

## WTO Operational Issues:

A supplemental reading for use with International Trade and FDI  
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### Contents

- 1 Introduction
  - 1.1 A plus-sum belief in mutual benefit
  - 1.2 The return to a zero-sum game
  - 1.3 The Singapore Ministerial Conference
- 2 The Singapore Issues
  - 2.1 Investment and competition policy
  - 2.2 The responses
- 3 The Doha Round Issues
  - 3.1 Agriculture
  - 3.2 Intellectual property rights
  - 3.3 The Singapore Issues and the Doha Round
    - 3.3.1 Government procurement
    - 3.3.2 Trade facilitation
  - 3.4. The failure of the Doha Round
    - 3.4.1 The Cancún Ministerial Conference
    - 3.4.2 The Geneva, Bali, and Nairobi MCs
- 4 The causal elements
  - 4.1 The direct causal elements
  - 4.2 The underlying causal element

## 1 Introduction

This supplemental reading provides a review of certain WTO developments that have occurred following the events that are discussed in Chapter 8: The GATT and the WTO.<sup>1</sup> These developments include the emergence of the North-South zero-sum game at the Singapore and Cancún Ministerial Conferences, the divisions over the Singapore Issues and the Doha Round Issues, the failure of the Doha Round of multilateral trade negotiations, and the causal elements that have influenced these WTO operational issues.

### 1.1 A plus-sum belief in mutual benefit

The performance of the GATT instrument and the *de facto* GATT organization from 1948 until the end of 1994 was extraordinary.<sup>2</sup> By the end of 1994, tariffs, non-tariff barriers (NTBs), and other barriers to trade were a fraction of the levels they had been in 1947, and the functional mechanisms<sup>3</sup> contained in the GATT instrument had facilitated the conduct of international commerce and fulfilled the mandate contained in the preamble to the agreement.

The most fundamental reason for this extraordinary success was that the GATT, its MFN provision, its other key provisions, and the *de facto* GATT organization had been established as a plus-sum game.<sup>4</sup> This plus-sum characteristic was driven by a provision contained in the agreement's preamble, which states that the means for achieving the objectives of the GATT would be "by entering into reciprocal and mutually advantageous arrangements."

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<sup>1</sup> W. Davies and C. G. Chen. 2023. "International Trade and FDI: An Advanced Introduction to Regulation and Facilitation." Business Expert Press.

<sup>2</sup> The success of the GATT is discussed in Chapter 8, Section 8.4.4.

<sup>3</sup> Functional mechanisms are discussed in Chapter 7, Section 7.4.3. The functional mechanisms contained in the GATT instrument are discussed in Chapter 8, Section 8.4.

<sup>4</sup> Plus-sum games are discussed in Chapter 8, Section 8.3.2.

This plus-sum principle was also the central ethos of the seven rounds of multilateral trade negotiations that were concluded between 1949 and 1994 — and explains how an increasingly large and diverse GATT membership was able to continue to make decisions by consensus.<sup>5</sup> The objectives contained in the preamble to the GATT, and the means for achieving those objectives, were based on a plus-sum belief in mutual benefit.

## 1.2 The return to a zero-sum game

By December 1996, less than two years after the coming into effect of the Marrakesh Agreement (MA), which replaced the *de facto* GATT organization with the WTO,<sup>6</sup> the plus-sum ethos that had been the governing and guiding principle of the GATT had been replaced by a zero-sum mindset, which signaled the return to a zero-sum game.<sup>7</sup>

The immediate antecedents to this change occurred during the Uruguay Round of multilateral negotiations, between 1986 to 1994,<sup>8</sup> which some developing-country representatives saw as being "unfair to developing countries and far more favorable to the US, EU and other developed countries,"<sup>9</sup> and which "led to negotiation resentment."<sup>10</sup>

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<sup>5</sup> Consensus decision-making at the GATT is discussed in Chapter 8, Section 8.5.1.2; and in Sections 4.1 and 4.2 of this supplemental reading.

<sup>6</sup> The Agreement Establishing the WTO / Marrakesh Agreement is discussed in Chapter 8, Sections 8.4.3.2 and 8.5; and in Sections 1.2, 3, and 4.1 of this of this supplemental reading. The *de facto* GATT organization is discussed in Chapter 8, Sections 8.3.1 and 8.4.4; and in Sections 1.1, 1.2, and other sections of this supplemental reading. The establishment of the WTO is discussed in Chapter 8, section 8.5.

<sup>7</sup> The zero-sum mindset and zero-sum games are discussed in Chapter 8, Sections 8.2.1.1 and 8.2.1.2; and in Sections 1.2, 1.3, 3.4.1 and 4.2 of this supplemental reading.

<sup>8</sup> The Uruguay Round is discussed in Chapter 8, Section 8.4.3.2.

<sup>9</sup> M. Kumar. 2022. "An Indian Perspective on Reviving the World Trade Organization."

<sup>10</sup> M. Kumar. 2019. "Negotiation Dynamics of the WTO," page 65.

### 1.3 The Singapore Ministerial Conference

The forum that showcased this fundamental change was the first WTO Ministerial Conference (MC), which was held in Singapore in December 1996. The intended purpose of this MC was to review the entering into force of the Uruguay Round instruments<sup>11</sup> (the about 60 agreements, annexes, decisions, and understandings — which included the General Agreement on Tariffs and Trade 1994; the Marrakesh Agreement; the GATS, TRIPS,<sup>12</sup> and TRIMs;<sup>13</sup> and the plurilateral GPA<sup>14</sup>), and to review the establishment of the WTO and its first 23 months of operations. The Singapore Ministerial Conference was dominated, however, by a proposal by representatives from developed countries for the appointment of working groups to develop recommendations on four issue areas: investment, competition policy, governmental procurement, and trade facilitation. These four issue areas came to be called the *Singapore Issues*.

At and following the Singapore MC, many representatives from developing countries and least developed countries<sup>15</sup> voiced their strong concern that the areas covered by some of the Singapore Issues (and especially the first two issues) were not mutually beneficial: that they were designed to benefit developed countries, and their nationals who are engaged in the practice of international trade and/or FDI, at the expense of developing countries.<sup>16</sup>

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<sup>11</sup> The Uruguay Round is discussed in Chapter 8, Section 8.4.3.2.

<sup>12</sup> GATS and TRIPS are discussed in Chapter 8, Sections 8.4.3.2, 8.5.3, and 8.5.3.1. TRIPS is also discussed in Section 3.2 of this supplemental reading.

<sup>13</sup> TRIMs is discussed in Chapter 8, Sections 8.4.2, 8.4.3.2, 8.5.3, and 8.5.3.2; Chapter 9, Section 9.1.4.4; and in Sections 2.1 to 2.3 of this supplemental reading.

<sup>14</sup> The plurilateral GPA is discussed in Chapter 7, Section 7.13; and in Section 3.3.1 of this supplemental reading.

<sup>15</sup> The terms *developed countries*, *developing countries*, and *least developed countries* are discussed in Chapter 7, Sections 7.1.2.2 and 7.1.2.3.

<sup>16</sup> Because LDCs are a subcategory of developing countries, in this book references to developing countries include LDCs.

The divisions over the Singapore Issues were sustained and continued because, at the Doha Ministerial Conference, in December 2001, all four Singapore Issues were included on the agenda for the Doha Round of multilateral trade negotiations.<sup>17</sup>

These divisions within the WTO have become deeply entrenched as a North-South zero-sum game, with the term *North* being used as a collective noun synecdoche for all developed countries, and the term *South* being used as a collective noun synecdoche for all developing and least developed countries.

## 2 The Singapore Issues

Although many developing and least developed countries opposed all four of the Singapore Issues, the most strenuous and near-unanimous opposition by developing and least developed countries was against the first two issues: investment and competition policy.

### 2.1 Investment and competition policy

Article III, of the GATT: National Treatment on Internal Taxation and Regulation, was intended to eliminate "discriminatory treatment in international commerce" by preventing discrimination against imported products after they have entered a country.<sup>18</sup>

The investment and competition policy Singapore Issues concerned the implementation of the Agreement on Trade-Related Investment Measures (TRIMs),<sup>19</sup> which had come into effect on January 1, 1995, and which extended the provisions contained in Article III of the GATT from the treatment of products to the treatment of entities engaged in the conduct of FDI.

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<sup>17</sup> The Doha Round issues are discussed in Section 3.

<sup>18</sup> National Treatment is discussed in Chapter 8, Section 8.4.2.

<sup>19</sup> TRIMs is discussed in Chapter 8, Sections 8.4.2, 8.4.3.2, 8.5.3, and 8.5.3.2; and Chapter 9, Section 9.1.4.4.

This extension was seen as requiring host-country governments to treat foreign-funded entities that are engaged in the conduct of FDI (and their operations and shareholders) in the same way as they treat domestic-funded entities (and their operations and shareholders).<sup>20</sup>

## 2.2 The responses

The North: Leaders from some WTO members, and especially those from developed countries, argued that the extraordinary success of the GATT in facilitating international trade should be extended to cover FDI. This extension of the WTO mandate was of particular interest to developed countries, because, at that time, developed countries were the home countries <sup>21</sup> of more than 90 percent of all FDI.

The investment proposals contained in the Singapore Issues would, if adopted, further extend the application of national treatment covered in the TRIMs agreement — and would prevent the governments of host countries from treating foreign direct investors differently from how they treat domestic investors, and would further extend the WTO mandate over FDI to cover many of the post-entry barriers to FDI that are discussed in Chapter 6.

The South: Leaders from many developing countries argued that the adoption of the Singapore Issues would, *inter alia*, violate their national sovereignty, because one or more of these issues would infringe upon their country's right: (1) to regulate FDI access — by preventing a host-country government from determining which foreign-funded entities could or could not invest in their country; (2) to regulate post-entry FDI operations — by mandating how a host-country government must treat foreign direct investors and entities operating within their country; and (3) to formulate and implement domestic economic development policies and strategies — by preventing a host-country government from treating foreign direct investors and entities differently from how they treat domestic investors and entities.

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<sup>20</sup> These TRIMs provisions are discussed in Chapter 8, Sections 8.4.2 and 8.5.3.2.

<sup>21</sup> The term *home country* is discussed in Chapter 7, Section 7.1.2.1.

Also, leaders from some developing countries argued that the term *Trade-Related Investment*, in the TRIMs agreement, had been used to justify the inclusion of investment-related issues by an organization that had previously focused solely on trade-related issues; that, by definition, the WTO mandate is limited to trade; and that the Singapore investment issues should be handled by other intergovernmental mechanisms, such as UNCTAD.<sup>22</sup>

### 3 The Doha Round Issues

The GATT 1947 instrument (which, together with its amendments, is included in GATT 1994)<sup>23</sup> includes two functional mechanisms for reducing tariffs: one continuous, the other periodic.<sup>24</sup> The continuous mechanism, which is contained in Article I of the GATT, is the most-favored-nation (MFN) provision.

The periodic mechanism, which is contained in Article XXVIII of the GATT, is the multilateral trade negotiations provision. Between 1949 and 1995, the GATT contracting parties participated in and concluded seven rounds of multilateral trade negotiations.<sup>25</sup> Articles II and III of the MA<sup>26</sup> provide, *inter alia*, that the WTO include all of the functions that were formerly performed by the *de facto* GATT organization, including the periodic multilateral trade negotiations.

The first attempt to establish a new round of multilateral trade negotiations, following the establishment of the WTO, occurred at the Seattle Ministerial Conference in December 1999. This round, which was proposed by developed-country members, and tentatively named the Millennium Round, did not come to fruition — due to opposition by many developing-country representatives, who believed it would be used to further the Singapore Issues.

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<sup>22</sup> UNCTAD is discussed in Chapter 7, Section 7.1.2.3.

<sup>23</sup> The inclusion of GATT 1947 in GATT 1994 is discussed in Chapter 8, Section 8.4.3.2.

<sup>24</sup> These two functional mechanisms are discussed in Chapter 8, Section 8.4.

<sup>25</sup> Multilateral trade negotiations are discussed in Chapter 8, Section 8.4.3.

<sup>26</sup> These provisions of the Marrakesh Agreement are discussed in Chapter 8, Section 8.5.3.

Two years later, at the Doha Ministerial Conference, in December 2001, a second attempt resulted in the initiation of the Doha Round — after developed-country representatives provided assurances that the round would focus on issues of interest to developing countries. These assurances were contained in the Doha Ministerial Declaration (DMD), which stated that "The majority of WTO members are developing countries [and that] we seek to place their needs at the heart of the Work Program adopted in this Declaration."<sup>27</sup>

Because of these developed-country assurances, and because the term *development* appears 39 times in the thirteen-pages of the DMD, this round came to be called the Doha Development Round (DDR). The work program agenda outlined in the DMD covered 18 issue areas, but two of these agenda items — agriculture and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) — came to dominate the Doha Round negotiations.

### 3.1 Agriculture

Agriculture is one of the most contentious issue areas in international trade, and was a dominant issue from the inception of the Doha Round. Also, the intractability of the agriculture issues was one of the reasons that the Doha Round was so conflicted and protracted.

For the South, agriculture can be a critically important economic issue: agriculture accounts for as much as 80 percent of the GDP of some developing countries — and is frequently their principal category of exports and their principal source of foreign exchange.

For the North, agriculture can be a critically important political issue. Agriculture accounts for a relatively small percentage of the GDP in most developed countries, but the voting patterns of farmers, of persons who are engaged in farming-related functions, and other voters in rural areas can make them key political constituencies in developed countries, and especially in the US, Japan, France, the Netherlands, and several other European countries.

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<sup>27</sup> Doha WTO Ministerial 2001: Ministerial Declaration, 20 November 2001, Section 2.



The governments of developing countries have argued that the governments of some developed countries: (1) use a range of tariff barriers, non-tariff barriers, and other barriers to trade to protect politically sensitive segments of their agriculture industries; (2) use export subsidies to support exports by segments of their agriculture industries; and/or (3) provide domestic subsidies to farmers and farming-related entities in segments of their agriculture industries.

The most contentious of these North-South agriculture grievances is domestic agriculture subsidies.<sup>28</sup> Although a government's primary purpose for making domestic agriculture subsidies may not be related to trade, developing countries (and some developed countries) have argued that domestic agriculture subsidies can produce indirect or secondary effects that distort free trade,<sup>29</sup> because these subsidies allow farmers and farming-related entities who have received them: (1) to market products domestically at artificially low prices, which makes it more difficult for imported products to compete in those markets, and/or (2) to export products at artificially low prices. The critics of domestic subsidies argue that, by distorting free trade, both of these factors act as barriers to international trade; and developing countries have demand that developed countries eliminate the use of domestic agriculture subsidies.

#### The US: Domestic agriculture subsidies

In 2002, the government of Brazil brought a complaint to the WTO Dispute Settlement Body against the US, which alleged that the government of the US was making annual payments of more than three billion dollars in subsidies to US cotton farmers.<sup>30</sup>

The governments of some developed countries have defended their use of domestic subsidies on the grounds that: (1) the purpose and intent of these subsidies is not trade-related, (2) it is the right and duty of a government to support its citizens, and/or (3) that interference in this right

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<sup>28</sup> Subsidies are defined and discussed in Chapter 4, Section 4.3.

<sup>29</sup> The distortion of free trade is discussed in Chapter 4, Sections 4.1 and 4.3.2.

<sup>30</sup> This complaint is discussed in Chapter 4, Section 4.3.4.3.

and duty by the government of another state, or by the WTO, is a violation of their sovereignty.<sup>31</sup> The positions taken on domestic subsidies by developed countries have varied, and have been the cause of dissent between developed countries.

### 3.2 Intellectual property rights

In some cases, the North-South division is evident not in the provisions contained in a WTO instrument, but in the interpretation and implementation of those provisions.

For example, developing-country governments have generally supported the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS),<sup>32</sup> but have serious concerns about its implementation — and have complained that the overly restrictive enforcement of the TRIPS agreement, which treats medicines as consumer products, has limited their ability to access desperately needed medicines at reasonable prices. In 2000, after the government of South Africa had adopted new intellectual property rights (IPR) legislation, which followed the flexibility provisions contained in TRIPS, 39 pharmaceutical companies from developed countries took legal action against the government and the legislation.

The Doha Ministerial Declaration<sup>33</sup> addressed some of these developing-country concerns, by restating the flexibility provisions of the TRIPS agreement. The Doha MC also adopted a separate "Declaration on the TRIPS Agreement and Public Health," which, *inter alia*, recognized "the gravity of the public health problems afflicting many developing and least-developed countries," and reaffirmed "the commitment of developed-country members to provide incentives to their enterprises and institutions to promote and encourage technology transfer to least-developed-country members."<sup>34</sup>

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<sup>31</sup> Sovereignty is discussed in Chapter 7, Section 7.1.5.

<sup>32</sup> TRIPS is discussed in Chapter 8, Sections 8.5.2 and 8.5.2.1.

<sup>33</sup> Doha WTO Ministerial 2001: Ministerial Declaration, 20 November 2001, Sections 17-19.

<sup>34</sup> "Declaration on the TRIPS Agreement and Public Health," 20 November 2001.

Some developing countries have maintained that the provisions of the Doha TRIPS declaration notwithstanding, the overly restrictive interpretation and implementation has continued, and that some developed countries have insisted on provisions in bilateral and regional trade agreements that exceed TRIPS requirements. These behaviors by developed countries are referred to as the *TRIPS plus enforcement trend* or simply as *TRIPS plus*.

### 3.3 The Singapore Issues and the Doha Round

At the Ministerial Conference in Doha, in December 2001, the Singapore Issues were included on the agenda for the Doha Round (the Doha Development Agenda) — subject to a decision to be taken by explicit consensus at the Cancún Ministerial Conference in 2003. Because the Cancún MC was adjourned before it had begun,<sup>35</sup> this vote on explicit consensus was never taken, and in August 2004 the WTO General Council removed the three Singapore Issues that had been most ardently opposed by developing countries (investment, competition policy, and government procurement) from the Doha Round current work program.

#### 3.3.1 Government procurement

The purpose of the Transparency in Governmental Procurement (TGP) working group (which had been created at the Singapore MC in 1996, and was added to the Doha Development Agenda in 2001) was to prepare material for inclusion in a multilateral agreement that would improve transparency in trade-related governmental procurement practices. Because government procurement was removed from the Doha Round current work program in 2004, the Doha Round negotiations did not include a multilateral agreement on government procurement.

The failure of the Doha Round to create a multilateral TGP agreement was offset by its facilitation of revisions to the plurilateral Agreement on Government Procurement (GPA).<sup>36</sup>

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<sup>35</sup> The Cancún Ministerial Conference is discussed in Section 3.4.1.

<sup>36</sup> The GPA is discussed in Chapter 7, Section 7.1.3.

The plurilateral GPA <sup>37</sup> had its origins in the OECD framework; was negotiated and entered into during the Tokyo Round of multilateral trade negotiations in 1979; came into effect in 1981; covers policies, rules, practices, obligations, and transparency relating to international governmental procurement — and opens governmental procurement to bids by nationals of countries that are parties to the agreement. The GPA was substantially revised and expanded during the Uruguay Round, became the Agreement on Government Procurement of 1994, and came into effect with the creation of the WTO on January 1, 1995.

The plurilateral GPA was again revised in negotiations that were held in parallel with the Doha Round of multilateral negotiations, which resulted in the Protocol Amending the Agreement on Government Procurement, which was concluded in 2012, and entered into force in 2014. The GPA now includes participation by 48 WTO members, <sup>38</sup> and covers central government entities and sub-government entities. The GPA's functional mechanism, the GPA Committee, includes the parties to the agreement plus 35 observers that are WTO members.

### 3.3.2 Trade facilitation

The removal of three Singapore Issues from the Doha Round current work program, in 2004, allowed negotiations to proceed on the fourth Singapore Issue: trade facilitation. In 1996, the Singapore MC had initiated exploratory and analytical work on "the simplification of trade procedures;" and in August 2004 negotiations began on the simplification, expedition, cost-reduction, and transparency of customs-related processes (which included the movement, release, and clearance of goods). These negotiations led to the adoption of the Trade Facilitation Agreement (TFA), which entered into force in February 2017.

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<sup>37</sup> The distinction between multilateral and plurilateral agreements is discussed in Chapter 8. Section 8.4.3.3; and in Section 4.1.1 of this supplemental reading.

<sup>38</sup> These GPA's members include the United States. The United States GPA market access schedule covers 85 federal-level entities and voluntary commitments by 37 state governments.

The TFA is the only Singapore Issue that has resulted in a WTO agreement, and is the only substantive multilateral agreement that has resulted from the Doha Round of multilateral trade negotiations. The TFA does not address any of the "issues of interest to developing countries" that are enumerated in the 2001 Doha Ministerial Declaration, which led this round of multilateral trade negotiations to be called the Doha Development Round. The TFA does, however, provide for developing countries to receive aid and technical assistance to improve their trade-related infrastructures; and the TFA is the first WTO agreement that allows developing countries to determine their own implementation schedules — with "progress in implementation explicitly linked to technical and financial capacity." <sup>39</sup>

### 3.4 The failure of the Doha Round

The Doha Ministerial Declaration stated that the negotiations for the Doha Round "shall be concluded not later than 1 January 2005." Because of the extreme differences in the positions taken on key issues by developed-country and developing-country WTO members, and because of the lack of progress on key issues, the end date was repeatedly extended.

#### 3.4.1 The Cancún Ministerial Conference

The most extreme indicator of the extent to which the North-South zero-sum game had come to dominate the WTO can be seen in the events at the four-day 5<sup>th</sup> Ministerial Conference in Cancún, Mexico, in September 2003.

When negotiating the makeup of the agenda prior to the beginning of the Cancún MC, the developed-country ministerial-level representatives wanted the agenda to focus on the Singapore Issues, such as increasing access for FDI in developing countries. The developing-country representatives wanted the agenda to focus on "development issues," such as the elimination of domestic agriculture subsidies by developed countries.

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<sup>39</sup> WTO, Review of TFA agreement.

On all of these agenda issues, the North and South ministerial-level representatives refused to compromise. When there was no agreement on the conference agenda by the third day, the Minister for Foreign Affairs of Mexico, who as minister for the host country was the designated chair of the conference, adjourned the conference before it had begun.

### 3.4.2 The Geneva, Bali, and Nairobi MCs

At the Geneva Ministerial Conference, in 2008, the negotiations collapsed when the member representatives were unable to agree on the details of a Safeguard Mechanism, which would have provided developing countries with special differential treatment. Following this collapse, there were several attempts to restart the Doha Round negotiations.

The Bali (Indonesia) Ministerial Conference, in December 2013, adopted a package that contained ministerial declarations and decisions, which addressed Doha Round agenda issues, including agriculture issues that "allow developing countries more options for providing food security, boost least developed countries' trade, and help development."<sup>40</sup>

At the Nairobi Ministerial Conference, in December 2015, WTO members agreed on the Nairobi Package, which contained ministerial decisions on six Doha Round issues that included "agriculture, cotton, and issues related to least-developed countries."<sup>41</sup>

The Doha Round has not been formally concluded, but all attempts to restart Doha Round negotiations since the Nairobi MC have failed, and the Bali and Nairobi Packages have been used to argue that the Doha Round was not a complete failure. But the number of issues addressed in these packages was only a fraction of the total number of issues contained in the Doha Ministerial Declaration agenda; and the Bali and Nairobi Packages did not address the agenda issues that are of greatest concern to developing countries.

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<sup>40</sup> WTO: 2013 News Items, 5-7 December 2013 Ninth WTO Ministerial Conference.

<sup>41</sup> WTO Ministerial Conference, Nairobi, 2015, Nairobi Package.

For example, the Nairobi Package includes a Ministerial Decision on export subsidies,<sup>42</sup> which states that "Developed Members shall immediately eliminate their remaining scheduled export subsidy entitlements." The critical subsidy issue for developing countries, however, is not export subsidies — but is domestic subsidies, and especially the use of domestic agriculture subsidies<sup>43</sup> by developed countries, and the trade-distorting effects of these subsidies; and the use of these subsidies was not addressed in either the Bali Package or the Nairobi Package.

## 4 The causal elements

Each of the WTO operational issues discussed in this supplemental reading has been influenced by direct and underlying causal elements.

### 4.1 The direct causal elements

The dominant direct causal elements have been: (1) the WTO practice of consensus decision-making, which requires participation by all WTO Members — and requires their unanimous consent; and (2) the absence of consensus.

The WTO consensus decision-making model<sup>44</sup> was developed during the early years of the *de facto* GATT organization, and was carried over into the WTO by Article X of the Marrakesh Agreement, which states that "The WTO shall continue the practice of decision-making by consensus followed under GATT 1947." The operational issues discussed in this supplemental reading, the decline in the operational effectiveness of the WTO, and the dearth of new multilateral agreements are all directly attributable to an adherence to the continued practice of consensus decision-making — and to an absence of consensus.

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<sup>42</sup> WTO Ministerial Conference, Nairobi, 2015, Export Competition, Export Subsidies.

<sup>43</sup> Domestic subsidies are discussed in Chapter 4, Section 4.3.2; and in Section 3.1 of this supplemental reading.

<sup>44</sup> Consensus decision-making at the WTO is discussed in Chapter 8, Section 8.5.1.2.

WTO Members have addressed these direct causal elements through the increased use of "inside" and "outside" consensus-avoiding alternatives (CAAs).

The primary inside CAA is for select groups of WTO Members to enter into plurilateral agreements — which were first used by select groups of GATT contracting parties during the Tokyo Round of multilateral trade negotiations,<sup>45</sup> and were carried over into the WTO by Articles II and III, and eight other articles, of the MA. Since the WTO Ministerial Conference in Buenos Aires, in 2017, the WTO has referred to plurilateral agreements that include participation by "like-minded groups of WTO Members"<sup>46</sup> as *joint initiatives*.

The primary outside CAA is for WTO members to enter into preferential trade agreements (PTAs) and create regional trade blocks (RTBs), which include free trade areas (FTAs) and customs unions (CUs).<sup>47</sup>

## 4.2 The underlying causal element

The dominant underlying causal element that has driven all of the WTO operational issues that are discussed in this supplemental reading is the North-South zero-sum game.

As discussed in Section 1.2, the return to a zero-sum mindset in the conduct of international trade and FDI has replaced the plus-sum belief in mutual benefit that is contained in the preamble to GATT 1947. The advent of the North-South zero-sum game at the Singapore MC in 1996, and the adjournment of the Cancún MC in 2003, signaled the return to a zero-sum game. Since then, the absence of consensus has been a direct causal elements in each of the WTO operational

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<sup>45</sup> Plurilateral agreements are discussed in Chapter 8, Section 8.4.3.3.

<sup>46</sup> WTO joint initiatives website. [https://www.wto.org/english/tratop\\_e/jsi\\_e/jsi\\_e.htm](https://www.wto.org/english/tratop_e/jsi_e/jsi_e.htm)

<sup>47</sup> Preferential trade agreements are discussed in Chapter 7, Section 7.1.6. RTBs are discussed in Chapter 9, Section 9.2. FTAs are discussed in Chapter 9, Sections 9.24 and 9.3. CUs are discussed in Chapter 9, Sections 9.2.4 and 9.4.



issues that are discussed in this supplemental reading — and this absence of consensus has, in each case, been driven by the WTO North-South zero-sum game.

A serious downside of zero-sum games is that they tend to be unstable, and can deteriorate into minus-sum games.<sup>48</sup> When players in a zero-sum game try to win by preventing other players from winning, this can produce similar reciprocal actions by the other players, which can result in a degeneration in the situation to the point where all players lose. When this occurs, the players have, by their behavior, changed the game from zero-sum to minus-sum.<sup>49</sup>

If left unchecked, the WTO North-South zero-sum game could lead to the same type of situation that existed in the decade following the adoption of the Smoot-Hawley Tariff by the Congress of the United States in 1930, when the governments of most nation-states saw international trade as a zero-sum game,<sup>50</sup> which led to the creation of a minus-sum downward spiral — that resulted in a more than 50 percent decline in international trade.<sup>51</sup>

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<sup>48</sup> Minus-sum games are discussed in Chapter 8, Section 8.2.1.2.

<sup>49</sup> W. Davies. 2000. "Partner Risk, Managing the Downside of Strategic Alliances." page 98.

<sup>50</sup> Trade as a zero-sum game is discussed in Chapter 8, Section 8.2.1.1.

<sup>51</sup> The minus-sum downward spiral is discussed in Chapter 8, Section 8.2.1.2.