Report by

ECIPE EUROPEAN CENTRE FOR INTERNATIONAL POLITICAL ECONOMY

BUILDING FOR SUCCESS

A WORLD TRADE AGENDA FOR THE BUENOS AIRES MINISTERIAL

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> The views expressed in this report are solely the opinion of ECIPE.

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INTRODUCTION

The World Trade Organisation (WTO) needs far more attention. Regrettably, these are challenging times for supporters of an open and rules-based world trading system. There are great uncertainties about the direction of global trade policy. Sentiments of economic nationalism are on the rise and the political compact for globalisation is challenged in many countries. Governments all across the world have become more innovative in protecting domestic business against competition from abroad. Too many political leaders seem to have forgotten that trade restrictions are no recipe for economic success and that recent decades of rapid growth in trade and foreign direct investment have significantly boosted global economic prosperity. Many countries have made unprecedented progress in improving their welfare and in alleviating poverty. The economic integration fostered by trade has been instrumental in making that happen.

After two WTO Ministerial Conferences that ended with positive results, it is now time for Members to aim for new and more consequential trade agreements. While the WTO has suffered from "Doha fatigue" for over a decade, the problems in global trade have been piling up. It is understandable that WTO Members turned their attention elsewhere when the Doha Round lost energy and momentum, and when the global economy was confronted with a crisis that required Members to focus on issues other than trade policy. Global trade liberalisation was not seen as a "make-or-break" component of the pallet of efforts required to avoid the world economy sinking into depression. Reforming the financial sector and restoring fiscal sustainability—while keeping demand up—were rightly seen as having greater urgency and priority.

Now, however, is different and there should be a new sense of urgency in revitalising the WTO by delivering new and better results from negotiations. Three factors in particular should prompt Members to invest far more in the WTO and to take bolder initiatives that could deliver tangible benefits to their domestic economies.

First, the macroeconomic outlook has changed and added more urgency to improving the supply side of the economy. Most economies suffer not just from poor rates of headline economic growth but also from weak underlying economic strength. Not only has productivity growth remained low for a long time; it has weakened over the past years in both developed and developing economies. Furthermore, investment remains muted. While FDI flows have risen in the past year, they consistently remain well below pre-crisis levels of outward and inward investment flows.[1] It is no longer just an issue about companies holding back their capital spending because future demand is uncertain. While there are great opportunities for new technologies to raise the prospects for economic growth, the reality is that a good part of the WTO Membership is on track for a longer period of low growth unless policy reforms are undertaken that support improved productivity and general economic dynamism.

Trade liberalisation is a proven way to raise the productivity of an individual economy as well as the global economy. It should not come as a surprise that the contribution of trade to labour productivity growth has weakened substantially over the past decade or two as the engine of trade liberalisation stalled.[2] After all, there has not been much recent liberalisation in trade and—without greater trade reforms—it will be difficult for economies to raise the prospects for value generation in the economy.

Second, the rate of growth in global trade volumes and values has weakened and remains well below trend.[3] With world trade growing at only 1.7%, the WTO expects 2016 to have seen the

1 UNCTAD, 2016.

2 IMF, 2016.

3 HSBC, 2016.

weakest rate of trade growth since the financial crisis.[4] While growth in global trade is a reflection of broader macroeconomic health, and may shift somewhat in the near future, it seems clear that trade growth is depressed by several factors that are structural rather than cyclical. Consequently, global trade should not be expected to return to its historic trend rate anytime soon—and without efforts by policymakers to improve the conditions for higher trade growth—that desire seems even more remote. Trade appears to have plateaued and what is needed now is new liberalisation that raises the underlying potential for growth.

The weakening of trade presents WTO Members with an economic context that is different from the recent past. Even if the efforts to liberalise trade through the Doha Round faced difficulties, for a good part of the period since the launch of the Round trade could actually continue to grow at decent levels. Trade policy was not in good health, but trade was and—for many WTO Members—it did not seem necessary to actually improve policy conditions for trade in order to benefit from greater globalisation. But this is where reality has changed. No WTO Member can now expect trade growth to be a substantial contributor to economic growth. For that to happen, there needs to be a sustained and successful effort towards further liberalisation.

Third—and perhaps most pressing—the global trading system is being challenged by increasing protectionism. While global leaders managed to avoid a rapid escalation of protectionism during the crisis years, it is clear that governments over the past years have raised the level of protection in the economy. New protectionism may not always be visible as it does not come in the form of tariff hikes, but it nevertheless affects real business and trade, and introduces new distortions in the economy. In a report to the Group of Twenty (G20) in 2016, the Global Trade Alert reported new protectionist measures increased by 50% in 2015 and that policy initiatives harming foreign commercial interests outnumbered liberalisation initiatives three-to-one. Since the crisis started, G20 countries have introduced more than 4000 trade-restrictive measures.[5]

The change in the US Administration has introduced new uncertainties about the future of US trade policy. There has been rhetoric about various types of trade policies that would clearly break with the US post-war leadership for open trade and rules-based trade agreements.[6] The possibility has been raised of a US withdrawal from the WTO. It seems likely that, at the least, there will be a far greater use of contingent measures by the US in the coming years.

It would be wrong and unfair, however, to suggest that the US Administration is the only challenge to the trading system. Many of the candidates for the US presidency used similar anti-trade rhetoric. Furthermore, the message of economic nationalism has travelled well beyond the US border. All other leading trade powers have experienced their own bouts of protectionism and contended with growing choruses against globalisation. Generally, the principles of the free market economy are on the retreat.

Inaction would be the worst way to defend the WTO and open trade against the risk of a sharp rise in protectionism. An organisation or policy agenda that is inconsequential to the health of the economy is one that more easily can be neglected. The current situation rather prompts renewed action, both in deploying better defences against protectionism and in crafting actions that would have a meaningful impact on trade and economic growth.

These three factors present WTO Members with a new context that requires not only attention, but also new forms of policy action. Frustrated by the slow progress in WTO negotiations, a good part of the Membership turned their attention to bilateral and regional trade initiatives. For the past eight years, the main focus in global trade policy has been a myriad of initiatives to liberalise trade on preferential terms. Even if these efforts warranted support, it is clear that it has not been much

4 WTO, 2016.

5 Evenett & Fritz, 2016.

6 USTR, 2017.

easier to negotiate outside the WTO in a manner that leads to swift and smooth reductions of trade barriers. Furthermore, it is equally clear that these initiatives have not been able to support much new trade, and that they would not help to create much more new trade even if a greater number of the initiatives had actually come to fruition. Finally, it is obvious that these initiatives have not been enough to arrest the trend of growing protectionism.

None of this should come as a surprise. Bilateral or regional trade initiatives are usually not large or consequential enough to have a solid imprint on aggregate volumes of trade. For trade agreements to move global trade, they need to be global. For other forms of liberalisation to raise national levels of trade significantly, they have to cover a larger part of the world economy. Similarly, for countries to resist the temptation of introducing new protectionism there have to be global initiatives, not just bilateral or regional ones. It is multilateral initiatives that have the power to get policymakers to be more careful about policies that distort trade and opportunities of other countries to benefit from trade.

In the following sections, we will discuss the urgent needs for more liberalisation and better rules in global trade and discuss what WTO Members should focus on in the period before and after the upcoming WTO Ministerial Conference taking place in Buenos Aires, Argentina in December 2017.

I. GLOBAL TRADE: THE UNFINISHED AGENDA

It is said that every cloud has a silver lining and if there is one benefit emerging from WTO Members having spent so long negotiating the Doha Round, it is that there is generally a high awareness of the issues that are important to WTO Members, business and the health of the world economy. At the past two Ministerials, WTO Members focused on some issues that have been the subject of negotiations for the past decade-and-a-half and agreed upon significant packages albeit limited to only a small number of issues. The packages agreed at these Ministerials have helped to restore credibility in the WTO's role as a forum for negotiation. The issues they agreed upon have also been substantively and politically important. The Bali package delivered a new agreement on trade facilitation and—at the Nairobi Ministerial—Members agreed to resolve issues relating to agricultural export subsidies that have been politically controversial for a long time.

However, these recent achievements pale in comparison with the huge potential for raising global prosperity by cutting restrictions to trade and improving trade rules. There is no shortage of issues for negotiators to attend, nor is there a shortage of economic research to support which issues would be particularly important.

1. Trade in non-agricultural goods

There is a strong economic case to be made for renewed focus on trade in goods. Trade in goods remains the backbone of global trade, and it is precisely in the goods sectors where we have seen both a substantial decline in trade growth and an alarming rise in protectionism. The world is likely to remain in a position where the ratio of trade growth and economic growth is one-to-one, a remarkable deviation from the trend of trade growth substantially exceeding economic growth by at least two-to-one.[7]

History also shows that the liberalisation of trade in goods has significant impacts on volumes of trade, and there are several reasons to expect that new liberalisation of trade in goods will have the same effect now. Both tariffs and non-tariff barriers (NTBs) have the effect of depressing trade, and for liberalisation to have a significant impact on actual trade and the realities on the ground for businesses, reductions of NTBs should follow on the reduction or elimination of tariff levels. While trade commentary often views trade in goods to be free of frictions, the reality is that trade barriers are still inhibiting trade to a substantial degree. The simple mean tariff average in the world is about 6%. While that figure hides significant variations—agricultural products face higher tariffs than other goods; developed economies have lower tariffs than developing countries—the reality is that a majority of the goods trade in the world takes place under a tariff. And it is not just the tariff rate that raises cost for trade; every trading contract under a tariff requires resources to manage customs administration. The levels of NTBs are generally higher than the levels of tariffs, and therefore should be a natural focus of negotiations in their own right.

The methodology to improve the conditions for trade in goods can have different components. While the ideal would be to agree on cross-sectoral reductions of tariffs, past negotiations have shown that it may be politically difficult to achieve such an outcome if the ambition is also to cut effective tariff barriers substantially. This is regrettable. Reductions of tariff barriers in the goods sector generally have a positive effect on all countries and the distributional profile is not skewed. A substantial part of trade in goods is trade within companies, and for that type of intra-company trade, tariffs function mostly as a tax on productive behavior. In such circumstances, even the country that imports more than it exports in newly liberalised sectors will experience a positive contribution on productivity and the competitiveness of their own firms.

7 OECD, 2016.

There are specific sectors where there seems to be a greater willingness among WTO Members to consider substantial tariff reductions. There are already negiotations for an Environmental Goods Agreement under way, and there is also talk about considering other sectoral agreements. Chemicals constitute an important input good and could be a sector where a very large number of countries have an interest to cut tariff to zero. Sectoral agreements that eliminate tariffs are important because they help to reduce the effective rate of protection for several other goods. They are also a natural platform for discussions about how to reduce NTBs. NTBs are far more specific than tariffs, and the ideal way for a trade agreement to address them is not to cut regulations down to zero. On the contrary, regulations governing NTBs are important generally but, sometimes, also serve to reduce the cost of doing business. What is key now is to start the process of cutting non-tariff costs facing producers and consumers. The exact design of such a negotiation agenda depends a great deal upon the sector.

2. Trade in services

Unlike the negotiations over trade in goods, the Doha Round negotiations over trade in services never reached a point when a broad outline of what an agreement possibly could look like ever emerged. While the WTO Membership widely recognized that there were substantial gains to be made from more liberalisation of trade in services, it was—erroneously from an economic standpoint—not considered an area that would be given priority in the sequence of negotiations that was established to conduct the Round.

The economic case for greater openness to trade in services has become stronger over time, partly because the share of services has grown in many economies. A growing part of global trade, services trade growth stands at healthy levels in some sectors and certain regions. The rapid growth of the digital economy has both generated increased trade in services and improved the potential for what, and how much, services can be traded. Continued acceleration in the digital economy and the uptake of new digital innovations will push the frontier of possibility even farther. Improved conditions for services trade also encourage trade in goods. According to the Organisation for Economic Co-operation and Development (OECD), about a third of the value of manufactured goods is created by services as intermediary inputs.[8]

However, the possibilities for greater trade in services cannot be turned into real trade gains unless countries agree to further open their services sectors. Apart from some preferential agreements, there has not been any substantial liberalization of trade in services in trade agreements since the completion of the Uruguay Round—and the actual liberalization ushered in by that round was modest. Barriers remains substantial and, in some areas (e.g. finance), they are growing and leading to significant de-globalisation. Some restrictions are visible and upfront, while others are hidden or manifested by complex and non-transparent government regulations.

There is no simple formula for liberalizing trade in services. What is needed is a combination of improved multilateral trade rules and achievements through plurilateral and autonomous trade reforms. The Trade in Services Agreement (TiSA) negotiations are important and should be accelerated. While it is not an ideal form for freeing up trade in services, the political reality is that TiSA is still the most realistic initiative whose successful conclusion could build momentum for liberalisation outside the group of currently participating countries. There should also be multilateral complements to TiSA—initiatives that would involve the full Membership and address issues that presently do not form part of TiSA.

8 OECD, 2016.

3. E-commerce

E-commerce is growing faster than any other sector and holds great potential for trade and economic growth. Like other sectors, however, it is increasingly subject to various forms of government regulations that prevent growth and more competition. Most of these regulations operate outside the scope of the existing rules on e-commerce, and there is a great need to update rules on e-commerce to better fit with the reality of the sector today. E-commerce will be boosted by improved standards in trade facilitation, and there are achievements outside the immediate realm of e-commerce that could help to propel it. For instance, reductions in tariffs will help to cut the costs of trade also for e-commerce. Moreover, tariff elimination will reduce costly bureaucracy required to deal with tariff declarations and customs clearance procedures. But there is also a direct agenda for e-commerce, and it is one that should be focused on reinforcing rules against competitive distortions.

4. Improved rules on "new" competitive distortions: SOEs, LCRs, export restrictions

Businesses increasingly face competitive distortions in the economy that emerge from the way a government regulates or protect its own enterprises. In some areas, these distortions have grown in force over the past decade. For instance, local content requirements (LCRs) are back in fashion as trade policy and it is surprising to see how often and in how many sectors such trade-restrictive policies are used. While previously LCRs were considered banned under WTO rules, the reality is that they have not only proliferated in number but also in character. In addition to the classic form of LCRs, lately governments also have experimented with new "add-ons" such as tailoring import licensing procedures to favour domestic production. Data localisation measures have grown significantly and the new European Centre for International Political Economy (ECIPE) data base on digital trade restrictions identifies more than 100 instances of such restrictions across the world. The consequences to trade by such—and other—localisation measures are substantial. According to one estimate, 117 localization measures have reduced trade by US$93 billion.[9] Another estimate suggests that eleven localization measures cut trade by US$10 billion.[10] Literally all WTO Members today use localisation measures to restrict trade.

There is a great need to improve the disciplines addressing the way governments act to distort trade. There should be a high degree of support for disciplines that reduce the competitive distortions of LCRs, export restrictions, SOEs and other forms of government intervention. Such measures tend to have a very discriminatory effect and, even if they look innocent, can have a great effect on trade.

5. Investment

There is a new interest among countries to consider issues that relate to the market access and protection of investment. Some of this new interest comes on the heels of a changing profile of global investment, with a lot more outward investment from developing and emerging economies. There are also lot of remaining market-access restrictions and large gaps between investment openness. There is a strong economic case to be made for both improving market access for investment and the protection of investments.

9 Hufbauer et. al., 2013.

10 Stone et. al., 2015.

II. TAKING STOCK OF DIGITAL TRADE POLICY

Digital trade policy merits particular attention. Digital trade is a new phenomenon that did not exist when basic rules for trade in services were crafted. Platforms, search engines and data portability do not exist in the vocabulary of the WTO General Agreement on Trade in Services (GATS). Nor are there any meaningful generic rules on what constitutes illegitimate restrictions of trade through regulations of data protection, an increasingly important part of cross-border integration of data-based services. Furthermore, the role of digital services for trade, output and productivity have grown exponentially over the last years. While some aspects of existing trade rules can be applied in a general way to digital trade, the absence of liberalisation and of specific rules for digital trade in the WTO represents a striking example of the gap between modern commercial realities and old trade agreements.

Digital trade has changed the structure and functioning of the global economy. Not only have digital technologies reinforced the role of global supply chains, knitting different economies more closely together, they have also increased the direct supply of digital goods and services. Importantly, the increasing digitalization of the global economy has also affected the way in which countries trade with each other and has created new types of trade barriers. The WTO must address these developments in its future work if it is to have a meaningful role for global trade.

1. The role of the digital economy

Digital technologies have introduced various changes in the economy as they have enabled new channels to sell goods and services, such as online platforms, and the provision of new types of digital goods and services.

First, the digitalization of the economy has contributed to making tradable services that were not tradable before, such as online banking and insurance services, online communication services like Skype and WhatsApp or online media. United Nations Conference on Trade and Development (UNCTAD), for example, estimates that the digital economy enables approximately half of the global services trade[11] and in OECD economies services usually account for approximately 70% of the GDP.

Second, the digital economy promotes interdependence between manufacturing and services, so called "servicification", because the market access of many goods depends on services inputs such as financing, design or maintenance, which requires cross-border data flows enabled via digital technologies.[12] Furthermore, digital technologies have transformed some goods into services as many of the entertainment and software products that were previously distributed on discs are now provided online.[13]

Designing appropriate policies to address the challenges arising from the digital economy and digital trade is therefore not a sectoral issue, but an essential requirement to enable trade across all sectors—both in manufacturing and services. The openness and appropriate regulations of a country's digital economy significantly determine its ability to trade in today's digitalized world. Moreover, the need for effective policies goes beyond the national level because of the "inherent 'globalness' of the digital environment".[14] In this context, it is essential to develop multilateral rules for digital trade within the WTO framework.

11 UNCTAD, 2009.

12 Lee-Makiyama, 2014.

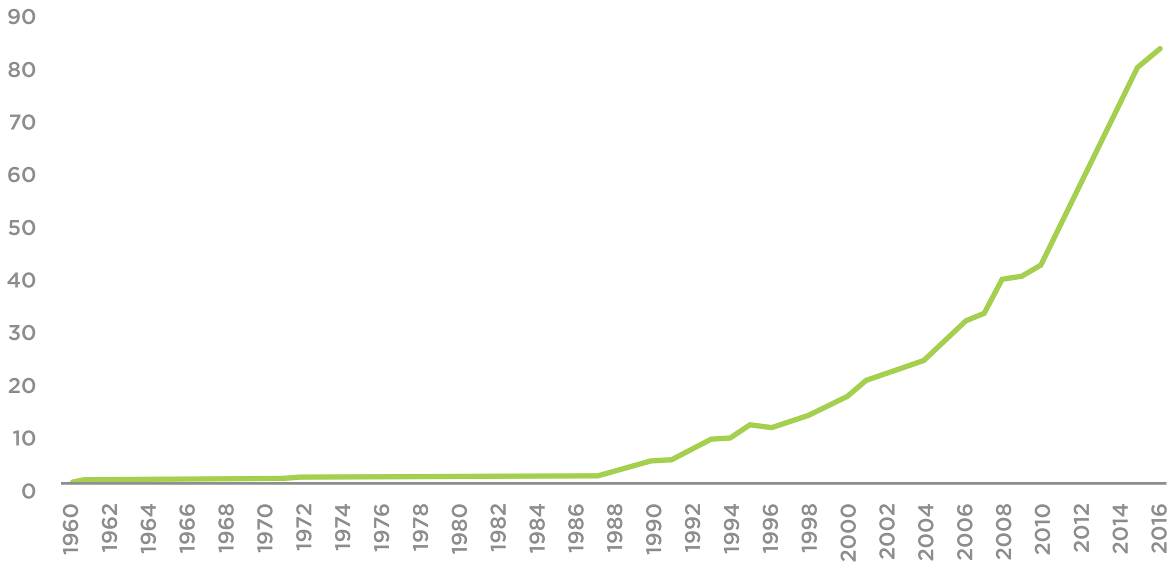
13 Ibid.

14 Burri, 2013.

2. The flow of data as a key feature

What are the challenges arising from the digital economy that need to be addressed by future work at the WTO? A key feature of most digital trade transactions is that they entail cross-border flows of data. The challenges for regulation arise from the need to find a balance between regulations which protect private data while not restricting trade. On the one hand, business requires the free flow of data to be able to provide their services, to leverage business opportunities and to increase innovation. On the other hand, consumers request the protection of their personal data due to privacy and security concerns. However, personal data is difficult to separate from non-personal data. As a result, data protection policies often limit the cross-border flows of data and the services available for consumers as well as the business opportunities of companies that rely on these data flows.

Chart 1: Data localisation measures 1961-2016

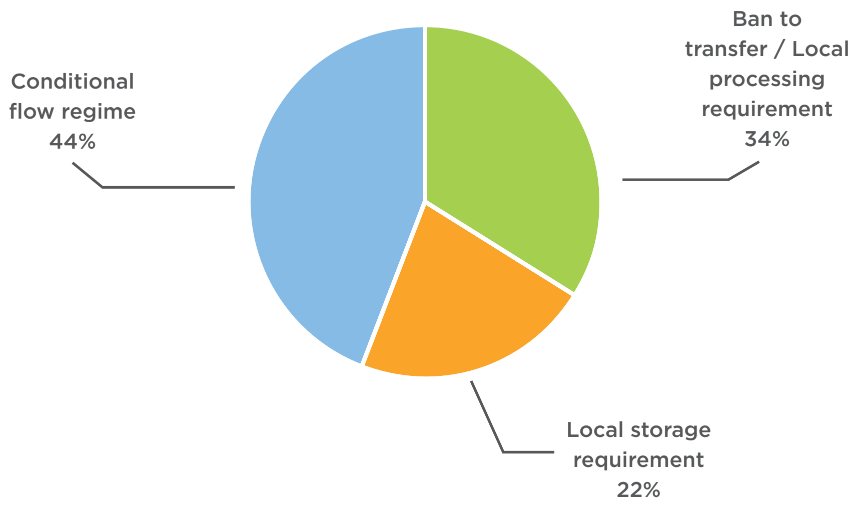


Source: ECIPE Digital Trade Estimates Database.

Regulatory restrictions of the internet, especially for commercial use, have been rising over the past years. Based on a desire to improve online security and privacy, governments increasingly introduce data protection policies. The policy measures mostly used to regulate data flows are data localisation measures. A data localisation requirement stipulates a mandatory storage of data within a certain jurisdiction, i.e. critical data needs to be stored on servers which are physically located within the country. Data localisation requirements can be strict and require the local storage and stipulate a ban on the transfer of data. Less strict measures allow flows of data outside the country based on certain conditions. Data localisation measures have been proliferating significantly over the last decade, as shown in an ECIPE analysis of digital trade barriers in sixty-five major economies.[15] This analysis has also shown that half of these measures are applied horizontally and therefore affect all economic sectors.

15 ECIPE, *Digital Trade Estimates Database*.

Chart 2: Data localisation measure by type



Source: ECIPE Digital Trade Estimates Database

3. The cost of data localisation measures

Many of these data localisation measures are not accurately designed to address the underlying privacy and security issues. Additionally, information security does not depend on where the data is physically stored or processed, because threats can also arise if data is stored and processed locally ; storing information in one location can actually increase its vulnerability.[16] As experts have argued, data security is not a function of where the data is physically stored. Considering today's interconnected economy and the dependence of so many sectors on data flows, poorly designed policies that raise the costs for data storage and processing can have severe trade restricting effects and economic impacts. As a result, data localisation or discriminatory privacy and security laws can have a significant negative effect on the global trading system.

Another study[17] estimated the economic costs arising from data localization requirements and related data privacy and security laws in seven jurisdictions, i.e. Brazil, the EU, China, India, Indonesia, South Korea and Vietnam. The outcome of the modelling showed that the impact of these regulations is considerable in all the analysed economies, not only for the GDP of these countries, but also for their exports.

Regulations concerning censorship and intermediary liability can also impose non-tariff barriers on digital trade and will need to be addressed somehow in the framework of multilateral trade policy-making.

4. At the WTO: A digital trade agenda

As there are often less trade-restrictive measures available than those applied by many countries, the future work at the WTO will need to include the discussion and negotiation of disciplines against data localisation requirements and other barriers to digital trade.

To date, the WTO has made little progress on digital trade. The debate is mainly trapped in the discussion of classification matters such as whether software sold on a disc is regarded as a

16 Bauer, 2014.
17 Ibid.

service or good.[18] Furthermore, although the WTO Agreement on Information Technology (ITA) has been expanded at the last Ministerial Conference in Nairobi, the agreement only addresses tariff reductions and does not include any regulatory issues. Also, the commitments under the WTO Agreement on Trade in Services (GATS), which cover all means of supplying a service including the cross-border transfer of data, are not sufficient to successfully regulate digital trade and resolve cross-sectoral digital trade barriers. Similarly, the GATS Annex on Telecommunications only refers to access to public telecommunications transport but does not go further in addressing the more complex issues of digital trade.

The lack of progress on digital trade may partly be due to the structural characteristics of the WTO system. The latter is designed to negotiate along defined disciplines and sectors rather than solving cross-sectoral matters, which has resulted in limited commitments on horizontal issues such as technical barriers to trade, investment or internet related trade barriers.[19] Digital trade barriers, however, need to be regulated in a different way. For example, the GATS negotiation approach based on different modes of supply does not necessarily fit the way digital services are delivered. The latter are usually exported in the form of skills and knowledge of experts, intellectual property (by transferring copyrights, patents or licenses), investment and the flow of data.[20] Thus, in order to regulate digital trade, commitments and rules in all these disciplines would be needed and new multilateral rules on data flows would need to be established.

A future agenda on digital trade at the WTO will need to comprise issues such as data flows and data localization policies, as well as work on e-commerce. Regarding data flows and data localization, the approaches developed in the Trade in Services Agreement (TiSA) and the Trans-Pacific-Partnership Agreement (TPP) negotiations could serve as a model. Whereas the TiSA negotiations are incomplete and potential outcomes on digital trade rules remain unclear, TPP outcomes (even if they have not been implemented) provide an example for how cross-border data flows and data privacy can be regulated in a trade agreement. For example, as a basic principle for cross-border data flows, TPP stipulates that the signatories should have a legal framework in place that protects personal data (Art.14.8), but leaves flexibility in terms of what privacy principles and regulatory regimes should be adopted. Furthermore, TPP prohibits the forced localisation of server capacity (Art.14.13 on the “Location of Computing Facilities”).

If these agreements are eventually concluded and implemented, the parties to those agreements will put legislation in place to meet the commitments on digital matters. As a result, their general legislation on digital matters will in practice apply to all their trading partners, since a regulatory regime is usually established on a most-favoured nation (MFN) principle and not country, i.e. trade partner, specific. This means that once these agreements are implemented, many commitments will de facto have already been made and legislation will have been adopted. From there it is technically not a big step to make the commitments multilateral, although that would naturally remain a political challenge.

18 Lee-Makiyama, 2014.

19 Ibid., p. 3

20 Ibid., p. 4

III. POTENTIAL DELIVERABLES FOR BUENOS AIRES: THE SHORT-TERM AGENDA

The overall political environment—particularly given uncertainty about the future direction of US trade policy and the inevitable time lag due to the new US Administration settling in—is such that the WTO's Eleventh Ministerial Conference (MC11) in Buenos Aires in December 2017 may be as much a time for planting seeds as for harvesting very significant amounts of fruit. Even if it will take time for a new and ambitious agenda to mature, this should not be seen as an invitation to short-term complacency. WTO Members should reinforce work to build on the achievements at the past Ministerials and use the time before and after the Ministerial to deliver tangible benefits that help build support for the idea that more substantial action can follow. The WTO has a very broad agenda and should continue to make progress across the board wherever possible. Within this framework, and bearing in mind current constraints, the following subjects are identified and suggested as priorities for action and attention at MC11.

1. Agriculture

WTO Members should remain committed to the long-term objective referred to in the Agreement on Agriculture to establish a fair and market-oriented trading system through a programme of fundamental reform encompassing strengthened rules and specific commitments on support and protection in order to correct and prevent restrictions and distortions in world agricultural markets.

For historical and political reasons, agriculture remains the key to unlocking much of the rest of the WTO's negotiating agenda. The agreement at the Nairobi Ministerial Conference on elimination of export subsidies was an historic achievement in itself but, in order to maintain momentum, it must be followed up with incremental progress on other elements of the agriculture negotiating agenda.

Following the achievements at Nairobi in the export competition pillar of the negotiations, the main focus of interest among WTO Members should now be **Domestic Support**.

The overall situation is clouded by the stand-off between the US and China where each accuses the other of highly trade-distorting forms of domestic support. A potential dispute case by the US against China is in the initial stages of working through the system. This has the potential to further sour relations and make movement in the negotiations more difficult.

Even so, a number of proposals have been tabled recently in the agriculture negotiations committee. There is clearly energy in the negotiations, although no clear sign of a potential landing zone. Possible avenues to explore include:

- Limits on overall trade-distorting support (amber box plus blue box plus "*de minimis*").
- Agreeing on cuts to different types of domestic support separately.
- Addressing concentrations of subsidies in certain agricultural products.
- Combining AMS and "*de minimis*" into one category.
- A "reference paper" approach (borrowed from the Telecoms negotiations in the 1990s) might produce some pro-competitive principles to restrain trade-distorting support.
- A "value chain" approach to reducing trade-distorting support.

It seems unlikely that "real" cuts could be negotiated in the immediate future. However even a reduction in "water" in some categories of commitments would at least be a meaningful start.

Another important area in the negotiations is **Market Access**. There is considerable pressure from developing countries for a Special Safeguard Mechanism. However, it seems unlikely that this could be agreed without an overall deal on market access as a whole. While discussions will continue, it seems more likely that the main emphasis in the negotiations will remain on domestic support. Market access should remain a live issue but may be more likely to be addressed meaningfully after MC 11.

The **Public Stockholding** issue arose because some developing countries were in danger of breaching their domestic support commitments through programmes to buy in stocks of staple foods. A "peace clause" was agreed at the Bali Ministerial Conference, but with conditions added to deal with fears that stockholding programmes involving purchases at supported prices could affect other countries. The peace clause is an interim solution and Members agreed in Bali to find a permanent solution by 2017. They subsequently clarified that the peace clause would remain in force until a permanent solution was agreed, even if that meant going beyond the 2017 deadline. From the point of view of building confidence in the negotiations on agriculture as a whole, it would still be important to find a permanent solution on the public stockholding issue by the time of MC 11.

WTO Members have, since 2004, recognized the importance of **Cotton** for a certain number of countries and its vital importance especially for a number of least-developed countries (LDCs). The subject was to be addressed "ambitiously, expeditiously, and specifically", within the agriculture negotiations. Cotton as a specific subject has two tracks in the WTO: trade and development. As regards trade, the approach has been to try to address cotton trade-distorting subsidies in other countries and to improve market access for LDCs. The subject must continue to feature in discussions leading up to MC 11. Whether any really concrete outcome can be expected at the Ministerial Conference seems doubtful but a concerted effort should be made. Again, progress will build confidence.

Another subject of concern relates to **Export Restrictions**, which are in a somewhat grey area as regards current WTO rules. An agreement to enhance transparency and reporting requirements in this area would be a useful outcome at MC 11, as a starting point for possible further consideration in future.

2. Services

Arguably, of all the subjects included in the Doha Round, progress on services has been the most disappointing. This is because trade in services is a vitally important part of the economies of both developed and developing countries; and because the baseline inherited from the Uruguay Round and its immediate aftermath is so low. For reasons that are not understood in services industries, the negotiations in the WTO have been held hostage to progress in other areas. The resultant frustration led directly to separate negotiations being initiated among a number of major participants outside the WTO.

There were hopes that conclusion of a high-standard Trade in Services Agreement would provide new impetus for the negotiations on services in the WTO. While TiSA was in the end not able to be agreed by the end of 2016, it is still possible that some of its aspects will be useful in re-energising the WTO. TiSA negotiators have also banked a wealth of information and experience that could usefully inform activities in the WTO.

In the area of rules, it seems possible that in particular the WTO talks on **Domestic Regulation** (one of the most advanced areas in the TiSA talks) could now make progress. While any agreement at MC11 in this area is unlikely to be far-reaching, and would probably focus mainly on increased transparency, this would nevertheless be confidence-building in terms of the prospects for negotiations in other areas of services.

More use could be made of the Telecoms "**Reference Paper**" approach to developing new pro-competitive rules. This involves development of a template—which does not have to be multilaterally agreed—that Members can be encouraged to adopt in whole or in part in their schedules of commitments. Interested Members should explore sectors in which such an approach might be useful.

A renewed attempt to make progress on **Market Access** in services is long overdue. The situation on the ground has, through autonomous liberalisation and preferential trading agreements, far surpassed the current level of WTO commitments as reflected in schedules negotiated over 20 years ago. Even if WTO negotiations focused only on reducing some of the water contained in these schedules, this would be a meaningful start. Possible approaches include:

> Revival of "collective requests" by interested groups of participants.

> A new "signalling conference" to explore possible gains in market access.

> Traditional request and offer procedures.

The WTO now has an opportunity to demonstrate its relevance to modern business by delivering tangible results in trade in services at MC11. Absent such results, major service industries in many countries are likely to conclude once again that the WTO is not a viable forum for negotiations and, albeit with some reluctance, turn back to preferential agreements.

3. Fisheries subsidies

The WTO negotiations on Fisheries Subsidies, under the Negotiating Group on Rules, are directly related to Sustainable Development Goal 14 ("Conserve and sustainably use the oceans, seas and marine resources for sustainable development"), and in particular, Goal/Target 14.6:

"By 2020, prohibit certain forms of fisheries subsidies which contribute to overcapacity and overfishing, eliminate subsidies that contribute to illegal, unreported and unregulated fishing and refrain from introducing new such subsidies, recognizing that appropriate and effective special and differential treatment for developing and least developed countries should be an integral part of the World Trade Organization fisheries subsidies negotiation."

Accordingly, this is a critical area for action by the WTO and results must start being delivered at MC11. Even those countries that are relatively defensive in this area have committed themselves to the Sustainable Development Goals (SDGs).

Outside the WTO, a number of countries have launched a plurilateral initiative aimed at concluding a high-standard agreement among themselves, while at the same time working with all WTO Members to make progress toward a multilateral agreement.

In a positive sign of interest and engagement, three proposals have recently been submitted to the Negotiating Group on Rules: by the European Union, the ACP Group and a group of six Latin American countries. These proposals share similar objectives:

> Achieving the goals set out in SDG 14.6;

> Ensuring effective disciplines while also providing special and differential treatment

for developing and least-developed countries; and

> Securing an outcome at MC11.

As regards potential deliverables for MC11, as an absolute minimum and as a step towards a more comprehensive agreement, agreement should be reached on the areas that currently seem more susceptible to emerging consensus: illegal, unreported and unregulated ("IUU") fishing and transparency. Other concerns such as subsidies linked to overcapacity and overfishing should also be progressed. It is vital that MC11 produces results. To this end, it is also important that Fisheries Subsidies be treated as a standalone subject in the negotiations as a whole and should not be held hostage to progress in other areas.

Considerable thought will also have to be given to designing a suitable framework for special and differential treatment, given that fishing is a vital element of subsistence for many poor coastal communities in developing and least-developed countries, which also may lack the resources and capacity to implement and enforce new disciplines. One possibility would be to adopt a "trade facilitation" approach, under which new disciplines would be adopted in line with increasing capacity to do so.

4. E-commerce

The WTO's work programme on electronic commerce was launched in 1998 but, to date, has produced few results. Meanwhile, between 2000 and 2015, internet penetration has increased from 6.5 to 43 per cent of the global population. It is estimated that last year e-commerce was worth around 22 trillion dollars. On both counts, the numbers continue to rise rapidly. E-commerce allows businesses and consumers to access a global market place, to reach a wider range of consumers and provides the potential to join global value chains.

E-commerce is not outside the framework of current WTO rules. For example, the GATS is technology-neutral and many of its provisions apply equally to services whatever the method of transmission. Even so, there is considerable scope to clarify and enhance rules in relation to e-commerce.

One of the problems faced by Members is the vastness of the subject of e-commerce, a good number of aspects of which fall outside, or partially outside, the remit of the Organization. A practical starting point would be a stock-taking exercise to identify which current WTO provisions are relevant to e-commerce and which could be expanded or clarified in order to add value, in a non-discriminatory and pro-trade or least trade-restrictive way, to the rule book.

Another starting point could be to examine e-commerce chapters in preferential trade agreements in order to identify provisions which go beyond current WTO rules. Provisions on regulatory cooperation may also be relevant.

One of the emerging barriers to e-commerce and associated date flows is in relation to forced data-localisation provisions. While data protection and privacy concerns are valid, care is needed to ensure that new rules are not more trade-restrictive than necessary. A recent ECIPE study of the European Union concluded that, if existing data localisation measures were removed, GDP gains of up to 8 billion euros per year (up to 0.06% of GDP) could be achieved.

It is important to the business community that new rules on e-commerce be developed on a global, multilateral basis. Techniques involving subsets of WTO Members could be a useful way of building consensus. The "template" approach adopted in the negotiations on Telecoms in the 1990s, under which a pro-competitive set of regulatory principle was developed, could be helpful. Initiatives among groups of Members, as long as clearly aimed at multilateralisation through building "critical mass", could also be useful.

It is important also that due account be taken of the resource and technical constraints faced by many developing and least-developed countries in this complex area. Consideration could be given to developing a "digital trade facilitation" agenda.

It is encouraging to note that, since Nairobi, a new sense of energy has become apparent among a substantial proportion of the WTO Membership with respect to the work programme on e-commerce, with eight submissions having recently been tabled.

The subject matter is complex and it is to be expected that Members would have differing views at this stage. There are valid concerns that the digital divide and the knowledge gap could inhibit inclusive dialogue. Nevertheless, it is important to the global business community that the effort and enthusiasm be maintained.

It is perhaps unrealistic to expect that very substantial results could be delivered at MC11 in this area. Nevertheless, at a minimum, the current moratorium on imposing customs duties on e-commerce transactions should be made permanent. And a clear programme for future specific work could be agreed.

5. Investment and investment facilitation

There is clearly a renewed interest in the Membership to revisit issues about investment and investment facilitation. While actual work in this areas has been dormant for a long time, there are potential approaches that should be explored in the short-to-medium term. Possible approaches include:

> Trade Facilitation approach to investment facilitation

> Strengthening investment rules by building on GATS

> Restarting the Working Group on Trade and Investment

At the minimum, a good outcome at MC11 would be an agreement to restart discussions in this area with an exploratory agenda.

6. Strengthening the WTO's "third pillar"

The WTO is not just a forum for negotiations and a body for dispute resolution, there is also an important "third pillar" of the multilateral trade organization, namely reviewing and analyzing global trade policy and serving as a repository of knowledge and experience of trade and trade restrictions. There are several avenues that could be explored by the Membership. They include improvements of the WTO's surveillance of bilateral and regional trade agreements and initiatives. Such trade policy is the main pillar of global trade initiatives today and the agreements struck have consequences—positive and negative—for other WTO Members and the multilateral trading system at large. The WTO could play several roles for preferential trade initiatives. The WTO Secretariat, for instance, has unrivalled knowledge about the effects of trade agreements and can help to shape the analyses underpinning new initiatives. Its power to monitor and report on preferential trade agreements could be improved. Its experience of resolving disputes is of central importance for trade initiatives outside the WTO. Generally, finding methods for new preferential initiatives to "dock" with the WTO would create much better conditions for bilateral initiatives to generate the desired improvements and gains.

The WTO regularly reports on trade-related developments and several of these reports have in recent years served as a good basis for understanding post-crisis protectionism. There is scope to expand this work and broaden it to not just include a description of adopted measures, but also to make a general review of trade restrictions in the world and propose approaches to reduce them.

BUILDING FOR FUTURE SUCCESS

It is obvious that current political trends create unfavourable conditions for a "business-as-usual" approach in the WTO. A world trade body whose work is considered inconsequential for Members will soon find itself obsolete. The response to the threats against global trade by populist and nationalist opinions can neither be to continue on recent trends nor to resign in front of seemingly strong political headwinds. In order to defend existing trade openness against increased protectionism, WTO Members have to demonstrate that they are willing to improve the system. Furthermore, if the contribution of trade to economic growth is to improve, it is necessary to return political attention to Geneva.

The next Ministerial Conference is an opportunity not just to make gradual progress on discrete issues where there has been a growing consensus among WTO Members. It is also a good time to set out a future work agenda that is ambitious and consequential. WTO Members know very well the trade policies of their partners and what restrictions they have faced in recent years, and what new restrictions that may come. They also know what contributions to the recent rise in protectionism that their own country has made. While it is regrettable that such measures were taken in the first place, they should now serve as a starting point for a real dialogue about the future work agenda for the WTO and whether there is an interest in the Membership to actually do anything to improve conditions.

For a new work agenda to be meaningful, it needs to contain meaningful trade-offs between countries with varied sectoral interests. There are "old" as well as "new" issues that require improvements, and in order to deliver something for all Members, a new agreement will have to incorporate the interests of agricultural exporters and those of countries at the frontier of new technologies and services. There are also cross-cutting issues where practically all Members have reasons to confess their sins. Local content requirements are a case in point. The larger lesson is that the WTO is a forum to improve the conditions of trade for business and consumers, and to achieve improvements by asking all key trading economies to contribute to the end result. That has been a formula for remarkable prosperity generation over several decades. It is now time to use it again.

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INTERNATIONAL CHAMBER OF COMMERCE (ICC)

The International Chamber of Commerce is the world's largest business organization with a network of over 6.5 million members in more than 130 countries. We work to promote international trade, responsible business conduct and a global approach to regulation through a unique mix of advocacy and standard setting activities—together with market-leading dispute resolution services. Our members include many of the world's largest companies, SMEs, business associations and local chambers of commerce.

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ICC WORLD TRADE AGENDA

The ICC World Trade Agenda is an initiative to enable global business leaders define multilateral trade negotiation priorities and to help governments set a trade and investment policy agenda for the 21st century that contributes to sustainable economic growth and job creation. The initiative actively promotes a robust post-Nairobi trade and investment policy agenda in relevant forums, including the Business 20 and G20 discussions, and in particular at the WTO in the lead-up to and during its next Ministerial Conference.

ICC COMMISSION ON TRADE AND INVESTMENT POLICY

As trade and investment are consistently top priorities for global business, the Commission on Trade and Investment Policy represents ICC's main working body on multilateral trade and investment policy issues. The Commission examines issues that will facilitate cross-border trade and investment by business to sustain the economic recovery, job creation and sustainable development.

The mandate of the Commission is to break down barriers to international trade and investment so that all countries can benefit from improved living standards through increased trade and investment flows. The commission has 186 members from over 30 countries. They comprise trade policy specialists from ICC member companies and business representative organizations.

Senior trade policy experts from the staff of intergovernmental organizations such as the WTO, UNCTAD, and the OECD are frequently invited to address commission meeting. The Commission provides a forum for business experts to examine trade and investment policy issues and draw up policy recommendations for governments.

QATAR CHAMBER OF COMMERCE AND INDUSTRY

Qatar Chamber is a strategic partner of the ICC Business World Trade Agenda initiative. It is dedicated to promoting Qatar's burgeoning economy and assuring that the interests of the business community are well represented. By providing key support services, networking opportunities and leadership, the chamber has helped oversee one of the most dynamic and fastest-growing economies in the world.

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