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Report

Unlocking the potential for the World Trade Organization to deliver modern trade deals

Monday 14 – Wednesday 16 March 2016 | WP1456

In association with:



Department
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for International
Development



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Background

1. The last two World Trade Organization (WTO) Ministerial Conferences have delivered significant outcomes. At MC9 in Bali in 2013, Ministers agreed the Trade Facilitation Agreement: the first full new multilateral agreement at the WTO since the organisation was formed in 1995 and by far the most significant deliverable so far from the long-running Doha Round, delivering around half the economic value of the Round.
2. The Ministerial Decision on export competition, agreed at MC10 in Nairobi, is the biggest agricultural deal in the organisation's history. MC10 also saw the conclusion of the Information Technology Agreement II (ITA II), the WTO's first major tariff cutting deal since 1996, demonstrating that plurilateral negotiations within the WTO can deliver results.
3. However, these successes were delivered in spite of persistent and fundamental divisions between members on the negotiating agenda of the WTO. For the first time, Ministers at MC10 acknowledged that the organisation's membership is divided on how to progress future negotiations in the WTO. While recognising the "strong commitment of all Members to advance negotiations on the remaining Doha issues", it is clear a new approach is needed to deliver progress beyond Nairobi. Ministers also noted that some members will wish to identify and bring new issues to WTO negotiations.
4. The WTO does not hold a monopoly on trade and economic negotiation. Other international fora, including UNCTAD, the OECD, the IMF, the World Bank, the G20 and the G7 play a role in setting the tone and direction of global economic cooperation and international development. The WTO does, however, play the key role of setting global trade rules into hard law and resolving trade disputes between its 162 members.
5. The WTO operates against a background of increasing regional trade agreements (RTAs), such as TTIP and the TPP. They exist in part thanks to stalled negotiations within the WTO, and they will increasingly play a role in setting the rules of global trade, despite being far less inclusive. The WTO remains unique in its mandate to negotiate, oversee and enforce multilateral trade rules on a global basis.
6. The global economic slowdown may lead to a gradual increase in protectionism, which the WTO needs to be able to avert. The argument that free trade will drive economic development remains subject to challenge. The WTO needs to demonstrate that multilateral deals will not only benefit the small minority. Developing countries must feel the WTO works for them.
7. As WTO members review MC10 and the Doha Round, and begin to look forward to MC11 in 2017, they need to reflect on the best way collectively to use the WTO as a negotiating forum. This conference was convened to make a contribution to this reflection. Participants considered those factors which are likely to make multilateral negotiations more successful, and how the WTO can best learn from plurilateral trade negotiations. They discussed what non-DDA or 'new' issues the WTO should pursue,

and how best to take forward the remaining issues from Doha Development Agenda.

The WTO as a forum for negotiation

8. If the WTO is to continue to succeed as a global negotiating forum, it needs to be open to lessons from the general principles of negotiation (and the WTO includes some of the world's most experienced negotiators), from the experience of MC10, and from other negotiations such as the Paris COP21 Climate Change Agreement.
9. There must, where possible, be consideration (i.e. a win) for all sides, which requires an understanding of what each party actually wants, and mutual trust. Incremental trade-offs move negotiations forward, but the challenge for the WTO as a multilateral forum is ensuring recognisable wins for all members through a combination of inclusivity and flexibility.
10. The scale and diversity of the WTO membership reflects an equally diverse range of priorities, both trade- and non-trade related. Each member brings unique cultural and geopolitical characteristics to the table, which counterparts should recognise. WTO members are likely to caucus around issues, rather than geography. This provides an opportunity to develop a diverse coalition of the willing on a specific issue.
11. WTO members clearly do not agree on the future of the Doha round. Organising multilateral trade negotiations into rounds creates the expectation of internal balance, which needs critical mass to succeed: the Uruguay Round balanced agriculture and textiles against TRIPs and services. It could be argued that the DDA was never a properly balanced agenda from the beginning, focussing instead on issues left over from the Uruguay Round. The failure of the single undertaking approach may make members more wary of committing to rounds in future, instead thinking about continuous negotiations or other flexible approaches to achieve balance on portfolios of issues.
12. The success of the COP21 negotiations in Paris in December 2015 demonstrates the importance of planning for success. Participants had a clear understanding of the aim and outcomes of the negotiation, rooted in a shared threat requiring a common response.
13. The Paris negotiations were approached through a campaign model, to address technical challenges and develop favourable political conditions in good time. Technical Working Groups were established early on. Diplomatic outreach was used effectively, so that coalitions could form and include smaller states with the biggest interest in the outcome.
14. Other international events such as CHOGM 2016 and the G7 were used to build political and diplomatic momentum. Cooperation on communications activity built interest in the event, and awareness of its successful outcome. The UNFCCC's 2° target provided a single core message for external audiences which galvanised the campaign. In recent years the WTO has lacked this sense of purpose, making it harder to build support for any deal among external stakeholders.
15. The ministerial conference in Nairobi provides a number of lessons from which the WTO membership can learn. MC10 took place in a context of widespread pessimism about the prospects for the global economy as the world emerged from an economic crisis. WTO negotiations were taking place against the backdrop of significant regional trade discussions including TTIP and TPP.
16. The relationship between trade and development was being challenged, and developing countries were voicing concern about the erosion of trade preferences. Civil society, and to an extent the private sector, were disengaging from the WTO process, in part due to a preoccupation with TTIP. This may in the longer term be more damaging than critical civil society engagement. More positively, the global context of MC10 included movement towards the successful COP21 negotiations in Paris, and the

launch of the 2030 Agenda for Sustainable Development.

17. The venue played an important role in the success of M10. Nairobi was the right place to bring together trade and agriculture, where both issues are so relevant. The conference had a strong, experienced and highly respected Chair who was determined to get a good outcome and was prepared to make tough and risky calls at the right time to get the deal over the line.
18. At MC10, negotiations were dominated by a small group of key players, so the majority of delegations were left outside the room. Those on the outside were only able to make their voices heard on both the process and substance through informal channels. This challenged the principle of inclusivity and may undermine future negotiations.
19. It was important that delegates, particularly those who been negotiating in Geneva, were familiar with the texts under negotiation. After many preparatory meetings in Geneva, negotiating group chairs felt that members understood other delegations' positions and where problems might arise. In general, those delegations who had signalled their concerns from an early stage were able to see them resolved.
20. MC10 showed the importance of policy coherence within and between delegations. It was clear that some capitals did not share their Geneva delegations' position on or understanding of the negotiations. This resulted in many Ministers arriving in Nairobi unable to grasp the issues under discussion and contributing to the feeling of being locked out of the talks. In the right circumstances, Ministers have the ability to find a way through the most difficult issues where official delegations are unable to move forward.
21. More broadly, the WTO needs to consider whether the model of biennial ministerial conferences is the most conducive to achieving the Organisation's objectives. Ministerial meetings provide an impetus to deliver a deal, and ministers can often unblock impasses at official level. But a focus on deliverables for the next ministerial conference may distract members from incremental steps forward in the 'permanent negotiations' of the WTO, which might benefit from more regular ministerial engagement.
22. The WTO is in part defined by the principle of consensus. But this hindered planning for MC10 as a small number of influential members did not commit to a deal until late in the day, so consensus on what MC10 could achieve arrived too late for serious, in depth planning. Official delegations should be taking a long-term and ambitious view of what is achievable and advising their Ministers accordingly.

New directions for the WTO

23. The WTO has ceded ground to other frameworks including bilateral and regional trade agreements. But the most inclusive economic benefits will continue to come from multilateral agreements. The single undertaking of the Doha Round has been tested to its limits. The Trade Facilitation Agreement (TFA) and the expanded Information Technology Agreement (ITA II) show more productive routes to multilateral agreement.
24. The Doha Round itself pre-dates the WTO membership of many states. There is no consensus on how to address both the existing Doha Round issues, and issues which reflect modern economic reality that will make the WTO relevant for the coming decades. Trust among members on both new and pending issues will allow progress on both. Introducing entirely new issues to the negotiations will carry a premium, and may be beyond the capacity of smaller WTO members.
25. Increased engagement with the private sector will help lay the groundwork for future success and emulate, in part, the successful multi-stakeholder model pursued in the COP 21 negotiations. After many years of disengagement businesses are showing a renewed interest in the WTO's work and the organisation should take advantage of this; the upcoming WTO business forum is a positive step. Private sector voices can help

drive a new agenda in the WTO and should be welcomed.

26. The **digital economy** is not strictly speaking a new issue, but requires a renewed focus as digital activities play an increasing important role in the global economy, particularly in the developing world. WTO members can use the digital economy to improve participation and to support growth, including managing the economic consequences of activity elsewhere on cyber security and internet governance.
27. The WTO should consider where it already acts on the digital economy, and identify where it can do more. A moratorium on imposing customs duties on electronic transmissions has been in place since 1998, as has a broader WTO work programme on e-commerce. The GATS includes commitment on access to the internet and the transfer of data across borders. Some FTAs have taken these commitments further.
28. To maintain its relevance for the digital economy the WTO should use the e-commerce work programme to review the support it offers the digital economy, across the WTO agreements. The aim should be a more ambitious e-commerce outcome at MC11 with an Agreement on E-Commerce as a maximal aim, preferably as a multilateral agreement but a plurilateral one if not. It should pursue this agenda in open discussion with other bodies such as UNCTAD, WIPO and the ITU, and with business and civil society. It should consider using external expertise to advise and re-energise the process.
29. If a standalone agreement cannot be reached members should consider making the 1996 moratorium permanent, and using the Trade Policy Review Mechanisms to highlight e-commerce facilitation and protectionism. The time for detail on the digital economy agenda is now and demandeurs should be in a position to outline detailed ideas on what a proposal could like, so that there is enough time to build consensus ahead of MC11.
30. International regulation on **investment** and on trade in goods and services are currently entirely separate, but in the real economy they are closely interlinked. There is a perception that rules around investment have been defined and imposed by the global North. The WTO might offer a forum for discussion of a new, multilateral approach on investment, to support rules around trade. It might support an advisory centre for international investment law, to support developing countries on issues highlighted in the Sustainable Development Goals.
31. In the longer term the WTO could consider how, as a treaty organisation, it can support **fossil fuel subsidy** reform. This would send a signal that the WTO is ready and able to respond to the wider concerns of its membership. Interim notification and peer review on subsidies would support negotiated moves towards full prohibition.

How can plurilaterals help to move the agenda forward?

32. Multilateral negotiations in the WTO have stalled in their pursuit of much of the Doha Round's single undertaking. Free trade agreements are not necessarily a vehicle through which all types of liberalisation or trade rule-making can be undertaken. Plurilateral negotiations offer an alternative way forward, offering more of the benefits of multilateralism while avoiding some of the blocking tactics and negotiating paralysis which have affected the Doha Round. Such agreements can be advanced faster and brought back into the multilateral system at an appropriate time.
33. Plurilaterals can be designed around a number of variables, particularly whether they exist inside or outside the WTO, and - for those inside the WTO - whether their outcome is subject to Most Favoured Nation status. Plurilaterals tend to have no geographical focus, but do focus on a specific discipline or sector, including where trade-offs are offered. They are often driven by strong commercial interests.
34. The Government Procurement Agreement (GPA) was a product of the Uruguay round, and as an 'Annex 4 plurilateral', it required agreement from all WTO members to

proceed. It would be difficult to replicate, except possibly in a future ministerial package, which would necessarily include a number of other deliverables to be agreed.

35. TiSA was a more unique construct, with the negotiation actively and deliberately taken out of the WTO. TiSA demonstrated what was possible, but was clearly undesirable for some WTO members. There remains some debate as to whether TiSA is most correctly described as plurilateral or as a services FTA under article 5 of the General Agreement on Trade in Services (GATS).
36. Using plurilaterals to progress the WTO agenda will require creativity and flexibility. For example, the Environmental Goods Agreement (EGA) provides a model where there is an inbuilt agenda to expand the scope of the negotiated rules over time. In the context of market access, plurilaterals should not focus only on tariffs on the end product, but should follow the global value chain to get a full overview of trade activity, and to bring in the interests of a greater number of WTO members.
37. On fisheries subsidies and other issues states might consider a hybrid model where the whole membership signs up to basic principles, for example on transparency, and more detailed annexes and commitments are agreed on a plurilateral basis. But this is unlikely to translate into rapid progress. Some members might also pursue a plurilateral annex to an existing multilateral agreement. On agriculture, a creative plurilateral might combine discussion of market access and domestic subsidies, as is already under informal consideration around wheat.
38. Interested parties would need to scope the issue fully, against what a plurilateral might be able to offer, and then build a coalition of formal proponents to reflect broader interest among the membership.
39. Existing free and regional trade agreements should be seen as a source of ideas on how key issues have been successfully negotiated. Plurilaterals negotiations should be designed with enhanced transparency so those outside see how they will be affected. Guidance or best practice on plurilaterals could be developed multilaterally.
40. Plurilaterals naturally entail a number of challenges. They will need a critical mass of big players in order to mitigate the risk of 'free riders'. They are more difficult to enforce: members of a plurilateral might request access to the WTO Dispute Settlement Body, but other WTO members may demand related or unrelated concessions in return for agreeing to this.
41. Members need to develop a better understanding of what the costs and benefits are for developing countries in joining these agreements. For example, the EGA discussions included a study of specific products whose inclusion would benefit. It is important to broaden discussions beyond market access issues and to ground agreements in global value chains, and to consider a combination of binding and non-binding elements, in order to encourage engagement among developing countries.

How to deliver the remaining DDA issues

42. At MC10 members agreed to disagree on the future of the DDA as a package. But members remain committed to addressing in a substantial way the issues within the DDA package. These include domestic subsidies and market access in agriculture, non-agricultural market access (NAMA), services, and the broader issue of rules.
43. **Agriculture** negotiations are systemic to the WTO, and have a powerful influence on other areas. Among some major economies, spending on domestic support is greater than when the WTO was founded. Given the difficult and entrenched political challenges around agriculture, members would benefit from a frank, informed exchange at committee level to identify real, specific and detailed interests, which have changed greatly since 2008. There is also a trust deficit at present among a few of the key players and steps need to be taken through the existing committee structure and informal consultations to bridge this.

44. Those who want to move the negotiations forward should be prepared to table a proposal, in order to trigger a detailed discussion. This may require coalition-building, focussed on common interests among previously incompatible parties, as was seen in the diverse group of members who proposed the outcome on export competition at MC10. It might also require an innovative approach around best practice or voluntary data sharing to move discussions forward.
45. MC11 will need to deliver an outcome on public stockholding following the decision reached at MC10, which will almost inevitably open up a wider debate about deliverables on domestic support. However it will be difficult for members to agree on an outcome for public stockholding without balance, despite some members' insistence that the issue sits separately from the rest of the agriculture negotiations.
46. It remains an open question whether the trade-offs will be found in the wider domestic support pillar or in one of the other areas of the negotiations such as services or NAMA. In any case members will need to be open minded and flexible in order to find a solution, further highlighting the importance of dealing with the agriculture negotiations on the basis of current facts and restoring much needed trust among the membership.
47. The proliferation of FTAs and mega-regional agreements has raised the question of whether any meaningful market access negotiations can take place in the WTO. This is compounded with fears of preference erosion from LDCs and demands for increased special and differential treatment in return for further liberalisation. But there remains significant value to addressing market access given there are real demands from members who are not included in the mega-regional agreements.
48. The need for agriculture negotiations to achieve a balance is a further reason to keep discussing market access in the WTO, as is the need to address the significant 'water' between bound and applied tariffs which still exists for some members. The WTO could do useful work with interested members to try and put an economic value on 'water', to better inform the arguments on what is known as 'blood vs water'.
49. The question of **NAMA** is intrinsically linked to agriculture and services. There are four groups of members with diverse interests which reflect their different growth rates and levels of income, and their differing tariff commitments. Developed countries have little water between bound and applied tariffs. Developing countries that were founder members of the WTO have far more water. More recently joined developing countries have less room for manoeuvre. Less developed countries are concerned about the prospects for the preferences they enjoy.
50. Regional trade agreements are addressing tariff barriers, and seeing results. This reduces the appetite to try to achieve the same goals through the WTO. Larger RTAs are also addressing non-tariff barriers.
51. There are three possible approaches to NAMA which could be explored in the WTO in the short term. Using formulae has been the de facto approach for over thirty years. This has not been successful, even when recalibrated in 2015, and exposes the differences between the four groups of members too starkly to be a constructive tool. Any approach which may lead to significant preference erosion should be disregarded.
52. An alternative is to select a balanced list of specific sectors and agree coverage within them, looking at both tariff and non-tariff barriers. Sectors could include medical equipment, forestry, beers and spirits, agricultural machinery, gems and jewellery, chemicals and pharmaceutical products. If members reached critical mass but not consensus, the option of a plurilateral negotiation would remain.
53. A third possibility is similar to that taken at the COP21 negotiations in Paris, where members volunteer offers on specific barriers (both bound and de minimis) in certain sectors, the sum of which forms the basis of a negotiated deal.

54. The trade in **services** is vital to the world economy, and may account for over 60% of trade, using value-added rather than balance of payments figures. Despite the potential value of GATS, the focus on agriculture and NAMA has sidelined services within the WTO and led to the plurilateral TiSA. An agreement on services would be a clear asset to the WTO in the long term.
55. The interests of all members, particularly developing countries, would be better served by convergence between TiSA and the WTO. It would deliver greater global coverage. The agreement would benefit from proper enforcement. Businesses would have a single global framework to operate within. The WTO is better placed to a long-term approach to change and uncertainty.
56. Bringing TiSA and the WTO together will, as with other issues, require a coalition of members to make a specific proposal to move the discussions forward. It will also require members to work across silos and to be prepared to make trade-offs, including beyond services.
57. Out of the four areas covered in the Doha mandate under **rules**, (anti-dumping, subsidies and counter-vailing duties, fish and regional trade agreements) the most likely prospect for achieving agreement is in the area of fish subsidies. There are good prospects for achieving an agreement on fish by MC11. This will also show how the WTO can deliver benefits to a wide range of its membership, including recent proposals from developing countries and how it supports the implementation of the 2030 Sustainable Development Goals agenda.
58. A multilateral approach which includes all members, in particular key fishing nations, is the preferable way forward. One option is to pursue a multilateral option for a year; if prospects for completion are not encouraging, then a lighter multilateral approach could be followed covering transparency requirements with a deeper plurilateral annex tackling subsidies that support illegal, unreported and unregulated (IUU) fishing and overfished stocks.
59. Another approach is to complete a multilateral deal as comprehensively as possible and only then explore if a deeper plurilateral is still required. A third approach is to start with a plurilateral on fish with a high level of ambition that others can join in due course.
60. The question remains about how to enforce a plurilateral on rules and how to prevent free-riding. A plurilateral sends an important signal that could encourage others to join later. However, if fish is pursued as a single issue, it will be more difficult to find compensatory factors for those countries that would need to change their current practices. Development aid to assist smaller countries is one solution. Special and Differential Treatment should not be used to allow some countries to continue to fish unsustainably. There are opportunities to draw on the expertise of other institutions, civil society, and action to support the fight against IUU.

Conclusion

61. To deepen the WTO's inclusivity, the most influential members should ensure active engagement with the wider membership to try and move the negotiation onto facts rather than ideology. They should support developing countries that have an interest in joining particular coalitions to remove obstacles to progress, as well as in making and defending proposals.
62. The WTO membership should show flexibility and creativity in the ways it achieves the collective and individual goals of members. This includes the choice of issues to address, the way to address them, and the overall operation of the WTO system. A more engaged private sector should be brought into the process of deciding what type of agreements the WTO should be aiming for in the future; ones that deliver commercially meaningful outcomes.
63. Incremental progress in WTO negotiations from now on may be the only practical way

the organisation can deliver results. Both MC9 and MC10 show that pragmatic and flexible approaches can deliver results that contain something for everyone outside the constraints of the single undertaking. Past failures of the WTO can be seen as stemming from trying to deliver too much.

64. WTO members have to find more opportunities for Ministers to conduct political stocktakes and bank progress made in the multilateral negotiations but these cannot be a substitute for the 2 yearly Ministerial Conferences. This should avoid a repeat of MC10, where many Ministers felt locked out of the process or engagement from capitals in the Geneva process came too late, or not at all.
65. Members should aim to deliver more ambition on e-commerce at MC11, which itself could be a stepping stone to something bigger at MC12 such as a digital economy agreement. Demandeurs need to outline their ideas in the WTO before the summer break to ensure that momentum does not peter out.
66. To remain relevant and credible, the WTO should balance current and future issues against the DDA, particularly around the digital economy, services, agriculture and NAMA. It should engage with and show leadership to other international fora as it contributes to the global economic agenda.

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