



Delhi Policy Group

Advancing India's Rise as a Leading Power



POLICY BRIEF

13th WTO Ministerial Conference Outcomes

Author

V.S. Seshadri

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Core 5A, 1st Floor, India Habitat Centre, Lodhi Road, New Delhi- 110003

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Author

Dr. V.S. Seshadri, I.F.S (Retd.), Senior Fellow for Economic Security. Delhi Policy Group

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Cover Photograph:

The Director-General, Ngozi Okonjo-Iweala, delivers an address at the 13th WTO Ministerial Conference in Abu Dhabi on February 29, 2024. (Source: [13th WTO Ministerial Conference/ Official Website](#))

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I. Introduction

The thirteenth WTO Ministerial Conference held in Abu Dhabi from February 26 to March 2, 2024, could only register a modest outcome. Adoption of the Abu Dhabi Declaration and a few decisions which together spelt out the work ahead in the coming two years, as well as the extension of the existing moratorium on customs duties on electronic transmissions (ET), were the highlights.¹ Accessions of two new countries to the WTO, Comoros and Timor Leste, increased the WTO's strength to 166 members. An expected outcome on the residual fishery subsidies agreement relating to overfishing and overcapacity could, however, not secure consensus. India's proposal for a permanent solution on public stockholding (PSH) for food security also could not materialise.

Multilateral trade negotiations involving sensitive trade-offs are never easy, even in the best of times. At a time of heightened geopolitical tensions, this is even more so. In her closing speech,² WTO Director General Dr. Ngozi Okonjo-Iweala said that the international backdrop to the Conference was marked by greater uncertainty than at any time she could remember. On top of that, several major countries are already in an election mode this year. Farmer protests in the EU and India have added to the complexity. This backdrop reduced the room for trade concessions.

II. Priorities outlined in Plenary statements

Before analysing the outcome of the Ministerial and the road ahead, it is instructive to understand what constituted the wish list among the key participating countries. The Plenary country statements in such multilateral conferences are more for the record but, considering their mandated brevity in the WTO, offer insights into their respective priorities.

India's minister Piyush Goyal highlighted the need for a permanent solution on PSH and the equitable sharing of fishery resources. He further underlined

¹ https://www.wto.org/english/news_e/news24_e/mc13_01mar24_e.htm

² https://www.wto.org/english/news_e/spno_e/spno44_e.htm

what the WTO should not be doing, that is negotiating rules on non-trade related subjects like climate change or labour.

USTR Katherine Tai called upon the WTO to address the massive disruptions from non-market policies and practices, restore transparency as a meaningful norm at the WTO, and to move to a fairer dispute settlement system. Specificity was, however, lacking in the statement, and the US was generally seen as disengaged during the Ministerial.

The EU Commission Vice President Dombrovskis talked of the need for the WTO to advance much needed reform on three tracks that included fixing the dispute settlement system, designing trade policy to meet the new global challenges, such as giving the ongoing e-commerce negotiations (a plurilateral joint statement initiative (JSI)) growing force, and extending the customs duty moratorium on Electronic Transmissions (ET). Additionally, he urged the WTO to catch up with world realities and update rules on industrial subsidies in the context of climate and sustainability, conclude the fishery negotiations, and move towards a balanced outcome on agriculture.

China appeared the most ambitious participant, calling for advancing a universally beneficial and inclusive economic globalisation that included restoration of the dispute settlement mechanism, advancing negotiations on agriculture, food security and fisheries, addressing supply chain disruptions, and enhancing resilience and stability of global industrial and supply chains. To inject fresh impetus into the WTO, it sought moving forward on the JSI on e-commerce, liberalise and facilitate trade in environmental goods and services, and incorporate the JSI agreement on investment facilitation into the WTO framework.

For agriculture-exporting countries like Australia, Brazil or Thailand, progress in agriculture negotiations was deemed essential, as also bringing the negotiations on fisheries to a close. Developed countries like Australia and Japan joined the EU in calling for the launch of discussions on trade and industrial policy, a new emerging theme, considering the push towards adoption of industrial policy initiatives in several members, including the US.

Among the ASEAN countries, Singapore placed emphasis on dispute settlement reform and extension of the moratorium on ET customs duties. It also called for addressing pressing challenges of food insecurity as well as sustainability and environment. Malaysia additionally prioritised JSI initiatives on MSMEs and women's economic empowerment, called upon the WTO to work on supply chain resilience, and hoped for the emergence of consensus on fisheries negotiations. Indonesia (and South Africa), which did not have a

ministerial level representation and statement, was supportive of India, both on agriculture (as part of G-33 countries) and in respect of ending the moratorium on customs duties on ET.

All in all, while there were some commonalities in the wish lists such as relating to dispute settlement reform, fisheries and ET, these spanned a wide variety of individual interests, ranging from agriculture to pushing JSIs on a whole range of topics.

III. Analysis of the Outcomes

Against the above wish lists, we can look at the MC13 outcomes in key areas, what they may mean for India, and what should be the road ahead.

(i) Dispute settlement reform

Getting the dispute settlement system of the WTO to be fully functioning was almost a universal call at the MC13 by all members of this rule-based organisation, with several also calling for the full restoration of the Appellate Body. While discussions have been underway on this in Geneva, including through facilitator-led informal discussions, these have been far from conclusive. With the US as the only member substantially standing in the way, not indicating any flexibility or specific direction, the MC13 merely reiterated the MC12 decision that had mandated this process to be completed by 2024. Whether this can still be done in the remaining months of this year, particularly after the US elections, remains to be seen. Noteworthy, however, in the MC13 decision is the call for accelerating discussions in an inclusive and transparent manner (not just informally), and also its explicit reference to appeal/review, providing clarity that a two-layered dispute settlement system was the intended goal even as the Appellate Body itself found no mention. It can only be hoped that the US will, sooner than later, realise how important it is to have a fully functioning dispute settlement mechanism.

(ii) Fisheries negotiations

Negotiations on the residual part of the fisheries agreement, related to overfishing and overcapacity, perhaps received the maximum attention at the Ministerial. The draft text saw several of its bracketed portions inserted with new formulations, but India's proposal seeking 25 years' flexibility for its fisheries sector, that is largely artisanal and more of a livelihood nature, did not progress. Meanwhile, the EU and China, which are among the largest subsidisers and are also significantly involved in distant water fishing beyond their EEZs, reportedly worked on a compromise favouring themselves. The

revised draft provided for substantial flexibility for continued provision of subsidies for distant water fishing, widely regarded as the most egregious form of fishery subsidisation that has led to overfishing in the first place. India could obviously not accept this, but it was rather self-serving to see EU Vice President Dombrovskis say "It was basically just one WTO member that blocked a comprehensive agreement on banning harmful fisheries subsidies worldwide." There is clearly much work ahead for India in ensuring protection of its interests, and keeping the fisheries text balanced. Persuading other members about India's concerns (as indeed of other similarly placed countries that require a special and differential treatment) will have to be undertaken by bringing out more data highlighting the asymmetries that exist in this sector, and the need for providing development space. Holding a well-prepared international conference that could point to the need for greater balance and calibration needs consideration.

(iii) Customs duties on Electronic Transmissions (ET)

A moratorium on customs duties on ET has been extended from one WTO ministerial to the other since 1998, hoping that the ongoing Work Programme in the WTO on electronic commerce (EC) will help better understand the implications and facilitate resolution in one way or another. There have also been several discussion papers on this issue. With developing countries like India, Indonesia, South Africa and a few others pushing for ending this moratorium in recent years, considering the duty foregone and how this was facilitating larger players as opposed to SMEs, MC12 had given a limited extension only till MC13. Pressure mounted again this year, and MC13, virtually at the last minute, extended the moratorium once again, but only till March 2026 or MC14, whichever comes earlier. It was also made clear that the moratorium and the work programme will expire on that date. Considering the wide support seen for retaining the moratorium, pressure may again mount in the coming months. India will need to consider carefully the way forward. A related aspect also is to examine the practicality and cost of having gateways or other tracking mechanisms for imposing such duties in the first place, considering that electronic transmissions otherwise cross borders seamlessly.

(iv) Investment Facilitation for Development Agreement

Negotiations on the JSI agreement on investment facilitation for development (IFD) began in 2017, in what is generally regarded a China-led initiative. It was concluded in 2023, and over 120 members have become a party to it comprising both developed and developing that include most ASEAN countries, several African and Latin American countries, Australia, Canada,

Japan, Republic of Korea and the UK. But countries like India, most South Asian countries, South Africa and the US have not joined. The parties to the agreement were very keen that MC13 agree for the IFD to be included as a plurilateral agreement under Annex 4 of the WTO Marrakesh Agreement, and thus become part of the WTO acquis. The relevant provision in the WTO agreement (Article X, para 9) states:

The Ministerial Conference, upon the request of the Members parties to a trade agreement, may decide exclusively by consensus to add that agreement to Annex 4.

India has generally been opposed to allowing JSIs, which are plurilateral in nature, with its rights and obligations applicable only to the parties, to become part of a multilateral WTO under this provision, since it could then throw open the WTO to become crowded with such limited initiatives. If this parallel track became available, it could also diminish the efforts needed to strike compromises towards crafting multilateral agreements that enjoy the consensual support of all. The requirement of 'exclusively by consensus' was inserted in the aforementioned legal requirement to ensure that every WTO member was comfortable with adding such an agreement. In this particular case, there was also an issue whether an investment agreement could be termed a trade agreement. In view of all this, India maintained its opposition at MC13 to the proposed inclusion of IFD under WTO acquis, and even argued against placing it on the agenda.

Considering the substantial degree of support enjoyed by this initiative, there will be continued pressure by its sponsors in the future as well, including at MC14. Whether an investment agreement is a trade agreement in the WTO context is a question on which arguments can be advanced either way. There is already the trade-related investment measures (TRIMS) agreement that is part of the WTO acquis and covers matters relating to 'investment measures on the goods' even as its scope is quite limited. Furthermore, in respect of investment in services, it is already very much part of GATS commitments under Mode 3 (commercial presence). Proponents of the opposite view can point to an explicit mandate in the July Framework of 2004, whereby the General Council of the WTO barred any negotiations within the WTO during the Doha Round on investment (as well as competition policy and government procurement). They could also point to the wording of Article X (Para 9) that it is restricted to a 'trade agreement' and does not provide the scope for a 'trade related agreement'.

India may need to carefully reassess its position. In any case, considering that investment promotion has figured as a separate chapter even in the FTAs that India has recently concluded (such as with the UAE and EFTA), to argue that it is not trade related may not be sustainable. This writer also considers the IFD, which is devoid of more controversial elements like market access, investment protection and investor state dispute settlement, and is broadly about transparency and non-discrimination, should in substance be of interest and importance to India as well. This is even as it needs close examination if its provisions (particularly its MFN provision and its Section III on streamlining and speeding up procedures) will in any manner contravene India's existing investment screening policies and practices, considering the close scrutiny that we have introduced for investments from neighbouring countries.

(v) The Broader Issue of Onboarding JSIs into the WTO

As evident from the different plenary statements, there is considerable pressure for plurilaterals emerging from JSIs to become a parallel track in the WTO. Here the WTO membership should examine carefully evolving an overall approach towards such JSIs. At one extreme level, it can be argued that every economic or social aspect, ranging from gender to labour, has a trade-related element and interested parties should be able to arrive at an agreement on them under the WTO. However, bringing them into a rule based multilateral trade organisation needs careful thought. Issues that can fare better at advocacy levels, or under other subject specialised agencies, are perhaps better left to be more adequately addressed there. WTO also does not have the required expertise on some of these issues, which have their own multilateral bodies that have greater understanding and capacities.

Post the establishment of the WTO in 1994, plurilateral agreements like the Information Technology Agreement (ITA), or even the recently agreed JSI on services regulation, have been absorbed into the WTO by incorporating the plurilateral parties' commitments into their respective GATT and GATS schedules in the WTO, thus affording their benefits, but without obligations or any negative impact, to all the WTO members on an MFN basis.³ Doing so, and not through the route of adding them to Annex 4 as sought in case of IFD, perhaps ensured that these initiatives enjoyed the support of a 'critical mass' in that sector/discipline, which is determined by whether the parties to a plurilateral regarded the non-parties as significant or not in terms of obligations and benefit. This is what happened in the ITA, which required that

³ A detailed narrative about plurilateral negotiations undertaken during the GATT days and post WTO can be seen in the ICRIER Working paper by Anwarul Hoda accessible at https://icrier.org/pdf/Working_Paper_415.pdf

its members accounted for at least 90% of its product coverage. Once that threshold was met, its members were not concerned if the rest free loaded.

In that sense, the proposal to onboard IFD under the Annex 4 route, if done, may be the first post-WTO case of integrating a plurilateral agreement whose benefits can be fully exercised only by the parties.⁴ Further agreements, if similarly done, can then undermine the very basic principle of the WTO, non-discrimination. Such plurilateral agreements could draw upon WTO's limited administrative and other resources (the IFD for example requires a WTO Committee on investment facilitation to be established), and moreover require the WTO to adjudicate disputes under them. The balance of rights and obligations of WTO members will certainly get affected.

While on the topic of JSIs, it needs to be mentioned that while India had earlier resisted allowing the commitments made in the JSI on services regulation to be onboarded, it seems to have recently relented. In this writer's view, India should really have been a party to this JSI. In any case, it is welcome that we have allowed it to proceed, which has enabled its provisions to become operational. The Director General of the WTO made a special mention of this at her closing speech at the MC13, when she said in this context "I would like to thank the EU, India and South Africa, and all the members that worked to make this a possibility."

(vi) India's Request for a Permanent Solution for PSH for Food Security

This has been a long pending demand by India and the G-33 group of developing countries which have been unfairly treated by the lopsided provisions in the WTO Agriculture agreement, and is a classic case of special and differential treatment for developed countries. A 'peace clause' secured by India and other developing countries in the aftermath of the Bali Ministerial at the WTO General Council meeting in 2014, fortunately continues to act as a restraint on a dispute being raised on the level of subsidisation exceeding the permitted level for PSH programmes. However, India has been keen on a permanent solution that would allow the Indian government to continue to purchase foodgrains from farmers at the minimum support price for funding its public distribution programmes. India has also been keen that such a

⁴ Admittedly the agreement extends MFN treatment to all WTO Members regarding the application of its provisions and not limit them only to the parties to the agreement. At the same time, a footnote makes clear 'this paragraph shall not be construed as creating any obligation for Members that have not accepted this Agreement, nor shall it be construed as creating any right for those Members, including the right to refer matters arising from this Agreement to a dispute settlement'.

permanent solution be decided in the form of rectification of the flawed Agriculture agreement, and not postponed to become part of any future comprehensive negotiation on all agriculture issues.

However, once again at the MC13, despite India attaching it the highest priority, the developed countries and the agriculture exporting countries showed no accommodation, even as it appears that a draft framework for possible agriculture negotiations made some headway in the Ministerial and could now make further progress in the informals and other processes in Geneva. While there is no reference to either the PSH issue or to the overall agriculture negotiations in the Abu Dhabi declaration, the Director General, in her concluding speech, did refer to the existence now of a (draft) text on agriculture.

India will need to mobilise much diplomatic leverage on this issue of livelihood importance to its farmers. Strategic understandings with certain key countries which could deliver a favorable outcome will need to be attempted. This is even as the need for domestic agriculture reform, and releasing some pressure on the MSP based system for certain foodgrains, should be among the priorities for India's post-election government.

IV. Conclusions

1. Even prior to the Abu Dhabi meeting, expectations from the Ministerial were not high. In that sense, the Ministerial coming up with a declaration and some decisions can be regarded as not a setback, but there were no breakthroughs.
2. Two issues of primary importance to India - a permanent solution for PSH for food security and a balanced fisheries agreement that provides adequate scope for growth and sustenance of our fisheries sector – remained unresolved. Far more diplomatic efforts and coalition will be required going forward.
3. On issues like continuation of the moratorium on customs duties on ET and the onboarding into the WTO of the plurilateral investment facilitation agreement, further internal assessments would be important. There is evidently a large majority of support among the WTO membership for these initiatives.
4. A serious discussion may be necessary in the WTO on integrating future plurilaterals into the WTO, particularly those whose benefits will not be available to non-parties of those plurilaterals.
5. Trade and climate change, and more recently, trade and industrial policy, are topics doing the rounds for WTO to take up. Our think tanks and

research bodies should carefully study these topics and follow discussion trends elsewhere to draw up possible approaches that serve India's interests.

6. Our trade diplomacy overall may need a careful rethink. Commentaries have already appeared internationally about the tyranny of the single vote. WTO members are also seen to be calling for the consensus mode of agreement to be used responsibly.

For a large lower middle income economy like India, it is crucial to retain adequate policy space for future development, and any attempt to unfairly cap it needs to be firmly resisted. Even so, limiting our 'fight to the finish' to a minimum set of issues, and even there building coalitions of support, deserves full attention of trade policy makers.

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