

Analyzing WTO's Decisions On India: Is WTO Biased towards Developed Nations?

Table of Contents

Abstract	1
Introduction	1
Evolution of the World Trade Organization and Characteristics	2
Functions of WTO	3
Developing Countries & World Trade Organization	4
Analysis of the decisions of the World Trade Organization concerning India	6
Dispute Settlement System of WTO: Structure & Problems	15
Impact of WTO Disputes on the Indian Economy	17
Findings of the Study	22
Recommendations	23
Conclusion	24
References	25

Abstract

The international trade plays a crucial role in the global economy by mobilizing resources from one country to another and boosting economic growth. It strengthens the diplomatic relations between developed and developing countries. The World Trade Organization is an international body that facilitates fair and just trade negotiations among its member nations. However, recently, there have been many concerns about the policies of WTO. This paper aims to analyze the following questions: are the WTO policies fair and equal? Do the policies of WTO have any adverse impact on developing countries like India? Does WTO treat developed nations more favorably than developing nations? The paper gives critical recommendations concerning structural and institutional reforms in WTO. The paper also suggests a possible standpoint of India going forward.

Introduction

The international trade can be traced back to the establishment of civilizations. The leading exchange occurred for commodities such as spices, metals, agricultural produce, and textiles. The first example of trade routes can be mapped to the Silk Road of 300 BC¹. The Silk Road emerged in China, extending over Asia, Europe, and Africa. The natural expansion of trade took place in the age of mercantilism when export promotion and colonialism were a driving force in Europe. The trade consisted of the finished products from Europe to the other parts of the world, and the intermediate goods flew from the Asian and African continents to the Western countries under colonialism. Trade gained pace during the Industrial Revolution.

Technological advancements increased the scale of production, creating a need for a bigger market since aggregate supply was more than aggregate demand in Europe. However, World War II saw production and supply disruptions and multilateral trade agreements began to take place. This reduced trade barriers and boosted economic growth in the countries. This led to a need for a central international body that could facilitate multilateral trade transactions and act as a dispute-redressing agency between trading nations. So, the General Agreement on Tariffs and Trade (GATT) was set up in 1947. This organization was set up to act against prevalent protectionist policies. This multilateral

¹ <https://tradecouncil.org/the-evolution-of-international-trade-a-historical-overview/>

agreement was signed by 23 countries. This organization carried out various negotiations, which led to a reduction in tariffs and various other protectionist policies. The main objectives of the organization included liberalizing trade, fostering economic development in low-income countries, and establishing a framework to carry out fair trade. The GATT stated principles of world trade and encouraged fair practices, but it wasn't essentially a legally binding agreement. Besides, GATT took a gradual approach by negotiating with nations rather than imposing stringent regulations. However, after the oil shocks of the 1970s, the GATT framework started to fall apart, and there was a need for a more robust framework. The non-binding nature and operations focused on Goods trade limited GATT's ability to deal with more complex international trade and commerce surroundings. Eventually, this gave rise to a more specialized body with an improved framework on the foundations of GATT.

Evolution of the World Trade Organization and Characteristics

WTO was formed based on GATT negotiations in the late 1980s, which are recognized as the Uruguay Round. The discussions brought up some critical limitations of the GATT². The reasons stated were:

- a. Growth of Service Industries: Along with the goods trade, services such as tourism, finance, and the creation and transfer of technology started gaining momentum and were traded among different countries through private companies or Governments. However, GATT failed to address issues related to the services trade significantly. Rather, the framework of GATT was too rigid to address these issues.
- b. Rise of Developing Countries: the developing economies understood the need to liberalize and expand to achieve economic development. Therefore, they started taking more part in international trade. Steadily, the developing countries began acquiring a good portion of global trade. India, too, decided to liberalize in the initial phase of the 1990s. The increased volume of trade and participation of smaller nations created the necessity for a more inclusive environment.
- c. Need for a robust dispute redressal system: Naturally, an increased quantum of trade required an efficient dispute redressal system, which GATT failed to deliver. Developing countries

² https://www.wto.org/english/thewto_e/history_e/history_e.htm

started to voice their concerns regarding the effectiveness of international trade organizations. Thus, demand increased for a proper, legally binding, structured, and inclusive global trade body that could give justice to every trade nation.

Thus, GATT was transformed, and the World Trade Organization was formed with the conclusion of the Uruguay Round in 1995. The WTO replaced the GATT, continuing the previous agreements, and added the new seat of the accords to existing ones. Initially, 117 countries signed the agreement. Today, the number has reached 170 countries.

The main aims of establishing the WTO were to address the limitations of GATT, reform the regulations and provisions according to the changing trade ecosystem, and promote international trade and economic development. The significant distinction is that GATT dealt with only goods trade, whereas WTO deals with service trade and intellectual property rights. The establishment of WTO added new procedures for dispute redressal. The WTO is a separate corporate entity under international laws. It is legally binding and, therefore, has a more significant impact than GATT. The main diversion from GATT was the inclusion of intellectual property rights, provisions related to copyrights, patents, geographical advantages, etc. WTO recognized that these rights needed to be safeguarded while doing international trade. WTO aims at maintaining.

The functions of WTO are mentioned below.³

Functions of WTO

A. Trade Negotiations

The WTO covers agreements of goods, services, and intellectual property rights. They lay principles of liberalization and permitted exemptions. They have commitments from individual countries to lower tariffs and other barriers to keep markets open. These arguments are updated from time to time. Many are negotiated under different Agenda (E.g., Doha Development Agenda)

B. Implementation and monitoring

WTO agreements require countries to maintain transparency in their agreements, informing the WTO about the measures adopted and laws in action. Various committees of the WTO ensure these

³ https://www.wto.org/english/thewto_e/whatis_e/what_we_do_e.htm

requirements are followed and strictly implemented. All the members are expected to undergo regular scrutiny of their trade practices. The WTO secretariat periodically conducts the reviews.

C. Dispute Settlement

The WTO has a robust dispute redressal system. The aim is to enforce the rules, and the trade flows smoothly. Judgments of these disputes are given by establishing an independent body with experts. These decisions are based on interpretations of agreements and commitments of individual countries.

D. Building trade Capacity

WTO has special provisions for developing countries, including extended periods for implementing commitments and agreements. They also employ measures to increase trade opportunities and support them for capacity building. The WTO especially launches technical cooperation programs for developing countries annually. The aid sanctioned for developing countries includes the development of infrastructure and the expansion of trade. Along with such initiatives, WTO also has extensive outreach programs that maintain dialogue with NGOs, parliamentarians, and other international organizations and increase awareness of activities undertaken by WTO.

Developing Countries & World Trade Organization

WTO classifies nations into three categories: developed, developing, and less developed countries. However, there is an absence of strict definitions regarding categories. The 'developing country' has been argued multiple times. It has been ambiguous since it does not indicate a country with what income level will participate in the WTO facility for developing countries. This confusion exists because the classification is made by the self-declaration of countries as developed or developing. This won't benefit developing countries as the preference-giving countries, that is, the developed nations, decide which country will benefit from preferential treatment. The developing countries make up 75% of WTO's total memberships. Yet, they seem deprived of exercising their power, for most countries depend on the United States, the European Union, China, and Japan for critical imports, exports, financial aid, and security for the trade voyage. The trade agreements are a sort of trade-off between two countries. One country gives a concession in one domain, let's say lowering tariffs or duties, and another country, in turn, accepts the offer with a particular agreement. However, few developed countries take undue advantage of the negotiations and fulfill their interests, leaving the developing

countries unbenefited. The characteristics of developing countries, such as the lack of human and technical resources, restrict them from participating in these trade negotiations. Naturally, they enter the negotiations with other economies with less capacity. We will investigate specific cases of developing countries to check their relations and work with WTO.

Nigeria is a developing country in the African continent with plenty of scarcity of resources and labour power. Nigeria was one of the initial members of the WTO, joining it with the induction of the WTO in 1995. It has also been part of various trade groups formed under WTO. These include African, Caribbean, and Pacific countries (ACP), G90, G20, etc. Nigeria had to implement trade policies that complied with international standards. Thus, it was a mixed situation for Nigeria as it needed to accept the regulations of WTO, consequently making it imperative for Nigeria to implement them as a member state of WTO. The WTO asked the Nigerian economy to revise its tariff structure and lower the tariffs as it hindered the base for a sound business environment and flow of FDI in the economy. It suggested several sections where reforms can be undertaken.

The critical reform included the domestication of the WTO agreement, which will result in legal accomplishments in local courts. It also suggested reducing the complexity of taxes and import duties and improving its registration processes. The Nigerian economy has experienced several problems with the implementation of the agreements of the WTO due to its informal structure. However, the WTO hasn't suggested any steps to improve the structure or keep an eye on how well it can be integrated into global trade. Another significant issue is with the TRIPS agreement. The agreement contains provisions facilitating the easy transfer of technology to developing nations. Long term goal of this agreement is to make developing economies self-sufficient in terms of necessary technology. However, many developed economies do not comply with the TRIPs agreement that incentivizes developing nations in technology transfer. This limits developing countries, including Nigeria, to only technology-importing nations.

Analysis of the decisions of the World Trade Organization concerning India

The World Trade Organization makes certain decisions for the responsibilities mentioned above. In some instances, decisions of WTO have left India with the shorter end of the stick. We will look into it one by one.

1. Trade-Related Investment Measures (TRIMS)⁴:

The TRIMS states that a member should not adopt any such trade measures that put quantitative restrictions on foreign goods and restrict trade. It prohibits specific important provisions that do not permit countries to trade with full effect. These include

- a. Requirement of Local Content: This measure forces foreign investors to use a certain amount of locally produced or available raw materials or intermediate goods in production.
- b. Export Obligation: This compels foreign companies to export a specified percentage or fixed amount of goods produced in the country.
- c. Quantitative Measures: The quantitative measures consist of import restrictions. i.e., Limiting the quantity of goods that can be imported.

Apart from this, specific performance requirements involve achieving certain levels of exports, employing a specified number of workers, or technology transfer to domestic firms. The TRIMS agreement is limited to goods trade. The effects of the TRIMs agreement on India are mentioned below.

Effect of TRIMs agreement on Indian Economy:

The contradiction concerning the prohibition of domestic content is significant for India since it has a massive relevance to domestic content. Using domestic content or local products encourages the production of intermediary goods, which reduces the cost of inputs. This also links FDI with domestic economic activities. When integrated with foreign manufacturing, domestic content can ensure

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https://www.wto.org/english/tratop_e/invest_e/invest_info_e.htm#:~:text=The%20Agreement%20on%20Trade%2DRelated,which%20violate%20basic%20WTO%20principles.

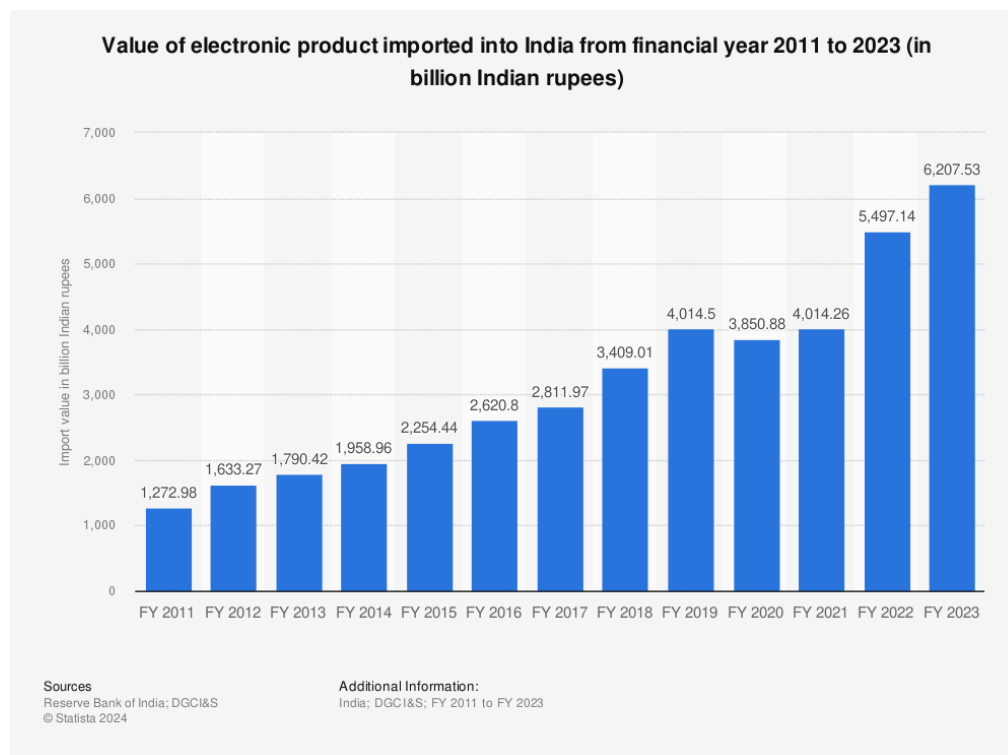
balanced economic growth. Considering these reasons, India had requested that the WTO reconsider these provisions in TRIMs regarding the economy's growth and stabilization of the Balance of Payments. India also asked for an extension to implement provisions in this agreement. The WTO allowed the deviation from the agreement on the grounds of BOP to developing countries, including India. Article V of the TRIMs agreement was amended, and mixing of a certain amount of local content was allowed in medicine production. However, the debate still goes on treating imported products as national products.

The US-India Trade Conflict on Import Licensing on Electronics

The Electronics sector in India transformed after the trade liberalization in 1991⁵. The electronics manufacturing sector post-liberalization has seen a growth of 24% from 1991 to 2008. The Indian electronics sector can be classified into two broad sectors. First is Software services, and second is IT and hardware electronics. Of them, only software and services experienced a growth of 40%, and the IT and hardware electronics industry experienced a growth of a mere 14%. Hardware electronics production has been continuously declining as a part of total electronics production. It reduced from 45 percent in 2000 to 26 percent in 2008. In electronics manufacturing, the telecommunication and broadcasting sector & consumer electronic products occupied a significant share. The share of computers and industrial components was much less than in the abovementioned sectors. The primary reason behind this is that the units in India were small and inefficient compared to global standards. Opening the economy increased foreign direct investment, mainly through mergers or acquisitions. The second thing is that firms were less competitive than international competitors. Although the total production, labour, and capital productivity increased, small firms were forced to close down from 2004 to 2008. Electronics production shifted from developed economies to developing economies. However, India still has an insignificant share of global electronics production. The local content obligation in the TRIMs agreement hindered the growth of small industries in hardware electronics production. Thus, the electronics market in India has been dominated by foreign

⁵ <https://electronicsmaker.com/the-face-of-electronics-industry-in-india>

companies than domestic firms. In 2019, the US raised complaints against import licensing on electronics goods in India. After this, India had to reduce import licenses on goods such as mobiles, tablets, laptops, etc. As a result, the total imports of electronics goods rose in subsequent years and cumulatively were much higher towards the end of FY2023.



(Fig.1 Value of Electronics Products Imported Source: Statista⁶)

From November 2023, India has cleared 110 of the 111 applications from various electronics companies such as Apple, Dell, Lenovo, etc. The imports of IT hardware from these companies were about \$ 10 Billion.

2. Trade Related Intellectual Property Rights Agreement (TRIPs):

The Trade Related Intellectual Property Rights Agreement is an international agreement that aims to reduce distortions in global trade by setting minimum standards for protecting and enacting intellectual property rights. The TRIPs agreement oversees copyrights, related rights, trademarks, tags, and patents. The TRIPs does not provide a set uniform law for protecting Intellectual Property

⁶ <https://www.statista.com/statistics/625751/import-value-of-electronic-products-india/>

Rights, but instead looks at whether a minimum level of standards is maintained based on specific parameters.

TRIPs & Invention

Article 27(1) in the TRIPS agreement states that patents will be granted for any invention, whether product or process patents. Patent rights will be freely enjoyable without any discrimination in technology. However, the TRIPS agreement does not specify a standard definition of invention. The invention can be defined by the national laws of the members within the application of minimum standards. It is also mentioned that patents should be available and rights should be enjoyable without discrimination based on the place of invention. There is no uniform definition to distinguish between an invention and a discovery. The only clarification by fundamental principles of the patent law is that an invention is patentable and a discovery is not. A discovery is referred to as something realized that already exists. In the Indian context of patenting and inventions, it is defined in the Patents (Amendment) Act 2002 as which items cannot be considered inventions or which inventions cannot be patented. It mentions, ‘an invention for commercial exploitation or against public order & morality or which causes serious harm to human, animal or plant life is not patentable.’ The traditional knowledge or traditionally known components have been excluded from patenting. This provision helps prevent Ayurveda practices from being monopolized. This also prevents an individual from patenting a knowledge system known to Indian communities for years. In judicial decisions, the invention has been regarded as an “act or operation of finding something new; the process of producing something that is not known or previously existing, by the exercise of independent investigation or experiment.” the Indian courts have held the view that a patentable invention is one that apart from just being new manufacture, must also be helpful to the community. The Indian Act on Patenting states a new product or process involving an inventive step capable of industrial application can be patented.

Thus, the point of explaining the inventions and their viability for patenting is that there is a lot of vagueness in defining the patentable inventions and criteria for exclusion.

Implementation of TRIPS Agreement and Issues with India

India amended the Patents Act 1970 in 2002 in order to comply with the regulations of the agreement and rectify its patenting process to avoid any potential dispute in international trade. This was also guided by the ruling of the dispute settlement panel against India in responding to the complaints made by the United States and the European Union.

a. The Mailbox Dispute:

The US and EU registered a complaint with the WTO regarding the absence of formal systems in India that permit patent application filings for agrochemical products and pharmaceuticals and grant exclusive marketing rights to the products. Along with this, it also states the probable absence of patent protection for pharmaceutical and agrochemical products. In its argument, India noted that the obligations arising in international treaties are not binding to Indian domestic law. Appropriate judicial or executive action has to be taken to bring them into force. Although these obligations are not self-executing under Indian law, they do not require any fresh action if the existing administrative policies are able to permit the implementation of the agreement. Thus, the Indian courts may interpret the present obligations with the pre-existing constitutional provisions. Despite the defense provided by the government, the panel ruled out India's statement of reasons on the grounds that it did not comply with obligations under Article 70(8)(a) for setting up a legal basis for prioritizing and processing applications for product patents in agrochemical and pharmaceutical products. It was also rejected on the grounds that India did not comply with Article 70(9) of the TRIPs agreement since it failed to establish a sound framework for granting exclusive market rights. India moved the hearing to the Appellate body, and they, too, upheld the panel's decision. As a result, India had to amend the Patents Act in 1999 and eventually again in 2002.

The Indian pharmaceutical industry argued that granting Exclusive Marketing Rights would hinder the local industry and that multinational giants would take over the domestic market. This would

result in the unaffordability of medicines to consumers. This issue still stands as a crucial issue for the Indian government. Access to medicines at affordable prices has always been a concern since then. It is argued by the developed nations that there are safeguarding measures such as parallel imports, compulsory licensing, and price controls. However, over a period of time, it has been observed that it is difficult to make these exemptions. India is one of the largest producers of generic medicines, so it needs help in maintaining public health concerns and patent protection, according to the TRIPs agreement. India has also repetitively requested a waiver and permanent revision of the TRIPs agreement. This will allow faster exports of pharmaceutical products. The revision of the agreement will have a significant global impact as India accounts for 20% of the world's generic medicine production.

b. TRIPs & Issue of Food grains:

With the adoption of the TRIPs agreement, India expanded the intellectual property rights in plant varieties. TRIPs call for IPR protection, which allows multinational corporations to operate in developing countries. Two critical regulations are plant genetic resources and biological diversity. The plant genetic resources were recognized as a common heritage of humanity and should be made freely available to the member states. The TRIPs agreement ignores the fundamental right to food security, which poses a threat to tribal communities. The TRIPs have pressured developing countries to reduce trade barriers. Under the TRIPs agreement, India gave up the common heritage network. Before giving up on this act, the farmers and breeders could patent to claim their intellectual property rights for the varieties subject to criteria set by the law. Under the new framework, plants and seeds were recognized as free resources, which resulted in free access to these resources by foreign firms from developed economies. The developed economies can use these resources to produce other patentable products. This gives them a chance to extract profits at the expense of the efforts of farmers and labour in India. It is constantly being argued that the tribal communities and farmers are the rightful owners of the resources and get adequate compensation for using these varieties. The TRIPs agreement affects small and marginal farmers in India by reducing the food sources of tribal communities by patenting

biological components. The access of people with low incomes to bioresources has been reduced, thus harming the subsistence economy of marginal farmers. This certainly has a negative impact on the share of trade.

3. Agreement on Agriculture (AOA):

The agreement on agriculture was designed to remove trade barriers and ensure transparent and easy market access for farmers in the global markets. The agreement of agriculture excludes fisheries and other forestry products along with rubber, jute, abaca, sisal, and coir. The AOA aims at market access, domestic support, and managing export policies of the countries, ensuring that export subsidies are under control. The subsidies are classified under three boxes.

Box	Policy Coverage
Green Box	<ol style="list-style-type: none"> 1. General services: public stockholding for food security. 2. Government income insurance & income safety net programs. 3. Payment reliefs against disasters, structural adjustment programs, and assistance against various climate action programs.
Blue Box	<ol style="list-style-type: none"> 1. Direct benefits under production limiting programs. Based on specific yield or area. 2. Payments done on a fixed number of livestock heads.
Amber Box	<ol style="list-style-type: none"> 1. Market Price Support, Price deficient payments, and various other budgetary supports. 2. Subsidies related to quantity of production.

Box	Policy Coverage
Development Box	<ol style="list-style-type: none"> 1. Investment subsidies into the agricultural sector. 2. Input subsidies for small and marginal farmers. 3. Includes direct and indirect assistance aimed at rural development.

(Table. 1 Types of boxes and their description)

Issues of India with WTO on AOA:

India's issues at WTO with the Agreement on Agriculture mainly relate to agricultural subsidies. India's Minimum Support Price (MSP) mechanism has always been under the radar of the WTO. WTO has questions based on restrictions imposed on countries under the amber box concerning the price support mechanisms in trade. WTO regards the MSP as a trade-distorting mechanism as it violates the 10% limit of product price support. This price support mechanism is calculated as the difference between the Applied Administered Price (AAP) and the External Reference Price (ERP) multiplied by the eligible production level. ERP is nothing but the export or import price of the product. The AOA considers a fixed amount of ERP and AAP to check for trade-distorting support measures. However, the main drawback of this system is that it does not take into account the inflation factor. Thus, this creates false estimates regarding the price support measures. The developing countries, along with India, have faced a conflict regarding the motive behind minimum price support. The WTO classifies these measures as subsidies for export promotion and considers them under the amber box. India has been arguing that MSP is not an export-promoting measure but a measure of food security. India has also argued on the methodology of subsidy calculation of the food grain prices with the base year 1986-88. The prices are thus not adjusted to the current level of inflation. India has also pointed out that if observed in an absolute sense, developed nations like the US provide 90% of price-distorting subsidies under the amber box. India has also clarified that it provides various input subsidies besides price subsidies, which it would not accept under the WTO regulations.

India's Invoking of the Peace Clause Agreement & issues regarding the invoker:

The peace clause argument states that no country will be legally excluded from participation in the universal food security programs even if the subsidies under these programs exceed the limit mentioned in the agreement on agriculture. Initially, the peace-clause agreement was supposed to last four years until 2017, with the expectation of finding a permanent solution to the subsidy issue. However, until now, no permanent solution has been in place for this issue. This increased India's worry as there was no clear line of defense for subsidies with no solution.

India invoked the Peace-Clause agreement first in 2020 after breaching the 10% limit on rice farmers' subsidies. India was the first member nation to invoke the peace-clause agreement. As mentioned above, India argues the viability of breaching the limit by stating that the stocks procured are for ensuring food security and not export promotion. India also claimed that crops such as rice, cereals, and pulses are procured under public procurement programs for distribution among the poor and vulnerable under the public distribution system to ensure food security and not to facilitate any commercial flow of the goods. India invoked the peace-clause agreement for the 3rd time in April 2022, inviting many criticisms and disputes from other member nations.

The United States, European Union, Canada, Brazil, and Japan have questioned India's use of the peace-clause agreement. They have stated that these rice subsidies distort global trade. The European Union has also requested the entire disclosure of India's public stockholding program at WTO to ensure that rice only exceeds the minimum support limit. India has denied such requests, arguing to seek a permanent solution for the public stockholdings and subsidies of agricultural produce rather than relying on a peace clause, which is a temporary solution and does not provide enough protection to developing countries. However, no action has been taken on this proposal, leaving this issue in the disputes among the member nations. This has also affected India's rice exports as it faced rejections from the US on the grounds of rice quality and pricing mechanisms.

Dispute Settlement System of WTO: Structure & Problems

The dispute settlement system of WTO is a part of the general council of the WTO member states.⁷ The General Council of the WTO includes all the member states and serves as the representative of the ministerial conference of the WTO. The Dispute Settlement Body operates as a part of the general council. The DSB is responsible for settling disputes in the trade between the member nations and carrying out successful negotiations. The DSB also has an appellate body. An appellate body consists of a panel of 7 members. The matters in the dispute settlement body that are not resolved under the settlement panel of member nations are taken to the appellate body. The appellate body has the right to uphold, change, or reverse the legal rulings and conclusions given by the panel. The appellate body came into existence with the establishment of WTO. However, the term of the appellate body ended in November 2020. It hasn't been reconstituted since then.

Stages of Dispute Settlement

In the first stage of dispute settlement, the WTO tries to settle the argument through mutual consultation with the member countries. The dispute will be moved to the next stage if the argument between the two parties is not settled.

A dispute settlement panel is set up at the request of member nations. The panel request and formation require a time of 45 days. The panel has the right to hear both parties, submit its findings, and report on the dispute within the next six months. The duration for perishable commodities is three months. The rulings of the panel can only be rejected by the dispute settlement body. This makes it difficult for the country losing the argument to reject the panel's verdict.

However, if there are significant loopholes in the panel's decision, then a member nation can move the matter to the appellate body mentioned above. The appellate body is concerned with specific issues, excluding reinvestigating the evidence or reexamining the witnesses. The appeal made to the body lasts up to a maximum of 3 months. The final acceptance or rejection of the decision lies with the dispute settlement body of the WTO. The member against whom the decision has been taken is expected to

⁷ <https://corporatefinanceinstitute.com/resources/economics/world-trade-organization-wto/>

follow all the agreements and regulations mentioned in the report. If, in the future, the respondent to the complaint doesn't comply with the agreement, any member nation can file a complaint against the noncomplying member nation. The member nation is given a specific time based on the case to clarify its activities. If it fails to provide just clarification, then the agreement will be forwarded for compensation and an agreement that is mutually acceptable to both parties. If the parties do not agree on the decision, then the dispute settlement body steps in.

Issues of India with the Dispute Settlement System of WTO

A. Constitution Issues:

When any dispute arises, it is taken to the dispute settlement body. The members of the WTO agreement have different operations regarding their domestic laws. The differences in their operations are most likely why the disputes arise. In India's case, questions are raised about domestic laws being inconsistent with the WTO trade agreements whenever a dispute arises. The above example of IPRs and the concept of invention can be considered here. Patenting has always been an issue in India and other developed nations like the US and Australia. The question that arises here is whether the dispute settlement body of WTO has jurisdiction to prove the consistency of domestic law. The WTO secretariat takes legislative action to close the trade gaps that exist due to trade disputes. The panel is given absolute rights in such accords. This is a clear case of exploitation as no such consent of absolute powers has been taken from the member nations.

B. Institutional Issues

Along with the flaws in fundamentals, there exist some vital institutional issues. The reason for this is the setup of the dispute settlement body and the distribution of powers among the nations.

1. *Transparency:* the WTO dispute settlement process lacks transparency. The selection of panelists is done without revealing the selection criteria. This raises questions and doubts regarding potential bias. Along with this, the proceedings are carried out behind closed doors

without any video recordings, raising doubts about the accountability of the records maintained by the panel.

2. *Bias*: as mentioned in the earlier points, it has been observed that the panelists chosen often belong to economically forward countries. This increases the chances of biases in the panel report due to their previous experiences in trade relations with the member nations.
3. *Absence of Appellate body*: The term of the Appellate Body ended in November 2020. The appellate body was expected to be reconstituted within six months from the end of the term. But it hasn't been reconstituted to date. This makes it extremely difficult for India and several other developing nations to resolve the disputes without delay and in an unbiased manner. Till December 2022, 25 dispute cases of India were pending with WTO and they cannot be further resolved until new members are appointed. This not only denies justice in the stipulated time to India but also increases the cost of resolving these disputes, resulting in losses from trade.

Impact of WTO Disputes on the Indian Economy

We will look into the potential impact of the WTO decision on the Indian Economy. We will look into the effect in three stages.

- a. The overall impact on economic growth.
- b. Sectoral Analysis of the potential backlashes of WTO disputes.

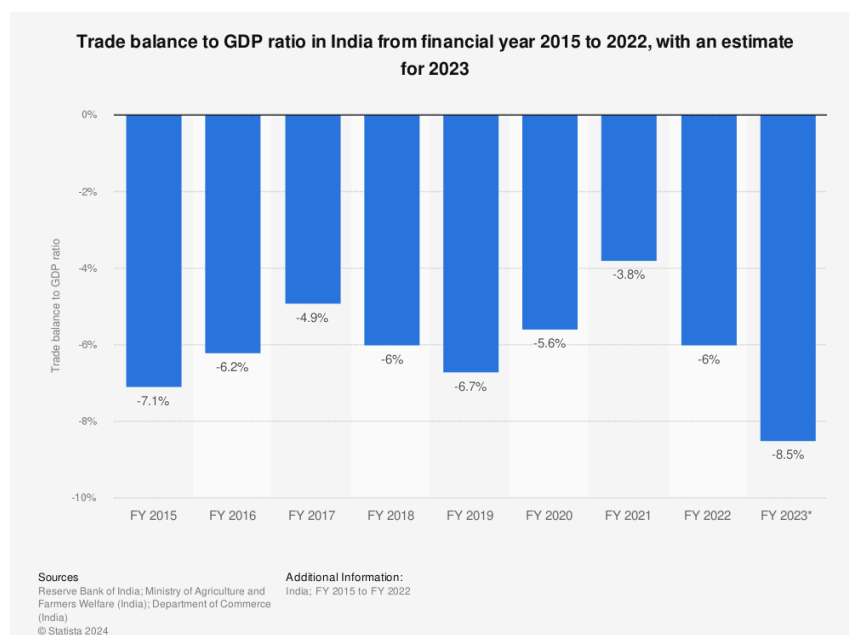
A. Overall Impact on the Indian Economy

Overall, the Indian Economy has had some negative implications in recent times. The imports have risen, resulting in a negative balance of trade. Along with this, the external debt has also increased. The Indian economy has also seen a fall in merchandise exports towards the end of 2023. We will look at key economic indicators and try to draw parallels with India's trade relations with other countries.

1. Trade Balance to GDP Ratio:

The trade balance to GDP ratio has declined from -6% in FY2022 to -8.5% in FY2023. This shows a negative trade balance due to the rising volume of imports as well as the rising value of imports. These imports mainly include engineering, electronics, agricultural goods, and fertilizers. The WTO ruling against India on import licensing led to reduced import restrictions from India, which, in turn,

increased the imports, pushing the trade balance down further. The figure 2 shows the trade balance to GDP ratio.



(Fig. 2 Trade Balance to GDP Ratio. Source: Statista⁸)

2. Trade Volume:

Table 1: Trade during February 2024*

		February 2024 (USD Billion)	February 2023 (USD Billion)
Merchandise	Exports	41.40	37.01
	Imports	60.11	53.58
Services*	Exports	32.15	27.40
	Imports	15.39	14.97
Overall Trade (Merchandise +Services) *	Exports	73.55	64.41
	Imports	75.50	68.56
	Trade Balance	-1.95	-4.15

* Note: The latest data for services sector released by RBI is for January 2024. The data for February 2024 is an estimation, which will be revised based on RBI's subsequent release. (ii) Data for April-February 2022-23 and April-September 2023 has been revised on pro-rata basis using quarterly balance of payments data.

(Fig. 3 Trade between FY2023 to FY2024. Source: Ministry of Commerce and Industry, Dept. of Commerce⁹)

Here, it can be seen that the trade balance improved in FY2024 but continues to be negative. The share of Merchandise imports has increased significantly. The merchandise exports have increased in 2024, but overall, they have shrunk by 6.51% from April to November 2023.

⁸ <https://www.statista.com/statistics/812444/india-trade-balance-to-gdp-ratio/>

⁹ <https://commerce.gov.in/trade-statistics/latest-trade-figures/>

B. Sectoral Analysis of the potential backlashes of WTO disputes:

We will now delve into the effects of WTO disputes concerning specific sectors. The WTO disputes have negatively affected the Indian economy in terms of both trade loss and domestic unemployment and production.

1. Export of Fisheries:

The fish exports have been affected due to disputes over the fisheries' subsidies. The recently concluded WTO ministerial meeting didn't pan out in the fisheries sector, as ongoing debates were unresolved. The developed countries have argued that when a country exclusively engages in fishing or fishing-related activities in any area or fishing area adjacent to the country's territory, it poses a significant threat to sustainability and biodiversity. India wanted to have special & differential treatment in fisheries subsidies for small-scale fishermen and development of the fisheries sector. The first benefit was regarding an extended transition period for terminating subsidies leading to overfishing. The transition period is 7-25, giving India ample time to develop its fisheries sector. The second potential benefit was the complete exemption of small-scale and artisanal fishing conducted up to 200 nautical miles from the seashore. Both these provisions are necessary for the income and livelihood of small-scale fishermen. The year-long dispute has affected fisheries exports, as shown in the table below. A reduction in fisheries exports significantly reduced the income of fishermen, thus endangering their livelihood.

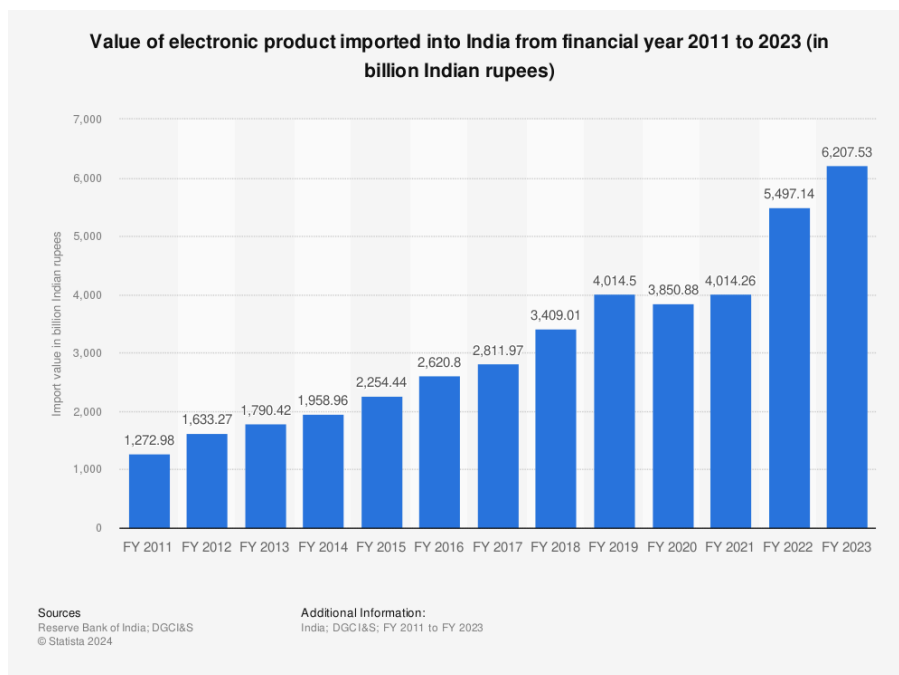
Commodity	Export Share % 2021-22	Export share 2022-23	Growth %
Fish & Aquatic Invertebrates	1.63	1.51	-1.15

(Table. 2 Fish Export Share & Growth Rate. Source: Department of Commerce¹⁰)

¹⁰ <https://tradestat.commerce.gov.in/eidb/ecom.asp>

2. Import of Electronic goods:

As explained in the TRIMs agreement section, the import tariff case on the information and communication technology sector increased imports, leading to higher competition in the domestic market.



(Fig. 4 Value of Electronic Products Imported. Source: Statista¹¹)

The increasing value of imports increases the prices of commodities in the domestic markets. Likewise, the Indian electronics market saw a surge in consumer electronics for laptops, tablets, and mobile phones.

With greater competition from foreign companies due to lowered import tariffs, local companies in the Information Technology sector have been forced to close their operations. Thus, the layoffs and unemployment in the IT sector have increased. The unemployment trends can be understood from

the table below. The rise in the general unemployment level is due to mass layoffs in the IT sector. Till May 2023, around 200,000 tech employees had to lose their jobs.

Year	Unemployment Rate
2022	7.8
2023	8.11

(Table. 3 Unemployment Rates in Years 2022 & 2023. Source: CMIE)

Thus, imports have hindered India's domestic electronics market. Although foreign direct investment has increased, firms from foreign countries have gained more than Indian companies.

Thus, the decisions of WTO and long-standing disputes in the dispute settlement body lead to income loss and affect the sectors' growth, making them lose competency. Thus, India and other developing countries undergo a substantial financial burden.

Findings of the Study

The above study interprets some crucial findings regarding WTO decisions and their potential impact on India and other developing countries. The findings are mentioned below:

1. The constitution of WTO was created for a dispute-free trade environment and to ensure equal representation opportunities for all member nations in global trade.
2. The WTO has ensured a broader product and geographical coverage, establishing itself as a single regulator of global trade. Since the establishment of the WTO, international trade has grown rapidly. WTO has facilitated the development of Global Value Chains and initiated domestic reforms in less developed countries.
3. However, specific policies and laws of WTO do not align with the country's domestic laws. For example, the patenting laws of India were not in compliance with norms under the TRIPs agreement, causing several disputes and disruptions in domestic laws and judgments.
4. The least developed and developing countries have less monetary power to engage in WTO summits and voice their opinions. Therefore, certain issues of these member nations remain unheard of.
5. The Dispute Settlement Body of the WTO has structural and institutional flaws which raise doubt about the unbiasedness of the rulings given by the dispute settlement body. The absence of an appellate body dents the dispute settlement procedure since, if the panel provides a verdict against a country, it has to appeal to the appellate body for due justice. Along with India, cases of many countries are pending at the appellate body, raising the costs of resolving the disputes and increasing potential losses from the time lag in judgment.
6. The method of constitution of the panel for dispute settlement is ambiguous, so the rulings of the panel can often be prejudiced or biased.
7. Long-standing disputes with the member nations at WTO and unfavorable outcomes from rulings can result in trade losses, which have implications for the economy as a whole.

Recommendations

The recommendations of this paper include the possible improvements in the structure and workings of the WTO and strategies India can apply to safeguard its interests.

1. WTO should appoint a new appellate body since the absence of an appellate body affects the dispute settlement mechanism. It also delays the time taken for verdicts, thus resulting in losses from trade for developing nations. The absence of an appellate body also leads to less voicing power for developing countries. Therefore, the WTO must focus on restoring the body as a priority.
2. Along with this, the WTO should also ensure greater transparency in the dispute settlement process. The dispute settlement panel has mostly members from developed nations who may give some prejudiced judgments.
3. The WTO should subjectively examine the policies of developing and developed countries to distinguish them as trade distortive and non-distortive measures.
4. The WTO also needs to bring about institutional reforms, including strengthening special and differential treatment provisions, addressing issues regarding its implementation, and addressing asymmetries in agreements mainly related to agriculture.
5. The decision-making process of WTO must have a formal structure that ensures inclusiveness in the decision-making process to address the concerns raised by developing countries.
6. From the Indian point of view, India should focus on self-reliance and gaining comparative advantage.
7. India should also look to create a geo-political capital by entering and building trade relationships with the nations that will gain potential importance in the coming years. Thus, India can leverage its trade relations to carry out negotiations in the future. This will also ensure greater market access and strengthen India's position in terms of parallel arrangements.
8. India should push for WTO reforms rather than enter into multilateral trade blocs, as the WTO's principles are favorable to developing countries like India. It will also give India greater negotiating power than in multilateral trade.

9. India should also focus on structural reforms to increase ease of doing business and reduce inefficiencies. India should also have a firm domestic policy framework on emerging areas.

Conclusion

Trade is necessary for all countries worldwide, as no country is self-sufficient. Global trade is essential not only to fulfill requirements for goods and services but also to achieve a certain level of economic development and progress towards efficiency. From the establishment of GATT to the formulation of WTO through subsequent delegation among the nations, the scope of global trade has widened. With the formulation of the WTO, the number of member nations has increased. International trade is not just limited to the physical trade of goods and services but also involves the transfer of technology and other investments essential for the development of a nation. The WTO performs the supervisory role in trade negotiations between two member countries. However, with the changing dynamics of the global economy and politics, WTO has to bring about critical structural reforms and give up rigidity to stay relevant in today's changing world. Although it promises equal opportunities to all the member nations, there have been several incidences where its weight has inclined towards developed countries that certainly have a higher monetary power and technological advancement. Therefore, the WTO must bring more transparency to the process by involving developing countries in decision-making.

In the case of India, along with voicing for strong structural and institutional reforms at the WTO, it is equally important that India focuses on capacity building. India should establish competency at both domestic and global levels. India has attracted many foreign direct investments post the 1991 reforms. India should expand more on research and development in both the manufacturing and services sectors to ensure cost-efficient and sustainable production. India must focus on capacity building for MSMEs to increase both the quality and quantity of production and push for export promotion. India must also make structural reforms in its legal framework to address some critical issues related to patenting, taxation, and subsidiaries. With improved global diplomatic relations, India can put its best foot forward to become a key player in the global market and maximize its returns from international trade. India should focus on building strong economic and diplomatic relations with WTO member

countries to avoid conflicts and reduce losses from trade. With the advent of technology and improved governance, India can be a crucial asset in moving forward with global trade.

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