



*Strengthening Africa in World Trade*

# **Understanding the World Trade Organisation (WTO) and the Multilateral Trading System**

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## 1 Introduction

The WTO is a Multi-lateral Organisation among countries providing a framework for the conduct of international trade in goods and services and for the protection of intellectual property rights. It is a forum for governments to negotiate trade agreements. The WTO oversees the implementation of a set of agreements known as the WTO agreements.

The system operated by the WTO is known as the Multilateral Trading system. Most nations, including almost all the major trading nations, are members of the system. However, not all countries are members of the system. Therefore “multilateral” is used to describe the system instead of “the global” or “the world”

The WTO agreements also include:

- ✓ Framework for the enforcement of rights and obligations in the agreements
- ✓ Principles of liberalisation and the permitted exceptions
- ✓ Individual countries’ commitments to lower customs tariffs and other trade barriers, and to open and keep open services markets
- ✓ Requirement for governments to make their trade policies transparent by notifying the WTO about laws in force and measures adopted and through regular reports keep the WTO secretariat informed on countries’ trade policies

### Facts about the WTO

<b>Established</b>	: 1 January 1995
<b>Headquarters</b>	: Centre William Rappard, Geneva, Switzerland
<b>Created by</b>	: Uruguay Round negotiations (1986–94)
<b>Membership</b>	: 153 countries (2009)
<b>Official languages</b>	: English, French, Spanish
<b>Budget</b>	: 189 million Swiss francs ( Approx. 182 million US\$) (2009)
<b>Secretariat staff</b>	: 625
<b>Director General</b>	: Pascal Lamy (Director General)
<b>Website</b>	: <a href="http://www.wto.int">www.wto.int</a>

## **2 Background**

The World Trade Organisation was established in January 1995 following the conclusion of the Uruguay Round of trade negotiations and the adoption of the Uruguay Agreements in 1994 in Marrakech Morocco. WTO is therefore one of the youngest international organisations but also the most powerful as it has a mechanism to enforce its agreements.

The origin of the WTO can be traced as far back as the end of the First World War. After World War I, the victors exacted a heavy price on the defeated countries by insisting that the latter pay high reparations. The United States which had given financial support to the victor countries, also pressed hard for these countries to repay their war loans. All these pressures put a heavy burden on western European economies that resorted to an inward looking attitude and erected high tariffs and other trade barriers aimed at protecting their own economies. The UK, which hitherto had been a leading champion of Free Trade, abandoned the policy and opted for protectionism. The USA adopted a similar protective posture and enacted the Smoot-Hawley Act of 1930 that raised the USA un-weighted average tariff to 52%. Other countries also followed suit by raising their tariffs. In the gloomy picture of the time, countries imposed measures to protect their own economies irrespective of the consequence of their actions on economies of other countries.

The negative consequence of this trade protectionism approach soon became apparent and the USA took the lead in adopting measures for mitigating against the problem by initially reducing its own tariffs and concluding bilateral agreements. Between 1934 and 1939 USA entered into as many as 27 bilateral reciprocal trade agreements with other countries under which tariff concessions were exchanged. These were then multilateralised by extending the concessions to other countries with which the USA already had trade bilateral agreements, as well as to other countries with which they subsequently concluded such agreements. This was the seed of what is known today as the Most Favored Nation (MTN) principle, which is one of the fundamental pillars of the General Agreement on Tariffs and Trade (GATT) and the WTO system. The great devastation caused by Second World War prompted many countries to appreciate the need for multilateral trade arrangements. They also saw the expansion of international trade as an important post war tool for growth and development, and for reconstruction.

### **2.1 The Havana Charter**

The USA and UK had had close economic cooperation before the first World War and took the lead in formulating world economic order after the wars. Between 1934 and 1945 they were engaged in intensive negotiations aimed at putting in place a new post War World economic architecture and institutions. In respect to trade, the two countries agreed on proposals for expansion of world trade and employment. It was this proposal that paved the way for the convening of the Havana conference by the United Nations Economic and Social Council that adopted the Havana Charter.

The conference on International Trade and Employment was convened on 21<sup>st</sup> November 1947 in Havana Cuba. The conference agreed on the Havana Charter in March 1948 that envisaged the establishment of an International Trade Organisation (ITO). The other provisions of the charter covered rules on employment and economic activity, economic development and reconstruction, commercial policy, restrictive business practices and intergovernmental commodity agreements. The vision of Havana Charter was the formation of a multilateral trading body that would be to world trade what the World Bank and the International Monetary Fund (IMF), which had recently been formed, were to international finance. This vision was not realized as the protectionist interest in the USA gained ascendancy. After the Havana conference, the USA senate made it clear that it would not ratify the charter. President Truman had no option but to withdraw it from consideration to avoid the risk of the charter being voted down by the senate. With the USA a major trading power unable to ratify the charter, many other countries did not have the incentives to do so. Accordingly, the charter was stillborn, and never came into force.

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## 2.2 The General Agreement on Tariffs and Trade (GATT)

The provisions relating to trade had been finalized in the preparatory process of the Havana conference and were embodied in the General Agreement on Tariffs and Trade which was signed on 30<sup>th</sup> October 1947. The signatories to the agreement were keen that these provisions be implemented swiftly and provisionally in order to safeguard the concessions they had negotiated. Under a provisional protocol, the signatory countries agreed that the GATT would come into operation provisionally from 1<sup>st</sup> January 1948 without waiting for the Havana charter to come into effect. The GATT therefore, came into operation as a provisional agreement.

The GATT was not an organisation. Its implementation was to be administered by the Interim Commission for the International Trade Organisation (ICITO) which was the formal organisation located in Geneva. The GATT continued under this provisional arrangement until December 1994 when it was incorporated in the Uruguay Agreements. However, by the time of the Uruguay Round, it had already established the basic principles and rules that underpin the multilateral trading system today. Members of the GATT pledged to work together to reduce tariffs and other barriers to international trade and to eliminate discriminatory treatment in international commerce. Tariffs were to be reduced through the application of the Most Favored Nation Treatment ( see below for further discussion on this principle). This principle continued as a key principle of the WTO.

The GATT was made up of several agreements, undertakings and legal instruments. Each of the major agreements was a treaty with different membership, an independent body and

a separate dispute settlement mechanism. Thus, the GATT system has been referred to as a la Carte as opposed to the single undertaking which is one of the hallmarks of the WTO. The GATT evolved through several rounds of negotiations with the final round, the Uruguay Round, resulting into the formation of the WTO.

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### 2.3 The GATT Trade Rounds - From Havana to Marrakech (1948-1994)

The early GATT trade Rounds; that is Geneva (1947), Annecy (1949), Torquay (1951), Geneva (1956) and Dillon Round (1960-61) concentrated on further reduction of tariffs. The Kennedy Round (1964-1967) brought about a GATT Anti-dumping Agreement and included a section on development; while the Tokyo Round (1973-1979) was the first major attempt to tackle trade barriers that do not take the form of tariffs and to improve the trading system. The eighth Round, the Uruguay Round (1986-94) was the last and the most extensive of all covering issues beyond trade in goods. It led to the formation of the WTO and a new set of agreements.

#### The GATT Rounds

Year	Place/Name	Subjects Covered	Participating Countries
1947	Geneva	Tariffs	23
1949	Annecy	Tariffs	13
1951	Torquay	Tariffs	38
1956	Geneva	Tariffs	26
1960-1961	Geneva (Dillon Round)	Tariffs	26
1964-1967	Geneva ( Kennedy Round)	Tariffs & anti-dumping measures	62
1973-1979	Geneva (Tokyo Round)	Tariffs, non-tariff measures, “framework” agreements	102
1986-1994	Geneva ( Uruguay Round)	Tariffs, Non-tariff measures, rules, services, intellectual property, dispute settlement , textiles, agriculture, creation of WTO, etc	123

## **2.4 The end of GATT: Why?**

The early 1970s through to early 1980's witnessed a deteriorating trade policy environment as a result of economic recession. This led to governments to devise other forms of protection for sectors facing increased foreign competition. Higher rates of unemployment and constant factory closures led governments in Western Europe and Northern America to seek bilateral trade arrangements with competitors and to embark on a subsidies' race to maintain their hold on agricultural trade. In the 1980s, GATT was also no longer relevant to the realities of world trade as it had been in the 1940s since World trade had become more complex than 40 years before.

The globalization of world economy was underway, and trade in services and intellectual property areas that were not covered by GATT rules, had become of major interest to many countries. International investment had also expanded. There were also other areas where the GATT was lacking. In agriculture for instance, loopholes in the multilateral system were being heavily exploited. Efforts to liberalise agricultural trade met little success. In the textiles and clothing sector, an exception to GATT's normal discipline was negotiated in the 1960s and early 1970s, leading to the Multifibre Arrangement. Even GATT's institutional structure and its dispute settlement system were also causing concern. As a result of these factors, GATT members realized that there was an urgent need to reinforce and extend the multilateral system to address the challenges of the time. These efforts resulted into the launch of Uruguay Round negotiations and the birth of the WTO.

## **3 The Uruguay Round and birth of the WTO**

The Uruguay Round which was launched in 1986 was finally concluded in 1994 with the Marrakesh Declaration and Agreement and the creation of the WTO. The GATT system was expanded under the Uruguay Round Agreement (URA) through the introduction of the then new issues i.e. services, intellectual property and investment measures. The system also effectively moved away from its traditional concern with trade barriers at the borders to issues involving domestic economic and development structures and policies.

### **3.1 Objectives of the WTO**

These are contained in the preamble of the Marrakesh Agreement establishing the WTO. In this agreement, the parties stated certain objectives they intended to attain through the multilateral trading system. These are:

- Raising living standards
- Ensuring full employment
- Ensuring a large and steadily growing volume of real income and effective demand

- Expanding production of trade in goods and services, while allowing for optimal use of the world's resources in accordance with the objective of sustainable development.

The Agreement also recognised the need for “positive efforts to ensure that developing countries, especially the least developed among them secure a share in the growth in international trade commensurate with their economic development.”<sup>1</sup>

The objectives of the WTO are not fundamentally different from the objectives contained in the preamble of the GATT 1947. However, it is important to note the following two points:

- Although the WTO's objectives do not mention trade liberalization as the means to establish free trade between Members, the drafters, nevertheless, considered substantial reduction of tariffs and other barriers to trade and the elimination of discriminatory treatment in international trade relations as important steps to achieving these objectives.
- A second means to achieve the noted objectives in the WTO was the practice of Members entering into reciprocal and mutually advantageous arrangements as mentioned in the text of the GATT 1947.

### **3.2 Principles of WTO**

The WTO agreements are lengthy and complex because they are legal texts covering a wide range of activities. However, these agreements are based on one overarching principle of trade without discrimination. The principles in the WTO are an offshoot of this principle. The specific principles are:

#### **3.2.1 Most-favoured-nation treatment (MFN)**

Under the WTO agreements, countries cannot normally discriminate between their trading partners. In case a country grants a special favour (such as a lower customs duty rate for one of their products) that favour has to be extended to all other WTO members. This principle is known as most-favoured-nation (MFN) treatment.

In general, MFN means that every time a country lowers trade barrier or opens up a market, it has to do so for the same goods or services from all its trading partners - whether rich or poor, weak or strong.

The MFN principle is so important that it is the first article of the General Agreement on Tariffs and Trade (GATT), which governs trade in goods. MFN is also a priority in the General Agreement on Trade in Services (GATS) (Article 2) and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) (Article 4), although in each

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<sup>1</sup> The WTO Agreements Pg.....



agreement the principle is handled slightly differently. Together, the three agreements - GATT, GATS and TRIPS, cover all the three main areas of trade handled by the WTO.

Exceptions to the MFN treatment are allowed in the following circumstances:

- Countries can set up a free trade agreement that applies only to goods traded within the group and can therefore discriminate against goods from outside.
- Developed countries can give developing countries special access to their markets.
- A country can raise barriers against products that are considered to be traded unfairly from specific countries.
- In services, countries are allowed, in limited circumstances, to discriminate.

The agreements however, only permit these exceptions under strict conditions. In general, MFN means that every time a country lowers trade barrier or opens up a market, it has to do so for the same goods or services from all its trading partners - whether rich or poor, weak or strong.

### **3.2.2 National treatment: Treating foreign and local products equally**

The purpose of this principle is about treating imported and locally produced goods equally - at least after the foreign goods have entered the local market. The same should apply to foreign and domestic services, and to foreign and local trademarks, copyrights and patents. This principle of “national treatment” (giving others the same treatment as one’s own nationals) is also found in all the three main WTO agreements (Article 3 of GATT, Article 17 of GATS and Article 3 of TRIPS), although once again the principle is handled slightly differently in each of these agreements. Since national treatment only applies once a product, service or item of intellectual property has entered the local market, charging customs duty on an import is not a violation of national treatment even if locally-produced products are not charged an equivalent tax.

### **3.2.3 Single Undertaking**

Article II, Part 2 of the Agreement establishing the WTO provides that in order to become a member of the WTO a state must ratify, along with the agreement establishing the organisation, the following agreements and Associated Instruments (referred to as the Multilateral Trade Agreements):

- The GATT 1994 and the multilateral agreement on trade in goods
- The General Agreement on Trade in Services, and its annexes (GATs)
- The Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPs)
- The understanding and procedures governing the Settlement of Disputes (DSU) and the Trade Policy Review Mechanism ( All referred to as the multilateral agreements)

Members accept the WTO single Treaty instrument as a “Single undertaking” which is reflected in the provisions of the WTO agreement dealing with original membership,

accession, non-application of the multilateral Trade agreements between particular members, acceptance of the WTO agreement and withdrawal from it. Within this framework all WTO members are bound by all the rights and obligations in the WTO agreements and its annexes.

### **3.3 Functions of WTO**

Briefly the functions of the WTO as provided for in Article III of the WTO document are:

- To administer the WTO trade agreements
- To serve as a forum for trade negotiations
- To handle trade disputes
- To monitor and review Members' trade policies
- To assist developing countries in trade policy issues, through technical assistance and training programmes
- To co-operate with other international organisations

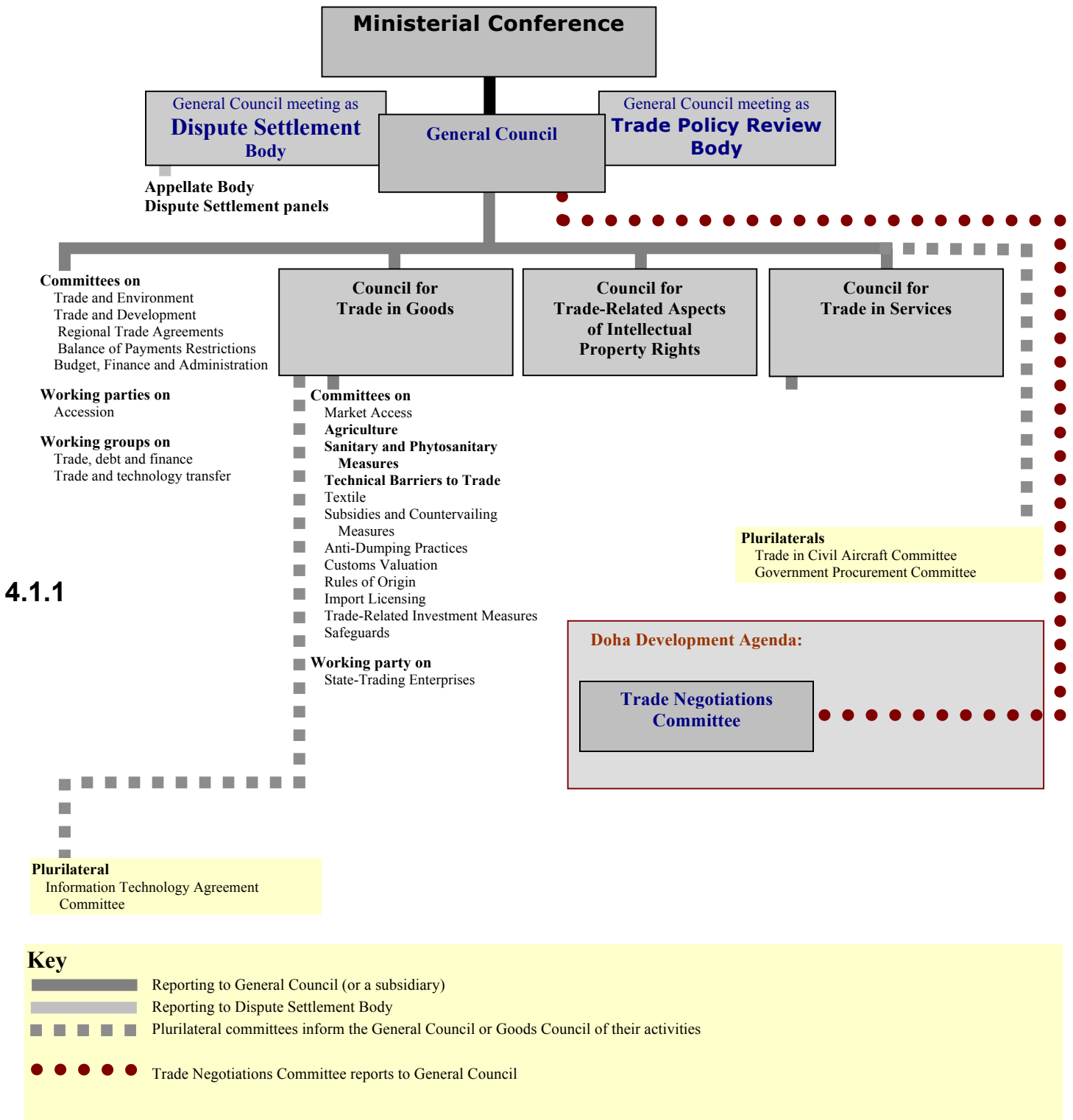
However in order to fully appreciate how the WTO functions, it is important to understand the structure of this organisation and the role the various bodies that constitute it play.

## **4 Structure of the WTO**

The WTO's structure is constituted by the following bodies in hierarchical order starting with the top most:

- The Ministerial Conference
- The General Council
- The Councils
- Subsidiary bodies

## Box 4. The structure of the WTO



Reference [www.wto.org](http://www.wto.org)

## **4.2 The Ministerial Conference**

The Ministerial Conference is the highest authority in the WTO. It is composed of ministers of trade or commerce from the member countries. Its sessions must take place at least once every two years. The Ministerial Conference can take decisions on all matters under all multilateral trade agreements; and is responsible for carrying out the functions of the WTO. The first ministerial conference was held in Singapore in December 1996, the second in Geneva in May 1998, the third in Seattle in November 1999 and the fourth in Doha in November 2001, the 5<sup>th</sup> in Hong Kong in 2005 and the 6<sup>th</sup> in Geneva in November 2009.

## **4.3 The General Council**

The General Council constitutes the second tier in the WTO Structure. It comprises representatives from all Member countries, usually Ambassadors and Permanent Representatives based in Geneva. It meets regularly (approximately once a month) to adopt decisions, mostly on behalf of the Ministerial Conference when the Conference is not in session. Thus, it acts on behalf of the Ministerial Conference on all WTO affairs.

The General Council also meets as:

1. *The Trade Policy Review Body (TPRB)*, with a different Chairperson, to analyze members' trade policies as mandated by the Decision on the Trade Policy Review Mechanism.
2. *The Dispute Settlement Body (DSB)*, with a different Chairperson to oversee procedures for settling disputes between members as mandated in the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU). The DSB has the authority to establish panels, adopt Panel and Appellate Body Reports, oversee the implementation of rulings and recommendations, and authorize the suspension of concessions and other obligations under the agreements for which disputes can be settled by the DSU.

It should be emphasised that all the three bodies are the same. The Agreement establishing the WTO states that they are all the General Council, although they meet under different terms of reference. They all consist of all WTO members and they report to the Ministerial Conference. Hence, they are referred to as "Committees of the Whole".

## **4.4 The Councils**

The Councils can be described as subsidiary bodies to the General Council. There are three councils:

- The Council for Trade in Goods (also known as the Goods Council) oversees all the issues related to the Agreements on trade in goods.

- The Council for Trade in Services (also known as the GATS Council) oversees all issues related to the GATS Agreement.
- The Council for Trade-Related Aspects of Intellectual Property Rights (the TRIPS Council) oversees issues related to the TRIPS Agreement.

The three Councils are responsible for the workings of the WTO agreements dealing with their respective areas of trade. These Councils are composed of all WTO Members and have subsidiary bodies (see below).

Several other bodies, which focus on specific issues, report to the General Council. They are usually called *Committees*. These are:

- Committee on Trade and Development (CTD)
- Committee on Trade and Environment (CTE)
- Committee on Regional Trade Agreements (CRTA)
- Committee on Balance-of-Payment Restrictions (BOP Committee)
- Committee on Budget, Finance and Administration

#### **4.5 Subsidiary bodies**

The three Councils (for Goods, Services and TRIPS) have subsidiary bodies.

*The Goods Council* has 11 committees working on specific subjects (such as agriculture, market access, subsidies, and anti-dumping measures). These committees are composed of all Members.

*The Services Councils'* subsidiary bodies deal with financial services, domestic regulations, GATS rules and specific commitments. It does not have a permanently fixed number of subsidiary bodies. For example, the Negotiating Group on Basic Telecommunications was dissolved in February 1997 when its work ended. Though having fewer bodies than the Goods Council, the Services Council performs more technical work requiring specific focus and expertise.

#### **4.6 Working Groups**

There are also other bodies which focus on specific issues. They are also usually referred to *Committees, Working Groups or Working Parties*. These bodies report to the General Council. There are five other Committees than those under the three Councils: These are:

- √ The committee on Trade and environment
- √ The Committee on Trade and Development (CTD) which reviews the implementation of the special provisions for the developing countries
- √ The Committee on Regional Trade Agreements (CRTA).
- √ The committee on Balance of Payment restrictions
- √ The committee on Budget , Finance and Administration

The Committees are composed of all WTO Members

There is a Working Party on Accession; and the Doha Work Programme instituted two Working Groups on Trade, Debt and Finance; and on Trade and Technical Transfer.

#### **4.7 The Secretariat**

The responsibilities of the Secretariat include:

- Administrative and technical support for WTO delegate bodies (councils, committees, working parties, negotiating groups) and implementation of agreements
- Technical support to member countries especially the least-developed countries
- Trade performance and trade policy analysis done by WTO economists and statisticians
- Legal assistance in resolution of trade disputes involving interpretation of WTO rules and precedents
- Dealing with accession negotiations for new members and providing advice to governments considering membership.

Some of the WTO's divisions are responsible for supporting particular committees for example the Agriculture Division assists the committees on agriculture and on sanitary and phytosanitary measures. Other divisions provide broader support for WTO activities including but not limited to technical cooperation, economic analysis and information.

Although the WTO is a member driven organisation, the WTO secretariat plays a significant role in the negotiating and decision-making process. The secretariat greatly influences the issues for discussion and the wording of the texts. There is a feeling among developing countries that the secretariat most often sides with and champions the interests of developed countries.

### **5 Decision-making process at the WTO**

The WTO is run by its member governments. All major decisions are made by the membership as a whole, either by ministers (who meet at least once every two years) or by their ambassadors or delegates (who meet regularly in Geneva). Decisions are normally taken by consensus.

Consensus is defined as a situation in which no Member present at a meeting where a decision is taken formally objects to the proposed decision. The definition is contained in Article IX of the WTO Agreement. Consensus allows all Members to ensure their interests are properly considered even though, on some occasions, they may decide to join a consensus in the overall interests of the multilateral trading system. However most often poor countries are coerced into joining the consensus.

Where consensus is not possible, the WTO agreement permits voting - a vote being won by a tally of the majority of votes cast, and based on "one country, one vote."

The WTO Agreement envisages voting in four specific situations:

- Interpretation of any of the multilateral trade agreements; a three-quarters majority of WTO Members is required to adopt an interpretation.
- Waiving of an obligation imposed on a Member by a multilateral agreement; a three-quarters majority in a ministerial conference is required.
- To amend provisions of the multilateral agreements; all Members or a two-thirds majority (depending on the provision of the agreement) can take a decision. However, the amendments only apply to WTO Members that accept them.
- To admit a new member; a two-thirds majority in the Ministerial Conference or the General Council in between conferences can take a decision.

### **5.1 Informal meetings (Green Rooms)**

One tier below the formal meetings is the informal meetings also known as “Green Room” discussions. The “Green Room” is a phrase taken from the informal name of the Director-General’s conference room. Informal meetings are convened regularly in the course of the WTO meetings in Geneva but also during the negotiations. Most often these meetings are notified only to a limited group of member countries especially the Quad i.e. US, EU, Canada and Japan. This core Group has been joined by other emerging major countries such as Australia, India, China and Brazil. Usually developing and poor countries are not invited to these informal meetings. The few who are purposively invited to the informal meetings are put under severe pressure to give up their positions or to soften their resistance to the proposals of the major developed countries. Most often real business is conducted and issues agreed upon in these informal meetings. Thus most often agreements are reached without the full participation of all members in the substantive deliberations and negotiations. However the proponents of the informal consultations in the WTO insist that the informal meetings play a vital role in bringing the diverse membership to an agreement during serious negotiations.

*An alternative View*

“The WTO will likely suffer from slow and cumbersome policy-making and management –an organisation with more than 120 member countries cannot be run by a “Committee of the Whole”. Mass management simply does not lend itself operational efficiency or serious policy discussion. Both the IMF and the WB have an executive board to direct the executive officers of the organisation, with permanent participation by the major industrial countries and weighted voting. The WTO will require a comparable structure to operate efficiently ...[ but] the political orientation of smaller ...members remains strongly opposed”.

Jeffrey J Schott - Institute for International Economics, Washington.

### **5.2 The accession process**

Any state or customs territory having full autonomy in the conduct of its trade policies may join (“accede to”) the WTO, but all WTO members must accept the new member.

In case of voting, a two-thirds majority in the Ministerial Conference or the General Council in between conferences can take a decision.

Broadly speaking the application goes through four stages:

1. The government applying for membership has to describe all aspects of its trade and economic policies that have a bearing on WTO agreements. These are submitted to the WTO in a memorandum which is examined by the Working Party dealing with the country's application. These Working Parties are open to all WTO members.
2. When the Working Party has made sufficient progress on principles and policies, parallel bilateral talks begin between the prospective new member and individual countries. These talks are bilateral because different countries have different trading interests. The talks cover tariff rates, specific market access commitments and other policies in goods and services. The new member's commitments have to apply equally to all WTO members under normal non-discrimination rules, even though they are negotiated bilaterally. In other words, the talks determine the benefits (in the form of export opportunities and guarantees) other WTO members can expect when the new member joins. The talks can be highly complicated.
3. Once the working party has completed its examination of the applicant's trade regime and the parallel bilateral market access negotiations are complete, the working party finalizes the terms of accession. These appear in a report, a draft membership treaty ("protocol of accession") and lists ("schedules") of the member-to-be's commitments.
4. The final package, consisting of the report, protocol and lists of commitments, is presented to the WTO General Council or the Ministerial Conference. If a two-thirds majority of WTO members vote in favour, the applicant is free to sign the protocol and to accede to the organization. In many cases, the country's own parliament or legislature has to ratify the agreement before membership is complete.

The duration of the process varies; the shortest time was that of the Kyrgyz Republic lasting 2 years and 10 months; the longest the People's Republic of China lasting 15 years and 5 months.

A number of poor and developing countries joined WTO automatically when it was established through their colonial linkages with the developed countries. However there are some developing countries that are trying to join but finding it very difficult especially given the demands made on them by the various WTO members.

### **5.3 Power Play in the WTO negotiation process:**

The majority of the WTO members are developing countries. Decisions in the WTO are taken by consensus and on the basis of one-country-one vote in the absence of a consensus. Yet developed countries have been dominating WTO decisions. The



developing countries have hardly had a decisive voice in the WTO. As Das has pointed out, this is the biggest irony of the GATT/WTO system.<sup>2</sup>

The strength of the developed countries in the WTO can be attributed to a number of factors including; their economic and political strength, coordination in the presentation of their interests as a united front and the weaknesses of the developing and poor countries.

Developed countries are united by their overwhelming objective of expanding their economic space in the developing countries for their manufacturers, traders, services' providers, inventors and investors. With the economic growth rate at about 2% and near to zero population growth, market expansion in developed countries is limited. On the other hand, given the high population and some of the fastest growing economies, developing countries are attractive potential markets for developed countries' goods, services and intellectual property. Examples of developed countries' coordination to benefit from developing countries can be exemplified by the issue of investment. The major demanders of an investment agreement in the WTO were EU and Japan. The US showed no interest initially. Yet as the Doha Ministerial Conference drew nearer and after high level contacts between the EU and US, the latter supported the efforts of the EU and Japan on this proposal.<sup>3</sup>

The private sector in developed countries is always solidly behind the negotiations. For example, the combined efforts of the major developed countries' governments, the pharmaceutical sector and financial services sector achieved the objective of having liberalisation of services sectors and the protection of intellectual property rights are included in the WTO ambit against the stiff resistance from developing countries.

On the other hand, the developing countries are in a very weak position in the WTO, most often lacking technical knowledge and with limited back up from their private sector and research institutions. This is a very serious issue given the fact that the subjects covered in the negotiations are highly technical with far reaching implications on the economies of the developing countries.

The developed countries have also weakened the position of developing countries in the multilateral system through divide and rule tactics in bilateral talks some of which culminate into bilateral agreements. Through this divide and rule tactics, when proposals detrimental to the economic interests of developing countries come up for negotiations in the multilateral forum, they meet no resistance as the developing countries would have already agreed to it in the manipulative bilateral talks. Developed countries have also used the carrot (promises of aid, technical assistance and preferential markets) and stick (withholding of aid) tactics to force developing countries to concede to arduous positions.

As a result, major developing countries have found the WTO a very useful instrument to achieve their economic expansionistic objectives.

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<sup>2</sup> Bhagirath Lal Das ( 2003): pg 153.

<sup>3</sup> Bhagirath Lal Das : The WTO and the Multilateral Trading System : Past , Present and Future pg 148

The question then arises as to why developing countries are in the WTO and why the number of developing countries joining the WTO has been increasing despite the many difficulties in acceding to the WTO and the imbalances and inequities within the system. It should be noted that during the GATT and its subsequent efforts towards reduction of tariffs, developing countries were not expected to reduce their tariffs. In fact developing countries were not expected to give any concessions. Developing countries could only benefit from the reduced tariffs of the developed countries through the MFN principle without giving anything in return. In this regards, developing countries have been accused by some of being “free riders” i.e. benefactors of a situation without giving anything in return. However, this status quo benefited the developed countries also as their opportunities in the markets of the developing countries expanded as some of the developing countries progressed along the development path.<sup>4</sup> It should also be pointed out that in general, very few developing countries benefited from the lowered tariffs as a result of supply capacity constraints and non tariff barriers including quantitative restrictions, anti-dumping legislations and technical standards requirements in the developed countries. It is also notable that tariffs in developed countries on products of special export interest to developing countries have continued to remain high.

However despite its many shortcomings, the developing and poor countries feel that the WTO system provides a fairly predictable and stable trading environment that has potential beneficial effect on their development. Without the multilateral system, a country cannot conduct trade with another country without an agreement. Therefore, that country would have to contract bilateral trade agreements with those countries it wants to trade with. Moreover, developing countries are at a disadvantage in bilateral negotiations as evidenced by the many concessions the EU is extracting from ACP countries in the Economic Partnership Agreement (EPAs) negotiations. The multilateral system not only provides developing and poor countries with a forum to make collective demands on developed countries, but it also safeguards them against developed countries’ unilateral and arbitrary actions. Further more as Das points out, not only does the MTS provides opportunities for learning from each other but remaining outside a multilateral system that has been functioning for a long time appears odd and is likely to erode a country’s credibility with the economic players of the world.<sup>5</sup>

It should be noted that developing countries like Brazil, India, China, and South Africa have become a power to be reckoned with in the WTO. It is probable that they will break the monopoly of the developed countries and help improve the system to benefit all members whether poor or rich.

### **5.3.1 Groups /Alliances in the WTO**

Since the launch of the Doha Round and particularly after the Cancun Ministerial, the WTO has witnessed a proliferation of Alliances / Groups especially among developing countries. The alliances play a constructive role in building joint negotiating positions and promoting convergence among the membership. For developing and poor countries

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<sup>4</sup> Bhagirath Lal Das ( 2003) pg 152

<sup>5</sup> Bhagirath Lal Das : Third World RESURGENCE; Issue No. 203-204 Jul/Aug 2007

the alliances enhance their bargaining power in the negotiations; and also ensure representation when consultations are held in smaller groupings and informal meetings. Examples of these alliances are the Quad which is the oldest grouping in the WTO. The Quad includes Canada, European Union, Japan and U. S. The Quad has been enlarged by the addition of countries such as Australia and India to form the “new Quad”; others include the ACP Group, Africa Group and LDC Group which share members.

There are two types of alliances in the WTO i.e. the issue-based alliances which are formed around concerns on a particular issue; for example the Cotton 4 which is interested in the Cotton issues. The Group includes Burkina Faso, Benin, Chad and Mali. The other type of alliance is the bloc-type coalitions with shared ideas on multiple concerns. Examples of this type include the Africa Group.

### ***5.3.2 The role of WTO Ministerial Conferences in decision making***

The ministerial conferences are the highest decision making body in the MTS. However the major developed countries have been using these conferences to press for new agendas and to introduce new subjects of their interest into the remit of the WTO. Yet developing countries have been opposed to the expansion of the activities of the WTO insisting that the existing deficiencies in the system should be addressed first. This conflict of interest has led to the collapse of a number of ministerial meetings and to the stalling of the Doha Round. For example in the Singapore Ministerial Conference, the major developed countries proposed five new subjects for inclusion in the WTO negotiations i.e. investment, competition policy, government procurement, trade facilitation and social clauses (labour standards.). Although these issues were not put on the agenda for negotiations, the developed countries succeeded in formally starting a study process on the four issues (apart from labour standards). These four issues have come to be known as the “Singapore or New issues”. The Seattle ministerial conference ended in disarray without even a closing ceremony. The major reasons for the collapse were mainly the highly flawed process whereby decisions were being taken by a few developed countries in “Green rooms”. In addition, the proposals put forward by developing countries were also totally ignored. These included the need to address the imbalances and deficiencies in the existing WTO agreements. There was also a huge presence of NGOs who were demonstrating against the conference. The collapse of the Seattle conference not only dealt a severe blow to the WTO system but it depicted the fault lines within the system itself.

## **6 Challenges facing the developing countries in the WTO**

As pointed out previously, developing countries recognise the potential benefit of the WTO system to their development needs; nonetheless there are a number of challenges that they specifically face in this regard. There has been some disenchantment with the system by the poor and developing countries as a result of lack of the anticipated benefits. Despite the much trumpeted benefits of the WTO, many developing and poor countries feel they have not benefited from the multilateral system. Issues of interest to developing countries have been ignored while the agenda is being overloaded by issues of interest to

developed countries. For example in terms of market access in the services sector, developed countries have refused to open up negotiations under Mode 4 (movement of natural persons under GATs) where developing countries have a keen interest. Issues of interest to developed countries already on the WTO agenda include services and intellectual property; yet they are also pushing for other issues - investment, competition policy and government procurement that will increase their participation and dominance in the economies of developing countries. Developing countries have been making concessions to the major developed countries repeatedly without getting anything substantial in return like the entry of services and IPRs on the WTO agenda.

Developing countries have also been requesting the membership to address the implementation issue (i.e. the problems development countries encounter in implementing the WTO agreements); but this issue has thus far been ignored. The countries have also been accorded less than equal treatment in the WTO rather than getting special and favourable treatment given their disadvantaged position. For example, many of the developing and poor countries find it difficult to access the dispute settlement process as it is very complex and costly. They cannot also enforce their rights through retaliation which is the instrument for enforcement of rights and obligations. Their capacity to defend themselves against the complaints brought by other countries is also limited. The working of the WTO system does not explicitly take into account these factors that put developing countries in a disadvantaged position.

The WTO has a very busy schedule of formal and informal meetings. Yet most of the developing countries' missions in Geneva are understaffed and they have to cover a large number of meetings. NGOs are in part feeling this gap on behalf of some developing countries.

## **7 Multilateral system and development needs of poor countries**

The WTO and its predecessor organisation –the GATT has contributed to the global trade system through the provision of a framework of rules within which Member countries conduct trade and other commercial relations among themselves. This has contributed to a measure of stability and predictability as contrasted to an alternative scenario in which arrangements are dominated by unilateral policies and bilateral arrangements.

“A multilateral system is better than bilateral arrangements and a rule-based system is better than one based on power. But the system is only as good as the rules and when the rules are asymmetric and iniquitous, the outcomes would be asymmetric and iniquitous”<sup>6</sup>

However, as a result of a number of factors, the MTS has not been able to adequately address the development needs of poor countries which also face very many challenges in ensuring that the system works in their favour

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<sup>6</sup> Das 1997:

## **The Systemic challenges of the MTS**

The initial objective of the trading system was to tackle the economic problem of post World War II Europe. Today the system has assumed the Herculean task of being the guardian of international trade with a membership of over 150 member countries ranging from developed to poor countries. The MTS has not adequately evolved its systems to live up to this task.

The basic tools used by the WTO system to achieve its objectives i.e. liberalisation, reciprocity and retaliation are inappropriate and deficient for a membership with vastly differing levels of economic development.

Liberalisation benefits countries that have addressed their supply capacity constraints. Many developing and poor countries still face very many supply capacity constraints and are therefore not only unable to utilise the availed market access but also face competition from imported products on their domestic markets. The exchange of concessions on the basis of reciprocity brings into the MTS an inbuilt mechanism and structure for enhancing the disparity between countries since a country that can give more gets more and the one that is unable to give more and thus gives less also gets less.

Retaliation as the ultimate instrument for enforcement of rules favours the strong countries. It should be noted that for poor countries, retaliation has both political and economic costs.

The contents of the trade rules are not commensurate with the development challenges facing poor and developing countries. For example the principle of “National Treatment” which prohibits more treatment to a domestic product as compared to like imported products, constrains the developing countries ability to promote and protect their domestic production. In implementing the trade rules, most often the developed countries fulfil their obligations in letter (technically) not spirit. For example regarding the issue of reduction of subsidies, developed countries have been shifting their subsidies from the prohibited boxes to those which are allowed by the rules. The net effect has been an increase in the overall subsidies in developed countries especially the EU and US. The developed countries have also taken aggressive trade restrictive measures against developing countries sometimes on grounds of public health, environment, and anti-dumping.

Therefore the basic principles and rules of the WTO are largely deficient and inadequate; and their implementation is defective.

## **Challenges facing the developing countries in the WTO**

As pointed out previously, developing countries recognise the potential benefit of the WTO system to their development needs; nonetheless there are a number of challenges that they specifically face in effectively participating in the MTS and ensuring that the system addresses their development needs. There has been some disenchantment with the

system by the poor and developing countries as a result of lack of the anticipated benefits. Despite the much trumpeted benefits of the WTO, many developing and poor countries feel they have not benefited from the multilateral system. Issues of interest to them have been ignored while the agenda is being overloaded by issues of interest to developed countries. For example in terms of market access in the services sector, developed countries have refused to open up negotiations under Mode 4 (movement of natural persons under GATs) where developing countries have a keen interest. Issues of interest to developed countries already on the WTO agenda include services and intellectual property; yet they are also pushing for other issues - investment, competition policy and government procurement that will increase their participation and dominance in the economies of developing countries.

Developing countries have also been requesting the membership to address the many challenges they face while implementing the WTO agreements. But this issue has thus far been ignored. In 1999 in the preparation for the Seattle Ministerial Conference, developing countries compiled and submitted to the conference a list of about 100 issues of unsatisfactory rules and their implementation.<sup>7</sup> These issues have not been addressed.

The developing countries have also been accorded less than equal treatment in the WTO rather than getting special and favourable treatment given their disadvantaged position. For example, many of the developing and poor countries find it difficult to access the dispute settlement process as it is very complex and costly. They cannot also enforce their rights through retaliation which is the instrument for enforcement of rights and obligations. Their capacity to defend themselves against the complaints brought by other countries is also limited. The working of the WTO system does not explicitly take into account these factors that put developing countries in a disadvantaged position.

The WTO has a very busy schedule of formal and informal meetings. Yet most of the developing countries' missions in Geneva are understaffed and they have to cover a large number of meetings.

Most developing and poor countries have limited capacity to carry out research and analysis to inform their negotiating positions. This challenge is compounded by the limited participation of other stakeholders i.e. the private sector, Trade unions and other civil society organisations.

Developing countries have of recent started to put their act together in the WTO as the adverse impacts of the WTO agreements on their domestic industry and trade sectors become more evident. Frustrations experienced by ministers and senior officials from developing and poor countries at the WTO have further motivated them to be organised and be well prepared for WTO negotiations. The situation has created space and opportunity for NGOs and other specialised institutions to build the capacity of government officials participating in WTO negotiations; and also to expose the iniquities within the system. As a result, developing countries have become more assertive; and

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<sup>7</sup> World Trade Organisation (2001) :” Implementation –Related Issues and Concerns” 14<sup>th</sup> November .

there are also calls to reform the MTS so that it addresses the development needs of all its members.

### **Reforming the MTS**

The need to reform the MTS so that it works in the interests of all its members is no longer an issue for debate. What is debateable is the process and the issues to be addressed. There is a view that the system requires a fundamental reform; while others maintain that no major overhaul of the system is required but rather a “long to-do list to strengthen the global trading system”.<sup>8</sup> Whatever form the reforms take, it is important that the system is reoriented towards a new paradigm where development will be the central theme; where elimination of poverty and reduction of disparity will be the urgent task at hand and where optimum utilisation of the world’s resources to uplift the lives of all will be the main objective.<sup>9</sup>

The failed ITO had attempted to address some of the concerns of developing countries and supported the objective of promoting higher living standards, full employment and conditions of social progress. Unfortunately the GATT maintained a narrower and more mercantilist focus that reflected the interests of it’s the developed countries. However the preamble of the Marrakesh Agreement establishing the WTO recognises the objective of sustainable development and also the need for positive efforts to ensure that the developing countries secure a share in international trade growth commensurate with the needs of their economic development. So far in practice development is not seen as a primary objective nor was it a primary purpose of the URA or the Marrakesh agreement. Prioritising development as a goal of the WTO has gained momentum; thus the Doha Round was dubbed the Doha Development Round. Some theorists have argued that calling the Doha Round a development Round was probably unwise as it has created too many expectations of the WTO that it cannot fulfil.<sup>10</sup>

### **Other areas for reform include:**

1. Strengthening the consensus principle: The small group approach (Green Rooms) to negotiations is an “obsolete and medieval”<sup>11</sup> approach to the WTO negotiations. It is also inefficient, exclusive, un-transparent, and inappropriate for the system as it alienates the excluded. Therefore it should be abandoned in favour of a genuine multilateral approach.
2. Rethinking trade liberalisation and other core principles of the WTO i.e. reciprocity and retaliation. Regarding liberalisation there is no consensus that trade liberalisation especially in poor countries will lead to further growth. Trade liberalisation should not be an objective in itself but a tool to advance the broad goals of development. Thus a number of economists have called for the notion of policy space to be enshrined in the in the constitution of the WTO. The other core

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<sup>8</sup> WTO Doc, “ Statement of the Director -General ” General Council , Job (09)/39,29<sup>th</sup> April 2009.

<sup>9</sup> Das 1997: p9 183

<sup>10</sup> Faizel Ismail : Reforming the World Trade Organisation Pg 112.

<sup>11</sup> Ibid 128

principles i.e. MFN, NT, reciprocity and retaliation; should also be reconsidered as these principles are most suited for a membership with the same level of economic development otherwise the system is penalising the weak and rewarding the stronger.

3. Limiting the scope and mandate of the WTO: The WTO has been expanding its scope and mandate most often by adding on the phrase “trade-related”. Thus issues that are not trade issues have been brought into the ambit of the WTO. For example prominent trade experts have concluded that it was a mistake to have included Intellectual Property (IP) as an issue in the WTO. They have concurred that IP is not a trade issue has distorted the trade system; and has been non-reciprocal as most patents belong to the developed countries and developing countries have had to bear the high costs of royalty payment. Therefore issues that are not trade issues should not be introduced in the WTO and a review should be made of the issues that are currently in the WTO to determine whether the WTO is indeed the appropriate venue for them. Martin Khor<sup>12</sup> proposes the following criteria for determining if and how issues are brought into the WTO:
  - a.
4. Fostering greater coherence between the WTO and the Bretton Woods Institutions (BWI) and its various bodies and agencies (UNCTAD, UNDP, ILO..). The Bretton Woods institutions have generally shared a similar perspective with the WTO on the role of markets and trade liberalisation in development. The basic policies that the BWI’s propagated under the Washington Consensus included: macro-economic stability, liberalisation and privatisation. These policies have been imposed on many developing countries through loan conditionalities. Under the BWI’s conditionalities many developing countries have had to sharply reduce their applied tariff rates for agriculture and industrial products with disastrous effects even though the WTO rules allow them to raise their tariffs to protect their domestic agriculture and industries. Therefore further strengthening of the relationship between the WTO and the BWIs ; and the WTO and the UN bodies and agencies must be based on the overarching goal of fostering sustainable development.
5. Addressing the existing imbalances and deficiencies in the system: As pointed out earlier, the system as it exists now is skewed in favour of the developed countries. This issue has to be addressed and the starting point would be to address the implementation issues submitted by the developing countries.

Generally the reforms should be geared towards transforming the WTO from a mercantilist institutions to make it a “more development- friendly, more user friendly so that its benefits are felt by all , large and small, rich and poor, strong and weak”<sup>13</sup>

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<sup>12</sup> Khor

<sup>13</sup> WTO ( 2009)



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