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The WTO in Buenos Aires

The outcome and its significance for the future of the multilateral trading system

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Abstract

The conclusion of the World Trade Organization's (WTO) Buenos Aires ministerial conference (10-13 December 2017) was immediately celebrated and derided in equal measure. For its supporters, Buenos Aires opened the way toward negotiations in e-commerce, investment facilitation for development, and measures designed to help micro, small and medium sized enterprises (MSMEs). For its detractors, the meeting underscored the gridlock that continues to blight the WTO's negotiating function and underlined the organisation's declining credibility as a mechanism for governing global trade. For civil society groups, events in the run-up to and during the meeting threatened to roll back the amicable rapprochement that has evolved between the WTO and its more vociferous critics. In this paper we provide one of the first full length critical evaluations of the Buenos Aires conference and its outcome. In so doing, we offer answers to three questions. What accounts for such dramatically different assessments of the meeting's outcome? How should the outcome be interpreted? And what is its significance for the future of the WTO and the multilateral trading system? We argue that the meeting's outcome was indeed significant. It has consolidated the process of reconfiguring the WTO's negotiating function; and it enables members to tackle more effectively a range of pressing economic and social issues as well as to navigate blockers and blockages in the negotiations. However, it also poses challenges for WTO members, particularly among its poorest constituents.

Keywords: World Trade Organization, Buenos Aires, ministerial conference, trade, development, multilateralism, single undertaking, civil society, the United States, India

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The WTO in Buenos Aires

The outcome and its significance for the future of the multilateral trading system

Introduction

In December 2017, World Trade Organization (WTO) members met in Buenos Aires for the organisation's eleventh ministerial conference (MC11) uncertain about what the meeting's conclusion might bring.² They had good reason. In the preceding months, the global trade landscape had been thrown into flux by the Trump administration's hawkish stance on trade, its withdrawal from the Trans-Pacific Partnership (TPP), and its "request" to renegotiate both the North American Free Trade Agreement (NAFTA) and the US-South Korea bilateral free trade agreement (KORUS).³ The "jewel" in the multilateral system's crown—the dispute settlement mechanism⁴—was under pressure from the United States' continued blocking of replacement appointments to the appellate body.⁵ And tensions between Canada and the United States were looming in a dispute over the latter's use of anti-dumping and countervailing duties as well as in aircraft, lumber, and paper.⁶

Challenges to the established trade order were not limited to North America alone, however. Significant alterations to the European trade landscape were also in the offing. Theresa May's

² Peter Ungphakorn, "Buenos Aires Ministerial preview: Will the WTO have to tango without the US?", *Agra Europe*, 4 December 2017. Available at: <https://iegpolicy.agribusinessintelligence.informa.com/PL213595/Buenos-Aires-Ministerial-preview-Will-the-WTO-have-to-tango-without-the-US>

³ Rachel Premack, "What is KORUS, And Why Is Trump So Mad About It?", *Forbes*, 2 November 2017, available at: <https://www.forbes.com/sites/rachelpremack/2017/11/02/what-is-korus-and-why-is-trump-so-mad-about-it/#1d3373fd4375>; and Shawn Donnan, "Fears for global trade as Trump fires first shots to kneecap WTO", *Financial Times*, 10 November 2017, available at: <https://www.ft.com/content/5afbd914-a2b2-11e7-8d56-98a09be71849> Also, Caroline Freund, "The United States wins from trade agreements", *Peterson Institute for International Economics: Trade and Investment Policy Watch*, 18 December 2017, available at: <https://piie.com/blogs/trade-investment-policy-watch/united-states-wins-trade-agreements>; and Dan Ciuriak, Lucy Ciuriak, Ali Dadkhah and Jingliang Xiao, "The NAFTA Renegotiation: What if the US Walks Away?", C. D. Howe Institute Working Paper, November 2017, available at: https://cdhowe.org/sites/default/files/attachments/research_papers/mixed/Working%20Paper%201128%20web.pdf

⁴ Gregory Shaffer and L. Alan Winters, "FTA Law in WTO Dispute Settlement: Peru-Additional Duty and the Fragmentation of Trade Law", *World Trade Review*, 16: 2 (2017), p. 305.

⁵ Gregory Shaffer, Manfred Elsig and Mark Pollack, "Trump is fighting an open war on trade. His stealth war on trade may be even more important", *The Washington Post*, 27 September 2017. Available at: https://www.washingtonpost.com/news/monkey-cage/wp/2017/09/27/trump-is-fighting-an-open-war-on-trade-his-stealth-war-on-trade-may-be-even-more-important/?utm_term=.a4241a3aca37 Also, Bridges, "Disputes Roundup: Compliance Panels Rule in US-Mexico Tuna Case, AB Vacancies Persist", *Bridges*, 21: 36, 2 November 2017. Available at: <https://www.ictsd.org/bridges-news/bridges/news/disputes-roundup-compliance-panels-rule-in-us-mexico-tuna-case-ab>

⁶ With a formal complaint filed after the conclusion of MC11. See "Canada files WTO complaint over US trade remedy measures", *WTO News*, 10 January 2018. Available at: https://www.wto.org/english/news_e/news18_e/ds535rfc_10jan18_e.htm Also, "Canada files WTO challenge on broad swath of US trade remedy practices", *Bridges*, 21: 36, 2 November 2017. Available at: <https://www.ictsd.org/bridges-news/bridges/news/disputes-roundup-compliance-panels-rule-in-us-mexico-tuna-case-ab>

government had begun the process of withdrawing the UK from the EU, its single market, and its customs union. The EU was undergoing a process of reflection, aware that relations among its members as well as with established trading partners would change following the UK's departure. Debate about the shape of future trade relationships, including with the United States and developing countries, was in full flow with both the UK and EU seeking to make swift progress on new trade deals in North America, Asia, and the Pacific.⁷ More broadly, relations between China and the US and EU continued to be strained in—among other areas—steel, aluminium, and intellectual property. And debate continued over whether China should be granted market economy status amid long standing accusations that it remained engaged in currency manipulation and illegal state support to domestic industries.⁸

These tensions had an inevitable effect on the pre-conference process—though they do not, in themselves, explain the failure to reach a consensus on either a ministerial declaration or a programme of work in the run-up to MC11. Despite intense discussions in Geneva and an October 2017 pre-conference mini-ministerial meeting in Marrakech, members proved unable to bridge divides.⁹ Matters were not made any easier when, in the immediate run-up to the ministerial conference, the Argentine government decided to revoke the accreditation of 63 non-governmental organisation (NGO) delegates, frustrating the WTO secretariat and civil society groups in equal measure.

It was no surprise, then, that members arrived in Buenos Aires aware that little had been achieved and much was still to be done. WTO officials set about rolling back expectations for the meeting. Grassroots groups prepared to launch demonstrations on the side lines of the conference. A small group of accredited NGOs prepared to voice their concerns in the Hilton hotel where the conference was held. And the Argentine authorities put on a formidable display of security that disrupted much of the San Nicolás financial district for the duration of the conference. It seemed that MC11 had all the hallmarks of a typical WTO ministerial conference, and one that looked like it might fail.

⁷ See, among others, “EU to race Britain for Australia, NZ trade deals”, *Reuters*, 13 September 2017, available at: <https://www.reuters.com/article/us-eu-juncker-trade/eu-to-race-britain-for-australia-nz-trade-deals-idUSKCN1BO11M>; Christopher Hope, “Canada’s trade deal with the EU will form the basis for Britain’s Brexit deal”, *The Telegraph*, 17 September 2017, available at: <http://www.telegraph.co.uk/news/2017/09/17/canadas-trade-deal-eu-will-form-basis-britains-brexit-deal/>; and Henry Mance, Jim Pickard and Shawn Donnan, “UK looks to join Pacific trade group after Brexit”, *Financial Times*, 2 January 2018. Available at: <https://www.ft.com/content/73943036-efa9-11e7-b220-857e26d1aca4>. Also Michael Savage and Toby Helm, “Trump row could kill off swift post-Brexit trade deal, says former UK envoy”, *The Guardian*, 13 January 2018. Available at: https://www.theguardian.com/politics/2018/jan/13/trump-tension-risk-quick-us-uk-trade-deal?CMP=Share_iOSApp_Other

⁸ See Chad P. Bown, “The Perils of Shifting China’s ‘Market Economy’ Dispute to the WTO”, *World Politics Review*, 21 December 2016. Available at: <https://www.worldpoliticsreview.com/articles/20757/the-perils-of-shifting-china-s-market-economy-dispute-to-the-wto> Also, Chad P. Bown, “17-21 Steel, Aluminum, Lumber, Solar: Trump’s Stealth Trade Protection”, Peterson Institute for International Economics Policy Brief, June 2017, available at: <https://piie.com/system/files/documents/pb17-21.pdf>

⁹ “Ministers in Marrakech grapple with Buenos Aires deliverables, future WTO Agenda”, *Bridges*, 21: 3. Available at: <https://www.ictsd.org/bridges-news/bridges/issue-archive/ministers-in-marrakech-grapple-with-buenos-aires-deliverables>

Yet, as has come to be the case with the recent pattern of WTO ministerials, failure proved not to be the meeting's outcome—though what was produced was not entirely obvious nor its significance clear. Members were unable to reach agreement on a ministerial declaration affirming the continued importance of the WTO to the global trading system or its role in supporting the development of the poorest countries—despite expectations right up until the very last moment that they would.¹⁰ Extensive discussions among members also failed to produce collective agreement on ways forward in agriculture, e-commerce, services and non-agricultural market access (NAMA), fisheries, and investment facilitation for development, or to make progress on a range of other side issues. Indeed, the only matter of substance to emerge from the formal negotiations was an agreement to renew the twin moratoriums on e-commerce and Trade Related Intellectual Property (TRIPs) non-violation complaints—though even these looked uncertain for much of the meeting.

That said, perhaps the biggest, most celebrated and unexpected outcome of the ministerial conference was the adoption of a declaration on trade and women's economic empowerment by 119 WTO members and observers. While designed to launch a fact-finding initiative intended to bolster the role of women in trade, particularly in new areas such as e-commerce, this is the first time WTO members have signalled a willingness to engage with what had previously been seen as a human rights issue. Although key members—notably India and the United States—remained outliers, with the former claiming the issue had no place in the business of an ostensible trade body, the strength of support and the degree to which the outcome was celebrated during the ministerial conference raised the possibility that it could foreshadow the beginning of an era when the regulation of multilateral trade connects more effectively with global economic and social agendas.

The declaration on trade and women's economic empowerment aside, the apparently insubstantial nature of the Buenos Aires outcome inevitably drew criticism.¹¹ In her immediate post-conference assessment, EU Trade Commissioner Cecilia Malmström was among the most outspoken, complaining that WTO members could not “even agree to stop subsidising illegal fishing”.¹² The Director General Roberto Azevêdo did his best to put the outcome in a positive light, claiming that “[w]e knew that progress here would require a leap in members' positions”. “Our work will go on after Buenos Aires. We can't deliver at every ministerial”. He also cautioned that “multilateralism is not always about “getting what you want”, but “the best outcome that all can accept”.¹³

¹⁰ This was widely expected right up until the end of the final Heads of Delegation meeting on 13 December 2017. Confirmed to us confidentially by a member of an industrial country delegation in a private conversation, Sheraton Hotel, Buenos Aires, 15 December 2017.

¹¹ For example, D. Ravi Kanth, “Multilateral Failure of WTO Ministerial at Buenos Aires”, *Economic and Political Weekly*, 52: 52, (30 December 2017), pp. 12-15.

¹² European Commission, “WTO meeting in Buenos Aires: A missed opportunity”, 13 December 2017. Available at: <http://trade.ec.europa.eu/doclib/press/index.cfm?id=1772>

¹³ Azevêdo's comments as reported in ICTSD, “Bridges: Daily Update 5”, 14 December 2017. Available at: <https://www.ictsd.org/sites/default/files/news/bridges-daily-update-5a.pdf>

These views were, however, quite different from the post-conference reflections of United States Trade Representative (USTR) Robert Lighthizer¹⁴ who commented,

MC11 will be remembered as the moment when the impasse at the WTO was broken. Many members recognized that the WTO must pursue a fresh start in key areas so that like-minded WTO Members and their constituents are not held back by the few Members that are not ready to act.¹⁵

What Lighthizer was referring to was the issuing of a series of ministerial statements of intent from individual groups of WTO members committing to advance work in areas that had previously been off the organisation's agenda or which had long been in a holding pattern. These "plurilateral" commitments saw large groups of members—but not the membership as a whole—agree to move forward in three specific areas: e-commerce; investment facilitation for development; and micro, small and medium sized enterprises (MSMEs). Lighthizer was not the only one to see value in these developments—which Azevêdo described as an "outbreak of dynamism"—though few were quite as effusive.

What accounts for these diametrically opposed assessments? How should the Buenos Aires outcome be interpreted? And what is the significance of MC11 for the future of the WTO and the multilateral trading system? Our aim in this paper is to evaluate critically the ministerial conference and the outcome it produced thereby providing answers to each of these questions. Four sources inform our analysis: (i) our participant observation of events during the ministerial conference; (ii) our informal conversations with gathered country delegates, members of the press, NGO participants and other observers; (iii) a body of literature concerned with the passage of WTO ministerials; and (iv) an analysis of official member state positions as set out in the statements delivered during the conference.

In pursuing answers to these questions, we suggest that while the meeting did not produce the kind of substantive deals that resulted from the two previous meetings in Bali (MC9, 2001—see table 1) and Nairobi (MC10, 2005)¹⁶—and failed to attract the same kind of attention as a result—its outcomes were significant nonetheless. We contend that the agreement of a series of statements of intent by large subsets of members (including many developing countries) consolidates the move away from the single undertaking and multilateral deals binding all members that had been the intention of the Doha round, the basis upon which the previous Uruguay round (1986-1994) was concluded, and which had been a stated ambition of multilateral

¹⁴ For an example of diametrical views on MC11 see S. Arun, "US calls WTO meet 'successful,' India says no substantive outcome", *The Hindu*, 16 December 2017. Available at: <http://www.thehindu.com/business/Economy/us-calls-wto-meet-successful-india-says-no-substantive-outcome/article21821175.ece>

¹⁵ USTR, "Robert Lighthizer Statement on the Conclusion of the WTO Ministerial Conference", 14 December 2017, <https://ar.usembassy.gov/ustr-robert-lighthizer-statement-conclusion-wto-ministerial-conference/>

¹⁶ Rorden Wilkinson, Erin Hannah and James Scott, "The WTO in Bali: what MC9 means for the Doha Development Agenda and why it matters", *Third World Quarterly*, 35: 6 (September 2014), pp.1032-1050; and Rorden Wilkinson, Erin Hannah and James Scott, "The WTO in Nairobi: the demise of the Doha Development Agenda and the future of the multilateral trading system", *Global Policy*, 7: 2 (May 2016), pp. 247-255.

trade negotiations since at least the Tokyo round but which has been gradually eroded over the course of the last three ministerial conferences.¹⁷ That said, this move began properly in Bali and Nairobi, though pressures for a shift in this direction were detectable earlier. The shift towards specific sectors as a focus of structured discussions—if not formal negotiations—marks a return to older ways of agreeing trade openings that had once been a defining characteristic of the multilateral trading system¹⁸ and enables particular members (largely the industrial ones) to find ways to move beyond the intransigence that has held up the negotiating function of the WTO in recent years.

Understood in this way, Buenos Aires consolidates a nascent process in which the negotiating function of the WTO is reconfigured. As one senior WTO staff put it to us, Buenos Aires was a “process conference ... a transition”¹⁹ to a different way of agreeing trade deals. It also enables the membership to tackle more effectively a range of pressing economic and social issues central to 21st century trade while also opening up the opportunity to navigate blockers and blockages in the negotiations. That said, it also means that the era of pursuing grand trade deals in rounds of negotiations is over, for the foreseeable future at least. This is perhaps an inevitable outcome of the effects of growing global economic complexity and of attempts to negotiate trade deals among 164 members that has been a long time coming, but it is also one that presents challenges, particularly to the WTO’s poorest members.

In developing our argument, the paper unfolds as follows. We begin by briefly exploring the background to the Buenos Aires meeting. We then explore the dynamics of the meeting itself paying particular attention to the political dynamics, obstacles and strategies evident during MC11 identified by those with whom we spoke as well as evident in our own observations. In the penultimate section we examine the content of the discussions focusing on those areas central to the meeting. In so doing, we highlight points of contention and areas of convergence, and we assess the overall balance of the outcome. In the final section, we explore the significance of the Buenos Aires outcome for the future of the WTO.

The road to Buenos Aires

Buenos Aires was always going to be a difficult meeting. The previous two ministerial conferences under Director General Roberto Azevêdo’s tenure had been seen as successes in what had otherwise been a dismal round of negotiations since the 2001 Doha Development Agenda (DDA) was launched. The 2013 Bali ministerial conference—the first on Azevêdo’s watch—had resulted in the first multilateral deal in almost 20 years with the conclusion of an agreement on trade facilitation and measures covering agriculture, and special and differential treatment for least developed countries (LDCs). This was followed by a second agreement at the 2015 Nairobi ministerial conference that saw members agree to a number of substantive outcomes: a package of measures agreed in agriculture and on LDC issues; and an expansion in the 1996 Information

¹⁷ See Rorden Wilkinson, *The WTO: Crisis and the Governance of Global Trade*, (London: Routledge, 2006), pp. 75-83.

¹⁸ For a full-length explanation, see Rorden Wilkinson, “Back to the Future: ‘Retro’ trade governance and the future of the multilateral order”, *International Affairs*, 93: 5 (2017), pp. 1131-1147.

¹⁹ Private conversation with senior WTO staffer following the MC11 closing ceremony, Hilton Hotel, Buenos Aires, 13 December 2017.

Technology Agreement (ITA). What was also common to both MC9 and MC10 was the refinement of the negotiating process itself, intended to make it more inclusive and transparent.

Table 1–WTO Ministerial Conferences

Buenos Aires (MC11) 10-13 December 2017
Nairobi (MC10) 15-18 December 2015
Bali (MC9) 3-6 December 2013
Geneva (MC8) 15-17 December 2011
Geneva (MC7) 30 November - 2 December 2009
Hong Kong (MC6) 13-18 December 2005
Cancún (MC5) 10-14 September 2003
Doha (MC4) 9-13 November 2001
Seattle (MC3) 30 November - 3 December 1999
Geneva (MC2) 18-20 May 1998
Singapore (MC1) 9-13 December 1996

However, the Nairobi ministerial conference left the future of the DDA unresolved.²⁰ While the ministerial declaration formally acknowledged that differing opinions existed among members on the future of the round, it was sufficiently ambiguous to be interpreted by some as a formal acceptance of the DDA's abandonment. For others the declaration merely recognised that an enduring impasse in the Doha round had been reached. This division of opinion notwithstanding, what Nairobi did was formally acknowledge the desire of some members to move beyond the strictures of the Doha round and pursue negotiations on issues not covered by the DDA.

This desire was not expressed without a measure of caution, however. The rationale for launching the DDA on the basis of a single undertaking had been to enable developing countries to secure movement forward in correcting implementation anomalies and agreements in unfinished areas (particularly in agriculture) in the Uruguay round, in exchange for any movement forward elsewhere. Yet, as is well documented, the DDA ran into trouble almost from the outset with

²⁰ See paragraphs 30-34 of the Nairobi Ministerial Statement. Full text available at: https://www.wto.org/english/thewto_e/minist_e/mc10_e/mindecision_e.htm

members proving unable to reach an agreement on a wide-ranging deal before the round collapsed in 2008. What Nairobi did was signal members' commitment to the pursuit of the development gains embodied in the DDA, but only compel them to revisit the round in the event that a desire to open up negotiations in new areas on a *multilateral* basis was forthcoming. Thus, in the absence of a formal abandonment of Doha by all members, any future WTO negotiations would inevitably take place among only a subset of members—that is, they would be plurilateral.

Where there was no disagreement was in how these opposing views framed debate in the run-up to Buenos Aires. For some Nairobi was seen as “the death of Doha and the birth of a new WTO”.²¹ For others it was derided—and vociferously so—as a significant mistake. For others still, it continued to underscore the faltering ability of the WTO to act as a forum for agreeing trade openings. What resulted was a pre-ministerial process that saw groups of members converge on particular issues and make declarations in support of their preferred positions. Seeking to shore up support for the multilateral trade system, for instance, 44 developed and developing countries issued a statement of strong support for the WTO.²² Others, particularly India, pressed for a permanent multilateral solution to the issue of public food stockholding. Others still pressed for negotiations to begin in new areas. And least developed members made clear the need to move towards a conclusion on the Doha development issues.²³

The result was that, despite much activity, members prepared to leave for Buenos Aires firmly divided. Cognisant of the gulf between member positions, Azevêdo was at pains to stress that not every ministerial conference could produce “big, blockbuster outcomes”.²⁴ This setting of expectations was laid out in a letter to the press on the eve of the meeting in which Azevêdo wrote,

The successes of recent years have provided invaluable lessons in the kinds of processes that work, and those that don't. We know ... that agreements involving the participation of all 164 WTO members must be tailored to provide flexibility to accommodate the interests of countries across the full range of development. Adequate transition periods and technical assistance are required if poor countries are to take part. Such an approach was one of the keys to success in the Trade Facilitation Agreement negotiations. WTO rules allow a lot of flexibility in terms of how agreements can be structured—including if only some members want to move forward with a particular issue.²⁵

²¹ Shawn Donnan, “Trade talks lead to ‘death of Doha and birth of new WTO’”, *Financial Times*, 20 December 2015. Available at: <https://www.ft.com/content/97e8525e-a740-11e5-9700-2b669a5aeb83>

²² The text of the ministerial statement is available at: https://www.wto.org/english/thewto_e/minist_e/mc11_e/mc11_ministerial_statement_mts_11_12_17.pdf

²³ Bridges Special Update, “WTO ministerial launches, as regional leaders make public call for support of multilateral system”, 10 December 2017. Available at: <https://www.ictsd.org/bridges-news/bridges/news/wto-ministerial-launches-as-regional-leaders-make-public-call-for-support>

²⁴ DG Azevêdo's comments as reported by Keith Rockwell, 9.30pm Press Briefing, WTO Ministerial Conference, 12 December 2017, Hilton Hotel, Buenos Aires.

²⁵ “DG letter to all journalists attending MC11. Buenos Aires: Strengthening the multilateral trading system”, 9 December 2017.

Available at: https://www.wto.org/english/thewto_e/minist_e/mc11_e/briefing_notes_e/dgletter_e.htm

Divisions among members were not the only fault lines on display, however, or the sole determinants of the meeting's character. Also important were the tensions that emerged between the host nation and the NGO groups in attendance. Indeed, events in the run-up to MC11 threatened to derail long standing work by the WTO secretariat to arrive at a rapprochement with some of its more vociferous critics.²⁶

The inclusion of civil society—understood by the WTO to include NGOs, labour, business, and academics—in parallel forums at ministerial conferences and engagement at annual WTO public forums are the principal means by which the WTO engages non-state actors. This was complicated in Buenos Aires by the Argentine government's last-minute decision to revoke the accreditation credentials of representatives from 63 civil society organisations, many of whom had attended past ministerial conferences and work together in the global Our World is Not For Sale (OWINFS) network.²⁷ Defending its actions, the Argentine Foreign Ministry claimed, “some NGOs ... had made explicit calls for violence on social media, expressing their tendency to produce schemes of intimidation and chaos”.²⁸ Yet, not since 2005 have demonstrations during WTO ministerials erupted into violence. The protests that have taken place in the interim have been scant, poorly attended and consisting largely of banner waving and chanting in and around the conference centres. Nothing in the public statements made by the organizations whose delegates' credentials were revoked suggested that a different tactic would be deployed in Buenos Aires.

The WTO secretariat strongly opposed the Argentine government's move. Indeed, it was only through direct intervention by officials from WTO member states offering assurances to the Argentine government that NGO representatives would not engage in violence or illegal acts that some individuals' accreditation was reinstated. Others did not fare as well. Two NGO representatives—Sally Burch of Agencia Latinoamericana de Información (ALAI) and Petter Slaatrem Titland, leader of the Norwegian chapter of Association for the Assessment of Financial Transactions and for Citizen Action (Attac)—were stopped at the Argentine border and deported after attempting to enter the country as tourists. Although the decisions were eventually reversed by Argentine authorities, they nonetheless served to frustrate civil society organisations.²⁹

The meeting itself

²⁶ See, Erin Hannah, Amy Janzwood, James Scott and Rorden Wilkinson, “What Kind of Civil Society? The Changing Complexion of Public Engagement at the WTO”, *Journal of World Trade*, 52:1 (2018), pp. 113-142.

²⁷ By way of illustration, the following were among those banned from attending the MC11 by the Argentine government: Argentina (Instituto del Mundo del Trabajo, Fundación Grupo Efecto Positivo, and Sociedad de Economía Crítica), Belgium (11.11.11), Brazil (Brazilian Network for People's Integration, REBRIP), Chile (Derechos Digitales), Finland (Siemenpuu), Indonesia (Institute for National and Democracy Studies), Netherlands (Transnational Institute), the Philippines (People Over Profit) and the UK (Global Justice Now!), as well as international organizations including UNI global union (based in Switzerland) and UNI Americas (based in Uruguay) and Friends of the Earth International.

²⁸ Argentina's Foreign Ministry quoted in “Fury as Argentina WTO attendees over ‘calls for violence’”, *The Guardian*, 11 December 2017, available at: <https://www.theguardian.com/world/2017/dec/11/argentina-social-media-ban-world-trade-organisation-conference>

²⁹ See for example civil society organizations' letters to DG Azevdeo and the Argentine government http://ourworldisnotforsale.net/2017/L_Disaccreditation.pdf See, also, the open letter on civil society's rights to the United Nations https://justnetcoalition.org/2017/PR_cs-rights.pdf

Azevêdo's deft diplomatic signature—a key factor in securing agreement in Bali and Nairobi—was very much in evidence in the way the negotiations were arranged. The meeting itself was chaired by former Argentine foreign minister Susana Malcorra acting with three vice-chairs: Nigerian Minister of Industry, Trade and Investment Okechukwu Enelamah; New Zealand Minister of Trade David Parker; and Hong Kong Secretary for Commerce and Economic Development Edward Yau. Discussions were arranged largely by substantive work streams—development, e-commerce, agriculture, services and NAMA, and fisheries—led by what DG Roberto Azevêdo termed “minister facilitators”,³⁰ although discussions and group meetings were not confined to these areas alone. Azevêdo was keen to stress that these facilitators were not chairs—position holders who in the past been roundly criticised³¹—but appointees designed to help curate discussion in the groups. Moreover, in response to the demands of many members for a more inclusive negotiating process, Azevêdo dispensed with familiar green room discussions³² in favour of successively organized issue-based discussions open to the entire membership.

The elephant in the room

For all of the debate that took place in each of the negotiating streams, the policy positions of just one country—the United States—framed the meeting. The United States' refusal to reaffirm the “centrality of the multilateral trading system” and the need to support “development”—both in the run-up to the meeting as well as during its final hours—was the primary reason a ministerial declaration to that effect was not agreed. Such was the strength of US opposition that it proved impossible to adopt even a statement acknowledging a division of opinion—in a similar vein to the Nairobi Ministerial Declaration expressing the range of views on the Doha round—on the centrality of the multilateral trading system.³³

Pre-conference debate on the content of the proposed ministerial declaration also saw the United States press for the inclusion of language “prohibiting the WTO's appellate body from violating the ‘sovereignty’ of members”.³⁴ While this was expected given US resolve to block future appointees to the WTO appellate body, it nonetheless cast a shadow over what had previously been held up as the success of the multilateral trading system in the WTO-era and one of the few

³⁰ The minister facilitators were: Amina Mohamed, Kenyan Minister of Foreign Affairs (agriculture); Kamina Johnson-Smith, Jamaican Minister of Foreign Affairs (fisheries); Ine Marie Eriksen Søreide, Norwegian Minister of Foreign Affairs (development); Eladio Loizaga Caballero Paraguayan Minister of Foreign Affairs (services and NAMA); and Alioune Sarr Senegalese Minister of Commerce (e-commerce).

³¹ See Faizel Ismail, “The Role of the Chair in the WTO Negotiations from the Potsdam Collapse in June 2007 to July 2008”, *Journal of World Trade*, 43: 6 (2009), pp. 1145–1171; Jawara, Fatoumata and Kwa, Aileen (2003), *Behind the Scenes at the WTO: the real world of international trade negotiations*, (London: Zed Books); and John S. Odell, “Chairing a WTO negotiation”, *Journal of international economic law*, 8: 2 (2005). pp. 425-448.

³² For discussion, see Kent Jones, *The Doha Blues: Institutional Crisis and Reform in the WTO*, (Oxford: Oxford University Press, 2010), pp. 85-118.

³³ Tom Miles, “U.S. block work on WTO ministerial statement ahead of meeting”, *Reuters*, 22 November 2017. Available at: <https://www.reuters.com/article/us-usa-trade-wto/us-blocks-work-on-wto-ministerial-statement-ahead-of-meeting-idUSKBN1DM214>

³⁴ Shawn Donnan and Benedict Mander, “Trump attack on WTO sparks backlash from member”, *Financial Times*, 10 December 2017. Available at: <https://www.ft.com/content/3e05f236-dd72-11e7-a8a4-0a1e63a52f9c>

positive developments that had occurred while the organization's negotiating function had been otherwise inert.³⁵

This was, of course, not the first time that the United States had taken a robust line on dispute settlement. It was nonetheless read by some as a worrisome statement of intent. As Lucy Hornby put it in discussing China's non-market economy status,

WTO judges are very aware that the Trump administration is just looking for one 'outrageous' ruling to justify pulling out of the WTO. They [the DSB] might be disinclined to provide one, no matter the merits of China's argument that it has, in fact, transitioned from a Soviet-style planned economy to one based on market prices (if not market competition).³⁶

The role of the appellate body and blockages in the negotiating function were not the sum of US complaints about the WTO aired in Buenos Aires. Also at issue was the "underperformance" of other members in fulfilling notification commitments. This was aimed particularly at China, with which the US has had an ongoing scuffle over the Chinese government's failure to provide the WTO with annual lists of subsidy programmes as required under Article 25.1 of the Agreement on Subsidies and Countervailing Measures and Article XVI of GATT 1994. Despite this annual requirement, China provided only two such notifications in its first 13 years of membership, neither of which included measures undertaken at the sub-national level of government. In response, the US started a series of "counter-notifications" to the WTO, initially listing 153 countries that it considered China should have notified as receiving state support.³⁷ Although China subsequently improved its record of notification, the US has continued to question their accuracy and comprehensiveness.³⁸ Lighthizer referenced this in his statement to the meeting's plenary session, saying that "it is impossible to negotiate new rules when many of the current ones are not being followed".³⁹

For all the concern expressed about the US position and its potential consequences, the Buenos Aires outcome may be sufficient to ameliorate the situation—at least in the near-term. While tensions between the US and China are the most pronounced and attracted the large majority of column inches, for some time now the biggest impediment to securing trade deals has been the profound differences of opinion between the US and India. It was this division that led to the

³⁵ Robert Howse, "The World Trade Organization 20 years on: Global governance by judiciary", *European Journal of International Law*, 27: 1 (2016), pp. 9-77. Also, Petros C. Mavroidis, "The gang that couldn't shoot straight: The not so magnificent seven of the WTO Appellate Body", *European Journal of International Law*, 27: 4 (2016), pp. 1107-1118.

³⁶ Lucy Hornby, "The debate on China's status as a market economy", *Financial Times*, 11 December 2017. Available at: <https://www.ft.com/content/cf105598-de65-11e7-8f9f-de1c2175f5ce>

³⁷ WTO (2014). "Subsidies: Request from the United States to China Pursuant to Article 25.10 of the Agreement", G/SCM/Q2/CHN/51, 21 October 2014.

³⁸ See documents G/SCM/Q2/CHN/57 and G/SCM/Q2/CHN/69 for the latest in the series.

³⁹ USTR (2017). "Opening Plenary Statement of the USTR Robert Lighthizer at the WTO Ministerial Conference", available from <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2017/december/opening-plenary-statement-ustr>

“impasse” in the DDA in 2008,⁴⁰ and it has been the predominant feature of recent ministerial conferences.⁴¹ What US actions in Buenos Aires do show, however, is that the era of US exceptionalism in trade is far from over, that WTO members are unable and unwilling to reach agreement in its absence, and the United States continues to set the pace in global trade.

The uncertain demise of Doha

In the background of MC11 lurked uncertainty over the future of the DDA. The Nairobi outcome two years previously had *de facto* brought an end to the troubled negotiations, after strong pressure led by the US for the abandonment of the round.⁴² That said, because there was no consensus the Nairobi ministerial declaration reflected the divergence of views among the membership, noting that “many Members reaffirm the Doha Development Agenda ... [while] [o]ther Members do not reaffirm the Doha mandates”.⁴³ And it is this agreement to disagree that for some members indicates that the round remains very much alive.

India, supported by South Centre, has used this interpretation to maintain the position that until the main DDA issues are resolved no new areas of negotiation should be opened. Indian’s view is that moving on from the DDA and the practice of negotiating multi-sector trade rounds will mean that areas of core interest to many developing countries will be forgotten. This is most obviously the case in agriculture, which was the main area of contention in the DDA. Moving away from the single undertaking approach will, India claims, make it all but impossible to conclude a future agreement on agriculture.⁴⁴

Substantive issues

Micro-Small and Medium Sized Enterprises (MSMEs)

The issue of MSMEs in trade and the aim of increasing their involvement therein was placed on the WTO agenda in 2015 by the Philippines. Since then the issue has grown, both among the membership and within the work of the WTO secretariat. MSMEs were the focus the 2016 World Trade Report,⁴⁵ and in May 2017 a new group was formed calling itself the “Informal Group of Friends of MSMEs”, which has proven to be the main driver seeking a future agreement on the issue.⁴⁶ As is increasingly the case—though often not presented this way—attitudes towards the proposed agreement are not split along North-South lines. This group includes both developed

⁴⁰ Paul Blustein, *The nine-day misadventure of the most favored nations: How the WTO’s Doha Round negotiations went awry in July 2008*, Brookings Institute Paper, (Washington, DC: Brookings Institute, 2008).

⁴¹ See Rorden Wilkinson, Erin Hannah and James Scott, “The WTO in Nairobi: The demise of the Doha Development Agenda and the future of the multilateral trading system”, *Global Policy*, 7: 2 (2016), pp. 247-255; and Rorden Wilkinson, Erin Hannah and James Scott, “The WTO in Bali: What MC9 means for the Doha Development Agenda and Why it Matters”, *Third World Quarterly*, 35: 6 (2014), pp. 1032-1050.

⁴² Rorden Wilkinson, Erin Hannah and James Scott, “The WTO in Nairobi: The demise of the Doha Development Agenda and the future of the multilateral trading system”, *Global Policy*, 7: 2 (2016), pp. 247-255.

⁴³ WTO, “Nairobi Ministerial Declaration”, 19 December 2015, WT/MIN(15)/DEC.

⁴⁴ See James Scott, “The future of agricultural trade governance in the World Trade Organization”, *International Affairs*, 93: 5 (2017), pp. 1167-1184.

⁴⁵ WTO, *World Trade Report: Levelling the trading field for SMEs*, (Geneva: WTO, 2016).

⁴⁶ See WTO, “Statement by H.E. Mr. Hector Casanueva, Coordinator of the Group of Friends of MSMEs at the WTO”, 29 November 2017, JOB/GC/162.

and developing countries and is geographically diverse, although at the time of MC11 no African member was involved.⁴⁷

In the run-up to MC11 the group circulated a proposed text for a ministerial decision, calling for the establishment of a work programme that would address issues pertaining to MSMEs, including access to information, the regulatory environment, access to finance, and reducing trade costs for MSMEs.⁴⁸ The group presented this as forming part of the development-oriented agenda of the ministerial, though others disagreed with framing the issue in this way. The South Centre, for instance has sought to question the agenda, seeing it as a distraction from more important areas of negotiation relating to development such as agriculture, and being potentially subject to capture by the interests of the most powerful states and corporations.⁴⁹ Some members' positions within MC11 echoed these misgivings and questioned whether the issues faced by MSMEs could be addressed through WTO rule-making processes. India, for instance, in its opening plenary statement sought to refocus attention on the items left over from the DDA,⁵⁰ a position supported by the Africa Group and others.⁵¹

Despite this opposition, the new spirit of plurilateralism led 57 members to issue a joint declaration on the creation of an informal working group for MSMEs.⁵² Claiming a “broad and growing consensus that MSMEs require more attention”, the declaration committed signatories to discussing a range of issues of relevance to MSMEs, including access to information, promotion of a more predictable regulatory environment, reduction of trade costs, and increasing access to trade finance for MSMEs. These discussions were stipulated to be open to all members and undertaken with “the utmost degree of transparency”.

Investment Facilitation for Development

Investment Facilitation for Development (IFD) proved to be a very similar issue to that of MSMEs. As with MSMEs, there was a Friends of IFD group which proposed as an outcome to MC11 the pursuit of an agreement to facilitate global investment.⁵³ Noting the claims by UNCTAD that the developing world would need an additional \$2.5 trillion in investment annually to achieve the Sustainable Development Goals (SDGs), the Friends of IFD called for an agreement specifically focused on investment facilitation for development.⁵⁴ A Dialogue, open to all WTO members, was

⁴⁷ The members of the group are: Argentina, Brazil, Brunei Darussalam, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, the European Union, Guatemala, Honduras, Japan, the Republic of Korea, Malaysia, Mexico, the Republic of Moldova, Nicaragua, Pakistan, Panama, Paraguay, Peru, the Philippines, the Russian Federation, Singapore, Switzerland, Chinese Taipei, Uruguay and Viet Nam.

⁴⁸ WTO, “Draft Ministerial Decision on Establishing a Work Programme for Micro, Small and Medium Enterprises (MSMEs) in the WTO”, 30 October 2017, JOB/GC/147.

⁴⁹ South Centre, “Micro, Small and Medium Enterprises (MSMEs)”, Analytical Note, 2017 SC/AN/TDP/2017/4.

⁵⁰ See, among others, WTO, “Statement by H.E. Mr Suresh Prabhakar Prabhu - Union Minister for Commerce and Industry - India”, 13 December 2017, WT/MIN(17)/ST/9.

⁵¹ WTO, “Statement by H.E. Mr. Robert Dufter Salama - Ambassador Permanent Representative - Malawi”, 18 December 2017, WT/MIN(17)/ST/69.

⁵² WTO, “Joint Ministerial Statement: Declaration On the Establishment of a WTO Informal Work Programme for MSMEs”, 13 December 2017, WT/MIN(17)/58.

⁵³ Consisting initially of Argentina, Brazil, China, Colombia, Hong Kong, China, Mexico, Nigeria and Pakistan.

⁵⁴ UNCTAD, *World Investment Report 2014: Investing in the SDGs: An Action Plan*. (Geneva: UNCTAD, 2014).

held in April 2017, followed by a High Level Forum on Trade and IFD co-hosted by Nigeria and the ECOWAS Commission in November 2017.

This signalled a reopening of an issue that has been on and off the WTO agenda for some time. The Trade Related Investment Measures (TRIMs) agreement of the Uruguay round was limited, but placed investment partially within the WTO's remit. At the Singapore Ministerial Conference in 1996 it was decided to establish a working group on trade and investment, with a view to preparing the ground for negotiating a future agreement. However, there was strong opposition from much of the developing world to opening such negotiations leading investment to be included in the Doha round only if an "explicit consensus" was forthcoming at the next (Cancún) ministerial conference. Amid the collapse and acrimony of the Cancún ministerial a consensus did not emerge, and investment was dropped from the Doha round agenda in August 2004.

As with the MSMEs issue, the historical North-South split is not the primary means animating the IFD discussions. All of the founding members of the IFD group were developing countries, while the main opponents of launching negotiations were also developing countries. Critics, including India and the African group, opposed moving away from the Doha mandates fearing that an IFD agreement would restrict their policy space and ability to regulate investment entering their markets.⁵⁵ As with MSMEs, these critics were supported by some members of civil society and development related IGOs.⁵⁶

Despite this opposition a coalition of the willing emerged during MC11 that decided to pursue the issue plurilaterally. On 11 December 2017 Ambassador Chiedu Osakwe of Nigeria held a press conference announcing that 42 members would begin "structured discussions with the aim of developing a multilateral framework on investment facilitation", including on improving transparency, streamlining administrative procedures and facilitating FDI.⁵⁷ They made note of some of the objections raised by critics, including in the declaration a statement that "the right of Members to regulate in order to meet their policy objectives shall be an integral part of the framework".⁵⁸ The signatories included a mix of developed and developing countries and a geographical spread, including five African states.⁵⁹ The group agreed to meet early in 2018 to commence work.

⁵⁵ WTO, "Statement by H.E. Mr. Vincent Munyeshyaka, Minister of Trade and Industry, Rwanda" 2018. WTO, "Statement by H.E. Mr Suresh Prabhakar Prabhu" (2017).

⁵⁶ Our World is Not for Sale, "Final Statement on MC11, December 13, 2017", available from http://ourworldisnotforsale.net/2017/OWINFS_final_stmt.pdf; South Centre (2017). "Reflections on the Discussion of Investment Facilitation", Investment Policy Brief, No. 8.

⁵⁷ WTO, "Joint Ministerial Statement on Investment Facilitation for Development", 13 December 2017, WT/MIN(17)/59.

⁵⁸ WTO, "Joint Ministerial Statement on Investment Facilitation for Development", paragraph 6, 2017.

⁵⁹ The statement was signed by Argentina; Australia; Benin; Brazil; Cambodia; Canada; Chile; China; Colombia; Costa Rica; El Salvador; European Union; Guatemala; Guinea; Honduras; Hong Kong, China; Japan; Kazakhstan; Korea, Republic of; Kuwait, the State of; Kyrgyz Republic; Lao People's Democratic Republic; Liberia; Macao, China; Malaysia; Mexico; Moldova, Republic of; Montenegro; Myanmar; New Zealand; Nicaragua; Nigeria; Pakistan; Panama; Paraguay; Qatar; Russian Federation; Singapore; Switzerland; Tajikistan; Togo; and Uruguay.

E-commerce

E-commerce refers to “the production, distribution, marketing, sale or delivery of goods and services by electronic means” and has been on the WTO agenda since the organisation’s second ministerial conference (MC2) held in Geneva in 1998, where it was agreed to establish a work programme to examine all aspects of global e-commerce with a particular focus on the relationship between e-commerce and existing WTO agreements.⁶⁰ It was also agreed at MC2 that members would continue the informal practice of refraining from imposing duties on electronic transmissions.⁶¹ This moratorium has been extended at each subsequent ministerial conference since.

E-commerce generated considerable debate on the fringes of the conference. Many NGOs were strongly opposed to the idea of negotiations, concerned about what they see as a push by dominant global (primarily US) technology companies to lock in place regulations that allow them unfettered access to data. The main asset of these companies is increasingly in the data that they gather, which can be processed and exploited for profits. For these NGO critics, the risk is that these companies are being given strong “first mover advantages” that will prevent the emergence of any competitor companies.⁶² A letter from a loose coalition of civil society organisation’s distributed in the run up to MC11 criticised the push for negotiations, arguing that:

Key provisions of the proposals include prohibiting requirements to hold data locally; to have a local presence in the country; no border taxes on digital products; prohibitions on regulating cross-border data transfers; and even prohibitions on requiring open source software in government procurement contracts. There is no economic rationale as to why digitally traded goods should not have to contribute to the national tax base, while traditionally traded goods usually do.⁶³

Meanwhile, at the ICTSD-run Trade and Sustainable Development Symposium a range of speakers from industry, international organizations and academia explored the potential benefits of e-commerce and the difficulties that developing countries currently faced.⁶⁴

Within the MC11 negotiations, in addition to the usual business of extending the moratorium discussion focused on whether to launch negotiations on a future more comprehensive agreement on e-commerce. This had the support of a number of members, including the industrial countries

⁶⁰ WTO, “Electronic Commerce Briefing Note”, 2017

https://www.wto.org/english/thewto_e/minist_e/mc11_e/briefing_notes_e/bfecom_e.htm

⁶¹ WTO, “Declaration on Global Electronic Commerce”, 20 May 1998, WT/MIN(98)/DEC/2.

⁶² See, for example, Deborah James, “E-commerce and the World Trade Organization”, *Our World is Not for Sale*, 17 November 2017, available at http://ourworldisnotforsale.net/2017/ALAI_E-commerce.pdf; and Jane Kelsey, “E-commerce: The development implications of future proofing global trade rules for GAFA”, paper prepared for MC11 NGO discussion, 13 December 2017, <https://bestbits.net/wp-uploads/2017/12/Kelsey-paper-for-MC11-Think-Track.pdf>

⁶³ Letter from Global Civil Society about the Agenda of the WTO, 9 October 2011, available at <http://notforsale.mayfirst.org/en/signon/11th-wto-ministerial-letter-global-civil-society-about-agenda-wto>

⁶⁴ See, for example, the Trade and Sustainable Development Symposium session on ‘The importance of cross-border data flows for international trade’, available at https://www.youtube.com/watch?v=a_qx51YYB8I

as well as the “Friends of e-commerce for development” group.⁶⁵ There was, nonetheless, opposition among the membership to the idea of beginning negotiations and by the third day of the conference this option had been dropped from the discussion of potential multilateral outcomes.⁶⁶ A second group wanted to maintain the status quo, continue the moratorium but not beginning any negotiations on a future agreement. A third group sought a halfway house between these two positions, suggesting the creation of a working group and strengthening the role of the General Council to look at cross cutting issues with other areas of WTO law, with a view to beginning exploratory talks about e-commerce before deciding on whether to negotiate.⁶⁷

The result was that members could not agree on a future direction for WTO engagement on e-commerce, though a sufficient number of interested parties felt sufficiently strongly about the issue to begin a plurilateral process. On the final day of the conference a joint statement was issued by 43 developed and developing countries, committing the group to “initiate exploratory work together toward future WTO negotiations on trade related aspects of electronic commerce”.⁶⁸ They committed to doing so in a way that was open to all members to participate, without prejudice to their eventual position in future negotiations.

Agriculture

Agriculture is a perennial feature of WTO ministerials and is typically the most divisive and difficult topic on the agenda. MC11 proved no different. Six main items were on the table for consideration—public stockholding, domestic support, cotton, export prohibitions, market access and the SSM—though most of the discussion focussed on the first of these. Public food stockholding refers to policies that secure food reserves, distribute subsidised food aid to the poorest, and guarantee minimum price supports for local farmers. This issue dominated much of the agenda in Bali in 2013, ultimately resulting in an open-ended waiver –consolidated in November 2014 in a bilateral deal between India and the United States⁶⁹—to ensure that existing public stockholding policies that contravened subsidy limits were not challengeable under the DSM. The Bali package had also stipulated that a permanent solution would be found and Buenos Aires provided another opportunity to push for a deal.

For proponents of a Public Stockholding solution, which includes member coalitions such as the G33, intergovernmental organizations such as South Centre and some civil society groups, the current situation is seen as untenable. Under the Agreement on Agriculture, developed countries are allowed to provide large subsidies to their farmers annually, while developing countries are much more tightly constrained despite the high prevalence of rural poverty in poor countries and the need to provide affordable food to those in need. This is an historical inequality that developing countries felt should be put right as a matter of priority, before the agenda could move

⁶⁵ Comprising Argentina, Chile, China, Colombia, Costa Rica, Kazakhstan, Kenya, Mexico, Moldova, Montenegro, Nigeria, Pakistan, Sri Lanka and Uruguay, and the MIKTA (Mexico, Indonesia, Korea, Turkey and Australia) group. WTO, “Electronic Commerce Briefing Note”.

⁶⁶ Press Briefing, 12 December 2017.

⁶⁷ MC11 NGO briefing, 11 December, 2017.

⁶⁸ WTO, “Joint Statement on Electronic Commerce”, 13 December 2017, WT/MIN(17)/60.

⁶⁹ Rorden Wilkinson, “Changing power relations in the WTO: Why the India-U.S. trade agreement should make us worry more, rather than less, about global trade governance”, *Geoforum*, 61 (2015), pp. 13-16.

on to any new issues. India expressed this position strongly in its opening plenary speech to the Buenos Aires conference, arguing that “This is a matter of survival for eight hundred million hungry and undernourished people in the world ... In this context, we cannot envisage any negotiated outcome at MC11, which does not include a permanent solution”;⁷⁰ and the G33 highlighted the agreement made at Bali to find a permanent solution on public stockholding and the lack of progress that had been made since.⁷¹

The agriculture facilitator role was undertaken by Ambassador Amina Mohamed of Kenya, who had chaired the Nairobi ministerial conference two years previously and won widespread praise for the job she did corralling members towards an agreement. After holding meetings with members in various configurations over the first two days of the conference, Mohamed invited members to submit a compromise text. The following day she announced that none had been provided and, in a final attempt to salvage a deal, put forward a Chair’s text for consideration.⁷² The text covered all the main elements under discussion, drawing from a range of member proposals while also stripping out contentious substantive content and leaving much for future negotiation. Although welcomed by many members as a sound basis for moving forward, the US, in a change of stance from that previously communicated at MC11, made it clear that it would be unable to agree to any outcome on public food stockholding.⁷³ In turn, India reiterated its position that without movement on this issue it could not envisage an agreement in other areas at the conference. Only at the last minute did India soften its position and accept the moratoria on TRIPs and e-commerce without a deal on stockholding.

Fisheries subsidies

Fisheries subsidies was one of the areas in which there was most hope for a substantive outcome in Buenos Aires. The issue was first put on the WTO agenda when the DDA was launched in 2001 and was reinforced as an area demanding expedited attention when the SDGs included the target to “effectively regulate harvesting, and end overfishing, illegal, unreported and unregulated (IUU) fishing and destructive fishing practices” by 2020 (SDG 14.4). The problems of the DDA ensured that progress was slow, but the run-up to MC11 saw hope for movement forward. These hopes, however, were ultimately unrealised. Initial discussions on a range of issues—overfishing, overcapacity and IUU subsidies—were whittled down to a focus only on the latter, but even this proved insufficient to bring about a breakthrough. By 12 December 2017 it was reported that five options on fisheries subsidies had been put forward by the facilitator of the negotiations, Minister Kamina Smith of Jamaica, drawing from member suggestions, but that “for some, even the strictest was too strict, while for others the most flexible was not flexible enough”.⁷⁴ Later that day, continued opposition by India meant that a deal on IUU subsidies was no longer considered to be deliverable and members opted to kick the proverbial can down the road, agreeing only to work

⁷⁰ Address by Suresh Prabhu Minister of Commerce and Industry India, Plenary Session, 11 December, 2017.

⁷¹ WTO, “G33 Ministerial Communiqué”, 10 December 2017, WT/MIN(17)/38.

⁷² Keith Rockwell, Press Briefing, 12 December 2017.

⁷³ Bridges Daily Update No. 4, “WTO Members Eye Post-Buenos Aires Work As Ministerial Talks Hit Hurdles”, 13 December 2017.

⁷⁴ Keith Rockwell, Press Briefing, 12 December 2017.

toward a solution by MC12.⁷⁵ Civil society groups concerned with overfishing derided the WTO members' failure to act, singling out India as being irresponsible and citing their opposition as demonstrating that "the Indian government supports the ongoing destruction of the ocean and of artisanal fishers".⁷⁶ Their critique was echoed by EU Trade Commissioner Cecilia Malström, who took to Twitter to complain that "members cannot even agree to stop subsidising illegal fishing. Horrendous".⁷⁷

Trade and women's economic empowerment

The Joint Declaration on Trade and Women's Economic Empowerment was one of the most significant outcomes of MC11.⁷⁸ Signed by 119 WTO members and observers, the declaration marks the first time that a group of members has committed to bringing a human rights issue into the WTO fold. The gender and trade agenda gained significant momentum throughout 2017. A number of international organisations are rolling out gender and trade initiatives, such as UNCTAD, the World Bank and the International Trade Centre (ITC). Certain national governments such as Canada, the Netherlands and the Nordic countries are aligning their trade and development policies with progressive, gender-sensitive priorities. The WTO appointed a Gender Focal point in August 2017 and gender and trade was a dominant theme at the 2017 WTO Public Forum, featuring on 14 of 106 panels where participants emphasized the need to identify and reduce the differential impacts of trade policies on women while others encouraged affirmative action initiatives to connect women to the global economy. The Trade Impact Group of the International Gender Champions made early efforts to place gender and trade on the multilateral trade agenda. Against this backdrop, Canada took the lead in drafting a declaration in the months prior to MC11, and the ITC and ministers from Iceland and Sierra Leone played a convening role in helping to generate buy-in among like-minded countries.⁷⁹

The Declaration itself is modelled on the gender chapters of the Canada-Chile and Chile-Uruguay free trade agreements. It explicitly acknowledges an inextricable link between inclusive trade, gender equality, economic growth, and poverty alleviation. It is written in the spirit of Goal 5 of the SDGs and the UN Convention on the Elimination of all Forms of Discrimination Against Women. The Declaration is premised on the idea that 1 billion women are excluded from the global economy. It calls for evidence-based initiatives such as generating gender-disaggregated data and methodological tools for measuring the gender impact of existing and proposed trade policies. In the near term, it also commits signatories to participating in a series of seminars, co-ordinated among relevant international organizations, ad focused on gender and trade. In these respects, the declaration contains a series of best endeavour commitments to explore the differential impact of trade on women and to develop policies that can better include women in the global economy. While the declaration is purely aspirational and non-binding, as are the gender chapters in all

⁷⁵ Bridges Daily Update No. 4, "WTO Members Eye Post-Buenos Aires Work As Ministerial Talks Hit Hurdles", 13 December 2017.

⁷⁶ Bloom and Varda, "India Sabotages Twenty Years of WTO Fisheries Subsidies Negotiations", Press release, 13 December 2017, www.bloomassociation.org/en/india-sabotages-twenty-years-of-wto-fisheries-subsidies-negotiations/

⁷⁷ Cecilia Malström, Twitter, <https://twitter.com/MalmstromEU>

⁷⁸ https://www.wto.org/english/thewto_e/minist_e/mc11_e/genderdeclarationmc11_e.pdf

⁷⁹ Private communication with a trade delegate, Hilton Hotel Lobby, Buenos Aires, Argentina, 11 December 2017.

existing FTAs, many are hopeful that it signifies the linking of human rights and broader social agendas to the regulation of multilateral trade.

This was certainly the resounding sentiment among many at MC11. Indeed, there was an air of jubilation as signatories publicly presented the declaration at a press conference on the penultimate day of the ministerial conference. At this event, signatories described the declaration as “masterfully pulled together” and something that establishes the basis for fair and equitable trade.⁸⁰ Reflecting the feeling of many delegates, Ann Linde, Sweden’s Minister for EU Affairs and Trade said, “[g]etting more women involved in trade is sound economic policy for all countries, regardless of their level of development. Gender inequality is something none of us can afford”.⁸¹

At MC11 and its side events, it became clear that several key figures were central to convening the coalition in support of the declaration: Arancha Gonzalez, Executive Director, ITC; Anabel Gonzalez, Senior Director of Global Practice on Trade and Competitiveness World Bank Group; Simonetta Zarrilli Chief of Trade, Gender and Development Work Programme, UNCTAD; and Francois-Phillipe Champagne, Minister of Trade, Canada. All of these individuals featured prominently as speakers in plenaries and panels focused on gender and trade where they expounded the benefits of mainstreaming women in global trade. For example, in her plenary remarks at the ICTSD Trade and Sustainable Development Symposium, the Executive Director of ITC noted, “only one in five MSMEs are women-owned; only one in five offline exporting companies are women owned; and four in five online exporting companies are women owned”. Indeed, explicit links were made by many at MC11 between the importance of addressing broader, non-DDA issues such as MSMEs and e-commerce and women’s empowerment in the global economy.

Like the other statements of intent agreed at MC11, the coalition endorsing the declaration on trade and women’s economic empowerment comprised members from both the Global North and South (Figure 1). Given the stark prospect that no progress would be made in multilateral trade negotiations, the issue of women’s empowerment became low hanging fruit for many WTO members and observers. Capitalising on the inclusive and progressive trade narrative and the growing traction of the SDGs was one way to ensure MC11 was not a complete failure for developed and developing countries alike.

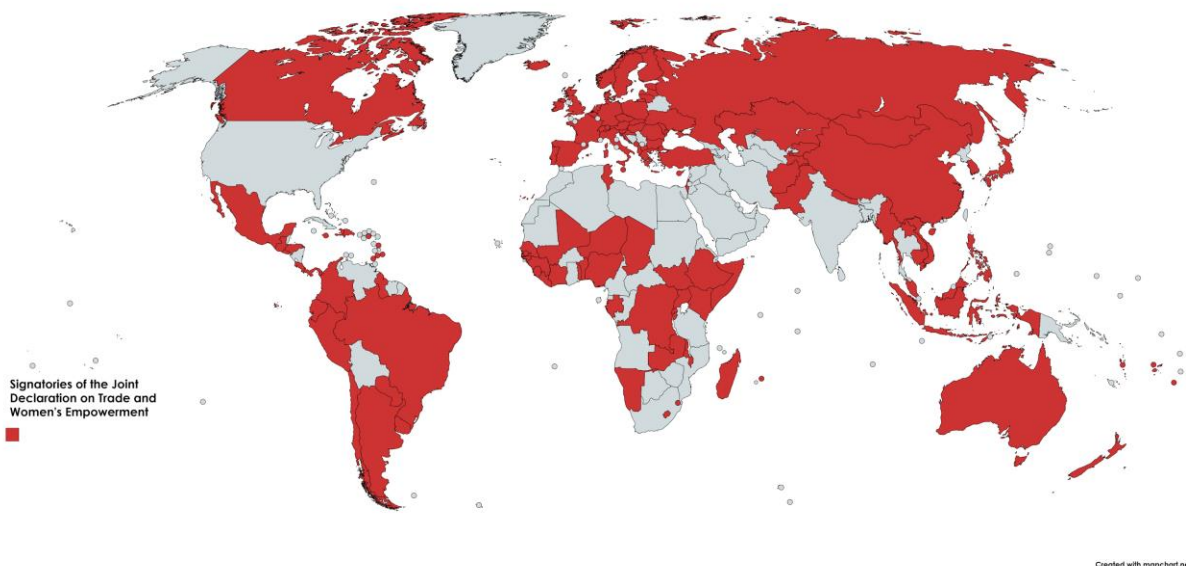
However, on this issue India and the United States were again notable outliers, albeit manifest in different ways. During one press conference, Indian Minister for Industry and Commerce, Suresh Prabhu stated that, “gender should not be confused as a WTO issue ... not all the issues of the world should be discussed in one place ... [and] gender is outside the mandate of the WTO”.⁸² The US, by contrast, remained silent at MC11 on whether the WTO should play a role improving women’s economic empowerment while electing not to sign the declaration.

⁸⁰ Private communication with a trade delegate, Hilton Hotel Lobby, Buenos Aires, Argentina, 12 December 2017.

⁸¹ For additional publicly stated sentiments on the declaration see https://www.wto.org/english/news_e/news17_e/mc11_12dec17_e.htm

⁸² Indian Press Conference, WTO Ministerial Conference, Buenos Aires, Argentina, 11 December 2017.

Figure 1: Signatories of the Declaration on Trade and Women’s Economic Empowerment



India was not the only vocal critic of the trade and gender agenda at the ministerial conference. The more critical civil society organisations accused the declaration of being a “Trojan horse”⁸³ for new issues such as e-commerce, MSMEs, and investment protection and referred to the initiative variously as a “pink herring”, a “gender clip-on”, and as “pinkwashing the WTO”.⁸⁴ One NGO delegate from Development Alternatives with Women for a New Era (DAWN) stated that “we will not be mainstreamed into a polluted stream”.⁸⁵ Others suggested that the “proposals on gender, small and medium enterprises, [and] facilitating investment for development belie the determination to abandon [the] promises of a Doha Development Round, with negative impacts on billions of women”.⁸⁶ These sentiments were also reflected in the rejection of the declaration by 164 women’s groups and allied NGOs that, over two days, signed a letter rejecting the declaration because it “appears to be designed to mask the failures of the WTO and its role in deepening inequality and exploitation”.⁸⁷

It is certainly the case that the declaration takes for granted the supposed benefits of trade liberalization for economic empowerment, it neglects widespread inequities in areas such as access

⁸³ Roberto Bissio, “Is ‘Gender’ a Trojan Horse to Introduce New Issues at WTO?” Third World Network, 11 December 2017 <https://twnetwork.org/wto/%E2%80%9Cgender%E2%80%9D-trojan-horse-introduce-new-issues-wto>

⁸⁴ “Panel Title”, NGO Centre, Buenos Aires, Argentina, 11 December 2017.

⁸⁵ “Panel Title”, NGO Centre, Buenos Aires, Argentina, 11 December 2017.

⁸⁶ Jane Kelsey, “Gender ‘Pinkwashing’ at the WTO Bodes Ill”, Scoop Independent News, 13 December 2017, <http://www.scoop.co.nz/stories/PO1712/S00117/gender-pinkwashing-at-the-wto-bodes-ill.htm>

⁸⁷ “Women’s Rights Groups call on governments to reject the WTO Declaration on Women’s Economic Empowerment”, Our World is Not For Sale, 13 December 2017, http://ourworldisnotforsale.net/2017/Feminist_stmt.pdf

to medicines, and it lacks real substance. The declaration is also quite vague in that it does not mention women who are not engaged in entrepreneurship, who are working in the informal economy, or in and around the household performing work that traditionally falls on women, such as caring responsibilities, child rearing, health care of the elderly. There is also no mention of the value of positive discrimination in national regulation, such as the gender sensitive domestic services initiative recently proposed by Canada in the context of Trade in Services Agreement (TiSA) negotiations.

That said, while there is little of substance to the trade and gender agenda at the WTO and inserting meaningful gender sensitivity into the business of multilateral trade will require a massive change in thinking, the wholesale rejection of the declaration by members of civil society is unfortunate given that the emphasis is on data acquisition and the sharing of best practices for assessing the differential impact of trade policies on women. What is more, while the declaration makes explicit links to women's inclusion in e-commerce and MSMEs, members do not need to smuggle new issues into the WTO by way of a gender declaration. As discussed above, members have already placed these items squarely on the future multilateral trade agenda by issuing statements of intent in the areas of e-commerce, MSMEs, and investment facilitation for development. Many of the same members and observers are signatories to all three statements of intent. In our view, adding some gender sensitivity to the multilateral trading system and promising to study the differential impact of existing and proposed trade policies are small, progressive steps and should be celebrated as such.

Civil society

Almost all of the issues we have discussed animated sections of civil society in Buenos Aires. However, officially registered numbers of civil society attendees were small. In total only 360 representatives from 170 civil society organizations from 52 countries attended MC11.⁸⁸ In large part, the reduced numbers of attendees was the result of the Argentine government's de-accreditation action—a reason relayed to us by many of the accredited representatives of civil society organizations that made it to Buenos Aires—though even without the host government's action MC11 would have been less well attended by NGO delegates than either of the two previous ministerials.

During the meeting, the activities of accredited NGOs were muted. A number of NGO sessions were held each day in the parallel NGO centre focused on the substantive issues at stake as well as broader topics such as sustainable development goals, poverty alleviation, and the digital divide.⁸⁹ Small protests were organized at the convention centre focusing primarily on the issues of agriculture, public stockholding, and farmers rights. Larger protests took place further away from MC11. Some estimates put the number of participants in these external protests in the thousands though it is difficult to gauge the numbers with any accuracy because the protests against the WTO blended in with wider domestic social mobilization against pension reform and labour rights in

⁸⁸Data provided by the WTO External Relations Department. See Erin Hannah, James Scott and Rorden Wilkinson, "Reforming WTO-Civil Society Engagement", *World Trade Review*, 16:3 (2017), pp. 427-448.

⁸⁹ The schedule of events at the MC11 NGO Centre is available at: https://www.wto.org/english/thewto_e/minist_e/mc11_e/ngo_schedule_e.htm

Argentina in the lead up to a purported general strike.⁹⁰ As a result, the areas immediately surrounding the ministerial conference were heavily militarized with a large police and para-military presence.

Civil society reactions to the outcome of the ministerial conference have been largely negative, widely criticising WTO members' inability to reach a multilateral agreement on even the lowest hanging fruit—such as subsidies for illegal fishing or a declaration on the centrality of the WTO in the global trading system—and condemning the shift in negotiations away from rounds towards plurilateral negotiations.⁹¹ Calls to resist the inclusion of new issues were abound while a coalition of NGOs also issued a wholesale denunciation of the declaration on trade and women's economic empowerment viewing it as a “trojan horse” for placing e-commerce and investment on the multilateral trade agenda.⁹² Many NGOs also expressed their frustration with the lack of consensus on a permanent solution for agriculture and public stockholding.⁹³

The news from non-state actors was not all bad, however. For the first time an official Business Forum was also held in parallel to the ministerial conference. For Azevêdo this event marked “a new chapter of business engagement with the WTO”.⁹⁴ A joint initiative between the Argentine government and the International Chamber of Commerce (ICC), the Business Forum was organized to give voice and a formal platform to key business interests at MC11. The day-long event featured many government ministers, senior IGO officials, CEOs and global business leaders engaged in a series of plenary sessions themed around enhancing global trade opportunities for business.⁹⁵ At its conclusion, the ICC made an unprecedented move by formally presenting a set of trade policy recommendations directly to Azevêdo and Malmorra.

Moreover, in the days immediately following MC11, a high-level, public-private partnership between the WTO and the World Economic Forum—the Electronic World Trade Platform (E-WTP)—designed to enable e-commerce was announced.⁹⁶ Questions have since been raised about the appropriateness of the WTO working so closely with global business but there is also considerable excitement about the organisation working formally with an NGO—the WEF—that represents effective global cooperation.⁹⁷

⁹⁰ Private conversation with civil society representative following the conclusion of MC11, Buenos Aires, 14 December 2017.

⁹¹ See the Final Statement of the People's Summit, “WTO Out, Building Sovereignty”, 13 December 2017 <https://viacampesina.org/en/final-statement-peoples-summit-wto-building-sovereignty/>

⁹² http://ourworldisnotforsale.net/2017/R_OWINS_gender.pdf

⁹³ For an illustration see http://ourworldisnotforsale.net/2017/R_reactions.pdf

⁹⁴ Comments made by Azevêdo during his opening remarks at the Business Forum, Buenos Aires, Argentina, 12 December 2017.

⁹⁵ The full programme is available at:

https://www.wto.org/english/thewto_e/minist_e/mc11_e/mc11_business_forum_program_e.pdf

⁹⁶ https://www.wto.org/english/news_e/spra_e/spra206_e.htm

⁹⁷ See for example commentary by Robert Howse <http://worldtradelaw.typepad.com/ielpblog/2017/12/is-it-legal-for-the-wto-to-team-up-with-ali-baba-and-the-world-economic-forum-to-enable-e-commerce-p.html>

The future for the WTO

In terms of its significance for the multilateral trading system, what emerged from Buenos Aires was a consolidation of the turn away from the pursuit of single undertakings as the product of complex negotiations among all members in formal rounds towards a variable geometry in which subsets of members pursue agreements in specific sectors. And while there will inevitably be pressure for multilateral deals in the future, for the medium term at least there is no appetite among the vast majority of members for a return to the intransigence of the past. Notably, this has been achieved at the same time that further positive refinements have been made to the negotiating process.

Buenos Aires is of course not unique in this regard. Rather, it takes forward a development set in motion at the Bali and Nairobi meetings. Taken together, however, the three ministerial conferences represent the end of a critical moment in the evolution of the multilateral trading system that had seen members attempt to ensure that all negotiations resulted in universal deals. However, in the history of the institution—from its earliest days under the auspices of the General Agreement on Tariffs and Trade (GATT)—only one universally binding deal was negotiated: the Uruguay round. All others involved either only limited subsets of members as signatories (as all the rounds prior to the Uruguay round had been), or else they have been issue specific deals, such as that on trade facilitation concluded at MC9. Had members managed to agree a deal under the auspices of the Doha round then this may have consolidated the institution's movement onto a different pathway, wherein multilateral deals were the established norm. However, with the setting aside of the Doha round in Nairobi and the tacit acceptance that development issues will be dealt without the need to rehabilitate a moribund negotiating framework, there appears little chance that genuinely multilateral outcomes will emerge anytime soon.

What is also significant about Buenos Aires is the extent to which there is little appetite for developing countries to stand any longer in large immovable groups. While standing together in solidarity may have been useful at moments in Doha negotiations, and it has been particularly useful to India in the pursuit of its own interests, doing so has cost many others the opportunity to move forward on deals in areas of genuine interest. The decision by 69 members to embark on structured discussions on investment facilitation for development is instructive in this regard.

What Buenos Aires also showed was further evidence that plurilateral negotiations are not only the “new normal”, they represent the only apparent form in which trade agreements will be delivered in the WTO. While there are clear and well document problems with the plurilateral approach as a negotiating norm in the WTO,⁹⁸ in the face of a continual blocking by some countries of any attempts to push the agenda forward—particularly by India whose stance in Buenos Aires of refusing to sign on to any initiative until a permanent resolution had been reached on public stockholding won it few friends—plurilateralism has become the only available avenue for attempting to negotiate trade deals. This was the case not only with the ITA expansion

⁹⁸ See, for instance, James Scott and Rorden Wilkinson, “The Politics and Perils of Plurilaterals”, *Economic and Political Weekly*, Vol XLVII: No. 43 (27 October 2012), pp. 16-19; also Silke Trommer, “The WTO in an Era of Preferential Trade Agreement: Thick and Thin Institutions in Global Trade Governance”, *World Trade Review*, 16: 3 (2017), pp. 501-526.

agreed in Nairobi and the spark of negotiations on e-commerce in Buenos Aires but it is also signalled in the intentions of groups like the Friends of Investment Facilitation for Development or the MSMEs.⁹⁹ This is also indicated by the broader move by 119 members and observers to bring social and human rights issues into the WTO fray with the signing of the Declaration on Trade and Women's Empowerment. For better or worse, with the conclusion of MC11 we have clearly entered a new era of pragmatism at the WTO where the focus is on finding points of convergence and taking action among many like-minded members—developed and developing countries alike—despite the intransigence of the few.

⁹⁹ “World economies consolidate progress on trade and investment facilitation”, *African Review of Business and Technology*, 12 October 2017. Available at: <http://www.africanreview.com/finance/business/world-economies-consolidate-progress-on-trade-and-investment-facilitation>