

Summary

Bullying tactics

The negotiating process at this year's ministerial conference was no better than we have come to expect from the WTO. Ahead of the ministerial, the US were very vocal regarding the need to drop the Doha mandate, completely ignoring the position of the majority of members. The EU pushed for countries to abandon their UN groupings so that they could "negotiate in the interests of their own economies". The process was dominated by 5 of the big players – the US, EU, India, Brazil, China - who met exclusively to finalise the deal.

Broken promises – Doha in limbo

For the first time since 2001, the final declaration fails to reconfirm a commitment to completing the Doha round. Instead it simply states that members do not agree on whether to continue the negotiations. Whilst technically this does not amount to the end of the Doha round, it is unlikely that the promises of 2001 will be fulfilled. The EU and US are amongst the strongest proponents of ending Doha and also of introducing new issues into multilateral negotiations. For the moment, no new issues are on the table but it is likely that we will see developed countries pushing for plurilateral negotiations on these issues and insisting on their introduction into the multilateral forum before further negotiations on Doha issues can happen.

Limited gains for developing countries

A number of agreements offer modest benefits for developing countries. As of the beginning of 2016, all developed countries must eliminate remaining scheduled agricultural export subsidies. This means, for example, that the EU has agreed to bind its export subsidies at zero. LDC cotton producers will be amongst those to benefit from the agreement on export subsidies; they will also benefit from duty-free, quota-free market access.

However, because export subsidies have already been significantly reduced, the immediate gains from this agreement are limited. More significantly, many subsidies have in fact simply been transferred into the Green Box (permitted) category: the EU has increased its notifications of Green Box (permitted) supports from 18.8 billion

Euros in 1995/6 to 71 billion Euros in 2011/12; the agreement does nothing to address this.

Many issues outstanding

For LDCs, a number of issues remain outstanding. Perhaps the most pressing of these is the proposed Special Safeguard Mechanism, which would protect developing countries from import surges; the G33 submitted a number of proposals ahead of the ministerial, but no agreement was reached. Whilst the cotton 4 (C4) countries saw some progress, there was no movement on market access barriers or development assistance for cotton producers. The decision on Rules of Origin offers no more than non-binding guidance on implementation and, except in relation to cotton, duty-free, quota-free market access was not discussed. Outside of the ministerial, LDCs had sought a permanent exception to the TRIPS agreement but instead have waivers until 2021 and 2033; this means that they will have to continue to allocate resources to this area of work.

India wanted to see a permanent solution to the issue of public stockholding for food security. This wasn't achieved in Nairobi, but members are committed to finding a solution by the time of the 2017 ministerial. This year's ministerial also failed to address the issues surrounding food aid – in particular the US practice of 'monetization' whereby it buys food from US producers and uses US companies to ship this to recipient countries, where it is sold to pay for other programmes.

What next for the WTO?

The WTO's negotiating function is looking very weak – with little clarity about the way forward. Ahead of the next ministerial, we can expect to see a significant push from developed countries for new issues to be introduced into multilateral negotiations, either directly or via plurilateral deals, and for there to be increased differentiation between developing countries. Developed countries have already set their sights on tackling issues such as competition, government procurement, e-commerce and global value chains, all of which pose potential threats for developing countries.

Outcomes of MC10

Process

The negotiating process at this year's ministerial conference was no better than we have come to expect from the WTO. Ahead of the conference US representative Michael Froman publicly claimed that Doha was dead, despite there being no agreement about this amongst the WTO membership. The G90 were calling for a strong text on special and differential treatment but had to repeatedly reject texts as other countries attempted to water down the provisions. Instead of supporting the G90 position, the EU delegation put huge pressure on them to significantly reduce their level of ambition. In civil society briefings, the EU also argued that countries needed to "abandon UN configurations" at the WTO and negotiate "in their own, individual economic interests": they seemed to see no issue with the EU group of 28 countries urging other countries to abandon their own groupings.

The process was dominated by five of the big players – the US, EU, India, Brazil, China - who met exclusively to finalise the deal. This meant that the first WTO deal to be held in Africa excluded not only all African countries but also all LDCs.

Was Doha Killed Off?

For the first time since 2001, the final declaration fails to reconfirm a commitment to completing the Doha round. Instead it reads:

"We recognize that many Members 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 do not reaffirm the Doha mandates, as they believe new approaches are necessary to achieve meaningful outcomes in multilateral negotiations."

Legally speaking, the above statement does not formally end the Doha Round of negotiations: WTO decisions are supposed to be taken by

consensus and there would therefore have to be agreement between all members to formally end the round - this has clearly not happened. It is worth noting that the African Group, LDC Group, ACP Group, China, Ecuador, India, Indonesia, South Africa and Venezuela presented a collective submission asking for the Doha Declarations and Decisions to be "recalled" in the ministerial declaration. However in political and practical terms, if more powerful countries, particularly the EU and US, do not support the continuation of the negotiations, it is highly unlikely that they will continue under the full terms of the Doha mandate.

The wording of the declaration suggests that the issues that were supposed to be addressed under the Doha mandate will remain on the table. For example, it explicitly states that there is commitment to "advancing work in all three pillars of agriculture, namely domestic support, market access and export competition, as well as non-agricultural market access (NAMA), services, development, TRIPS and rules" and it reaffirms that "provisions for special and differential treatment shall remain integral."

Much more shaky are the architecture and modalities that will be used to get there: "Many Members want to carry out the work on the basis of the Doha structure, while some want to explore new architectures". This suggests that there will be a push to abandon things like the single undertaking (where nothing is agreed until everything is agreed) and to revisit the sequencing of negotiations on different issues. The danger is that more powerful countries use it as a bargaining chip: agreeing to progress on Doha issues only if 'new' issues, many of which were supposed to be off the table until Doha was concluded, can be introduced.

The declaration clearly illustrates that relations between member countries have deteriorated significantly. Ahead of the talks, the argument had been put forward that Doha needed to be set aside in the interest of demonstrating that the WTO was a "21st-century organisation" that could deal with "new issues"; reaffirming Doha, it was argued, would see the organisation become increasingly irrelevant. Yet the final outcome neither reconfirms nor calls an end to Doha. The

most significant impact of this is to further undermine the negotiating function of the WTO.

Are new issues on the table?

'New' issues include things like investment and public procurement (in fact many 'old' Singapore issues that were excluded from the Doha negotiations) which are priorities for developed countries, but also things like fisheries, in which developing countries potentially have a greater interest.

Legally it would require a consensus of the full membership to agree to start multilateral negotiations on these issues; this consensus has not yet been achieved. The declaration states that "Any decision to launch negotiations multilaterally on such issues would need to be agreed by all Members." So for the moment, multilateral negotiations on new issues cannot take place.

However there is a strong likelihood that increasing numbers of plurilateral negotiations are initiated on the margins of the WTO (as for the Environmental Goods Agreement, for example) – often dealing with issues that are controversial with some (developing country) members. Once these plurilateral agreements are agreed between smaller groups of countries, those countries will put pressure on the WTO to bring them into the multilateral negotiations.

Progress on the different negotiating areas

Agricultural Export Competition

The agricultural export competition heading covers four areas:

- Elimination of export subsidies,
- Disciplines on export credits and export credit guarantees or insurance programmes,
- Disciplines on agricultural exporting state trading enterprises,
- Disciplines on food aid.

Elimination of Export Subsidies

The most significant decision in this area is that developed country members "shall immediately eliminate their remaining scheduled export subsidy entitlements as of the date of adoption of

this Decision". Processed products, dairy products and swine meat can continue to benefit from export subsidies until the end of 2020. For the EU this means that it agrees to bind its export subsidies at zero. Developing and least developed country members are to eliminate their remaining export subsidies by the end of 2018, with the proviso that they continue to benefit from certain exceptions (Article 9.4 on the Agreement on Agriculture) until the end of 2023 and the end of 2030 respectively.¹ This is a significant improvement on the language coming out of the 2013 ministerial.

Whilst this is a significant decision, a longstanding priority of developing countries and part of the Doha mandate, the impact of the decision is limited in three important ways. The first is that export subsidies have been significantly reduced in recent years, such that this decision in itself won't lead to significant additional reductions. The second is that the EU and US have transferred a substantial number of subsidies into the Green Box (classified as non trade-distorting and therefore allowed). For example, the EU's notifications of Green Box supports increased from 18.8 billion Euros in 1995/6 to 71 billion Euros by 2011/12. Finally, domestic supports, currently the largest allocation of subsidies, are not addressed by this agreement.

Export Credits, Export Guarantees, Insurance Programmes

Members have committed not to provide export credits, export credit guarantees or insurance programmes² for agricultural products listed in

¹ Only 25 Members at the WTO can provide export subsidies in agriculture, most developing countries cannot. The 25 countries that can provide export subsidies is as follows: Australia, Brazil, Bulgaria, Canada, Colombia, Cyprus, Czech Republic, EU, Hungary, Iceland, Indonesia, Israel, Mexico, New Zealand, Norway, Panama, Poland, Romania, Slovak Republic, South Africa, Switzerland-Liechtenstein, Turkey, US, Uruguay, Venezuela.

² This includes: direct financing support, comprising direct credits/ financing, refinancing and interest rate support; risk cover, comprising export credit insurance or reinsurance and export credit guarantees; government-to-government credit agreements covering the imports of agricultural products from the creditor country under which some or all of the risk is undertaken by the government of the exporting country; and any other form of governmental export credit support, direct or indirect, including deferred invoicing and

Annex 1 of the Agreement on Agriculture. The list of relevant products includes meat and dairy, edible vegetables, fruit and nuts, coffee and tea, cereals, sugar and cocoa.³

Before the ministerial, there had been significant wrangling about repayment times for export credits. The 2005 Hong Kong Ministerial Declaration and the 2008 revised draft modalities suggested a repayment period of six months, the US succeeded in extending this to 18 months (currently the norm for its own existing programmes), effective from the 31st December 2017. Developing countries have been given a phase-in period defined as four years, although in practice they only have two years more than developed countries because their phase-in period starts in 2016. LDCs and net food importing developing countries will have between 36 and 54 months for repayment for basic foodstuffs.

State trading enterprises

The only new element coming out of the conference is that Members agree to ensure that agricultural exporting state trading enterprises operate in line with the other agreements under the export competition heading.

Food aid

The major issue here has been to ensure that trade rules and their implementation do not prevent food aid from crossing borders efficiently and to prevent food aid undercutting local producers. In theory, the agreement binds members to ensure that food aid is needs-driven, in fully grant form, not tied to commercial exports of agricultural products or other goods and services and not linked to the market development objectives of donor members.

However (in response to US pressure) there is no outright ban on the monetization of food aid and buying food from local or regional sources is only “encouraged”. Monetization entails food being bought from and shipped by donor countries, either to NGOs or recipient governments, to be sold in recipient countries to fund other

development projects. The US use of monetization has been particularly problematic and is not addressed by this agreement.

LDC measures

Cotton

Developed and some developing country members will provide duty-free, quota-free access for cotton and cotton-related products produced and exported by LDCs, as of 1 January 2016. The decision on export competition also applies to cotton – i.e. members agree to cut export subsidies, with immediate effect for developed countries (see above for the limitations of this). There was no movement on market access barriers or development assistance. This is nevertheless a step forward from the 2013 position.

Rules of Origin

The Hong Kong ministerial declaration of 2005 states that LDCs should be offered transparent, simple rules of origin which contribute to facilitating market access. The 2015 agreement essentially offers a range of clarifications and recommendations to members – for example methodology for testing whether a product qualifies for preferences. However the language is not binding.

Duty Free Quota Free

Other than in cotton, there was no movement on this issue and there is no decision document coming out of the negotiations. In effect, this means that there has been no pressure on the US (currently the only country yet to meet the commitment to 97% DFQF) to improve its position.

Services Waiver

The language in the agreement is non-binding: members are “urged to redouble efforts” to notify preferences and “encouraged to undertake specific technical assistance and capacity building measures.”

Special Safeguard Mechanism

The existing Special Safeguard Mechanism at the WTO is not easy to use and takes time to invoke (a detailed investigation process must be conducted). For this reason developed countries

foreign exchange risk hedging. Excluded from this list is working capital financing to suppliers.

³ The full list of products is available here

<https://www.usitc.gov/tata/hts/bychapter/index.htm>

in the Uruguay Round pushed for the Special Safeguard Provision for those products for which they undertook ‘tariffication’ – where a quantitative restriction was converted into a tariff. This is only available to 39 countries – no LDC is part of the list and South Africa, Namibia, Swaziland and Botswana are the only sub-Saharan African countries that benefit from it. The EU lists 539 products (23.9% of all agriculture tariff lines) under this provision. It has recently made significant use of this provision for poultry and sugar products.

Import surges continue to dog developing country agricultural sectors. For example, in Cameroon, poultry imports increased nearly 300 percent between 1999 and 2004; 92% of poultry farmers dropped out of the sector and 110,000 rural jobs were lost each year between 1994 and 2003.⁴ Developing countries feel that the SSM for them would allow them to counter the significant domestic subsidies still offered by developed countries and tackle import surges or sharp falls in prices. This issue has been pursued in the market access pillar of the Doha agriculture negotiating text. The G-33 group of developing countries is the main proponent. Some members, including the US, are resisting the proposal on the grounds that market access negotiations need to happen in tandem.

This ministerial saw no progress on this issue, despite the G-33 making a number of specific proposals.

Work Programme on Small Economies

Members reaffirm commitment to continue work on this issue.

Public Stockholding for Food Security

Background:

Some (developing) countries have programmes to acquire food for the purposes of providing a buffer against volatility in global prices, supporting low-income farmers and providing food for poor

communities. This can entail the granting of subsidies subject to WTO rules.

Public stockholding for food security is allowed under several conditions specified by the Agreement on Agriculture, annexes 2 and 3, but there are a number of issues with these provisions which leave developing countries open to challenge for their stockholding programmes. The 2013 agreement, initiated by the G-33, sees WTO members bind themselves to “exercise due restraint” in the initiation of complaints to challenge the compliance of a developing member with its obligations under the AoA.

2015 state of play

The 2013 declaration committed members to agree a permanent solution by 2017; India had been pushing for this to happen at the 2015 ministerial. There is no permanent solution coming out of the 2015 declaration but a statement that negotiations should be pursued “in an accelerated time-frame”. The statement also makes clear that public stockholding is not one of the ‘Doha issues’.

Other issues under the Agreement on Agriculture

There was no progress on other issues in this area, for example to deal with the outdated Aggregate Measurement of Support (AMS) calculations. AMS levels were fixed at the end of the Uruguay round when most developing countries bound themselves at zero. This means they are bound not to provide domestic support computable under the AMS methodology except for a de minimis amount of 10% of the value of production on a specific product. In effect, this means developing countries are more likely to be found to be in breach of WTO rules than developed countries because countries that were already subsidizing at high levels (EU, US) were allowed to continue their support with only minor reductions. Because reference prices for the AMS calculations were set nearly 30 years ago, the difference computable for the AMS calculation is artificially inflated.

⁴ South Centre calculations Analytical Note SC/TDP/AN/MC10/2 December 2015

http://www.southcentre.int/wp-content/uploads/2015/12/AN_MC10_2_Special-Safeguard-in-Agriculture.pdf

TRIPS

Nothing new from the ministerial – preferences have already been extended to 2033 on patents and clinical trial data, the application of TRIPS standards is waived until 2021. LDCs have long called for a permanent exception based on their LDC status, this decision means that they will have to continue to allocate resources to waiver extension.

The New Information Technology Agreement

In the early days of the conference, the WTO announced that the Information Technology Agreement (ITA) had been finalised – this is an agreement between a small group of WTO members and as such does not form part of the official conference business.

The deal covers about 97 per cent of world trade in information technology products and provides for participants to completely eliminate duties by 2019. This will apply to products like GPS navigation systems, medical products such as magnetic resonance imaging machines, machine tools for manufacturing printed circuits and touch screens. The agreement expands the total list of products covered by 201. According to the WTO, annual trade in these 201 products is valued at over \$1.3 trillion per year.

The WTO claims that both developed and developing countries are represented in the group that negotiated the agreement, yet seventy of the eighty-one countries⁵ who negotiated the deal are from high income countries. None of the countries from the Least Developed Country (LDC) group are represented and only one from the Lower Middle Income (LMIC) group.

Where's the Environmental Goods Agreement?

UK civil servants had suggested that the EGA was likely to be launched at the Nairobi ministerial. 360 or so goods were to be listed as being 'environmental', and therefore to be liberalised, and there was much controversy about exactly how some of those goods could possibly be

classified as such. In the event, no agreement was reached and negotiations will continue in 2016.

What should we look out for ahead of the 2017 ministerial?⁶

The WTO is arguably in worse shape than it has been for some time and its claim to work for the benefit of developing countries has been further weakened. Developed countries are likely to push even harder for their own issues to be addressed, including for the introduction of new issues and for special and differential treatment to be limited to LDCs, Net-Food Importing Developing Countries and Small and Vulnerable Economies.

The following gives a summary of some of the issues and approaches that are likely to be proposed.

New Issues

A report⁷ by three Ambassadors selected to facilitate the process of discussions around a Ministerial Declaration for the Nairobi Conference suggests the following as potential new issues: e-commerce, investment, SMEs and MSMEs, global value chains, government procurement, Mode 5 in services, environmentally harmful subsidies and other issues. The report did not state how many members were actually calling for considerations of such issues and the list includes a number of 'Singapore issues' (see below).

Singapore Issues

These have long been argued by developing countries to be 'non-trade issues' that do not belong at the WTO. Unless there is a change to the current negotiating framework, legally Doha must be concluded before multilateral work can take place on the issues of investment, competition and transparency in government procurement, however there is no restriction on plurilateral negotiations.

⁶ Summary of South Centre briefing note (December 2015) *WTO's MC10: the call for 'new issues' at the WTO and implications for developing countries* http://www.southcentre.int/wp-content/uploads/2015/12/AN_MC10_5_Call-for-New-Issues-at-WTO.pdf

⁷ 2 (JOB/TNC/55) entitled "Tenth Ministerial Conference- Consultations on Ministerial Declaration" (29 October 2015)

⁵ Figure counts European countries separately

Competition

The Doha mandate states that the Working Group on competition will focus on the clarification of core principles, including transparency, non-discrimination and procedural fairness, and provisions on hardcore cartels; modalities for voluntary cooperation; and support for progressive reinforcement of competition institutions in developing countries through capacity building. The work is supposed to be no more than “exploration and analysis” however it is clearly oriented towards achieving a uniform minimum standard of competition policy amongst members.

The fear is that negotiations in this direction would create an additional layer of bureaucracy for developing countries, take away policy tools that they may wish to use to promote economic development (for example to guide the entry and operation of foreign trading firms), expose domestic firms to competition with powerful multinational firms and constrain government ability to give preference to domestic firms. There are also serious concerns that this area of work would be used to limit the role of State Owned Enterprises.

Procurement

Government procurement in developing countries forms a significant part of GDP, accounting for 20 to 25% in some cases. This means that it can be a powerful tool for promoting domestic industries as well as a response to economic downturns, or favouring economically marginalised groups. If market access offers were made in this area, the outcome is likely to be highly asymmetrical in favour of developed country providers.

E-Commerce

This area currently entails examining trade related aspects of, for example, enhancing internet connectivity and access to information and telecommunications technologies and public internet sites, cloud computing, the protection of confidential data, privacy and consumer protection. These issues have been examined by various committees. Members currently agree to refrain from imposing customs duties on electronic transmissions. If e-commerce appears as a ‘new issue’, it will likely entail the expansion of the mandate, with a strong focus on data transfer,

banning local content and local presence requirements and national treatment (cf TISA negotiations).

Global Value Chains – New Issues by the Back Door?

There is a developing narrative around the need to enhance the participation of developing countries in ‘Global Value Chains’ (GVCs) and supporting micro, small and medium enterprises. This is happening both within the WTO and also at the OECD and the World Bank. In the context of the World Bank, this agenda is highly focused on liberalization and behind the border regulation.⁸ The Trade Facilitation Agreement is presented as a key tool for achieving the aims outlined above, although the agreement says little about how SMEs might be given specific support. There are a number of risks associated with a work programme on GVCs, namely: that it offers greater benefits to developed country companies than to developing country companies (for example if it includes tightening of intellectual property rules); that it undermines regional value chains, where there is some evidence that developing country companies have a stronger position.⁹

Conclusions

There is an urgent need for a just and equal multilateral system but the WTO has demonstrated yet again that it cannot deliver this. The Doha deal has been dealt a significant blow and there is mounting uncertainty as to how developing countries will be able to ensure their issues are given priority. There is no mandate to introduce new issues to the multilateral negotiations but a significant risk that these will be replaced by further plurilateral negotiations, to the likely exclusion of development objectives. The

⁸ See for example OECD and World Bank (2015) *Inclusive Global Value Chains: Policy options in trade and complementary areas for GVC integration by small and medium enterprises and low-income developing countries* http://www-wds.worldbank.org/external/default/WDSContentServer/WDS/IB/2015/12/11/090224b083c499d8/2_0/Rendered/PDF/InclusiveGLOB0developing0countries.pdf

⁹ See: South Centre Analytical Note (July 2013) “Global Value Chains From a Development Perspective”, available at: http://www.southcentre.int/wp-content/uploads/2013/08/AN_GVCsfrom-a-Development-Perspective_EN.pdf

above demonstrate that, more than ever, there is a need for a fundamental rethink of the international trading system.

Further information:

- [Full list](#) of MC10 decisions and declarations.
- [Details](#) of the Information Technology Agreement
- European Council 15/12/15 *First Council conclusions on the 10th World Trade Organization Ministerial Conference* – Note how close some aspects of the ministerial declaration are to this [text](#), written before the conference had concluded.
- Extensive analysis from the [South Centre](#).
- Position statements, photos and campaigning from [OWINFS](#).
- Responses from [Focus on the Global South](#).
- Michael Froman, US Trade Representative, [calls](#) for the end of Doha just before the Ministerial
- Vatican [urges](#) World Trade Organization to remember the poor
- Sophia Murphy *WTO: Missing in Action* <http://www.iatp.org/blog/201512/wto-missing-in-action> Excellent article putting the WTO debacle into broader political context.