

SDG 17

Trading away the SDGs?

Trade and investment agreements – and disagreements – create obstacles for the 2030 Agenda

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Trade and trade-related policies and international agreements are addressed explicitly in seven of the 17 Sustainable Development Goals (SDGs) and are identified as key to implementation of the 2030 Agenda and of the Addis Ababa Action Agenda (AAAA).¹

Market access is deemed essential to promote the graduation of the LDCs (targets 10.a, 17.11 and 17.12) and to improve the livelihood of small food producers (target 2.3). Trade distortions are to be dealt with, reducing subsidies on agriculture (target 2.b), on fossil fuels (12.c), and on fisheries (14.6). Capacity-building on trade is required (target 8.a) and the WTO is urged to complete the Doha Round (target 17.10) as one of the key means of implementation for the whole Agenda.

Collapse of the WTO Ministerial Conference 2017

Yet, governments, less than two years after having unanimously committed themselves at the highest level to these objectives at the UN, failed to translate those promises into action at the Eleventh Ministerial Conference of the World Trade Organization (WTO) held in December 2017 in Buenos Aires.

The meeting at the Argentinian capital collapsed without approving a declaration, not even to thank the host country. “We failed to achieve all our objectives,” said the EU Trade Commissioner Cecilia Malmstrom in her remarks at a closed meeting of

delegation heads in Buenos Aires, according to the audio recording, leaked by the US media outlet and website POLITICO. “The sad reality is that we did not even agree to stop subsidizing illegal fishing,” she went on. “I hope all delegations here reflect carefully about the message this sends to our citizens, to our stakeholders and to our children.”²

Goal 14 of the SDGs commits governments to “conserve and sustainably use the oceans, seas and marine resources” and its sixth target promises to prohibit, by 2020 “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”.

In Buenos Aires, the governments could only “agree to continue to engage constructively in the fisheries subsidies negotiations”³ with a view to adopting an agreement by the next WTO Ministerial Conference in 2019.⁴ But this promise cannot be blindly trusted.

2 EU Statement at the Heads of Delegations meeting, Buenos Aires, Argentina, 13 December 2017 (http://trade.ec.europa.eu/doclib/docs/2017/december/tradoc_156464.pdf).

3 All official documents of the Buenos Aires Ministerial Conference can be found at: www.wto.org/english/thewto_e/minist_e/mc11_e/mc11_e.htm

4 See the Spotlight on SDG 14 in this report.

1 For an in-depth analysis see Bellmann/Tipping (2015).

The previous WTO Ministerial Conference, held in Nairobi in 2015, had agreed to conclude in Buenos Aires the negotiations on agricultural stockholding for food security by developing countries. In spite of that commitment, no agreement was reached last December on this key issue, not even to continue negotiating at the next Ministerial.

This failure to agree on agriculture also contravenes the commitments of the 2030 Agenda. SDG 2 promises to “end hunger, achieve food security and improved nutrition and promote sustainable agriculture” and to that effect it spells out as specific targets the commitments to “correct and prevent trade restrictions and distortions in world agricultural markets” (target 2.b) and also to “ensure the proper functioning of food commodity markets ... in order to help limit extreme food price volatility” (target 2.c).

Without an agreement on agriculture, not even to continue negotiating these issues, indispensable to achieve the hunger and nutrition targets, there is no hope for SDG 2 to be met.

In the case of Trade-Related Aspects of Intellectual Property Rights (TRIPS), the results of the Buenos Aires Ministerial Conference were a bit more positive, with a single paragraph resolution that promises to keep discussing the substance of the conflict between the holders of patents of medicines, protected by the TRIPS agreement, and making those same drugs affordable. Countries using generics or resorting to compulsory licensing of medicines in the interest of public health risk being sued through the WTO compliance mechanisms. The continuation of the present ‘peace clause’, committing WTO members not to initiate such complaints while a substantial agreement is being negotiated, was agreed to in Buenos Aires, thereby diluting immediate threats to public health.

Paragraph 68 of the 2030 Agenda called upon “all members of the World Trade Organization to redouble their efforts to promptly conclude the negotiations on the Doha Development Agenda”. The Doha Development Round of trade negotiations was launched in Qatar in 2001, as a result of the Fourth WTO Ministerial Conference. This new round of

trade negotiations was supposed to address the issues of concern to developing countries, in particular textiles and agriculture.

The WTO membership is composed of 164 countries, most of which are also UN Member States. But a few weeks after agreeing on the 2030 Agenda in New York, the same countries could not agree at the 10th WTO Ministerial Conference in Nairobi to reaffirm their commitment to conclude the Doha Round. Thus, paragraph 30 of the Nairobi Declaration simply informs that “many Members reaffirm the Doha Development Agenda” while “other Members do not reaffirm the Doha mandates”.⁵

In Buenos Aires, Conference Chair Susana Malcorra circulated a draft ministerial statement that did not mention the word “Doha” but wanted the WTO members to “reiterate paragraphs 30 and 31 of the Nairobi Ministerial Declaration” and “commit to work towards more effective implementation and enforcement of WTO rules”.

The US vetoed that language. Nothing seems less strict than referencing a statement that says that some are in favour and others against - so observers are led to believe that it was the mention of “the strong legal structure” of the WTO that the US intended to block, even at the cost of letting the whole conference collapse.

The “legal structure” of the WTO is not its role as negotiating forum, but its dispute settlement system that applies trade rules to claims raised by members against other members and allows for the use of proportionate trade sanctions when a country is found guilty of violating trade rules. At the top of that system the Marrakesh Treaty places an Appellate Body, the supreme court of global trade, composed of seven members with fixed terms. The Trump administration has been blockading the appointment of new members to replace those whose mandates expire, which might soon paralyse that body and thus make the WTO useless and leave the door open to trade

⁵ See: www.wto.org/english/thewto_e/minist_e/mc10_e/mindecision_e.htm

wars and unilateral impositions.⁶

The positions of the US government were known in advance and they follow a pattern that is not dissimilar from, for example, the US withdrawal from the Paris Agreement on Climate Change. What was really surprising during the Buenos Aires Ministerial Conference was the inability of the other 163 members of the WTO to reaffirm their common faith in “a universal, rules-based, open, non-discriminatory and equitable multilateral trading system under the World Trade Organization” - precisely what their Heads of State agreed to in the 2030 Agenda (SDG 17.10).

Push for “new issues”

The countries of the global North, with enthusiastic support from the International Chamber of Commerce, the World Economic Forum and an active lobby of the GAFA-A group (Google, Amazon, Facebook and Apple, with common interests in some issues with the Chinese Alibaba) pushed for partial (non-consensual) agreements with some middle-income countries and a few least developed countries on “new issues”, instead of solving the issues of interest to developing countries and mandated by previous conferences.

Thus, the USA did sign, together with the European Union, Japan, China, Russia and some middle-income countries a “joint statement” promising “to initiate exploratory work together toward future WTO negotiations on trade-related aspects of electronic commerce”.⁷

This coalition of the willing wants to advance “electronic commerce work in the WTO in order to better harness ... opportunities” for micro, small and medium-sized enterprises (MSMEs).⁸ Yet the Anglo-Ecuadorean analyst Sally Burch, one of the NGO experts banned from attending the conference by the Argentinean authorities, commented that “MSMEs are just the bait to attract support” to the

Agenda that the GAFA-A was lobbying for.⁹

This agenda includes “free flow of data”, which actually means the possibility of commodification and appropriation of personal and local data by global corporations, freedom for those corporations to operate in a country without having a commercial presence in it (and thus exempted from fiscal and even criminal liabilities), and freedom to offer their services to the public and to the States without having to disclose their algorithms or include local software or expertise.

Several other “joint initiatives” were made public in Buenos Aires around what Malcorra called “21st century issues”: investment facilitation (supported by 70 members), MSMEs (87 members) and a “declaration on women and trade”, signed by over 100 members.

Some 200 women’s groups from around the world immediately condemned the notion that the WTO could help to empower women, stating:

[I]ncreasing access to credit and cross border trade for a few women will not benefit women’s human rights overall. The declaration is a ‘pink herring’, an attempt to obscure the harm WTO provisions have on women while ensuring the WTO can bring in ‘new issues’, likely to deepen inequality.¹⁰

Similarly, many associations of small and medium-enterprises, mainly from developing countries, condemned the idea of an informal working group on them in the WTO, as well as using supposed benefits for them, but without any consultation, to introduce in the WTO the issue of e-commerce, seen more as a subsidized non-tax-paying threat than an advantage.

The introduction of these new issues was opposed by the African Group as a whole, as well as by Bangladesh, India and other countries. South Africa’s

6 Jishnu (2018).

7 WTO (2017).

8 Ibid.

9 Burch (2017).

10 <http://apwld.org/statement-womens-rights-groups-call-on-governments-to-reject-the-wto-declaration-on-womens-economic-empowerment/>

trade minister Rob Davies castigated the attempts at Buenos Aires to terminate the special and differential treatment (S&DT) flexibilities for developing countries and “walk away from all mandated issues while embracing new issues, which doesn’t portend well for the organization”.¹¹

Without naming the USA, India said, “Unfortunately, the strong position of one member against agricultural reform based on current WTO mandates and rules, led to a deadlock without any outcome on agriculture or even a work programme for the next two years.”¹²

Much of the extreme inequalities in the world that SDG 10 promises to address derive from trade and investment agreements that guarantee free flow of capital but not of labour and increased rights and privileges for investors (including the right of foreign investors to sue host States before private arbitration panels) without countervailing rights for workers, citizens or even governments.

Yet, despite all of its imbalances detrimental to developing countries and to workers and consumers everywhere, the WTO dispute settlement mechanism is the only legal mechanism with enough ‘teeth’ to make powerful countries comply to demands from smaller states.

Deprived both of its role to enable negotiations (by a major player abandoning the field) and of its arbitration function (because of the impasse on Appellate Body selections), the WTO risks being submerged into irrelevancy. International trade is defined by the 2030 Agenda as “an engine for development”.¹³ Is it safe to leave it running without a map or a driver?

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11 Kanth (2017).

12 Ibid.

13 UN (2015), para. 62.