Saving the WTO from Irrelevance: Strengthening the Supervisory Role of WTO over FTAs

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WTO Faces an Existential Crisis

• WTO faces an existential crisis because it has failed to deliver on significant trade liberalisation
• The only agreement reached is the Agreement on Trade Facilitation
• Consensus based decision making slows down the pace of trade liberalisation
• The proliferation of FTAs...
But, why is WTO important?

• WTO is best positioned to serve the interests of smaller and developing countries
• WTO has an effective dispute settlement process
• WTO has an effective trade policy review mechanism
FTAs and the WTO

• Economically, FTAs may act as building blocks for multilateralism

• However, exclusionary or protectionist FTAs can have an adverse impact on multilateralism.

• Protectionist FTAs might result in greater trade diversion and less trade creation.
Existing mechanism in WTO to supervise FTAs

- FTAs signed by WTO member countries have to comply with the requirements given in Article XXIV of GATT
- These requirements are: obligation to notify to the CRTA; external trade requirement and the internal trade requirement
- CRTA is entrusted with the responsibility to examine whether the FTA meets the external and internal trade requirements of Article XXIV.
• However, due to the political composition of the CRTA (comprising of all WTO member countries), this assessment has not been carried out.

• Jurisdiction of the WTO’s DSB: The AB in Turkey-Textiles had held that the DSB has the jurisdiction to decide compatibility of CUs and FTAs with Article XXIV during, before or after the review of the CRTA.
• The AB said that when the legality of a country’s measure is challenged under GATT, it could avail the defence of Article XXIV if two conditions are satisfied: 1. the country claiming the benefit of Article XXIV must demonstrate that the measure is introduced upon the formation of a CU (or FTA as the case may be) that fully meets Article XXIV requirements. 2. the country must demonstrate that if it were not allowed to adopt the measure the formation of the CU (or FTA as the case may be would be prevented).
• Countries should make use of the WTO’s DSB to challenge the consistency of FTAs with Article XXIV

• This would strengthen the control of WTO over FTAs and force WTO member countries to enter into FTAs that act as building blocks and not stumbling blocks to multilateralism.