

13th Ministerial Conference of the WTO: Multiple narratives need not perplex us

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Rashomon, the classic 1954 film by Japanese director Akira Kurosawa, narrates four different perspectives of a crime. The Rashomon Effect aptly applies to varying accounts of the recently concluded 13th Ministerial Conference (MC-13) of the World Trade Organization (WTO), with much commentary in the Western media holding India as a spoiler even as Indian write-ups provided justification for the country's positions.

All this, while geopolitical shifts have resulted in strategic economic partnerships worldwide overshadowing the WTO. Ten days after MC-13 ended, the signing of the India-EFTA trade deal on 10 March marked India's fourth significant free trade agreement (FTA) in recent times, following the deals with Australia, the UAE and Mauritius. India's engagement with the US-led Indo-Pacific Economic Framework, Quad security partnership and Critical Minerals Partnership, in addition to FTA negotiations with the UK and EU, are among the other significant ties being worked on.

Those partnerships, however, are not a substitute for the WTO, now in its 29th year of existence. The fact that 166 countries, representing over 98% of global trade and GDP, came together and committed themselves to hard negotiations over 5 days for MC-13 is in itself a vote of confidence in multilateralism. The WTO's agreements cover goods, services and

intellectual property, apart from a framework for settling disputes, and M-13 featured several contentious issues on which greater clarity will be needed to ensure outcomes at the next meeting.

E-commerce moratorium: A commitment to not place customs duties on e-commerce has been extended by two years. This 1998 moratorium has been extended at every ministerial meeting since. However, in the past few years, countries like India, South Africa and Indonesia have emphasized the need for review, noting that the moratorium and its expanded interpretation should not stymie digital industrialization in developing countries. Clarity on the scope and ambit of the moratorium is crucial to its future.

TRIPS: Non-violation complaints (NVCs) are a unique WTO concept that let disputes be raised even if the letter of an agreement is not breached if its benefits are not realized. Developing countries including India have demanded a moratorium on NVCs under the WTO's TRIPS agreement on trade-related intellectual property rights. Section 3(d) of India's Patent Act, 1970, which disallows patents for the mere discovery of a new form of a known substance that does not result in its enhanced efficacy, is an example of an issue over which NVCs could potentially be raised. A moratorium on TRIPS NVCs has invariably been linked to the one on e-commerce, the demanders of which are mostly developed countries. It is important not to lose sight of TRIPS NVCs while discussing the future of the e-commerce moratorium.

Public stockholding for food security: Domestic support for agriculture is prevalent in all countries. The WTO's Agreement on Agriculture (AoA) in 1995 sought to discipline agricultural support measures to minimize their trade-distortive impact. But its modalities ended up giving developed countries such flexibility that it is estimated some of them can provide product-specific subsidies amounting to over 50% of production value! But the support provided by most developing countries is capped at 10% of production value, a de minimis limit, and pegged to a reference price dating back to 1986-88. With the passage of time and inflation, a breach of this limit became inevitable. India's 2013 negotiation of a reprieve at the Bali meeting from disputes initiated against public stockholding measures for food security was a significant achievement. Translating this to a permanent solution by amending the AoA is important for legal certainty. Yet, despite over 80 developing countries presenting a clear proposal on such a solution, the matter is far from resolved.

Fisheries: The MC-13 skirmish on fishery subsidies resulted from India's desire to ensure that WTO commitments do not impinge on its ability to safeguard the interests of low income and artisanal fish-workers. India also fought for differential disciplines on subsidies for high-sea fishing, with an accelerated reduction of subsidies by heavy subsidisers and more time for countries like India to develop its high-seas capabilities. What we need on this issue is a good balance to ensure we do not end up with asymmetries of the kind that crept into the AoA.

Dispute settlement: The chief architect of the WTO disputes stalemate is the US, which has refused to appoint members to the WTO's appellate body. A two-tier appellate review mechanism, which provides a basis for rectifying errors and harmonizing interpretations of agreements, worked efficiently for 24 years from 1995 to 2019. With US elections scheduled for November 2024, we cannot expect a solution before 2025.

Joint initiatives: India and South Africa have raised concerns of WTO fragmentation as a result of joint initiatives by small groups of members. At MC-13, the conclusion of talks among 72 members on domestic service-sector regulations was announced. Another one close to conclusion is an agreement on investment facilitation between 123 members. Incorporating this into the WTO fold will require India's acquiescence. Whether to withhold assent, accept such rules or participate in rule-making in new areas such as these is a key decision that will have implications for the future of India's global trade policy outlook.