

Multilateralism at the COVID-19 Pandemic Crossroad

The 12th WTO Ministerial Conference in Focus



Felix Maonera

Multilateralism at the COVID-19 Pandemic Crossroad: the 12th WTO Ministerial Conference in Focus

Authored by:

Felix Maonera

Published by:



CUTS INTERNATIONAL, GENEVA

Rue de Vermont 37-39

1202 Geneva, Switzerland

www.cuts-geneva.org

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

This study was prepared by Felix Maonera and was peer reviewed by Rashid S. Kaukab. Felix Maonera, Head of the OACPS Geneva Office, is a former WTO negotiator. The views expressed in this paper are his own and do not necessarily represent the views of the OACPS Secretariat, or of the OACPS. This study is published under CUTS International Geneva's project "Geneva-MSME Connection: South and Southeast Asia 2021", undertaken with funding support from AustralianAid.

Citation: Maonera, F. (2022). *Multilateralism at the COVID-19 Pandemic Crossroad: the 12th WTO Ministerial Conference in Focus*. Geneva: CUTS International, Geneva.

Disclaimer: The views expressed in this publication represent the opinions of the author, and do not necessarily reflect the views of CUTS or its funders.

Cover Photo: wuestenigel

© 2022. CUTS International, Geneva

The material in this publication may be reproduced in whole or in part and in any form for education or non-profit uses, without special permission from the copyright holders, provided acknowledgment of the source is made. The publishers would appreciate receiving a copy of any publication, which uses this publication as a source. No use of this publication may be made for resale or other commercial purposes without prior written permission of the copyright holders.

Table of Contents

Executive Summary.....	ii
Abbreviations	4
Introduction.....	1
Enter the COVID-19 Pandemic.....	2
All Economic Sectors Under Siege	2
Pandemic Lessons About Multilateral Trade.....	5
The Old and the New Multilateralism	7
A World Gone Virtual	7
The MC12 Agenda: A Recap	10
Same Negotiating Agenda; with A Response to the Pandemic Added	10
Some Reflections	14
References.....	16

Executive Summary

The 12th WTO Ministerial Conference to be held two years after MC11 in 2017, is still to be held, five years on. Its continued postponement is in part due to the COVID-19 pandemic, declared by the World Health Organisation in March 2020 to be a global pandemic. World-wide restrictions such as minimum contact distances, mask wearing and the need for people to get vaccinated introduced to minimize the spread of the pandemic presented the WTO negotiators with a whole new terrain of uncertainties and affected the conduct of negotiations. A pandemic first considered by many as only a temporary inconvenience may turn out to be endemic.

No economic sector could escape the negative effects of the COVID-19 pandemic which gave rise to huge disruptions in regional and global supply chains, the proliferation of trade-restrictions, reduced income, a decline in inflows of remittances, and difficulties in securing essential goods, including vaccines and medicines. The pandemic brought to the fore important elements and lessons about multilateral trade, such as the indispensable nature of multilateralism; the importance of services that enable online supply; the need to bridge the digital divide within and across countries; the importance of transparency; as well as the importance of greater global cooperation in the production and distribution of essential products such as food and medicine.

Though seemingly logical that WTO members' COVID-19 pandemic experiences would inform their approach to the long-standing negotiating agenda, the reality is that

members' positions, and their arguments in support of those positions, have not changed even as all the members acknowledge the socio-economic crisis caused by the pandemic. However, to their credit, in 2021 WTO members embarked on a process to comprehensively respond to the pandemic, while some of the members tabled a proposal to waive certain obligations under the WTO Agreement on Trade-related Aspects of Intellectual Property Rights to make medical products, including vaccines, more affordable in the fight against the pandemic. Otherwise, the negotiating agenda has remained the same since MC11, with active discussions in the long-standing areas of agriculture; fisheries subsidies; special and differential treatment for developing countries; WTO reform and e-commerce, to name a few.

WTO multilateralism, traditionally conducted in the form of negotiators sitting at a table, had to adapt when this became impossible to do in the context of the restrictions that curtailed the holding of in-person meetings. Together with the rest of the world, WTO members had no choice but to turn to virtual means of holding meetings through the use of internet-based platforms. As uncertainty surrounds whether things will return to what they were in the pre-COVID-19 years, or whether the world is in an entirely new normal where the environment has permanently changed, virtual means of negotiation may endure long past the pandemic considering the current heavy reliance on digital technologies. It would seem logical for WTO members to embrace virtual means where their positive impact in the negotiations has been demonstrated, even though it is unlikely that

in-person meetings will be abandoned taking into account some positive intangible elements associated with such meetings.

The solution to the continuing gaps in members' positions even in the run-up to MC12 is unlikely to be found in the early convening of MC12 alone. The solution continues to lie in the need for political will on the part of the WTO members to take the difficult decisions that could lead to agreement in the negotiations.

Abbreviations

COVID-19	Corona virus disease of 2019
GATS	General Agreement on Trade in Services
HIV/AIDS	Human immunodeficiency virus/acquired immunodeficiency syndrome
ICT	Information and Communications Technology
LDCs	Least-developed countries
MC	Ministerial Conference
PHEIC	Public Health Emergency of International Concern
S&DT	Special and Differential Treatment
SDG	United Nations Sustainable Development Goal
SPS	Sanitary and Phytosanitary Measures
TRIPS	WTO Agreement on Trade-Related Aspects of Intellectual Property Rights
WHO	World Health Organization
WTO	World Trade Organization

Introduction

"There is life after Buenos Aires..."¹ Susana Malcorra, Argentina's Minister of Foreign Affairs and Chair of the 11th World Trade Organisation (WTO) Ministerial Conference (MC11), said in Buenos Aires in 2017. None at MC11 could have imagined that life after Buenos Aires would mean contending with the COVID-19 pandemic that has upended the conduct of WTO negotiations and caused the postponement of 12th WTO Ministerial Conference (MC12). WTO members may now look back at the 'life-after-Buenos Aires' statement and think that maybe over the years they have taken for granted the holding of each ministerial conference, sometimes postponing decisions on the issues to the next ministerial. Perhaps now the members may look forward to the next ministerial with tempered hope that it will even take place, and attempt to make the most of the opportunity every ministerial presents them to reach agreement.

The COVID-19 pandemic, which started in 2019 as just another health crisis, quickly turned into a trade crisis of unimaginable proportions. In quick order, the world was faced with a fast-spreading virus that led to a world-wide shutdown with unprecedented trade ramifications. From around March 2020, WTO members found themselves unable to engage in multilateral negotiations in their usual sit-down meetings due to the

restrictions introduced to prevent and halt the spread of the virus.

WTO members had initially agreed to hold MC12 in December 2019 in Nur Sultan, Kazakhstan, but shifted the date to June 2020 because the temperatures in Kazakhstan in December would be intolerably low. With the pandemic at full trot by June 2020, the members subsequently agreed to hold MC12 in Geneva in November-December 2021. That was cancelled only a few days before the ministerial conference was to take place because the epidemiological situation caused by the COVID-19 pandemic made it impossible for some WTO members to travel to the in-person meeting. The tentative next date of March 2022 became impracticable as it became clear at the beginning of the year that the situation had not improved enough to enable the holding of MC12 at that time. WTO members then agreed to hold MC12 in June 2022.

¹Malcorra tells WTO members "there is life after Buenos Aires", available at https://www.wto.org/english/news_e/news17_e/hod_19oct17_e.htm

SECTION 1

Enter the COVID-19 Pandemic

On 11 March 2020, the World Health Organization (WHO) declared COVID-19 to be a global pandemic, after having pronounced it a public health emergency of international concern (PHEIC) on 30 January 2020. This came with restrictions such as minimum contact distances, mask wearing and the need for people to get vaccinated. WTO negotiators were presented with a whole new terrain of uncertainties that had to be navigated in order to continue with their negotiations. As the COVID-19 pandemic spread, WTO members found themselves engaged in new debates on the need to ensure the availability of vaccines and medicines for all to fight the pandemic, and for members to avoid 'vaccine nationalism' - the push by mainly developed countries to get first access to the COVID-19 vaccines and secure billions of doses while poor developing countries struggled to access supplies.

The unprecedented COVID-19 pandemic public health challenge gave rise to measures to curb the spread of the disease leading to the shut-down of large swathes of the world economy.² The travel restrictions and border closures, which were an important part of the initial policy response to the COVID-19 pandemic, directly affected trade in goods and services. They disrupted freight transport,

business travel and the supply of services that rely on the presence of individuals abroad.³ Since all countries depend on international trade and global value chains to source products, the pandemic aggravated existing vulnerabilities in light of disruptions to international transport, particularly air cargo, which often goes together with passenger travel. World-wide demand for medical products to fight the pandemic surged.

All Economic Sectors Under Siege

No economic sector could escape the negative effects of the COVID-19 pandemic. The WTO Secretariat has since 2020 compiled and updated reports on a dedicated web portal chronicling the effect of the pandemic across economic sectors.⁴ The reports provided trade-related information, including notifications by WTO members, on the impact the virus has had on exports and imports, and how the multilateral trading system has responded to the pandemic.⁵ The reports paint a picture of huge disruptions in regional and global supply chains, the proliferation of trade-restrictions, reduced income, a decline in inflows of remittances, difficulties in securing essential goods during the crisis,

² 'Export prohibitions and restrictions' WTO Secretariat Information Note, dated 23 April 2020, available at https://www.wto.org/english/tratop_e/covid19_e/export_prohibitions_report_e.pdf

³ 'Trade costs in the time of global pandemic' WTO Secretariat Information Note, dated 12 August 2020, available at

https://www.wto.org/english/tratop_e/covid19_e/trade_costs_report_e.pdf

⁴ 'WTO reports on COVID-19 and world trade' available at https://www.wto.org/english/tratop_e/covid19_e/covid_reports_e.htm

⁵ https://www.wto.org/english/tratop_e/covid19_e/covid19_e.htm

including vaccines and medicines, and limited foreign exchange availability.⁶

In the agricultural sector, supply chains were affected as some WTO members resorted to stockpiling, export restrictions and new sanitary and phytosanitary (SPS) measures.⁷ While world food stocks and production levels for the most widely consumed staples were at or near all-time highs with lower prices in principle making food more affordable, the COVID-19 pandemic's impact on jobs and incomes increased the number of hungry people.⁸ It was clear during the pandemic that producing and storing enough food is not sufficient if it does not reach those in need. At one point during the pandemic exports of several food products dropped, notably for higher-value products, such as fresh produce, dairy and meat, generally more dependent on sales to restaurants, schools and the tourism sector than to households. In addition, high-value perishable products transported by air were hit hard by the sudden collapse in air passenger traffic, which diminished air freight capacity and raised costs.⁹ The pandemic highlighted the critical importance of keeping trade flows open, and ensuring that food supply chains stay operational. While many governments gradually relaxed lockdown measures, removed several export restrictions, and introduced domestic support measures to support the agricultural sector, the continued spread of the pandemic was expected to

continue to influence the demand for, and supply of, agricultural products.¹⁰

E-commerce for goods and services trade was impacted by the same factors that caused disruption in supply and demand overall, as the enforcement of social distancing, lockdowns and other measures led consumers to ramp up online shopping, social media use, internet telephony and teleconferencing, and the streaming of videos and films.¹¹ Delivery delays and outright cancellations were experienced together with other e-commerce-related challenges such as price gouging (i.e. increasing prices to unreasonably high levels), product safety concerns, deceptive practices, cybersecurity concerns, the need for increased bandwidth, and development-related concerns.¹² The pandemic highlighted the glaring need to bridge the digital divide, both within and across countries. Many traditional e-commerce obstacles such as lack of efficient and affordable information and communication technology services were accentuated and continued to hamper greater participation in e-commerce activities by small producers, sellers and consumers in developing countries, particularly in least-developed countries.¹³

The pandemic gave rise to temporary export prohibitions and restrictions introduced by some WTO members to mitigate critical shortages at the national level.¹⁴ Although the

⁶ 'DDG Wolff: COVID-19 crisis underlines need for more multilateralism, not less' available at https://www.wto.org/english/news_e/news20_e/ddgaw_07may20_e.htm

⁷ 'COVID-19 and agriculture: a story of resilience', WTO Secretariat Information Note, dated 26 August 2020. Available at https://www.wto.org/english/tratop_e/covid19_e/agric_report_e.pdf

⁸ Ibid

⁹ Ibid

¹⁰ 'COVID-19 and agriculture: a story of resilience', WTO Secretariat Information Note, dated 26 August 2020.

Available at https://www.wto.org/english/tratop_e/covid19_e/agric_report_e.pdf

¹¹ 'E-commerce, trade and the Covid-19 pandemic', WTO Information Note dated 4 May 2020. Available at https://www.wto.org/english/tratop_e/covid19_e/ecommere_e_report_e.pdf

¹² Ibid

¹³ Ibid

¹⁴ 'Export prohibitions and restrictions', WTO Information Note, dated 23 April 2020. Available at https://www.wto.org/english/tratop_e/covid19_e/export_prohibitions_report_e.pdf

purpose of the WTO is for a fairer and open multilateral trading system for the benefit and welfare of peoples, the WTO Agreements do allow restrictive measures to prevent or relieve critical shortages of foodstuffs or other essential products provided that they do not constitute a means of arbitrary or unjustifiable discrimination between countries, or are a disguised restriction on international trade, taking into account the interests of others.¹⁵ It was observed¹⁶ that the products covered by the export prohibitions and restrictions varied considerably. Although the focus was on medical supplies (such as facemasks and shields), pharmaceuticals and medical equipment (such as ventilators), the measures extended to products such as foodstuffs and toilet paper. The effect of the measures was to reduce the world's supply of the products concerned, thereby causing suffering among those countries without the capacity to manufacture the products.¹⁷ In addition, transparency regarding these measures at the multilateral level was lacking.¹⁸

Disruptions in services supply had a broad negative economic and trade impact, given the role of services in providing inputs for other economic activities, including connecting supply chains and facilitating trade in goods.¹⁹ The lockdowns and social distancing requirements severely impeded trade in services that involves proximity

between suppliers and consumers.²⁰ The temporary border closures and travel restrictions imposed by many WTO members largely paralysed GATS mode 2 (i.e., supply in the context of the movement of consumers abroad) and mode 4 (involving the temporary movement of natural persons).²¹ This led to a heavy negative impact on sectors such as tourism and education services. These mobility barriers also significantly affected trade in goods, through their impact on transport services and on information and transaction costs.²²

Since transport and travel costs constitute an important part of trade costs and, depending on the sector, are estimated to account for fifteen to thirty-one per cent, the COVID-19 travel restrictions were likely to have accounted for a substantial increase in trade costs.²³ Although sometimes registering considerable delays at the beginning of the COVID-19 crisis, maritime and land transport remained largely functional. However, air freight transport was severely disrupted, with global air cargo capacity shrinking.²⁴ Also contributing to the trade costs were the export-restrictive measures and the high levels of uncertainty in international trade which reduced the appetite of firms to invest in new trading relationships.²⁵

¹⁵ GATT Article XX; Agreement on Sanitary and Phytosanitary Measures; Agreement on technical Barriers; Agreement on Agriculture; General Agreement on Trade in Services; Agreement on Agriculture

¹⁶ Ibid

¹⁷ 'Export prohibitions and restrictions', WTO Information Note, dated 23 April 2020. Available at https://www.wto.org/english/tratop_e/covid19_e/export_prohibitions_report_e.pdf

¹⁸ Ibid

¹⁹ 'Cross-border mobility, covid-19 and global trade', WTO Information Note, dated 25 August 2020. Available at

https://www.wto.org/english/tratop_e/covid19_e/mobility_report_e.pdf

²⁰ Ibid

²¹

https://www.wto.org/english/tratop_e/covid19_e/services_report_e.pdf, dated 28 May 2020

²² Ibid

²³ 'Trade costs in the time of global pandemic', Information Note, dated 12 August 2020. Available at https://www.wto.org/english/tratop_e/covid19_e/trade_costs_report_e.pdf

²⁴ Ibid

²⁵ Ibid

Combating the COVID-19 pandemic required wide access to an extensive array of medical products and other technologies, ranging from protective equipment to contact tracing software, medicines and diagnostics, as well as vaccines and treatments.²⁶ Developing and least-developed countries understandably could not afford to acquire the needed medicines, and the vaccines when these became available on the market. Most developed countries stampeded to acquire billions of doses for their populations as developing countries went without.

In short, the COVID-19 pandemic has had devastating health and economic consequences, with unprecedented disruptions to people's lives, the global economy and world trade.²⁷

Pandemic Lessons About Multilateral Trade

The COVID-19 pandemic brought to the fore elements about multilateral trade that the world already knew, but had perhaps become complacent about. The biggest of these lessons is that multilateralism is indispensable.

The pandemic underlined the importance of life online, not just for trading but for teleworking, tele-education and tele-medicine. Consumers ramped up online shopping, social media use, internet telephony and teleconferencing, and the streaming of videos and films.²⁸ In response to increased demand, operators in developed and

developing countries suspended data limits and boosted data as many governments issued additional wireless spectrum to further increase capacity.²⁹ The need to bridge the digital divide was highlighted, both within and across countries, as many traditional obstacles such as lack of efficient and affordable information and communications technology (ICT) services, computer and other emerging technologies which hamper greater participation in e-commerce activities by small producers, sellers and consumers in developing countries, particularly in least-developed countries (LDCs).³⁰

The pandemic further underscored the importance of services that enable online supply, beyond just telecommunications and computer services, to the broader infrastructural role of financial, transport, distribution and logistics services in facilitating merchandise trade and economic growth, thereby making the services sectors, and the creation of conditions conducive to trade in services, key to world economic recovery.³¹ It gave credence to developing countries' calls at the WTO to bridge the digital divide. While resorting to teleworking was an opportunity for the WTO members to continue with the negotiations, its use by developing countries was limited due to connectivity disparities.

The pandemic highlighted the fact that transparent, efficient information-sharing is

²⁶ 'The TRIPS Agreement and covid-19', WTO Information Note, dated 15 October 2020. Available at https://www.wto.org/english/tratop_e/covid19_e/trips_report_e.pdf

²⁷

https://www.wto.org/english/tratop_e/covid19_e/covid19_e.htm

²⁸ 'E-commerce, Trade and the Covid-19 Pandemic', WTO Secretariat Information Note; dated 4 May 2020. Available at

https://www.wto.org/english/tratop_e/covid19_e/ecommerce_report_e.pdf

²⁹ Ibid

³⁰ Ibid

³¹ 'E-commerce, Trade and the Covid-19 Pandemic', WTO Secretariat Information Note; dated 4 May 2020. Available at https://www.wto.org/english/tratop_e/covid19_e/ecommerce_report_e.pdf

crucial.³² Transparency of measures became important for the different actors engaged in supply chains to prevent essential equipment such as COVID-19-relevant medical goods being blocked and stopped in transit. It was crucial to pool information on a multilateral platform to avoid duplication of efforts, and to increase efficient collaboration.³³ On 24 March 2020, the then WTO Director-General, Roberto Azevedo, called on WTO members to submit information to the WTO Secretariat about their trade and trade-related measures issued in response to the coronavirus outbreak.³⁴ The issue of transparency remains high on the WTO agenda as most WTO Agreements place an obligation on members to be transparent by communicating and notifying to the WTO Secretariat any trade-related measures they might take, such as export measures and economic support programmes. Many developing countries have argued that they face constraints in meeting their transparency obligations and require technical assistance to do so.

WTO members took some measures in response to the pandemic that showed just how quick members can resort to measures that have both a negative and positive impact

on the multilateral trading system. While export restrictions had an obvious negative effect, positivity was observed in the actions to remove duties, taxes and charges on COVID-19-critical medical goods and other essential supplies. Forty WTO members were recorded as having adopted such measures in order to reduce the cost of the goods needed to fight the pandemic, both for the health sector and for the general public.³⁵ Customs procedures and border clearance for COVID-19-critical medical goods were expedited by cutting back red tape, while some measures established priority clearance channels, lessened and simplified documentary requirements and electronic processing, and improved border agency cooperation.³⁶

No doubt the pandemic severely tested the resilience of the multilateral trading system and exposed some shortcomings. The pandemic's global nature and impact underlined the importance of greater global cooperation in the production and distribution of essential products such as food and medicine. It was clear that the economies of developing countries remain extremely vulnerable to shocks, requiring the building of greater preparedness and resilience.

³² 'Transparency – Why it matters at times of crisis', WTO Secretariat Information Note, dated 7 April 2020. Available at https://www.wto.org/english/tratop_e/covid19_e/transparency_report_e.pdf

³³ 'Transparency – Why it matters at times of crisis', WTO Secretariat Information Note, dated 7 April 2020. Available at https://www.wto.org/english/tratop_e/covid19_e/transparency_report_e.pdf

³⁴ 'DG Azevedo requests WTO members to share information on trade measures related to COVID-19' dated

25 March 2020. Available at https://www.wto.org/english/news_e/news20_e/dgra_r20_e.htm

³⁵ 'How WTO Members have used trade measures to expedite access to covid-19 critical medical goods and services', WTO Information Note dated 18 September 2020. Available at https://www.wto.org/english/tratop_e/covid19_e/services_report_16092020_e.pdf

³⁶ Ibid

SECTION 2

The Old and the New Multilateralism

The WTO is an embodiment of multilateralism as can be seen from its mandate as a forum for negotiations among its members concerning their multilateral trade relations, and a framework for the implementation of the results of such negotiations.³⁷ The organisation is tasked with facilitating the implementation, administration and operation of WTO Agreements and of the Multilateral Trade Agreements, while providing a framework for the implementation, administration and operation of the Plurilateral Trade Agreements.³⁸

The WTO multilateral negotiations have traditionally been conducted by the negotiators sitting together in a room across a table. The ministerial conferences entail the members travelling to congregate in similar formats at some exotic capital for a number of days to get their ministers to adopt decisions and declarations on the various issues being negotiated. The COVID-19 pandemic and the restrictions introduced by countries to fight it, such as social distancing and vaccination requirements, curtailed the holding of in-person meetings. Together with the rest of the world, WTO members had no choice but to

turn to virtual means of holding meetings through the use of internet-based platforms.³⁹

A World Gone Virtual

With person-to-person contact restricted, multilateral interactions went virtual. Virtual means of negotiation came with their own particular advantages, as well as peculiar challenges. The general reflections in one study⁴⁰ (which surveyed some members of the WTO) noted on the positive side lower costs of participating in meetings through virtual means, and increased opportunities for attendance and representation. On the downside, the study noted the limited opportunities for informal discussions; fewer opportunities, if any, to get to know the other negotiators and build relationships; and the feeling that virtual means made discussions more formal, serious, and less personable.⁴¹

Virtual means made it unnecessary for participants to obtain ministry and government permission to travel to participate at a meeting.⁴² Participants who would normally be unable to travel to meetings were now able to take part at the click of a button. This enabled persons with the relevant skills and specific contributions to make to be easily

³⁷ Ibid

³⁸ Agreement Establishing the WTO, Article III

³⁹ Such as Zoom, Webex, Skype, Google Meet, Facetime, Microsoft Teams, and Interprefy

⁴⁰ Virtual Negotiations: Lessons from a survey of JSI and UNCITRAL negotiators, available at [https://www.iisd.org/itn/en/2021/06/24/virtual-negotiations-](https://www.iisd.org/itn/en/2021/06/24/virtual-negotiations-lessons-from-a-survey-of-jsi-and-uncitral-negotiators-zoe-williams/)

[lessons-from-a-survey-of-jsi-and-uncitral-negotiators-zoe-williams/](https://www.iisd.org/itn/en/2021/06/24/virtual-negotiations-lessons-from-a-survey-of-jsi-and-uncitral-negotiators-zoe-williams/)

⁴¹ Ibid

⁴² Virtual Negotiations: Lessons from a survey of JSI and UNCITRAL negotiators, available at <https://www.iisd.org/itn/en/2021/06/24/virtual-negotiations-lessons-from-a-survey-of-jsi-and-uncitral-negotiators-zoe-williams/>

present. The study also observed that countries were more likely to attend a virtual negotiation or meeting than an in-person one, with representatives from multiple ministries.⁴³ However, the presence of government officials who might not otherwise usually attend negotiations was seen as both positive and negative for delegates with, on the one hand, the presence of high-level officials exerting a chilling effect on negotiators, making them more likely to posture for the benefit of domestic audiences. On the other hand, virtual negotiations were more accessible to junior officials and provided them with a learning experience.⁴⁴

It has been observed that negotiations are generally most productive when conducted in-person, considering that about seventy-five percent of the non-verbal communication content is lost when resort is made to virtual means.⁴⁵ The study⁴⁶ found that while the basic outline of negotiations had not drastically changed with the move online, the 'colour' has been drained from the picture - delegates miss getting to know their negotiating colleagues, discussing informally, and reading reactions in the room. While these intangible elements may seem superficial, they are essential for the

compromises and cooperation that underpin successful multilateral negotiations.⁴⁷ During in-person negotiations, significant communication takes place in the margins, as negotiators chat informally with each other during coffee breaks or over lunch, something that is considered a high priority for identifying like-minded countries.⁴⁸ In these spaces, negotiators share valuable information in informal discussions not only to coordinate positions but to also 'read the room,' anticipate problems, anticipate new positions, read reactions using body language, and adjust interventions along the way.⁴⁹ These intangible elements have been largely eliminated by the use of virtual means.

Perhaps not unsurprising, some negotiators indicated that they were less focused during virtual negotiations than when they attended in person.⁵⁰ Distractions such as text messages, emails and other interruptions can affect the flow of a meeting or cause someone to miss critical parts of a discussion.⁵¹ Many may recall incidences during virtual meetings when family members bugged in on proceedings. It was a trend even before the pandemic for WTO negotiators to go outside Geneva for a retreat, brainstorming workshop or seminar to enable them to hold focused

⁴³ Virtual Negotiations: Lessons from a survey of JSI and UNCITRAL negotiators, available at <https://www.iisd.org/itn/en/2021/06/24/virtual-negotiations-lessons-from-a-survey-of-jsi-and-uncitral-negotiators-zoe-williams/>

⁴⁴ Virtual Negotiations: Lessons from a survey of JSI and UNCITRAL negotiators, available at <https://www.iisd.org/itn/en/2021/06/24/virtual-negotiations-lessons-from-a-survey-of-jsi-and-uncitral-negotiators-zoe-williams/>

⁴⁵ 'An Interesting Piece on Physical vs. Virtual Negotiation', available at <http://sourcinginnovation.com/wordpress/2013/04/08/an-interesting-piece-on-physical-vs-virtual-negotiation/>

⁴⁶ Virtual Negotiations: Lessons from a survey of JSI and UNCITRAL negotiators, available at <https://www.iisd.org/itn/en/2021/06/24/virtual-negotiations-lessons-from-a-survey-of-jsi-and-uncitral-negotiators-zoe-williams/>

⁴⁷ *ibid*

⁴⁸ Virtual Negotiations: Lessons from a survey of JSI and UNCITRAL negotiators, available at <https://www.iisd.org/itn/en/2021/06/24/virtual-negotiations-lessons-from-a-survey-of-jsi-and-uncitral-negotiators-zoe-williams/>

⁴⁹ *Ibid*

⁵⁰ Virtual Negotiations: Lessons from a survey of JSI and UNCITRAL negotiators, available at <https://www.iisd.org/itn/en/2021/06/24/virtual-negotiations-lessons-from-a-survey-of-jsi-and-uncitral-negotiators-zoe-williams/>

⁵¹ Virtual Negotiations Are Here To Stay — Now What?, available at <https://www.forbes.com/sites/forbesbusinessdevelopmentcouncil/2021/03/23/virtual-negotiations-are-here-to-stay---now-what/?sh=3898fa3a6670>

discussions away from their usual work or home settings.

While arranging meetings has become easier without the need to travel or book hotels and flights and thus saving on costs and time, having to navigate different time zones in order to set up a meeting requires some creativity on the part of those organising meetings whose participants come from different countries and continents.

A pandemic first considered by many as only a temporary inconvenience may turn out to be endemic. There are three categories of thought when it comes to the pandemic and its impact, and the use of virtual means.⁵² Some believe that things will return to what they were in the pre-COVID-19 years; others believe that the world is in an entirely new normal where the environment has permanently changed; while others believe that the answer lies somewhere in the middle.⁵³ What seems clear is that virtual means of negotiation may endure long past the pandemic considering the heavy reliance on digital technologies.⁵⁴

It would seem logical for WTO members to embrace virtual means where their positive impact in the negotiations has been demonstrated, such as in increased opportunities for participation, and the ability to hold meetings across time-zones, across continents without the hassle of travel. The study⁵⁵ showed that overall, preparatory or

technical stages of negotiations could be carried out effectively online, while hammering out the details and achieving compromise in later stages was best carried out in person. Aspects that are a precursor to the actual negotiations can therefore be undertaken virtually.

The virtual WTO meetings held during the pandemic showed that it is indeed possible to hold some meetings without necessarily having to meet in-person. A hybrid approach (virtual and in-person) is likely to be the norm during the pandemic and post-pandemic. However, some aspects of decision-making in the WTO, such as consensus, are still to be tested through virtual means. Deserving of WTO members' attention is the lack of connectivity resulting in glitches caused by slow internet in some developing countries. The lesson here is that for virtual means to work they need to be accessible to, and be inclusive of, all WTO members through affordable digital technologies.

One can conclude that multilateralism at the WTO has changed with the pandemic. It seems sensible that the members would incorporate into their conduct of business those positive aspects of virtual means. However, in-person negotiations are the hallmark of WTO members' interactions, and no doubt remain indispensable to the success of the negotiations. A hybrid approach is perhaps the best way for the WTO members to continue with their multilateral interactions.

⁵² Virtual Negotiations Are Here To Stay — Now What?, available at <https://www.forbes.com/sites/forbesbusinessdevelopmentcouncil/2021/03/23/virtual-negotiations-are-here-to-stay---now-what/?sh=3898fa3a6670>

⁵³ Ibid

⁵⁴ Virtual Negotiations: Lessons from a survey of JSI and UNCITRAL negotiators, available at <https://www.iisd.org/itn/en/2021/06/24/virtual-negotiations->

[lessons-from-a-survey-of-jsi-and-uncitral-negotiators-zoe-williams/](https://www.iisd.org/itn/en/2021/06/24/virtual-negotiations-lessons-from-a-survey-of-jsi-and-uncitral-negotiators-zoe-williams/)

⁵⁵ Virtual Negotiations: Lessons from a survey of JSI and UNCITRAL negotiators, available at <https://www.iisd.org/itn/en/2021/06/24/virtual-negotiations-lessons-from-a-survey-of-jsi-and-uncitral-negotiators-zoe-williams/>

SECTION 3

The MC12 Agenda: A Recap

It would seem logical that WTO members' experiences under the COVID-19 pandemic would inform their approach to the negotiating agenda with which they have been engaged since 2001. However, members' positions and arguments in support of those positions have not changed even as the pandemic has underlined the need for multilateral solutions. To their credit, in 2021 WTO members embarked on a process to comprehensively respond to the pandemic, while some members tabled a proposal to waive certain obligations under the WTO Agreement on Trade-related Aspects of Intellectual Property Rights arguing that this was necessary to make available medical products, including vaccines and medicines, and to allow members to scale-up the research into, development, manufacturing and supply of such products to combat COVID-19.⁵⁶

Same Negotiating Agenda; with A Response to the Pandemic Added

In June 2021, WTO members embarked on a facilitator-led process to put in place a comprehensive and holistic response to the COVID-19 pandemic, seeking to tie together the elements of transparency and monitoring; export restrictions and prohibitions; trade facilitation, regulatory coherence and cooperation, and tariffs; services trade; collaboration with other international organizations, and engagement with other key stakeholders.⁵⁷ Based on lessons learnt, WTO members seek to craft a response that will boost economic recovery, strengthen the resilience of the multilateral trading system and enable the organisation to adequately respond if faced with a similar crisis in future.

Related but pursued on a separate track, a proposal was tabled in 2020 by some WTO members⁵⁸ seeking a temporary waiver of certain obligations under the WTO Agreement on Trade-Related Intellectual Property Rights

⁵⁶ *Waiver from certain provisions of the TRIPS Agreement for the prevention, containment and treatment of Covid-19* - Communication from India and South Africa in document IP/C/W/669, dated 2 October 2020 and *Waiver from certain provisions of the TRIPS Agreement for the prevention, containment and treatment of Covid-19* - Communication from the African Group et al, in WTO document IP/C/W/669/Rev.1 dated 25 May 2021

⁵⁷ As explained by the WTO DG at a High-Level Dialogue on Expanding COVID-19 vaccine manufacture to promote equitable access, available https://www.wto.org/english/news_e/spno_e/spno12_e.htm

⁵⁸ . The process is facilitated by Ambassador David Walker of New Zealand, named on 22 June 2021 by the General Council Chair as the facilitator for the WTO's response to COVID-19.

⁵⁸ *Waiver from certain provisions of the TRIPS Agreement for the prevention, containment and treatment of Covid-19* - Communication from India and South Africa in document IP/C/W/669, dated 2 October 2020 and *Waiver from certain provisions of the TRIPS Agreement for the prevention, containment and treatment of Covid-19* - Communication from the African Group et al, in WTO document IP/C/W/669/Rev.1 dated 25 May 2021

(TRIPS) to ensure that intellectual property rights such as patents, industrial designs, copyright and protection of undisclosed information did not create barriers to the timely access to affordable medical products including vaccines and medicines, or the scaling-up of research, development, manufacturing and supply of medical products essential to combat COVID-19.

It will be recalled that this is not the first time that WTO members have expanded their negotiating agenda to include the search for solutions to a pandemic. In 2001 in a process led by the African Group in the run up to MC4, WTO members added to their agenda a discussion on the WTO Agreement on Trade-Related Intellectual Property Rights (TRIPS) and its connection to the high price of medicine to treat the HIV/AIDS pandemic. This process led to the adoption of the Doha Declaration on the TRIPS Agreement and Public Health in 2001⁵⁹ and a Decision⁶⁰ in 2003 to waive countries' obligations under the TRIPS Agreement to enable them to acquire medicine to fight the HIV/AIDS pandemic. This culminated in an amendment of the TRIPS Agreement in 2005.⁶¹

WTO members have shown an ability to take into account threats to the multilateral trading system even if these could be classified as health concerns. One hopes that in their search for a comprehensive response to the COVID-19 pandemic, WTO members will resist the temptation to continue to push the same arguments and entrenched positions they had before the pandemic, and that their response will not take too long to put in place and probably become irrelevant. For example, the TRIPS amendment agreed in 2005 was only ratified by the required number of WTO members in 2017, by which time the

situation regarding the HIV/AIDS pandemic had almost resolved itself as manufacturers over the years brought down the price of the needed medicines.

The negotiating agenda has otherwise remained the same since MC11, with active discussions in the long-standing areas of agriculture; fisheries subsidies; special and differential treatment for developing countries; WTO reform and e-commerce, to name some key areas.

In the agricultural negotiations WTO members continue to seek agreement on how to discipline domestic subsidies; enable the World Food Programme to deliver food to those in need in times of crisis; a work programme on export restrictions; assess the notification requirements on export competition; explore the possibility of extending the interim agreement to shield public stockholding programmes for food security in developing countries; assist developing countries and LDCs to temporarily increase tariffs beyond their bound duties through a special safeguard mechanism; and, with respect to market access for agricultural products, explore issues of tariff simplification, non-tariff barriers, preference erosion, special products, and tariff escalation.

In the fisheries subsidies negotiations members are still to reach agreement regarding the prohibition of subsidies that threaten the sustainability of fishing based on a mandate from MC 11 and the United Nations Sustainable Development Goal (SDG) 14.6. The idea is to discipline subsidies for illegal, unreported and unregulated fishing and those subsidies that contribute to overcapacity and overfishing, while ensuring that special and differential treatment for

⁵⁹ Document WT/MIN(01)/DEC/2, dated 20 November 2001

⁶⁰ WT/L/540 and Corr.1, dated 1 September 2003

⁶¹ WT/L/641, dated 8 December 2005

developing and least developed countries is central to the negotiations.

In the area of services action shifted after MC11 from the WTO to discussions in the context of a Joint Initiative on Services Domestic Regulation which has the stated aim of developing disciplines to facilitate services trade and to mitigate the unintended trade-restrictive effects of measures relating to licensing and qualification requirements and procedures, and technical standards.⁶² These negotiations concluded in 2021 with participating members adopting the outcome. On the other hand, some WTO members are making attempts to inject into the WTO negotiations a discussion of the impact of the COVID-19 pandemic on key services sectors.

Some developing countries⁶³ continue to push the Doha Agenda mandate⁶⁴ to review and strengthening existing special and differential treatment (S&DT) provisions in order to re-balance the WTO system and enable it to better respond to developing countries' special situation and needs in the area of trade which have become even more pronounced in the wake of the pandemic. These discussions have been along a mainly developed-developing countries divide, with developed countries pushing back on the proposals arguing that special and differential treatment cannot be accorded to developing countries wholesale, but should only be accorded where need is established.

The agenda to reform the WTO revolves around the elements of safeguarding and

strengthening the dispute settlement system; reforming the WTO's regular work and transparency, including improving the efficiency and effectiveness of the WTO monitoring function; rule-making in the WTO, and 'modernizing' the trade rules for the twenty-first century, including the approach to the development question.⁶⁵ Although members seem agreed that some reform of the WTO is necessary, there is no agreement yet on the shape and content of such reform. Developing countries have insisted that the discussions should be transparent, inclusive, and must address the interests of all, while not introducing new burdensome measures. Members seem to be gravitating towards the establishment of a working group at MC12 to facilitate further discussion.

Discussions on e-commerce have shifted from the 1998 WTO Work Programme on e-commerce, to the Joint Initiative on E-commerce under which some WTO members agreed in 2017 to initiate exploratory work towards future WTO negotiations on trade-related aspects of e-commerce.⁶⁶ However, WTO members have discussed the need to extend the current multilateral moratorium on customs duties on electronic transmissions taking into account its implications on revenue collection from a development perspective.

In the run-up to MC12 WTO members all acknowledge the socio-economic crisis caused by the COVID-19 pandemic; decry the high levels of uncertainty caused by some members' unilateral measures, and the low

⁶² Joint Ministerial Statement on Services Domestic Regulation. WTO Document WT/MIN(17)/61, dated 13 December 2017

⁶³ The G90

⁶⁴ Paragraph 44 of the Doha Ministerial Declaration

⁶⁵ MAONERA, F. (2018). An Agenda for Reforming the World Trade Organisation: A New Wind Blowing. Geneva:

CUTS International, Geneva, available at https://www.cuts-geneva.org/pdf/KP2018-Paper-Towards_a_Reform_of_the_WTO.pdf

⁶⁶ Joint statement on electronic commerce, WTO Document WT/L/1056, dated 25 January 2019

level of growth; and underscore the importance of international trade and multilateralism. However, this has not been reflected in any urgency to reach agreement in the long-standing negotiations. If anything, members remain as far apart now as they

were before the COVID-19 pandemic. This must change if there is to be a realistic expectation of tangible outcomes at MC12.

SECTION 4

Some Reflections

The WTO members have moved, clock-work style⁶⁷, from one ministerial conference to the next since the adoption of the Doha Development Agenda in 2001, even as tangible outcomes have become sparse, and the ministerial declarations have become thinner over the years. At fifty-two paragraphs long, the Doha Ministerial Declaration is the longest ministerial declaration WTO Members have ever adopted. But as over the years the members descended from the heady early days of broad commitments and expansive agendas for a work-programme to the nitty-gritties of negotiation, it seems that certain things they committed themselves to are just not doable, particularly because of countries' economic realities. Disciplining agricultural domestic subsidies is still proving difficult to achieve as the subject is politically touchy in the developed countries that provide huge subsidies. The commitment to place the needs and interests of developing countries at the heart of the WTO work programme to enable them to secure a share in the growth of world trade commensurate with the needs of their economic development⁶⁸ has not been realized. Developed countries are pushing back strongly on the very principle of special and differential treatment for developing countries. Members' commitment to recognize the particular vulnerability of the least-developed countries, their special structural difficulties and to improve their effective participation in the multilateral trading system⁶⁹ also remains unrealized. Still, WTO members seem to always look with

anticipation to the next ministerial conference, including MC12.

One could legitimately ask if there is anything lost by a delayed MC12? The answer lies in the fact that the problem the negotiators are faced with is not technical, but political. In the intervals between meetings of the Ministerial Conference, its functions shall be conducted by the General Council,⁷⁰ meaning that if solutions could be found now, the WTO General Council is well-placed to lock those in even without a ministerial conference. Even as MC12 was imminent before its postponement in 2021, members were still just as far apart in their positions on the draft negotiating texts, without any clear pathway as to how the ministers would bridge those gaps at MC12. Ironically, before each ministerial conference, it is the negotiators in Geneva that put together the texts of the decisions their ministers subsequently adopt. If the negotiators cannot reach agreement in advance of a ministerial on the technical issues, the chances that the ministers will work out the solutions at the ministerial are slim. Perhaps the value in a ministerial is mostly optical – so the world can see that the WTO is at work and that the multilateral trading system is alive. Some have wondered whether ministerial conferences should be held every two years as mandated even when no tangible outcomes can be realized, or whether they should be held only if there is need.

The overall conclusion is clear: WTO members still need to go beyond political announcements

⁶⁷ According to Article IV of the Agreement Establishing the WTO, the Ministerial Conference is to meet at least once every two years.

⁶⁸ Paragraph 2, Doha Ministerial Declaration

⁶⁹ Paragraph 3, Doha Ministerial Declaration

⁷⁰ Article IV of the Agreement Establishing the WTO

to actions to substantially narrow their differences in key areas before MC12. Only that will lead to a successful MC, not only in optics but, much more importantly, in terms of agreements and work programmes that clearly demonstrate the critical role of the multilateral trading system in these testing times.

One thing that is certain is that WTO multilateralism has entered a new phase due to the COVID-19 pandemic. As the world incorporates virtual means into the manner of doing business, it is reasonable to expect that WTO members will take advantage of the positive aspects of virtual means of negotiation. WTO negotiators who have been to past WTO ministerial conferences have been known to mention, almost casually but with a sense of distinction, that they participated in such and such ministerial conference held in such and such exotic location. That always meant they had physically been to such capital in the country that hosted the ministerial conference. With the use of virtual means, now the listener might have to ask, did you actually go there? For it will henceforth make sense to say, I participated in the 12th WTO Ministerial Conference held in Geneva - but I have never been to Geneva.

References

1. 'An Interesting Piece on Physical vs. Virtual Negotiation', available at <http://sourcinginnovation.com/wordpress/2013/04/08/an-interesting-piece-on-physical-vs-virtual-negotiation/>
2. 'COVID-19 and agriculture: a story of resilience', WTO Secretariat Information Note, dated 26 August 2020. Available at https://www.wto.org/english/tratop_e/covid19_e/agric_report_e.pdf
3. 'Cross-border mobility, covid-19 and global trade', WTO Information Note, dated 25 August 2020. Available at https://www.wto.org/english/tratop_e/covid19_e/mobility_report_e.pdf
4. 'DDG Wolff: COVID-19 crisis underlines need for more multilateralism, not less' available at
5. 'E-commerce, trade and the Covid-19 pandemic', WTO Information Note dated 4 May 2020. Available at https://www.wto.org/english/tratop_e/covid19_e/ecommerce_report_e.pdf
6. 'Export prohibitions and restrictions' WTO Secretariat Information Note, dated 23 April 2020, available at https://www.wto.org/english/tratop_e/covid19_e/export_prohibitions_report_e.pdf
7. 'Export prohibitions and restrictions', WTO Information Note, dated 23 April 2020. Available at https://www.wto.org/english/tratop_e/covid19_e/export_prohibitions_report_e.pdf
8. 'How WTO Members have used trade measures to expedite access to covid-19 critical medical goods and services', WTO Information Note dated 18 September 2020. Available at https://www.wto.org/english/tratop_e/covid19_e/services_report_16092020_e.pdf
9. 'The TRIPS Agreement and covid-19', WTO Information Note, dated 15 October 2020. Available at https://www.wto.org/english/tratop_e/covid19_e/trips_report_e.pdf
10. 'Trade costs in the time of global pandemic' WTO Secretariat Information Note, dated 12 August 2020, available at https://www.wto.org/english/tratop_e/covid19_e/trade_costs_report_e.pdf
11. 'Trade costs in the time of global pandemic', Information Note, dated 12 August 2020. Available at https://www.wto.org/english/tratop_e/covid19_e/trade_costs_report_e.pdf
12. 'Trade in services in the context of COVID-19', WTO Secretariat Information Note, Available at https://www.wto.org/english/tratop_e/covid19_e/services_report_e.pdf
13. 'WTO reports on COVID-19 and world trade' available at https://www.wto.org/english/tratop_e/covid19_e/covid_reports_e.htm
14. https://www.wto.org/english/news_e/news20_e/ddgaw_07may20_e.htm
15. MAONERA, F. (2018). An Agenda for Reforming the World Trade Organisation: A New Wind Blowing. Geneva: CUTS International, Geneva, available at https://www.cuts-geneva.org/pdf/KP2018-Paper-Towards_a_Reform_of_the_WTO.pdf

16. ST. JOHN, T and WILLIAMS, Z. (2021) Virtual Negotiations: Lessons from a survey of JSI and UNCITRAL negotiators, available at <https://www.iisd.org/itn/en/2021/06/24/virtual-negotiations-lessons-from-a-survey-of-jsi-and-uncitral-negotiators-zoe-williams/>
17. Virtual Negotiations Are Here To Stay — Now What?, available at <https://www.forbes.com/sites/forbesbusinessdevelopmentcouncil/2021/03/23/virtual-negotiations-are-here-to-stay---now-what/?sh=3898fa3a6670>
18. Waiver from certain provisions of the TRIPS Agreement for the prevention, containment and treatment of Covid-19 - Communication from India and South Africa in document IP/C/W/669, dated 2 October 2020
19. Waiver from certain provisions of the TRIPS Agreement for the prevention, containment and treatment of Covid-19 - Communication from the African Group et al, in WTO document IP/C/W/669/Rev.1 dated 25 May 2021

