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Post-Nairobi Work Programme of the WTO

Introduction – the result of the Nairobi Ministerial

The 10th Ministerial Conference of the WTO took place between 15 and 19 December 2015, in Nairobi, Kenya. Its main outcomes included an Agreement on export subsidies and export competition elements in Agriculture and the expansion of the Information Technology Agreement (ITA). The Ministerial Conference also took a number of decisions to encourage and facilitate the participation of Least Development Economies (LDCs) in global trade. Furthermore, Liberia and Afghanistan became members of the WTO.

On the other hand, the Ministerial Declaration confirmed a division between the members of the WTO on the future of the Doha Development Agenda (DDA). Paragraph 30 reads:

“We recognize that many Members reaffirm the Doha Development Agenda, and the Declarations and Decisions adopted at Doha and at the Ministerial Conferences held since then, and reaffirm their full commitment to conclude the DDA on that basis. Other Members do not reaffirm the Doha mandates, as they believe new approaches are necessary to achieve meaningful outcomes in multilateral negotiations. Members have different views on how to address the negotiations”.

Although the agreements and decisions delivered in Nairobi show that the WTO remains an important organisation and gave a positive signal on its ability to negotiate and produce multilateral agreements, they also show the difficulties that the WTO and its members face in this process.

It is evident that the WTO, if it wishes to maintain its core role as the guardian of multilateral trade rules, needs to adapt better to the changing global trade environment, for instance by reviewing its negotiating processes to make them more efficient, delivering on the remaining DDA mandate and by creating new sets of rules, on issues beyond the DDA.

A new phase for the WTO

The Nairobi Ministerial formally confirmed a process that, for some, had already started in 2008, when an attempt to conclude the DDA failed, and continued throughout the Ministerial Conferences of Geneva (2009 & 2011) and Bali (2013). The WTO is entering a new phase and this can be observed on two instances in particular:

Firstly, the Nairobi Declaration paves the way for the WTO to address new issues that go beyond the DDA mandate. This has been a long-term demand from some members of the WTO in particular, who felt that the WTO needs to work in areas that are pertinent



for the current international trade reality, following the emergence of global value chains (GVCs) and the prominence of regional and plurilateral trade agreements, which go beyond the WTO in terms of rules and disciplines.

Secondly, and as a result of the first, the 'single undertaking' is officially abandoned, and the WTO is in search for new ways to negotiate. 'By Consensus' may be the way forward – those WTO members who agree to move further on certain issues, will do so. However, other WTO Members may decide to join these initiatives later. It remains to be seen how different WTO members will react to this process. Some of them view plurilateral agreements with certain reluctance, while others appear more open – an example being China's participation in ITA. It is important that ways are found to further engage with and motivate emerging economies to participate in plurilateral initiatives, for example by still making an effort to deliver on the remaining DDA issues.

Post-Nairobi Work Programme

The WTO should develop a Work Programme that delivers for all: Members – both developed and developing – businesses, workers and consumers. Trade can help foster growth and promote development in a sustainable, inclusive and effective manner and this should be better reflected in the work of the WTO as well. Increasing communication on how Trade can deliver for the society as a whole is also important to ensure wider public support.

1- Delivering on the remaining issues under the Doha mandate:

- Market Access: Achieving horizontal tariff elimination, in particular for industrial goods, is important. However, if broad tariff elimination is not feasible, the WTO should look into creative approaches within NAMA in negotiating sectoral agreements provided the critical mass of 90% trade coverage is met. This may be relevant in particular for sectors with a high level of participation to the GVCs and are oriented to opening up more markets, such as chemicals.
- Services: Accounting for nearly three quarters of the EU's GDP, it is fundamental that further horizontal liberalisation in trade in services is achieved. Wider market access, including through the substantial reduction of NTBs in services, as well as increased transparency vis-à-vis internal regulations and cooperation within the WTO and among its members in the area of regulations to remove trade barriers should be pursued. We also encourage the WTO to develop tools to improve the identification and elimination of trade barriers, such as the OECD's STRI index.
- Agriculture: This is one of the areas under the Doha mandate that require multilateral solutions. In this regard, the impetus created during the Nairobi Ministerial with the conclusion of the package on Agriculture should be maintained.
- Trade Facilitation Agreement (TFA): The ratification of the TFA should be a priority for the WTO. This is an essential agreement that will benefit all WTO members and should fully enter into force as soon as possible.



- Customs procedures, beyond the TFA: It is also important to address other concerns related to customs procedures that could facilitate trade. The automation of the procedures, as well as the conduct of regular surveys on the costs related to transport and ways to diminish them, are areas where the WTO could work on. Another concern lies with the customs inspections and adjustment practices followed by authorities. It should be ensured that these measures are always based on international regulations, such as Article VII of the GATT and the Convention on the Harmonised Commodity Description and Coding System. Finally, it is important to stress the need for continuous cooperation on non-preferential rules of origin between the WTO Committee on Rules of Origin and the Technical Committee on rules of Origin of the World Customs Organisation (WCO).
- Transparency: Several issues of the of the Doha mandate in the area of transparency have not been concluded so far and should be effectively addressed through fresh initiatives. Those issues include: the establishment of a mediation mechanism for 'out-of-court' settlement of non-controversial non-tariff barriers (NTBs), export restrictions and transparency vis-à-vis regional (preferential) agreements, for instance on notification requirements.

2- Addressing issues beyond the Doha mandate:

The rule book of the WTO needs to be updated and complemented in order to cover areas that are particularly important for modern trade and business practices:

- Digital trade: this is an increasingly important and dynamic area of the world economy. It is also an area where Governments tend to introduce new regulations in many cases driven by protectionist objectives e.g. forced localisation. Ensuring free flow of cross-border data is vital. In parallel, bilateral trade agreements are also setting standards focused on more specific areas of digital trade like e-commerce, source code and cryptography. This is a new field and one where there is an interest to define coherent and if possible harmonised rules from the beginning.
- Export restrictions¹: export tariffs and taxes have a negative impact on trade, discriminating foreign against domestic customers and resulting in economically inefficient use of materials or products. Their use, especially in the area of energy and raw materials, has been increased in the past years, resulting in increasing, artificially created distortions of competition. Recent decisions by the WTO Dispute Settlement Body highlight the legal lacunae in the area of export restrictions. Therefore, in order to progress towards an international level playing field it is urgent to work towards an agreement on lowering tariffs, taxes and other export restrictions.
- Export subsidies: The Nairobi Ministerial achieved a landmark agreement in the area of export subsidies in agriculture. However, similar efforts should be pursued for industrial goods and services. This will help avoid trade distortions and establish a level playing field.

¹ Notwithstanding the obligations in the area of export restrictions under the Doha mandate.



- Energy and raw materials: Building on the provisions that the EU is currently developing in its trade agreements, such as TTIP, we would like to discuss the inclusion of effective rules in the GATS on international transit of energy products transported by pipeline. Attention should also be drawn to other challenges related to obtaining exploration licenses, to local content requirements and to export restrictions. In this regard, resource-holding countries that are not yet members of the WTO should be encouraged to join the Organisation.
- Non-Tariff Barriers and Regulatory Cooperation: this is currently at the centre of many bilateral and regional free trade agreements and it will be increasingly so with the progressive lowering and dismantling of tariffs. It is also a sensitive area that relates to the policy space of Governments and their right to regulate. Considering the growing number of free trade agreements that include specific rules on this area it would be beneficial to ensure some coherence in system.
- Intellectual Property Rights (IPR): The TRIPS Agreement sets the minimum IPR protection standards globally. BUSINESSEUROPE believes that its standards should be respected and strengthened in various bilateral trade agreements or international agreements that address IP issues. Any IP-erosion initiatives that deviate from TRIPS should be countered globally. TRIPS implementation should be ensured where it is still pending, in line with special transitional arrangements foreseen. In this regard, the WTO and its members should increase their cooperation in order to achieve a more effective enforcement of IPR and fight against counterfeiting.
- Old Singapore issues:
 - *Investment:* the emergence of global value chains has also refocused attention on the need of a global framework regulating investments. The current proliferation of bilateral investment agreements covering areas of market access as well as investment protection is a clear proof of this development. The WTO could provide a framework for a multilateral solution on this issue.
 - *Competition:* in an effort to respond to the recent global financial crisis, some governments resorted to protectionism and trade-distorting measures like subsidies or positive discrimination toward State Owned Enterprises (SOEs). Although rules on monopolies and exclusive service suppliers exist in the WTO, these need to be complemented by additional rules in order to cover the whole spectrum of competition policies.
 - *Transparency in procurement:* although the Government Procurement Agreement (GPA) includes rules on transparency, due to the nature of the agreement, these apply only to its Parties. We would like to stress the need for promoting and adopting multilateral rules on transparency in public purchases.

3- Current Plurilateral agenda

There are several plurilateral agreements that WTO members are part of, or negotiating on:



- Information Technology Agreement (ITA): The WTO and its members should focus on completing the preparatory work to allow the entering into force of the expanded ITA, as agreed upon during the Nairobi Ministerial Conference.
- Government Procurement Agreement (GPA): the updated GPA entered into force in April 2014. Accession to the GPA of key WTO members, such as China and Russia, is important and should happen on ambitious terms.
- Environmental Goods Agreement (EGA): initiatives aimed at improving overall market access are welcomed. However, they should avoid a negative impact on trade by unfairly discriminating between products and sectors-
- Trade in Services Agreement (TiSA): services are fundamental for trade and the global economy and need to be further liberalised. We support the TiSA negotiations as a means to advance liberalisation of trade in services. However, this agreement must retain a WTO scope.
- Chemicals Tariff Harmonisation Agreement (CTSH): The successive extensions of the existing CTSH to new members of the WTO² have delivered tangible benefits for the industry. A possible way forward is to pursue further tariff liberalisation and/or broadening the signatory base.
- Pharmaceutical Agreement (PA): There is a pressing need to expeditiously start the 5th update of the pharmaceutical zero-for-zero agreement of the GATT Uruguay round and preferably, in combination with broadening the signatory base. This agreement included a provision to be updated at least every three years, in order to include additional products for tariff elimination. However, since 1994, only four such updates have been made.

4- Cooperation with other organisations

The WTO is moving into the right direction when it seeks to strengthen its cooperation with other international organisations. As such, and similar to its work with the World Customs Organisation (WCO), we support the establishment of better cooperation between the WTO and the United Nations Food and Agriculture Organisation (FAO) that was announced in 2015. We also support other cooperation initiatives between the WTO and the OECD, ILO, UNCTAD and the G20.

² During the Uruguay round, it was decided to cap the import duties of chemicals at max. 6.5%.