

**WHAT'S COOKING FOR MC12?
Two processes that could reshape the WTO in the interest
of the most powerful**

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I. The unfolding big picture of MC12

The World Trade Organization's 12th Ministerial Conference (MC12) is shaping up to become a stage for reshaping the multilateral trading system in the interest of the most powerful including corporate lobbies. While the COVID TRIPS waiver has been continuously blocked through various strategies and tactics for more than a year, it is increasingly clear that the interests of developed countries are focused on establishing two post-MC12 processes. One, entitled 'WTO response to the COVID-19 pandemic', instead of delivering the TRIPS waiver is focused on promoting more liberalization and regulatory constraints. Another process is focused on the notion of 'WTO reforms', which several developed countries including the US, EU, Japan and others have been using to push their ideas for redesigning the WTO and its rules of decision-making.

At the same time, issues of concern to developing and least developed countries, and broad civil society campaigns, are being further marginalized. These include the TRIPS waiver proposal and proposals to correct the rules of the WTO Agreement on Agriculture, which have led to the demise of the agricultural sector in many poor countries and exacerbated food insecurity around the world. Other important issues include strengthening and operationalizing special and differential treatment for developing countries and least developed countries (LDCs), which is integral and crucial to the proper functioning of the multilateral trading system.

II. The process claiming to find a WTO response to the COVID-19 pandemic

In June 2021, the WTO General Council Chair unilaterally selected Ambassador Walker of New Zealand to facilitate a series of negotiations supposedly focused on ensuring a WTO response to the COVID-19 pandemic. Consequently, this process came to be known as the 'Walker process'. Ambassador Walker's work, reflected in his reports to the WTO General Council, revolved around a premise that what is needed is more liberalization, interventions that will further constrain regulatory space and policy tools available to WTO Members, and more reliance on the private sector.

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From among the voices and proposals that Ambassador Walker had heard, he chose to focus on the following issues:

- pushing trade facilitation and regulatory coherence in a way that undermines developing countries' flexibilities under the existing rules and further limits regulatory space;
- promoting services liberalization as one of the answers to the pandemic;
- limiting the ability to use export restrictions that are currently allowed under WTO rules. The pandemic has shown that when demand exceeds supply, developing countries/LDCs will be outbid by developed countries who can afford to pay much higher prices. In such contexts, developing and least developed countries have a special need to utilize these tools given the limited policy tools available to them.
- pushing an expansive notification and monitoring regime that will further put pressure on developing countries in implementing their trade policies;
- and opening the door wider for the private sector's influence on WTO processes under the claim of expanding collaborations with other international organizations and other stakeholders with a specific mention of the private sector.

Issues raised by developing countries such as food security and intellectual property issues have been sidelined in Ambassador Walker's reports, who also repeatedly refused to cover the issues pertaining to the TRIPS waiver.

A skewed process leaving most WTO Members in the dark

Without proper consultations, Ambassador Walker produced a draft text of a Ministerial Declaration on the WTO response to the pandemic with almost no brackets and proposed it as a basis for deliberations among a very small group of selected countries. Such processes are designed to put pressure on the rest of the WTO membership, who are not in the room to negotiate, to accept the outcome when they are shown the result of the deliberations at the last moment. They are given no proper chance or time to meaningfully engage in the negotiations. The appealing name of 'WTO response to the COVID-19 pandemic' is manipulated as a further pressure tool on delegations to feel compelled not to refuse the outcome despite the fact that they were not given the chance to meaningfully participate in deliberating it and that the content does not reflect their views and potentially becomes very damaging for their interests.

A group of developing countries stress TRIPS waiver, structural transformation, economic resilience and food security

In October 2021, a group of developing countries including Pakistan, Egypt, Tunisia, South Africa, Sri Lanka, and Uganda presented a submission ([JOB/GC/278/Rev.1](#)) that sought to capture a lot of the concerns of developing countries. Developed countries both possess and have employed exceptional fiscal and monetary policies to manage the shock from the COVID-19 crisis and to cushion the economic and social impact in ways that developing countries and LDCs could not. In comparison, developing countries and LDCs do not possess the tools that would allow them to respond and recover and maintain resilience to withstand a global crisis on a scale the world has been facing.

Their submission emphasized that the focus of the work under the 'WTO response to the pandemic' ought to shift from liberalization and regulatory constraints to policy space and enablers of structural transformation and resilience building, including economic resilience and food security issues. They also stressed that any proposals considered under the WTO pandemic response should in no way constrain the policy tools and space that developing countries and LDCs need in order to respond to pandemics and similar crises, nor restrict tools and flexibilities available to developing countries and LDCs under the WTO agreements.

The submission also emphasizes that the General Council decision granting a waiver from certain provisions of the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights ('the TRIPS Agreement') for the prevention, treatment and containment of COVID-19 is central to the WTO's response to the COVID-19 pandemic. It also adds that Members shall not directly or indirectly, prevent or discourage, another Member(s) from fully utilizing the flexibilities of the TRIPS Agreement or in any way limit such flexibilities.

The dangerous push for a post-MC12 work plan and implementing body

Developed countries, including the US and EU, are pushing towards setting up a work plan and related implementing body that will carry the work post-MC12 on the WTO response to the COVID-19 pandemic and potentially other future pandemics and crises. One proposition is for this body to be chaired by a head of delegation appointed by the General Council chair. Proponents of this idea are pushing for agreement over a Ministerial Decision on this matter even before the WTO membership gets the chance to negotiate and agree to common grounds on what should entail a WTO response to the pandemic.

In effect, agreeing to such a post-MC12 work plan and body while the content of the work plan is not agreed could serve as a blank cheque that could be manipulated to push the liberalization and deregulatory interests that were revealed in the first version of the text that Ambassador Walker released. Its relation to the existing mandates of negotiations is not clear. This includes the Doha mandate of 2001, which has multiple issues of interest to developing countries that were never delivered. This means its operationalization could end up further marginalizing work on existing mandates. The proposition to delegate to the General Council Chair the selection of a chair for this work could end up replicating a process similar to that led by Ambassador Walker, whereby most of the developing countries and LDCs remain outside the negotiating room or uninformed about the deliberations, except for what they get to know from time-to-time reports at the WTO General Council.

III. About ‘WTO Reform’ and attempts to replace state-led multilateralism with corporate-fuelled plurilateralism

The narrative about ‘WTO reform’ has been populating the WTO deliberations for a while. But there is a major difference between what developing countries mean by reform and the ideas being pushed by some developed countries under the guise of ‘reform’, which became a dividing subject among the WTO membership. In the run-up towards MC12, the WTO Director-General has facilitated a push to have the WTO reform item at the forefront of issues to be addressed in the ministerial.

Developing countries have long called for reform of the multilateral trading system in favour of developing countries and large vulnerable constituencies such as small farmers, producers, workers, patient groups and indigenous peoples. In December 2020, a collective submission by the group of African States at the WTO, India and Cuba (WT/GC/W/778/Rev.3) stressed that central to this reform agenda was the call to review and rebalance existing WTO rules, in order to address the implementation challenges that developing countries and LDCs have been facing and to strengthen and improve operational special and differential treatment.

In contrast, the narrative and proposals pertaining to WTO reform as promoted by developed countries, led by the US and EU, continue to push for:

- agreements on new issues (such as rules on industrial subsidies);
- advocating new approaches on special and differential treatment that will eventually limit the availability of these flexibilities to developing and least developed countries;
- injecting into the WTO agenda issues that will further constrain the policy tools available to developing countries and undermine inclusivity and participation in WTO negotiations, through attempting to alter decision-making procedures;
- normalizing plurilateral approaches to setting the WTO negotiations agenda and adopting new rules which will undermine the multilateral nature of the organization and its ability to deliver anything useful for developing countries and LDCs;
- extending the WTO monitoring mechanisms in a way that would put further pressure on developing countries in implementing their trade policies;
- opening up more space for big business in the WTO under the umbrella of ‘multi-stakeholderism’.

In the context of negotiating the Ministerial Outcome Document of MC12 (i.e. the ministerial declaration), a number of mainly developed countries are pushing for the establishment of a new Working Group on what they call ‘improvements of the functioning of the WTO’. The EU and Brazil informally floated a proposal seeking the establishment of such a working group to consider ‘institutional improvements to the functioning of the WTO’ and address the WTO monitoring and deliberating function, negotiating function, and dispute settlement function.

Setting up such a body while there remains a major disagreement on what ‘WTO reform’ means and the direction sought from such work will allow the US, EU and other developed countries to utilize this platform to push for operationalizing the ideas they have in mind for ‘WTO reform’. Such approaches significantly undermine and limit the ability of developing countries and LDCs to influence agenda setting and pursue issues of their interest in the negotiations. They will also legitimize a bigger role for the private sector, mainly big business, in influencing agenda setting and negotiations in the WTO, thereby creating a more imbalanced institution that is responsive mainly to the commercial interests of big business.

The truth of what is being prepared for MC12

While some developed countries continue to block any progress towards the TRIPS waiver, and the WTO DG and secretariat facilitate such obstructionist positions by a few WTO Members, the push on the two fronts detailed above could result in fundamental changes to the WTO’s institutional architecture and function. It is another step in the attempt to circumscribe the fundamental rules of decision-making that the WTO was built around in order to remedy the major deficiencies that characterized the GATT (General Agreement on Tariffs and Trade) system that preceded it.

These latest attempts should be seen in the light of, and together with, the developments since the last two ministerial conferences held in Nairobi in 2015 and in Buenos Aires in 2017. Back then, the developed countries succeeded in pushing back on the existing negotiation mandates of interest to developing countries, although they did not succeed in fully killing the Doha Round. They also commenced an intensive push towards illegally expanding plurilateral approaches to defining issues of negotiations and to changing WTO Agreement rules. What could unfold in MC12 could further serve these attempts.

In effect, these processes would open the door to reinventing the WTO as a power-based rather than rules-based organization. The result will be grabbing space away from developing countries and their development issues in order to facilitate more corporate power grab of the WTO. This will also significantly undermine, if not put an end to, a lot of the common goals of civil society campaigns that have been calling for correcting trade rules to make them less harmful and constraining on development processes and the transformations needed to address the global climate crisis and more recently the global pandemic.