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# **EVOLVING LANDSCAPE OF GLOBAL GOVERNANCE AND ROLE OF WTO AND TRIPS IN SHAPING STATE SOVEREIGNTY: A PORTRAYAL**

AUTHORED BY - DR. SANGEETA CHATTERJEE\* & ANITA MONDAL\*\*

## **ABSTRACT**

*Since the very first civilization ever existed on Earth, trade has been a constant practice of humankind. This trade took different forms over thousands of years and it played a huge role in the evolution of human society. Irrespective of the diversities of the community, trade has been the biggest factor which has shaped the society and the law. Even the biggest and major cities in the world are situated on the banks of the sea because they have been the hub of trade. Although trade has influenced many laws, it has been difficult to bring a robust trade law which would regulate all sorts of trades. After the First World War, the first attempt was made to create an international body to regulate trade at the global level. The establishment of GATT proved to be remarkable for international trade as trade became easy for many countries. In 1995, the creation of the World Trade Organisation and its Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) revolutionised trade by extending the ambit. Now, the protection was not only extended to tangible goods but to intangible goods such as services, ideas, and artistic works. However, the question still persists: How efficient have these two international bodies been proved? The world witnessed a situation of wars and extreme trade tension between two economic power blocks. The developing technology and evolving weapons are being real challenges for the WTO and TRIPS to tackle the misuse of trade. WTO is now facing real challenges like a global pandemic and then war situations between major countries and other conflicts that are attacking the trade of the rival countries.*

## **PROLOGUE**

A profound shift in the nature of global governance marks the contemporary international landscape. The traditional paradigm, centred on nation-states and their sovereign authority, has been challenged by the forces of globalisation. The increasing interconnectedness of nations,

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driven by economic liberalisation, technological advancements, and cultural exchange, has necessitated new frameworks to address shared challenges and promote cooperation.

The World Trade Organization (WTO) and its Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) emerged as pivotal mechanisms in this evolving landscape. Established in 1995, the WTO succeeded the General Agreement on Tariffs and Trade (GATT), which has governed international trade since 1948. TRIPS, a component of the WTO agreements, established a comprehensive set of rules governing, protecting and enforcing intellectual property rights (IPRs).<sup>1</sup>

The creation of the WTO and TRIPS reflected the growing recognition of the importance of international trade and intellectual property in the global economy. As nations became more interdependent, there was a need for a multilateral framework to reduce trade barriers, settle disputes, and promote a level playing field for all members. TRIPS, in particular, addressed the growing concern about protecting IPRs essential for innovation, economic growth, and cultural development.<sup>2</sup>

The WTO and TRIPS have had a profound impact on the global economy. The WTO has contributed to economic growth and development by reducing trade barriers and promoting free trade. On the other hand, TRIPS has provided a framework for protecting IPRs, which has incentivised innovation and investment. However, the rise of the WTO and TRIPS has also raised important questions about the balance between national sovereignty and international obligations.<sup>3</sup>

The WTO's dispute settlement mechanism has been a critical feature of its success. This mechanism allows countries to peacefully resolve trade disputes, avoiding the potential for trade wars. However, the WTO's dispute settlement process has also been criticized for being biased in favour of developed countries.

TRIPS has been both praised and criticised for its impact on developing countries. While

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<sup>1</sup> WTO, *History of the multilateral trading system* available at: [https://www.WTO.org/english/theWTO\\_e/history\\_e/history\\_e.htm](https://www.WTO.org/english/theWTO_e/history_e/history_e.htm) (last visited Sep. 08, 2024).

<sup>2</sup> WTO, *TRIPS — Trade-Related Aspects of Intellectual Property Rights* available at: [https://www.WTO.org/english/tratop\\_e/trips\\_e/trips\\_e.htm](https://www.WTO.org/english/tratop_e/trips_e/trips_e.htm) (last visited Sep. 08, 2024).

<sup>3</sup> *Ibid.*

TRIPS has provided a framework for protecting IPRs, it has also been argued that it has hindered access to essential medicines and technologies in developing countries. This has led to debates about the appropriate balance between intellectual property rights and public health.<sup>4</sup>

The COVID-19 pandemic has posed significant challenges for the WTO and TRIPS in recent years. The pandemic has disrupted global supply chains and highlighted the need for greater international cooperation. Several countries, at a point in time, were facing a shortage of essential supplies due to the sudden lockdowns of national as well as international boundaries. The ongoing trade tensions between the United States and China have also strained the multilateral trading system.<sup>5</sup>

Despite these challenges, the WTO and TRIPS remain essential institutions for global governance. They provide a framework for addressing trade disputes, promoting economic growth, and protecting intellectual property rights. However, they must adapt to the changing global landscape to remain relevant and practical.

The COVID-19 pandemic also highlighted the tension between intellectual property rights and public health. There were calls for a temporary waiver of TRIPS provisions to facilitate the production and distribution of vaccines and other medical supplies.<sup>6</sup>

In 2023, there were fresh efforts to reform the WTO, including discussions on improving the dispute settlement system and addressing the rise of protectionism.

The growth of e-commerce and digital services has led to discussions about the need to update WTO rules to address these new forms of trade. Growing interest has been in promoting sustainable trade practices, including addressing climate change and environmental protection.

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<sup>4</sup> WTO, Overview: the TRIPS Agreement available at: [https://www.WTO.org/english/tratop\\_e/intel2\\_e.htm#:~:text=Thepercent20Agreementpercent20providespercent20forpercent20a,inpercent20questionpercent20andpercent20ofpercent20other](https://www.WTO.org/english/tratop_e/intel2_e.htm#:~:text=Thepercent20Agreementpercent20providespercent20forpercent20a,inpercent20questionpercent20andpercent20ofpercent20other) (last visited Sep. 07, 2024).

<sup>5</sup> WORLD ECONOMIC FORUM, *How COVID-19 has affected trade, in 8 charts* (Nov. 06, 2020) available at: <https://www.weforum.org/agenda/2020/11/how-covid-19-has-reshuffled-international-trade/> (last visited Sep. 18, 2024).

<sup>6</sup> Jillian Kohler, Anna Wong, and Lauren Tailor, *Improving Access to COVID-19 Vaccines: An Analysis of TRIPS Waiver Discourse among WTO Members, Civil Society Organizations, and Pharmaceutical Industry Stakeholders*, XXIV (2) HHR (2022) available at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9790937/> (last visited Sep. 18, 2024).

These recent developments demonstrate the ongoing evolution of global governance and the importance of the WTO and TRIPS in shaping the international landscape. As the world continues to become more interconnected, the role of these organisations will likely become even more critical.

## **WTO AND TRIPS BALANCING NATIONAL INTEREST AND INTERNATIONAL OBLIGATIONS**

The WTO and TRIPS often receive criticism for establishing a uniform set of rules for global trade as this uniform set of rules limits the ability of many developing countries from trading with their own terms and conditions. Many countries have alleged that although the effort has been made to make the trade free from unnecessary barriers, it also creates hurdles for the least developed countries to make heavy revenue out of imported goods. One of the highlighted examples can be the use of WTO dispute settlement mechanisms to challenge the national rules and laws of trade of several countries which do not conform with the trade rules and norms of WTO.

Beside these criticisms, global trade has witnessed a significant evolution and growth in international trade in the past Twenty-Nine years. It is pertinent to note that since the liberalization, privatization and globalisation of the economy and since the establishment of WTO and its TRIPS agreement many countries have been able to trade freely and generate even more revenue than ever. Earlier, where used to be heavy influence of developed Nations and economic power blocks but now the market has been opened for every one and the global market has come to a unitary platform as the world can see the concept of borders being diminished.<sup>7</sup>

As we look at how TRIPS was implemented at the national level, both in introducing and enforcing new laws, it's important to note how this international agreement transformed domestic politics by giving technology-intensive sectors more significant influence. Similar to how Baldwin argues that GATT's reciprocity principle shifted political interests towards widespread tariff reductions, TRIPS reshaped national patent policies. Before TRIPS, these policies were largely driven by strong consumer groups and import-substituting industries, with

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<sup>7</sup> *TRIPs-Related issue*, 4 CUTS INTERNATIONAL 1 (2017) available at: [https://cuts-citee.org/pdf/Viewpoint\\_Paper\\_TRIPs\\_Issues.pdf](https://cuts-citee.org/pdf/Viewpoint_Paper_TRIPs_Issues.pdf) (last visited Sep. 19, 2024).

innovators playing a limited role. Many developing countries focused more on ensuring access to technology and knowledge than on promoting innovation. However, TRIPS forced a shift towards stronger IP protections, acting as an external shock that redistributed income between innovative and non-innovative sectors. As stronger IP laws took hold, innovative businesses benefited, while those relying on previous policies saw diminishing profits, leading to a shift in political power. Over time, even those initially opposing TRIPS adapted, forming alliances with innovation-driven actors and adjusting their political strategies to the new landscape.<sup>8</sup>

Many middle-income countries aiming to advance technologically and build domestic capabilities have found new growth opportunities through participation in global value chains (GVCs), provided they are willing to meet the stricter intellectual property (IP) requirements set by the TRIPS agreement. As multinational enterprises (MNEs) became more inclined to disperse production across different countries, industrialists in these nations, eager to join GVCs, showed a willingness to comply with the more stringent IP standards demanded by MNEs, often requiring more vigorous enforcement. The tightening of IP regulations and the convergence of regulatory standards among countries has paralleled the expansion of GVC trade. This dynamic has led some, like Chang, to argue that the higher institutional demands placed on developing countries are unfair and amount to ‘kicking away the ladder’ to prevent them from joining the ranks of developed nations.<sup>9</sup> However, China’s rise demonstrates that strong IP protections do not necessarily hinder technological advancement in lower-income countries if governments and firms are prepared to invest in research and development. China’s rapid growth and the positive effects of its success on other middle- and low-income nations highlight the effectiveness of this strategy. Yet, as predicted by Gomory and Baumol, such strategies can lead to tensions when incumbent nations perceive threats to their market share.<sup>10</sup>

The increasing importance of intangible assets—such as technology, design, and branding—in production is mirrored by their growing share in the value of final products in international trade. Hsieh and Rossi-Hansberg attribute this to a ‘second industrial revolution’ in the services sector, where information and communication technologies (ICTs) have boosted productivity

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<sup>8</sup> Suma Athreya, Lucia Piscitello, Kenneth C. Shadlen, *Twenty-five years since TRIPS: Patent policy and international business*, III (4) JSBP 315 (2020) available at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7549422/> (last visited Sep. 15, 2024).

<sup>9</sup> FPIF, Ha-Joon Chang, John Gershman, *Kicking Away the Ladder: The “Real” History of Free Trade*, (Dec. 30, 2003) available at: [https://fpif.org/kicking\\_away\\_the\\_ladder\\_the\\_real\\_history\\_of\\_free\\_trade/](https://fpif.org/kicking_away_the_ladder_the_real_history_of_free_trade/) (last visited Sep. 09, 2024).

<sup>10</sup> *Supra*, note 8, at 16.

much like machines and mechanical engineering did during the first industrial revolution. Furthermore, leading firms in GVCs focus more on intangibles while outsourcing physical production to partners in middle- and low-income countries. As a result, there is a growing demand for more robust protection of intangible assets under the TRIPS framework, including data, trademarks, and copyright safeguards. Sectors with higher intangible capital, whether through technological innovation or brand value, can increase earnings by strategically selecting where to locate their operations.

The UNCTAD report of 2024 shows a massive growth in the trade of services and a significant surge in the export of artificial intelligence-related equipments in the first quarter of 2024. This export mainly came from China (Nine percent), India (Seven percent) and USA (Three percent). Meanwhile, the European countries showed no growth and there was a decrease in exports in African countries by Five percent. During the first quarter, trade in developing countries and South-South trade grew by approximately Two percent in both imports and exports. In contrast, developed countries experienced stable imports and a modest One percent increase in exports.<sup>11</sup>

## **THE IMPACT OF RECENT GLOBAL CRISES ON TRADE AND GLOBAL GOVERNANCE**

The third decade of Twenty-First century has witnessed a period of absolute absurdity when it comes to almost every aspect of life. In span of Five years since December 2019 the world has witnessed a global pandemic due to COVID-19 which disrupted the whole demand and supply chain. And then the world witnessed a war that almost looked like never-ending war between Russia and Ukraine which impacted the supply of food and energy to the majority of European countries. When it was not even over then the world witnessed another war between Israeli and Palestinians which badly affected the trade in the region. From the perspective of global economy, this is the toughest time in the past Forty years. Let us dwell into each scenario independently.

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<sup>11</sup> UNCTAD (2024), *Global Trade Update (July 2024)* available at: <https://unctad.org/publication/global-trade-update-july-2024#:~:text=Globalpercent20forecastspercent20forpercent20GDPpercent20growth,recordpercent20levelpercent20seenpercent20inpercent202022>. (last visited Sep. 12, 2024).

### ***The Covid-19 and the disruption of global supply chain***

The global trade is dependent upon a complex chain of supply from different countries on the globe. And the situation of covid-19 pandemic exposed the entire globe to vulnerability of supply of goods because of the sudden lockdown of the international markets and the borders. This halted all the manufacturing industries, the transportation agencies and labour shortage which led to the delay in production and ultimately resulting in the halt of imports and exports. Along with goods, the trade of services also was heavily impacted.<sup>12</sup> We are going to discuss about the primary services like travel and transport services and digital services.

The travel and transport industry employs many workers in numerous countries and is often called a people-centred industry. Now, with this industry suffering, employment has suffered in many economies, including within the Organisation for Economic Co-operation and Development (OECD) and other parts like the Indian subcontinent. For instance, the absence of Chinese tourists had been noted during that period and had affected the tourism industry significantly, but the absence of the possibility to travel does not only affect the industry itself, it also affects other industries in many countries where face-to-face contact is necessary. It, therefore, affects global value chains. Also, in the goods sector, think a bit about how many services enter into a global value chain for it to function smoothly: the accounting services, financial services, human resources, training, education, essential logistics services, and customer services. All these services have to run smoothly for a value chain to function. Unfortunately, this has not always been the case during the crisis, and even now, we will be entering a recovery.<sup>13</sup>

We have seen that in the area of digital trade, policymakers have made an effort to facilitate that trade during the global pandemic. This is important because digital trade was a vital resilience factor during the pandemic. The fact that we could communicate digitally, as we did during the entire pandemic, the fact that we could have practical work, cloud-based working solutions, the effect that high-speed internet connectivity was available and made it possible to continue working when travel was not possible. Policy makers have facilitated that part of trade

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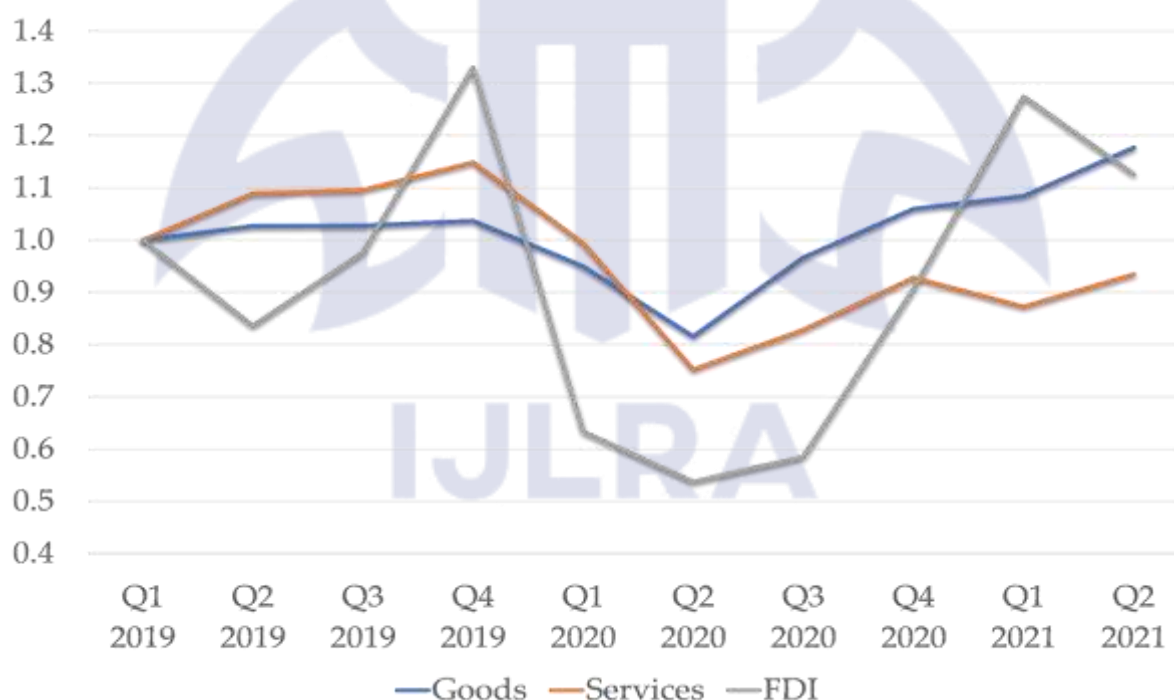
<sup>12</sup> Pinelopi K. Goldberg, Tristan Reed, *Growing Threats to Global Trade*, IMF (Jun. 2023) available at: <https://www.imf.org/en/Publications/fandd/issues/2023/06/growing-threats-to-global-trade-goldberg-reed> (last visited Sep. 14, 2024).

<sup>13</sup> UNCTAD (2021), *Key Statistics and Trends Trade Trends Under the Covid-19 Pandemic in International Trade 2020* available at: [https://unctad.org/system/files/official-document/ditctab2020d4\\_en.pdf](https://unctad.org/system/files/official-document/ditctab2020d4_en.pdf) (last visited Sep. 16, 2024).

during the crisis as we can see in our services trade restrictiveness index measures.<sup>14</sup>

The policies that policymakers put in place for services have become more restrictive. For instance, increased screening of investment measures that may be hampering the movement of people over the long run or also after the pandemic is gone. The services trade restrictiveness has increased during the pandemic and posed a great threat to the trade of services that, if it had been constituted, would have hampered the trade to a greater extent. Policymakers must take action now to allow for services to play the role that they can play for a vigorous recovery and for sustainable growth in the future.<sup>15</sup>

In the last of month of December, the experts observed a slight downfall in the global market because of outbreak of the COVID-19 pandemic and then all three measures (goods trade, services trade and the investment in the world) saw sharp downfall in the first quarter of 2020 and then they hit the lowest in the second quarter of 2020 as seen in the Chart 1 below.<sup>16</sup>



<sup>14</sup> YouTube, OECD Trade and Agriculture, *How COVID-19 has affected services trade* (Sep. 06, 2021) available at: [https://www.youtube.com/watch?v=4h6ONvtHwpM&ab\\_channel=OECDTradeandAgriculture](https://www.youtube.com/watch?v=4h6ONvtHwpM&ab_channel=OECDTradeandAgriculture) (last visited Sep. 18, 2024).

<sup>15</sup> Mitsuyo Andoa, Kazunobu Hayakawab, *Impact of COVID-19 on trade in services*, JWE (Jun. 2022) available at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8915575/> (last visited Sep. 16, 2024).

<sup>16</sup> IDE RESEARCH COLUMNS, *How Did the COVID-19 Pandemic Change Trade and Investment?* available at: [https://www.ide.go.jp/English/ResearchColumns/Columns/2022/hayakawa\\_kazunobu.html](https://www.ide.go.jp/English/ResearchColumns/Columns/2022/hayakawa_kazunobu.html) (last visited Sep. 15, 2024).

**Chart 1 – Source: IDE Research Columns<sup>17</sup>**

Chart 1 clearly portrays the downfall of goods trades, services and investments in the global periphery during the Covid 19 period. It picturises the practical situation of a long span of two years since 2019 to 2021, wherein a major downfall has occurred in the index point which has reached 0.6 in the downward side during the second and third quarters of 2020, when the Covid 19 was its most devastating stage. But, again it has risen upwards from 1.0 to 1.3 during the second quarter of 2021, when actually the whole world has started recovering from the pandemic. Another interesting point of this Chart is that, it shows clearly, the FDI curve is moving more frequently both in the upward and downward sides, in comparison to goods and services curves. Hence, it can be inferred that, FDI sector is directly affected owing to pandemic globally, whereas, trade in goods and services sectors, is affected indirectly. Practically, trade in goods and services somewhat was continued during the pandemic, but the business sector was reluctant to invest in the foreign countries. Rather, the global business sector was totally confused and hence, the FDI sector suffered in massive rate resulting into the disruption of global supply chain.

***Russia-Ukraine War and its implication on food and energy security***

Russia's military invasion of Ukraine has not only created one of the world's most tragic humanitarian crises but also resulted in economic devastation that will reverberate far beyond Ukraine's borders. Ukraine is the largest country by land area entirely in Europe, and despite its struggling economy, it plays a crucial role in global trade and is called the bread basket of Europe because of its highly fertile soil.<sup>18</sup>

Ukraine is the world's fifth-largest exporter of wheat and the fourth-largest exporter of corn and barley. It's also the top exporter of seed oils, accounting for Forty-Six per cent of the world's sunflower oil supply. Ukraine's agricultural exports flow mainly to the global south, with countries such as Indonesia and Lebanon heavily dependent on its grain to feed their populations.<sup>19</sup> Beyond its agricultural capacity, Ukraine is rich in minerals, with a mining

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<sup>17</sup> Ibid.

<sup>18</sup> WTO, *The Crisis in Ukraine Implications of the war for global trade and development* available at: [https://www.WTO.org/english/res\\_e/booksp\\_e/impactukraine422\\_e.pdf](https://www.WTO.org/english/res_e/booksp_e/impactukraine422_e.pdf) (last visited Sep. 18, 2024).

<sup>19</sup> ECCEU, *How the Russian invasion of Ukraine has further aggravated the global food crisis* available at: [https://www.consilium.europa.eu/en/infographics/how-the-russian-invasion-of-ukraine-has-further-aggravated-the-global-food-crisis/#:~:text=Ukrainepercent20ispercent20thepercent20world'spercent20largest,\(aboutpercent20percentE2percent82percentAC11.5percent20billion\)](https://www.consilium.europa.eu/en/infographics/how-the-russian-invasion-of-ukraine-has-further-aggravated-the-global-food-crisis/#:~:text=Ukrainepercent20ispercent20thepercent20world'spercent20largest,(aboutpercent20percentE2percent82percentAC11.5percent20billion)) (last visited Sep. 18, 2024).

industry worth more than Fifteen billion dollars. The country is the world's fifth-largest exporter of iron and the fourth-largest exporter of titanium. It's a significant producer of gallium and germanium, which are used on semiconductors, fibre optics, and light-emitting diodes. Ukraine also produces nearly Seventy per cent of the world's neon and Forty per cent of its krypton, both used in the semiconductor manufacturing process. A disruption in the supply of these technology-critical elements will likely exacerbate the existing global chip shortage caused by the covid 19 pandemic. Disruption of Ukraine's exports is only part of the story.<sup>20</sup>

Russia's invasion has severely crippled its own economy. Russia's share of global commodity markets is one-sixth of the world's land mass. It's the world's largest wheat exporter and the top producer of barley and buckwheat feeding countries such as Egypt, turkey, and Bangladesh. The country is a key exporter of agricultural fertilisers, accounting for Forty percent of the world's potash and Twenty percent of its ammonia. Russia's extensive mining industry is first in global diamond production, second in platinum, third in gold and fourth in silver. It is an essential source of rare earth metals such as vanadium and cobalt. Most importantly, Russia is the world's largest supplier of natural gas and the second-largest oil exporter. Germany is heavily reliant on Russian gas to meet its energy needs.<sup>21</sup>

As Russia faces severe international sanctions for its invasion and retaliates by suspending key exports, shortages and higher prices in key sectors will likely be felt worldwide. Yet the disruption is also likely to lead to long-term realignments of political and economic relationships as countries seek to replace the loss of Russian and Ukrainian imports with goods from other countries. The conflict may also accelerate the transition to renewable and nuclear energy as Western countries are now motivated to reduce their dependence on Russian oil and gas. In the meantime, the international community faces the challenge of isolating an aggressive and dangerous government while keeping the global economy afloat. The trade between the countries has grown Four percent slower, as shown in the Chart 2 below.<sup>22</sup>

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<sup>20</sup> YOUTUBE, Voice of America, *The Global Economic Impact of Russia's Invasion of Ukraine* Voice of America (Mar. 30, 2022) available at: [https://www.youtube.com/watch?v=oy0Mom-vcW8&ab\\_channel=VoiceofAmerica](https://www.youtube.com/watch?v=oy0Mom-vcW8&ab_channel=VoiceofAmerica) (last visited Sep. 17, 2024).

<sup>21</sup> *Ibid.*

<sup>22</sup> Philip Blenkinsop, *Global trade rift widening as Ukraine war passes two-year mark*, THE REUTERS (Feb. 22, 2024) available at: <https://www.reuters.com/markets/global-trade-rift-widening-ukraine-war-passes-two-year-mark-2024-02-22/> (last visited Sep. 15, 2024).

### Trade within and between geopolitical blocs



Note: Seasonally adjusted volumes, with Russia, Belarus and Ukraine excluded, base of 100 in Jan 2022  
Source: WTO, using Trade Data Monitor

#### **Chart 2 – Source: The Reuters<sup>23</sup>**

Chart 2 clearly portrays the trade within and between geopolitical blocs. It is visible from the Chart that, the trade was growing between 2016 and 2018, whereas, a serious downfall occurred in the trade in 2020 with the outbreak of Covid 19 pandemic. Somehow the trade was revived during 2021 at the end of the pandemic and the growth rate reached its highest peak in the later part of 2022. But, the outbreak of war has seriously affected the trade and since then downfall has started, which has not yet been recovered. One important point regarding the issue is that, growth rate of both trades was similar before and during pandemic, be it upwards or downwards. However, different growth rates are visible during the war period, which clearly portrays massive effect of war on the trades. As per the downward curves, trade between blocks has suffered more than the trade within blocks. Hence, it can be inferred that, owing to the war, somewhat impossibility has occurred in the trade between geopolitical blocks causing threats to food and energy security widely.

#### ***Israel - Palestine war and its impact on the global economy***

The risks emanating from the escalating Israeli Hamas conflict in addition to the Ukraine war, clearly point to the worsening of global economic outlooks. Just when the world started to recover somewhat from the Ukraine war, the Israeli-Hamas conflict became a severe economic

<sup>23</sup> Ibid.

risk, which is reflected in a surge of crude prices, which is likely to push up elevated inflation even further. The global Central banks called for higher interest rates for longer, even before the Israel tensions. And it looks more likely that global rates will remain at these high levels for longer than previously anticipated.<sup>24</sup>

### ***The Impact of USA-China Trade Tension***

The trade tension between the United States of America and China has grown so vast now that it has negatively affected the consumers and producers of both the countries. Although the tariff on the trade has significantly reduced, the bilateral trade deficit between the two countries remains unchanged.<sup>25</sup> The impact of this trade tension is so big that now, as it is in the campaign for the US presidential election of 2024, it is going to impact other nations as well, if Trump reigns again.

A \$6 bike Bell made in China could cost \$9.60 if additional tariffs proposed by Republican presidential candidate Donald Trump become a reality. Donald Trump: 'We're doing tariffs on other countries. Other countries are going to finally, after Seventy-Five years, pay us back for all that we've done for the world, and the Tariff will be substantial in some cases'. This means that Chinese-made products will be hit with as much as a Sixty percent tariff under Trump's plan. He also plans to implement blanket tariffs of up to Twenty percent for all other countries. The Biden Administration kept most of the import taxes during Trump's presidency.<sup>26</sup>

In May 2024, Biden announced further tariff increases on \$18 billion of Chinese imports, including a 100 percent import tax on Chinese electric vehicles. The Biden Administration says its tariffs are more strategically aimed at specific Industries and that Trump's import tax takes a broader approach that will cost a middle-class American household \$44,000 more annually. Other estimates are in the range of around \$2,000.<sup>27</sup>

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<sup>24</sup> YOUTUBE, WION, *Israel-Palestine War: Israel conflict to weigh on global economy*, WION (Oct. 10, 2023) available at: [https://www.youtube.com/watch?v=e5Tb5lHf6QY&ab\\_channel=WION](https://www.youtube.com/watch?v=e5Tb5lHf6QY&ab_channel=WION) (last visited Sep. 16, 2024).

<sup>25</sup> NBER, Linda Gorman, *How the US-China Trade War Affected the Rest of the World* available at: <https://www.nber.org/digest/202204/how-us-china-trade-war-affected-rest-world> (last visited Sep. 18, 2024).

<sup>26</sup> YOUTUBE, Voice of America, *Tariffs in U.S.-China trade war may impact U.S. consumers, experts say* (Sep. 18, 2024) available at: [https://www.youtube.com/watch?v=-rk9663s-H4&ab\\_channel=VoiceofAmerica](https://www.youtube.com/watch?v=-rk9663s-H4&ab_channel=VoiceofAmerica) (last visited Sep. 19, 2024).

<sup>27</sup> TAX FOUNDATION, Erica York, *Tariff Tracker: Tracking the Economic Impact of the Trump-Biden Tariffs* (Jun. 26, 2024) available at: <https://taxfoundation.org/research/all/federal/trump-tariffs-biden-tariffs/> (last visited Sep. 15, 2024).

Trump says consumers won't be impacted, but Chinese businesses are not the ones paying the import taxes, as explained by supply chain expert Christopher Tang, *'during the election years, everyone is promising the moon, but the truth of the matter is that the US firms pay the import tariffs'*. So, for an imported Chinese-made TV purchased at Costco, it's Costco that pays the import tax. *'When companies are facing High import tariffs, there are two buttons to push; one is to pass the high import costs to the consumers, the other one is squeezing the Chinese factories to lower the price'*. Tang says the risk of pushing Chinese companies to lower prices is poor product quality. Import taxes may mean fewer printed labels made in China, but that doesn't mean fewer imports are coming from China. They'll have a label from a different country, says Tang. *'China actually shipped a lot of components and parts to Vietnam to India for final assembling, and those end products actually are still imported into us as well, so therefore, the total effect of China is they still actually export more, but they're not exporting to the US directly,'* Says Tang. The World Trade Organization finds tariffs disproportionately affect low-income households, which means a \$9.60 bike Bell may be out of reach for some consumers if a Sixty percent import tax is slapped on Chinese-made products.<sup>28</sup>

### ***Effect of trade tension on producers***

The United States of America and Chinese producers are affected by tariffs. Those using these goods as intermediate inputs will likely face negative impacts. One critical effect is trade diversion, where increased imports from other countries offset the decline in U.S. imports from China. For example, following the implementation of a \$16 billion tariff list in August, U.S. imports from China fell by nearly \$850 million, while imports from Mexico rose by a similar amount, keeping overall U.S. imports relatively stable. Smaller increases in U.S. imports were also observed from countries like Japan, Korea, and Canada. However, aggregate data may mask other factors, such as inventory use, influencing bilateral trade patterns. In some instances, like photosensitive semiconductor devices, there was little or no shift in imports from third countries. Overall, trade diversion helps explain some of the adjustments in global trade flows following the tariff measures, as it can be seen in the Chart 3 below.<sup>29</sup>

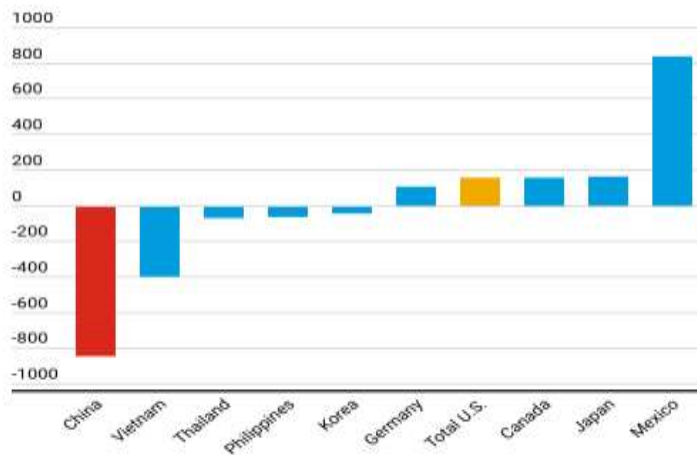
<sup>28</sup> Elizabeth Lee, *Tariffs in U.S.-China trade war may impact U.S. consumers, experts say*, VOA News (Sep. 17, 2024) available at: <https://www.voanews.com/a/tariffs-in-u-s--china-trade-war-may-impact-u-s- consumers-experts-say/7788140.html> (last visited Sep. 18, 2024).

<sup>29</sup> IMF BLOG, Eugenio Cerutti, Gita Gopinath, Adil Mohommad, *The Impact of US-China Trade Tensions* (May 23, 2019) available at: <https://www.imf.org/en/Blogs/Articles/2019/05/23/blog-the-impact-of-us- china-trade-tensions> (last visited Sep. 16, 2024).

### Impact on producers

The effects of tariffs on producers is more mixed, with some winners (such as US and Chinese producers of goods competing in their domestic markets with imports affected by the tariffs) and many losers (such as US and Chinese producers of goods affected by the tariffs).

(millions of US dollars, change in Sep-Nov 2018 imports relative to Sep-Nov 2017, \$16 billion list)



Sources: US Department of Commerce, and IMF staff calculations.

INTERNATIONAL MONETARY FUND

### Chart 3 – Source: IMF Blog<sup>30</sup>

Chart 3 clearly portrays the loss or gain suffered by the producers' due to US-China trade tension and increased rate of tariffs therefrom. Some producers have suffered less because of their business in the domestic markets has gained profits, but others, who are mainly based on export-import business, have suffered huge loss owing to the increase of import tariffs. Chinese producers have been affected the worst, while Mexican producers have gained the best. Therefore, it can be inferred from this chart, that while power-blocks will come in conflict with each other, serious economic impact shall occur and ultimately the buyers and sellers will be the sufferers.

### *Measures taken by WTO to tackle the situation of such wars*

From the USA-China Trade tension to the COVID-19 Pandemic and to the Russia-Ukraine war, the supply chain and production have been heavily impacted by trade and the world economy went on a rollercoaster ride. As the anchor trade organisation, the WTO has

<sup>30</sup> Ibid.

constantly tried to tackle the issue through multilateral agreements.<sup>31</sup>

During the Russia-Ukraine war, WTO has appealed to countries to respond to their needs as per their sourcing patterns and by adjusting production technologies. Suppliers would shift and relocate outside the war-impacted area, and the transport firms would adapt the routes to such area which is not very inconvenient to transport in order to increase the production rapidly to meet the demands of the countries.<sup>32</sup>

The WTO has been constantly entering into various multilateral agreements with member countries to reduce any possible barriers to making adjustments for these actors. As per WTO reporting, Seventy-Five percent of world trading takes place under the rules of WTO or the laws of GATT, the predecessor of WTO.<sup>33</sup>

## WTO AND ENVIRONMENT

Also, WTO does not have any agreement with respect to environmental laws; however, it promotes and encourages the maintenance of sustainability among the member countries while carrying out any trade. The contribution of WTO to sustainable development comes in a form of allocating the resources and making the trade and economic growth more predictable with an anticipation of protecting the environment.

*India etc. versus US: 'shrimp-turtle'*, case of 1998, a case brought by India, Malaysia, Pakistan and Thailand against the US for imposing the prohibition on import of certain shrimp. This case is important in aspects, firstly, WTO held that the authority WTO is not only restricted to the trade matters but it also extends to the protection of rights of humans, animals and the life of plants. And WTO can also take measures to conserve resources. The second reason is that WTO stated '*... We have not decided that the sovereign nations that are Members of the WTO cannot adopt effective measures to protect endangered species, such as sea turtles. Clearly, they can and should. ...*'<sup>34</sup>

<sup>31</sup> WTO, *An economic analysis of the US-China trade conflict* available at: [https://www.wto.org/english/res\\_e/reser\\_e/ersd202004\\_e.htm](https://www.wto.org/english/res_e/reser_e/ersd202004_e.htm) (last visited Sep. 18, 2024).

<sup>32</sup> WTO, *WTO in Brief* available at: [https://www.wto.org/english/thewto\\_e/whatis\\_e/inbrief\\_e/inbr\\_e.htm](https://www.wto.org/english/thewto_e/whatis_e/inbrief_e/inbr_e.htm) (last visited Sep. 18, 2024).

<sup>33</sup> WTO, *The Crisis in Ukraine Implications of the war for global trade and development* available at: [https://www.WTO.org/english/res\\_e/booksp\\_e/impactukraine422\\_e.pdf](https://www.WTO.org/english/res_e/booksp_e/impactukraine422_e.pdf) (last visited Sep. 18, 2024).

<sup>34</sup> WTO, *India etc. versus US: 'shrimp-turtle'* available at: [https://www.WTO.org/english/tratop\\_e/envir\\_e/edis08\\_e.htm](https://www.WTO.org/english/tratop_e/envir_e/edis08_e.htm) (last visited Sep. 18, 2024).

## CHALLENGES OF WTO AND TRIPS

It is noteworthy that the attitude of member states has yet not changed towards the international bodies. The World Trade Organisation is not untouched from this and hence it struggles to make the member states follow the rulings of WTO.<sup>35</sup> For instance, the WTO has not yet been able to come to a consensus with respect to new rules on agricultural goods as there is a conflict between developing and developed Nations.

In 2016, the United States of America blocked the appointment of an appellate body which is the third stage of the dispute settlement system. The argument of the USA was that the appellate body was acting ultra-vires and was enjoying powers that was beyond its authority. So in that year, the dispute settlement system was inoperative, and the WTO members have not been able to come to a consensus with respect to reforming the mechanism.<sup>36</sup>

The trade tension between the United States of America and China has put a strain on the WTO, and the WTO has not yet been able to resolve the issue for more than half a decade. These two nations are the economic power blocks and the tensions between them are ultimately impacting the global economy.<sup>37</sup>

It is very apparent on the part of TRIPS that it has not been able to bring all kinds of countries under the same umbrella of IP Protection. It has failed to realise the disparity between developing and developed countries.<sup>38</sup>

## CHALLENGES OF WTO AND TRIPS IN SHAPING STATE SOVEREIGNTY

One of the major challenges of WTO and TRIPS in shaping sovereignty of the states is being categorized as erosion of national sovereignty being equated as the loss of border sovereignty. Losing border sovereignty also means losing internal economic sovereignty, which forces nations to adopt the deregulation and privatization agendas of neoliberal policies. WTO

<sup>35</sup> Kalim Siddiqui, *International Trade, WTO and Economic Development*, VII (4) WRPE 424 (2016) available at: <https://doi.org/10.13169/worlrevipoliecon.7.4.0424> (last visited Sep. 09, 2024).

<sup>36</sup> IISD, Simon Lester, *Ending the WTO Dispute Settlement Crisis: Where to from here?* (Mar. 02, 2022) available at: <https://www.iisd.org/articles/united-states-must-propose-solutions-end-wto-dispute-settlement-crisis> (last visited Sep. 19, 2024).

<sup>37</sup> WTO, *An economic analysis of the US-China trade conflict* available at: [https://www.wto.org/english/res\\_e/reser\\_e/ersd202004\\_e.htm](https://www.wto.org/english/res_e/reser_e/ersd202004_e.htm) (last visited Sep. 18, 2024).

<sup>38</sup> *TRIPs-Related issue*, 4 CUTS INTERNATIONAL 1 (2017) available at: [https://cuts-citee.org/pdf/Viewpoint\\_Paper\\_TRIPs\\_Issues.pdf](https://cuts-citee.org/pdf/Viewpoint_Paper_TRIPs_Issues.pdf) (last visited Sep. 19, 2024).

accords, such as TRIPS, restrict countries' ability to impede trade or meddle in the choices made by domestic or foreign capital to invest. This undermines the sovereignty of a state by limiting its capacity to enact laws that could be beneficial to it. States and government systems face challenges from international bodies such as the WTO, such as extraterritoriality and jurisdictional conflict and overlap. Conflicts between international accords and national legislation may result from this. Capacity of a state to manage and control intellectual property inside their borders is restricted by the strict intellectual property protections imposed by TRIPS. This may restrict access to necessary products and services and impede innovation. Considering all these aspects, state sovereignty faces serious obstacles from the WTO and TRIPS, underscoring the necessity of a well-rounded strategy that takes into account both domestic concerns and global commitments.

### **WAY FORWARD FOR WTO IN SHAPING OF STATE SOVEREIGNTY**

The World Trade Organization (WTO) must find a careful balance between advancing international trade and upholding national interests if it is to continue influencing the sovereignty of a state. In order to do this, the WTO's agreements must place a high priority on adaptability and flexibility, enabling states to enact laws that are specifically suited to their own economic and social requirements. In order to maintain efficiency and justice, the WTO should concentrate on modifying and revising its dispute settlement procedures. This can entail defining more precise guidelines and processes for settling conflicts as well as raising accountability and openness. The WTO should also work to create more inclusive decision-making procedures that involve a wider variety of parties, such as the private sector, civil society, and developing nations. Ensuring that WTO accords align with the varied interests and concerns of its member nations would be facilitated by this measure. In the end, the WTO's capacity to adjust to the changing requirements of its member countries while advancing a more just and sustainable international trade system will determine how successful it is in influencing state sovereignty.

### **WAY FORWARD FOR TRIPS IN SHAPING OF STATE SOVEREIGNTY**

In order to continue developing the sovereignty of a state, TRIPS must find a balance between advancing national interests and safeguarding intellectual property rights. Countries can use the adaptability included in the TRIPS Agreement to pursue public policies that safeguard

biodiversity, defend public policies through the implementation of TRIPS-compatible standards, and create macroeconomic conditions that foster economic development in order to achieve this equilibrium. States can utilize innovative approaches, such limiting the use of trademarks and establishing exceptions to granted rights, to incorporate TRIPS principles into domestic law and practice. By lowering or raising the TRIPS standards, states can modify the degree of protection to fit their own requirements. The implementation of enforcement tools in line with national interests is a way for states to fulfil their commitments under TRIPS. Legislations pertaining to topics that are not addressed by TRIPS, like handicrafts and traditional knowledge, is left up to individual countries. States can recover part of the sovereignty they forfeited as a result of globalization and international institutions, like the WTO by utilizing these opportunities and implementing important reforms. They will be more equipped to advance sustainable development and safeguard their states' interests as a result.

## EPILOGUE

It is pertinent to note that the international organisations are still struggling to make a stand at the international level. The countries are exploiting the trade law and completely disregarding the WTO agreements as per their whims and fancies. Sometimes the countries stand against other countries which affect the functioning of WTO and sometimes the countries do not follow the trade law to impose tariff or carry-on anti-competitive activities which halts the functioning of WTO.

As we looked into the historical development of the trade law and how WTO has been making efforts to tackle the current issues and its ambit to provide maximum protection to underprivileged nations and to make the market free from trade barriers. We also discussed facilitation of services that have become essential during this time. With such services a new challenge posed to the WTO and TRIPS, that is to provide proper protection to the intangible assets as well.

The policymakers have to facilitate services trade. Facilitating international travel will be important not only for the travel industry but also for other sectors. However, international travel does not only have to take place safely, numerous initiatives exist to facilitate safe international mobility and make existing national or international aid-level systems interoperable. One of these initiatives exists at the OECD, and the policymakers should look at these initiatives and participate in them either or elsewhere to facilitate safe international

mobility across the globe.

The second important initiative is the one in the area of digital trade. Digital trade has played an essential role during the pandemic and can play an important role in the new normal that many of us expect to be more digital. Recent work at OECD on a digital trade intervention inventory has shown that there are a lot of commonalities across the regulations that are placed at national levels on digital trade. Many of those regulations refer to already existing international instruments. If there are many commonalities across domestic regulations in digital trade, then it should be impossible to overcome the differences that still exist and to make the different regulatory schemes speak more to each other in order to facilitate digital trade even further.

Last but not least, let us discuss the example of an initiative that can contribute to facilitating trade-in services: the joint statement initiative on domestic services regulation at the WTO. Research conducted has shown that if countries would meet the kind of regulations and the kind of levels of liberalisation that are being discussed under the joint statement initiative, and if countries, for instance in the APEC region would go to those levels of services, liberalization and transparency would increase. If they would do this, the cost of services trade could be reduced by around seven per cent. Reaching that kind of liberalization of services trade and reduction of the cost for services trade would be important not only for the APEC region, but also for the world. It is necessary for services trade to flourish and to contribute to a vigorous recovery, that we would expect to experience in the coming years.

Finally, the nature of state sovereignty has been significantly altered by the World Trade Organization and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). Authority of states to manage their economies, safeguard national interests, and give priority to sustainable development and public health has been curtailed by WTO and TRIPS, which has established a structure of international trade regulations and intellectual property safeguards. These accords have reduced national sovereignty and limited the ability of governments to make laws and regulations, even as they have facilitated international trade and the integration of economies. States have to walk a tightrope between upholding their sovereignty and complying with international responsibilities as they negotiate the challenges of globalization. The borders of state sovereignty were subsequently redefined by the WTO and TRIPS, highlighting the necessity for countries to stand up for their national interests and negotiate adaptable accords that put their own welfare and development first.