



---

**Cordell Hull Institute**

---

**RESTORING MULTILATERAL TRADE COOPERATION:  
REFLECTIONS ON DIALOGUES IN THREE DEVELOPING COUNTRIES**

**DIAGNOSTIC REPORT**

**PETER DRAPER AND MEMORY DUBE, SOUTH AFRICAN INSTITUTE OF INTERNATIONAL AFFAIRS  
DICK CUNNINGHAM, CORDELL HULL INSTITUTE**

## **ABSTRACT**

---

The World Trade Organisation is currently in a state of flux and unable to advance its rule-making function through the Doha Development Round. Out of this impasse a new architecture of negotiations has emerged, centred on mega-regional trade agreements and plurilaterals. Notwithstanding the package negotiated at the Bali Ministerial Conference in December 2013, since then WTO negotiations have largely returned to their quagmire. Accordingly, this document seeks to synthesise the various ideas that have been posited in five dialogues in key developing countries, across three regions, aimed at revitalising multilateral trade negotiations. Vital issues are discussed with a view to making recommendations on how best to retain the WTO's central place in the multilateral trading system while accommodating the interests of those eager to advance trade rules outside of the WTO, and developing countries and LDCs that are not part of mega-regional and plurilateral negotiations.

# TABLE OF CONTENTS

<b>Abstract .....</b>	<b>2</b>
<b>Abbreviations.....</b>	<b>4</b>
<b>1. Introduction .....</b>	<b>5</b>
<b>2. Multilateral Trade Negotiations in the Wake of the Doha Stalemate .....</b>	<b>7</b>
2.1 <i>The Multifaceted Problems Of The Doha Round .....</i>	<i>7</i>
Shifting Political Economy .....	7
Substantive Blockages .....	8
The Challenge of Consensus .....	9
The World of Global Value Chains .....	9
Concluding observations .....	10
2.2 <i>The New Architecture Of Trade Negotiations.....</i>	<i>11</i>
2.3 <i>The WTO Response: The Bali Deal.....</i>	<i>13</i>
<b>3. Towards Reconstituting the WTO: Emerging Systemic Issues.....</b>	<b>15</b>
3.1 <i>The Evolving Debate On Global Value Chains.....</i>	<i>15</i>
3.2 <i>Plurilateral Approaches and the GVC Dynamic .....</i>	<i>17</i>
A Plurilaterals Package?.....	17
Incorporating LDCs .....	17
Special and Differential Treatment.....	19
The TFA as Template .....	19
Politics of Plurilaterals .....	20
3.3 <i>The Urgent Need To Fix Agriculture: Towards A Plurilateral? .....</i>	<i>21</i>
3.4 <i>The Emerging Importance of the Trade in Services Agreement .....</i>	<i>24</i>
<b>4. Concluding Remarks .....</b>	<b>27</b>
<b>5. Endnotes .....</b>	<b>28</b>

## ABBREVIATIONS

---

<b>APEC</b>	Asia-Pacific Economic Cooperation
<b>BRICS</b>	Brazil, Russia, India, China and South Africa
<b>DSB</b>	Dispute Settlement Body
<b>CEPR</b>	Centre for Economic Policy Research
<b>DFQF</b>	Duty Free Quota Free
<b>EU</b>	European Union
<b>GATS</b>	General Agreement on Trade in Services
<b>GATT</b>	General Agreement on Tariffs and Trade
<b>GPA</b>	Government Procurement Agreement
<b>GVCs</b>	Global Value Chains
<b>ISDS</b>	Investor-State Dispute Settlement
<b>IPR</b>	Intellectual Property Rights
<b>ITA</b>	Information Technology Agreement
<b>LDC</b>	Least Developed Country
<b>MFN</b>	Most Favoured Nation
<b>MNCs</b>	Multinational Companies
<b>MPTAs</b>	Mega-Regional Preferential Trade Agreements
<b>NAMA</b>	Non-Agricultural Market Access
<b>PTAs</b>	Preferential Trade Agreements
<b>RCEP</b>	Regional Cooperation in Asia-Pacific
<b>SAIIA</b>	South African Institute of International Affairs
<b>S&amp;DT</b>	Special and Differential Treatment
<b>SOEs</b>	State-owned Enterprises
<b>TEGA</b>	Trade in Environmental Goods Agreement
<b>TFA</b>	Trade Facilitation Agreement
<b>TISA</b>	Trade in Services Agreement
<b>TPP</b>	Trans-Pacific Partnership
<b>TRQs</b>	Tariff Rate Quotas
<b>TTIP</b>	Transatlantic Trade and Investment Partnership
<b>UNFCC</b>	United Nations Framework Convention on Climate Change
<b>US</b>	United States
<b>WTO</b>	World Trade Organisation
<b>WTO+</b>	WTO plus (deepening rules covered in existing WTO agreements)
<b>WTO-X</b>	WTO Extra (rules not covered in existing WTO agreements)

# 1. INTRODUCTION

---

This diagnostic report reflects on a series of international dialogues, conceived by the Cordell Hull Institute, financed by the World Bank's Development Grant Facility, and implemented by the South African Institute for International Affairs (SAIIA) in cooperation with trade and economic institutes in developing countries, primarily.<sup>i</sup> The project, now concluded, was entitled "Restoring Multilateral Trade Cooperation". Its purpose was to explore, with particular emphasis on the views and needs of the developing world, the new paths that trade negotiations have taken since the 2008 stalemate in the Doha Round. Equally important, we hope to build an intellectual framework for restoring multilateral cooperation in multilateral trade negotiations, and to do so in a way that can enable meaningful agreements that further both trade liberalization and economic development.

In the first half of 2014 dialogues were held in Seoul (February), Brasilia (April) and Johannesburg (June), bringing together trade experts from developing country governments, international organizations, the business community, present and former trade negotiators, legal experts, economists, and academics. The Seoul dialogue set the bar high, resulting in the publication of a Centre for Economic Policy Research (CEPR) report setting out the issues framing the project.<sup>ii</sup> That report has since been presented in four different settings:

1. A closed meeting of World Trade Organization (WTO) Ambassadors convened by the General Council Chair, in Geneva;
2. At a meeting in Washington hosted by the Cordell Hull Institute;
3. In Johannesburg at a public forum organized by SAIIA in advance of the third dialogue; and
4. In Geneva at a closed meeting of the International Centre for Trade and Sustainable Development - World Economic Forum Expert Group on Global Value Chains.

The second phase began with a "stocktaking" and dissemination event on the margins of the WTO's Public Forum in Geneva, in September 2014. This was followed by a dialogue in Dhaka, Bangladesh (November 2014); and the last dialogue in Beijing, China (April 2015). A preliminary report was presented in Hong Kong shortly after the Beijing Roundtable.

Reports on all the dialogues have been produced, and are available on the project website along with materials derived from those dialogues.<sup>iii</sup>

This paper synthesises key issues emerging from all three dialogues, with a view to building on the CEPR report. In essence it aims to diagnose the current state of affairs in the multilateral trading system as seen, primarily, through the lenses of influential developing country stakeholders. The paper is intended to be a diagnostic report that captures the participants' views on the WTO and the multilateral trading system in the different regions where the roundtables were held. It specifically does not purport to represent the views of all those involved in the various roundtables, since those were diverse. Where relevant, region and country-specific issues as canvassed in the dialogues are reflected, but only where they are of systemic or substantive significance. In other words this report is focused on the multilateral trading system as a whole, rather than the views and opinions of key countries, per se.

Notwithstanding these caveats, the dialogues in all six locations followed consistent themes, which are reflected in the structure of the paper. Section 2 canvasses the state of play in multilateral trade negotiations in the wake of the Doha stalemate. Section 3 focuses on three key emerging systemic issues viewed from the standpoint of developing countries. In reviewing those issues we put forward tentative proposals for how they could be approached with a view to retaining the WTO's central place in the multilateral trading system. Section 4 concludes.

## 2. MULTILATERAL TRADE NEGOTIATIONS IN THE WAKE OF THE DOHA STALEMATE

---

There are many reasons why the Doha round is stalled, and it is impossible to do justice to all of them here. We begin with a brief review of four key issues at the heart of the Doha impasse, based on discussions in our dialogue series. Then we address the emerging new architecture of global trade negotiations, notably mega-regional agreements (MPTAs) involving the major players, and plurilateral approaches in the WTO. The section concludes with a brief review of the WTO's most recent response, in the form of the Bali package.

### 2.1 The Multifaceted Problems Of The Doha Round

#### *Shifting Political Economy*

First, the dynamics of negotiating among 160 WTO Members would be challenging even if the Members were like-minded. This is a broader problem with multilateralism, as is evident in stalemates in various negotiating forums such as the United Nations Framework Convention on Climate Change (UNFCCC). Related to this, a significant portion of developing countries and large emerging nations are determined to pursue their own interests and, as a corollary, to ensure that the old developed country "club" (US, EU, Japan, Canada) must not run the show as they did for so long under the General Agreement on Tariffs and Trade (GATT) framework. In this light the branding of the round reinforced old suspicions attached to it: the Doha "Development Agenda" promised the preponderance of benefits to developing countries, but metamorphosed into a traditional trade negotiation by the time of the Cancun Ministerial. Such branding also created an additional and very fundamental problem. Development still remains a key to unlocking the impasse at the WTO, although there is no convergence on what it means within the context of the multilateral trading system. Developed countries and developing countries are looking at the notion of development in different ways. Recasting the Doha agenda and rebalancing interests in the Round may not work outside of such agreed definition of development.

So the old order is ailing, and may even be dying, but the new one is yet to be born. While resisting developed country impulses, developing countries have not been able to grasp the mantle of leadership. Consequently, both developed and developing countries still look for leadership from the major developed countries, especially the US and the EU. At the same time, developing countries still complain about the structure and allocation of bargaining power in the WTO. For their part, developed countries, and particularly these two (counting the EU as a single economic space), used to occupying a position of privilege, find the new contestation unsettling. Furthermore, the international business community, led largely by developed countries, has offered only lukewarm support for the round, leading to lukewarm leadership by the US and EU. This has led to the more immediate challenge of lack of adequate and effective leadership which has translated into a failure by the key countries (US, EU and emerging economies such as China, India and Brazil) to show commitment to reaching any effective agreement within the WTO.

## *Substantive Blockages*

Second, these broad concerns over power, influence, and leadership in WTO negotiations run much deeper, into the substantive issues at stake. Many in the developing world hold the view that there must be a rebalancing of WTO obligations which, in their view, were tilted in past rounds in favour of developed countries' market access interests; and that these imposed excessive burdens on emerging and developing members. This explains the emphasis accorded by certain developing countries to level the playing fields in agriculture, a sector that is notoriously difficult to seriously reform in developed countries. The matching demand from developed countries centers on industrial tariffs and services markets, both of which some developing countries similarly find difficult to liberalize and reform. This dilemma has sometimes led to political posturing, with countries spurning proposals for the sake of it rather than for perceived negative impacts. However, these "battle lines" are also blurred on both sides of the developing - developed country divide, with the result that the divide is no longer a strictly developing versus developed one. For example, some developing countries strongly resist agriculture liberalization and reform, both at home (think India) and in the EU (think African access to EU trade preferences), while others favour industrial tariff (think China) and/or services market liberalization elsewhere (think India and Chile) since they stand to benefit from it. The result is a bewildering array of positions and alliances that greatly complicate the negotiating picture.

Regardless of the above, some still believe that all is not lost with the Doha negotiations. All participants in our roundtables were fully supportive of the multilateral trading system but also recognized the challenges that the Doha Round encounters in its current state. In Bangladesh a suggestion was made that WTO members attempt to conclude the Doha Round by focusing on specific commitments in the areas of non-agricultural market access (NAMA), agriculture and services on which members were near agreement before the 2008 impasse. The same sentiment was expressed by some participants in China, pointing out that this already the core focus of Doha, and without agreement on these issues there would always be a stalemate. In Geneva currently, however, the conversation at the WTO is about crafting a post-Bali work programme to deal with all the outstanding issues on the Doha agenda. Certain items included in the mandate of the Round have shown no promise at all. There is virtually no convergence on the GATS rules (safeguards, government procurement and subsidies). Differences exist on some basic issues on domestic regulations as well. The rules negotiations on the goods side, on anti-dumping and countervailing duties have also not shown promise at any stage. The same observation applies to two other areas of negotiations viz., Trade Related Intellectual Property Rights (TRIPS) and trade and environment. The non-tariff barrier texts in NAMA are also not ready for a quick decision.

The lowering of ambition could therefore possibly be through reducing the agenda rather than reducing the level of liberalization embodied in various texts currently on the table. Once the agenda has been reduced then all agenda items without any realistic chance of reaching conclusion can be scrapped. The Trade Facilitation Agreement could then be added to those issues as part of the Doha Package. This could then pave the way for a new round that is fully cognizant of new developments in the global trade arena. The new round could then focus on mitigating the adverse impact of MPTAs for non-participants but also including the issues of relevance to developing countries that are not covered by MPTAs. How countries such as South Africa, who are intent on seeing the Doha

negotiations achieve their “developmental” outcome, would meet this suggestion remains to be seen. It is highly likely that this would be viewed as yet another attempt by developed countries, in particular, to subvert the development agenda (couched primarily in extended and more effective special and differential treatment of developing countries) of the Doha negotiations.

In this light, an interesting observation emerging from the Geneva consultation concerned the long-running EU–ACP Economic Partnership Agreements (EPAs) negotiations. A participant noted that the time invested into negotiating the EPAs, with the exception of the CARIFORUM region, is relevant for this paper as symptomatic of an underlying challenge with regard to the appetite of developing countries for trade liberalization. The EPAs reflect the challenge faced by many developing countries in transitioning from special and differential treatment to reciprocal trade relations.

Furthermore, to a great extent the current impasse is being driven by the fact that the US (and the EU) are struggling to figure out what they want to do with China, whereas China needs to decide where it wants to go on the trade cooperation front. One of the discussion points in Beijing was that while China is interested in signing up to the Trade in Services Agreement (TISA) and is involved in MPTA processes as well through the Regional Comprehensive Economic Partnership (RCEP), it still needs to clarify its national interests in the context of the WTO. China’s position in the WTO has been mostly defensive, mostly because of its newly acceded member status and the fact that the accession process resulted in massive opening up of the Chinese economy. Consequently, it would be hard to imagine China steering the WTO until it knows what it wants. Nonetheless, if the 3 big trading powers can carve out the necessary compromises, then the system would be a long way down the road towards critical mass since they account for some 60 percent of global GDP. This reinforces the point that it is a mistake to frame the impasse as being narrowly along North-South lines.

### *The Challenge of Consensus*

Third, since the WTO operates under a consensus culture these underlying differences were always going to render achievement of that consensus difficult. Related to this, the Doha round makes use of a negotiating device successfully deployed in the Uruguay Round, the single undertaking, whereby nothing is agreed until everything is agreed. However, the single undertaking cannot function if the members cannot agree, as is the case currently, and so the round cannot be concluded. Thus the single undertaking has become a straightjacket, inhibiting piecemeal progress in specific negotiating areas. The single undertaking approach may no longer be viable, especially given the significant differences in the development levels of member states and even bigger differences on the areas in which existing multilateral disciplines should be deepened (WTO +) and the new areas in which multilateral disciplines should be established (WTO-X).

### *The World of Global Value Chains*

This highlights the fourth issue. An accelerating change in the way global trade and investment is conducted has been underway for some time as global value chains (GVCs) proliferate. There are many different kinds of GVCs depending on what type of lead firm is driving them – retailers vs. producers, developed world-headquartered firms versus emerging market-based firms; e-commerce

driven value chains, such as Alibaba; the increase in share of services in all this, etc. More generally, there are “new” business models that may not be best captured under the GVC heading, for example: Small and medium enterprises selling direct to foreign buyers via B2B and B2C e-platforms, or General Electric’s “power by the hour” where the product is not just a complicated, high-tech jet engine but a guaranteed amount of thrust per unit of time/distance which gives rise to a need to be able to service engines anywhere, anytime, involving systems that monitor engine performance in real time and that generate large quantities of data that need to be moved, stored and analyzed.

Thus the term “GVCs” is useful shorthand for describing a process in which many different “moving parts” are required to produce and/or sell a product, and that require cross-border movement and supply of all kinds of things, including increasingly data and people. The label only imperfectly captures how the world has changed. The real point is that a host of different policies impact on the efficiency and ability of firms to do what they (and their customers) want to do. Therefore, the main relevance of GVCs as an analytical device is to help identify what policies help firms to specialize and expand, and that will improve consumer welfare.

However, the trade and investment issues relevant to these changes are largely not addressed in the Doha Round. The majority of WTO member states are currently more interested in their “traditional” negotiations on tariffs, anti-dumping rules, countervailing measures, rules of origin, safeguards and subsidies, etc; while the business community and multinational corporations’ (MNCs) interests are increasingly focused behind the border rules governing competition, investment, IPRs, services, and harmonisation of standards (TBTs & SPSs). The absence of attention to GVC issues is one reason for the international business community’s lukewarm support of the Round. Furthermore, those wishing to establish rules relevant to GVC operations are obliged to look elsewhere. Bringing the two together would require redefining the role of the WTO, based on the requirements of modern commerce as defined by GVCs.

### *Concluding observations*

It is clear that the political economy of the WTO has changed since the launch of the Doha Round. As noted above, the thinking around agriculture is still largely dominated by the assumption that developed countries are driving the protectionist agenda and preventing developing countries from exporting. However, the rise of the emerging economies has changed the narrative and the locus of protection has also shifted, with countries such as India now taking the lead in the protection stakes. Or take the fact that Germany has decided it does not like investor-state dispute settlement (ISDS) or the prospect of having to accept US regulatory standards for products. Related to this, there are many issues that divide the EU and the US in the Transatlantic Trade and Investment Partnership (TTIP) context, and a number of areas where it is clear that both want to keep “policy space” along lines that are very similar to what developing nations want to be able to do, for example: procurement discrimination; freedom to subsidize investment; safeguard “culture”; pursue industrial policies; etc. In some areas some developing countries are “to the right” of the US and EU, such as when it comes to belief in openness and integration into the world economy, a good example being the Pacific Alliance. Consider Chile’s flat tariff structure versus that of the US, with hundreds of different tariff lines, complex rules of origin, the constant threat of antidumping, multiple agencies at the border that do not necessarily coordinate, etc.

The question therefore becomes whether the changed political economy could be used to redesign the WTO negotiating content, mechanism and process. In all roundtable discussions participants acknowledged the difficulty of stemming the tide on RTAs and MPTAs especially. These arrangements are perfectly legal within the context of the WTO<sup>iv</sup> and changing the provisions that regulate regional trade agreements as provided for in GATT Article XXIV would take as much effort as is needed to conclude the Doha Round. This especially applies to the MPTAs which have grown from geopolitical roots. The most pressing issue in relation to MPTAs pertains to containing any adverse impacts of the agreements on non-members. One possible avenue of stemming the impacts on non-members would be to multilateralise some of the measures widely found in PTAs, such as the TFA. In the absence of such initiatives, the momentum is coming from mega-regional trade agreements, to which we now turn.

## **2.2 The New Architecture Of Trade Negotiations**

In our view MPTAs are negotiations that cover a significant proportion of world trade, and are deep in terms of their coverage, particularly of “behind the border” issues. They have been launched and shaped by the big developed countries, particularly the US and, to a lesser extent, the EU, and are consequently of strategic significance. The centrepieces are the Trans-Pacific Partnership (TPP) and the TTIP. On the margins of the WTO these are accompanied by plurilateral negotiations – the TISA, and environmental goods.

Developed countries dominate all of these negotiations. They have stimulated a sort of “competitive liberalization,” in the form of a proliferation of preferential trade agreement (PTA) negotiations, notably: the RCEP and certain Asia-Pacific Economic Cooperation (APEC) initiatives in the Asia-Pacific region; the Pacific Alliance on the western coast of Latin America; The Tripartite FTA in Southern and Eastern Africa; and numerous others negotiations (EU-Japan, EU-Canada, Japan-Australia, Korea-China, Korea-Japan-China, Korea-Canada, Korea-Colombia, Korea-TPP, Turkey-TTIP, etc.).

With the important exception of China the BRICS (Brazil, Russia, India, China, and South Africa) are not participating in MPTAs, and none are participating in the sectoral plurilaterals although it is possible that China will participate in TISA and the embryonic plurilateral negotiations on trade in environmental goods. There is, in many developing countries (certainly in Brazil and South Africa), discomfort with the emphasis in the MPTAs and TISA on expanding the rules of trade to include “behind the border” issues. There is a view that this infringes on developing country governments’ “policy space”, and that it is intended to shift power away from governments to MNCs. Furthermore, some regard MPTAs as constituting an effort to impose on the trading system an agenda that the developed countries were unsuccessful in advancing in the Doha Round.

Yet all of this MPTA activity is a response, not only to Doha’s stalemate, but also to the changes in the issues that are important to the new GVC-focused way of engaging in trade. GVCs requires deep integration, consisting of comprehensive market access (for goods, services and investments) and a transparent and efficient regulatory environment across borders. As the WTO cannot provide such deep integration, MPTAs are filling the gaps. Thus, the MPTAs and TISA focus on regulating a variety of issues that are largely absent from the Doha Round, including:

- Security of investment
- Security of IPR
- Logistics (trade facilitation)
- Market access for intermediate products
- Access to services markets
- Data security
- State-owned enterprises (SOEs)
- Government procurement
- Harmonization/reform of regulations
- Harmonization of standards
- E-commerce
- “Core labor standards”
- Level playing field in environmental rules

A major, openly-expressed motivation of the US and EU is to set the rules for world trade in the US-EU model before “the rise of the rest” leads to different templates. In this light, not on the agenda of these new negotiations are some issues of central importance to developing and emerging nations, including:

- Agricultural subsidies
- Tariff peaks that are sensitive in advanced countries (some of these are in TPP, however)
- Mode 4 services
- Special and differential treatment (S&DT)

The MPTAs tend to be “unbalanced” in the sense that the developed countries are seeking (largely in new rules) a lot from developing countries, but are offering relatively little in return. Various economists’ studies of TPP and TTIP show quite small trade/economic gains.<sup>v</sup> So why are the US and EU pressing these initiatives? At least four considerations are apparent:

- Reform of rules (which show more potential for gains than MPTA tariff reductions);
- Enthusiasm in their business communities;
- The prospect that agreements could be reached without the necessity of commitments to reduce or eliminate agricultural subsidies;
- Geopolitical considerations, with the US at the centre of reasserting leadership over the global trading system.

While the success of these initiatives is not guaranteed, they have multiple implications whether they succeed or not.<sup>vi</sup>

The impact of the MPTAs on the WTO raises some interesting technical questions about the WTO+ and WTO-X rules, particularly the consistency of these rules with the WTO and how such new rules and disciplines would interact with the WTO. In Beijing, for example, an interesting discussion point concerned whether the WTO's Dispute Settlement Body (DSB) mechanism can be used for disputes under the mega-regionals. While MPTAs are allowed under GATT Article XXIV, if their disciplines are not covered by the WTO, can they still use WTO processes to resolve disputes? Another question relates to how this would be received by non-participants if such disputes were to be heard under the DSB. One concern relates to the multilateralisation of MPTA disciplines through DSB jurisprudence should such disputes be heard in the WTO. Consequently some participants in the Beijing roundtable argued that the WTO's committee on regional arrangements needs to be reinforced, and mandated to discuss the implications of MPTAs for the DSB.

### **2.3 The WTO Response: The Bali Deal**

Considering the many obstacles to achieving consensus in the Doha round, the collective goal for the 9<sup>th</sup> Ministerial Conference in Bali, in December 2013, was understandable: a mini-Doha deal, focused primarily on addressing the needs of developing countries. It achieved the following, inter alia:

- A trade facilitation agreement (TFA) with, if it is implemented fully, very substantial benefits, weighted toward developing countries;
- The TFA embodies a new approach to S&DT, in which implementation by developing countries is directly linked to a country's capacity to implement and, where requested, voluntary commitments by developed countries of funds to help developing countries and LDCs implement. While this is voluntary, the initial level of funding commitments is quite promising;
- Binding dispute settlement for TFA, linked to delivery of funds where requested;
- A (questionable) "commitment" to give early priority to resolving the issue of the US cotton support programme;
- A quite meaningful agreement to establish a system for re-allocating unused portions of agricultural tariff rate quotas (TRQs)<sup>vii</sup>;
- A commitment to implement the duty free/quota free agreement (DFQF) covering 97 percent of a developed country's tariff lines for imports from LDCs, initially agreed to in Hong Kong in 2005;
- At the insistence of India, a provision that no Member would challenge a developing country's programme for subsidizing farmers and enhancing food security by purchasing crops from domestic farmers at subsidised prices and placing them in a stockpile. This "peace clause" was to remain in effect until new Agricultural Agreement rules on such stockpile arrangements could be negotiated, with a 2017 deadline for such negotiations; and
- A services waiver for LDCs.

While proclaiming victory and new momentum for the Round, Director-General Azevedo launched an effort to develop a consensus on some way, or ways, to move forward on trade liberalization, either by completing Doha or by some other approach. Unfortunately, this intention was sorely tested by the membership's failure to adopt the protocol of implementation for the TFA and the rest of the Bali Package by the specified deadline of July 31<sup>st</sup>, 2014. Two principal issues, one structural and the other substantive, emerged in opposition to implementation of the Bali package. First, a group of (mainly African) developing countries objected that implementation now of the TFA and the other Bali commitments would comprise only part of the Doha agenda and would thus be inconsistent with the single undertaking. In the end, these objectors relented. India, however, raised a major substantive objection. It refused to accept an arrangement that might end the "peace clause" (preventing a WTO challenge of its food stockpiling program) if definitive Agriculture Agreement rules on stockpiling were not agreed by 2017. India demanded instead that such a definitive resolution be agreed by year-end 2014, and that Bali implementation be deferred until then. Efforts to find a compromise on this Indian objection were only rewarded in November 2014 when India and the US reached a political agreement on both the TFA and the decision on Public Stockholding for Food Security Purposes, paving the way for implementation of the Bali Package and work on the post-Bali work plan to resume.

Nonetheless, at the time of writing (September 2015) it is not clear that much progress has been made in the broader effort to reconstitute the round. Consequently the WTO membership finds the multilateral trading system at a crossroads: unable to proceed with even a limited agenda, or to escape from the straitjacket of the single undertaking, while being bypassed by new forms of negotiation constructed by the major trading powers. It is very difficult to see how the multilateral system can be extricated from this situation, and a future of increasing irrelevance; absent major changes to the way business is currently done. This necessarily requires focusing on key substantive and systemic issues at the heart of the impasse, and it may require a re-thinking of important elements of the WTO's mandate and agenda. Next we reflect on our dialogue discussions concerning some of those issues.

### 3. TOWARDS RECONSTITUTING THE WTO: EMERGING SYSTEMIC ISSUES

---

Flowing from our analysis of the root causes of the WTO's unfolding crisis, in this chapter we focus on four key, interrelated areas in which sufficient consensus is required in order to generate momentum towards reconstituting the WTO in order to ensure its continued centrality in the global trading system.

#### 3.1 The Evolving Debate On Global Value Chains

In all six countries in which we held roundtables, and in Hong Kong, there was agreement that the conduct of international trade and investment has undergone a qualitative shift in recent decades, as GVCs driven by MNCs have spread, intensified, and deepened. The inescapable reality is that trade is shifting to a GVC structure, with the corollaries that competition for investment is increasingly important and that trade rules will focus more and more on "behind the border" issues relevant to GVC-related FDI.

However, there was substantial disagreement among the governments in the international dialogue venues over what the implications for trade and investment policies are. In the South Korean case, GVCs are embraced and regarded as the key to multilateral trade governance in the future. In Brazil the liberalizing policy agenda associated with the GVCs discourse is regarded with suspicion, and as potentially intruding on domestic industrial policy space. Similarly, in South Africa the discourse is labelled a "narrative" and rejected for being a replay of the "Washington consensus"; an agenda regarded as privileging liberalization at the expense of state action through purposive industrial policies. In Bangladesh, there was general acceptance of the GVCs "narrative" as reflective of the reality of modern day commerce but the major concern was how to facilitate the participation of LDCs into, and upgrading within, GVCs. The importance of the WTO recalibrating both its negotiating modalities and operational approaches in response to the GVCs narrative and other developments was also emphasised. Similarly, in China the GVCs "narrative" is widely accepted, but concerns remain over how Chinese companies can upgrade within them and what kind of policy packages this may require. Having entered the value chain ladder, China is now able to change the rules in order to capture more value domestically. A good example is the mobile phone sector where they have developed their own standards and require MNCs to conform to them. In all six venues, however, the dominant (but not universal) view of business sector participants was supportive of negotiations that would facilitate GVCs and GVC-related FDI.

These differences are reflective of the broader debate over the policy implications of GVCs and what that means for the WTO.<sup>viii</sup> It is pretty clear that this debate is deeply ideological, and therefore may well be unresolvable. Consequently, it is unlikely that those favouring adoption of a "GVC attraction" policy package with attendant liberalization will be able to convince their detractors, and vice-versa, at least in the near term. In the WTO positions are thus likely to become more entrenched over time as the Doha impasse deepens.

Consequently we cannot yet see a way out of this conundrum in the WTO context, absent explicit agreement that those who wish to pursue GVC-related negotiations through non-multilateral negotiations should be free to do so, provided they do not harm the interests of other WTO members. This means allowing groups of like-minded countries to proceed with plurilateral negotiations, but on the basis of safeguards for those choosing not to join.

It should be realized, however, that such a course poses serious concerns for many developing and emerging economies, as well as LDCs. In addition to the fact (noted earlier), that the new GVC-related rules will be established in MPTAs (TPP, TTIP) in which the developing and emerging nations will have little or no voice, the establishment of MPTAs has potentially serious practical effects on countries outside the MPTA grouping. These potential adverse effects include both diversion of trade and diversion of GVC-related FDI. The two diversions are in fact inter-related. A country participating in TPP or (if it is extended to countries beyond the US and EU) TTIP will be more attractive for FDI than a non-participating country, not only because of rules (for domestic policies) that favor FDI, but also because production in countries in the MPTA will have preferential access for their exports to other countries participating in the MPTA. This suggests to us that these non-multilateral negotiations, both MPTAs and plurilaterals, deserve serious attention by the WTO in its role as guardian of the global trading system. It is also especially contingent upon the LDCs, as a fairly urgent priority, to hold the WTO to this responsibility. While it does not seem feasible to halt these non-multilateral initiatives, there should be examination of ways, in the short run, to develop safeguards to protect the interests of non-participating countries (especially in the developing world) and, in the longer term, to move the arrangements resulting from these negotiations toward multilateralism.

In Dhaka several prescriptions for how the WTO should approach this were proffered. First, the WTO should insist on maximum transparency of the new MPTA and plurilateral negotiating processes. Secondly, pursuant to the stated desire by the US to open up the MPTAs for accession by other countries, the WTO should supervise the terms and process for accession by developing countries. This would ensure that the accession criteria are consistent with the S&DT principle, and that there would be special interim processes for developing country accession accompanied (as in the TFA) by “aid for trade” to enable them to accede effectively and meaningfully. Thirdly, ongoing discussions and negotiations on the post-Bali workplan should include the issues of multilateralization of MPTAs and plurilaterals, as well as the associated accession and S&DT issues. For example, MPTA parties could automatically extend regulatory approvals to imports from a non-party state if another MPTA party has granted such approval, rather than requiring additional approvals; in other words through extending conformity assessment recognition automatically. Such a step could, in fact, be significantly trade and FDI creating for non-parties, and would boost the operation of GVCs.<sup>ix</sup>

Next we take these ideas further.

## 3.2 Plurilateral Approaches and the GVC Dynamic

### *A Plurilaterals Package?*

Of course some plurilaterals are proceeding already, notably the TISA and the recently launched trade in environmental goods agreement (TEGA). These come on top of the already extant government procurement agreement (GPA), updated in 2011, and the information technology agreement (ITA), updated this year (2015). Both the ITA and the TEGA are inclusive arrangements<sup>x</sup>, in the sense that participation is voluntary and the results are extended on an MFN basis to all non-members. There is consequently no strong objection to these negotiations. The GPA and TISA, on the other hand, are exclusive arrangements in the sense that participation is conditional, and the results are available only to signatories. The TISA is best considered a PTA, since it will be compliant with GATS Article 5 thus not requiring consent from the full WTO membership, and it remains to be seen whether its results will be extended to non-parties. The GPA operates under GATT annex 4, which requires the consent of the full WTO membership. This was obtained in the wake of the Uruguay round, but under current conditions it is not at all clear that such consent could be obtained for a different plurilateral negotiation in the future.

Against this backdrop, what kind of issues could constitute a meaningful GVC-related plurilateral negotiating agenda? It is clear that GVC issues are primarily about rules, particularly those governing trade and investment, with ancillary attention to traditional bargaining on market access. One way to think about this, as explicitly proposed in the CEPR paper<sup>xi</sup> and prior work done for the World Economic Forum<sup>xii</sup>, is to construct a “GVC package” consisting of, inter alia: trade facilitation (already done); logistics, finance, and distribution services; investment rules; IPR; and a market access package for goods. Some of these issues, notably the market access component, could be negotiated on a critical mass basis and extended through MFN to all WTO members – this would not require the broader membership’s consent nor should it harm their interests. Indeed, those in a position to do so would benefit. The challenge is convincing China and other BRICS to join since, from the narrow mercantilist standpoint permeating WTO negotiations, they may think that there is not enough on the table for them.

There are more formidable obstacles though. The political economy of negotiating a “GVCs package” is formidable in the current and foreseeable WTO environment. Since very little is advancing in Geneva, how would such negotiations get off the ground? Consequently some participants in our Geneva consultation argued that such negotiations are best conducted by prospective GVC host countries, and should take place at the source of investment rather than in Geneva. In other words, countries would be better served negotiating directly with MNC headquarters.

### *Incorporating LDCs*

The underlying theme of development for poorer countries was also very evident in our Geneva consultation. It was emphasised that GVCs are not just about trade policy but also about supply side constraints, industrial policy, services trade, and how to overcome the barriers faced by poorer countries in entering value chains. In this light, some of the specific challenges posed by GVCs for LDCs include:<sup>xiii</sup>

- Countries are competing aggressively for the location of production for various stages of (MNCs' GVCs. This extends to production of services as well as goods, intermediate products and raw materials.
- An aspect of that type of competition will be countries' development of their own businesses to make them attractive as suppliers of intermediate physical inputs and services. Upper-tier developing countries are already doing this in a big way, using a variety of subsidizing and facilitating techniques. South Korea is an example.
- A second aspect – and this is not new, but has an increasing focus on intermediate GVC-related input production – is that countries are negotiating deals with MNCs to establish or increase in their country the production of goods and services relevant to the MNCs' global value chains. At present, other than low labour rates (and in some cases plentiful minerals, energy or crops), LDCs have real disadvantages in such negotiations, compared with more developed countries.
- MPTAs can give their members significant advantages in attracting MNCs to locate GVC elements in their countries. One advantage is the freer flow among the MPTA members of intermediate goods and services, resulting from the MPTA's reduction of tariffs and other market access barriers. Equally if not more important, the TPP member countries will have established structural conditions – legal, regulatory, etc. – that significantly increase their attractiveness for foreign direct investment (FDI) compared to countries that do not create such conditions. These are things like protection of investment, protection of intellectual property rights, open government procurement, regulation of SOEs, competition policy, regulation of employment and environment, non-restrictive rules of origin and harmonization of standards and/or (although this is much more difficult) regulatory regimes.

In making a case for the integration of LDCs into GVCs and in dealing with the above issues, three types of issues were identified in Dhaka: horizontal issues (more participation); vertical issues (better quality participation); and, diagonal issues (sustainable development). Participants agreed that land-lockedness, poor connectivity, cumbersome business processes, border infrastructure etc. were major barriers that needed to be addressed if LDCs were to more effectively participate in the emerging value chains. If LDCs are stuck at the lower-end of the value chain, it will be difficult for them to translate higher trade into greater well-being of people through increased value retention, higher productivity and higher wages.

So facilitating and maximising the global integration of low income countries, especially the LDCs, and strengthening compliance capacity through targeted support, will be critical to building their competitive strength in view of these emerging developments and the increasingly competitive global trading regime. In Dhaka, some participants emphasised that the WTO's rules relating to market access and preferential rules of origin will need to follow the patterns of GVCs and production networks; that trade facilitation-related obligations should gain due importance in the WTO system; and, market opening in the services sector should parallel the pace of market opening

in the goods sector. Supporting measures and compensatory mechanisms for LDCs therefore become essential.

Even if negotiations for a “GVCs package” were to get underway in Geneva, the rules component, which is its core, is much more challenging to bring into the WTO context, and therefore requires much more serious thought. It is difficult to see how new rules could be applied to subsets of the membership and be subject to WTO dispute settlement without the full membership signing off. There may be a way, theoretically, to build sufficient consensus so that the full membership would sign off, notably through negotiating, upfront, a code of conduct to govern the subsequent negotiation of exclusive plurilaterals and MPTAs.<sup>xiv</sup>

### *Special and Differential Treatment*

Such a code would have to pay careful attention to S&DT. However, given the political currents swirling around Geneva this result looks unlikely in the short to medium term. Nonetheless, the S&DT provisions in the WTO in support of LDCs need to be strengthened from the perspective of implementation and enforcement. The newly proposed Monitoring Mechanism could serve as an important tool in this context if its mandate and operational modalities are appropriately designed. Here, whilst Dhaka roundtable participants welcomed the Bali decision as regards the monitoring mechanism for S&DT provisions, some argued that this mechanism should not just be a forum for diagnostics, but should be endowed with a prescriptive role. That the decision does not mention any time-bound commitment to address the concerns raised by LDCs was perceived to be a weakness that needs to be corrected through further follow-up discussion. However, caution was advised with regard to undertaking responsibilities vis-a-vis LDCs that cannot be effectively discharged. There is already agreement in the WTO for DFQF in goods, for a services preferences waiver, for preferences in the rules of origin, flexibility in implementing the TFA, and for Aid for Trade. It was pointed out by one of the participants that if the trading partners of LDCs follow up on these decisions and commitments that would facilitate the integration of LDCs into GVCs.

There is of course the general problem of graduations and distinctions of countries for special and differential treatment (rigidity of rules and definitions) who, in certain areas of trade are substantial players. The broad distinction between states is hindering the current, horse trading, approach to multilateral negotiations and one of the causes of the present impasse in the Doha Round is the insistence of developing countries on enlarging the S&DT envelope. S&DT for LDCs is accepted without any reservation but for other developing countries it creates tensions with developed countries, and amongst some developing countries. With particular regard to developing countries as distinct from LDCs, a case can be made for reduced emphasis on S&DT and differentiated rules for developed and developing countries, and to rather focus on common rules that take the development dimension into account. For example, in agriculture the Blue Box was designed for the EU, and sensitive products were designated for certain developed countries without formal recognition as special treatment of these countries. S&DT would then, for developing countries, only be limited to those areas where it is absolutely critical.

### *The TFA as Template*

On the positive side, the “behind the border” issues relevant to GVCs and related FDI are analogous to the types of issues encountered in the TFA negotiations. As emerged from the Johannesburg dialogue, the TFA negotiations had a substantial cooperative, as opposed to mercantilistic trading-off, element. This was because both importing and exporting countries had a common interest in reducing or eliminating logistical impediments to trade flows. It is possible to see GVC-related rules negotiations in a similar light, that is, both developing countries in need of investment and MNCs desirous of building more efficient GVCs have many common interests in reducing or eliminating barriers to GVC-related FDI. The TFA offers a window to address customs-related barriers but the need for aid for trade facilitation, and the SD&T provisions in the TFA, was perceived by Dhaka participants to be the key enabler.

### *Politics of Plurilaterals*

It has also become clear in the course of our Dialogues that some (not all) developing and emerging country governments have an abiding distrust of MNCs and a consequent reluctance to adopt rules that might inhibit their ability to regulate the activities and investments that MNCs make in their countries. There are concerns that MNC investments may be transitory, moved to another country as soon as domestic wages rise; that the MNC may not facilitate domestic operations to “move up the value chain”; that MNCs may use their economic leverage to get favorable tax, subsidy or regulatory treatment; or that MNCs will simply exercise too much power in the developing country.

Some of these concerns may be valid; others may be exaggerated or illusory. But they deserve attention. In part this suggests guidance for the negotiation of the terms of MPTAs and other non-multilateral agreements, perhaps through guidelines promulgated by the WTO and other multilateral organizations. Another idea worth considering is the development – in the negotiation of specific agreements and/or as a guidance promulgated by the WTO and other multilateral organizations – of one or more “codes of conduct” for MNCs and their GVCs.

At the end of the day if the voluntary plurilateral and MPTA logic holds then it would be up to each member state to make its own assessment of whether to sign up for the negotiation in question or not. Such assessments should be rooted in understanding the dynamics of upgrading within GVCs, and how negotiations for rules or for codes of conduct can affect this. ¶The WTO and related multilateral agencies such as the World Bank, the United Nations Conference on Trade and Development (UNCTAD), and various regional agencies have crucial roles to play in providing such analyses. This points to the need for concerted, but informed, deliberation mechanisms linked into WTO processes, if not actually coordinated by the WTO itself.<sup>xv</sup>

But there are inevitable additional complications. Developing countries may have difficulty advancing their views in plurilaterals and MPTAs because the negotiating dynamic tends to be dominated by the US and other major developed countries. Furthermore, the negotiating dynamics of trading market access for new rules, which is what the TPP is largely about, as well as the political dynamics, especially for developing countries, of rules negotiations, require serious reflection. A key question is whether plurilaterals could be approached piecemeal, one by one; or whether negotiating logic dictates that a broader package be constructed? But such a “package deal”

approach risks becoming, in effect, the DDA; if so, what might that mean for the future of the system given the profound obstacles in the way of concluding the DDA?

This brings into play the vexed issue of agricultural trade.

### **3.3 The Urgent Need To Fix Agriculture: Towards A Plurilateral?**

Currently it is difficult to conceive of Brazil and South Africa, to mention two countries where we held dialogues, opting to sign up for a piecemeal approach since agricultural issues are of critical importance to them and they regard the approach as a stratagem on the part of developed countries to avoid agricultural reforms. Therefore, in Brazil and South Africa we explored some possibilities around initiating an agriculture plurilateral – an interesting but extremely challenging proposition. It is challenging because the interest groups buttressing agricultural protection in the developed world are formidably entrenched, but also because some key developing countries have similarly intractable domestic lobbies – India being a current case in point. But simply because it is challenging does not mean it should be ignored, given that key developing – and developed (think Australia) – countries are very keen on progress in this area. Furthermore, if the US and the EU, and the emerging powers, genuinely wish to retain (the former) or assume (the latter) a position of leadership in the multilateral trading system this is one nettle they will inescapably have to grasp.

However, events have occurred in both developed and emerging nations that make it substantially more difficult to get a deal (especially on domestic and export subsidies):

- The US farm bill, which embodies “price triggers” that make it extremely unlikely that the US could today offer anything like the \$7.5 billion cap on domestic farm supports that it put on the Doha table in 2008;
- The European Union, in addition to maintaining high market access barriers, is giving to its farmers much larger domestic supports than any other nation, doing so under blue and green box categories to which some developing countries strongly object. One senior BRICS country trade official told us that redefinition of “the boxes” so as to control EU supports is, for his country, the sine qua non of success in the Doha Round;
- India has demanded a dispensation, under the rubric of “food security,” for massive stockpile purchases from its farmers at subsidised prices.

In addition to these new developments, Doha Round obstacles remain in various issues, inter alia: India’s (supported by China) demand for a special safeguard; the US’s sugar barriers and cotton subsidies; the EU’s export subsidies; Japan’s pervasive access barriers; and the US and Canadian dairy and poultry regimes. The basic quid pro quo in the Round – developed countries offer concessions on domestic and export subsidies in return for developing and emerging countries’ concessions on market access in NAMA – ultimately did not work. And today, in light of the developments discussed above, that negotiating dynamic seems even less likely to succeed.

These difficulties led us to explore in our Dialogues different ways to approach the agriculture stalemate. These discussions have addressed both procedural changes and the substantive dynamics of negotiating the agriculture issues.

On the procedural side, we received productive views and suggestions, focusing in particular on conducting a plurilateral agriculture negotiation, one that does not involve either the “single undertaking” or a strict requirement of consensus (i.e., unanimity of all participants in agreement on final terms).

The central concept of a plurilateral approach is that, in the politically sensitive area of agriculture, it is extremely difficult to reach consensus – or even to negotiate effectively – among the full 160 members of the WTO. Many of those Members have truly insignificant shares of world trade in agriculture, whether viewed as an exporter or as an importer. This suggests that it would be better to limit the negotiating group to those countries that, in the aggregate, constitute a “critical mass” of world trade in agriculture. A study by a former senior US, then WTO trade official, and a former senior Australian trade official, concludes that such a “critical mass” could be achieved with as few as 38 participating nations.<sup>xvi</sup>

Such a plurilateral agreement would, as to the agreed issues, cover a sufficiently high percentage of agricultural trade to minimize the concern about the “free riders.” Incentives could be built in to encourage additional countries to accede later to the agreement, bringing it nearer to a true multilateral deal.

Another aspect of this proposal would be that neither a “single undertaking” nor full consensus would be required. If agreement could be reached on market access, export subsidies and food security, for example, but not on domestic supports, the participating countries would determine whether to proceed with the agreed issues and leave domestic supports for another day. In addition, if one or several countries could not accept the agreement crafted by the other participants, a decision would be made by the agreeing countries as to whether a sufficient “critical mass” would exist if the dissenting countries dropped out.

This plurilateral approach, it was argued, would limit the negotiation to issues and viewpoints important to countries that matter in agricultural trade. It would also permit agreement on issues where agreement proved possible, even if agreement on other issues proved impossible. Finally, it would limit the ability of individual countries or small groups of countries to block an agreement desired by countries constituting the bulk of agricultural trade. To prevent an agreement, those dissenting countries would have to persuade enough other countries to join their opposition such that a “critical mass” would no longer exist.

In considering this approach, thought should be given to which countries are essential to make up a “critical mass.” Major agricultural exporters – the US, EU, Canada, Australia, New Zealand, Brazil, South Africa, and other Cairns group countries – would be important. Some of those countries are also major importers, along with China, Japan, Korea, etc. India, it was suggested, is a desirable participant, but India’s history (Geneva 2008, Bali 2013, Geneva 2014) in the Doha Round raises

concerns that India, although a participant, could be a country that might not in the end join in an agreement favored by a “critical mass” of participants.

Even with the current shift in the political economy of the WTO, however, some participants were skeptical of any resolution of the agriculture question that did not involve the current key protagonists because the current stalemate is really about them and what they are willing to concede, or not. A plurilateral resolution for the agriculture problem, based on the critical mass approach, therefore holds more promise for a multilateral solution. However, regarding the substantive dynamics of how an agriculture agreement might be resolved, our Roundtables did not bring us to a satisfactory resolution. For some countries, achieving greater access to other countries’ markets is the paramount goal, while the greatest sensitivity is the preservation of domestic supports for their farmer communities. For other countries, the principal objective is to protect their domestic farmers from imports. Still other countries, including a number of developing and “middle market” export-oriented nations focus overwhelmingly on reducing trade-distorting domestic supports elsewhere (especially in the US and the EU). Perhaps most frustrating, some countries are intensely devoted to protecting and subsidizing their farm sectors, but have little or no “offensive interests” (think India).

This kaleidoscope of different, conflicting interests poses difficult questions in determining how to construct the trade-offs necessary to reach a meaningful agreement, and whether internal consistency within the proposed plurilateral could be found. An agreement focusing only on market access (and perhaps also export subsidies) might have a traditional dynamic of countries offering to reduce their agricultural access barriers (tariffs, quotas and TRQs) in return for other countries reducing their agricultural access barriers. This can be done in a variety of ways, involving across-the-board formulas, perhaps modified by S&DT considerations and safeguard mechanisms. It might also be augmented by negotiation of special deals between or among major players, as is now being attempted between the US, Japan, and Canada in the TPP.

From the standpoint of many developing and emerging nations, however, as well as some export-oriented “middle market” countries, an agriculture agreement may not be acceptable without reduction or elimination of trade-distorting domestic supports in the developed countries, especially in the US and the EU.<sup>xvii</sup> Domestic support could be used to block market access as well as be a substitute for export subsidies, thus it is highly inconceivable that the Cairns group, in particular, could accept an agreement on agriculture that excludes the domestic support issue. One way to address this is for the U.S. and EU to trade off reductions in their domestic supports for further reductions in other nations’ agricultural access barriers. This negotiating dynamic, however, failed to culminate in agreement in the Doha Round.

These challenges were reflected in a view, expressed in both the Brazil and South Africa dialogues, that an agriculture plurilateral may ultimately not be “self-balancing”. This suggests that an agreement limited to agriculture would require a degree of leadership by some of the major WTO Members that has not been seen in the Doha Round to date.

It may also be that “trade-offs” need to be developed in new ways between agriculture and other issues. In the Doha Round, there was contemplation of trade-offs between developed country

concessions on agriculture and developing country concessions on NAMA, but such trade-offs never reached fruition. It could be that trade-offs involving other trade areas (perhaps services) need to be considered. This might be accomplished by pursuing an agriculture plurilateral as far as possible, and in the end considering trade-offs between that plurilateral and other plurilaterals, such as TISA or NAMA sectorals.

In short, our Roundtables have reached several conclusions on the subject of agriculture negotiations:

- First, agriculture is for many developing and emerging countries a *sine qua non* of acceptable results of trade negotiations. For that reason, many developing countries object strenuously to the fact that agriculture – and, in particular, domestic supports – is basically off the table in the current MPTA and plurilateral initiatives;
- Second, there seems little prospect that the agriculture negotiations as currently constructed in the Doha Round can reach a result acceptable to the developing world;
- Third, it is worth exploring the possibility of resort to a plurilateral agriculture negotiation, one that could not be hamstrung by the “single undertaking” and full consensus requirements of the Doha Round. However, careful thought needs to be given to the substantive negotiating dynamics of such a negotiation, especially if – as developing and emerging countries are likely to insist – such a negotiation addresses domestic supports as well as market access.

Finally, we turn to our last key issue of the importance: the TISA.

### **3.4 The Emerging Importance of the Trade in Services Agreement**

The TISA negotiations are very significant owing to the contribution services make to modern economies. The TISA countries currently cover about 70% of world trade in services; many of those services underpin the operation of GVCs. There have been numerous negotiation rounds since its inception in 2012, with the aims being to open up markets and improve rules in areas such as licensing, financial services, telecoms, e-commerce, maritime transport, and professionals moving abroad temporarily to provide services. Although members have made a lot of progress in the negotiations, there are still areas of negotiation that are proving resistant to progress, such as opening markets to foreign services providers (mode 4).

TISA negotiations based on the General Agreement on Trade in Services (GATS). The key provisions of the GATS – scope, definitions, market access, national treatment and exemptions – are also found in TISA which, it can be argued, makes for a great opportunity to introduce new commitments at the multilateral level. For the most part negotiations are occurring between states that already have a PTA with each other covering trade in services. The states that stand to gain the most are those that have zero or one services PTA. However, none of the TISA members have deals with all of the big three members (EU, Japan, & US). The idea is to extend “best” PTA deals to all TISA members, focusing mostly on lock-in of existing commitments, not new liberalization, and “new and enhanced

disciplines". From a market access point of view TISA does not offer much except if members can find value in making binding commitments. TISA members are considering some early harvest agreements that include financial services, telecommunication services, e-commerce, movement of natural persons and transparency.

In principle, regulation should be non-discriminatory as regulators care about outcomes, not about nationality. However, the degree of discrimination depends upon how the agreement will be implemented, if it is going to be an Article V economic integration agreement under the GATS then in principle the members will be able to discriminate, and market access is all about discrimination. Nevertheless, since TISA focuses on regulation there might not be a lot of room for discrimination.

The TISA negotiations are relatively more important to states whose domestic economy is already reliant on services, like the US, for whom the services sector contributes more than 70% of GDP. However, the negotiations are also of increasing importance to those developing countries that are looking to pre-emptively negotiate favourable trading terms in services. This is evident in China's case as its economy seeks to move away from manufacturing goods towards value added services, from "Made in China" to "Served in China". China regards participation in the TISA negotiations as a way to spur domestic economic reforms. Nevertheless, China is not yet a part of the TISA negotiations owing to resistance from the US, which purportedly wishes to maintain a high standard of liberalization and harmonization of rules, but fears China would water down ambition levels.

As with plurilaterals and MPTAs, the TISA negotiations are driven by the failure of the Doha round. The problem was the initial prioritisation of agriculture and NAMA negotiations, to the relative neglect of services liberalization, whereas many developed country MNCs want to see progress on services negotiations and were consequently prompted to negotiate this outside the WTO. Unfortunately, the countries that offer the most dynamic opportunities in global services trade, such as China, are not part of TISA. It is doubtful that countries would want to sign up to rules that they did not negotiate. There are parallels with the GPA where countries, mostly developing, have been unwilling to sign up to rules whose formulation they were not part of. Yet admitting countries such as China would give TISA critical mass and perhaps make it more attractive for other developing countries.

Of course the approach to reach critical mass, especially including China in negotiations, will hinge on the pre-negotiation dialogue. It is expected that non-participants will enter at a disadvantage simply by admitting interest to participate as the pre-negotiation admission "bar" is expected to be deliberately high, forcing China to show its cards. Alternatively, third parties will be asked to sign the agreement after negotiations are concluded which, judging from the GPA experience, will not work. China also has alternatives to TISA in the same way TISA participants have alternatives in the MRAs.

Nonetheless, TISA has created an opportunity for states interested in furthering global services regulation to do so and will help to move towards a greater convergence between the current PTAs, in the process bringing all the best on offer together and extending it to all participants (multilateralization of the status quo). It should also be noted that TISA purports to be open access and not limited to a regional agreement meaning that the end result could be an inclusive plurilateral.

TISA, unfortunately, does have a few drawbacks. As mentioned already, a subset of countries are writing the rules, thereby alienating non-participants. There are open questions making it unclear whether there will be much on binding new rules, for example will there be a “necessity test” for domestic regulation? How will it be enforced? Will TISA go beyond the DSU for remedies? And what about ISDS? Yet lack of ambition may help eventual multilateralization. For this to happen, however, TISA needs to become a critical mass deal. So far the exclusion of China has been a major missed opportunity.

It is difficult to assess the impact of TISA on members before the fact as it is not clear what can or will be negotiated and what effect it would have on trade costs and incentives, especially for third parties. What can be said is that the current lack of transparency is a drawback, including exclusion of the WTO Secretariat, but the negative impact on the multilateral trading system will be limited, only because the possible positive effects seem small. Finally, it should be remembered that TISA is not the only opportunity on offer in the services terrain: TPP, TTIP, other intra-OECD PTAs, etc. may be deeper and divert more trade & investment.

## 4. CONCLUDING REMARKS

---

Trade negotiations are heading down new roads, orchestrated by the US and EU, and without the participation of most of the developing world. That should be a serious concern for the WTO as the caretaker of the world trading system. While the WTO cannot put this toothpaste back in the tube, it has a responsibility to find ways to influence these new initiatives. In particular, the WTO should seek ways to hold the US to its stated hope that these non-multilateral arrangements will lead back to multilateralism. The US has espoused a “build it and they will come” concept. The TPP, for example, will be of such obvious benefit to its participating countries that other countries will beat a path to the TPP door, asking to join. The WTO’s responsibility, we submit, is to make it clear that this can happen only if the new non-multilateral agreements take into account the interests of the full WTO Membership (including particularly agricultural exporting countries aggrieved by US and EU trade-distorting domestic agricultural supports).

Every effort should be made to determine whether and how the new GVC-based way of conducting trade can be the basis of a greater community of interest between developed and developing countries. In this regard, see some of the thoughts in this paper about codes of conduct for MNCs, about WTO involvement in the development of GVC and FDI related rules, and about the roles of the WTO and other international bodies in accelerating analyses of the dynamics of GVC-based trade and investment.

## 5. ENDNOTES

---

<sup>i</sup> The core partners were: Centre for Policy Dialogue (Dhaka); China Centre for International Development (Tianjin); Cordell Hull Institute (Washington); Fundaca Getulio Vargas (Sao Paulo); [Instituto de Pesquisa Econômica Aplicada](#) (Brasilia); Korea Institute for International Economic Policy (Seoul); South African Institute of International Affairs (Johannesburg); Indian Council for Research on International Economic Relations (New Delhi); The European University Institute, Global Governance Programme (Florence).

<sup>ii</sup> Hoekman, B (2014) *Supply Chains, Mega-Regionals and Multilateralism: A Road Map for the WTO*. London: CEPR.

<sup>iii</sup> Available at <http://www.saiia.org.za/news/new-project-restoring-multilateral-trade-co-operation>

<sup>iv</sup> Problems with Article XXIV and the RTA assessment process notwithstanding.

<sup>v</sup> These are reviewed in Draper, P; Lacey, S and Ramkalowan, Y (2014) *Mega-Regional Trade Agreements: Implications for the African, Caribbean, and Pacific Countries*. ECIPE Occasional Paper 2, Brussels.

<sup>vi</sup> For an exploration of this see Draper et. al Ibid.

<sup>vii</sup> A system whereby imports that fall within a certain prescribed quota are charged a lower tariff than those falling outside of the quota, effectively creating a two-tier tariff regime for one product.

<sup>viii</sup> This debate is summarised in an International Centre for Trade and Sustainable Development (ICTSD) policy brief, which also considers its implications for multilateral trade governance. Draper, P and Freytag, A “Who Captures the Value in the Global Value Chain: Implications for the WTO” *E15 Briefing*.

<sup>ix</sup> Baldwin, R (2014) Chs 4.1 and 4.2 in World Economic Forum *Mega-regional Trade Agreements: Game-Changers or Costly Distraction for the World Trading System?* Geneva: World Economic Forum.

<sup>x</sup> Draper, P and Dube, M (2013) *Plurilaterals and the Multilateral Trading System* Think piece for the E15 Expert Group on Regional Trade Agreements.

<sup>xi</sup> Hoekman, op.cit.

<sup>xii</sup> World Economic Forum, Bain & Co. and World Bank. 2013. *Enabling Trade—Valuing Growth Opportunities*, Geneva: World Economic Forum..

<sup>xiii</sup> Presentation by Richard Cunningham at joint Centre for Policy Dialogue and South African Institute of International Affairs, ‘Reviving the Multilateral Trading System: Post-Bali Issues’ Roundtable, 23-24 November 2014, Dhaka, Bangladesh

<sup>xiv</sup> World Economic Forum (2010) “A Plurilateral ‘Club-of-Clubs’ Approach to World Trade Organization Reform and New Issues”, Global Agenda Council on the Global Trade System and FDI, Geneva.

<sup>xv</sup> Hoekman, op.cit.

<sup>xvi</sup> Gallagher, P and Stoler, A (2010) *Viability of a Critical Mass Framework for Agricultural Trade Negotiations: An Alternative to the Single Undertaking Approach*. Canberra: Rural Industries Research and Development Corporation, RIRDC Publication No 10/025, June. For a very brief synopsis see the opinion pieces on our project website: Stoler, A (2014) “Is there any way to break the Doha Round impasse in agriculture negotiations?” 25<sup>th</sup> August, available at <http://www.thetradebeat.com/opinion-analysis/is-there-any-way-to-break-the-doha-round-impasse-in-agriculture-negotiations>. Also see de Lima Campos, A. (2014) “In agriculture, it is time to act with plurilaterals”, <http://www.thetradebeat.com/opinion-analysis/in-agriculture-it-is-time-to-act-with-plurilaterals>.

<sup>xvii</sup> It should be noted that India’s “food security” program is largely a method of providing subsidies to its farmers. Thus the issue of domestic supports is no longer a developed country issue exclusively, and India’s program has similar potential adverse effects on agricultural exporting nations. The effect of this on the dynamics of a domestic supports negotiation is not yet clear.