WTO and Its Impact on Indian Economy

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Abstract

Created in 1995, the World Trade Organization (WTO) is an international institution that oversees the global trade rules among nations. It superseded the 1947 General Agreement on Tariffs and Trade (GATT) created in the wake of World War II. It is based on agreements signed by the majority of the world’s trading nations. The main function of the organization is to help producers of goods and services, exporters, and importers protect and manage their businesses.

The WTO has 153 members and about a two-thirds of them are developing countries. The special and differential treatment provisions allow the developed countries to treat the developing countries more favourably than the other WTO members. Developing countries like India face some challenges in coping up with the trade regime. They are: fulfilling commitments under WTO agreements which require legal and administrative reforms; capacity-building to articulate concerns and trade-offs during the negotiations; adaptation and mitigation policies to contain the adverse effects of globalisation; and the shrinking of policy space because of the global commitments. They are conscious that they did not do the preparatory work at the negotiations stage. Further, they perceive that the globalisation process is skewed (greater mobility of goods and capital and lesser mobility of labour) and that most of the S&DT provisions are not mandatory.

Keywords: TRIPS, GATT, DSU, TPRD, DSB, SSM.

The World Trade Organization (WTO) is the only global international organization dealing with the rules of trade between nations. At its heart are the WTO agreements, negotiated and signed by the bulk of the world’s trading nations and ratified in their parliaments. It is essentially an alternative dispute or mediation entity that upholds the international rules of trade among nations. The organization provides a platform that allows member governments to negotiate and resolve trade issues with other members. The WTO’s main focus is to provide open lines of communication concerning trade between its members.

Goals of WTO

- The WTO’s global system lowers trade barriers through negotiation and operates under the principle of non-discrimination. The result is reduced costs of production (because imports used in production are cheaper), reduced prices of finished goods and services, more choice and ultimately a lower cost of living. The WTO’s system deals with these in two ways. One is by talking: countries negotiate rules that are acceptable to all. The other is by settling disputes about whether countries are playing by those agreed rules. The WTO can stimulate economic growth and employment. The WTO can cut the cost of doing business internationally. The WTO can encourage good governance. Transparency — shared information and knowledge — levels the playing field. Rules reduce arbitrariness and opportunities for corruption.

- The WTO can help countries develop: Underlying the WTO’s trading system is the fact that more open trade can boost economic growth and help countries develop. In that sense, commerce and development are good for each other. In addition, the WTO agreements are full of provisions that take into account the interests of developing countries.

- The WTO can give the weak a stronger voice: Small countries would be weaker without the WTO. Differences in bargaining power are narrowed by agreed rules, consensus decision-making and coalition building. Coalitions give developing countries a stronger voice in negotiations. The resulting agreements mean that all countries, including the most powerful, have to play by the rules. The rule of law replaces might-makes-right.

- The WTO can support the environment and health: The trade is nothing more than a means to an end. The WTO agreements try to make trade support the things we really want, including a clean and safe environment, and to prevent governments using these objectives as an excuse for introducing protectionist measures.

- The WTO can contribute to peace and stability: When the world economy is in turmoil, the multilateral trading system can contribute to stability. Trade rules stabilize the world economy by discouraging sharp backward steps in policy and by making policy more predictable. They deter protectionism and increase certainty. They are confidence-builders.

History of WTO

World Trade Organization, as an institution was established in 1995. It replaced General Agreement on Trade and Tariffs (GATT) which was in place since 1946. In pursuance of World War II, western countries came out with their version of development, which is moored in promotion of free trade and homogenization of world economy on western lines. This version claims that development will take place only if there is seamless trade among all the countries and there are minimal tariff and non-tariff barriers. That time along with two Bretton wood institutions – IMF and World Bank, an International Trade Organization (ITO) was conceived. ITO was successfully negotiated and agreed upon by almost all countries. It was supposed to work as a specialized arm of United Nation,
towards promotion of free trade. However, United States along with many other major countries failed to get this treaty ratified in their respective legislatures and hence it became a dead letter. Consequently, GATT became de-facto platform for issues related to international trade. It has to its credit some major successes in reduction of tariffs (custom duty) among the member countries. Measures against dumping of goods like imposition of Anti-Dumping Duty in victim countries, had also been agreed upon. It was signed in Geneva by only 23 countries and by 1986, when Uruguay round started (which was concluded in 1995 and led to creation of WTO in Marrakesh, Morocco), 123 countries were already its member. India has been member of GATT since 1948; hence it was party to Uruguay Round and a founding member of WTO. China joined WTO only in 2001 and Russia had to wait till 2012.

Governance

Ministerial Conference
The topmost decision-making body of the WTO is the Ministerial Conference, which usually meets every two years. It brings together all members of the WTO, all of which are countries or customs unions. The Ministerial Conference can take decisions on all matters under any of the multilateral trade agreements.

General Council
The General Council is the WTO’s highest-level decision-making body located in Geneva, meeting regularly to carry out the functions of the WTO. It has representatives (usually ambassadors or equivalent) from all member governments and has the authority to act on behalf of the ministerial conference which only meets about every two years. The General Council also meets, under different rules, as The General Council, the Trade Policy Review Body, and the Dispute Settlement Body (DSB). Three councils, each handling a different broad areas of trade, report to the General Council: The Council for Trade in Goods (Goods Council), The Council for Trade in Services (Services Council), The Council for Trade-Related Aspects of Intellectual Property Rights (TRIPS Council). As their names indicate, the three are responsible for the workings of the WTO agreements dealing with their respective areas of trade. Again they consist of all WTO members.

The Trade Policy Review Body (TPRB)
The WTO General Council meets as the TPRB to undertake trade policy reviews of Members under the TPRM and to consider the Director-General’s regular reports on trade policy development. The TPRB is thus open to all WTO Members.

Dispute Settlement Body (DSU)
The General Council convenes as the Dispute Settlement Body (DSB) to deal with disputes between WTO members. Such disputes may arise with respect to any agreement contained in the Final Act of the Uruguay Round that is subject to the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU). The DSB has authority to: establish dispute settlement panels, refer matters to arbitration, adopt panel, maintain surveillance over the implementation of recommendations and rulings contained in such reports, and authorize suspension of concessions in the event of non-compliance with those recommendations and rulings.

Appellate Body
The Appellate Body was established in 1995 under Article 17 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU). The DSB shall appoint persons to serve on the Appellate Body for a four-year term. It is a standing body of seven persons that hears appeals from reports issued by panels in disputes brought by WTO Members. The Appellate Body can uphold, modify or reverse the legal findings and conclusions of a panel, and Appellate Body Reports, once adopted by the Dispute Settlement Body (DSB), must be accepted by the parties to the dispute. The Appellate Body has its seat in Geneva, Switzerland.

The Council for Trade in Goods (Goods Council):
The General Agreement on Tariffs and Trade (GATT) covers international trade in goods. The workings of the GATT agreement are the responsibility of the Council for Trade in Goods (Goods Council) which is made up of representatives from all WTO member countries.

The Goods Council has following committees dealing with specific subjects:

The Council for Trade in Services (Services Council):
It operates under the guidance of the General Council and is responsible for facilitating the operation of the General Agreement on Trade in Services (GATS) and for furthering its objectives. It is open to all WTO members, and can create subsidiary bodies as required. Presently, the Council oversees the work of four such subsidiary bodies:

The Committee on Trade in Financial Services: It carries out discussions on matters relating to trade in financial services and formulate proposals or recommendations for consideration by the Council.

The Committee on Specific Commitments: it oversees the Working Party on Domestic Regulation, and the Working Party on GATS Rules

The Council for Trade-Related Aspects of Intellectual Property Rights (TRIPS Council): It monitors implementation of the Agreement on Trade-Related Aspects of Intellectual Property Rights (the TRIPS Agreement). It provides a forum in which WTO Members can consult on intellectual property matters, and carries out the specific responsibilities assigned to the Council in the TRIPS Agreement.

WTO Ministerial Conferences (MC)

Main Ministerial Meets
Singapore ministerial meet and ‘Singapore issues’ – 1996
The ‘Singapore issues’ term refers to areas of trade and investment; trade and competition policy; trade facilitation; and transparency in government procurement.
These four issues have collectively come to be known as the Singapore issues in the context of the WTO, because it was at the first ministerial conference of the WTO in Singapore in 1996 that they were first brought up as possible areas on which the multilateral body could initiate negotiations.
As it can be inferred from these four areas, only ‘trade facilitation’ is directly related to trade, while other three are only indirectly related (if not unrelated) to trade. Developed countries wanted to include all these areas in negotiations. In contrast, developing countries wanted implementation of outcomes of Uruguay round. Hence, from very beginning of WTO deliberations, contradictions of interests of both developed and developing world came to surface, which continues till date.
Further, The USA and Norway were behind the push for bringing in labour standards in the WTO, but developing countries were able to get the meeting to agree that the International Labour Organisation is the competent body to do such work.

Doha Ministerial meet and ‘Doha Development Agenda’ – 2001
For the next ministerial (Seattle) meet developed countries tried to push a lopsided agreement on Singapore Issues down the throat of developing countries, but latter successfully resisted. All this while, allegations were hurled on developed countries for ignoring developmental challenges of developing and least developed countries. This made developed countries to agree to a ‘developmental agenda’ and new round of negotiations – Doha Development Round begun at 4th ministerial meet in Doha. It is said that this was agreed to by developed countries in expectation that contents of ‘Singapore Issues’ will be agreed by dissidents.

Main issues of Doha Development Round
a. Agriculture – First proposal in Qatar, in 2001, called for the end agreement to commit to substantial improvements in market access; reductions (and ultimate elimination) of all forms of export subsidies (including under Green and blue box); and substantial reductions in trade-distorting support.

The United States is being asked by the EU and the developing countries, led by Brazil and India, to make a more generous offer for reducing trade-distorting domestic support for agriculture. The United States is insisting that the EU and the developing countries agree to make more substantial reductions in tariffs and to limit the number of import-sensitive and ‘special products’ (aao) that would be exempt from cuts. Import-sensitive products are of most concern to developed countries like the European Union, while developing countries are concerned with special products – those exempt from both tariff cuts and subsidy reductions because of development, food security, or livelihood considerations. Brazil has emphasized reductions in trade-distorting domestic subsidies, especially by the United States (some of which it successfully challenged in the WTO U.S.-Brazil cotton dispute), while India has insisted on a large number of special products that would not be exposed to wider market opening.

b. Access to patented medicines – A major topic at the Doha ministerial regarded the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). The issue involves the balance of interests between the pharmaceutical companies in developed countries that hold patents on medicines and the public health needs in developing countries. Before the Doha meeting, the United States claimed that the current language in TRIPS was flexible enough to address health emergencies, but other countries insisted on new language.
On 30 August 2003, WTO members reached agreement on the TRIPS and medicines issue. Voting in the General Council, member governments approved a decision that offered an interim waiver under the TRIPS Agreement allowing a member country to export pharmaceutical products made under compulsory licenses to least-developed and certain other members. It also allows members to not to allow evergreening of Patents.

C. Special and differential treatment (SDT) – SDT as a principle has been there since 1970’s in multilateral negotiations under GATT. In Doha round, members agreed that Developing and Least developed countries will continue to be eligible for a favorable treatment. However, of late developed countries are dragging their feet here too. They now claim that big developing countries like India, China, Brazil and South Africa are unreasonable in their demand and only least developed countries are rightful claimant of differential treatment. Here it is inconceivable that poor countries like India are to be treated at par with western developed world. At the December 2005 Hong Kong ministerial, members agreed to five S&D provisions for least developed countries (LDCs), including the duty-free and quota-free access.

Nairobi Ministerial Meet – 2015: Nairobi meet was a huge disappointment for the developing and under developed world. Here, U.S. trade Representative unabashedly called Doha Development Agenda a dead, outdated and undesirable course. West is desperately trying to set aside development aspect of negotiations, to which it had agreed in Doha. Its focus is now on Trade Facilitation Agreement which was agreed to in Bali meet. Further, they are trying to introduce new issues (including some Singapore issues) such as Government Procurement, E-commerce, Investment, Competition policy. To this India and other developing countries took strong objection.
In the run-up to the Nairobi meeting, a large majority of developing countries led by India, China, South Africa, Indonesia, Ecuador, and Venezuela prepared the ground to ensure that the Doha Round of negotiations are not closed by the two trans-Atlantic trade elephants. They also tabled detailed proposals for a permanent solution for public stockholding programmes for food security and a special safeguard mechanism (SSM) to protect millions of resource-poor and low-income farmers from the import surges from industrialized countries.
Again, the two proposals were actively opposed by the US, which led a sustained campaign to ensure that there was neither an outcome on continuing DDA negotiations nor a deal on SSM and public stockholdings for food security.
WTO Contribution to the World

The WTO is one of the three international organisations (the other two are the International Monetary Fund (IMF) and the World Bank Group) which by and large formulate and co-ordinate world economic policy. It is playing a crucial role in the international trade, global economics, and the political and legal issues arising in the international business because of globalization. It has emerged as the world's most powerful institution for reducing trade related barriers between the countries and opening new markets.

It cooperates with the IMF and World Bank in terms of making cohesiveness in making global economic policies. Through resolving trade related disputes, the WTO has got the potential to maintain world peace and bilateral relations between its member countries thorough following negotiations, consultations and mediations.

Global trade rules: Decisions in the WTO are typically taken by consensus among all members and they are ratified by members’parliaments. This leads to a more prosperous, peaceful and accountable economic world.

Trade negotiations: The GATT and the WTO have helped to create a strong and prosperous trading system contributing to unprecedented growth. The system was developed through a series of trade negotiations, or rounds, held under the GATT. The 1986-94 round – the Uruguay Round – led to the WTO’s creation. In 1997, an agreement was reached on telecommunications services, with 69 governments agreeing to wide-ranging liberalization measures that went beyond those agreed in the Uruguay Round. Also in 1997, 40 governments successfully concluded negotiations for tariff-free trade in information technology products, and 70 members concluded a financial services deal covering more than 95% of trade in banking, insurance, securities and financial information.

In 2000, new talks started on agriculture and services. These were incorporated into a broader work programme, the Doha Development Agenda, launched at the fourth WTO Ministerial Conference (MC4) in Doha, Qatar, in November 2001. At the 9th Ministerial Conference (MC9) in Bali in 2013, WTO members struck the Agreement on Trade Facilitation, which aims to reduce border delays by slashing red tape.

The expansion of the Information Technology Agreement – concluded at the 10th Ministerial Conference (MC10) in Nairobi in 2015 – eliminated tariffs on an additional 200 IT products valued at over US$ 1.3 trillion per year. Most recently, an amendment to the WTO’s Intellectual Property Agreement entered into force in 2017, easing poor economies’ access to affordable medicines. The same year saw the Trade Facilitation Agreement enter into force.

WTO and India

Is WTO a friend or foe of India?

India is one of the prominent members of WTO and is largely seen as leader of developing and under developed world. At WTO, decisions are taken by consensus. So there is bleak possibility that anything severely unfavorable to India’s interest can be unilaterally imposed. India stands to gain from different issues being negotiated in the forum provided it engages with different interest groups constructively, while safeguarding its developmental concerns. In absence of such a body we stand to lose a platform through which we can mobilize opinion of likeminded countries against selfish designs of west. Thanks to vast resources of developed countries they can easily win smaller countries to their side. WTO provides a forum for such developing countries to unite and pressurize developed countries to make trade sweeter for poor countries. Accordingly, India remains committed to various developmental issues such as Doha Development Agenda, Special Safeguard Mechanism, Permanent solution of issue of public stock holding etc. Apart from this, Dispute Resolution Mechanism of WTO is highly efficient. Chronological list of cases in WTO can be accessed here. Countries drag their trading partner to this body when action of one country is perceived to be unfair and violative of any WTO agreement, by other country.

Why India stayed out of Information Technology Agreement-II in Nairobi?

As many as 53 WTO members agreed in Nairobi to a seven-year time frame to scrap all tariffs on 201 IT products that account for an annual trade of $1.3 trillion. Such a pact is touted to drive down prices of items ranging from video cameras to semi-conductors. However, India had been opposing such an agreement on fears that the deal would benefit only those countries (notably the US, China, Japan and Korea) that have a robust manufacturing base in these products, and not India. This Information Technology Agreement is being called ITA-II. Original ITA was signed in 1996. New ITA aims at expanding lists of items covered and total elimination of custom tariffs in 7 year framework. Since 1996 many new items have creeped in electronics industry which remains outside the ambit of ITA. Current dismal state of Indian electronic industry is often attributed to ITA of 1996. This compelled India to keep certain electronic items tariff free which gave us infamous ‘inverted duty structure’. Here, domestic products are charged to higher excise duty than custom duty on imports. This put Indian manufacturers at serious disadvantage in comparison to foreign vendors. It is expected that by 2020 India will consume electronic items worth $ 400 billion. As per current situation, out of this it is likely to import at least goods worth $300 billion. Electronic hardware manufacturing is one of the main components of ‘Make in India’ and ‘Digital India’ program. Hence India stayed away from ITA-II.
How India’s stand differs when it comes to services?

From India’s point of view, services present a different picture from agriculture and industrial tariffs. As an emerging global power in IT and business services, the country is, in fact, a demander in the WTO talks on services as it seeks more liberal commitments on the part of its trading partners for cross-border supply of services, including the movement of ‘natural persons’ (human beings) to developed countries, or what is termed as Mode 4 for the supply of services. With respect to Mode 2, which requires consumption of services abroad, India has an offensive interest. In sharp contrast, the interest of the EU and the US is more in Mode 3 of supply, which requires the establishment of a commercial presence in developing countries. Accordingly, requests for more liberal policies on foreign direct investment in sectors like insurance have been received. These developed countries are lukewarm to demands for a more liberal regime for the movement of natural persons. Unlike many developing countries, India has taken offensive positions in this area as it has export interests in information technology (Mode 1). The country also seeks greater access to the EU and the US in terms of the movement of natural persons, or what is termed as Mode 4 in cross-border supply of services. Lack of movement in Mode 4 due to opposition by the US and the EU may affect India’s ability to offer much in other modes of services. India would also like to see issues like economic needs test, portability of health insurance and other such barriers in services removed. As far as delivery of services through commercial presence (Mode 3) is concerned, there is an increasing trend of Indian companies acquiring assets and opening businesses in foreign markets in sectors such as pharmaceuticals, IT, non-conventional energy, etc. This is further evidenced by the increase in Outward Foreign Direct Investment. India may, therefore, have some interest in seeking liberalisation in Mode 3, although it may need to strike a balance with domestic sensitivities in financial services. Mutual recognition of degrees, allowing portability of medical insurance, reducing barriers to movement of professionals, etc, are some of the areas of interest to India.

An important issue relating to the delivery of services and liberalisation is domestic regulatory reforms. Appropriate domestic regulations are necessary to prevent market failure as well as to address issues like quality control, accreditation and equivalence, effective registration and certification systems, revenue sharing, etc, for protecting and informing consumers. In addition, regulatory frameworks can also advance transparency. Any market access commitments that India might make during the ongoing negotiations must be preceded by an effective regulatory framework. The hiatus in the negotiations could be utilized for putting into place appropriate regulatory regimes in different service sectors. Some experts are of the view that under the Uruguay Round commitments, developed countries already have a liberal trade regime in Mode 1 (which covers Business Processing Outsourcing or BPOs) with regard to some of the service sectors of interest to India. Further research needs to done to assess the extent of autonomous liberalisation undertaken by developed countries, which can be locked in during the negotiations, and consequent gains that can accrue to India. Further, even in the absence of additional liberalisation, India’s service exports would continue to grow in view of its cost advantage and demography. India could also explore the possibility of finalizing mutual recognition agreements with the main importers of services, so that differences in national regulatory systems do not act as barriers to its exports.

Should India provide market access in Higher Education?

As we have read in General Agreement on Trade in Services, Mode 3 classification covers services provided by a foreign commercial establishment through physical presence in relevant country. Accordingly, western countries are pushing hard to get unrestricted access to Indian education sector under this mode and again India is defensive. India has already made some offers on this front to WTO in run up to Nairobi Meet. Topics are still under negotiation and discussion. Coverage of higher education in GATS will encourage treatment of education as a tradeable commodity. It is possible that any agreement will curb power of Indian government to provide subsidy and support to the sector. Further, it is likely to affect reservation policy of India. Further, foreign universities will consume scarce educational human resource available in India, leaving less competitive domestic and public institution starved of good teachers. It is also feared that this will speed up process brain drain from India as foreign universities are likely to design courses under ambit of their parent institution. On other hand, India is in desperate need to create more and better quality educational institutions. Gross enrolment in higher education is just 12% while government aims to increase it to 30%. For all this, it is imperative that more investment is attracted in the sector. Overtime due to competition, students will get better educational alternatives and at cheaper costs. However, for this to happen, government has to draw certain redlines while negotiating on the issues of support to public institutions, scholarship to weaker sections and on its reservation policy.

WTO Concerns

Problems facing the WTO are: Dispute settlement cases continue to be filed for the time being and are being litigated. A civil dialogue over trade issues persists. Technical functioning is now wholly inadequate to meet the major challenges to the strategic relevance of the WTO in the 21st century. In critical areas, the organisation has neither responded, nor adapted, nor delivered. Dimensions of its structures and functions are fragile, creaking, and failing in parts. Functioning of state enterprises engaging in commercial activities is interfering with and distorting the operative assumption of the General Agreement on Tariffs and Trade (GATT)/WTO that international trade is to be conducted, principally, by private sector operators in response to conditions of supply and demand through price in a market economy. Many WTO members bear responsibility for the use of trade-distorting domestic subsidies. Agricultural and industrial subsidies have caused blockages in the system and prompted protectionist reactions in a number of WTO members. Blockage and deadlock in the Appellate Body stage of the WTO dispute settlement system triggered the present crisis. The WTO lost the critical balance between the organisation as an institution established to support, consolidate, and bind economic reform to counter damaging protectionism, on the one hand, and the organisation as an institution for litigation-based dispute settlement, on the other hand. For years now, the multilateral system for the settlement of trade dispute has been under intense scrutiny and constant criticism. The U.S. has systematically blocked the appointment of new Appellate Body members (“judges”) and de facto impeded the work of the WTO appeal mechanism.
What needs to be done

A vibrant WTO cannot accommodate conflicting economic models of market versus state. All WTO members will have to accept the operative assumption of a rules-based order steered by a market economy, the private sector, and competition. Launch negotiations to address the intertwined issues of agricultural subsidies and market access, while recognising that food security concerns will not disappear. A credible trading system requires a dispute settlement system that is accepted by all. Launch serious negotiations to restore the balance, and we must do so in an open-ended plurilateral manner that cannot be blocked by those who do not want to move ahead. GATT/WTO rules in a number of areas are outdated. New rules are required to keep pace with changes in the market and technology. Rules and disciplines on topics ranging from trade-distorting industrial subsidies to digital trade require updates.

WTO Future

Since the WTO is consensus-based, reaching an agreement on reforms among all 164 members is extremely difficult. One possibility moving forward could be a plurilateral agreement with a group of like-minded countries on a new set of rules that serve as an addendum (supplement) to the broader WTO.

A reformed WTO will have to be constructed on the foundation of liberal multilateralism, resting on open, non-discriminatory plurilateral pillars, an improved Appellate Body, explicit accommodation of regional trade agreements, and appropriate safety valves for rules-based sovereign action. A reaffirmed commitment to the rules-based liberal market order with a development dimension must be the foundational starting point.

Conclusion

India has to continue its effort to prevent issues of developmental importance to be side-lined. Until this is done WTO cannot impinge upon sovereignty of India. India has already marked red line in sectors such as agriculture by making it clear than there is no scope of compromise on its positions. West has relentlessly tried to project India as rigid and uncompromising negotiator. However, these attributes are better suited to U.S. and other developed countries. They have been backtracking on various commitments under Doha Development Round and desperately trying to bring in new issues including Singapore issues. These issues are prejudicial to interests of majority of countries and vast majority of population. Consequently, majority of countries stand with India after failure of every meet. India needs to upscale its diplomatic capability. In recent Nairobi meet, it was seen that while developed countries spoke in unison, there was no such unity in developing countries. Brazil, a prominent member of WTO, has already broken away from G-20/33 group and has aligned itself close to position held by developed countries; thanks to its globally competitive agricultural sector. India made a serious effort last year at India- Africa summit to arrive at common agenda for WTO and was largely successful. However, there needs to be larger combined effort in bringing on the common platform of developing nations in all continents. U.S. has been already doing it for several years and that’s partly why it remains most assertive and subtle power in any negotiation.

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