

The WTO Doha Development Round

From Doha in 2001 to Nur Sultan



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Published by:



CUTS INTERNATIONAL, GENEVA

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1202 Geneva, Switzerland
www.cuts-geneva.org

Also at: Jaipur, New Delhi, Chittorgarh, Kolkata, Hanoi,
Nairobi, Lusaka, Accra, Washington DC

This paper was undertaken by Felix Maonera. It is published under CUTS International Geneva's project "Keeping Pace with Trade Developments", undertaken with funding support from the Ministry of Foreign Affairs, Sweden.

Citation: MAONERA, F. (2019). *The WTO Doha Development Round: From Doha in 2001 to Nur Sultan*. Geneva: CUTS International, Geneva.

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Abbreviations

AB	Appellate Body
DDA	Doha Development Agenda
DSU	Dispute Settlement Understanding
IUU	Illegal, Unreported and Unregulated
MSMEs	Micro, Small and Medium-size Enterprises
NAMA	Non-agricultural Market Access
S&D	Special and Differential Treatment
SDG	United Nations Sustainable Development Goal
SVEs	Small and Vulnerable Economies
WTO	World Trade Organization

Executive Summary

The World Trade Organisation Doha Work Programme adopted at the 4th WTO Ministerial Conference in November 2001 captured Members' commitment to place the needs and interests of developing countries at the heart of the work programme to ensure that developing countries secure a share in the growth of world trade. However, almost twenty years on, agreement cannot be found in the Work Programme negotiations, as the focus has now shifted from issues of interest to developing countries to other issues, including so-called 'new issues', arguably of little relevance to the development of developing countries.

The negotiations are in a state of impasse. Several reasons explain this situation, and include the lack of political will on the part of some Members to find the needed solutions. The current large number of WTO Members makes it difficult to find solutions that fit each's differing levels of development, and differing levels of interest. The WTO approach of adopting decisions by consensus is also a contributing fact, as is disagreement on the issue of special and differential treatment for developing countries. Although Members continue to conduct negotiations in different formats, it is clear that no amount of technical work will be able to unlock the impasse.

Against this background, groups of a mix of developed and developing country WTO Members announced at the 2017 11th WTO Ministerial Conference joint initiatives in the areas of electronic commerce, investment facilitation and micro, small and medium size enterprises. A large number of WTO Members are now occupied with these joint initiatives, which are likely to gain traction amongst the rest of the membership.

The 12th WTO Ministerial Conference will be held in about six months, with very little expectation of positive outcomes. With little movement on the DDA Work Programme, the issues taken up in the joint initiatives are likely to fill the vacuum in the run-up to, and at, MC12.

The upcoming 12th Ministerial Conference seems the right opportunity, almost twenty years after Doha, for Members to accept that they have failed to reach agreement on the Doha Work Programme and to consider committing themselves to reviewing each of the remaining issues on the agenda with a view to determining which ones could be retired, and which ones hold hope for reaching agreement.

SECTION 1

Background

The World Trade Organisation (WTO) Doha Development Agenda (DDA) was launched in Doha, Qatar, in November 2001 amid a lot of optimism and promise of good things to be achieved. Fifty-two paragraphs long, the Doha Ministerial Declaration was to be the longest ministerial declaration WTO Members would ever adopt. It set out a broad work programme which incorporated both an expanded negotiating agenda and other important decisions that Members believed would address the challenges facing the multilateral trading system. Specific mandates were adopted on some issues with deadlines, at times ambitious, for the completion of negotiations.

WTO Members acknowledged in the Doha Declaration that international trade can play a major role in the promotion of economic development and the alleviation of poverty, and recognized the need for all peoples to benefit from the increased opportunities and welfare gains that the multilateral trading system can generate, taking into account the fact that the majority of WTO Members were developing countries.¹ Members committed to place the needs and interests of developing countries at the heart of the work programme, and to continue to make positive efforts to ensure that developing countries, and especially the least-developed among them, secure a share in the growth of world trade commensurate with the needs of their economic development.² Members also

recognized the particular vulnerability of the least-developed countries and the special structural difficulties they face in the global economy and committed to addressing the marginalization of least-developed countries in international trade and to improving their effective participation in the multilateral trading system.³ Enhanced market access, balanced rules, and well targeted, sustainably financed technical assistance and capacity-building programmes, it was further acknowledged, have important roles to play.⁴ It was befitting, against this backdrop that the WTO Members decided to name the work programme the ‘Doha Development Agenda.’ At the same time the WTO accession procedure for China, a large developing country and currently the world’s second largest economy, was completed.

In the run up to Doha, and even at Doha, developing countries expressed their reluctance to join in the launch of a new Round of negotiations. But it would probably have been incongruent on their part to decline to join in the launch of a Round whose work programme came with a ‘development’ tag attached to it. Also, the clear commitment by all the WTO membership to place the needs and interests of developing countries at the heart of the work programme must have been encouraging.

Most developing countries were still grappling with implementing some of the Uruguay

¹ Paragraph 2, Doha Ministerial Declaration

² Paragraph 2, Doha Ministerial Declaration

³ Paragraph 3, Doha Ministerial Declaration

⁴ Paragraph 2, Doha Ministerial Declaration

Round outcomes and had serious implementation concerns. These concerns were taken into account with Members agreeing to attach the utmost importance to the implementation-related issues and concerns raised, while expressing a determination to find appropriate solutions to them.⁵ Members then adopted a Decision on Implementation-Related Issues and Concerns⁶ in which they agreed that outstanding implementation issues were to be an integral part of the work programme. As a way forward, where a specific negotiating mandate was provided, the relevant implementation issues would be addressed under that mandate, while the other outstanding implementation issues would be addressed as a matter of priority by the relevant WTO bodies, which were obliged to report to the Trade Negotiations Committee by the end of 2002 for appropriate action.⁷ Members also agreed that all special and differential treatment provisions in favour of developing and least-developed countries were to be reviewed with a view to strengthening them and making them more precise, effective and operational.⁸ The packaging of the Round was, hence, attractive.

But one cannot rule out that political pressure was applied on some developing countries to get them to go along with the launch of a new Round. Speaking⁹ about a year before the Doha Ministerial Conference, after the failure of the 1999 Seattle Ministerial Conference, the then WTO Director General Mike Moore's statement is revealing;

"I have spent a long time mulling over why we failed to launch a new round in Seattle.

Superficially, the answer is obvious: the membership couldn't agree... There wasn't enough flexibility from all sides... The political will was lacking. Perhaps the surest way of encouraging the launch of a new round is political pressure from below. In practice, that means business lobbying and coalition building.

"My conclusion is that launching a new round, while by no means impossible, is certainly going to be difficult. It will not happen by default. It will only happen if sustained pressure on governments produces the political will needed to adopt more flexible positions in sensitive areas. Narrow interests must be examined in the context of pursuing the greater good."

The current state of the negotiations does not reflect the noble Doha intentions as the focus has shifted from issues of interest to developing countries to a push by developed countries for greater access to the markets of developing countries. Despite the fact that at Doha Members committed to place the needs and interests of developing countries at the heart of the work programme, other issues that are arguably of little relevance to the development of developing countries have now come to the fore. The Doha development mandates have largely been ignored.

Developing countries have called dishonest the current lack of interest in issues of relevance to them. They have pointed out that the measure of success of a Round dubbed a 'development' Round, after more than seventy years of a tilted multilateral trading history,

⁵ Paragraph 12, Doha Ministerial Declaration

⁶ In Document WT/MIN (01)/17

⁷ Paragraph 12, Doha Ministerial Declaration

⁸ Paragraph 44, Doha Ministerial Declaration

⁹ WTO NEWS: SPEECHES - DG MIKE MOORE, Jackson Hole, United States, 25 August 2000

Reflections on the global trading system, Symposium on Global Economic Integration available at https://www.wto.org/english/news_e/spmm_e/spmm35_e.htm

should be the amount of development outcomes.¹⁰

Since Doha, WTO Ministerial Conferences have been held at Cancun, Hong Kong, Geneva, Bali, Nairobi and Buenos Aires, with ministerial conference number twelve set to be held in Nur Sultan, Kazakhstan, in June 2020. Previous ministerial conferences have witnessed very few outcomes from the packed Doha Work Programme. The story has been one of missed deadlines, renewed, and missed again.

At the 10th WTO Ministerial Conference in Nairobi in 2015, developed countries made it quite clear that in their view, the Doha Work Programme was not doable. The Ministerial Declaration recognized¹¹ that while many Members (*read that to mean developing countries*) reaffirm the Doha Development Agenda, and the Declarations and Decisions adopted at Doha and at the Ministerial Conferences held since then, and reaffirm their full commitment to conclude the DDA on that basis, other Members (*read that to mean developed countries*) do not reaffirm the Doha mandates, as they believe new approaches are necessary to achieve meaningful outcomes in multilateral negotiations. This was the first time that a WTO Ministerial Declaration had recorded Members' divergences on an issue. The usual practice had been that where members could not find agreement on an issue, that issue would not find its way into the declaration. In a way, developing countries were complicit in the abandonment of the Doha Work Programme, and the mandates, by agreeing to this formulation.

Why has there been no progress on an agenda put together with the commitment of all WTO Members, and which promised so much for developing countries? The current situation of deadlock could certainly not have been foreseen in 2001 as WTO Members rode that development train from Doha, rolling on the wheels of commitment and powered by the steam of promise and optimism. Perhaps a closer look at the current state of play in some of the areas under negotiation could provide some answers.

¹⁰ TWN Info Service on WTO and Trade Issues (May11/08) 18 May 2011 Third World Network, *Members voice concerns on Doha stalemate, urge dialogue*

Published in SUNS #7141 dated 3 May 2011 available at <https://www.twn.my/title2/wto.info/2011/twninfo110508.htm>
¹¹ In paragraph 30

SECTION 2

Current State of Play

Members continue to meet in regular and special sessions to negotiate those issues that remain active on the Doha Work Programme, even in the face of lack of movement.

2.1 Agriculture

The objective of the WTO Agreement on Agriculture is to establish a fair and market-oriented agricultural trading system through the reform of the relevant rules and specific commitments on support and protection in order to correct and prevent restrictions and distortions in world agricultural markets.¹² At Doha Members committed themselves to comprehensive negotiations aimed at substantial improvements in agricultural market access; reductions of, with a view to phasing out, all forms of export subsidies; and substantial reductions in trade-distorting domestic support.¹³ Agriculture, an issue of great importance to developing countries, remains part of the unfinished business of the negotiations. The list of issues under agricultural negotiations includes domestic support, public stockholding for food security purposes, market access, and a special safeguard mechanism, among others. Special and differential treatment for developing countries was to be an integral part of all the elements of the negotiations.

Domestic support refers to financial and other support given by governments to their local

farmers. All domestic support in favour of agricultural producers is subject to WTO rules.¹⁴ The negotiations seek to find a solution to ensure that subsidies provided to farmers do not distort trade in agricultural products, by reducing the amounts of support that are allowed. This involves dealing with intricate details relating to which members of the WTO should make the cuts and which should be excluded, as well as which developing country members should benefit from special and differential treatment.

Closely linked, is the issue of public stockholding based on a proposal by a group of developing countries¹⁵ to shield their public stockholding programmes for food security purposes against possible challenges in case their agreed limits for trade-distorting domestic support were breached. The stockholding programmes are considered to distort trade when they involve purchases from farmers at prices fixed by governments, known as 'supported' or 'administered' prices. Some developing countries fear they could, through these programmes, breach the limits they have agreed to on trade-distorting domestic support.¹⁶

Many developing countries are in support of this proposal believing that this would cushion their populations in the event of food shortages, especially taking into account the adverse impact of climate change. They would want agreement to be found covering

¹² Preamble, Agreement on Agriculture

¹³ Paragraph 13, Doha Ministerial Declaration

¹⁴

https://www.wto.org/english/tratop_e/agric_e/ag_intro03_domestic_e.htm

¹⁵ G33 Group, a coalition of developing countries calling for flexibilities to undertake limited market openings in agriculture

¹⁶

https://www.wto.org/english/tratop_e/agric_e/factsheet_agng_e.htm

both existing and future programmes, but without stringent notification requirements. However, this proposal has met with a push back from mainly developed countries that are not convinced by the need for such a solution, arguing that an existing Decision on public stockholding¹⁷ as well as the existing flexibilities in the Agreement on Agriculture are sufficient instruments that enable countries currently to do what is envisaged in the proposal.

To improve market access for agricultural products, some members would want to see the streamlining of tariff structures, the reduction of tariff peaks and the reduction of the gap between applied and bound tariffs. But those developing countries who still desire to increase and develop their domestic agricultural production are unwilling to agree to the opening up of their markets to foreign competition. However, developing countries do have market access concerns of their own, such as tariff peaks and tariff escalation in developed country markets that seem designed to condemn developing countries to being providers of raw materials only.

Developing countries have been pushing for a special safeguard mechanism to enable them to deal with import surges of certain agricultural products on their markets that pose the risk of depressing local prices. At the same time, some members have expressed the opinion that the very idea of a special safeguard mechanism goes against the

liberalisation of agricultural trade that the WTO stands for.

Linkage¹⁸, (the conditioning of finding agreement on one issue on favourable outcomes in other related issues), has further complicated the negotiations.

2.2 Fisheries subsidies

Subsumed under the mandate of clarifying and improving WTO rules, Members agreed at Doha to clarify and improve WTO disciplines on fisheries subsidies, taking into account the importance of this sector to developing countries.¹⁹ The intention is to prohibit certain forms of subsidies that contribute to overcapacity and over-fishing, in tandem with the objective of the United Nations Sustainable Development Goal (SDG) 14.6 which aims to prohibit certain forms of fisheries subsidies which contribute to overcapacity and overfishing, and eliminate subsidies that contribute to illegal, unreported and unregulated (IUU) fishing by 2020.

The reality is that most developing countries do not have the resources to subsidize their fishing industries, but suffer the negative effects of illegal fishing and overfishing in their waters carried out by foreign subsidized industrial fleets. At the same time, developing countries do have an interest in being allowed to support, by way of subsidies, their small-scale and artisanal fisheries sectors.

¹⁷ Public Stockholding for Food Security Purposes, Ministerial Decision, in document WT/MIN (13)/38 WT/L/913, dated 11 December 2013, and General Council Decision WT/L/939 dated 27 November 2014

¹⁸ A linkage between PSH and Domestic Support outcomes on the basis that the implementation of PSH programmes can affect members' Domestic Support commitments. This request was rejected by the proponents, who argued that the PSH mandate is a stand-alone mandate: A linkage on an outcome on SSM with an

outcome on Market Access, which was strongly rejected by SSM proponents on the basis that adequate safeguards are needed irrespective of additional market openings; A linkage between an outcome on cotton to an overall outcome in domestic support, rejected by cotton producing members as delaying possible early agreement on cotton; A linkage to progress made in market access with progress in NAMA and Services.

¹⁹ Paragraph 28, Doha Ministerial Declaration

The deadline of December 2019 passed without agreement having been found, with Members agreeing to a new deadline of MC12 in June 2020.

2.3 Services

The services negotiations are supposed to be conducted with a view to promoting the economic growth of all trading partners, and the development of developing and least-developed countries.²⁰ Services market access negotiations aim to liberalize market conditions for trade in services through the “request-offer” procedure by which Members send requests directly to each other indicating what improvements they are seeking for their services and service suppliers, and specify in their initial offers how and to what extent they are willing to take binding commitments in response to these requests.²¹

Members also seek to develop disciplines to ensure that measures relating to qualification requirements and procedures, technical standards and licensing requirements and procedures do not constitute unnecessary barriers to trade in services in the negotiations under the WTO Working Party on Domestic Regulations.²²

At the 11th WTO Ministerial Conference some WTO Members issued a joint statement, and have engaged in informal deliberations on domestic regulation text, outside the WTO Working Party on Domestic Regulation.

In 2011 WTO Members adopted a waiver to allow preferential treatment for services and service suppliers from least-developed

countries, and have been working since on taking steps to encourage use of this waiver.²³

2.4 Special and Differential Treatment

While noting concerns expressed regarding the operation of special and differential treatment provisions in addressing specific constraints faced by developing countries, particularly least-developed countries, Members at Doha agreed that all special and differential treatment provisions were to be reviewed with a view to strengthening them and making them more precise, effective and operational.²⁴ They adopted a mandate²⁵ to identify those special and differential treatment provisions that are already mandatory in nature and those that are non-binding in character, to consider the legal and practical implications for developed and developing Members of converting special and differential treatment measures into mandatory provisions, and to identify those that Members consider should be made mandatory. This was a reaffirmation by Members that provisions for special and differential treatment are an integral part of the WTO Agreements.

Special and differential treatment was incorporated into the WTO rules out of a recognition by all Members that the circumstances of poor economic growth of developing and least developed countries requires that they be accorded certain flexibilities to enable them to develop and embark on a path of sustainable development. These flexibilities are in the form of

²⁰ Paragraph 15, Doha Ministerial Declaration

²¹

https://www.wto.org/english/tratop_e/serv_e/market_access_negs_e.htm

²²

https://www.wto.org/english/tratop_e/serv_e/dom_reg_negs_e.htm

²³

https://www.wto.org/english/tratop_e/serv_e/ldc_mods_negs_e.htm

²⁴ Paragraph 44, Doha Ministerial Declaration

²⁵ Paragraph 12.1(l)-(iii) of the Decision on Implementation-Related Concerns, WT/MIN (01)/17, 14 November 2001.

exemptions, longer time periods for implementing agreements and commitments; measures to increase trading opportunities for developing countries and LDCs; provisions requiring all WTO members to safeguard the trade interests of developing countries and LDCs; and support to help these countries build capacity. It has been recorded that the total number of special and differential treatment provisions in WTO agreements is one hundred and twenty-nine.²⁶

In pursuit of the mandates, WTO Members in 2003 identified eighty-eight agreement-specific special and differential treatment provisions which developing countries considered important for the industrialization, structural transformation and diversification of their economies, and for their integration into the multilateral trading system. By the time of the 10th WTO Ministerial Conference in Nairobi in 2015, the number of these provisions remaining under consideration had dropped down to only nine. As Members head for the 12th WTO Ministerial Conference, ten provisions remain in a proposal tabled by a group of developing countries.²⁷

Many developed countries have made a concerted push against the proposals, arguing that there needs to be a differentiation of developing countries upfront on the basis of predefined indicators, on a case-by-case basis in response to specific needs, such that large developing countries or emerging economies do not benefit from the same special and differential treatment accorded to smaller developing countries. The overall objective, developed countries state, is that all members must apply the WTO rules, and not avoid commitments by claiming special and

differential treatment. Developing countries have rejected this approach, and asserted their right to special and differential treatment in the WTO rules and as recognised at Doha, as well as their right to make their own assessments regarding their developing country status. And therein lies the stand-off in the negotiations.

However, differentiation is not a new concept in the WTO. The non-agricultural market access (NAMA) negotiations and the resultant texts not only provided for LDC flexibilities, but provided as well for country-specific and groups-of-countries-specific flexibilities.²⁸ Small vulnerable economies (SVEs) were accorded flexibilities that took into account their specific situations.²⁹ But while differentiation has been done before, it was not done in the manner suggested by some developed countries. In the NAMA texts, Members that felt they had no need of special and differential treatment chose to step aside. Or there was consensus on how to go about differentiating. The TRIPs Amendment adopted in 2005 also adopted that approach.³⁰

2.5 WTO Reform

Developed countries, led by the EU, the US and Canada have laid out an agenda to 'reform' and 'modernise' the work of the WTO arguing that there is a case for improving the way the WTO does its work. Such a reform agenda was not foreseen at Doha.

The content of the reform includes greater transparency and notification requirements under the WTO's monitoring and surveillance

²⁶ WT/COMTD/W/239, dated 12 October 2018.

²⁷ G90

²⁸ Paragraph 7(e) of the NAMA July Package

²⁹ Paragraph 13 of the NAMA July Package

³⁰ General Council Decision of 6 December 2005

function. Those Members who would find themselves in a situation of non-compliance with these notification and transparency requirements would be subjected to punitive measures designed to limit their participation in the work of the WTO. Many developing countries have rejected this approach, and suggested instead that technical assistance should be extended to them to enable them to comply with their notification and transparency obligations. As part of the reform agenda, developed countries have restated their approach to special and differential treatment, and their argument that there be a differentiation of developing countries.

Under the same reform agenda, and citing a number of procedural issues, the US blocked the appointment of WTO Appellate Body members forcing Members to engage since 2018 in discussions aimed at amending some provisions of the Dispute Settlement Understanding, essentially to take care of the concerns raised by the US. If no agreement is found on this issue, which seems likely, then the WTO Appellate Body will not be able to perform its duties from December 2019 for lack of the required number of members. Ironically, many developing countries had under a separate mandate³¹ proposed reforming the WTO dispute settlement system on the basis that they were unable to use the system due to, among other things, the cost involved in pursuing a dispute and their inability to retaliate against bigger economies even if they win in a dispute. Agreement is still to be reached on these proposals. Developing countries have therefore expressed the view that although they are willing to engage in discussions on and prioritise the issues raised by the US in view of the impending paralysation of the WTO dispute settlement

system other issues, such as improving inclusivity, access and compliance with rulings, should also be taken up.

The reform agenda is a sweeping one, but one which is likely to soon be bogged down in the same quagmire in which the rest of the Doha Work Programme negotiations are bogged down.

2.6 Other non-DDA Issues

At the 2017 11th WTO Ministerial Conference groups of a mix of developed and developing country WTO Members announced joint initiatives in the areas of electronic commerce, investment facilitation and micro, small and medium size enterprises (MSMEs). Seventy-one WTO Members announced they would initiate exploratory work towards future WTO negotiations on trade-related aspects of electronic commerce; seventy Members announced they would pursue structured discussions with the aim of developing a multilateral framework on investment facilitation; and eighty-seven Members announced their intention to create an Informal Working Group on MSMEs at the WTO. The proponents made it known that these initiatives were open to all WTO members.³²

The electronic commerce initiative reaffirmed the importance of global electronic commerce and the opportunities it creates for inclusive trade and development, and expressed the intention of advancing electronic commerce work in the WTO in order to better harness these opportunities, while recognizing the particular opportunities and challenges faced by developing countries, especially LDCs, as

³¹ Paragraph 30, Doha Ministerial Declaration. Members agreed to negotiations on improvements and clarifications of the Dispute Settlement Understanding.

³² https://www.wto.org/english/news_e/news17_e/minis_13d_ec17_e.htm, New Initiatives on electronic commerce, investment facilitation and MSMEs

well as by micro, small and medium-sized enterprises, in relation to electronic commerce. This initiative is supposed to undertake exploratory work toward future WTO negotiations on trade-related aspects of electronic commerce.³³ Electronic commerce, or e-commerce, is the production, distribution, marketing, sale or delivery of goods and services by electronic means.³⁴

It should be noted that there is already in place a multilaterally agreed WTO Work Programme on e-commerce in terms of which Members have engaged in discussions on a large number of issues, including the protection of privacy and public morals and prevention of fraud, access to and use of public telecommunication networks and services, and increasing the participation of developing countries and their small and medium-sized enterprises in the e-commerce marketplace.³⁵ Developing countries have highlighted the development dimension of e-commerce as well as the challenges they face in terms of technological developments, and the lack of the necessary basic connectivity infrastructure. However, there is no agreement under the Work Programme to embark on negotiating e-commerce rules.³⁶

At the 11th WTO Ministerial Conference Members agreed to maintain the current practice of not imposing customs duties on electronic transmissions until the next Conference.³⁷ However, some Members are beginning to challenge this moratorium arguing that it deprives them of revenue from

taxes they could levy on these electronic transmissions.

The joint initiative on investment facilitation for development recognizes the dynamic between investment, trade and development and the need for closer international cooperation for facilitating cross-border investment. Members to this initiative called for beginning structured discussions with the aim of developing a multilateral framework on investment facilitation with the aim of improving the transparency and predictability of investment measures; streamline and speed up administrative procedures and requirements; and enhance international cooperation, information sharing, the exchange of best practices, and relations with relevant stakeholders, including dispute prevention.³⁸

The MSMEs initiative created an Informal Working Group whose outline of discussions includes improved access to information for MSMEs; ways to promote a more predictable regulatory environment for MSMEs; reduction of trade costs, including areas such as trade facilitation, shipping and logistics, and procedures and requirements related to origin; promotion, including through cooperation with other multilateral institutions, of better access to trade finance for MSMEs; identification of issues of particular interest to MSMEs that could be addressed in WTO Trade Policy reports; and consideration of how technical assistance and capacity building

³³ In Document WT/MIN (17)/60, dated 13 December 2017

³⁴ https://www.wto.org/english/thewto_e/minist_e/mc11_e/briefing_notes_e/bfecom_e.htm

³⁵ https://www.wto.org/english/thewto_e/minist_e/mc11_e/briefing_notes_e/bfecom_e.htm

³⁶ Relevant discussions are however taking place in key WTO bodies such as the Council for Trade in Goods; Council for Trade in Services; Council for TRIPS; and the Committee on Trade and Development. All under the supervision of the General Council

³⁷ In Document WT/MIN (17)/65 WT/L/1032, dated 18 December 2017

³⁸ In Document WT/MIN (17)/59, dated 13 December 2017

initiatives could take into account the trade needs and challenges of MSMEs.³⁹

Meetings among proponents of these joint initiatives have been taking place at the WTO since 2018 with reported good progress in the discussions and, in some cases, the

negotiations. It is certain that another agenda has been set. Agreement on the issues may be easier to reach among the proponents since these are coalitions of the willing. The aim of the initiatives is to lay the groundwork for possible negotiation of relevant rules at the WTO.

³⁹ In Document WT/MIN (17)/58 13 December 2017

SECTION 3

Why the Impasse?

'The whole process is now political'. This is the most commonly heard explanation for the current deadlock in the negotiations. What is meant by this is that, for example, in the agricultural negotiations, the removal of subsidies by the concerned countries would deny their farmers this benefit, thereby directly adversely affecting that sector of their economies. Any government that does that is unlikely to remain popular among both farmers and consumers in economies in which farming plays a large part. Behind the global issues discussed, behind the proposals, the statistics and the figures, are real people with livelihoods to sustain; the farmers, the service providers, the manufacturers, and many others un-named. So indeed, the process cannot help but be political as issues start to hit closer to home, to the very core of the economies of countries.

The same political considerations anchor the call by developed countries for the differentiation of developing countries as developed countries face stiff competition in some sectors from strong developing country economies. Developing countries that have been cited in that regard are India, Brazil, China and South Korea, among others. Developed countries are not prepared to let these countries enjoy less than the full duties and obligations, as it were. One must note, however, that the correlation between these developing countries' strong performance in some sectors and special and differential treatment has not been clearly shown. In any case, the very design of special and differential treatment was to counter-balance

the many disadvantages developing country economies faced, as opposed to those faced by developed countries.

Clearly, when negotiations in the WTO become as political as they have become, no amount of technical prowess on the part of the negotiators is going to undo the deadlock. Members have shown, however, that if an issue is politically doable, results can be achieved when they reached agreement in 2005 on amending the WTO Agreement on Trade-related Intellectual Property Rights (TRIPs) in the context of making medicines more affordable to poorer populations, and again in 2013 when they reached agreement on the Trade Facilitation Agreement designed to ease doing business across borders.

One thing experience has shown in the negotiations is that in a configuration of 164 WTO Members, with differing levels of development and each with differing levels of interest on issues, it is extremely difficult to find agreement to the satisfaction of all. In other words, in that configuration, the negotiations have hit the ceiling, or the floor, depending from which position one is looking at the situation. One gets the impression that what could be done has been done, and that what remains on the table cannot be done.

The situation is not made easier by the fact that WTO decisions are taken by the consensus of the whole membership. This means that if only one Member objects, then no agreement can be reached. It must be understood though that the Marrakesh Agreement Establishing the World Trade

Organization⁴⁰ allows Members to vote on an issue. Voting has never been resorted to in deciding issues in the history of the WTO negotiations, the consideration being that consensus decision making ensures greater chances of implementation by the Membership of any agreements reached, for the greater good of the multilateral trading system.

The gaps on the issues on which no agreement has been found since Doha are wide as can be seen from the state of play, with no appreciable way of resolving them. What the negotiations have confirmed so far is that market opening is difficult for all Members, even as they seek increased access to the markets of other Members. Naturally, Members will tend to lean towards protectionism when fundamental gaps exist between expectations and the market realities worldwide. The world economic geography has changed over the years with large

developing-country economies such as China, South Korea, Brazil, India and others presenting developed countries with stiff competition in some sectors, leading the developed countries to propose new approaches to special and differential treatment, for example. The current world economy, with its technological advances that are changing the way countries trade, is a far-cry from that of 2001 when the Doha Work Programme was put together.

The next stop in the string of WTO Ministerial Conferences is Nur Sultan, Kazakhstan in June 2020. There isn't much reason for optimism.

⁴⁰ Article IX (1)

SECTION 4

Next Destination: Nur-Sultan

It is about eight months to the 12th WTO Ministerial Conference, a period before a ministerial conference that should usually be characterised by text on the table, and a concerted search for convergence on that text. But except for the fisheries subsidies file, there is no other text on which the promise of an outcome can be built. Over the years, at this stage before a ministerial, Members would be using language of expectation and anticipation such as ‘low hanging fruits’, ‘early harvest’, ‘small packages’ and ‘deliverables.’ No such language can be heard in the WTO corridors at the present moment. Even the usual calls on Members to show ‘political will’ are absent. Expectations for MC12 are low.

It is unlikely that Members can bridge the gaps in the intervening period to reach agreement in the area of agriculture. Perhaps the best that can be expected in this area is agreement to continue with the negotiations. Agreement on fisheries subsidies is supposed to be reached by the set deadline of December 2019 which means that, technically, this is not an issue for MC12. However, indications are that the deadline will not be met, making it likely that negotiations will be bumped into 2020, possibly with eyes on MC12 for an agreement. There is nothing to support any hopes of finding agreement on special and differential treatment now, at MC12, or beyond. The gaps are just too wide.

With practically nothing happening on the DDA Work Programme, the issues taken up in the joint initiatives are likely to fill the vacuum. The large number of WTO Members involved make it likely that these issues will be the main attraction at MC12. The tide is high, and one cannot see how

the other WTO Members not yet party can continue to resist the impetus.

Perhaps MC12 presents Members with an opportunity to look each other in the eye and admit they are unable to find agreement on the issues that remain on the DDA Work Programme. It seems time to squarely face the hard truth, and concede that what could not be done in the past twenty years, just cannot be done. The reasons can be cited, if necessary. Members could consider committing to review each of the remaining issues on the agenda with a view to determining which ones can still be pursued. They might also consider capturing in a declaration their understanding of how in future mandates unable to be fulfilled are to be treated with. The move seen in Nairobi in 2015 where some Members just walked away from agreed mandates cannot be considered the proper way of dealing with given mandates, even those that prove difficult to fulfil.

Perhaps the Doha Agenda was too ambitious. Perhaps some WTO Members did not believe in what they were committing to. Or perhaps the current world economy and the political geography do not support an agenda set almost twenty years ago. The passage of time has certainly not brought Members any closer to agreement. It is unlikely that the passage of more time would change that. But whatever it is Members can congregate around in Nur Sultan it has to be pro-development in the context of the SDGs, and should remain faithful to the original intention of the Doha Work Programme for all peoples to benefit from the increased opportunities and welfare gains that the multilateral trading system can generate, taking

into account the fact that the majority of WTO Members are developing countries.

So next stop, Nur Sultan; final destination, unknown.

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