

Looking towards WTO MC12: What's on the table for developing countries and LDCs

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Introduction: MC12 or no MC12?

All eyes are again on the World Trade Organization (WTO)'s 12th Ministerial Conference (MC12). Will it take place, as announced, during the week of 12 June? Will it be postponed again due to the war in Ukraine or due to COVID-19?

News reports of an informal WTO General Council meeting held on 28 March pointed out an “emerging understanding” that it will be held on 12-15 June.¹ Yet, the political challenges emanating from the war in Ukraine are making many WTO meetings unmanageable and might still make it challenging to hold the ministerial conference. What is clear thus far is that, irrespective of whether MC12 will be held or not, the war in Ukraine has dealt another blow to multilateralism and the multilateral trading organization. This follows earlier setbacks such as that stemming from the lack of an outcome on the TRIPS waiver proposal to address intellectual property (IP) barriers to equitable access to COVID-19 vaccines, therapeutics and diagnostics, despite the support of more than 100 WTO Members. The threat of irrelevance hangs over the WTO and keeps on intensifying.

Developing countries and least-developed countries (LDCs) are faced with this challenging reality. For them, the rules-based multilateral system is the preferred forum to pursue trade relations, because without it, the will of the most powerful will be the determining factor of the terms of trade. Developing countries and LDCs are faced with a narrative that stresses how crucial it is to harvest deliverables in order to bolster or revive trust in the multilateral system and thus contribute to ensuring its survival. Yet, despite their commitment to the multilateral trading system and its need to deliver results, developing countries and LDCs ought to take a

¹ See <https://insidetrade.com/daily-news/wto-members-coalesce-mc12-dates-amid-push-address-war-ukraine> and D. Ravi Kanth, “WTO: DG calls for ‘convergence-building’ on controversial issues for MC12”, *SUNS* #9546, 31 March 2022.

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close look at what is offered to them and what it means, in regard to each item on the agenda of negotiations as well as to the overall balance of what they will be getting in return for what they might be giving up.

The agenda of the WTO remains focused on four issues: the response to the pandemic including the TRIPS waiver, fisheries subsidies, agriculture, and WTO reforms. Issues of particular concern to developing countries and LDCs, such as strengthening special and differential treatment (S&DT), have for long been marginalized and remain so in the current context. Since the adoption in 2001 of a mandate under the WTO's Doha Work Programme to review all S&DT provisions with a view to strengthening them and making them more precise, effective and operational,² developing countries and LDCs have undertaken several attempts to pursue and fulfil this mandate.³ Previously when these proposals were being considered, they were effectively undermined by developed countries, through watering down the proposed revised language on S&DT, to the point where it was of no value and certainly did not fulfil the mandate of the Doha Work Programme.

Beyond the mandate noted above, special and differential treatment is of systemic importance as it pertains to a fundamental principle embedded in the legal basis of the multilateral trading system. It is crucial to the effective functioning of the WTO and the ability to align trade rules with development needs of its Member States. The recent crisis induced by the COVID-19 pandemic has again underscored the reality that developing countries and LDCs are in need of special flexibilities. Developing countries and LDCs have been re-emphasizing the importance of ensuring that any ongoing negotiations in the WTO do not undermine existing flexibilities and special and differential treatment rules they benefit from. They also emphasize that any future negotiations, such as those that could potentially be pursued under an Action Plan on Pandemic Response, Preparedness and Resilience, should also uphold special and differential treatment as a right for all developing countries and LDCs and give specific attention to the need for policy space, economic resilience, food security, and protecting public health.

This paper will briefly review the dynamics pertaining to some of the major issues on the table of WTO deliberations, primarily the WTO response to the pandemic, fisheries subsidies, agriculture, and WTO reforms. Issues pertaining to the so-called joint statement initiatives will also be highlighted.

The WTO response to the pandemic

The WTO response to the pandemic is one of the most pressing issues on the table of the WTO, not only because of the urgency that the pandemic imposes, but also because of the expectation of a contribution by the WTO to addressing the pandemic. Yet, over two years since the pandemic was declared, this contribution has not materialized.

Procedural issues have been causing challenges to the process, particularly to developing countries and LDCs, hindering their full and effective participation. They have repeatedly stressed the importance of this process remaining Member-driven and that any text that is to be considered has to be discussed and negotiated by WTO Members.

The initial discussions on the WTO response to the pandemic, which were led by Ambassador David Walker of New Zealand who was appointed in June 2021 as facilitator of the process, 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, as well as more reliance on the private sector. Developing countries, including a coalition that presented a collective submission (which came to be known as 278, after the document number of their submission to the WTO),⁴ India, along with others have stressed that the response to the pandemic should instead focus on issues of concern to developing countries and LDCs including food security, economic resilience, IP

² See Doha Development Work Programme, paragraph 44.

³ The Group of 90, which is comprised of the Organisation of African, Caribbean and Pacific States, the African Group and the group of LDCs, has put forward 10 proposals in this regard which relate to transfer of technology, trade-related investment measures, technical barriers to trade, sanitary and phytosanitary measures, customs valuation, subsidies and countervailing measures, and the accession of LDCs to the WTO.

⁴ Includes Egypt, South Africa, Sri Lanka, Tunisia, Bolivia, Uganda, Venezuela, and Pakistan. See their initial submission entitled "WTO response in light of the pandemic: trade rules that support resilience building, response and recovery to face domestic and global crises" (WTO document JOB/GC/278/Rev.3).

barriers to equitable access to vaccines, therapeutics and diagnostics needed to address the pandemic, and other policy space issues relevant to preparedness and resilience. Developing countries and LDCs have also stressed that any outcome should not undermine the existing flexibilities for them and should include effective special and differential treatment.

Currently, the negotiations on the declaration pertaining to a WTO response to the pandemic are paused (what delegates call a “strategic pause”). This pause was reportedly called for by the United States. The Ambassador of Honduras, previously the Chair of the WTO General Council during 2021, has been appointed as the new facilitator of this process. Several issues of importance to developing countries and LDCs remain in need of substantial attention such as reinforcing the elements pertaining to food security, including those pertaining to net food-importing developing countries (NFIDCs), in pandemics and similar crises.

The centrality of the TRIPS waiver to the WTO response to the pandemic

Besides this, developing countries have repeatedly stressed that a General Council decision on the TRIPS waiver proposal is absolutely central to any WTO response to the pandemic. Many Member States have repeatedly stated that there cannot be a credible outcome on the pandemic response without a meaningful and workable outcome on the TRIPS waiver proposal. In this regard, the alignment in pace between the process pertaining to the TRIPS waiver and that pertaining to negotiating a declaration on the WTO response to the pandemic has been crucial for many countries. Currently, the multilateral process pertaining to the TRIPS waiver remains stalled. The only text on the table remains the waiver proposal by the 65 co-sponsors⁵ and supported by more than 100 WTO Member States.

In March of this year, the media reported a leaked text from discussions facilitated by the WTO Secretariat (the WTO Director-General and Deputy Director-General).⁶ This text has no official status in the multilateral process and thus cannot be considered part of the official WTO deliberations pertaining to the TRIPS waiver proposal unless it is officially submitted to the rest of the WTO membership. The leaked text has been widely criticized and it is generally agreed that it does not present a meaningful TRIPS waiver. It largely reflects the hardline positions of the European Union (EU) and the US. The EU position, as articulated in a declaration in June 2021, is to have a decision that mainly restates existing flexibilities around non-voluntary authorizations (i.e., Article 31 of the TRIPS Agreement) while providing the perception that something significant has been achieved. This position of the EU is the basis of the leaked text. The US, which has supported an IP waiver for vaccines, seems to have gone along with the EU position, while limiting the decision to vaccines and with eligibility criteria that will exclude China.

The leaked text contains a mix of clarifications and a very limited waiver of Article 31(f) of the TRIPS Agreement, which is only applicable in limited circumstances when most of the vaccine production is for export purposes. Yet the proposed text imposes several “TRIPS-plus” conditions that will effectively make it impracticable and unworkable to use the decision. This approach contradicts the spirit and intent of the original TRIPS waiver proposal. The latter aims at temporarily eliminating IP barriers (patents, protection of undisclosed information, copyright and industrial designs) and creating freedom to operate so that there is greater policy and operational space as well as legal certainty for the entry of follow-on/generic manufacturers, with a view to expanding and diversifying local production and supply options for COVID-19 vaccines, therapeutics and diagnostics to enable more equitable access.

Further, there are reports that indicate that certain developed countries such as the EU and Canada in addition to others such as Brazil seek, in return for agreeing to this leaked COVID-19 IP text, to extract concessions from developing countries in such areas as fisheries subsidies, agriculture, WTO reforms, and the broader response to the pandemic.⁷ Since this document fails to provide any additional gains and confers long-term costs, further concessions in other areas could amount to a double loss for developing countries and LDCs.

⁵ “Waiver from Certain Provisions of the TRIPS Agreement for the Prevention, Containment and Treatment of COVID 19”, WTO document IP/C/W/669/Rev.1.

⁶ <https://healthjusticeinitiative.org.za/2022/03/24/trips-waiver-negotiations-leaked-text/>

⁷ D. Ravi Kanth, “Linking draft IP ‘compromise’ with MC12 deliverables?”, *SUNS* #9538, 21 March 2022. Available at: <https://www.twn.my/title2/wto.info/2022/ti220317.htm>

Fisheries subsidies negotiations

The most immediate deliverable for MC12 is disciplines on fisheries subsidies, mandated by Sustainable Development Goal 14.6 and driven by the objective of marine resource conservation. Negotiations have been ongoing since 2016 under three pillars: illegal, unreported, unregulated (IUU) fishing; overfished stocks (OS); and overcapacity and overfishing (OCOF).

Developing countries have been battling it out for stronger special and differential treatment especially for their small-scale fishers. However, S&DT even for low-income, resource-poor fishers continues to face proposed geographical (limited to territorial waters and not extended to the Exclusive Economic Zone or EEZ) and time (2-5 years) restrictions under the first two pillars. Small-fisher groups have been arguing that they do very much go into the EEZ to fish. The overarching objective of SDG 14.6 is to protect their livelihoods by conserving fish stocks, but the manner in which it is being applied in the WTO will achieve the exact opposite.

In an apparent move to divide and rule, countries contributing less than 0.7% of global marine capture have been given a reprieve under the OCOF pillar in the 8 November 2021 draft text (WTO document TN/RL/W/276/Rev.1) issued by the Chair of the negotiations, and this has continued in the latest 24 November 2021 version (WT/MIN(21)/W/5). But many developing countries with very large fishing populations continue to fight over an exemption period. In addition, notification requirements for all S&DT use would be mandatory and stringent while technical assistance remains voluntary. The negotiations have failed to take into account the size of fishing populations or the historical responsibility of industrial fishing nations.

Interestingly, in what is being seen as reverse S&DT for developed countries and advanced fishing countries, Article 5.1.1 of the Chair's text provides an overriding exemption for developed economies such as the EU which can comply with the provision more easily, given their advanced monitoring mechanisms often developed at tremendously high government expenditure.⁸ Distant water fishing, undertaken mainly by advanced fishing nations, also gets further reprieve.

The concern going forward is that this compromised text should not be further compromised in return for any illusory gains in the current leaked text on the COVID-19 IP solution. For developing countries, it will not be worth sacrificing the interests of their small fishers for getting “nothing” on the TRIPS waiver.

Agriculture

A similar concern is also pertinent for agriculture. The agricultural negotiations leading up to MC12 in 2021 were already heavily biased against developing countries. Issues of great interest to them have been consistently pushed to the back by the developed countries, with the active cooperation of the Chair of the agricultural negotiations, Ambassador Gloria Peralta from Costa Rica.

First, a permanent solution on public stockholding (PSH) – which asks for a waiver on subsidies provided to poor farmers in developing countries via price support on procurement of stocks for public food programmes – has been languishing since 2013. In spite of a mandated and missed deadline for an outcome by 2017 and two concrete proposals submitted by the African Group (JOB/AG/205) and the Group of 33 (JOB/AG/214), the Chair proposed yet another postponement of a decision on PSH, this time to the 13th Ministerial Conference, in her report to the WTO's Trade Negotiations Committee (TNC) on 23 November 2021. Recently, Brazil and some other countries said they will not agree to a permanent reprieve while Canada, the US, the EU and others have been raising questions about developing countries' compliance with current notification requirements, making a case against an outcome on a permanent solution on PSH.

⁸ Subsidy estimates by U. Rashid Sumaila et al. (<https://doi.org/10.1016/j.marpol.2019.103695>) show that total subsidies provided by countries with high Human Development Index (HDI) rankings (including China) amounted to 87%, with the low-HDI countries contributing the rest. Out of 82 maritime countries covered in the study, around 58 developing countries, excluding China, provide 44% of global subsidies while 23 developed countries contribute 35%, and China accounts for the residual 21%.

Second, the proposed Special Safeguard Mechanism (SSM), which would allow additional duties to counter a sudden increase in agricultural imports, was also relegated to a post-MC12 work programme, without even a deadline in sight.

On the other hand, there has been a systemic push to promote issues often inimical to the interests of developing countries. Domestic support, especially given by developed countries through extra entitlements and the Green Box, has always been a concern of developing countries. But formulae suggested in proposals on domestic support disciplines tabled by the Cairns Group (a group of farm-product-exporting countries) since 2020, imply deeper cuts for developing countries on the Amber Box. Even S&DT measures such as the Development Box and *de minimis* subsidies are being challenged. At the same time, other issues such as market access, limits on export restrictions, and additional transparency measures which are of commercial benefit to farm-product-exporting developed countries are also being consistently pushed.

There is a proposal on the table not to restrict exports meant for the World Food Programme (WFP), which is seen as the low-hanging fruit in MC12. While it looks good in principle, there are significant concerns that this is a precursor to eventual disciplines on export restrictions on all agricultural (and non-agricultural) products, even if the restrictions are imposed for reasons of domestic food security and manufacture of critical industrial products.

The emerging food crisis

The Russia-Ukraine war has recently triggered a situation of escalating food prices, primarily of wheat, edible oils, maize and barley, which is further compounded by spiralling energy and fertilizer prices, thus impacting other food products as well. This is resulting in a food crisis in many parts of the world. Supply chain blockages in Ukraine, sanctions on Russia and natural disasters affecting supplies for export markets by other countries are all compounding the problem. Especially vulnerable are several LDCs and NFIDCs as well as several other developing countries, given the already precarious food situation during the pandemic.

The Director-General of the WTO has announced⁹ her intention to address food security and supply chain issues but said “Concentrating sourcing and production at home, while understandable, could also create new vulnerabilities and may not be the best risk management strategy”, while calling on countries to export more food and fertilizer and to release food stocks into the international market. A “high-level” conference on food security is planned to be held by the Chair of the WTO’s agriculture negotiations Ambassador Peralta on 26 April.

The DG’s prescription goes beyond inadequate to shocking. It continues the denial of the fact that in spite of trade liberalization through the WTO for the last 27 years, the global food market remains extremely concentrated, in terms of countries supplying major products as well as the number of companies that operate and control the export market. The inequitable rules of the WTO Agreement on Agriculture (AoA) have ensured that subsidized agricultural products from developed countries penetrated markets in developing countries and LDCs, threatened small-scale production in these countries, and made many countries net food importers. Rather than depending on a concentrated, volatile and precarious global market, it is imperative that countries develop some form of self-sufficiency in critical food products especially in order to deal with future crises. But the WTO has again tied their hands by limiting the policy space to support farmers, boost production and strengthen public stockholding programmes for supporting both production and consumption.

Several short-term solutions can be explored, such as trying to keep supply chains open and diversified as well as keeping payment channels open for exports meant for vulnerable countries, and providing them finance and other support. Yet, a long-term solution cannot come without WTO rules being changed in favour of allowing and strengthening policy tools in developing countries and LDCs to expand and diversify production.

Not surprisingly, the WFP proposal is being conveniently given a renewed push by the developed countries using the context of the food crisis. While this can be useful in the current context especially for exports to NFIDCs and LDCs, any long-term commitment on export restrictions which are currently allowed under Article 12 of the AoA needs to be treated with caution.

⁹ https://www.wto.org/english/news_e/news22_e/dgno_28mar22_e.htm

Given the challenges already faced by developing countries (especially NFIDCs and LDCs), further concessions in terms of giving up the permanent solution on PSH or SSM, in return for an unworkable outcome on the COVID-19 IP issue that does not deliver any meaningful waiver, should be unthinkable. Further, if any pandemic response package is to go through, it must seriously address food security and vulnerability issues in developing countries and offer long-term solutions that can pre-empt a situation of recurring food crises. Developing countries must also kickstart a longer-term standalone process to explore food security solutions.

WTO reforms and what they potentially hide

There are major differences between what developing countries mean by “WTO reform” and the ideas being pushed by some developed countries under the guise of reform, which have become a divisive subject among the WTO membership. In the run-up towards December 2021 when MC12 was initially scheduled to take place before its postponement, the WTO Director-General had facilitated a push to have WTO reform at the forefront of issues to be addressed in the ministerial conference. Similarly, the WTO DG is putting WTO reform on the priority agenda for the ministerial now scheduled for June 2022.¹⁰

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 Cuba¹¹ 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 the EU, continue to push for rules on new issues (such as rules on industrial subsidies) not multilaterally mandated and new approaches to S&DT that will eventually limit the availability of these flexibilities to developing countries and LDCs. They have also been interested in altering decision-making procedures at the WTO, including normalizing plurilateral approaches to setting the WTO negotiation agenda and adopting new rules that could undermine the multilateral nature of the organization and its ability to deliver anything useful for developing countries and LDCs. Furthermore, they are interested in extending the WTO monitoring mechanisms in ways that would put further pressure on developing countries in implementing their trade policies and open up more space for big business in the WTO under the umbrella of “multi-stakeholderism”.

In the context of negotiating the outcome document of MC12 (i.e., the ministerial declaration), a number of mainly developed countries have been 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 on the direction sought from such work will allow the US, the EU and other developed countries to utilize this platform to push for operationalizing the ideas they have in mind for “WTO reform”. Such approaches could 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 could also legitimize a bigger role for the private sector 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.

It has been reported that developing countries have insisted that any discussions on WTO reform be under the umbrella of the General Council and open to all WTO Members. They also insisted that any necessary reforms to improve the WTO functions should be consistent with the principles and objectives of the multilateral trading

¹⁰ D. Ravi Kanth, “WTO: DG calls for ‘convergence-building’ on controversial issues for MC12”, *SUNS* #9546, 31 March 2022.

¹¹ See WTO document WT/GC/W/778/Rev.3.

system as set out in the Marrakesh Agreement Establishing the World Trade Organization and its multilateral trade agreements. They also underlined that the process as well as the outcomes of the review should be transparent, inclusive and give due regard to the development and policy space needs of developing and least-developed countries, and that the review and its outcomes shall not alter, or in any manner affect, Members' rights and obligations under the WTO agreements and agreed mandates.¹²

Furthermore, it has been reported¹³ that under the draft outcome document, the differences between the developed countries and developing countries in regard to the WTO's negotiating function were laid bare, particularly on the issue of plurilateral negotiations. The developed countries proposed language that would undermine the multilateral nature of the organization and the consensus requirement: "[... Many Members reaffirm commitment to exclusive multilateral negotiations. Many other Members believe that new approaches are necessary to achieve meaningful outcomes in WTO negotiations]."¹⁴ A proposal coming from developing countries underlined strengthening the capacity of the WTO "[to perform its function as the forum for negotiations among all its Members concerning their multilateral trade relations as collectively decided by the Ministerial Conference, in accordance with Articles II.1 and III.2 of the Marrakesh Agreement Establishing the World Trade Organization and other relevant articles of the WTO Agreement, and with a view to strengthening its ability to develop an integrated, more viable multilateral trading system]".¹⁵

Joint statement initiatives continue and increase in number

Plurilateral "joint statement initiatives" on e-commerce, investment facilitation, services domestic regulation, disciplines for micro, small and medium enterprises (MSMEs), and trade and gender, announced at the WTO's 11th Ministerial Conference in Buenos Aires in 2017, continue to be deliberated among different subsets of the WTO membership. Multiple other environment-related initiatives have been added to the list, including trade and environmental sustainability structured discussions (TESSD).¹⁶ These initiatives do not constitute part of the WTO work, as they are not officially covered by multilateral mandates of negotiation agreed at the WTO. However, most of the meetings pertaining to these plurilateral initiatives are hosted at the WTO.

These initiatives have raised multiple systemic concerns, particularly in regard to their potential undermining of WTO rules pertaining to deciding the negotiation mandates at the WTO as well as the rules pertaining to adopting the results of negotiations to make them part of WTO law. In February 2021, a submission by India, South Africa and Namibia challenged the legality of joint statement initiatives and the attempts to introduce their outcomes into the WTO.¹⁷ In their submission, they rejected the proposition that, if the negotiated outcomes are offered on a most-favoured-nation (MFN) basis, no multilateral consensus is required for bringing the resulting framework under the umbrella of the WTO. They stressed that such a proposition would be contrary to fundamental principles and objectives of the multilateral system, enshrined in the Marrakesh Agreement Articles II.1 and III.2.¹⁸ They also stressed that any attempt to introduce such new rules into the WTO without the consensus of the whole WTO membership will be detrimental to the functioning of the rules-based multilateral trading system, erode its integrity by subverting established rules and foundational principles, bypass the collective oversight of Members, and result in the disregard of existing multilateral mandates arrived at through consensus in favour of matters without multilateral mandates.¹⁹

¹² See supra note 10.

¹³ Unofficial WTO room document (RD/GC/17/Rev.2) reported on in D. Ravi Kanth, "WTO: DG calls for 'convergence-building' on controversial issues for MC12", *SUNS* #9546, 31 March 2022.

¹⁴ *Ibid.*

¹⁵ *Ibid.*

¹⁶ Vicente Yu, "Environment- and Climate-Related JSIs: Caveat Emptor", Third World Network, available at: https://www.twn.my/title2/briefing_papers/MC12/briefings/Short%20note%20-%20environment%20JSIs%20generally.pdf

¹⁷ See WTO document WT/GC/W/819.

¹⁸ Article II.1 provides that "The WTO shall provide the common institutional framework for the conduct of trade relations among its Members ...", and Article III.2 provides that "The WTO shall provide the forum for negotiations among its Members concerning their multilateral trade relations".

¹⁹ Submission by India, South Africa and Namibia (WT/GC/W/819/Rev.1), "The Legal Status of Joint Statement Initiatives and their Negotiated Outcomes", March 2021.

A reference paper on services domestic regulation resulted from the Joint Initiative on Services Domestic Regulation (SDR), and was released publicly in October 2021.²⁰ This text will impose new “disciplines” on how governments which adopt it can develop and administer their licensing standards and procedures, qualification requirements and procedures, and technical standards as well as other measures related to authorizations in relation to the services sector.²¹ Professor Jane Kelsey has discussed the systemic implications of the development of this text by a self-selected group of WTO Members, in light of the lack of legal legitimacy of the process by which the text was produced and the means proposed for its adoption.²² Kelsey notes the SDR text cannot claim a mandate from anywhere else. It overrides an existing multilateral mandate under Article VI.4 of the WTO General Agreement on Trade in Services (GATS). In paragraph 1 of Section I, it states that the negotiations and resulting text are pursuant to GATS Article VI.4. Kelsey contests that. This text has not been developed by the WTO Council for Trade in Services or the body established by the Council for that purpose, being the Working Party on Domestic Regulation. Kelsey points out that the process was designed to circumvent that multilateral mandate and the body authorized to oversee it.

Conclusion: How to avoid a lose-lose outcome for developing countries

Multiple issue areas with systemic implications for the multilateral trading system and for developing countries and LDCs collectively are currently under consideration at the WTO. Multilateralism is being threatened daily by war politics as well as the chipping away at the fundamentals underpinning the multilateral trading rules that are supposed to revolve around compromise, consensus, and recognition of the special and differential treatment that is a right for developing countries and LDCs. Solidarity among developing countries is of utmost importance in these challenging times when multilateralism is facing such serious shocks and setbacks.

The TRIPS waiver has been one of the most important issues for developing countries and LDCs during the last two years because of its centrality to access and equity in the response to the COVID-19 pandemic. The core metric of assessing any outcome in this regard should remain the extent to which it enables equitable access to vaccines, therapeutics and diagnostics through ensuring freedom of operation for manufacturers from developing countries and legal certainty in this regard. This issue should remain a standalone issue in the context of the WTO response to the pandemic and should not be linked to concessions in other negotiation areas.

At the same time, other key issues such as fisheries subsidies and agriculture that are embedded in the development objectives of developing countries and LDCs must not undermine but strengthen both production and small-scale producers for long-term resilience building as well as for ensuring food and livelihood security. Besides this, a collective stand by developing countries and LDCs is crucial to ensure that plurilateral initiatives do not end up undermining the viability of the multilateral rules-based trading system, and that WTO reforms help enhance the capacity of the WTO to perform its function as the multilateral forum for negotiations among all its Members and help facilitate the effective participation of developing countries and LDCs rather than the opposite.

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²⁰ See INF/SDR/1 dated 27 September 2021.

²¹ Kinda Mohamadih (2021), “Reference Paper on Services Domestic Regulations: Overview of main content and regulatory implications”, available at: https://www.twn.my/title2/briefing_papers/MC12/briefings/Reference%20paper%20on%20SDR%20TWNMC12BP%20Nov%202021%20Mohamadih.pdf

²² Jane Kelsey (2021), “Briefing note on Services Domestic Regulation JSI text of 27 September 2021 (INF/SDR/1)”, available at: https://www.twn.my/title2/briefing_papers/twn/Domestic%20regulation%20TWNBP%20Oct%202021%20Kelsey.pdf