

## Beyond Rules and Agreements: Reading the Tea Leaves

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*'The even, uneven, and complex nature of the ground in the front or on the sides or in the rear should be examined.'*

*In the rapidly evolving stage of world trade, India needs to redefine its role from one that reacts to events, to one that shapes the same. The challenges to this are many: India is currently facing a spate of disputes at the WTO; its status as a developing country entitled to special and differential treatment is being questioned by a few countries, and; the development agenda for WTO reform on issues ranging from services to agriculture set forth at the Doha Round in 2001, remains unfinished.*

*Since the 11th Ministerial Conference in 2017, the format for negotiations at the WTO has also changed with the mushrooming of 'joint ministerial grounds'- which are informal groups dedicated to discussions on E-commerce, Investment Facilitation, Domestic Regulation in Services, and micro, small and medium enterprises (MSMEs). India has been sceptical about engaging with such issues, the concern being that when there is unfinished business under the WTO's Doha Agenda, Members cannot divert attention to new issues without a clear mandate.*

*India needs to develop a clear strategy to address each of these challenges. This article discusses a few options that India could consider in reshaping its vision and role in the world of trade.*

### I INTRODUCTION

India has so far been more of *rule-taker* rather than *rule-maker* in international economic relations. It is also often perceived as frequently reacting to events, rather than as one that can set out a proactive agenda for international economic relations. It is perhaps time for a rethinking of India's strategy and assess how to harness its strengths. The timing is opportune; the International Monetary Fund (IMF's) World Economic Outlook of 2019 has estimated India to be one of the fastest growing economies, despite a global slowdown due to weakening of trade, investment and manufacturing.<sup>1</sup> The OECD has estimated that although India's economic growth will slow somewhat in 2019–20, it will remain robust, at close to 7.5%.<sup>2</sup> In a scenario where we need to attract and retain investments, and ensure that there is a fair and just system for free flow of goods, services and capital, it is clearly in our self-interest that we assess law of the land and redefine our position in the international economic

order, rather than simply react to events around us that are being defined by others.

This, by no means, is an easy task. International economic relations are at a complex and critical juncture, characterized by the uncertainty surrounding the WTO's core function of dispute settlement, the spectre of Brexit, and uncertainty in trade rules resulting from President Trump's unilateral imposition of WTO-incompatible tariffs on imports of steel and aluminium, and the possible application of such tariffs to a wider category of products. At the same time, it is perhaps apt to ask whether the vantage point for viewing this uncertainty is accurate, since it assumes that these developments are a *departure* from the world of rules of 'free trade'. Should we instead be asking the question – have we ever had a world order where rules of free trade have been truly implemented, or will a more honest appraisal of international economic relations simply reveal a world with *varying degrees of protectionism*? The varying degrees of protectionism has been a function of a country's assessment of its self-

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<sup>1</sup> International Monetary Fund, *World Economic Outlook: Growth Slowdown, Precarious Recovery* (Apr. 2019).

<sup>2</sup> OECD, *Developments in OECD and Selected Non-Member Countries* (Nov. 2018). <http://www.oecd.org/eco/outlook/economic-forecast-summary-india-oecd-economic-outlook.pdf>.

interest, and its status as a global power, at different points of time in the history of international economic relations. If we acknowledge this basic premise, then perhaps there can be a more honest and open discussion on what is often characterized as a crisis of the WTO, and the nature of remedial measures required to address it.

Let us take the simple example of 'voluntary export restraints' (VERs), which have historically been implemented on products ranging from textiles and footwear to steel, machine tools and automobiles. The US in particular used it extensively in the 1980s with regard to imports of automobiles, steel and aluminium. VERs were phased out during the Uruguay Round negotiations leading up to the creation of the WTO. And now, over twenty-five years later, they are seeing a resurrection in trade agreements and arrangements of the United States: first, South Korea agreed to cut by 30% its steel exports to the US under the renegotiation of its free trade agreement with the US; and second, VERs have been built for automobile exports in the renegotiated US-Canada-Mexico agreement (USMCA). And since the unilateral increase by the US of tariffs on imports of aluminium and steel in early 2018, several WTO Members have accepted the application by the US of quotas on their steel and aluminium exports, to avoid additional tariffs on their products. These agreed limitations on exports bring back the spectre of the VER practice of the 1980s.<sup>3</sup>

The WTO's rules of multilateral trade have often been hailed as bringing greater predictability and fairness to international trade relations. It is certainly true that the WTO did herald a reign of greater degree of transparency and enforceability of trade rules. However, UNCTAD notes in its recent Trade and Development Report, with its ominously worded title 'Power, Platforms and the Free Trade Delusion': '(T)he paradox of twenty-first century globalization is that – despite an endless stream of talk about its flexibility, efficiency and competitiveness – advanced and developing economies are becoming increasingly brittle, sluggish and fractured.'<sup>4</sup> The Report goes on to outline the growing dissatisfaction with the manner in which rules have been formulated and applied, and notes that its most significant beneficiaries have been global businesses whose corporate power has only become more concentrated and enhanced. It also concludes that this is a universal perception and realization across both developed and developing countries.

An article in the *Economist* newspaper in 2016 noted that '(f)rom Warsaw to Washington the political divide that matters is

*less and less between left and right, and more and more between open and closed. Debates between tax-cutting conservatives and free-spending social democrats have not gone away. But issues that cross traditional party lines have grown more potent. Welcome immigrants or keep them out? Open up to foreign trade or protect domestic industries? Embrace cultural change, or resist it?*<sup>5</sup>

The current state of affairs has been at least a decade in the making. The year 2008 is often acknowledged as the year when protectionism across countries started increasing, in the aftermath of the financial crisis. The WTO's Report on Status of G20 measures in 2012 noted that '*the politics of trade in some countries seems to be turning inward-looking*'.<sup>6</sup> It documented an increase in government-imposed trade and investment restrictions affected global imports. The *Global Trade Alert*, an independent survey, titled one of its 2012 updates on trade protections as '*Debate*', and estimated a 36% increase in the number of protectionist measures enacted in 2010 and 2011, and warned that many more were on the anvil.<sup>7</sup>

Clearly, there is a need for a new vision, and a different approach to international economic relations. A rule-based world means greater predictability, certainty and security – both economic and political, for all countries. But how can such rules ensure fairness and achieve the legitimate policy objectives for all? This article does not have the ability to wave a magic wand to provide concrete solutions. Instead, it seeks to raise two key issues for rethinking India's strategy and vision for its place in the global economic order:

- (a) *Addressing the evolving power dynamics in the multilateral trading world*: This explains that the series of events facing world trade is not about US's unilateral moves alone; but certain shifts in ideas, visions and positions across countries;
- (b) *India's approach on the 'joint informal' groups at the WTO on E-Commerce, Investment Facilitation, Domestic Regulation, etc.*: This raises the question of whether India staying out of the rule-making process in these areas, spells more harm than good.

## 2 ADDRESSING THE EVOLVING POWER DYNAMICS IN THE MULTILATERAL TRADING WORLD

A significant part of trade policy discourse in the recent past has been dominated by President Trump and his unilateral policies. The US has also blocked the

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<sup>3</sup> See e.g. Geraldo Vidigal, *The Return of Voluntary Export Restraints?: How WTO Law Regulates (and Doesn't Regulate) Bilateral Trade-Restrictive Agreements* (20 Sept. 2018), 53 J. World Trade 187–210 (2019). SSRN: <https://ssrn.com/abstract=3254196>.

<sup>4</sup> UNCTAD, *Trade and Development Report: Power, Platforms and the Free Trade Delusion* (2018).

<sup>5</sup> *Drawbridges Up*, *The Economist* (30 July 2016), <https://www.economist.com/briefing/2016/07/30/drawbridges-up>.

<sup>6</sup> WTO (31 May 2012) *Report on G-20 Trade Measures*.

<sup>7</sup> Centre for Economic & Policy Research (June 2012), '*Debate: The 11th GTA Report on Protectionism*'.

appointment of Appellate Body members, and as a result, there is a real risk of the Appellate Body getting completely dismantled.

And yet at the eleventh WTO Ministerial Conference in December 2017 (MC-11), the biennial meeting of all WTO members, there was *no* condemnation of the US, or a united front to reinforce multilateralism in a sign of unity. On the contrary, MC-11 simply reinforced further fissures in the multilateral system, with small groups of members issuing joint ministerial statements on issues such as e-commerce, investment facilitation, domestic regulation in services, and MSMEs. This was the first time that a Ministerial Conference, instead of taking discussion on ongoing negotiations forward, had break-out groups of countries endorsing disparate sets of issues. The implicit requiem for the unfinished ongoing negotiations, on issues ranging from agricultural rules, to market access in non-agricultural goods and services, barely aroused any concern. Instead, there was a lauding of the breakout groups, as holding the key to reinvigorate the WTO and multilateral trade. The US, interestingly, has supported only the joint ministerial group on E-commerce. The EU, on the other hand, along with Japan, Canada, Australia, New Zealand and Russia, are proponents of each of the joint ministerial groups on e-commerce, domestic regulations in services, investment facilitation and MSMEs. China was a proponent of all of the joint ministerial groups, except e-commerce, to begin with. However, at the World Economic Forum held in January, 2019, it expressed its support for the WTO negotiations on e-commerce. India has remained out of each of the joint ministerial groups, and thereby not been able to contribute to any of the substantive debates and discussions.

There was another interesting development at MC-11; the ministerial representatives of the US, the EU and Japan had their first trilateral meeting, pursuant to which they issued a joint statement highlighting the need to achieve a 'global level playing field' and to enhance close cooperation to address the serious concerns caused by 'severe excess capacity in key sectors exacerbated by government-financed and supported capacity expansion, unfair competitive conditions caused by large

market-distorting subsidies and state-owned enterprises, forced technology transfer, and local content requirements and preferences'.<sup>8</sup> At the same time, this apparent synergy of interests however did not deter the US from imposing its unilateral tariffs on aluminium and steel imports from countries worldwide with an initial respite to the EU, which was subsequently revoked. In response, the EU initiated a WTO dispute,<sup>9</sup> while in parallel, retaliated through its own unilateral trade measures, which resulted in the initiation of a WTO dispute by the US against the EU measures.<sup>10</sup> While Japan has taken a less confrontational position, in that it has not initiated any WTO dispute or imposed any counter-tariffs as yet, it has nonetheless reserved its rights to impose such countermeasures in a notification at the WTO.<sup>11</sup> Clearly, countries are crossing swords, while shaking hands, and testing the limits of the trade rules as they exist.

At the time of its inception at MC-11, the main target of the trilateral statement appeared to be China, whose market economy status has been opposed by each of the countries which were part of the trilateral group. But recent events indicate that a key target is also India.

## 2.1 Threat of Disputes

A key front on which India has been targeted by the US-EU-Japan trilateral is the spate of disputes initiated against it in the past year. This includes the disputes initiated by the US against India's export measures,<sup>12</sup> by the EU against tariff treatment of Information Technology products,<sup>13</sup> by Japan against measures relating to iron and steel products,<sup>14</sup> and on tariff treatment of certain information technology goods.<sup>15</sup> Other than these, Brazil, Australia and Guatemala have initiated disputes against India's measures relating to sugar and sugarcane.<sup>16</sup> This has to be, arguably, the maximum number of disputes within a span of eighteen months initiated against India. This has also been accompanied by two instances of unilateral revocation of trade concessions by the US: first in June 2018 wherein the US imposed an increase in tariffs for imports of aluminium and steel, and most recently on 5 June 2019, when it terminated India's status as a GSP<sup>17</sup> beneficiary.

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<sup>8</sup> Joint Ministerial Statement by the United States, Japan and European Union (Buenos Aires, 12 Dec. 2017).

<sup>9</sup> United States – Certain Measures on Steel and Aluminium Products, WTO Doc. WT/DS/548. The Panel was composed on 25 Jan. 2019.

<sup>10</sup> European Union – Additional Duties on Certain Products from the United States, WT/DS559. The Panel was composed on 25 Jan. 2019.

<sup>11</sup> Communication from Japan, *Immediate Notification Under Art. 12.5 of the Agreement On Safeguards to the Council for Trade in Goods of Proposed Suspension of Concessions and other Obligations referred to in para. 2 of Art. 8 of the Agreement on Safeguards*, G/L/1240. G/SG/N/12/JPN/4. 22 May 2018.

<sup>12</sup> *India- Export related Measures* (DS 541, Panel established 23 July 2018).

<sup>13</sup> *India- Tariff Treatment on Certain Goods in the Information and Communication Technology Sector*, (DS582 Consultations, 2 Apr. 2019).

<sup>14</sup> *India- Tariff Treatment on Certain Goods*, (DS584, Consultations 10 May 2019).

<sup>15</sup> *India- Certain Measures on Iron and Steel Products* (DS518, Panel report under Appeal, Dec. 2018).

<sup>16</sup> *India- Measures Concerning Sugar and Sugarcane*, (DS579, DS580, DS581, Consultations Feb.-Mar. 2019).

<sup>17</sup> Generalized System of Preferences (GSP) is available for developing countries on a non-discriminatory and non-reciprocal basis under the WTO. The US suspension of GSP therefore clearly violates WTO rules.

Two fundamental points appear to emerge from these developments: (a) India's rising economic performance is being perceived as a threat, and perhaps, more importantly, an object of the 'trilateral ire' of US, EU and Japan; and (b) India's policies are vulnerable due to the perception that they are not resilient to WTO challenges.

What should India's strategy be? While amicable solutions are always the desirable objective in international relations, India's approach cannot be pegged to this expectation alone. In fact, there is no better example than the US itself that has used a combined strategy of bilateral dialogue, coupled with unilateral action, and most importantly, recourse to the WTO's dispute settlement system to raise its own disputes as a counter-strategy. With respect to disputes which are still at the stage of consultations, a clear assessment needs to be considered on how to effectively use this to arrive at mutual solutions – an aspect India has not used effectively enough at the WTO before. India needs to weigh and balance each of these strategies to assess the appropriate response in each instance.

## 2.2 Other Challenges at the WTO

In the arena of trade negotiations, the trilateral group (US, EU and Japan) proposed a draft General Council decision on the 'Procedures to Enhance Transparency and Strengthen Notification Requirements Under WTO Agreements'.<sup>18</sup> The proposed decision, purportedly addresses what it describes 'the chronic low level of compliance with existing notification requirements under many WTO agreements',<sup>19</sup> which is an important objective to be addressed. However, it proposes that this may be done through naming, shaming and administrative censure. The proposal also refers to capacity building and technical assistance for developing countries. A truly cooperative approach should have made this the focus of the proposal through a broader discussion, and not an incidental appendage, and also addressed the practical manner in which these goals can be achieved in the context of each of the WTO Agreements.

Related to this is the proposal from the US proposing a fundamental change in the current practice of self-declaration by developing countries that they would qualify as 'developing countries',<sup>20</sup> which argues that the north-south divide is an outdated construct and does not reflect the contemporary

realities of development, and seems to suggest that multi-lateral trading rules apply only to developed countries. India, China and South Africa have responded to this through their detailed submission on the continued relevance of special and differential treatment,<sup>21</sup> and explained that economic growth and progress has not eliminated the development divide.

What should India's strategy be to address this development? At one level, India has acknowledged that the existing provisions on 'special and differential treatment' (S&DT) under WTO Agreements are 'best endeavour' clauses, lack precision, effectiveness, operability and enforceability and their actual benefits to developing Members have fallen far short of expectation.<sup>22</sup> In fact, a key thrust of the Doha Declaration was on how to better implement and operationalize S&DT provisions. The US has moved away from this core issue, and made it one about who should be entitled to S&DT. The threshold question of who should determine a country's development status is a crucial one, and marshalling data and parameters for assessing the same is important.<sup>23</sup> At the same time, the debate on broad generic principles alone may not be sufficient. Subtle developments across new areas of discussion at the WTO indicate the increasing use of qualifying statements which WTO members can potentially use to qualify their compliance with a provision. For example, the Agreement on Trade Facilitation (TFA), which was concluded in 2013 after several rounds of negotiations, tempers several of its obligations with the qualifying phrase '*to the extent practicable*', and this qualifier is available for all countries – both developed and developing. Similarly in the context of the negotiations on domestic regulations, the draft text of the joint informal group suggests that 'resource constraints' can be used by all countries to justify the extent to which they can comply with specific obligations. This, along with the phrase '*to the extent practicable*', is available to all countries, irrespective of development status, as a mitigating factor to the implementation of legal obligations.<sup>24</sup>

There are also lessons to be learnt from other international agreements. For example, S&DT as a principle has been witnessing evolution in other international agreements as well. In 1992 when the United Nations Framework on Climate Change (UNFCCC) was arrived at, S&DT manifested as 'common but differentiated responsibilities and respective capabilities' ('CBDR-RC'). The UNFCCC had a definitive

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<sup>18</sup> Argentina, Costa Rica, European Union, Japan, United States, *Proposal to Enhance Transparency and Strengthen Notification Requirements under WTO Agreements*, JOB/GC/204/Add.1; JOB/CTG/14/Add.1 and JOB/GC/204/Add.2; JOB/CTG/14/Add.2 (1 Nov. 2018, revised on 1 Apr. 2019). Australia, Canada, New Zealand and Taiwan have subsequently endorsed the decision.

<sup>19</sup> *Ibid.*

<sup>20</sup> United States, *An Undifferentiated WTO: Self-Declared Development Status Risks Institutional Irrelevance* WT/GC/W/757/Rev.1 (14 Feb. 2019), and United States, *Draft General Council Decision on Procedures to Strengthen the Negotiating Function of the WTO*, WT/GC/W/764 (15 Feb. 2019).

<sup>21</sup> China, India, South Africa, Venezuela, *The Continued Relevance of Special and Differential Treatment in favour of Developing Members to Promote Development and Ensure Inclusiveness*, WT/GC/W/765 (18 Feb. 2019).

<sup>22</sup> *Ibid.*, para. 1.5.

<sup>23</sup> This is the thrust of the joint submission by India and others in the response to the US.

<sup>24</sup> *Disciplines on Domestic Regulation*, WT/MIN(17)/7/Rev.2 (13 Dec. 2017).

linkage on implementation of S&DT when it stated that *'The extent to which developing country Parties will effectively implement their commitments under the Convention will depend on the effective implementation by developed country Parties of their commitments related to financial resources and transfer of technology'*.<sup>25</sup> Unfortunately, this provision was not effectively implemented. Over the course of time, with the evolution of the Paris Agreement under the UNFCCC, the principle of CBDR-RC evolved in a more generic manner as *'common but differentiated responsibilities and respective capabilities, in the light of different national circumstances'*,<sup>26</sup> and complete silence on the conditioning of a developing country's obligation to the compliance by developed countries of their obligation to financial and technical assistance. The agreement also adopts a bottom-up approach to commitments, with each country – whether developed or developing, notifying its contribution to emission reductions in the form of 'intentional nationally determined contributions' (INDCs). While criticized for being soft and not effective enough to address the crisis of climate change, the Paris Agreement continues to hold important lessons from the limited perspective of an alternative architecture to implementing the S&DT principle.

What are the factors that India needs to consider in defining its approach to multilateral trade negotiations? It appears to be fairly clear that there is no singular architect of disruption of multilateral trade rules. The US is solely responsible for the Appellate Body crisis, and India has joined hands with the EU and other members in two important submissions<sup>27</sup> to redeem the situation; the US continues to maintain an inflexible stand. With regard to other issues, however, the alignments of positions among countries are far more complex, and this needs to be recognized. On issues such as S&DT, a deeper assessment of what is specifically at stake, is required, and so is forging coalitions with both developing countries and Least Developed Country (LDCs) to achieve a balanced outcome.

### 3 THE APPROACH TO THE 'JOINT INFORMAL' GROUPS AT THE WTO ON E-COMMERCE, INVESTMENT FACILITATION, DOMESTIC REGULATION, MSMEs

As briefly discussed in Part I above, the WTO's eleventh ministerial conference (MC-11) in December 2017,

witnessed small groups of members issuing joint ministerial statements on issues such as E-commerce, Investment Facilitation, Domestic Regulation in Services, and MSMEs.

India has been sceptical about engaging with such issues, the concern being that when there is unfinished business under the WTO's Doha Development Agenda (which commenced in 2001), on issues ranging from services to agriculture, Members cannot divert attention to new issues without a clear mandate. Both India and South Africa have also highlighted that the plurilateral initiatives represent divisive priorities that would strike at the very roots of 'multilateralism'.<sup>28</sup> A related concern is that in an area such as digital trade where national regulatory frameworks are still evolving, it is perhaps premature to agree on multilateral rules.

These concerns notwithstanding, there is a gradual build up of momentum on these issues, and there is now increasing focus on new approaches to achieving outcomes which are not necessarily based on the traditional WTO norm of 'consensus' based decisions, since not all WTO Members are part of the 'joint groups'. These include a recent World Bank-IMF-WTO article referred to above on 'Reinvigorating Trade',<sup>29</sup> a 'Joint Communiqué of the Ottawa Ministerial on WTO Reform' issued by a group of thirteen countries comprising of Australia, Brazil, Canada, Chile, European Union, Japan, Kenya, Korea, Mexico, New Zealand, Norway, Singapore and Switzerland,<sup>30</sup> and the Report of a High Level Board of Experts comprising of trade experts from several jurisdictions, titled 'Revitalizing Multilateral Governance at the WTO'.<sup>31</sup> The EU and Canada have separately released their discussion papers on WTO reform.<sup>32</sup> A common theme running across these documents is the need for flexible and open negotiating approaches to addressing the new issues.

Interestingly, the Ottawa Communiqué also emphasized that *'tackling pending and unfinished business is key to ensuring the relevance of the WTO'*. This could potentially form the basis for assessing specific aspects of the unfinished Doha business that need resolution. At the same time, it may not be prudent to insist that unfinished business should be completed before discussions on new areas can proceed. Constructive engagement on issues such as domestic regulations for services, e-commerce,

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<sup>25</sup> Art. 4.7, UNFCCC.

<sup>26</sup> Paris Agreement, Preamble, Art. 2 and Art. 4.

<sup>27</sup> Communication from the European Union, China and India to the General Council, WT/GC/W/753 (26 Nov. 2018), and Communication from the European Union, China, Canada, India, New Zealand, Norway, Switzerland, Australia, Republic of Korea, Iceland, Singapore and Mexico, to the General Council, WT/GC/W/752 (26 Nov. 2018).

<sup>28</sup> TWN Info Service on WTO and Trade Issues, *Third World Network India, South Africa reject attempts to launch talks on e-com*, IF (30 Jan. 2019).

<sup>29</sup> IMF, World Bank & WTO, *Reinvigorating Trade and Inclusive Growth* (IMF Policy Papers, 30 Sept. 2018).

<sup>30</sup> 'Joint Communiqué of the Ottawa Ministerial on WTO Reform' (25 Oct. 2018).

<sup>31</sup> BertelsmannStiftung, *Revitalizing Multilateral Governance at the World Trade Organization* (Global Economic Dynamics 17 July 2018).

<sup>32</sup> European Commission, *WTO Modernisation* (Concept Paper, 29 June 2018).

investment facilitation at the WTO is important; not doing so not only runs the risk of fragmented plurilateral outcomes, but also would mean that India would have lost a chance to express its views and interests in these areas of negotiations.

Among these, the issue of domestic regulations is the only area where there are two parallel processes coexisting: the joint informal group which was constituted at MC 11, and discussions at the Working Party on Domestic Regulations (WPDR), which has been in existence at the WTO for close to twenty years now. India, in fact, has been an active participant at the WPDR, and it is the documents refined through discussions at the WPDR that formed the basis for the joint ministerial statement on domestic regulations and its accompanying text at MC 11.<sup>33</sup> The only rationale for the group of countries supporting the joint informal group on domestic regulations and abandoning the WPDR process, appears to have been the need for a faster outcome. There have been suggestions that the outcome of the joint informal groups be incorporated as 'additional commitments' under Article XVIII of the General Agreement on Trade in Services (GATS). This would allow countries flexibility in adopting the content as well as determining the timing of when these disciplines would enter into force for them. Such a plurilateral outcome would however have to be applied on an MFN basis.

To resurrect the WPDR discussions, India introduced an article in November 2018, on domestic regulations focusing only on the supply of services by natural persons. This, however, has not achieved much support at the WPDR. A key question for India is whether it can take the lead in drawing the joint informal group to the WPDR and mainstream the discussions. Instead of being confined to the joint informal group members only? The starting point for this is the fact that the WPDR discussions lie at the heart of the development of the text of the joint informal group's text. In fact, there are several synergies (and some significant differences), in India's approach to the Mode 4 text on domestic regulations and the text that was used as the basis for the joint informal group's discussions. In fact, India's proposal for Trade Facilitation in Services (TFS) initiated in 2017, had also proposed elements which are similar to the administration of substantive and procedural requirements on domestic regulations.<sup>34</sup> The most significant difference between the Mode 4 text proposed by India, and the Domestic Regulation (DR) text of the joint informal group, is with reference to recognition of qualifications of professionals- a key issue of the DR

disciplines. This needs wider engagement among WTO members. Bringing the issue back to the formal WTO fold under WPDR for a discussion on inclusion of all relevant elements, while offering countries the flexibility of GATS Article XVIII, could potentially be a win-win outcome for all countries. Can India facilitate this through its intervention?

In the other areas too, such as e-commerce and investment facilitation, India should strongly consider engaging, since being outside of the discussions will only mean that there will be no ability to inform the discussions in any way. The discussions on these issues, and the approaches taken to address them, will have a crucial role to play in whatever shape or form world trade rules survive and evolve. In the area of e-commerce, especially, there is an evolving understanding in countries like the EU, that issues relating to technological power need to be addressed with caution so as not to result in concentration of resources and data in a few technological giants. Engaging in dialogue and discussion to address common concerns, may work in our interest. Not engaging at all and watching as bystanders may only amount to a missed opportunity.

Similarly on the issue of 'investment facilitation', specifically on the Government of India's approach, there is need for further dialogue on the benefits and drawbacks of a multilateral system on investment facilitation, while dealing with investment protection separately in bilateral agreements. India needs to consider and express its views. Not doing so will only mean a case of missed opportunities to shape the dialogue.

#### 4 CONCLUSION

The underlying premise that economic interdependence will lead to peaceful coexistence, is increasingly being put to test as countries are perceiving increased trade and investment itself as a threat to economic sovereignty. Other than the spate of US tariffs purportedly on grounds of 'national security', protectionist measures across the world are increasing. This is coupled with another trend among some countries to enhance the security assessment for any foreign inbound investment, with a focus on issues beyond the traditional military and defence paradigm. Clearly, economic sovereignty is becoming central to any country's self-interest. This assessment of self-interest is not confined to inward looking policies, but on developing a clear strategy for multilateral negotiations as well. India needs to take a

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<sup>33</sup> Joint Ministerial Statement on Services Domestic Regulation at MC-11, WT/MIN(17)61 (13 Dec. 2017) (JMS-DR); Draft Text for Domestic Regulations, WT/MIN(17)/7/Rev.2 (13 Dec. 2017).

<sup>34</sup> Trade Facilitation Agreement for Services: Submissions by India on Concept Note on Trade Facilitation (S/WPDR/W/55, dated 6 Oct. 2016); Elements Paper (S/WPDR/W/57, dated 25 Nov. 2016); Draft Legal Text (S/WPDR/W/58, dated 22 Feb. 2017).

proactive role in determining its place in the changing economic scenario.

The developments in the recent past reveal a curious mix:

- Increasing protectionism across countries;
- Unilateral trade actions (e.g. the US's steel and aluminium tariffs);
- Bilateral solutions that are not strictly in compliance with trade rules (e.g.: quotas similar to VERs);
- Raising WTO disputes against unilateral actions and perceived WTO inconsistencies (over forty new disputes have been initiated at the WTO since the beginning of 2018, of which seven are against India);
- Proposals for revamp of WTO rules on compliance with notification and transparency obligations, while also undermining the future of the WTO dispute settlement mechanism (through precipitating the Appellate Body crisis);

- Proposals for newer trade rules, comprising of an interesting mix of binding, non-binding, and partially binding obligations, while making recourse to practicalities of implementation potentially available to all countries, irrespective of developmental status.

It may not be prudent for India to continue perceiving these developments through its lens of the late nineties and early twenty-first century. Despite its many fissures, the world we live in today is increasingly interdependent, and that reality cannot be reversed. Instead, countries are aggressively seeking engagement at different levels, with a mix of new rules, and innovative approaches to trade negotiations. Staying outside of it achieves status quo only for India.

The alternative for proactive engagement does not mean that India needs to agree with the views and discussions as they are currently being shaped; rather, India needs to be assertive in aggressively engaging in ideas and provide a vision for a world that is based on enhanced cooperation and interdependence.