

**India's Statements at the General Council meeting held on
28th February 2019**

'Informal Process on Appellate Body Matters'

1. In the last 2 months, we have had two open-ended and two small group meetings under the informal process on Appellate Body matters, with an issue by issue discussion of all the proposals on the table. While it is encouraging to note that a process for focussed discussions on the AB impasse has been set in motion, we must bear in mind that this will be of value **only if** the Member blocking the appointments begins to engage substantively with the proposals on the table with a view to finding a solution and not merely reiterating the problem.

2. General critiques of the Appellate Body's past behaviour will lead us nowhere. Our focus should remain on reaching swift agreement on a solution that accommodates the interests of the entire Membership and preserves the essential features of the system, namely an independent, two-tier dispute settlement system, automaticity in the launch of proceedings and the principle of negative consensus.

3. As time is of the essence, the most constructive way forward would be to base our discussions on concrete and precise textual proposals on the table such as our proposal in document W/752, that address the procedural concerns articulated by the United States.

4. While India is willing to engage in discussions on the issue of 'over-reach', we believe that it is in the interest of all WTO Members to de-link a resolution of this issue from the process of unblocking the appointments to the Appellate Body. This is because, given Members' divergent views on what constitutes 'over-reach' and the complexity of the underlying issues involved, it is extremely unlikely that any convergence on this issue will be achieved before December 2019.

5. If the institutional mechanism for enforcing the rights and obligations of Members is rendered dysfunctional, there will be no appetite to make new rules or engage in talks of reform. At the same time, making the resolution of the AB impasse contingent on concessions in other areas of the WTO's functioning would lead to a complete breakdown of trust.

6. On this sombre note, we call on all Members to adhere to their treaty obligations under Articles 17.1 and 17.2 of the DSU which clearly provide that “a standing Appellate Body **shall** be maintained by the DSB” and that “vacancies **shall** be filled as they arise”. It would be disingenuous on our part to use the pretext of the Appellate Body’s alleged digression from the clear mandate of the DSU to justify our wilful non-compliance with the same.

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'Procedures to Strengthen the Negotiating Function of the WTO'

1. Thank you Dennis, for sparing your deputy to engage on bilateral trade with India. The WTO's loss is clearly our gain and we are delighted ! India is, however, disappointed by the slant of the recent communications tabled by the United States in WTO documents WT/GC/W/757/Rev.1 and WT/GC/W/764 on the sensitive issue of development. The one-sided and arbitrary approach to development and special and differential treatment provisions articulated in these communications can cause lasting damage to the multilateral trading system. This has prompted India and 8 other Members to present a counter-narrative on the continuing relevance and importance of SDT for all developing Members in the WTO. But more on that later.

2. Special and Differential Treatment (SDT) for developing Members and LDCs, as provided for in Part IV of the General Agreement on Tariffs and Trade, is an unconditional right. The rationale behind SDT is simple and obvious. It recognizes the enormous difference in the levels of development between different Members of the WTO, and allows developing Members the 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. Over the past five decades, this has formed the basis for the concept of SDT and less than full reciprocity under the GATT and WTO. We need to firmly keep this in mind.

3. The United States has focused on certain indicators to argue that there has been a significant reordering among countries and increasing economic differentiation among them. However, while developing Members have achieved progress on some economic indicators since the inception of the WTO, the old gaps in the levels of development are far from being bridged, and in some areas, have even widened. And, new divides, especially in the digital and technological spheres, are becoming more pronounced. Against this backdrop, attempts to cherry-pick and employ selective economic indicators to deny the persistence of the divide between developing and developed Members are profoundly insidious.

4. If at all we are to use economic indicators to gauge the development level of a country, these must be *per capita* indicators, because the essence of development is the human being. It is precisely for this reason that in the WTO covered agreements indicators used to assess the level of economic development of a Member are based on per capita calculation, such as "income per capita", "GDP per capita" and "household income per capita" in Article 8.2 (b) (iii) of the SCM Agreement.

5. The US proposal is extremely divisive. In addition, the proxy parameters that they have chosen for development are arbitrary and the language in their proposal is broad enough to allow for new conditions to be brought in to phase-out SDT on a sector-specific basis, even for Members who fall outside the ambit of the four criteria mentioned in W/764. This clearly appears to be a strategy to ultimately terminate special & differential treatment at the WTO.

6. The narrative that the US is seeking to build is also incorrect and unsupported by evidence. As assessed by the UNCTAD, most SDT provisions in the WTO covered agreements are imprecise, unenforceable and in the form of 'best endeavour clauses' and therefore the assertion that onerous SDT obligations are making the WTO irrelevant is untenable. It is also important to note that though Members can declare themselves as developing, their specific rights and obligations are still subject to negotiations.

7. The US paper, W/757 Rev.1, makes some general and sweeping statements. For instance, it says in Para 1.7 that "all rules apply to a few (the developed countries)". Nothing could be farther from the facts as evident from Agenda item 8 of today's GC where extension of an exemption is being sought for the US. Further, there exist several 'reverse SDT provisions' in the covered agreements that give explicit carve-outs to developed Members and benefit them at the expense of developing Members. The joint-communication by China, India, South Africa and others gives several illustrations of such reverse SDT provisions in favour of the developed Members. Let me remind the United States that it sought and benefited from the waiver from some of the key obligations especially in the area of agriculture and textiles, sectors of export interest for LDCs & developing countries, under the GATT for almost 40 years.

8. It is factually incorrect to blame the self-declaration of development status as the reason for the lack of progress in negotiations. Rather a "self-declared paralysis" has occurred in the WTO due to the inability of the developed Members to abide by the agreed negotiating mandates of the Doha Round and the progress made thereunder. This is in spite of the fact that the Doha Round was launched with the primary objective of bridging the trust deficit between developing and developed Members and increasing the opportunities for developing Members to integrate meaningfully into the global trading system. Referring to the likely contribution of the Doha Round, Robert Zoellick, then USTR, stated that the Doha Round, with development as its core, would be "the starting point for greater development, growth, opportunity and openness throughout the world." Sadly, this is a promise, that has remained unfulfilled.

9. In view of the above, we cannot agree to the premise of the US statement in W/757 Rev.1 or agree with their suggestions made in W/764.

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'The Continued Relevance of SDT in Favour of Developing Members to Promote Development and Ensure Inclusiveness'

1. The joint communication by China, India, South Africa, Venezuela, Laos PDR, Bolivia, Kenya, Cuba and Central African Republic in document WT/GC/W/765 highlights the persistence of an enormous development divide between the Members of the WTO by presenting data from a wide range of indicators such as GDP per capita, poverty levels, levels of under-nourishment, size of agricultural landholdings and the number of farmers dependent on them, financial infrastructure, R&D capacity, receipts from IPR, among other things. China has already highlighted its key features.

2. While India cherishes its economic achievements over the past few decades, it is important to underline that we are nowhere near catching-up with developed countries. We request Members to take a moment to consider some startling figures: India is home to 35.6% of the world's poor compared to 38% in all LDCs put together and 195.9 million or 24% of the world's under-nourished people. During the period between 2010 and 2017, on an average India's per capita GDP was 2.9% that of the United States. Approximately 61.5% of India's population is dependent on agriculture for their livelihood, and yet data from 2016 shows that domestic support per farmer in the United States is 267 times that in India. Furthermore, India has 81 times the number of farmers per hectare as compared to the United States.

3. In view of the gaping divide between our levels of development as compared to those of developed Members, it would be grossly unfair and iniquitous if India were required to take the same obligations as developed countries. US and India cannot be in the same category, even in a boxing match!

4. Other developing Members face similar challenges. For instance, we know access to broadband is the most vital indicator for measuring digital development. And in the developing world, most broadband access is on mobile phones. As far as mobile broadband penetration is concerned, from 2007 to 2016, it increased from 19 percentage points to 90 percentage points in developed countries as compared to an increase from 1 percentage point to 41 percentage points in developing countries. Thus, the growth has been 71 percentage points in developed countries while it has been only 40 percentage points in developing countries. Further, the difference between developing and developed countries was 18 percentage points in 2007 which has grown to 49 percentage points in 2016. Thus in the critical digital area also, not only is the divide very large but it has also grown considerably in the last 10 years.

5. Self-declaration of development status has been a long-standing practice since the early days of the GATT, and therefore it became a part of the 'customary practices to be followed by the WTO' within the meaning of Article XVI: 1 of the Marrakesh Agreement. Depriving developing Members of the policy space that is a right, and that was enjoyed by each developed Member 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.

6. Before I close, I would like to underline five points. First, despite the impressive economic progress made by many developing Members over the past 2-3 decades, the gap in the standards of living with the developed Members persists and has actually widened in respect of many parameters.

7. Second, developing Members continue to confront many formidable challenges, which provide a strong argument for the continued relevance of special and differential treatment in their favour. If the multilateral trading system is unable to respond to their needs, some of the developing Members may not retain a high stake in the system.

8. Third, a regime based on complete reciprocity will mainly benefit those Members who are better endowed with capital and technology. Developing Members, who face significant challenges and constraints, will not be able to benefit from such a regime.

9. Fourth, SDT provisions should be viewed as an instrument to enable developing Members to decide what obligations to undertake and over what time frame. Unless we address the formidable challenges faced by developing Members, we will never be able to encourage them to fully participate in and make contributions to future negotiations.

10. Lastly, in the past, the GATT/WTO Membership exhibited realism and a strong sense of fairness in agreeing to SDT provisions as an unconditional right for developing Members. In his plenary statement at the Doha Ministerial Conference, Pascal Lamy, then EU Trade Commissioner emphasized that development belongs "right at the heart of the multilateral trading system".

11. Let me emphasise that if future negotiations do not adopt a similar approach then it would be a certain recipe for intractable deadlock in negotiations. Obviously, it is in the combined interest of the entire WTO Membership to avoid this eventuality.