title2/t&d/tnd43.pdf>
- ¹⁴ “US blocks Appellate Body 88th time; China Canada panels named”, *Washington Tariff and Trade Letter*, 27 June 2025, available at <https://www.wttlonline.com/stories/us-blocks-appellate-body-88th-time-china-canada-panels-named,13977>
- ¹⁵ *The Results of the Uruguay Round of Multilateral Trade Negotiations: The Legal Texts*, GATT Secretariat, 1994.
- ¹⁶ WTO document WT/MIN(05)/DEC dated 22 December 2005.
- ¹⁷ WTO document WT/MIN(15)/46 dated 21 December 2015.
- ¹⁸ Paragraph 7 of the Hong Kong Ministerial Declaration adopted on 18 December 2005, WTO document WT/MIN(05)/DEC dated 22 December 2005.
- ¹⁹ Paragraphs 132–146 of the Revised Draft Modalities for Agriculture, WTO document TN/AG/W/4/Rev.4 dated 6 December 2008.
- ²⁰ WTO document WT/MIN(15)/43 dated 21 December 2015.
- ²¹ Suspending the application of Sections 1, 4, 5 and 7 of Part II of the TRIPS Agreement or their enforcement in relation to prevention, containment or treatment of COVID-19.
- ²² WTO document WT/MIN(22)/30 dated 22 June 2022.
- ²³ WTO document WT/GC/W/920 dated 21 December 2024.
- ²⁴ <https://uscib.org/uscib-urges-biden-administration-to-oppose-extending-trips-waiver-to-covid-diagnostics-therapeutics/>
- ²⁵ <https://healthpolicy-watch.news/us-wants-wto-to-delay-decision-on-trips-waiver-extension-for-covid-19-tests-and-treatment/>
- ²⁶ WTO document IP/C/100 dated 13 February 2024.
- ²⁷ https://www.researchgate.net/profile/Peter-Drahos/publication/240021924_Global_Property_Rights_in_Information_The_Story_of_Trips_at_the_Gatt/links/541c19b70cf241a65a0bb120/Global-Property-Rights-in-Information-The-Story-of-Trips-at-the-Gatt.pdf
- ²⁸ Article 71 of the TRIPS Agreement.
- ²⁹ Article X of the GATS.
- ³⁰ WTO document S/WPGR/221 dated 14 April 2011.
- ³¹ https://www.wto.org/english/tratop_e/serv_e/wpgr_e.htm
- ³² WTO, Decision on Negotiations on Movement of Natural Persons, available at https://www.wto.org/english/docs_e/legal_e/47-dsnat_e.htm
- ³³ WTO document S/L/12 dated 24 July 1995.
- ³⁴ WTO document S/L/11 dated 24 July 1995.
- ³⁵ WTO document S/L/20 dated 30 April 1996.