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Is the Doha Round Over? The WTO's Negotiating Agenda for 2016 and Beyond

by Simon Lester

The World Trade Organization's (WTO) most recent Ministerial Conference took place last December in Nairobi, Kenya. Opinions vary on how much was achieved, and, perhaps more importantly, where the WTO goes from here. The United States and the European Union have emphasized that "new" issues and approaches should guide WTO negotiations in the future. But it is not clear what that means, and how it relates to the "old" issues and approaches. And with the rise of mega-regional trade negotiations, such as the Trans Pacific Partnership (TPP) and the Transatlantic Trade and Investment Partnership (TTIP), there are serious questions about the WTO's role as a negotiating forum for trade liberalization.

This paper reviews the current WTO negotiating agenda and the Nairobi outcomes, discusses possibilities for new directions, and makes suggestions for the WTO going forward.

The Nairobi Results

The Doha Round of WTO negotiations—formally, the Doha Development Agenda—was launched in November 2001. The work program covered about 20 areas of trade, including agriculture, services trade, market access for nonagricultural products, and certain intellectual property issues.¹

Despite initial optimism, the negotiations stalled early in the process as tension and disagreements between major trading countries in the developed and developing world impeded progress. In the ensuing years, while the negotiations at times showed signs of life, for the most part expectations remained low.

To some extent, the Nairobi Ministerial outcome feels like a culmination of the Doha Round, as some governments have now expressed the view that it is time to move

on (although other governments disagree).² If Doha is really over, was it a success? What exactly was achieved in Nairobi, and in the Doha Round overall, and where do we go from here?

A number of topics were discussed in Nairobi, not all of which were directly related to the original Doha agenda. As briefly described below, some of the more noteworthy outcomes were on agriculture trade, trade facilitation, and information technology products.

The most contentious topic in the Doha Round has been agriculture trade, where developed-country protections have long caused trade conflict, but now developing country market interventions have made the situation even worse. There are a variety of subissues here: export subsidies (including export credits), domestic support, stockpiling for food security, safeguard mechanisms, state trading entities, and cotton subsidies.

One area of success on agriculture trade in Nairobi was export subsidies.³ There is now a formal decision on phasing out these subsidies.⁴ However, its various carve-outs mean that its effectiveness might be somewhat less than suggested, and its full impact remains to be seen.⁵ And, while this result should be celebrated, it needs to be recognized that the line between export and domestic subsidies is not as clear as one might think. Subsidies can be structured and packaged in various ways, so that an export subsidy can be replaced by the same subsidy provided as a domestic subsidy (for example, by removing the export contingency). Depending on the new form it takes, the change in a particular subsidy's impact on trade might not be all that great.

Importantly, and unfortunately, the Nairobi package does not rein in domestic agriculture subsidies generally. These subsidies remain high and are proliferating. This is not just a rich-world problem anymore; middle-income developing countries are now big providers as well.⁶ In this regard, India has made a big push to legitimize some of its

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subsidies under the guise of “food security.” In Nairobi, this issue was not resolved, and will remain on the agenda.⁷

A smaller issue related to agriculture subsidies in Nairobi was food aid. The United States provides this aid in such a way that producers in other nations have raised concerns about unfair competition. Here, the legal texts leave many questions open, although they appear to tighten the disciplines in certain ways.⁸

Beyond agriculture, the results from Nairobi were somewhat mixed. Some progress was made on trade facilitation, another element of the original Doha agenda. In Nairobi, additional countries ratified the new Trade Facilitation Agreement, although not enough yet for it to take effect. Two months before the Nairobi ministerial declaration, the WTO marked its 50th member to sign onto the treaty.⁹ The figure rose to 63 by the time of the Nairobi Ministerial Conference.¹⁰ (Ratification by two-thirds of the membership is necessary in order for the pact to take effect; there are 162 members as of this writing.¹¹)

Finally, another positive outcome from Nairobi was that the WTO announced during the conference that new trade liberalization had been achieved through a second Information Technology Agreement (ITA-II), an agreement among 53 WTO members to lower duties, on a most-favored-nation basis, on a wide range of technology products.¹² This initiative was not technically part of Doha, but it shows that WTO negotiations can still promote trade liberalization.

Beyond Doha

The biggest disagreement among WTO members, however, goes beyond specific substantive issues: it is about the future of the Doha agenda and the WTO’s negotiating function itself. Should the WTO continue working on the Doha agenda, trying to complete the outstanding items? Or should it move on to other issues, and, if so, which ones?

The ministerial declaration references both positions without resolving the issue. In this regard, the declaration states:

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. We acknowledge the strong legal structure of this Organization.¹³

With regard to the opponents of continuing with Doha, in their statements on the Nairobi ministerial, both the United States and the European Union have emphasized the end of Doha and moving on to new issues and approaches. The U.S. Trade Representative Michael Froman has talked about “a new phase in the WTO’s evolution,” “a new era for the WTO,” and how WTO members will now “be freed

to consider new approaches to pressing unresolved issues and begin evaluating new issues for the organization to consider.”¹⁴ For its part, the European Commission noted that “Ministers also mapped out the future direction for WTO trade negotiations and started a debate on new issues that the WTO should address.”¹⁵

However, neither makes clear how exactly these new issues fit with the old Doha agenda. Ambassador Froman explained things this way in a *Financial Times* op-ed:

That route forward is a new form of pragmatic multilateralism. Moving beyond Doha does not mean leaving its unfinished business behind. Rather, it means bringing new approaches to the table. Doha issues are too important to leave to the Doha architecture that has failed for so long.

Freeing ourselves from the strictures of Doha would also allow us to explore emerging trade issues. Many developing countries have encouraged new discussions on issues like ecommerce and the needs of small businesses.¹⁶

But it is unclear what Froman is proposing here. Does the Doha Round need to be formally ended, or just renamed? What should the content of future WTO trade negotiations cover? Along the same lines, the European Commission’s lead trade officials said, “The WTO should keep working on outstanding Doha Development Agenda issues but with new approaches.”¹⁷ Again, specifics are lacking on how the new and the old relate. The ministerial declaration states that “there remains a strong commitment of all Members to advance negotiations on the remaining Doha issues.”¹⁸ But where and how these issues will be addressed has not been specified.

The EU has noted that the new issues could include investment, digital trade, e-commerce, regulatory issues affecting goods and services behind the border, and better discipline for subsidies and local content obligations.¹⁹ It may be that the United States and the European Union simply want to take their bilateral/regional trade agenda and apply it at the WTO. But they may face resistance. In this regard, many developing countries are pushing back on the idea of new issues and arguing instead for completing the Doha agenda. In reaction to the conclusion of the Nairobi Ministerial Conference, China said, “The WTO members should develop authorization according to Doha, and steadily promote Doha to gain active achievements.”²⁰ And India stated: “The Ministerial Declaration circulated today . . . reflects the division amongst the WTO Membership on the issue of the reaffirmation of the Doha mandate. India, along with other developing countries, especially most members of the G-33, LDCs, the Africa Group, and the ACP, wanted a reaffirmation of the mandate of the Doha Round.”²¹

How to Negotiate Successfully at the WTO

With major trading countries holding positions that appear to be far apart, it may not be possible to negotiate anything at the WTO these days. And perhaps that is fine. The WTO has achieved so much already, and relying on it

as the arbiter of existing rules may be enough. Currently, it serves as the main constraint on the use and abuse of antidumping duties, as well as protectionist domestic regulations. Having the WTO as the global oversight body for rules against protectionism is extremely valuable.

On the other hand, there may be ways to make additional progress on trade liberalization at the WTO, and it would be a shame to miss the opportunity. The spread of agriculture subsidies is actually an opportunity for liberalization: because more countries are now doing this, a proposal to stop would have a more balanced impact.

If trade negotiators want to think big, they could push for some kind of “grand bargain,” where governments who are big providers of agriculture subsidies make real cuts in exchange for disciplines on, for example, state-owned enterprises and e-commerce.

Alternatively, they could think small and push for more sectoral deals like the ITA-II. This deal reflects the traditional form of trade liberalization: lowering tariffs on a multilateral basis. As much as people tout new issues in trade negotiations, there are few initiatives more beneficial than removing tariffs. Currently, a similar deal on tariff reductions for environmental goods is being negotiated.²² More sectoral tariff liberalization of this sort might be a good area to pursue.

Along the same lines, the trade in services talks going on in Geneva could be brought formally into the WTO framework.²³ This liberalization mirrors, in terms of its focus on liberalization, the tariff reductions on information technology and environmental goods.

But more generally, putting aside the question of the best strategic approach, there is a fundamental question for governments: Are you willing to address your own protectionism? If the answer is no, the whole process may be doomed from the outset and is not worth the time and effort. It may be possible to reach a trade deal, but the liberalization in it is unlikely to be significant. In this regard, bilateral and regional trade deals have proliferated, but their tariff reductions and services liberalization are preferential (i.e., discriminatory) and they do not address some of the most pressing issues, such as trade remedies and agriculture subsidies. While such deals may have political value, their economic benefits are limited.

It is often said the WTO is a member-driven organization. It is up to the governments, then, where they want to drive it. Recently, it seems as though governments have chosen to get out of the car for a pit stop (to put the classic “bicycle theory” in a new vehicle). But the reality is, the WTO cannot liberalize trade unless governments want to do so.

Unfortunately, every government seems to have a reason why its own agriculture subsidies or other sacrosanct protectionism should be excluded from disciplines. The focus is always on addressing the kinds of protectionism that others engage in. With that attitude, though, real trade liberalization becomes almost impossible to achieve.

Losing the WTO as an effective forum for trade liberalization would be a setback for free trade. Despite its existing successes, there is much more the WTO could achieve,

as trade liberalization is most beneficial when carried out multilaterally. It is therefore in the interests of all governments to make the WTO work by committing to trade liberalization in relation to their own protectionism.

Notes

1. World Trade Organization, “The Doha Round,” https://www.wto.org/english/tratop_e/dda_e/dda_e.htm.
2. Michael Froman, “We Are at the End of the Line on the Doha Round of Trade Talks,” *Financial Times*, December 13, 2015, <http://www.ft.com/cms/s/0/4ccf5356-9eaa-11e5-8ce1-f6219b685d74.html>. (“One way or the other, this week’s WTO ministerial conference in Nairobi will mark the end of an era.”)
3. “World Trade Organization Strikes ‘Historic’ Farming Subsidy Deal,” *BBC News*, December 20, 2015, <http://www.bbc.com/news/business-35145377>.
4. World Trade Organization, “Export Competition: Ministerial Decision of 19 December 2015,” WT/MIN(15)/45, WT/L/980, December 21, 2015.
5. “WTO Deal on Export Competition Sets New Rules without Enforcement Mechanism,” *Inside U.S. Trade*, December 19, 2015, <http://insidetrade.com/daily-news/wto-deal-export-competition-sets-new-rules-without-enforcement-mechanism>.
6. For example, Brazil has been accused of subsidizing its sugar industry. See House Committee on Agriculture, *Full Committee Hearing: Foreign Subsidies: Jeopardizing Free Trade and Harming American Farmers: Global Sugar Subsidies on the Rise*, 114th Cong., 2nd sess. (2015), http://agriculture.house.gov/uploadedfiles/10.21.15_roney_testimony.pdf. (“The value of this indirect subsidy of the Brazilian cane sugar industry, by way of the subsidy of the cane ethanol industry, along with related government benefits, has been placed at \$2.5–3.0 billion per year.”)
7. “India Claims Victory In Nairobi By Preserving Its Key Priorities From Doha,” *Inside U.S. Trade*, December 22, 2015, <http://insidetrade.com/daily-news/india-claims-victory-nairobi-preserving-its-key-priorities-doha>; World Trade Organization, “Public Stockholding for Food Security Purposes: Ministerial Decision of 19 December 2015,” WT/MIN(15)/44, WT/L/979, December 21, 2015.
8. “WTO Deal on Export Competition Sets New Rules without Enforcement Tool,” *Inside U.S. Trade*, December 23, 2015, <http://insidetrade.com/inside-us-trade/wto-deal-export-competition-sets-new-rules-without-enforcement-tool> (“The disciplines on food aid are slightly stronger than those included in the draft text circulated on Dec. 17, but stop far short of demands by the European Union, Brazil and others to impose a numerical cap on the amount of so-called monetization of food aid by the United States.”); World Trade Organization, “Export Competition: Ministerial Decision of 19 December 2015,” WT/MIN(15)/45, WT/L/980, December 21, 2015, paras. 22–32.
9. World Trade Organization, “50th Ratification of Trade Facilitation Agreement Received,” October 19, 2015, https://www.wto.org/english/news_e/news15_e/fac_19oct15_e.htm.
10. World Trade Organization, “WTO Receives Six Additional Ratifications for Trade Facilitation Agreement,” December 17, 2015, https://www.wto.org/english/news_e/news15_e/fac_17dec15_e.htm.

11. Ibid.
12. World Trade Organization, "WTO Members Conclude Landmark \$1.3 Trillion IT Trade Deal," December 16, 2015, https://www.wto.org/english/news_e/news15_e/ita_16dec15_e.htm. ("As a result of these negotiations, approximately 65% of tariff lines will be fully eliminated by 1 July 2016. Most of the remaining tariff lines will be completely phased out in four stages over three years. This means that by 2019 almost all imports of the relevant products will be duty free."); "Countries Reach ITA Expansion Deal after Compromise on 'Critical Mass'," Inside U.S. Trade, December 17, 2015, <http://insidetrade.com/inside-us-trade/countries-reach-ita-expansion-deal-after-compromise-critical-mass>.
13. World Trade Organization, "Nairobi Ministerial Declaration," adopted on December 19, 2015, WT/MIN(15)/DEC, December 21, 2015, para. 30. See also, "U.S., Other WTO Members Dispute Meaning Of Ministerial Declaration Language on Doha," Inside U.S. Trade, December 19, 2015, <http://insidetrade.com/daily-news/us-other-wto-members-dispute-meaning-ministerial-declaration-language-doha>; "Statement by Ambassador Michael Froman at the Conclusion of the 10th World Trade Organization Ministerial Conference," December 2015, <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2015/december/statement-ambassador-michael>.
14. "Statement by Ambassador Michael Froman at the Conclusion of the 10th World Trade Organization Ministerial Conference," December 2015, <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2015/december/statement-ambassador-michael>. See also, "U.S., Other WTO Members Dispute Meaning of Doha Language in Declaration," Inside U.S. Trade, December 23, 2015, <http://insidetrade.com/inside-us-trade/us-other-wto-members-dispute-meaning-doha-language-declaration>.
15. European Commission, "WTO Delivers Ground-breaking Deal for Development," December 19, 2015, http://europa.eu/rapid/press-release_IP-15-6379_fr.htm.
16. Froman, "We Are at the End of the Line on the Doha Round of Trade Talks."
17. "Joint Statement by Commissioners Malmström and Hogan Ahead of the 10th WTO Ministerial Conference in Nairobi," December 14, 2015, http://europa.eu/rapid/press-release_STATEMENT-15-6302_en.htm.
18. World Trade Organization, "Nairobi Ministerial Declaration," para. 31.
19. "Joint Statement by Commissioners Malmström and Hogan."
20. "MOFCOM Spokesman Comments on the Conclusion of the 10th WTO Ministerial Conference," December 22, 2015, <http://english.mofcom.gov.cn/article/newsrelease/policyreleasing/201512/20151201222786.shtml>.
21. Government of India, "India Opposes Non Reaffirmation of DDA," press release, December 19, 2015, Ministry of Commerce and Industry, http://commerce.nic.in/MOC/press_release.asp?id=3192.
22. See generally, Office of the U.S. Trade Representative, "Environmental Goods Agreement," <https://ustr.gov/trade-agreements/other-initiatives/environmental-goods-agreement>.
23. See generally, European Commission, "Trade in Services Agreement," <http://ec.europa.eu/trade/policy/in-focus/tisa/>.