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# THE WTO AFTER NAIROBI – WHERE TO NOW?

**SOME OBSERVATIONS ON LOOMING CHANGES IN GLOBAL TRADE STRUCTURES**

The final declaration of the 10<sup>th</sup> Ministerial Conference made it quite clear that the future of the WTO is in limbo. Some perceive the current situation as standing at “a crossroads,” others already see it as a “cul-de-sac.” Either way, the WTO, which seemed so promising in the beginning, soon encountered tough challenges and now faces serious consequences.

The opening session of the 10<sup>th</sup> Ministerial Conference of the World Trade Organization (WTO) held between 15 and 19 December 2015 in Nairobi (Kenya) was greeted with acclaim, if not excitement. The WTO’s 162 “old” members welcomed two additional members to their ranks. Liberia and Afghanistan had successfully completed accession negotiations to become members 163 and 164 respectively of an organization that has command over more than 90 percent of world trade flows and acts as the superintendent of the Multilateral Trading System (MTS).

At first glance, the highly-welcomed accession of two new countries to the WTO seems to confirm a particular tendency: the creation of an ever more comprehensive structure with the capacity to lead and regulate world trade relations. These relations are seen as essential tools in a strategy of global growth and development. Indeed, the creation of the WTO on 14 April 1994 in Marrakesh (Morocco) was to end almost 50 years of an “eternal” makeshift solution – the General Agreement on Tariffs and Trade (GATT).

## FROM PROMISING BEGINNINGS ...

The WTO was originally foreseen as part of the Bretton Woods Agreement that gave birth to the World Bank and the International Monetary Fund; the WTO was to act as the third pillar of a stable post-World-War-II international economic order. However, the organization was not established at this time due to the Cold War, which divided the world economy into two zones: the Western capitalist and the Eastern state-socialist trading areas. However, the WTO effectively formed after the collapse of the Eastern Bloc and the reintegration of Eastern Europe (including the former Soviet Union’s progeny states) into a unitary world economy. It was from then on that the WTO started to take on the form of a comprehensive structure, and it seemed to be on a path to success.

Ironically, however, in its hour of triumph, the 20-year-old organization has come under serious affliction, because, and despite its new members, the WTO seems to have lost its relevance to world trade. Even worse, the latest developments are questioning the organization’s *raison d’être*.

The origins of the dispute within the WTO came about shortly after the organization’s inception. At its 3<sup>rd</sup> Ministerial (MC3), in Seattle, the world trade body suffered a massive debacle when the conference failed to approve the Multilateral Agreement on Investments (MAI). In part, this was the result of mass street protests by thousands of activists; however, it was largely due to internal differences between member-states, in particular between the dominating North-western “developed” nations. The WTO’s MC4 took place at the end of 2001 at a time when countries were still reeling from the shock of the terror attacks that had occurred in New York on 9/11. In order to improve cohesion, the WTO agreed to initiate the Doha round of negotiations, which were to focus particularly on “development” through the Doha Development Agenda (DDA). This attempt to embark on a new era of global free trade faced a major setback when the MC5 in Cancun collapsed due to disagreement over the “Singapore issues” in September 2003.<sup>1</sup>

During the last 15 years, and after numerous periods of deadlock, it has become more and more obvious that the Doha Round struck at the core of the conflicts of interest that existed between the “First” and “Third” world. It should not be surprising that hardly any substantial progress was made during this time. The countries of the Global South argued that the main obstacle to progress was the fact that the “First World” had refused to open its markets in sectors in which the South enjoyed competitive advantages – mainly in agriculture. In contrast, “developed” countries aimed to ensure that the South opened up sensitive market segments such as

e-commerce, public procurement, and (financial) services; this was strictly rejected by “developing” nations. This never-ending controversy eventually led to a dead end, which, in turn, gave rise to the three developments that currently threaten the very existence of the WTO.

*Firstly*, there is a growing tendency towards *bilateral agreements*. In particular, the US’ African Growth and Opportunity Act (AGOA), which the US administration extended in June 2015 to 2025, is a point in case. The AGOA has represented the cornerstone of America’s economic engagement with sub-Saharan Africa for many years, with 39 sub-Saharan African countries eligible to access this preferential programme. In accordance with the AGOA, the US considers a number of factors related to a candidate country’s economy and governance; these include the rule of law, the elimination of barriers to US trade and investment, poverty reduction efforts, the protection of worker’s rights, non-support of terrorist activities, and non-interference with US national security and foreign policies. Most of these rules are not covered by WTO regulations.

*Secondly*, since the inauguration of the Cotonou Agreement in 2000, the European Union (EU) has negotiated *regional free trade contracts* (Economic Partnership Agreements – EPA) with countries that were formerly colonized by European states (today referred to as African, Caribbean, and Pacific [ACP] countries). Under the pressure of an ultimatum that threatened the EU with a loss of market access, by 1 October 2014, the European Commission had concluded EPAs with almost all of the ACP countries. However, these agreements go far beyond WTO rules and thus are no longer in need of protection through WTO standards.

*Thirdly*, the global trade landscape will be dominated in the near future by *mega-regional trade agreements*. This is the most challenging development that currently threatens the role of the WTO. Mega-regionals – free trade agreements between a very limited number of member states that, nevertheless, control huge volumes of international trade – have the potential to become the new pillars of the MTS. The Transatlantic Trade and Investment Partnership (TTIP) is currently being negotiated between the EU and the US and will probably cover one-third of world trade. A similar agreement – the Transpacific Partnership (TPP) – was recently concluded in Auckland (New Zealand) by twelve nations on the Pacific Rim. These mega-regionals – which, remarkably, exclude China and Russia – are designed to set worldwide trade standards. Yash Tandon, a trade expert from Uganda, illustrates the current global economic environment in the following manner: the “Transpacific Partnership [...] and] the Transatlantic Trade and Investment Partnership [...] are not about economics, economics is the only entry point to what essentially are matters of geo-economic-political power of the empire and corporate capital.”<sup>2</sup>

It is interesting to note that the provisions on regulatory cooperation in “new generation” trade agreements go beyond what preceding agreements attempted. Observers note that scripting new trade rules without the world’s leading trade powers is inviting trouble and increases the potential for disputes.

Thus, the leading trade blocs’ interest in the WTO is diminishing, to say the least. Even worse, given the stalemate regarding the DDA, the WTO is seen by many, in particular by industrialized member states, as a dysfunctional body that would only be worth saving if the DDA were to be ter-

minated and “new issues” – like public procurement, competition policy, and investment policy – were to be placed on the agenda. This also became clear during the MC9 in Bali in 2013 and was even more pronounced during the course of the recent meeting in Nairobi.

### ... TO TOUGH CHALLENGES ...

The 10<sup>th</sup> Ministerial Conference (MC10) in Nairobi was unique in sundry ways, but its most distinct aspect was the fact that it was only the second time that the WTO’s highest decision-making body had met on the African continent. The expectations placed on the MC10 had been immense from the outset, and it had been assumed that this meeting would conclude the Doha Round; however, African countries, and Kenya in particular, did not want to see the “death” of the Round on their doorstep. Kenyan Cabinet Secretary for Foreign Affairs and Trade, Amina Mohammed, was keen to see a successful outcome, and while speaking to the press at the opening of the conference, she said: “I don’t think any of us is ready to give up today, we’re not ready to give up tomorrow, we’re not ready to give up on the 17<sup>th</sup>, nor are we ready to give up on the 18<sup>th</sup>.”

Two years earlier, in December 2013, the adoption of the Bali Declaration at the MC9 had led to huge excitement among delegates: a last-minute resolution on the Trade Facilitation Agreement (TFA) and a commitment to address issues of interest to developing countries and the Least Developed Countries (LDCs) sparked a sense of hope in the WTO. The MC10, therefore, was viewed as a make or break situation for the Doha Round.

However, the outcomes from Nairobi remain indistinct, which further strengthens the opinion that the World Trade Organization, and the rule-based system it administers, has become a supremacy forecourt, and that this led is behind the current crisis in the global trading system. The final Nairobi declaration helped reclaim the importance of the WTO as the conciliator of international trade rules; nevertheless, LDCs and emerging nations were left grieving at the attrition of the DDA and the possible opening up of “21<sup>st</sup> century issues.”<sup>3</sup>

Although the Bali MC9 had generated optimism for the Doha Round, the euphoria soon died down in deliberation of the Nairobi Work Plan (the programme for the MC10). The first unfortunate sign of events after Bali occurred when some WTO members blocked the Protocol of Amendment for the TFA, which prevented it from being adopted in accordance with the deadline established as part of the Bali Package. This occurred despite the fact that the TFA had long been viewed as a win-win situation for all of the WTO’s members.

The post-Bali debate was characterized by discussions about the exemption of certain general services from the tally of permitted agricultural subsidies, an interim agreement on public stockholding for food security purposes linked to a “peace clause” in WTO litigation, an understanding on the administration of tariff rate quotas on agricultural products, and a declaration on phasing out agricultural export subsidies. Decisions were also taken to phase out cotton subsidies, and to provide preferential rules of origin for LDCs and preferential treatment for LDC service suppliers. Furthermore, resolutions were passed regarding duty-free and quota-free market access for LDCs, and on the monitoring of special and differential treatment for LDCs.

Despite the apparent consensus backing the Nairobi Work Plan, persistent differences on domestic support<sup>4</sup> in agriculture, particularly due to opposition by the United States to the so-called “draft modalities” agreed by WTO members in 2008, continued to be an area of irritation. From this point onwards, people began lowering their expectations that Nairobi would produce a positive result.

Although it was sold as a success by some quarters, five days of hard negotiating failed to address the issues at the core of the Doha Development Round. As developed countries celebrated the outcomes, the failure by developing countries and LDCs to achieve consensus on key outstanding issues in the DDA was a major setback.

Whereas developed countries were able to attain considerable deliverables (an extension to the deadline for the elimination of exporting subsidies, and longer repayment terms for export financing support), no decisions were made on developing a permanent solution to food stockholding, and no agreement was found on special safeguard mechanisms (SSM) for developing countries. For the Cotton 4,<sup>5</sup> whose exports almost entirely depend on cotton, the result was far less than had been proposed as it only led to “best endeavor” language by developed countries on cutting their trade-distorting subsidies. Furthermore, there was no definitive affirmation of the Doha Development Round, and, even more disappointing, the declaration unlocked the discussions about the Singapore issues, which developing countries rejected.

To appreciate the outcomes of the MC10, it is useful to cross-reference Paragraph 30 of the Nairobi Declaration, which states: “Other Members do not reaffirm the Doha mandates, as they believe new approaches are necessary to achieve meaningful outcomes in multilateral negotiations. Members have different views on how to address the negotiations. We acknowledge the strong legal structure of this Organization.”<sup>6</sup>

Whereas the results from the MC10 reveal that there is no political impetus behind the principle of single undertakings, compromising Paragraph 47 of the Doha Declaration<sup>7</sup> leads to questions about how the WTO can go forward. At the opening of the MC10, Cecilia Malmström, the EU Commissioner for Trade, stated: “What we need is to agree in the coming days on what to do next. Important issues remain to be addressed, and we should continue negotiating them. We cannot however simply repeat what we have been doing for the last 15 years and expect different results. We need to approach the issues from a different direction and give them the full creativity of our minds. And, more broadly, we need to inject more dynamism into the organization by starting to explore here those issues that we negotiate in regional deals; this will provide more flexibility to our organization and allow it to advance in areas relevant for today’s trade.”<sup>8</sup>

With such strong sentiments coming from leading global trading powers, the industrialized world has clearly lost patience with the drawn-out Doha negotiations. The failures of the Doha Round have re-energized global interest in trade regionalism, and these developments have placed immense pressure on the WTO to evolve. This weight will force the organization to follow and supervise principles that have been set outside of its influence.

### ... WITH SERIOUS CONSEQUENCES

The Nairobi Declaration makes it vividly clear that developed countries remain steadfast in their pursuit to set aside

permanently the entire development mandate of the Doha Round, and to trade it for an alternative agenda. The insistence of developed countries that the WTO address “next generation” issues in Nairobi is indicative of the growing importance of 21<sup>st</sup> century issues, which is fundamentally at odds with the development objectives of the Doha Round.

A positive conclusion of the DDA could help repair the global trading system and restore the confidence that has eluded the WTO for years. Despite these trials, the WTO is a valuable platform for developing countries and LDCs, especially when defending areas such as agriculture from which most of the population in the Global South derives their livelihood.

Nevertheless, some valuable lessons can be learned from the MC10.

*First*, “one must remember that the WTO is a trade – not [a] ‘development’ – institution.”<sup>9</sup> This insight should be understood in two ways. On the one hand, since the WTO upholds the principles of “one country, one vote” and the “single undertaking clause,” the threat posed by the mega-regionals might lead the WTO to become more important than ever for “developing” countries as a means of regulating world trade. This could particularly apply to LDCs. Accordingly, it would certainly be worthwhile keeping the WTO alive. On the other hand, if the “Third World” seriously intends to address “development issues,” the WTO is definitely not the right place to do so. Instead, a complex strategic approach is needed that goes well beyond “trade.”

*Second*, if “developing” nations insist on reaffirming the DDA, they urgently need to elaborate a common strategy in negotiations that not only takes their collective interests into account (assuming they exist), but that is also flexible enough to deal with the fact that the WTO is becoming increasingly “irrelevant.”

*Third*, the dictum “development first, then trade”<sup>10</sup> might be too apodictic. Nevertheless, it would be important if it meant Africa needed more “structural transformation” (the generation of internal value chains not least through intensified regional integration) instead of more “free trade.”

To sum up: the process associated with the MC10 and its results have laid the ground for the WTO to become more polarized than ever before. Despite the promises of the Doha Round, the outcomes of the MC10 illustrate the profound marginalization of LDCs within the multilateral trading system. LDCs (and this particularly affects Africa) should, and must, fashion an urgent response to the disconcerting global trade landscape. The robust ambitions for regional integration on the continent today are a step in the right direction.

In her description of the current state of the WTO, Baumer notes: “The WTO is not just dying, it’s either killed or reanimated by its Members.” It is ironic that after the MC10, “developed” countries still proclaim the importance of the WTO and the Doha Round, while, on the other hand, continuing to establish parallel spheres of global trade governance. There is a fundamentally unquestionable consensus that the WTO is far from perfect, but it is still important to the South. Nevertheless, the WTO stands at a crossroads, and the role it will play in the future depends on how its members will resolve the deadlock around safeguarding the DDA and rejecting 21<sup>st</sup> century issues. Of all the possible scenarios, adhering to this position and accepting that the WTO might become less relevant in the future could represent the “lesser evil.”

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<sup>1</sup> The Singapore issues include investment policy, public procurement, competition policy, and trade facilitation. Only the latter “survived” the MC5 in Cancun; “developing” countries continue to reject the other three. <sup>2</sup> See Tandon, Yash: The 10<sup>th</sup> Ministerial Conference, Nairobi, December 2015: A road map; p. 10. <sup>3</sup> In addition to the “Singapore issues,” these include negotiations on e-commerce, disciplining state-owned industries; and negotiations on environmental goods and services, among others. <sup>4</sup> “Domestic support” needs to be distinguished from “export subsidies.” Whereas the latter is a direct state subsidy aimed at promoting exports by lowering their price, the former is a direct state payment to agricultural enterprises or farmers to keep them in production, regardless of whether they export their goods. However, domestic support enables farmers to sell their produce on the market at particularly low prices. Among the “developed” nations, only Canada, Norway, and Switzerland still pay export subsidies. <sup>5</sup> The Cotton 4 is a West African coalition seeking cuts to cotton subsidies. It is made up of Benin, Burkina Faso, Chad, and Mali. <sup>6</sup> See Nairobi WTO Ministerial 2015: Ministerial Declaration WT/MIN(15)/DEC Adopted on 19 December 2015. <sup>7</sup> See Doha Declaration: “47. With the exception of the improvements and clarifications of the Dispute Settlement Understanding, the conduct, conclusion and entry into force of the outcome of the negotiations shall be treated as parts of a single undertaking. However, agreements reached at an early stage may be implemented on a provisional or a definitive basis. Early agreements shall be taken into account in assessing the overall balance of the negotiations.” ([https://www.wto.org/english/thewto\\_e/minist\\_e/min01\\_e/mindecl\\_e.htm](https://www.wto.org/english/thewto_e/minist_e/min01_e/mindecl_e.htm)) <sup>8</sup> See Nairobi WTO Ministerial 2015: Ministerial Declaration WT/MIN(15)/DEC Adopted on 19 December 2015. <sup>9</sup> Tandon, in Pambazuka, Issue 755. <sup>10</sup> Ibid.

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