

BRIDGES NETWORK

# BRIDGES NEGOTIATION BRIEFING

A Guide to Negotiations at the WTO's Eleventh Ministerial Conference

SPECIAL BUENOS AIRES ISSUE - DECEMBER 2017



## An ICTSD guide to the Buenos Aires ministerial

FISHERIES

AGRICULTURE

E-COMMERCE

DEVELOPMENT

GENDER

INVESTMENT FACILITATION

FOSSIL FUEL SUBSIDIES

SERVICES



International Centre for Trade  
and Sustainable Development

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## SPECIAL BUENOS AIRES ISSUE – DECEMBER 2017

### BRIDGES WEEKLY

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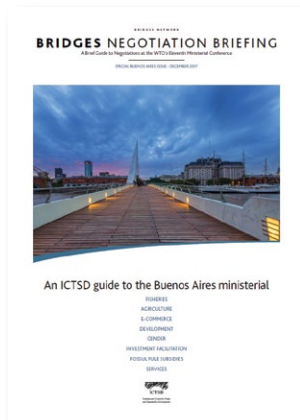
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## OVERVIEW

# Amid Fragile Environment, Ministers Weigh Trade's Future and its Contribution to Sustainability



Trade ministers, negotiators, and thousands of business and civil society actors will gather in Buenos Aires, Argentina, for the World Trade Organization's Eleventh Ministerial Conference (MC11), marking the first time that the global trade body's highest-level meeting will be held in South America.

This year's ministerial comes at a moment of change for the global trade system, which in October celebrated the 70th anniversary of the General Agreement on Tariffs and Trade (GATT). The negotiating agenda under discussion at the WTO is, however, relatively limited for the Buenos Aires meet. Areas where ministers could reach agreement – with varying degrees of ambition – include agriculture, electronic commerce, fisheries, and issues related to small and medium-sized enterprises. There is also the prospect of voluntary, plurilateral offshoots in important matters such as fossil fuel subsidies and gender.

All of these policy initiatives will require considerable effort to reach a concrete outcome. Despite heightened activity in Geneva and a flurry of proposals over recent months, the capacity of negotiators to cross the finish line, or otherwise chart a course for the organisation's future work, remains uncertain due to both technical and political challenges. Not least among these are a number of systemic issues related the functioning of the organisation - such as disagreement over the role of the Appellate Body - that are likely to play an influential role in the talks, even though they are not on the formal negotiating agenda.

In contrast to these muted expectations, there are growing demands for the global trade body to respond to a fast-changing world and for its members to engage effectively towards the evolution of an updated rules-based system that delivers on the objectives of sustainable development, as recognised in the preamble to the Marrakesh Agreement establishing the WTO. The United Nations 2030 Agenda for Sustainable Development and the Paris climate agreement provide a framework on which this effort could be aligned, and various stakeholders have called for seizing this moment of opportunity to use the WTO structure to deliver on several global public goods. They also warn that failing to work towards helping to achieve these universal goals could further test the system's long-term resilience and miss a valuable opportunity for change.

Meanwhile, the WTO ministerial also comes just as Argentina begins its presidency of the G20, and its move to host both high-level events presents an opportunity to advance leadership on trade issues while generating synergy between the bodies.

## A volatile global environment

The political and economic background against which MC11 is taking place can be characterised as uncertain, even volatile. The anxieties of individuals and communities over the domestic impacts of globalisation, coupled with the dislocations and uneven pace of recovery since the 2007-08 financial crisis, have been channelled over recent months towards different brands of political and economic nationalism – most notably in the United States, but also in elections across Europe.

The centre of world economic gravity meanwhile continues its inexorable shift towards emerging regions, especially Asia, with China gradually assuming the mantle of globalisation champion. Both of these dynamics have disrupted leadership patterns within the post-war liberal international economic order, thereby generating some instability and frictions in the system. The debates on what constitutes free, fair, and reciprocal trade, as

well as the pull of power-based and zero-sum approaches to trading relations, are some of the most visible manifestations.

There is a sense that the global trade system could experience a profound shake-up. The drive towards deeper integration through regional initiatives continues apace, as efforts to advance at the WTO have been frustrated.

This includes the development of new trade routes through China's Belt and Road Initiative, negotiation in the Asia-Pacific of the Regional Comprehensive Economic Partnership (RCEP), the Continental Free Trade Area (CFTA) in Africa, a recent deal among signatories of the Trans-Pacific Partnership (TPP) without the US, the planned extension of the Pacific Alliance to new associate members, and the EU-Canada Comprehensive Economic and Trade Agreement (CETA). The engagement of the US has focused on the modernisation of the North American Free Trade Agreement (NAFTA) with Canada and Mexico, and considerable rhetoric on bilateral trade relations with China and other Asian trading partners, along with the initiation of some high-profile trade remedy and intellectual property investigations by domestic authorities.

What these developments mean for the WTO framework remains unclear. Some national leaders have lately argued that regional agreements could be a shot in the arm for the rules-based economic system. Analysts say that should WTO negotiations continue to stall, countries may increasingly be looking to other forums to advance trade rule-making. This could lead to these new initiatives serving as useful structures to test new ideas that could eventually be brought back into the WTO system – or drain the energy from global trade talks.

#### **From Nairobi to Buenos Aires**

As they begin to arrive in Argentina, ministers will also be faced with the challenge of building on the success of the last meeting in Nairobi in the context of the inconclusive discussions that have unfolded at WTO headquarters in Geneva during the two years since.

The WTO's tenth ministerial conference was held in December 2015 in Nairobi, Kenya, and was similarly billed as a turning point in the organisation's history. It also held the distinction of being the first WTO ministerial in sub-Saharan Africa. The stakes at the time seemed high, coming off the success of the 2013 Bali ministerial, where ministers adopted a Trade Facilitation Agreement – the first global trade deal since the WTO took the place of the GATT system in 1995.

In Nairobi, ministers approved a package of outcomes which included a deal to eliminate agricultural export subsidies, along with adopting a set of development-oriented deliverables. A subset of WTO members also signed off on an update to the Information Technology Agreement (ITA-II), expanding the tariff-cutting accord on information and communications technology goods to include a series of new products.

Despite these achievements, a long-simmering disagreement over how to address the Doha Round of trade talks in their final declaration spilled out onto the surface in Nairobi. Members spent the high-level meeting openly at odds over whether to repeat their endorsements of the Doha agenda, as in ministerials past, or cast that framework aside in the hopes of overcoming old negotiating blockages. Unable to agree on a clear path forward, they ultimately codified their differences in writing: that some members still wished to proceed under the Doha structure, while others preferred “new approaches” to multilateral trade talks. They did, however, note their common ground when “acknowledg[ing] the strong legal structure of this organisation.”

Two years hence, that same “strong legal structure,” many fear, could soon buckle under the weight of too many complex legal cases, with too few lawyers to handle them. Moreover, the WTO's dispute settlement arm is currently facing a newer hurdle with systemic implications – that of eventually not having enough appeals judges on deck to rule on cases at all.

Earlier this year, the US moved unilaterally to block the start of new selection processes for two Appellate Body vacancies, citing frustration with purported overreach by the global trade court. Washington also questioned the legal basis behind the long-standing practice of having appellate judges whose terms have expired finish their work on ongoing cases. The move has left the WTO's highest court with only five of its seven judges in office – a number that will fall to four judges in December, and down to the minimum number of three by next September if not resolved.

Trade insiders note that some of the US concerns with the WTO's appellate system have existed for years, and are not necessarily a hallmark of the new administration's wider approach to international trade. Even so, the lack of clarity on what Washington needs to allay its concerns of alleged Appellate Body overreach; the overall tone of the new US president's trade rhetoric; and the repeated statements of American "scepticism" over reaching negotiated outcomes in Buenos Aires have stoked fears in some quarters that the WTO may be entering one of its most challenging chapters to date.

### **Why this matters for sustainable development: trade's contribution**

Meanwhile, the world keeps turning, and pressing public policy challenges remain – with real implications for the lives and livelihoods of people around the globe. Just over two years ago, UN member states endorsed a new sustainable development agenda, with 17 Sustainable Development Goals (SDGs) and 169 associated targets designed to spur political momentum – as well as concrete action – towards ridding the world of poverty, hunger, and inequality by the year 2030 while ensuring environmental sustainability.

Many of these goals have potential overlaps with trade, including as a means of fulfilling these public policy objectives. Indeed, the 2030 Agenda and the Addis Ababa Action Agenda on financing for development explicitly recognise the role of trade in advancing the SDGs. Yet while trade negotiators cite SDG 14.6 as a powerful motivator in reinvigorating the fisheries subsidy negotiations at the multilateral level, where do the other SDGs fit in? The same question can be asked of the nationally determined contributions (NDCs) committed to under the Paris Agreement to mitigate the rise in the average global temperature to below two-degrees Celsius above pre-industrial levels, given that trade components feature in nearly half of current NDCs.

Some of that SDG momentum can be seen driving specific initiatives that WTO sub-groups are set to announce in Buenos Aires: different groups of members are expected to release declarations on trade and women's economic empowerment, as well as trade's role in fossil fuel subsidy reform. Both of these initiatives could serve to advance progress on specific goals, such as SDG 5 on gender equality, SDG 7 on affordable and clean energy, and SDG 13 on climate action. How to move from political statements to concrete implementation with tangible benefits will, as always, be key.

### **What sort of ministerial and legacy**

Whatever the result of Buenos Aires, WTO members will have to consider whether the current system can handle the speed with which the world is changing, the evolving manner in which business is conducted, and the aspirations of citizens regarding future prosperity and sustainability. Questions remain over WTO members' record on implementing the results of recent ministerials, along with their spotty performance in notifying that progress to the global trade club in order to facilitate future reforms. Furthermore, it remains unclear whether the global public, given the heated international debate on globalisation, technology, and the merits of international trade deals, will be receptive to the outcome.

In turn, WTO members will urgently need to reflect on how and whether they can adapt to these challenges, and thus continue to serve their domestic constituencies and the collective public good over the years to come.

## FISHERIES

# WTO Rules on Fisheries Subsidies: Progress and Prospects

*WTO members have been working to craft disciplines on harmful fisheries subsidies, with the additional push of the Sustainable Development Goals (SDG) to conclude these efforts by 2020.*

New rules to address the negative environmental effects of subsidies to the fishing industry are one of the most likely possible outcomes of MC11. These negotiations were originally mandated in the Doha Declaration of 2001, only to languish for several years before being given renewed impetus by the United Nations 2030 Agenda for Sustainable Development. Recent proposals have prioritised "effects-based" disciplines focused on subsidies to illegal, unreported, and unregulated (IUU) fishing and subsidies to fish stocks that are already overfished, as well as the more general priorities of the original mandate: subsidies contributing to overcapacity and over-fishing. Disciplines on subsidies to vessels and operators engaged in IUU activity, commitments to improve transparency of fisheries subsidies, and a programme of further work currently appear to be the most likely elements of an outcome at MC11.

## **From the Doha mandate to the present day**

Fisheries subsidies have been an issue on the global agenda for many years. Global fisheries already suffer from overfishing: according to the UN's Food and Agriculture Organization (FAO), around 60 percent of assessed fish stocks are fully exploited and 30 percent are already over-exploited. The global fleet is also severely over-capitalised as fishing power has increased and resources have been depleted, the harvesting productivity of global fishing fell, on average, by a factor of six between 1970 and 2005, according to a [2009 study](#) from the World Bank.

There is strong evidence from economic modelling and case studies that subsidies to fishing can create incentives for over-capitalisation of the industry and for unsustainable levels of fishing effort. By [recent estimates](#), subsidies to the fishing industry amounted to around US\$35 billion per year, of which around US\$20 billion were given in forms that tend to enhance fishing capacity. Fisheries management [could go some way](#) to curbing these effects, but is rarely effectively enforced, and can in fact be undermined by political pressure exerted by over-capitalised fleets.

WTO members established a [mandate](#) for negotiations on the subject as part of the Doha Round in 2001, and [elaborated on that mandate](#) in 2005, directing the prohibition of certain subsidies that contribute to overcapacity and overfishing, enhanced transparency, and the inclusion of appropriate and effective special and differential treatment (S&DT) for developing and least developed country (LDC) members. The negotiations have faced technical challenges, particularly for building subsidy disciplines that address sustainability of fish stocks, as well as political challenges given the sector's economic importance to developed and developing countries.

A [Chair's text](#) of 2007, a milestone in the negotiations, included a list of subsidies to prohibit, a new rule for actionable fisheries subsidies, general exceptions, and a sophisticated system of S&DT, including greater exceptions for small-scale fishing close to shore and narrower exceptions for larger-scale fishing. A [Chair's report](#) of 2011 identified some areas of greater convergence, such as the idea of prohibiting subsidies to IUU fishing.

After a hiatus of several years, negotiations were reinvigorated following the adoption in 2015 of [Sustainable Development Goal \(SDG\) target 14.6](#) of the United Nations 2030 Agenda for Sustainable Development. This set a deadline of 2020 for prohibiting subsidies contributing to overfishing and overcapacity, and for eliminating subsidies to IUU fishing. WTO members also appear to have been inspired by the inclusion of binding fisheries subsidies rules in the Trans-Pacific Partnership (TPP) Agreement, which has since been

**2001**

WTO members establish mandate for negotiating disciplines on harmful fisheries subsidies under Doha Round

**2005**

Ministers in Hong Kong elaborate mandate, including through a prohibition of certain forms of fisheries subsidies that contribute to overcapacity and overfishing

**2007**

Chair's text issued, including list of possible subsidy prohibitions, S&DT system, and other possible provisions

**2011**

Updated chair's report issued, Doha talks later confirmed as deadlocked

**2015**

Negotiators in Nairobi attempt to advance talks on fisheries subsidies, which are not included in final package, though declaration pledges to continue work in rules negotiations

renamed as the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP).

A wide range of textual proposals have been tabled throughout the past year. The main proponents include New Zealand, Iceland, and Pakistan; the EU; Indonesia; the Africa, Caribbean, and Pacific (ACP) group; Argentina, Colombia, Costa Rica, Panama, Peru, and Uruguay; the LDC group; Norway; China; and the United States. Proposals tabled in the first half of the year were collated into a matrix in July and then into a vertical compilation text by the proponents in September. In the lead-up to MC11, negotiators have been working from this vertical compilation, including ongoing additions of formal proposals and textual suggestions from various members. They have also been discussing what issues might be ripe enough to be included in an outcome at MC11, and what issues might be candidates for inclusion in a work programme of further negotiations to the twelfth ministerial conference (MC12).

**State of play heading into Buenos Aires**

All proposals on the table include prohibitions of subsidies based on their "effects," in particular subsidies linked to IUU fishing and subsidies to fishing of stocks that are already overfished. These two prohibitions are thought to be leading candidates for an agreement because of a general understanding that subsidies in these situations, particularly to IUU fishing, are especially egregious that, at least in principle, the disciplines could apply to all WTO members equally. This approach could avoid or minimise debate over exceptions in the form of special and differential treatment (S&DT) for developing countries, which would make the agreement difficult for large developed countries to accept. This understanding is not a point of firm consensus, however; there are proposals on the table that include exceptions to these prohibitions.

Many of the proposals also include prohibitions on subsidies based on the type of cost they target – capital costs, like vessel construction, or operating costs, like fuel. Most proposals for disciplines on these subsidies, for example by the ACP and LDC groups, include S&DT in the form of wide exceptions for these subsidies to be provided to small-scale fishing and fishing within developing country WTO members' own exclusive economic zones (EEZs).

**Key issues in the negotiations***Subsidies to Illegal, Unreported, and Unregulated fishing*

Of all the issues on the table, the idea of a discipline on subsidies to IUU fishing is one of the most likely candidates for some degree of agreement at MC11. Illegal and unreported fishing is a pervasive problem in global fisheries; some estimates suggest the value lost amounts to up to US\$23 billion per year. The issue is mentioned explicitly in SDG 14.6 and has obvious political appeal. The central issue in the negotiations is how IUU fishing in different jurisdictions would be identified and thus trigger the subsidy discipline. A further, deeply political and sensitive issue, that has recently been brought openly into the negotiations is how WTO disciplines might be designed to avoid issues of disputed jurisdiction over different maritime zones.

- Identifying activity that would trigger the subsidy prohibition: RFMO lists

Most of the proposals on subsidies to IUU fishing suggest that vessel lists currently published by Regional Fisheries Management Organisations (RFMOs) could be used to trigger the prohibition: once a vessel or operator is listed, subsidies to that vessel or operator would be banned.

Members have proposed different approaches, however, for how to use RFMO lists. The more automatic approach advanced by New Zealand, Norway, and the LDC group, among others, would have the subsidy prohibition apply once a vessel is listed by any RFMO. Other members are concerned about the process by which RFMOs list vessels, and propose that WTO members retain more control over this trigger. A proposal by a group of Latin American countries, for example, would enable a WTO member to recognise RFMO lists of vessels for the purposes of the subsidy prohibition. China has proposed

even greater control, requiring a vessel's subsidising member to verify alleged IUU activity before a subsidy prohibition is applied.

- Identifying activity that would trigger the subsidy prohibition: National lists and determinations

A second approach proposed is to apply the subsidy prohibition to vessels identified by national governments for IUU fishing. Identification could be by flag states, subsidising governments, or potentially by coastal states. The EU, New Zealand, and others have proposed that identification could take the form of national IUU vessel lists. Several Latin American members and the LDC group have also proposed that identification could be broader, in the form of national determinations of vessels or operators as having been engaged in IUU fishing under national legislation. Some members have suggested that the prohibition could apply, under certain conditions, to vessels identified by coastal states for IUU fishing in the coastal states' waters, an idea that has raised concerns about one member's ability to trigger the subsidy obligations of another member. A proposal by Norway offers a middle-ground approach, under which the subsidising member would be required to check that operators receiving subsidies had not recently operated in another member's EEZ without permission.

#### *Prohibition on subsidies to overfished stocks*

Several proposals on the table include a prohibition on subsidies for fishing on stocks that are already overfished. According to the [FAO](#), around 31 percent of assessed fish stocks around the world are overfished.

The more ambitious proposals, including New Zealand and the LDC group, would apply the subsidy prohibition to all stocks that were assessed to be overfished. Other members have argued for a narrower discipline, either by requiring that subsidies have negative effects on an overfished stock, as proposed by the EU and Latin American group, and/or by limiting the subsidy rule to vessels that target an overfished stock, as proposed by the EU and ACP groups. The EU has also proposed to carve fishing within the territorial sea out of this discipline's scope.

The proposals by New Zealand and the Latin American country group suggest an objective definition of when a stock is to be considered overfished. Other members would rely instead on national or regional fisheries authorities' decisions, although concerns have also been raised about their reliability, and whether and how deeply they might be reviewed in the WTO.

A further issue is whether the rule should be extended to un-assessed stocks. Two proposals, by New Zealand and the EU, suggest that the prohibition on subsidies should also apply when a stock's status is unknown or where scientific information is insufficient, an idea that has raised concerns among some members, particularly those with limited stock assessment information.

#### *Subsidies that contribute to overcapacity and over-fishing*

Several members have proposed a prohibition of subsidies that increase the capacity of fishing fleets, either in general terms, i.e. subsidies that contribute to overcapacity, or by identifying specific kinds of subsidies. The EU proposal focuses on capacity-enhancing subsidies, arguing that overcapacity is the root cause of overfishing and stock depletion. Many developing country members are concerned, however, that rules that would limit their ability to provide subsidies that increase fishing capacity, such as by building vessels or supporting more powerful engines, would limit their ability to support the growth of their domestic fishing fleets.

Proposals by the ACP and LDC groups, by the Latin American country group, and by the EU and Indonesia, for example, include a variety of exceptions from this prohibition for developing countries: for LDCs, for small-scale fishing, and for fisheries within EEZs or fishing of RFMO quota. In the case of the EU and Indonesian proposals, some exceptions



would be subject to fisheries management being in place to ensure subsidies did not contribute to further overfishing, a key concern.

Members have attempted to address the problem of subsidies that contribute to overfishing in different ways, and negotiators have frequently combined the issue with discussing rules on subsidies to overfished stocks. Indonesia and the LDC group have suggested specific prohibitions on operating costs which are usually considered to contribute to fishing effort and therefore potentially to overfishing. Fuel subsidies make up a large percentage of global subsidies to operating costs, and have been a difficult issue in the negotiations. Mexico and others have argued that the fisheries subsidy disciplines could cover horizontal (i.e. economy-wide) subsidies to fuel which benefit the fishing industry; others have argued instead that disciplines should include the specificity requirement from the current Agreement on Subsidies and Countervailing Measures (ASCM). The EU has proposed exempting fuel de-taxation schemes from the scope of a new fisheries subsidies agreement altogether.

#### *Special and differential treatment*

The question of whether and how much S&DT is required in the final agreement is likely to depend on the scope of the final prohibition. There is an important political and technical aspect to the discussions: the United States, in particular, is reluctant to see more flexible rules apply to large developing countries under a WTO deal. The effects-based elements of the proposals on the table included, until recently, little or no S&DT, and mostly in the form of extended implementation time for these disciplines. In contrast, much broader S&DT is being discussed in the context of disciplines to subsidies that increase capacity or fishing effort, many of which would exclude LDCs from these prohibitions completely, and apply the prohibitions primarily to fishing outside developing countries' EEZs and to large-scale fishing. Other members, however, have argued that this would exclude large swathes of fishing from the disciplines.

#### **To MC11 and beyond**

There has been a significant push during 2017 to agree on disciplines on fisheries subsidies, specifically to deliver an outcome that contributes to SDG target 14.6. While there is substantial high-level political expectation and therefore momentum behind the negotiations, the technical and legal complexity of the negotiations means it is not yet clear what elements of the proposals on the table might be able to be combined into an outcome at MC11. Much will depend on the potential for flexibility from the largest WTO members.

The US and China have both engaged formally in the fisheries subsidies negotiations only recently and with firm proposals on transparency and IUU, respectively, between which there is no immediately obvious common ground. It remains to be seen whether defensive members have enough flexibility to adopt disciplines that are significant enough for ambitious members to accept. What does seem likely is that whatever is agreed in Buenos Aires will need to be supplemented by a work programme that addresses the remaining issues on the table for a further deliverable to be agreed at MC12 in 2019, one year before the SDG 14.6 deadline of 2020.

## AGRICULTURE

## Harvesting Outcomes or Planting Seeds for the Future?

*Members have been weighing possible options for agricultural domestic support reforms, public food stockholding, and other farm trade topics, either for a ministerial outcome or future work programme.*

Agriculture has long been central to trade talks at the WTO, despite only small steps forward in the 23 years since members first endorsed global rules on farm trade. Cutting trade-distorting farm subsidies and improving access to markets were key elements of the Doha Round negotiations, which ministers launched in 2001. Agricultural trade issues were part of broader packages agreed at the last two ministerial conferences – leaving many to argue that Buenos Aires should help build on this legacy.

While most members favour an outcome on farm trade issues in Buenos Aires, some are reluctant to agree on new rules at this stage. For example, the US has lately said that it is “sceptical” that major negotiating outcomes can be reached in Buenos Aires. Persistent disagreements at both political and technical levels among the membership over how to address long-standing concerns on domestic agricultural support and public food stockholding for food security purposes have also repeatedly re-emerged in the preparations for this year’s conference.

Ongoing talks aimed at a “fair and market-oriented” agricultural trading system are built into the WTO’s existing Agreement on Agriculture. Furthermore, UN member states endorsed a series of commitments made under the Sustainable Development Goals (SDGs) which includes a target under [SDG 17](#) on “promot[ing] a universal, rules-based, open, non-discriminatory, and equitable multilateral trading system under the World Trade Organization, including through the conclusion of negotiations under its Doha Development Agenda.”

That SDG also calls for action on trade restrictions and distortions in agriculture as one means to achieving the goal of ending hunger and malnutrition by 2030, as captured under [SDG 2](#). In this view, an outcome at the WTO on farm subsidies and other unresolved issues is a necessary but insufficient requirement for progress on the global goals.

The success of negotiated WTO outcomes in supporting these sustainable development objectives will also hinge on their implementation, as recent ministerials have shown. The above-mentioned SDG 2 did mention the elimination of agricultural export subsidies and “export measures with equivalent effect,” and trade ministers agreed in Nairobi two years ago to eliminate that type of state aid. Progress on putting that in place has, however, moved slowly, with only the [European Union](#) and [Australia](#) submitting revised schedules to the WTO reflecting this change.

### What’s on the table?

Many countries have argued that the ministerial should be an opportunity to cap and cut trade-distorting agricultural domestic support, which is one of the major unresolved Doha issues that all countries have agreed should be addressed.

At the same time, a set of developing countries have renewed calls for a “permanent solution” to difficulties they say they face under existing WTO rules when buying food at subsidised prices as part of their public stockholding programmes for food security purposes. Cotton subsidies are also on the agenda, another long-standing farm trade issue which is critical for many of the world’s poorest countries. Finally, there is another proposal on the table for improving transparency on agricultural export restrictions, and an exemption on their application to humanitarian food aid.

**2001**

WTO members launch Doha Round talks, including comprehensive negotiations on market access, export subsidies, and domestic support

**2003**

Ministerial in Cancún ends in stalemate

**2004**

WTO members adopt July 2004 package, set out frameworks for advancing Doha Round talks

**2005**

Members endorse at Hong Kong ministerial a 2013 target date for eliminating export subsidies on agriculture

**2006-2007**

Draft texts circulated, proposing tariff-cutting and subsidy reduction formulas

**2008**

Talks produce "Rev.4," draft modalities on agriculture. Mini-ministerial comes close to deal, breaks down

**2011**

Updated chairs' reports issued, members at Geneva ministerial acknowledge Doha Round is at "impasse"

**2013**

Bali ministerial endorses package that includes select agricultural deliverables, including an interim solution to public stockholding for food security purposes, along with items on tariff-rate quota administration, general services, and export subsidies

**2015**

Nairobi ministerial confirms deal on eliminating agricultural export subsidies, sets disciplines on export measures with equivalent effect

However, if satisfactory solutions cannot be found at the upcoming ministerial, in whole or in part, these topics could be addressed under a work programme to be pursued after the conference, along with other non-agricultural areas. Trade officials say this could also include negotiations on agricultural market access; a "special safeguard mechanism" to protect developing country and least developed country (LDC) producers from sudden surges in import volumes or price depressions; and "export competition" issues, such as rules on agricultural state trading enterprises, which were left unresolved at the last ministerial conference in Nairobi, Kenya, two years ago.

*Domestic support*

Members have tabled numerous proposals for capping trade-distorting agricultural domestic support in recent months. While some focus on rectifying past imbalances in the WTO rulebook, others seek to establish a fairer basis for future trade. Major differences between countries complicate the task of agreeing on an outcome in this area.

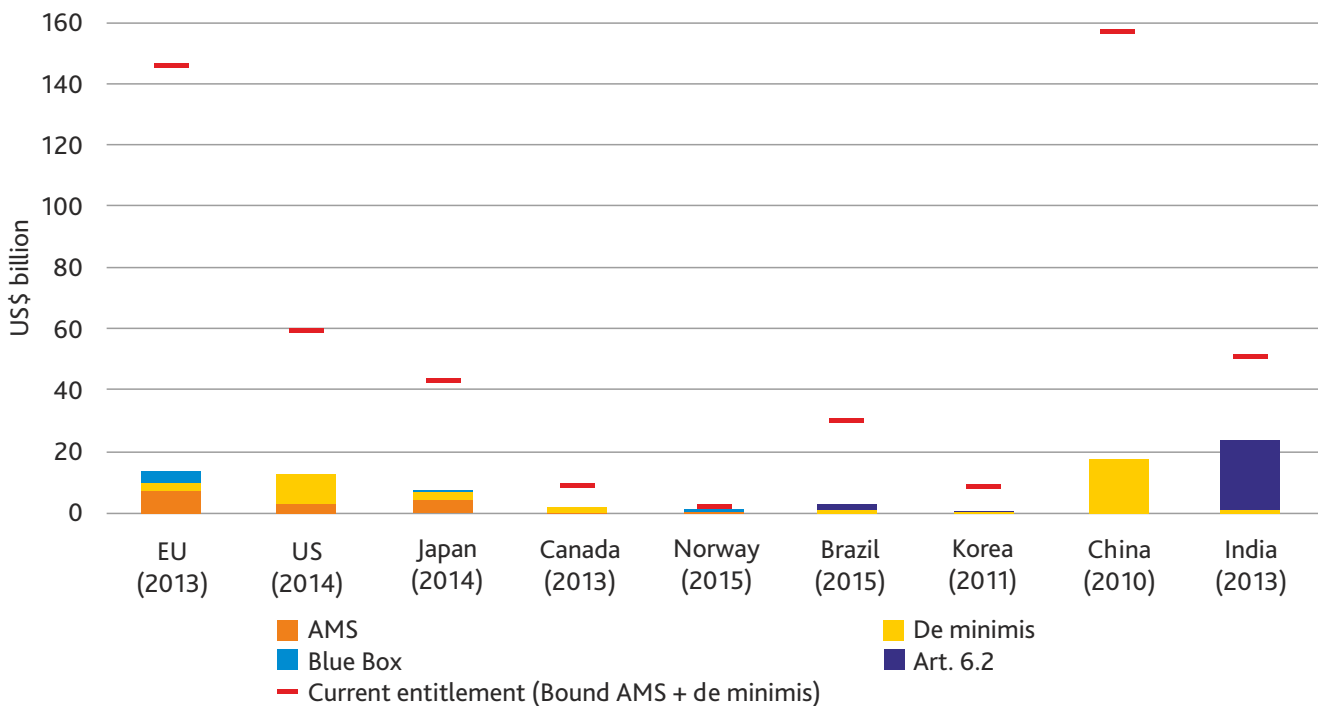
In particular, gaps have emerged between the stance of large developing countries, such as China and India, and members that have long provided trade-distorting farm subsidies, such as the US and EU. While China and India have called for the elimination of trade-distorting "amber box" support, they also favour maintaining current flexibilities for developing countries to provide "de minimis" support – which the US argues could still distort markets. Meanwhile, G10 countries with highly-protected farm sectors such as Japan, Norway, and Switzerland have argued that China and India's stance makes unrealistic demands of them, while those in the African, Caribbean, and Pacific (ACP) group have mostly backed up the large developing countries' stance.

A June proposal from the EU, Brazil, and three other agricultural exporting countries sought to advance a different approach. The paper called for new ceilings to be established on overall trade-distorting support, to be set as a share of farm output, and seeks to incentivise countries to report more current and accurate data to the WTO. Developing countries would be able to provide more support than developed countries, or set in place the new ceilings at a later date, while there would be no constraints on support provided by LDCs. Crucially, the proposal sought to link new rules on farm subsidies with the issue of the procurement of subsidised food under developing countries' public stockholding programmes for food security purposes – a move which China, India, and other countries in the G33 negotiating coalition of countries with large populations of smallholder farmers said was unacceptable.

Another cluster of countries also has had difficulties with the EU-Brazil approach, but for different reasons. Australia, New Zealand, and some other agricultural exporting countries have called for ceilings expressed as a fixed monetary value – rather than ones that tend to increase as the value of farm output grows. A proposal from these countries was tabled in October, offering a menu of different approaches to setting a ceiling, with options covering major countries, high-subsidising economies such as the G10, and smaller developing countries. Least developed countries would be exempt from any support ceiling.

As Mexico argues that the proposal would impose a heavy burden on those developing countries which have high existing ceilings on trade-distorting support, it has tabled an alternative approach based on cuts to current entitlements.

Most recently, Argentina has tabled a proposal aimed at galvanising "convergence," in its role as conference host rather than as a representation of its national position. The text draws on elements from proposals tabled by other countries, and would include caps on overall trade-distorting support as well as on subsidies classified as amber box.

**Figure 1. Domestic support notifications relative to current entitlements**

Source: ICTSD calculations based on WTO notifications.

#### *Public stockholding*

Some ideas have also been put forward in a separate but related topic in the talks, the issue of public stockholding for food security purposes. Large developing countries had first raised this question ahead of the Bali ministerial conference in 2013, when rapid food price inflation meant they could risk breaching existing WTO rules on farm subsidy levels.

Ministers struck a temporary deal whereby other countries agreed not to bring disputes in this area at the WTO, in exchange for more detailed information on how these support schemes were operating and other conditions; countries later agreed this deal would apply until a permanent solution had been found. While China, India, and other G33 countries favour an exemption for these support payments under WTO rules, agricultural exporting countries such as Paraguay and Russia prefer an outcome that builds on the Bali deal.

Members have also debated whether to expand the scope of the current "interim solution" in product coverage or in related requirements regarding its use when crafting a final solution, with no clear outcome heading into the ministerial.

While members agreed in Bali four year ago to craft a permanent solution by the 2017 ministerial, that deadline has since been turned into a non-binding one, with the current "interim solution," or peace clause, in place until whatever date that a permanent version is agreed.

#### *Cotton, export restrictions*

Members agreed over a decade ago that they would address the issue of cotton "ambitiously, expeditiously, and specifically," though efforts to advance those trade talks have struggled in practice. Most recently, some commitments were endorsed in Nairobi two years ago, aimed at improving market access for LDCs, as well as some provisions on export competition.

The C4 group of West African cotton-producing LDCs tabled a proposal on cotton in October, sponsored by group members Benin, Burkina Faso, Chad, and Mali. The new paper calls for capping the overall level of trade-distorting support for cotton, as well as

measures on "green box" support, which is required to be only minimally trade-distorting under WTO current rules.

Countries that have committed to a ceiling on highly trade-distorting "amber box" support at the WTO would be subject to cuts on overall trade-distorting support for cotton, ranging from 70 to 90 percent depending on how high subsidies were in a historical reference period. Because the proposal would not require new commitments from developing countries such as China and India, developed countries such as the US have not seen the proposal as a good basis for further talks.

Separately, submissions on agricultural export restrictions have largely focused on small steps to improve existing rules. A Singapore paper proposing improved transparency in this area has for the most part been broadly welcomed by members. The submission also proposes exempting humanitarian food aid purchased by the World Food Programme from these restrictions.

### **Beyond Buenos Aires**

Heading into the ministerial, what level of outcome might garner support from members remains unclear. Given this situation, as well as the fact that some farm trade issues have featured little in recent talks in Geneva, what might be included in a future-oriented work programme is likely to play a key role in the Buenos Aires talks. What structure and approach this might take will depend on discussions in the Argentine capital.

Recent efforts to agree on crafting new work programmes – such as the plans for putting together a post-Bali work programme, which never came to fruition – have seen mixed results, meaning that the design for this new one and the political will to implement it will be crucial elements for its success.

Argentina and four other exporting countries have proposed talks on agricultural market access, while Canada, Chile, and Switzerland have called for members to negotiate enhanced disciplines on export competition. With no clear agreement among members on negotiating mandates, a new consensus on the work that needs to be done could help members take steps forward on shared objectives, such as those set out under the Sustainable Development Goals.

## E-COMMERCE

## Debating the Future of E-Commerce and Digital Trade in Buenos Aires

*Several WTO members have been pushing to update a 1998 work programme on e-commerce, and examining whether global trade rules should be crafted in this area.*

There is growing interest among trade experts and delegations in Geneva and beyond over the potential for e-commerce and digital trade to support economic development, especially by providing an effective way for small companies in less developed countries to participate in global trade and penetrate global value chains. However, these opportunities must be considered along with concerns that the “digital divide” between countries which are capitalising on these opportunities and those which are not could become a digital chasm if the frameworks governing them do not adequately ensure the equitable distribution of benefits and overcome barriers to inclusive growth.

Estimates published by eMarketer, a news and research site on digital trends, put global e-commerce website sales at above US\$22 trillion last year, with projections that they will expand to US\$27 trillion by 2020. Many experts argue that developing new rules in the WTO context is important not just to keep pace with an evolving global economy, but also to ensure that this field is inclusive – rather than evolving into a patchwork of preferential arrangements that involve select countries.

### **Digitisation and the Global Economy**

Over the past two decades, the global economy has been transformed by digitisation and rapid technological change, boosting e-commerce, engaging new actors, and presenting novel possibilities. The frameworks of global trade can be harnessed towards shaping the nature and outcomes of digitisation, including towards realising sustainable development outcomes.

#### *Effects of Digitisation on World Trade*

The internet has helped new business models emerge and disrupted incumbent industries, forcing companies to adjust to remain competitive. Rapidly evolving telecommunications capacities have further fuelled this process, making e-commerce easy to engage in from any smart device and allowing companies to profit by providing new kinds of services. It has also facilitated a greater role for entrepreneurs and small and medium-sized enterprises (SMEs) in the international trading landscape, cutting production and trading costs and saving time.

However, it seems that developed and some developing countries often have more enabling environments for e-commerce, and thus reap the benefits more easily, while for many least developed countries (LDCs), this not yet the case given persistent institutional, regulatory, knowledge, and skills asymmetries, as well as limitations on physical infrastructure that affect connectivity. The development of future policies in this area could either resolve these problems, or conversely make disparities between and within countries worse, depending on how they are crafted.

#### *Scope for Trade Frameworks to Regulate and Shape the Digital Economy*

Advocates for pursuing more detailed e-commerce discussions – or undertaking negotiations on new rules – in the WTO framework say that the rapid pace of technological change will require a digital trade agenda attentive to the needs of SMEs, with conducive policies and mitigated regulatory friction through reduced transaction costs, lower administrative and logistical burdens, greater transparency, and regulatory coherence.

They also note that these measures will need to be coupled with the provision of reliable internet access, in line with SDG target 9.C; training and skills development; and infrastructural support. The digital economy can also enable access to education and skills

building through e-learning platforms and online courses, in line with SDG target 4.A on upgrading education facilities that are "child, disability, and gender-sensitive" and provide safe learning environments for everyone. It can also contribute to global health and well-being (SDG 3), through access to online health care services, which can in turn support quality employment.

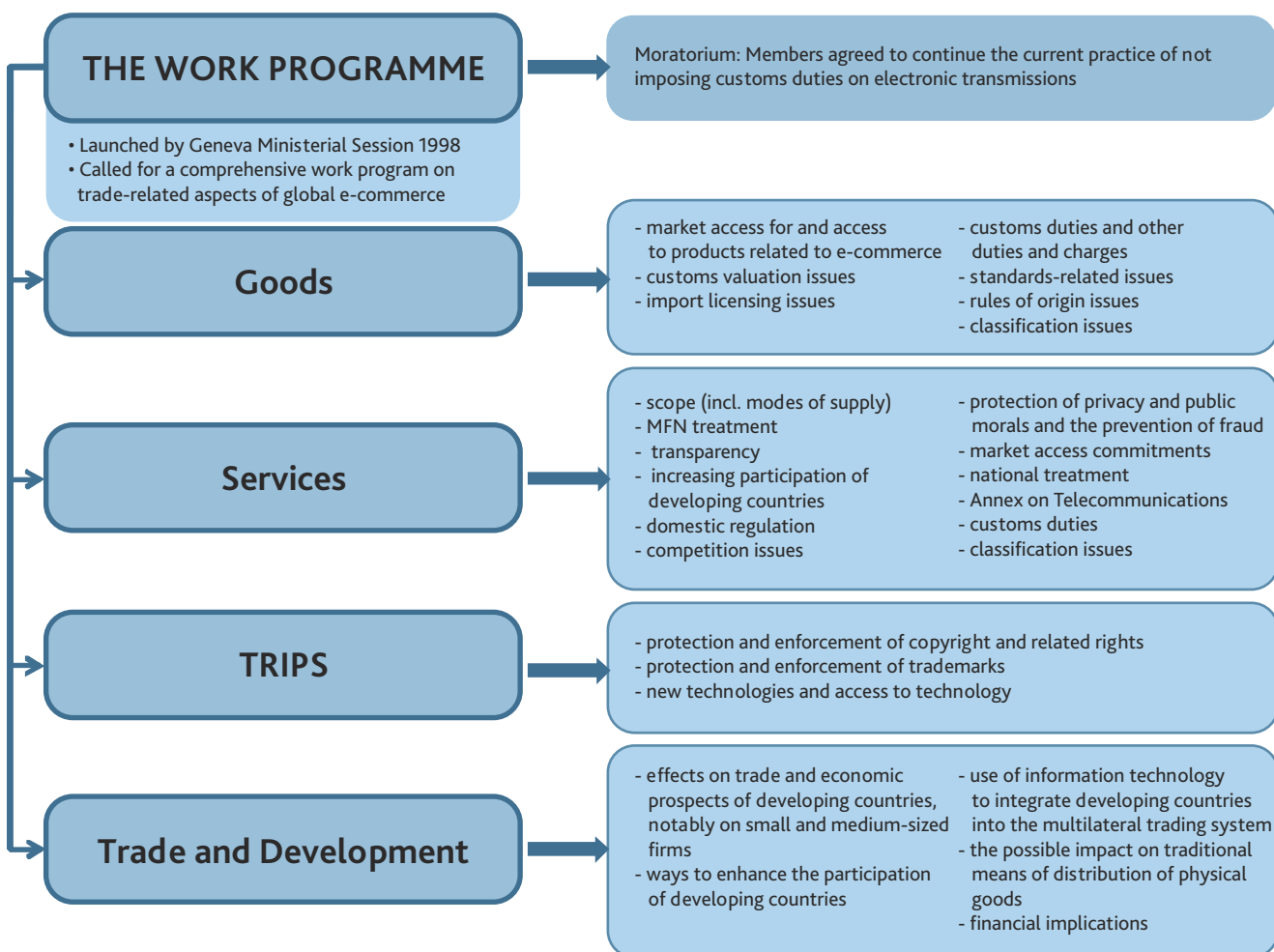
E-commerce can also facilitate greater participation by women, and can be harnessed to build companies in countries where they lack professional networks and resources, in line with SDG Target 5.B on the enhanced use of information and communications technology (ICT) to empower women.

### History of E-Commerce in WTO Negotiations

There are some aspects of e-commerce that already fall within the scope of WTO rules, including telecommunications, services commitments, customs reforms, and intellectual property considerations. These are enshrined in and advanced through multilateral and plurilateral agreements.

The WTO's General Agreement on Trade in Services (GATS), Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), and Information Technology Agreement (ITA, later expanded to ITA-II) contain rules with a direct bearing on e-commerce. The plurilateral Trade in Services Agreement (TiSA), negotiations which are currently on hold, could also be of significance in this field if concluded.

**Figure 1. Setup of WTO E-commerce Work Programme**



Source: Author's representation based on presentation by Lee Tuthill in the MIKTA Workshop on Electronic Commerce, Geneva, 5 July 2016.





**1998**

WTO members agree to establish e-commerce work programme, continue moratorium on customs duties on electronic transmissions, which is renewed at subsequent ministerials

**1998-2015**

moratorium continuously renewed at ministerials, as is work programme, including directions for periodic reviews. Work in WTO bodies continues, at varying paces

**2015**

WTO members agree in Nairobi to continue holding periodic reviews on work programme; Information Technology Agreement (ITA) expanded

**2016**

E-commerce returns to TRIPS Council agenda for first time in over a decade.

**2016-2017**

MIKTA, FED coalitions hold informal events on e-commerce in WTO context. Aid for Trade Global Review focuses on connectivity, inclusiveness

*Advances in free trade agreements*

Parallel to this, there has been progress in free trade agreements in developing new disciplines on digital trade. At least 70 regional trade agreements (RTAs) currently exist which include an e-commerce chapter or one or more articles dedicated to e-commerce, but which vary extensively in scope and depth, according to a recent paper by Mark Wu. This number includes RTAs under negotiation. More than half of the WTO's members have signed at least one RTA with a standalone e-commerce provision, including several developing countries.

For example, the US-Korea Free Trade Agreement, known as KORUS, administers considerable e-commerce coverage, including banning customs fees on trade in digital products; disallowing discrimination in favour of domestic digital products over "like" imported digital products; encouraging the use of digital signatures; and promoting cooperation among national consumer protection authorities on prevention of e-commerce deceptive practices through its rules.

Similarly, the proposed Trans-Pacific Partnership (TPP) expands on KORUS to include commitments on the free flow of data across borders subject to exceptions; disciplines on data localisation requirements; a ban on requirements to transfer technology as a condition of conducting business; restrictions on imposing customs duties on internet traffic; and provisions for enforcing encryption. Since talks were re-opened following US withdrawal from the pact, a dozen provisions relating to intellectual property and telecommunications have since been suspended, though only a handful were related to digital clauses. The vast bulk of suspended intellectual property provisions related to biologics, pharmaceutical test data, and patents.

**Escalation in WTO activity**

The level of WTO members' engagement and activity regarding the future of the e-commerce work programme is changing fast, with dozens of submissions tabled since July 2016 – a notable shift given the various preceding years where limited activity was seen in this area. Heading into the ministerial, positions remain polarised. Members have not agreed on whether to continue with the status quo in the current work programme, expand the scope of discussions, explore the basis for negotiations, or commit to opening talks straight away. Furthermore, negotiators have yet to agree on whether to extend or revisit the moratorium on duties on electronic transmissions.

Critically, there remain persistent disagreements on how and whether to address the so-called "new issues" that go beyond the agenda of the Doha Round, an issue that dominated ministerial-level talks in Nairobi two years ago. Alongside this debate, certain WTO members have also cited the absence of a mandate for negotiations on e-commerce and the need to first address the open questions of the work programme before looking to further action.

Certain recent draft ministerial decisions have diverged from the previous mandate, demonstrating a range of views regarding whether to proceed under the existing work programme or to set up new structures and objectives for discussion, which could potentially lead to discussing new rules or ideas.

The draft ministerial decision tabled by Russia in October proposes the establishment of a Working Group on Electronic Commerce as a forum for the continuation of e-commerce work beyond the WTO bodies currently charged with the work programme. The body would consider developing country participation, trade facilitation, intellectual property rights, and existing WTO rules and gaps, among other items. Similarly, a submission from Japan, Hong Kong, and the Separate Customs Territory of Taiwan, Penghu, Kinmen, and Matsu suggested a working group to evaluate whether clarification or strengthening of existing WTO rules would be necessary, after which members can consider whether to launch negotiations.

China suggested in November that efforts should continue under the work programme with the existing mandate, using member proposals to develop and agree to a work plan, with special consideration for least connected countries. A November communication from Bangladesh also suggested the continuation of efforts under the existing work programme, and urged developed and developing countries, with the necessary capacity, to provide duty-free and quota-free (DFQF) market access to LDC exports delivered through e-commerce platforms.

Costa Rica honed in on six areas of proposed work for a potential WTO E-commerce for Development Agenda in its own submission, namely ICT infrastructure and services; trade logistics; payment solutions; legal and regulatory frameworks; e-commerce skills development and technical assistance; and access to finance. The document draws an explicit link between e-commerce discussions and development objectives, with a view to obtaining a ministerial mandate. A communication from Australia, Canada, Chile, the EU, Norway, Paraguay, and South Korea, went further, proposing the establishment of a working party to prepare for and carry out negotiations based on member proposals.

A statement on behalf of the African Group said that the creation of new multilateral rules on e-commerce would be premature, where the work programme has not yet been sufficiently explored, urging for discussions to continue in this venue. The group has since tabled a draft ministerial decision on the subject. Meanwhile, Singapore has issued a draft ministerial decision which would continue discussions under the current work programme, along with calling for periodic reviews by the General Council of the work of the relevant WTO bodies, among other provisions.

**Table 1. Positions on elements of MC11 Decision on e-commerce**

	Job 137	Job 140 Rev.4	Job 149	Job 150	Job 152 Rev.1	Job 153	Job 155	Job 156 Rev.1
<b>Substantive matters</b>								
Retain 1998 Programme mandate as currently interpreted					X	X	X	
Expand substance of deliberations	X	X	X	X*				X
Examine case for negotiations								X
Mandate negotiations now		X						
Abandon 1998 Work Programme	Mooted as a possibility/risk in discussions but not included in any proposal							
<b>Organizational matters</b>								
Retain 1998 Programme as framework for ongoing work			X	X	X	X	X	
Establish a new body – Working Group or Working Party	X	X						X
<b>Moratorium on duties on electronic transmissions</b>								
Extend moratorium at MC11 to MC12	X	X	X	X				X
Consider whether to extend the moratorium at MC11						X	X	
Link to extension of moratorium on non-violation in TRIPS						X		

\* Explicit reference made to need for agreement by all members.

**Key to Job numbers:**

*Job 137:* Russian Federation

*Job 140 Rev.4:* Australia, Canada, Chile, Colombia, The European Union, Israel, the Republic of Korea, Mexico, Montenegro, Norway, Paraguay, Peru, and Ukraine

*Job 149:* Singapore

*Job 150:* China

*Job 152 Rev.1:* Bangladesh

*Job 153:* India

*Job 155:* The African Group

*Job 156 Rev.1:* Costa Rica, Hong Kong, China, Japan, Switzerland, and the Separate Customs Territory of Taiwan, Penghu, Kinmen, and Matsu.

Source: Patrick Low, *E-Commerce and the WTO: Goals and Expectations towards MC11 and Beyond*, ICTSD (forthcoming)

**Looking to MC11 and beyond**

In negotiating terms, as noted above, advocates of discussing e-commerce rules in the WTO framework warn that failure to address this issue here could deepen asymmetries in setting the rules, and miss out on the possibilities for e-commerce to help countries and regions meet the challenges of unemployment, poverty, and limited cross-border trade.

Between setting inclusion opportunities across borders and the potential to contribute to sustainable development agendas, proponents for addressing e-commerce in more depth within the WTO context say that failure to discuss these ideas – especially given that RTA rules, while advancing, are still limited – also risks further entrenching economic inequalities and widening the digital divide.

Heading into Buenos Aires, it remains unclear how ministers will treat e-commerce at the multilateral level, given the wide range of opinions on the subject. However, the plethora of proposals that have emerged in recent months are in themselves a sign of far greater interest and engagement on the subject than what the WTO has seen in several years – suggesting that whatever emerges from the discussions in Argentina could be telling for whether members continue turning to the global trade club as a valuable forum for exchanging ideas, even if at the informal or plurilateral level, or if they will instead pursue these discussions in RTAs or other settings.

## DEVELOPMENT

## Examining How to Reinvigorate Talks on Supporting Developing Countries' Role in Global Trade

*Members have been debating 10 proposals on special and differential treatment, as part of wider discussions on how to support developing countries' greater integration in global trade.*

Sixteen years ago, WTO members kicked off the Doha Round of trade negotiations, also known as the [Doha Development Agenda](#), with the goal of rewriting global trade rules in a way that creates better conditions for developing countries to play a greater role in world trade. Although WTO members [disagreed](#) at the Nairobi ministerial conference in 2015 on whether to reaffirm the Doha mandate, development remains at the centre of multilateral trade talks and negotiating dynamics.

While virtually all topics related to global trade rules can have significant developmental implications, WTO members have also been weighing more specifically on how to ensure that multilateral rules better fit developing countries' specific needs and priorities. The adoption of the Sustainable Development Goals (SDGs) in late 2015 has given further political impetus to these discussions, with the goals of [eradicating poverty](#) and [ending hunger](#) by 2030, among a host of other targets with a trade and development dimension.

Notably, [SDG 17.1](#) also calls for "doubling the least developed countries' share of global exports by 2020," a challenging goal given recent trade statistics (see [Figure 1](#)) and [target 17.10](#) calls specifically for bringing the Doha Round talks to a close. A separate target under [SDG 14](#) on ocean conservation and sustainable use, along with calling for enacting bans to harmful fisheries subsidies, also refers to the role of appropriate special and differential treatment (S&DT) for developing countries, to give another example.

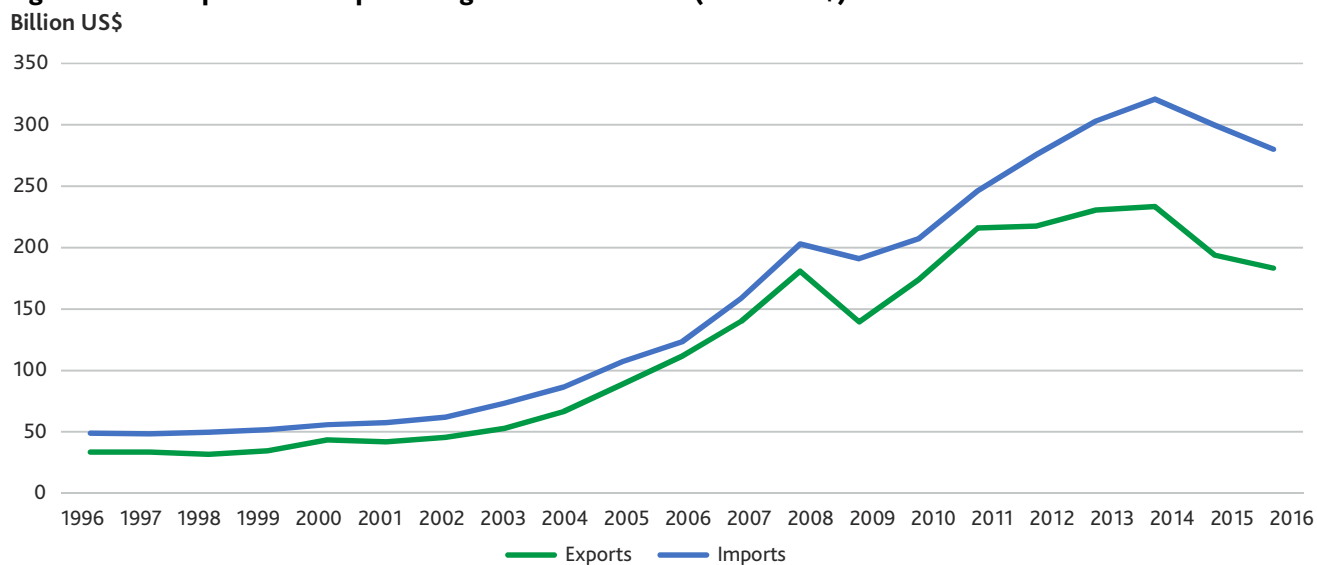
Over the years, WTO members have agreed on various decisions specifically aimed at helping least developed countries (LDCs) better integrate into the global economy and improve their prospects through global trade. This LDC focus has made it easier for members to reach agreement by consensus and important outcomes have materialised, notably in the context of the [Bali](#) and [Nairobi](#) LDC "packages."

However, one of the outstanding challenges within the WTO negotiations has been fulfilling a 2001 mandate to review S&DT provisions to make them more effective. These provisions give developing countries special rights, including preferences exempted from the most favoured nation principle, lower levels of commitments, derogations from various provisions, longer implementation periods, and technical assistance.

Ahead of the WTO's Eleventh Ministerial Conference (MC11) in Buenos Aires, discussions have continued on this topic, although a negotiated result seems unlikely at press time. The question of defining which members would be able to benefit from the proposed provisions remains a key stumbling block, as developed countries are unwilling to grant emerging economies the same rights they would grant LDCs.

Yet with LDCs' trade on an inconsistent trend since 2014 ([Figure 1](#)) and with an uneven path to diversification over the past decade ([Figure 2](#)), further efforts on LDC-specific issues remain important, although no new negotiating proposal has been circulated by LDCs on these topics, except regarding cotton, which has been treated in a separate proposal by four West African LDCs. (*For more on cotton, see [agriculture briefing](#)*)

**Figure 1. LDC exports and imports of goods and services (billion US\$)**



Note: Data is reported in current (or "nominal") prices for each year, i.e. in the value of the currency for that particular year. For example, current price data shown for 1990 are based on 1990 prices, for 2000 are based on 2000 prices. Therefore, current series are influenced by the effect of price inflation. Source: Author calculations from World Development Indicators database, <http://databank.worldbank.org/data/>

**Figure 2. Composition of LDC exports and imports, by sector**



Note: Data is reported based on aggregated categories of Standard International Trade Classification (SITC), Rev.4. Source: Author calculations

### **Special and differential treatment once again on the table**

The concept of special and differential treatment is a central element of ongoing WTO negotiations, both in their own right and within subject-specific talks, such as those devoted to disciplining harmful fisheries subsidies. The S&DT concept recognises that countries at different stages of development may require flexibilities in various forms to address specific vulnerabilities and foster their integration into the multilateral trading system.

Ministers agreed in 2001 that all S&DT provisions contained in WTO agreements should be reviewed, with a view to strengthening them and making them more precise, effective, and operational. Since then, however, consensus on most of these issues has remained elusive. Out of an original set of 88 proposals tabled by developing countries and LDCs in the WTO's Committee on Trade and Development (CTD), members have only reached agreement on five LDC-specific ones, including a 2005 decision on duty-free quota-free (DFQF) market access for LDCs.

Other issues have been incorporated under specific negotiating streams but largely remain unresolved. WTO members also established at the Bali ministerial conference a Monitoring Mechanism to serve as focal point for the monitoring of S&DT provisions, based on written input from members and other WTO bodies. So far, however, limited written submissions have slowed substantive discussion in that framework.

In the run-up to Buenos Aires, negotiations have focused on a new G90 submission circulated on behalf of the African, Caribbean, and Pacific (ACP) Group, LDCs, and Africa Group. This submission is filed under the heading JOB/DEV/48 – JOB/TNC/60, and is currently a restricted document. The submission builds on previous attempts at narrowing down the scope of the 88 original proposals. Before Nairobi, the G90 had already highlighted 25 proposals for agreement in a submission (JOB/TNC/51) which was subsequently revised twice to accommodate concerns of other members.

With no consensus reached in Nairobi, the new submission prioritises 10 proposals, including eight which have already been discussed, on issues such as the Agreement on Trade-Related Investment Measures (TRIMS), the General Agreement on Tariffs and Trade (GATT), non-tariff barriers, and subsidies. There are also two new ones on technology transfer and LDC accession.

On TRIMS, the submission envisages exemptions for developing countries for up to 15 years if a proposed measure fulfils certain development objectives related to industrialisation, socio-economic transformation, economic upgrading, environmentally-friendly production, or closing the digital divide.

On GATT Article XVIII, the proposed disciplines would allow developing countries, in particular LDCs or developing country members facing "constraints," to temporarily modify or withdraw concessions through a simplified and faster process, with no obligations to compensate or allow affected parties to suspend similar concessions for a five year-period. As with the TRIMS proposal, this flexibility would only apply for achieving certain objectives, such as infant industry protection, industrial upgrading, or recovering from natural disaster.

On sanitary and phytosanitary measures (SPS) and technical barriers to trade (TBT), the proposal seeks to operationalise certain technical assistance and S&DT provisions, including defining what is a "reasonable time" for LDCs and developing countries to make comments on new SPS/TBT measures or allowing a "longer time frame for compliance." It also proposes a system of compensatory adjustments to allow developing countries to maintain their market share and adjust to new measures.

On subsidies, the G90 proposes that some subsidies related to various development goals, including research and development, diversification, regional development, or environment protection should be considered as non-actionable for a certain period.

**2001**

WTO members launch Doha Round, aiming to revise global trade rules to facilitate developing country participation in world trade

**2002**

Members adopt accession guidelines for LDCs, along with WTO work programme on market access, trade-related technical assistance and capacity building initiatives, and other related provisions

**2005**

Ministers agree in Hong Kong that developed countries and developing country members "declaring themselves in a position to do so" will implement DFQF market access for products originating from LDCs

**2006**

Aid for Trade initiative launched

**2011**

WTO ministerial endorses waiver allowing members to grant preferential treatment to LDC services and service suppliers

**2012**

General Council approves updated WTO accession guidelines for LDCs

**2013**

WTO members adopt LDC package at Bali ministerial, including on DFQF, cotton, preferential rules of origin, and operationalisation of the LDC services waiver

**2015**

WTO members adopt another LDC package at Nairobi ministerial, including on rules of origin, implementation of services waiver, and cotton

This was originally envisaged under Article 8 of the WTO's Agreement on Subsidies and Countervailing Measures (ASCM), though that provision has since expired.

To use these flexibilities, beneficiaries would need to demonstrate that they face certain challenges – for example lack of diversification, decline in commodity prices or in manufacturing, or the digital divide. It also envisages certain exceptions to the prohibition on subsidies which are contingent on local content requirements.

On customs valuation, the proposal suggests different valuation techniques for LDCs facing difficulties in establishing the true value of an imported good, until implementation capacity has been acquired through technical cooperation.

On market access, the proposed disciplines would oblige trade-preference-granting countries to take into account the needs of developing countries and LDCs when designing their preferential schemes to ensure that their products of export interest are provided meaningful preferences.

On transfer of technology, the proposal calls for measures to allow effective access to technology on fair, non-discriminatory, and reasonable terms. Developed countries shall establish a "Publicly-Owned Technology inventory" making available information concerning technologies that receive at least half of their funding from public bodies. It also calls for technical assistance to help LDCs improve their technological base and innovation capacities.

Finally, on LDC accession, the proposal states that members shall fully implement the benchmarks for goods and services concessions agreed in the [2012 General Council decision](#), which updated the accession guidelines for the WTO's least developed country members. It also calls for disciplining the fast track accession procedure recently used in LDC accessions.

The G90 submission has been intensively discussed in the CTD's Special Session. Overall, members have remained deeply divided. Australia, Canada, the EU, and Japan have raised questions regarding the rationale for the proposed amendments, the specific challenges faced by developing countries, and how such proposals would apply in practice. Ongoing divisions on "differentiation," in other words on whether higher and lower-income developing countries should be treated the same way under these provisions, have also been raised.

### Keeping the ball rolling on LDC issues

Since the beginning of the Doha Round, a series of LDC issues have gained traction, resulting in LDC packages adopted at the Bali and Nairobi ministerial conferences in 2013 and 2015, respectively. These were articulated around core issues such as a services waiver, duty-free quota-free market access, preferential rules of origin, and cotton. Although no substantial negotiations have taken place on LDC-specific issues ahead of MC11, further progress does not necessarily require new rules at the multilateral level, but could instead be advanced through further work on implementing existing decisions.

#### *DFQF market access*

In 2005, WTO ministers in Hong Kong [agreed](#) that "developed country members shall [...] provide duty-free and quota-free market access on a lasting basis, for all products originating from all LDCs." However, another provision toned down the scope of the decision, stating that "members facing difficulties [...] shall provide duty-free and quota-free market access for at least 97 percent of products originating from LDCs," while taking steps to progressively achieve full coverage.

To date, many developed members provide either full or nearly full DFQF market access to LDC products, with some sectoral exceptions related to their respective markets. A number of developing countries have also notified their DFQF market access schemes for LDCs to the WTO. Recently, members agreed to ask the WTO secretariat to examine the

implementation of the DFQF market access decision for LDCs in order to inform future discussions.

#### *Preferential rules of origin for LDCs*

Rules of origin (RoOs) set the criteria for determining the national source of a product. As LDC exports benefit from preferential and DFQF access to the market of various countries, being able to vouch for the LDC origin of a product by complying with RoOs is crucial to make effective use of these preferences, hence the importance of having simple and preferential RoOs in place for LDCs.

At the 2013 Bali ministerial, WTO members took a significant step by adopting the first-ever set of multilateral guidelines on this topic. Two years later, in Nairobi, they adopted another ministerial decision on preferential rules of origin for LDCs, building on the previous Bali decision and providing additional guidance on specific aspects.

Although no new negotiating proposal has been submitted on preferential RoO ahead of Buenos Aires, important technical work mandated by the Nairobi decision has been conducted since its adoption. In particular, WTO members agreed in March 2017 on a common template for notifying preferential RoO schemes for LDCs, with the objective of improving transparency and comparability between requirements. Fifteen WTO members have since submitted notifications using the new template, highlighting how they are seeking to help LDCs benefit from preferences through less stringent RoOs.

#### *Services waiver*

Efforts to operationalise in a commercially meaningful way the LDC services waiver decision, which grants preferential treatment to services and services suppliers originating from LDCs, have been ongoing since its adoption in 2011. The Nairobi ministerial decision on this issue extended the duration of the waiver until 31 December 2030, and encouraged both developed and developing members "in a position to do so" "to redouble efforts" to notify preferences in line with the collective request submitted in July 2014.

To date, 24 members have submitted notifications regarding the preferential treatment they would like to grant to LDC services and services suppliers, and the LDC Group has reiterated the need for additional aid and further discussions in order to take full advantage of these notifications.

#### **Looking ahead**

While some stakeholders might be concerned about the absence of an outcome at MC11 on development-specific topics such as S&DT and LDC issues, this does not mean that Buenos Aires will be unimportant from a development standpoint. The discussions on S&DT could help inform the broader efforts among the membership to craft a work programme for the post-Buenos Aires era, and the importance of addressing developing country needs is spurring creative, if challenging, discussions in areas ranging from fisheries subsidies prohibitions to domestic regulation in services.

As ministers consider the next chapter for the global trade body, the importance of the WTO's development dimensions will remain a central concern, particularly given that the organisation remains the one existing forum where nearly all of global trade is covered, and where countries across the development spectrum all have a voice at the negotiating table.

The direction and momentum provided from the SDG process also mean that the WTO's 164 members will need to consider how best to draft new trade rules and implement existing ones in order to support the global effort to meet these sustainable development objectives.



## GENDER

## Group of WTO Members: Time to Focus on Gender as Critical Inclusion Issue

*Several WTO members have been examining how to build a greater understanding of the gender and trade nexus, and thus develop more gender-responsive policies.*

A coalition of developed and developing economies is expected to unveil a declaration in Buenos Aires outlining several steps they plan to take over the coming two years towards incorporating a gender lens into their approaches to trade and development policy.

The declaration from this WTO member subgroup will be issued outside of the normal negotiating process. However, this set of voluntary commitments could serve to raise the issue's profile at the global trade body, while the agreed measures could help address long-standing knowledge deficiencies in this policy area, thus paving the way to more concrete actions aimed at facilitating women's increased participation in trade.

Among the members expected to support the declaration are Argentina, Benin, Canada, Costa Rica, Fiji, Finland, Iceland, Kenya, Montenegro, Norway, Pakistan, Paraguay, Sierra Leone, Sweden, the United Kingdom, and the European Union. Some of these members have already stated their intention to sign publicly, including through a social media campaign under the hashtag "[#mc11women](#)."

These members have been involved with the Trade Impact Group (TIG), which is part of the [International Gender Champions](#) coalition and has been coordinating the preparations.

### Applying a gender lens

The adoption of the UN Sustainable Development Goals (SDGs) in 2015 included a goal dedicated to gender equality and the empowerment of women and girls, captured under [SDG 5](#). That goal includes among its targets the "full and effective participation and equal opportunities for leadership at all levels of decision-making" as well as pursuing measures that provide women "equal rights to economic resources," among a host of other targets relating to universal health access, prevention of violence against women, and stopping discrimination.

Policy processes across the sustainable development spectrum have increasingly acknowledged that women face gender-specific barriers that have hampered their advancement in the economic, social, and political sphere – and that tackling these barriers head-on can lead to tangible benefits domestically and across the global economy.

In recent years, there has also been a growing recognition in many quarters that a gender perspective can therefore be of great benefit in the policymaking process, starting from when a policy or regulation is first being conceptualised – and that having more women involved across different decision-making levels could provide valuable insights into the varying impacts of public policies within societies, along with how to shape more equitable policy approaches.

For example, at this year's UN climate conference in Bonn, Germany, negotiators signed off on a "gender action plan" aimed at correcting the poor representation of women in the climate talks; taking steps to make the implementation of international climate accords "gender-responsive," and otherwise making gender a mainstream part of the policymaking process, particularly given that climate change can have gender-specific impacts.

Data from the [Organisation for Economic Co-operation and Development \(OECD\)](#) shows that women are still vastly underrepresented in senior positions across the public policy

**1979**

Convention on the Elimination of All Forms of Discrimination against Women signed, taking effect two years later

**1995**

Beijing Declaration and Platform of Action adopted at Fourth World Conference on Women

**2000**

African, Caribbean, and Pacific (ACP) Group and EU conclude partnership agreement, include reference to respect for women's rights in preamble

**2015**

UN members adopt 2030 Agenda and Sustainable Development Goals (SDGs), including SDG 5 on gender equality and empowering women and girls. SheTrades initiative launched by International Trade Centre (ITC) to connect more women to international markets

**2016**

Maafikiano Mandate on gender-related issues adopted at UNCTAD XIV, expanding mandate on trade and gender

**2016**

Chile, Uruguay sign FTA, including gender chapter

**2017**

EU, ITC host International Forum on Women and Trade. Chile, Canada negotiate gender chapter in FTA. WTO member subgroup prepares joint declaration on trade and women's economic empowerment. Coalition of WTO members also puts forward proposed text on avoiding gender discrimination in domestic regulation in services.

spectrum – making up just one-third of policymaking roles, and an even smaller share in domestic legislatures.

**Developing a public profile**

One of the biggest hurdles this policy area has had to face is visibility: in treating gender as an issue in its own right, rather than solely as a facet of other policy areas. Some signs have emerged that this could be changing, particularly as more women advance to senior policymaking roles and give greater visibility to the importance of a gender perspective. Trade experts have noted that extracting gender from other seemingly related issues and dedicating chapters to the subject in recent FTAs has been a positive development, both in raising awareness and in highlighting the scale of the work that remains.

Within the international trade arena, given the wider recognition that making trade sustainable also means making it inclusive, some countries have already moved to negotiate specific gender chapters in free trade agreements (FTA) with interested partners. Recent examples include the gender chapters of the Chile-Uruguay FTA, or the addition of a gender chapter to the Chile-Canada FTA. However, within the WTO context, the subject of gender is still in its infancy, despite recent moves to establish a gender focal point within the organisation's secretariat and public support from the director-general.

Meanwhile, the growing visibility of gender in the international trade policy discourse has highlighted that the subject of gender is not well enough understood. Research by the UN Conference on Trade and Development (UNCTAD) has demonstrated that data is one of the most challenging areas in attempting to craft gender-responsive trade policies. For example, the analysis of trade liberalisation's effects does not currently do enough to account for how the lowering of barriers could have gender-specific impacts, such as by benefiting sectors where men are a significantly greater percentage of the labour force due to educational opportunities or cultural norms – and thus worsening existing disparities that are caused by discriminatory gender norms in different societies.

The anticipated declaration in Buenos Aires by a group of WTO members is therefore being used as an early step to raise the profile of how trade affects women's economic opportunities – along with serving as a potential starting point for more informed discussions in the future. It also aims to tackle the data problem: that the trade policy community does not yet have the information necessary to address the gender-differentiated impacts of trade, which vary across countries. Conceptually, the issue is also poorly understood, and runs up against cultural attitudes, or discriminatory social norms, that are sometimes captured in domestic laws, that can make implementation of gender-responsive policies – both in trade and elsewhere – difficult.

In a bid to better understand the issues behind the gender-differentiated impacts of trade on economic opportunities, the WTO member declaration includes a commitment to exchanging information on their respective experiences in incorporating "gender-responsive" approaches to policymaking; discussing data collection methods that can break down the differentiated impacts of trade; and deepening their knowledge base through dedicated seminars over the coming years.

It also refers to the role of the WTO's Aid for Trade Initiative, and how it could be harnessed to support the effort. The Aid for Trade Initiative, now over a decade old, is aimed at supporting developing and least developed countries as they develop the necessary systems and infrastructure to become more integrated into the international trading landscape. According to the International Trade Centre (ITC), approximately 40 percent of small and medium-sized enterprises are women-owned on the global scale – a percentage that drops by nearly half when looking solely at developing countries.

The declaration, a draft version of which has been seen by Bridges, also includes a reference to a progress report on implementing these and other pledges by 2019.

Outside of the ministerial conference venue, high-level discussions on trade and gender will also be taking place during parallel events organised by the business sector, civil society, and think tanks in Buenos Aires. For example, a panel on trade and gender will be included in the Business Forum organised by the Argentine government and the International Chamber of Commerce on 12 December, which sources say could see additional engagement on the declaration. Events on trade and gender will also feature during the Trade and Sustainable Development Symposium organised by ICTSD, the publisher of Bridges, including an [event](#) on "making trade work for gender equality" which will include the participation of several ministers.

At press time, members were consulting their respective capitals about embracing the declaration during the ministerial conference, with sources signalling a "good level of engagement."

Declarations like these are common at WTO ministerials, often reflecting voluntary commitments among interested parties that could subsequently pave the way for negotiations or other initiatives.

Going forward, other members may sign on to the declaration during the next two-year cycle before the WTO's twelfth ministerial conference, slated for late 2019. During that time, the issue could be raised within the organisation's General Council, for example.

#### **Countering discrimination in services trade**

Aside from the declaration, some countries are pushing to reach a negotiated outcome on gender at the multilateral level during the Buenos Aires ministerial.

Earlier this year, Canada put forward a proposal on gender equality for consideration at the WTO's Working Party on Domestic Regulation, which deals with possible disciplines on qualification and licensing requirements, along with related issues in the field of services trade. The proposal was co-sponsored by 16 other WTO members, including Albania, Argentina, Australia, Chile, Colombia, the EU, Iceland, Kazakhstan, Liechtenstein, Macedonia, Moldova, Montenegro, Norway, Pakistan, Panama, and Uruguay.

The proposal would require that members do not discriminate against individuals on the basis of gender in the context of licensing requirements, licensing procedures, qualification requirements, or procedures.

The proposal has highlighted conceptual differences among members, such as whether there is an existing mandate for looking at gender within the global trade body's negotiating context, along with whether to address the issue as one of avoiding discrimination as opposed to promoting economic empowerment.

#### **Looking to the future**

While the domestic regulation negotiations are unlikely to advance far in Buenos Aires, and the joint declaration on women's economic empowerment is non-binding, the fact that both have been raised in the WTO context is still a landmark development., indicating a growing expectation by members and the public alike that the global trade body is – and can be – responsive to this and other changes.

## INVESTMENT FACILITATION

# Renewed Debate Emerges Over Global Trade and Investment Frameworks

*Informal discussions among groups of WTO members have been looking increasingly at the relationship between the trade and investment regimes.*

The subject of how to better facilitate investment has a long history in global economic policy discourse, interlinkages involving trade-related investment measures, services, and intellectual property. In recent months, groups of WTO members have tried to bring the discussion to the global trade club and raise its profile, arguing that in a world of intricate production patterns and global value chains (GVCs), economic regulation cannot be sufficient if policy regimes continue developing in separate silos.

Other members argue that investment facilitation is a "Singapore issue," in reference to a series of topics that were considered as possible additions to the WTO's negotiating mandate under the Doha Round and were in large part shelved. These members also argue that discussing investment facilitation in the WTO context could detract attention and resources from decades of negotiations on critical issues for developing and least developed countries (LDCs).

Proposals for an investment facilitation agreement in the WTO context are in the early stages. What is ultimately at issue is how members will view the relationship between the trade and investment regimes, both during the ministerial and beyond, as well as the role of private sector investment for advancing the Sustainable Development Goals (SDGs). The UN Conference on Trade and Development (UNCTAD) estimates that developing countries will require an additional US\$2.5 trillion each year to meet the SDGs and that half of this amount will need to come from private investors.

## **Investment in the current WTO framework**

The WTO framework already contains piecemeal approaches to investment rules through trade-related measures codified into select accords: the Agreement on Trade-Related Investment Measures (TRIMS), the General Agreement on Trade and Services (GATS), the Government Procurement Agreement (GPA), and the Agreement on Trade-Related Aspects of Intellectual Property (TRIPS). These agreements, however, only regulate the use of investment restrictions that are specifically trade-related, or in sectors where members have commitments.

They explicitly link market access and national treatment benefits to the production of goods and the provision of services. By focusing on the trade-related aspects of foreign direct investment (FDI), members limited the scope of WTO investment rules to trade-related measures, retaining their right to regulate FDI for national development priorities.

At the Singapore Ministerial Conference in 1996, ministers agreed to establish working groups on investment, competition policy, and transparency in government procurement, together known as the aforementioned *Singapore issues*. The investment working group focused on the economic relationship between trade and investment.

After years of debate, and with the exception of trade facilitation, the Singapore issues were dropped from the Doha Agenda work programme in July 2004. The Cancún Ministerial in 2003 proved to be the last major attempt until this year to address investment in the WTO rulemaking context.

## **The evolution of GVCs and the investment facilitation debate**

The 16 years that have passed since the Doha Round's launch have seen numerous changes in the global economic landscape. This includes the rapid growth in the scale and

**1998**

WTO members agree to establish working groups on four "Singapore" issues (investment, competition policy, transparency in government procurement, trade facilitation) for possible inclusion in Doha talks

**2003**

Cancún ministerial collapses

**2004**

WTO members agree to drop all "Singapore issues," except trade facilitation

**2013**

WTO members adopt Trade Facilitation Agreement at Bali ministerial

**2015**

OECD Policy Framework for Investment (PFI) created

**2015**

UN member states adopt 2030 Agenda for Sustainable Development, Sustainable Development Goals (SDGs), and Addis Ababa Action Plan, call for addressing investment gap in development financing. UNCTAD Investment Policy Framework for Sustainable Development adopted in Addis

**2016**

UNCTAD releases Global Action Menu for Investment Facilitation

**2016**

G20 members adopt Guiding Principles for Global Investment Policymaking

**2017**

FIFD group holds informal meetings on investment facilitation at WTO, along with high-level forum in Abuja, Nigeria, with ECOWAS

depth of international investment agreements (IIAs), bilateral investment treaties (BITs), and regional trade agreements (RTAs), as well as increasingly elaborate patterns of global production through value chains.

The fast-paced changes of the trade and investment scene may call for a similarly rapid response from the international community. Research by the World Bank, WTO, and others has found that more profound and more far-reaching trade and investment agreements can lead to higher investment flows through GVCs, cutting trade costs and directing investments to finance domestic infrastructure and transportation. Furthermore, investment can play an important role in supporting developmental objectives, with World Bank figures finding that over 40 percent of the approximately US\$1.75 trillion of global FDI flows went towards developing countries last year, providing financing that often surpasses foreign aid.

In 2016, China as holder of the G20 presidency established a new Trade and Investment Working Group (TIWG) and non-binding guiding principles for investment policymaking, endorsed by all G20 leaders at the Hangzhou Summit in September 2016. While investment facilitation was mentioned only briefly in the final version, in reference to better transparency and an enabling business climate, it sparked increasing awareness over the importance of clear, efficient investment policy frameworks to support today's production patterns.

However, WTO members have been divided over how to approach investment facilitation going forward, partly due to whether it is considered a "new issue" and therefore would require consensus to start formal, multilateral talks in line with the Nairobi ministerial declaration from 2015.

While traditional investment discussions at the WTO addressed FDI regulations as a whole, current proposals are limited to investment facilitation, largely avoiding some of the more politically challenging subject areas such as market access or dispute settlement.

Instead, the proposals focus on measures aiming to facilitate the establishment, expansion, and maintenance of business activities on a day-to-day basis in host countries, along with other hurdles such as the need for better transparency, shared information, and a stable policy environment.

### **Investment facilitation at the WTO – what is at stake?**

At the very core of the issue of investment facilitation lies the underlying debate of whether it should be addressed within the WTO framework – and whether doing so is necessary for the organisation's negotiating agenda to keep pace with a changing global economy. It has also renewed questions over whether trade and investment are interchangeable or complementary, which affects then how to treat investment facilitation in these discussions.

The Friends of Investment Facilitation for Development (FIFD) currently consists of 11 WTO members: Argentina, Brazil, Chile, China, Colombia, Hong Kong, Kazakhstan, Mexico, Nigeria, Pakistan, and South Korea. The MIKTA group consists of Mexico, Indonesia, South Korea, Turkey, and Australia. The two coalitions, with their overlapping membership, have both called for addressed investment facilitation in the WTO context, with the FIFD submission citing the increasing inter-linkages between trade and investment and their mutually reinforcing roles in fostering global development and inclusive growth. They argue, for instance, that the GATS already covers FDI in services, which accounts for two-thirds of global inward FDI stock and 55-60 percent of all services trade.

Meanwhile, India has suggested that services facilitation measures should be addressed separately through a possible Trade Facilitation Agreement for Services, though members have debated whether it is appropriate to focus on domestic institutional arrangements to facilitate investment only in services, as opposed to investment generally. However, India, South Africa, Uganda, Bolivia, and several other countries argue that rules on investment facilitation could exceed the WTO's current mandate.

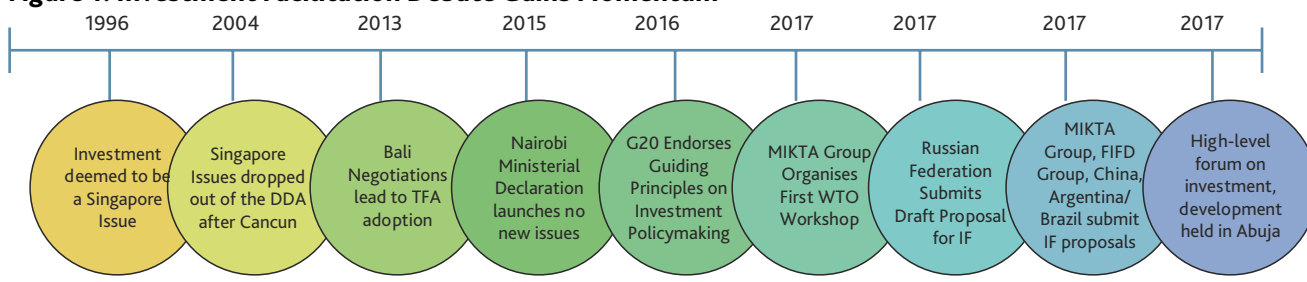
Another issue at stake relates to differences between the WTO's Trade Facilitation Agreement and a possible investment facilitation agreement, given the latter's implications for domestic institutions and regulations. For instance, investment facilitation may require legal reforms to avoid increased costs of doing business, guarantee business competition, and maximise the effectiveness and efficiency of its administration through all stages of the investment cycle.

Another challenge may come from the need for better physical infrastructure, higher quality business services and labour forces, and improved property rights protections. These issues have led countries to raise concerns regarding the possible loss of regulatory sovereignty and economic policy space to regulate should WTO members ink a global treaty on investment facilitation.

### Negotiating proposals for Buenos Aires

Discussions on investment facilitation have lately been brought to the WTO through the concerted efforts of the FIFD and MIKTA groups, who have hosted workshops and informal dialogues over the past year. Most recently, a high-level forum on trade and investment facilitation was held by FIFD in early November in association with the Economic Community for West African States (ECOWAS).

**Figure 1. Investment Facilitation Debate Gains Momentum**



In this context of renewed momentum to discuss investment facilitation, China, Russia, Argentina, and Brazil, as well as the MIKTA group and FIFD countries have submitted various WTO proposals on investment facilitation, modelled largely on the Trade Facilitation Agreement in scope and structure. Despite broad convergence on issues such as better transparency, efficiency, and international coordination, the proposals also shown some notable differences.

The MIKTA Workshop Reflections on Investment Facilitation from this past April suggested that discussions of investment facilitation at the WTO would strengthen trade and investment flows as well as policy coherence between the two regimes. The FIFD proposal for an "Informal Dialogue on Investment Facilitation" distributed that same month called for an informal dialogue "to explore – without limiting or prejudging possible outcomes – the role that the WTO could play as a forum to discuss measures that members could take to facilitate investment."

The Argentina-Brazil proposal for a WTO "Instrument on Investment Facilitation" focuses on setting up National Focal Points or Ombudspersons at the domestic level that would cooperate and coordinate with each other as well as with a proposed WTO Committee for Investment Facilitation.

The Russian proposal mainly differentiates itself from the above approach due to its inclusion of possible provisions on "dispute prevention and resolution" and also leaves room to include future provisions of market access for investments, something other members have been reluctant to incorporate. It also refers to special and differential treatment considerations when developing these rules. For its part, China has recommended providing stakeholders with the opportunity to comment on new investment-related laws and regulations as well as, in the case of LDCs, according investors with easy access to essential public infrastructure.

**Table 1. Comparative Table of Investment Facilitation Submissions**

		Russian Federation	MIKTA Group	FIFD Group	China	Argentina/ Brazil
Date Submitted		30.Apr.17	04.Apr.17	21.Apr.17	21.Apr.17	24.Apr.17
Scope	Investment protection	✓	✗	✗	✗	✗
	Market access	✓	✗	✗	✗	✗
	Dispute Settlement	✓	✗	✗	✗	✗
Transparency	Publish investment-relevant laws and regulations	✓	✓	✓	✓	✓
	Allow stakeholders to comment on drafts and regulatory amendments	✓	✗	✗	✓	✓
	Draft common principles for processing applications	✗	✗	✗	✓	✓
	Establish enquiry point(s) for reasonable enquiries	✗	✗	✗	✓	✓
	Establish single (electronic) window mechanisms	✓	✗	✗	✗	✓
	Notify new laws and amendments	✗	✓	✗	✓	✓
	Reserve right to non-disclosure of sensitive information	✓	✗	✗	✗	✗
Administrative Efficiencies	Provide info on and establish clear, consistent procedures for obtaining permits	✓	✓	✗	✓	✓
	Streamline and review periodically procedures / provide decisions in set time-frames	✓	✓	✓	✓	✓
	Provide information on and keep fees and charges to a minimum	✓	✗	✗	✓	✗
	One-stop approval	✗	✗	✗	✓	✓
	Enhance investor-state communication (e.g. ombudspersons/ NFPs)	✓	✗	✗	✗	✓
	Facilitate dispute prevention and resolution	✓	✗	✗	✗	✓
	Include disciplines to impose penalties for breach of investment related regulations	✓	✗	✗	✗	✗
	Enhance coordination among domestic regulatory institutions	✗	✗	✗	✓	✗
	Facilitate entry and sojourn of personnel relating to investment	✗	✗	✗	✓	✗
Enhance investor access to basic public infrastructure	✓	✗	✗	✓	✗	
International Cooperation and Implementation	Safeguard S&DT	✓	✓	✓	✓	✓
	Provide technical assistance and capacity building for implementation	✓	✗	✗	✓	✓
	Encourage investors' CSR	✓	✗	✗	✓	✓
	Enhance cooperation among national focal points/ ombudspersons	✗	✓	✓	✓	✓
	Use TFA categories to sequence implementation/ Establish WTO Committee	✗	✗	✗	✗	✓
	Allow members to self-assess ability to implement rules	✓	✗	✗	✗	✗
	Create basis to discuss future market access and treatment disciplines	✓	✗	✗	✗	✗
	Improve screening efficiency and policy support of outward investments to (L)DCs	✗	✗	✗	✓	✗
	Provide priority consideration to development needs of LDCs	✗	✗	✗	✓	✗

Source: ICTSD

**Setting the path for a post-Buenos Aires Agenda**

Proponents for WTO discussions on investment facilitation say that doing so could play a role in ensuring a coherent interaction between trade and investment regimes that, in turn, could have implications for the provision of global public goods. Nevertheless, the issue will require further exploration and study, given its complexity and the rapidly changing environment that stakeholders are working in. While the next steps for Buenos Aires are uncertain, the growing engagement in this area suggests that the debate over whether and how to craft new trade rules – either at the WTO or elsewhere – on investment facilitation is only just beginning.



## FOSSIL FUEL SUBSIDIES

## Tackling Fossil Fuel Subsidy Reform: A Role for the Global Trade Body?

*A group of countries is looking at how trade tools, including potentially in the WTO context, can advance efforts at reforming fossil fuel subsidies.*

Although not currently a negotiating item, an effort to advance discussions in the WTO context on reforming fossil fuel subsidies is underway. An informal group of non-G20 countries known as the "Friends of Fossil Fuel Subsidy Reform" (the "Friends") has prepared a statement to this end, which is being circulated for support before a planned launch during the WTO's Eleventh Ministerial Conference in Buenos Aires.

Fuelled by work in various plurilateral and multilateral settings, the sharp drop in global oil prices, and the WTO negotiations on fisheries subsidies, combined with the adoption of the UN's Sustainable Development Goals (SDGs) and the Paris Agreement on Climate Change, the past two years have seen increasing debate about the WTO's role in fossil fuel subsidy reform. Subsidy notifications on a general level under the WTO's Agreement on Subsidies and Countervailing Measures (ASCM) have long been lagging, and often lack sufficient detail on fossil fuel subsidy schemes, among other challenges. There is also no sectoral agreement in place to discipline such government support, unlike the rules currently in place on farm subsidies under the Agreement on Agriculture.

While the views on the rationale and options for tackling fossil fuel subsidies in the global trade body diverge, there is undoubtedly growing noise that may see the issue land on trade negotiators' agendas.

### **Fossil fuel subsidies: Economic and environmental dimensions**

All major economies subsidise the exploration, processing, and use of fossil fuels. Global annual government spending on producer and consumer subsidies is estimated by the International Monetary Fund (IMF) at US\$333 billion. If external costs are considered, this number rises to US\$5.3 trillion. This huge variation in estimates and data is due to the lack of a commonly accepted definition, metrics, and reporting framework. Irrespective of this discrepancy, fossil fuel subsidies clearly impose a significant burden on government budgets and displace financial resources from other priorities, like health and education. Moreover, fossil fuel subsidies often reinforce inequalities between the rich and poor and can cause serious distortions in the global economy.

From an environmental perspective, these subsidies are an important driver of climate change. They encourage the over-extraction and wasteful consumption of fossil fuels, which account for 90 percent of greenhouse gas emissions, and by delaying the clean energy transition they further compound the climate problem. The associated air pollution moreover causes widespread health hazards.

The environmental harm, economic inefficiencies, and adverse effects on social development related to subsidising fossil fuels undermine the shared goals of sustainable development, enshrined in the UN's 2030 Agenda for Sustainable Development and related Sustainable Development Goals (SDGs), as well as the preamble of the Marrakesh Agreement establishing the WTO. It also puts at risk the efforts to remain below the temperature target set under the global Paris climate agreement. That target is below a 2°C increase above pre-industrial levels, and leading climate scientists warn that exceeding this level could have devastating environmental impacts, including extreme weather events and other natural disasters caused by climate change.

**2009**

G20, APEC agree to reform fossil fuel subsidies, hold peer reviews

**2010**

Friends of Fossil Fuel Subsidy Reform, informal group to build political consensus on the importance of fossil fuel subsidy reform, is created

**2013**

G20 agrees to start phasing out inefficient subsidies on fossil fuels over the medium term

**2015**

Fossil fuel subsidy reform included within 2030 Agenda

**2015**

UN members adopt Paris Agreement on climate change. FFSR releases communiqué

**2017**

Fossil fuel reform discussions draw high-level support at UN climate conference, G20 peer reviews published by Germany and Mexico. FFSR prepare declaration for MC11

**International reform momentum**

While there is no legally binding global commitment on fossil fuel subsidies, various international forums have put the issue on their agenda and made voluntary commitments to discipline their use over the past several years.

At the 2009 Pittsburgh Summit, the G20 coalition of major advanced and emerging economies pledged to "phase out and rationalise over the medium term inefficient fossil fuel subsidies while providing targeted support to the poorest." G20 members have put into place a peer review process, implemented by the Organisation for Economic Co-operation and Development (OECD), to increase transparency around fossil fuel subsidies. Germany and Mexico are the most recent pair to have undergone the process, with their reviews published and scrutinised at the annual UN climate talks in November. This follows the 2016 review of the US and China.

In 2009, the 21-member Asia-Pacific Economic Cooperation (APEC) group made a similar pledge on eliminating fossil fuel subsidies and is also carrying out peer reviews. Meanwhile, the G7 said in its 2016 communiqué that its members "remain committed to the elimination of inefficient fossil fuel subsidies and encourage all countries to do so by 2025."

Since its formation in 2010, the "Friends" have committed to phasing out fossil fuel subsidies and have been promoting fossil fuel subsidy reform through political statements, research, and seminars. In December 2015, the group launched a communiqué on the sidelines of the annual UN climate conference in Paris, France, calling on the international community "to increase efforts to phase-out subsidies to fossil fuels through [...] policy transparency, ambitious reform, and targeted support for the poorest." The statement has since been endorsed by 43 countries and thousands of businesses.

The adoption of both the Paris Climate Agreement and the Sustainable Development Goals have further increased the momentum for fossil fuel subsidy reform. Article 2.1.c of the Paris Agreement requires parties to "[make] finance flows consistent with a pathway towards low greenhouse gas emissions and climate-resilient development," and 13 parties have submitted national climate action plans that refer to fossil fuel subsidy reform, while Sustainable Development Goal 12.C calls for "[rationalising] inefficient fossil fuel subsidies."

So far there is no legally binding tool that provides for accountability to those pledges and a framework for effectively disciplining the use of fossil fuel subsidies. There has recently emerged increasing support from various countries for the idea of the WTO filling this void.

**Building on Bonn's momentum**

At this year's UN climate conference in Bonn, Germany, New Zealand, which has been a key driver of the "Friends'" work, made a push for the WTO to take on a role in addressing fossil fuel subsidy reform (FFSR).

In his speech, New Zealand's Minister for Pacific Peoples William Sio said "New Zealand would like to see more focus on FFSR in the World Trade Organization. We believe that trade policy can and should address global environment challenges."

Calls for a role for the global trade body in disciplining fossil fuel subsidies have also been made in the WTO at various panels and workshops, including during one held in June 2017.

Aiming to increase the attention of WTO members to fossil fuel subsidy reform and encourage a dialogue on this issue within the global trade body, the "Friends" together with New Zealand and Finland are co-hosting a side-event during MC11. They will be calling for high-level attendance and support for their statement on the WTO's role in advancing discussions on disciplining the use of fossil fuel subsidies.

A push is also being made by France, which is driving a European Union initiative to support dialogue on the role of trade in disciplining fossil fuel subsidies, to place the issue on the agenda of the WTO's Committee on Trade and Environment.

### **Rationale behind the initiative**

Advocates for fossil fuel reform in the WTO context say that there is both a trade and an environmental rationale for doing so.

Fossil fuel subsidies can cause distortions to trade. Providing subsidies to producers of tradable goods such as oil, gas, and coal can distort competition between producers in different countries as well as between different energy sources. The impact can also extend to downstream industries where energy is a major input and therefore a factor in costs. Fossil fuel subsidies also impact competition between fossil fuels and clean energy, reducing the competitiveness of the latter and diverting investments away from clean energy sources.

The environmental rationale relates to the effect of fossil fuel subsidies on global warming, as these subsidies incentivise the production and use of climate-warming fossil fuels and delay the widespread uptake of clean energy.

Even in the absence of trade distortions, some advocates of fossil fuel subsidy reform highlight the value of addressing the issue in the WTO. For example, some argue that fossil fuel subsidies should be disciplined because of their environmental impact alone and highlight that the preamble of the Marrakesh Agreement establishing the WTO explicitly recognises the need "to protect and preserve the environment."

They argue that the WTO would provide the right framework for disciplining fossil fuel subsidies because of the institutional structure it provides for negotiations; its monitoring and enforcement mechanisms, including the Trade Policy Review Mechanism and the dispute settlement function; as well as its experience with negotiating sectoral subsidies. They cite, for example, the experience negotiators have in the areas of agriculture and fisheries subsidies, though ongoing efforts to update decades-old rules on agricultural domestic support and negotiate new prohibitions on harmful fisheries subsidies have proven challenging in practice.

Experts say that there are various options for disciplining the use of fossil fuel subsidies in the WTO. These range from the use of existing mechanisms for transparency and notification, such as under the ASCM or the Trade Policy Review Mechanism, to a plurilateral reform initiative, a reform of the ASCM, or the negotiation of a new legal framework. The choice would depend on the level of ambition and the rationale chosen for embarking on this path.

### **Fossil fuel subsidy reform and the WTO: First steps**

Fossil fuel subsidy reform is not an official item on the WTO negotiating agenda, and turning it into a negotiating item will require additional work and political will, especially to bring on board countries that are heavily reliant on fossil fuels – along with answering long-standing questions within the WTO over whether existing negotiating mandates should be expanded to include new topics.

However, a number of international commitments have increased the momentum for disciplining the use of fossil fuel subsidies. The idea that the WTO, with its negotiating function, monitoring, enforcement, and compliance provisions, and long-standing experience with sectoral subsidy initiatives can provide the right institutional framework for turning the commitments into real action is gaining increasing traction. The "Friends" planned statement for MC11 may be a concrete first step in this direction, though its impact will depend on the support it receives and the action it incites.

## SERVICES

# Domestic Regulation in Services: Members Weigh Options for Levelling Playing Field

*WTO members have engaged in intense discussions towards fulfilling a long-standing mandate to develop disciplines on domestic regulation in services.*

The growing share of services trade and the increasing shift of global value-added from goods to services has sharpened international focus on the importance of good regulation. Furthermore, the advent of the digital economy and new business models have drawn the attention of national regulators and trade negotiators alike toward appropriate regulations. In this context, national productivity and trade-related competitiveness increasingly depend on sound domestic regulation and reduction of regulatory barriers — if not regulatory coherence — across borders.

The WTO's General Agreement on Trade in Services (GATS) addresses the topic of domestic regulatory frameworks. The GATS provides for specific "criteria" to be considered and applied throughout the design and administration of "domestic regulations" affecting trade in services. These criteria include transparency, objectivity, impartiality, reasonableness, and the avoidance of overly burdensome regulations which may amount to a disguised restriction to trade in services.

Domestic regulations do not constitute limitations on market access or national treatment, but they can determine the ability of service providers and services to access a specific market effectively. They include measures of general application affecting services trade, which can involve measures relating to qualification requirements and procedures, technical standards, and licensing requirements.

For instance, to provide legal services in a given jurisdiction, a membership to a local bar association may be required, or in the case of health/medical services, a specific certification, technical standard, or license may be needed to authorise the supply of the service. Therefore, whether a service supplier can access a certain market effectively is determined both by "traditional market access limitations," as well as the landscape of domestic regulations governing a particular activity.

Given their complexity, variety, and relevance, domestic regulations could play a key role in levelling the playing field of international trade in services. Their quality and efficacy have the potential of "changing the face" of a country's regulatory space, and thus radically improving its ability to engage and benefit from trade. Alternatively, if designed and implemented in a way inconsistent with the criteria or principles agreed under the GATS, domestic regulations have the potential of becoming another layer of beyond-the-border limitations.

The discussion and subsequent negotiation of further disciplines on domestic regulations remains one of the most crucial unresolved challenges of international trade rulemaking and policy. Any step towards achieving increasing regulatory coherence and enhancing the soundness of regulatory regimes could be a valuable contribution to the multilateral trading system and to the fulfilment of the Sustainable Development Goals (SDGs) under the UN's 2030 Agenda for Sustainable Development, if crafted appropriately.

### **The evolution of services trade talks at the WTO**

Since the GATS was signed over two decades ago, WTO members have been unable to agree on new and enhanced rules governing trade in services, despite achieving negotiating progress in a few other select areas, such as new disciplines on agricultural export subsidies and the Trade Facilitation Agreement.

**1995**

GATS enters into force, including Article VI:4 mandate to negotiate rules on domestic regulation in services

**2001**

WTO Doha Round launches, including mandate for services trade negotiations

**2009**

Chair's text released in domestic services talks

**2011**

Chair's report released in domestic services negotiations, Doha Round talks declared deadlocked.

**2017**

WTO members debate options for domestic regulation in services, along with possible Trade Facilitation Agreement in Services and a provision on preventing gender discrimination

Article VI:4 of the GATS on domestic regulations contains a specific mandate for members to "develop any necessary disciplines" with a view to "ensuring that measures relating to qualification requirements and procedures, technical standards, and licencing requirements do not constitute unnecessary barriers to trade in services."

The negotiating challenge has been addressing the tension between governments' right to regulate economic activity, and the explicit mandate of the GATS to develop disciplines aimed to ensure that "measures relating to qualification requirements and procedures, technical standards and licencing requirements" are not "more burdensome than necessary to ensure the quality of the service." The latter is known in trade jargon as a "necessity test."

Historically, negotiations on domestic regulations at the WTO have been text-based and shepherded by a chairperson under the Working Party on Domestic Regulation (WPDR). Two chairs' texts, from March 2009 and April 2011 respectively, have been issued from the WPDR and attached to reports from the chair of the Council on Trade in Services "Special Session," the broader forum for negotiating new rules on services trade. These documents reflect all observations, areas of consensus, and disagreements expressed by members throughout the negotiating process to that point.

The overall divide among the WTO membership can be described broadly as falling into two camps. One involves opposition against undertaking any type of discussion or negotiation on the issue of domestic regulations, because of concerns that imposing further disciplines could lead to a loss of domestic policy space. There is also a profound disagreement around the historic issue of the "necessity test," with no clear solution in sight. While some oppose any reference to it, others advocate for its inclusion as a matter of effective access to markets.

Currently, members have been unable to agree on which chair's text to use as a basis for future negotiations. Alternatively, a group of 25 members led by Australia and the European Union has recently been trying to revive the negotiation by promoting a discussion on a subset of less controversial trade-facilitating elements within the broader agenda on domestic regulations. It does not, however, discard the discussion on the most sensitive issues, but instead focuses on the areas where consensus may be possible.

The proposal contained in JOB/SERV/272/Rev.1, released on 7 November 2017, covers topics such as the submission and processing of applications; criteria applicable to timeframes; acceptance of electronic applications; establishment of enquiry points; enhanced transparency mechanisms; necessity test; and a new section on development. A subsequent version, JOB/SERV/272/Rev. 2, was released on 24 November 2017.

The inclusion of the "necessity test" topic under this proposal was a specific demand of a limited group of WTO members which have historically supported the fulfilment of that part of the Article VI:4 mandate – specifically, Chile, Hong Kong, Moldova, New Zealand, Peru, and Switzerland. The proposal also includes elements regarding the opportunity to comment and provide information before a regulation's entry into force; submission of applications; application timeframes; application fees; independence (of the competent authority); and technical standards.

Overall, these additions introduce further precision to existing obligations, but do not amount to a significant update of their substantive core. Nevertheless, they advance an agenda on domestic regulations at the WTO which aims to narrow the gap between multilateral rules and the developments under regional trade agreements (RTAs), as many of the proposed improvements have already been adopted under bilateral and plurilateral initiatives.

There are also various interlinkages between this area of trade policymaking and sustainable development objectives. Domestic regulations play a significant role in assuring equal opportunity for market access. Sound regulatory frameworks enhance

the ability of small and medium-sized enterprises (SMEs) to engage in trade, and take full advantage of the resulting benefits. Developing multilateral standards or criteria can increase regulatory coherence among countries, which facilitates cross-border trade in services.

Furthermore, the inclusion of a comprehensive section on "development" in this proposal, inspired by the principles governing the Trade Facilitation Agreement, recognises the centrality of incorporating an effective system of trade assistance into multilateral trade negotiations. By doing so, WTO members can draw an explicit linkage between trade obligations and the achievement of the SDGs under Agenda 2030.

This section on "development" differentiates between developing, developed, and least developed countries. While the last would be exempt from all obligations, they are nevertheless encouraged to comply, within their capabilities. For developing country members, the section describes a mechanism for delayed entry into force of specific provisions, subject to explicit timeframes and conditions. Likewise, it lays out a system of "on request-trade assistance" in support of developing countries who face institutional and regulatory capacity constraints.

#### **Looking towards Buenos Aires**

Discussions in recent months have largely been based on the above-mentioned proposal. However, considering that a significant portion of the membership has not expressed support or has effectively rejected the proposal, despite having drawn the backing of one-third of the WTO membership, the negotiation scenario heading into the WTO's Eleventh Ministerial Conference (MC11) remains uncertain.

If members were to strike a deal on "domestic regulations" at MC11, this would mean that the historical deadlock on multilateral services negotiations would begin to be overcome. If so, 2018 could see the beginning of a new stage in multilateral trade negotiations where trade in services would intensify its partnership with trade in goods through the lens of "facilitation."

On the other hand, if members are not able to agree on an outcome at MC11, the discussion could be sent back to the Council on Trade in Services (CTS) and WPDR for further deliberation among delegations, though how long this might take is unclear. Sources say that given the significant level of support for this proposal, it is likely that co-sponsors could ask for ministers' specific guidance in defining how the WTO should move forward in this area over the coming year.



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