



First Intersessional: Response by the Civil Society FfD Mechanism

25th April 2025

II.D International trade as an engine for development

Trade policy issues, though primarily shaped in other spaces such as the WTO and in bilateral or regional negotiations, have assumed a critical importance in the road to FfD4. While fair and equitable trade rules and policy have for long been acknowledged as a key development policy tool under the FfD framework, never has this issue been so critical for developing and least-developed countries. The current disruption and uncertainty caused by the aggressive and unilateral use of tariffs by the US administration in global trade in violation of all global rules and codes of conduct, has threatened both developing and developed countries. But developing countries stand to lose much more, as their sheer economic survival in the global economy, which in turn is linked to their social development and environmentally sustainability, has become hinged on the whims of one country.

This also shows that the global trading system has remained inequitable across its multiple areas of operation and has not been able to address the dependence and vulnerability of global South countries on a few markets. Nor has it been able to ensure structural transformation, resilience, economic stability and broad-based sustainable development in these countries. This moment, while of immense challenge, can also be a turning point in ensuring that trade rules and systems do indeed work for future sustainable development objectives across Global South countries, and therefore merits a strong engagement on part of all stakeholders in FfD4.

As the first inter-sessional concludes in New York, the status of negotiations shows a mixed result, including some welcome addition of language but also a failure to improve language in critical areas or even a regression. In particular, we welcome the progression in language in the following areas:

- **Unilateral trade measures:** New paragraphs 35.bis and 35.m.bis on the unilateral trade measures, especially the use of tariffs, provide the right perspective and direction. It is important to remember that developing countries' tariff rates, which are often alleged to be high, are a tool for the growth and development of key sectors. Tariffs have already been extensively used by the US and other developed countries while they were industrializing and needed the protection that developing countries need today. Moreover, under the Uruguay Round of the GATT, developing countries have already made major concessions, for example, by conceding to agreements that are detrimental to their interests such as TRIPS or TRIMS, in exchange for retaining tariffs which are often their only trade policy tool to ensure domestic production and incomes across agricultural and industrial products.
- **Unilateral environment measures (Paragraphs 35, 36.l, 36.m):** We support the insertion of the sentence in Paragraph 35 (chapeau) starting with "Trade policy measures for environmental purposes should not constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on international trade (...) be based on an international consensus" which is from the Rio Declaration.
We appreciate that Paragraphs 36.l and 36.m are moving in the right direction. We strongly support 36.l.ter and endorse that such measures must be multilaterally agreed and based on principles such as CBDR which are the core principles of the UNFCCC, the Kyoto Protocol and Paris Agreement.
- **Crisis response (Paragraph 36.m.ter):** We strongly welcome the new paragraph that aims to ensure policy tools to meet various forms of global crisis. The covid 19 pandemic as well as other recent natural disasters have exposed the vulnerability of developing and least developed countries and the need for trade policy space to deal with the same. It should be noted that the TRIPS Waiver proposal was supported by 100 or so developing countries and there have been proposals on a comprehensive crisis response by other WTO Members since then.
- **Critical minerals:** We very much welcome the recognition of the need for fully flexible trade and investment policies with regard to their critical minerals for developing countries that are owners of such resources. This is

necessary for domestic value addition, structural transformation, beneficiation and for ensuring the use of critical minerals is used for meeting national sustainable development objectives. We agree that developing countries and LDCs need “local industries to participate in regional and global value chains, to drive industrialization, growth and development in those sectors”. We also fully support the idea that there should be nationally owned and led partnerships, and that these partnerships must address “the potentially negative impacts on producer countries and vulnerable communities”.

Some major issues in urgent need of improvement:

- **Critical importance of policy space (Para 36.h):** Policy space has been recognized as of critical importance for sustainable development; for example, for structural transformation, resilience building, crisis response, industrialisation, shifting away from commodity dependence, meeting food and health security objectives in the Global South. This is recognized both in the Addis Agenda and the 2030 Agenda and has been a longtime demand in the WTO (most recently in the multiple submissions by the African Group).

Unfortunately, Paragraph 36.h on policy space remains extremely weak. First of all, the greater need of developing countries and LDCs to trade policy space for pursuing sustainable development must be front and central. Secondly, current trade rules and commitments are obstructing the pursuit of development across Global South countries through inequitable rules as contained in several WTO agreements such as the Agreement on agriculture, the agreement of trade related intellectual property rights, Agreement on Non-agricultural Market Access, Agreement on Services; in addition to the multiple North-South trade and investment agreements which have WTO-plus commitments. Unless these are amended and policy space is ensured, developing and least developed countries cannot achieve true sustainable development. Therefore, this paragraph must prioritize the needs of developing countries and LDCs by changing current trade rules and commitments, both of which elements are being contested or are currently missing.

- **Investor state dispute settlement (ISDS) in international investment agreements (Paragraphs 36.i and 36.j):** The issue of ISDS and obsolete investment agreements as dealt in paragraphs 36.i and 36.j remain disappointing in comparison to the magnitude of the problem posed to governments’ policy space to address sustainable development. It is time to go beyond “reform” of the ISDS to have a multilateral agreement for the coordinated and permanent cessation of the ISDS in all international investment agreements. Given that both developed and developing countries have been adversely affected by the increasing use of the ISDS by transnational corporations, this should be seen as a rational progression of actions. Moreover, it is to be noted that the current multilateral efforts such as reform under UNCITRAL or the EU proposal of multilateral investment court, are all ineffective to meet the challenges stemming from the ISDS. Further paragraph 36.j is critical for investment treaty reform which is more urgent than general treaty reform and must be pursued immediately. Investment agreements must be redesigned so as not to block critical policy space for sustainable development which would require engagements beyond the ISDS to, for example, definitions of investment. Obsolete agreements must be terminated and replaced by more development-oriented agreements.
- **Special and differential treatment (Paragraph 36.e):** We support the call for strengthening of S&D provisions in Paragraph 36.Pre.e as well as group specific suggestions proposed under 36.e.bis, 36.e.ter and 36.e.quat. In particular strengthening of S&D should take place across all trade and investment agreements. But to achieve this in a systematic manner, we reiterate our call to establish a multilateral agreement under the UN that reaffirms, updates and strengthens S&D provisions across all trade agreements.
- **E-commerce (Paragraph 36.d and 37.b):** The suggested addition to 36.d on e-commerce moratorium should be rejected as this moratorium has mainly benefited digital corporations based in developed countries and has caused potential tariff revenue loss (calculated at bound rates) to developing countries excluding LDCs of \$48.15 billion; and to WTO LDCs of \$1.77 billion, over 2017-20 (South Centre, 2022). Further, given the digital divide and the very different capacities to benefit from e-commerce between developed and most developing countries, Paragraph 37.b must recognise the need for retaining full policy space for domestic regulations, in a manner that does not undermine but strengthens domestic providers and suppliers of services in developing countries and LDCs. Further, the line proposing “the importance of facilitating the free flow of data across borders” must be rejected as free flow of data can lead to loss of control over data and also of the ability to design data policies for national sustainable development across developing countries.