

## Engagement of the Asian and African Nations in the WTO: An Assessment of the Buenos Aires Ministerial Meeting

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### Abstract

*The last WTO Ministerial Conference at Buenos Aires, Argentina, convened from 10 to 13 December 2017, and its aftermath has raised interesting questions regarding legitimacy, efficacy and necessity of the rule-based multilateral trading regime institutionalized in the WTO. An analysis of Afro-Asian countries' stakes in the WTO furnishes convincing arguments in favour of retaining the systemic infrastructure. This article contends that orchestrating the emerging network of bilateral and or regional arrangements in the regions within the purview of the WTO shall improve the effectiveness of engagement of these countries in the organization. Also, the unambiguous affirmation of a reconfigured Doha Development Agenda is important in order to address the yet unresolved and nascent issues. Finally, the cynical approach towards the trend of resorting to plurilateralism in WTO negotiations whenever multilateral consensus appears to fail ought to be replaced by strategies to utilize the inherent flexibility of the idea of plurilateralism to initiate crystallization of consensus on issues of concern.*

**Keywords:** WTO Eleventh Ministerial Conference, multilateralism, single undertaking, plurilateralism, Doha Development Agenda

### Introduction

The game of interests and politics of power in the realm of international trade have inspired the international community to perceive closely the nature of multilateral, plurilateral or bilateral arrangements in trade. The multilateral institutionalized trading arrangement, embodied in the World Trade Organization (WTO), has both been lauded and criticized on several parameters of substantive and procedural pertinence as well as governance. It has been argued that the WTO is a part of the growing

network of international institutions that increasingly constitutes a nascent global state, described as having an imperial character (Chimni 2004). In light of the last Ministerial Conference of the WTO at Buenos Aires (MC11), on the eve of the upcoming Ministerial Conference scheduled in June 2020 in Kazakhstan, it is timely to take a stock of what the MC11 delivered, or promised to deliver, from the perspective of the Asian and African nations, and to evaluate the quantum and effectiveness of the engagement of these nations therein.

In principle, the multilateral trading system in itself constitutes a Global Public Good (GPG) (Kaul 2012: 41; Kindleberger 1986). However, to become “a GPG in substance rather than merely in form”, the multilateral trade regime “requires adjustments to correct a distributional imbalance favouring developed countries at the expense of developing countries”(Mendoza 2003: 455- 483; Chimni 2006a; Chimni 2006b; Chimni 2013). For the purposes of the present appraisal, it is pertinent to underline that issues like food security do constitute GPGs, and necessarily call for a shift from authoritarian mercantilism marked by inadequate reciprocal concessions to an efficient and legitimate, multilevel governance of interdependent trading and development (Smith 1776: 625; Petersmann 2011: 47). The Uruguay Round of negotiations engendered WTO on the basis of these aspirations. Today the need for the aforementioned “adjustments to correct a distributional imbalance” is indispensable as ever, but an attitudinal shift away from preferring multilateral forum for regulating international trade is becoming conspicuous. Whether the plethora of bilateral and regional arrangements present a prudent alternative for the Afro-Asian region remains to be seen in the scheme of this article.

### **The WTO: A Background Note**

As a backdrop, it is pertinent to peruse the factors and events which adduced impetus to the formation of the multilateral trading regime, to construct in brief the narrative of the very complex past of the WTO. The Bretton Woods institutions, *viz.*, the International Monetary Fund (IMF) and what is now known as the World Bank arose in 1947 out of the ashes of the Second World War, as an aftermath to the Great Depression of 1929-30, as the International Trade Organization (ITO) was intended to. However, the ITO was the first casualty of the post-war political

environment, with the US Congress refusing to approve the Havana Charter to this institution. Therefore, the General Agreement on Tariffs and Trade (GATT), which was entered into to serve as an interim/provisional arrangement before the new trade institution came into being, a fall-back option, became the centre-piece of the trading system.

The interim period turned out not to be a few months but was instead close to half a century. This stripped-down version of the ITO grew along three dimensions over the ensuing decades, with the number of GATT contracting parties multiplying, their tariff commitments deepening and the range of issues gradually widening from border measures to behind-the-border laws (VanGrasstek 2013: 10). While GATT certainly ushered in a new era of international cooperation, it nonetheless had to weather the aborted effort to create ITO, pressures of numerous other national and regional conflicts, and the entire Cold War, before eventually morphing into the WTO (VanGrasstek 2013: viii).

GATT hosted eight rounds of multilateral trade negotiations from its establishment in 1947 until subsumed by the WTO in 1995 as shown in table 1:

**Table 1: GATT Trade Rounds**

Year	Place (Name)	Subjects covered	Countries
1947	Geneva	Tariffs	23
1949	Annecy	Tariffs	13
1951	Torquay	Tariffs	38
1956	Geneva	Tariffs	26
1960-1961	Geneva Dillon Round	Tariffs	26
1964-1967	Geneva Kennedy Round	Tariffs and anti-dumping measures	62
1973-1979	Geneva Tokyo Round	Tariffs, non-tariff measures, framework agreements	102
1986-1994	Geneva Uruguay Round	Tariffs, non-tariff measures, rules, services, intellectual property, dispute settlement, textiles, agriculture, creation of WTO	123

GATT gradually evolved from an exclusive club to an essential attribute of global citizenship. Nearly all of the countries that were not yet contracting parties to GATT by the end of the Uruguay Round (1986-1994) were either in the process of accession or were seriously exploring that possibility. The ITO sought to pursue rather modest goals, with neither the ITO nor GATT

saying a word about free trade, and the negotiators working numerous protections for those sovereign states into the terms of these agreements, albeit not enough to satisfy their critics (Diebold 1994: 336). *Au contraire*, the philosophy of WTO hinges on the doctrine of free trade which envisages a policy by which a government does not discriminate against imports or interfere with exports by applying tariffs (to imports) or subsidies (to exports) (Sen 2010) and reflected the underpinning aspiration for a liberal economic system that had to be operated by sovereign states on the basis of a “single-undertaking” principle (Sen 2010). Under this principle, virtually every item of the negotiation is part of a whole and indivisible package and cannot be agreed separately, i.e. “nothing is agreed until everything is agreed” (WTO. How the Negotiations are Organized). After the Uruguay Round, however, there remained four agreements, originally negotiated in the Tokyo Round, which had a narrower group of signatories and are known as “plurilateral agreements” (Low 2011: 7). In recent times, especially in the MC11 as discussed hereinafter, the plurilateral approach seems to have gained much currency.

The principles which are projected to constitute the foundation of the WTO regime are those of, *inter alia*, trade without discrimination enshrined in the most favoured nation clauses and national treatment principles; free trade, gradually through negotiation; predictability through bindingness and transparency; promotion of fair competition; and encouragement of development and economic reform (WTO. Understanding the WTO: Basics: Principles of the Trading System). The institution of WTO was engendered to enable effective trade liberalization amongst members within a rule-based system; to enhance fuller participation of members from both global north and south; and to ensure that the development agenda of members is achieved through a fair trading system.

It should, however, be noted that WTO has quite often, from a critical perspective, been projected as an imperialistic institution designed to exploit the less developed parts of the world. Imperialism has been defined as “the spread and expansion of industrial and commercial capitalism” (Gathii 2007: 1013-1014). Whilst defining the idea of imperialism, Edward Said (1994: 9) quoted Michael Doyle on the connotation of empire and imperialism: “Empire is a relationship, formal or

informal, in which one state controls the effective political sovereignty of another political society. It can be achieved by force, by political collaboration, by economic; social, or cultural dependence. Imperialism is simply the process or policy of establishing or maintaining an empire” (Doyle 1986: 45).

The analogy has not been lost on the proponents of the idea that international institutions, international financial institutions in particular, control the effective economic sovereignty of the Member States, and therefore, could be deemed to constitute a supra-state entity exhibiting imperial traits. The global imperial state exists through its effects and its ordering dynamics, and seemingly, the functions entrusted to that state are those of a suppressive policing instrument, not the upholder of the values of international justice, peace, and due process (Rasulov 2018: 16-17).

In this globalizing era, a new form of sovereignty, a sovereignty which they call Empire, which is all-encompassing, pervades the arena of global governance (Hardt and Negri 2000: xi, xii, xiv; Anghie 2004: 245-246). Interestingly, globalization has also been viewed as yet another stage of imperialism which has in common with its predecessors the goals of achieving, among others, the control of the expansion of markets (Amin 2001: 9). The WTO allegedly delimits the autonomy of sovereign states, and such loss of autonomy has serious consequences for third world states and peoples (Chimni 2004:2, 7). With the sovereign economic decision making authority relocated from states to international economic institutions like the WTO that possess effective enforcement powers, sovereign economic space is being seceded. Such attenuation of policy space is facilitated by the imposition of uniform global standards often goaded by the factor of *structural coercion*, irrespective of the countries’ stages of development, in crucial areas such as agriculture, intellectual property rights and regulation of foreign investment and services. The greatest influence in the international institution, and thereby on the nascent global state, is exercised by a transnational capitalist class (Chimni 2004: 4), as evidenced in the staff of the WTO, who play a significant role in reproducing the transnational capitalist class culture.

It has further been argued that the wheels of global capitalism are oiled by its “relentlessly creative use of alternative norm-generation and standard dissemination apparatuses” (Rasulov 2018: 15) and rules of “different levels of binding power” (Trachtman 1996: 43). Instead of placing sole reliance on traditional public international law mechanisms and processes, a method adopted half-a-century earlier, the project of global imperial governance today involve the use of increasingly ad-hocish, hybrid, and ‘soft’ governance structures, which include, *inter alia*, WTO judicial decisions (Howse 2016).

In all fairness, the covered agreements of the WTO do, at times, take note of the concerns of the developing states. However, the general tendency has not been to grant developing countries broad exceptions to compliance with the rules enshrined in the legal text (Trebilcock and Howse 1995: 324).

The negotiations leading to the adoption of the treaty regime, as well as the decision-making afterwards, allegedly suffer from an absence of deliberative democracy (Chimni 2004: 19). The continual sidelining of third world countries<sup>2</sup> has stirred several protests, but effectively to no avail. This observation might inspire the inference, elucidated later, that the idea of plurilateralism amongst similarly interested states might be utilized to crystallize consensus on areas of concern.

The lack of accountability of the organization to the peoples who are affected by its policies and decisions further hint towards the imperial character argued about (Chimni 2004: 21). Third world democracy has been undermined owing to the aforementioned relocation of sovereign powers from states to international institutions, leading to the substantial elimination of “the possibility of effecting a choice between political parties/ actors with different economic and social programmes” (Chimni 2004: 22).

Since the aspiration of this article is to focus on the MC11 as the latest Ministerial Conference, it would be appropriate to clarify the idea of a WTO Ministerial Conference. The Ministerial Conference, which is attended by trade ministers and other senior officials from the organization’s 164 members, is the highest decision-making body of the

WTO. Under the Marrakesh Agreement Establishing the WTO, the Ministerial Conference is to meet at least once every two years.

### **A Prologue to the Ministerial: Key Milestones**

In order to comprehend what happened at Buenos Aires, it deems fit to furnish, as a backdrop, certain highlights under which the WTO negotiating apparatus has been functioning. The Doha Development Agenda (DDA) launched in 2001, immediately after the 9/11 terrorist attacks, ought to continue to be the foundation for the functioning of the various Doha negotiating bodies for agriculture, development (improvements in special and differential flexibilities), market access for industrial goods, services, rules (including fisheries subsidies) and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) (Mehta and Chatterjee 2017). In principle, the Doha Round is the latest round of trade negotiations among the WTO membership aimed at achieving major reform of the international trading system through the introduction of lower trade barriers and revised trade rules (The Doha Round).

The Doha work programme is premised on the single undertaking and covers about 20 areas of trade. This understanding spurred the negotiations for quite some time, albeit the differences. The Doha round of negotiations, the agenda of which clearly prioritized the interest of the developing countries, has been in turbulent waters since the collapse of the Cancun Ministerial in 2003, partly due to irreconcilable differences on the controversial 'Singapore issues' (trade and investment, competition policy, government procurement, and trade facilitation) and agriculture. As opposed to the blunt perspective that the failure of the Ministerial was the result of developing country intransigence (Chetaille and Tavernier 2003), the collapse is attributable to the prioritization at the Cancun Ministerial of the Singapore issues raising legitimate welfare and resource concerns for the developing nations within the Group of 20 (G20) countries, as those represented a further extension of the WTO agenda into behind-the-border regulatory measures (Kurtz 2004).

After a delicate trade-off, offering the developing and poorest countries explicit assurances that their developmental concerns in agriculture, industrial goods, and special and differential flexibilities, among others, would be addressed for their acceptance to negotiate on trade facilitation,

the core demand of the United States of America since the first WTO Ministerial in Singapore in 1996, the negotiations were revived and a framework agreement settled upon in July 2004. The Hong Kong Ministerial Declaration in 2005 further clarified the provisions in services, industrial goods, special and differential treatment and agriculture, particularly cotton, an issue of paramount importance for the West African countries of Benin, Burkina Faso, Mali and Chad, also known as the “Cotton Four”.

The impetus accorded to the work on agriculture culminated in the December 2008 draft negotiating modalities which allowed considerable flexibilities for developing countries while demanding exacting cuts in trade distorting domestic subsidies. Not unexpectedly, these modalities were blocked by the United States of America because of opposition from its powerful agricultural lobby, the American Farm Bureau Federation.

A paradigm shift in the negotiating stratagem was perceived in the eighth ministerial conference in Geneva in 2009 when the single undertaking devise was practically set aside by the United States of America and its allies and a caveat in paragraph 47 of the Doha work programme was resorted to in order to cater to the issues important to them in the work programme. The provision states: “...agreements reached at an early stage may be implemented on a provisional or a definitive basis. Early agreements shall be taken into account in assessing the overall balance of the negotiations” (WTO 2001b). This caveat was utilized to finalise the controversial Trade Facilitation Agreement (TFA) amidst prominent scepticism regarding the possibility of harvesting the same (Raja 2017).

It is pertinent to note that a reluctance is perceived vis-à-vis putting the Doha tag on negotiating bodies or even the TFA since the Bali Ministerial Conference of December 2013 (Kanth 2017: 13), with the latter often being seen as the first multilateral agreement since 1995 even though it is in fact part of the Doha work programme (Kanth 2017: 13). The asymmetry between the developing country needs and developed country interests was glaring in Bali: while the issues of agriculture were inadequately resolved with a temporary relief in the form of an interim peace clause for public stockholding programmes for food security purposes, the issue of trade facilitation became the subject of a rigorous new treaty (TWN:



Editor's Note 2014). Despite having agreed in the Hong Kong Ministerial Conference in 2005 to abolish agricultural export subsidies by 2013, the failure of the western countries to end these subsidies was glossed over with a mere expression of regret in Bali (WTO 2013b: 56).

In the Tenth Ministerial Conference at Nairobi in December 2015, the Ministerial Decision on Export Competition included a commitment to eliminate export subsidies, now that the powerful developed countries' members had ended such subsidization. However, there still was no concrete agreement on a special safeguards mechanism (SSM) to protect farmers in the developing countries against sudden import surges, and no short deadline for a permanent solution on public stockholding for food security purposes. Howsoever, mandates to resolve these issues in the next Ministerial were issued. In fact, the Ministerial Decision on Public Stockholding for Food Security Purposes merely reaffirmed the agreement reached at the 9<sup>th</sup> Ministerial Conference at Bali to find a permanent solution to this contentious issue.

Interestingly, the lack of an unambiguous reaffirmation of the DDA (Stewart 2015) stirred the idea that "new issues of interest to developed countries, including competition policy, government procurement and investment are now open for negotiations" (Editorial. 2015: The Hindu). The Doha Round of negotiations having been at an impasse since long (Ismail 2012), opinions had been advanced that attempts to save the Doha Round should be discarded (Schwab 2011) but no government had been willing to publicly announce the abandonment of the Round (Baldwin and Evenett 2011). Unwittingly, and somewhat disastrously, countries allowed this "grave transformation" to take place in Nairobi during the closed door green room meeting between five countries of the United States of America, the European Union, China, India, and Brazil (Kanth 2016b).

The developing states, particularly those of the Asian and African region, should have been prepared to opt for a trade-off that involved securing a permanent solution to public stockholding programs for food security and special safeguard mechanisms, and reaffirmation to continue the DDA negotiations beyond Nairobi. In return, they would commit to a "substantive agreement on export competition entailing a phase-out of export subsidies and reducing export credits" (Vasudeva 2015). However,

the opportunity was missed, and it was predicted “the future for the developing countries at the WTO remains utterly bleak as they failed to assert their priorities when push came to shove in Nairobi” (Kanth 2016a). The prediction has received a kind of validation, and much more, in MC11. From Nairobi to the MC11, certain developments further struck blows to the multilateral trading arrangement. In the absence of substantive rule-making since the WTO came into being, a condition often termed “soft paralysis” of the system (Patnaik 2017), the dispute settlement body of the WTO has had a crucial role to play (Reich 2017). The institutional imbalance between the political and judicial branches of the WTO has always entailed certain risks for the WTO (Croley and Jackson 1996). The US has recently chosen to inflict a blow to the mechanism by blocking the reappointment of a sitting Appellate Body member on spurious grounds (Patnaik 2017).

The zeal of the US Trump administration to strive to wreck the multilateral system to its advantage was discernible. Firstly, in the country’s withdrawal from the Trans-Pacific Partnership Agreement, an initiative which it had practically spearheaded, in January, 2017 (Office of the USTR 2017; Miyazaki and Westbrook 2016), and secondly, in November, 2017 at the Asia-Pacific Economic Cooperation Forum in Vietnam, where President Trump pitched for an “America First” Trade Policy and hinged on “mutually beneficial commerce” via bilateral trade agreements citing huge trade deficits (Davis and Landler 2017).

### **Multilevel Failures: Collapse of the Ministerial**

It has generally been opined that for the purposes of MC11 there were three circles of issues, namely, the established issues, the outer circle of new areas and issues with questionable mandate like investment facilitation and micro, small, and medium enterprises (MSMEs) (Suneja 2018). The multilaterally mandated issues faced a negotiation impasse. These issues have been enumerated by Kanth to include the following:

- ...(i) the permanent solution for public stockholding programmes for food security;
- (ii) the work programme on SSM for developing countries to curb unforeseen surges in imports of agricultural products;
- (iii) the work programme on 10 agreement-specific proposals for improvements in special and differential flexibilities;

(iv) the long-standing cotton issue since the 2005 Hong Kong Ministerial Conference; and (v) a ministerial declaration which is the hallmark of a successful ministerial conference (Kanth 2017: 13).

The MC11 was a critical convening expected to address these pending issues deemed to be the fulcrum for fostering the development agenda of the concerned members. Perhaps the greatest proof of the collapse of MC11 perhaps lies in the fact that no ministerial declaration was arrived at in MC11. The Conference ended with a number of ministerial decisions, and a commitment to continue negotiations in all areas (WTO 2017). At the same time, new initiatives to advance talks at the WTO on the issues of electronic commerce, investment facilitation and MSMEs were also launched, whilst old issues pertaining to food security, cotton subsidies and fisheries subsidies did not see resolution (WTO Ministerial Conference: New initiatives on electronic commerce, investment facilitation and MSMEs).

#### **Public Stockholding for Food Security**

The pre Uruguay Round era saw the developed countries utilizing a plethora of mechanisms, primarily protectionist, to promote agricultural production, with their agricultural policies being characterized as attempts to preserve traditional agrarian lifestyle (Stewart 1993: 131). On the other hand, the developing countries then lacked the financial resources to subsidize agriculture, and taxed the agricultural sector in order to earn badly needed revenue for industrialization and maintaining affordable food prices for the urban dwellers (Bilal 2000: 83). In addition to that, the adoption of Structural Adjustment Programmes (SAPs) mandated the liberalization of markets in developing nations to the detriment of the right to food (FAO 2000). When the agricultural markets were opened to foreign competition and the food subsidies for urban dwellers were simultaneously reduced or eliminated, violent food riots occurred in the 1980s, known as 'IMF riots', in several developing countries, including Venezuela, the Dominican Republic, Morocco, Madagascar, and Zambia (Gathii 2000). Thereafter, with the advent of the Agreement on Agriculture (AoA), during the negotiation of which the developing countries barely had any say, agricultural trade has been further liberalized (Schoenbaum 1993:72).

First, the AoA expanded market access by necessitating the conversion of all non-tariff barriers to tariffs via the method of tariffication and the binding and reduction of these tariffs. While the developed countries resorted to dirty tariffication, selective tariff reduction, strategic use of the AoA's Article 5 safeguard provision, most developing countries did not get the opportunity to engage in tariffication at all, as many were forced to eliminate non-tariff barriers prior to the AoA as a result of SAPs mandated by the World Bank and the IMF, and obliged to declare bound tariffs, which were then subject to reduction commitments in accordance with the terms of their specific country schedules (FAO 1999). Second, it required the reduction of both the volume of and expenditures on subsidized exports. It solicits mention here that export subsidies were altogether done away with in the Tenth Ministerial Conference at Nairobi in 2015 (Article 15.2 AoA; WTO, Ministerial Decision of 19 December 2015). Third, it required the reduction of trade distorting domestic subsidies (Articles 6 and 7, AoA).

However, the Uruguay Round concluded with the acknowledgement of imperfection of the AoA, simultaneously claiming to have built the foundations for freer trade in subsequent negotiations. Right to food was nowhere referenced in the Agreement, nor was 'food security' defined. The implications of the AoA for food security, particularly during the structural reforms to global food markets, were recognized as a non-trade concern to be reviewed in the next negotiating round (Hawkes and Plahe 2012: 24). The decision on 'Measures Concerning the Possible Negative Effects of the Reform Program on Least-Developed and Net Food-Importing Developing Countries' (the Marrakesh Decision) (WTO 1994), the primary WTO concession to the right to food, has never been enacted, perhaps due to the lack of WTO-recognized mechanism to determine the AoA's impacts on food insecurity (Häberli 2010). The responses enumerated in the Decision included giving food aid and short term financing of commercial imports, financial assistance to improve agricultural infrastructure and production, and agricultural export credits (WTO 1994).

A noteworthy provision herein is the Peace Clause in the AoA, which proscribes the application of countervailing duties or the commencement of WTO dispute settlement proceedings under certain provisions of the

1994 GATT and the Agreement on Subsidies and Countervailing Duties to the extent that domestic and export subsidies comply with the terms of the AoA (Articles 1(f) and 13). By virtue of this provision, the trade-distorting export subsidies and domestic support measures maintained by the US and the EU were rendered non-actionable until 2004, thereby divesting developing countries of any judicial recourse to address the unfair competitive advantage conferred by the AoA on developed countries. The Peace Clause, fated to expire by the end of 2003, had generated diverse opinions (WTO. Agriculture Negotiations: Background, Phase 1, Peace Clause).

Despite an increasing awareness that food security ought to be ensured to the citizens of the world (UNDP: Goal 2) and that “policy would be a matter of ensuring that enough food reaches those in need on a sustained basis” (Escobar 1995: 102), no permanent solution to the issue of public stockholding for food security purposes has yet been arrived at. The need for a permanent solution arises out of a lack of policy space for many developing and least developed countries (LDCs) under the existing rules of the AoA to implement agricultural and food security policies (Sharma and Das 2017b: 16). Any price-support backed food security policy, the tool generally resorted to by the developing countries as part of the food security strategy, involve expenditure on three components: procurement, stockholding and distribution (Sharma 2016).

Expenditure on stockholding and distribution amount to Green Box support - deemed minimally trade-distorting; while that on procurement of food grains at the administered price is classified as Amber Box support, which is a trade-distorting support under the provisions of the AoA. The Amber Box support is allowed to the extent of *de minimis* limit, capped for all the WTO members as per their Schedule of Commitments at the time of joining of the WTO. Interestingly, most developing countries were not giving trade-distorting support above the *de minimis* limit during the base period (1986-88) under the Uruguay Round, owing to which their Amber Box support was capped at zero.

Several developed countries were giving trade-distorting support higher than the *de minimis* limit under the Uruguay Round during the base period 1986-88. These members got the flexibility to give trade-distorting support

higher than the *de minimis* limit in the future as well. Additionally, some developed countries were benefitting from the peace clause in the AoA, effective till the end of 2003 (Sharma and Das 2017a). As a result, a majority of the developing countries are proscribed from providing product-specific support more than the *de minimis* limit, that is, 10% of value of production of the agricultural product concerned during the relevant year (WTO 2002b). With rules deterring procurement at the administered price in place, policy space for the developing countries is significantly circumscribed and providing food security to the poor becomes “a daunting task” (Sharma and Das 2017b: 16), as evinced in the US-China dispute of 2016 on the domestic support policy of China (WTO 2016). It is worthy to recall that public stockpiling along with minimum support prices does have the potential to deal with the volatility of agricultural production and prices (Nanda 2017: 22; Sharma and Das 2017b: 17).

On behalf of the developing countries, even before the Doha Round, India had sought a “Food Security Box” for developing countries to address the eroding policy space related to food security (WTO 2001a). At the behest of developing countries, the Doha Ministerial Conference in 2001 mandated that special and differential treatment for developing countries as well as non-trade concerns, including food security and rural development, shall be an integral part of the negotiations (WTO 2001b). To advance the Doha Round negotiations, the G33, a coalition of developing countries, including China, India, and Indonesia, demanded the exemption from the Amber Box in 2012 the procurement of food grains for food security purposes at the administered price (WTO 2012): a demand in continuity of the proposal by the African Group in 2002 (WTO 2002a) and the fourth revised modality (WTO 2008).

When WTO members made the effort to agree on a “mini-package” at the Bali Ministerial Council in 2013, the domestic support issues under Articles 6.3 and 7.2(b) of the AoA and proposal to exempt purchases at administered prices for public stock-holding for food security purposes from the Aggregate Measurement of Support (AMS) discipline took centre-stage (Footnote 5 of Annex 2, AoA). Given the time constraints of the Bali Meeting, a compromise in the form of a ‘peace clause’ was arrived at (WTO 2013a), albeit with certain conditionalities, with the developing

countries wanting it to endure till a permanent solution was found and the US insisting on a four-year limit. Arguments had been advanced that an attempt to benefit from this “temporary relief” can be deemed to “tacitly” acknowledge that “such measures are illegal” (Ghosh 2014). Unfortunately, disappointments have been expressed over the fact that the ‘peace clause’ would shield “certain stockpile programmes from subsidy complaints in formal litigation” (Häberli 2010).

Despite high hopes and arduous attempts to mobilize the stakeholders, this issue has not been resolved, by a permanent solution, in the subsequent Ministerial Conferences at Nairobi (WTO 2015) and Buenos Aires. It has been felt with respect to the Doha Round that since 2004, whatever scant regard had been paid in the WTO to human rights concerns earlier, has been diminished with the focus now being hinged on “technical detail constraining developing countries from acting to respect, protect, and fulfill the right to food” (Hawkes and Plahe 2012: 21).

The objective behind seeking a permanent solution, as opposed to the existing Peace Clause in perpetuity, is threefold. Firstly, in order to seek recourse to the Peace Clause, developing countries have to comply with the notifications, transparency, anti-circumvention, and safeguard provisions in the Bali decision. As per the Bali decision, before taking recourse to the Peace Clause, a developing country member has to (i) provide up-to-date domestic support notifications for the preceding five years (Sharma and Das 2017b: 18), and (ii) notify in advance a breach or a potential breach. Such a notification may even amount to a tacit acknowledgement of a breach (Arun 2017). The issue of notification requirement in the Peace Clause has generated divergent views, with the developing countries mostly finding it arduous, unrealistic and impracticable. Secondly, the Peace Clause is only applicable to the support provided for traditional staple food crops in pursuance of public stockholding programmes existing as of 7 December 2013. In other words, future or new food security programmes are not covered by the Peace Clause. Thirdly, the product coverage under the Peace Clause is restricted due to the use of the terminology “traditional staple food crops”, thereby stirring a call for widening the ambit vide the use of the terminology “foodstuff”- the term used in footnotes 5 and 6 of Annex 2 of the AoA.

However, in MC11, United States Trade Representative (USTR) reneged on Washington's earlier assurances on arriving at a permanent solution for public stockholding to ensure food security (Venu and Mohammad 2017), rendering the standstill on the issue perennial so far. Nonetheless, developing countries ought to persist in their efforts for a permanent solution that is better than the perpetual Peace Clause. As a permanent solution, support through public procurement should better be shifted to green box, as opposed to its extant positioning in the amber box of subsidies. Additionally, the definition of AMS, deemed in the current form to be a "theoretical construct rather than real subsidy" (Nanda 2017: 24), ought to be reviewed.

### **Cotton**

Despite assertions regarding cotton clearly remaining a priority for MC11 not much progress was achieved in this sector (WTO 2017). This is unlike 2015 Ministerial at Nairobi, when at least a Ministerial Decision on cotton had been chalked out (WTO 2015). A short shrift was paid by the USTR to the four West African countries of Benin, Burkina Faso, Chad, and Mali, who had compromised on the extent of domestic support and market access just to get the US to agree: a conduct described as "the condescension of an oligarch even as his subjects are confronted with a matter of life and death" (Editorial EPW 2017).

### **Fisheries Subsidies**

With respect to fisheries subsidies, the glass was at least half full. MC11 ended with a commitment from members to secure a deal on fisheries subsidies, delivering on Sustainable Development Goal (SDG) 14.6 by the end of 2019 (WT/MIN(17)/64). The SDG 14.6 aims to prohibit certain forms of fisheries subsidies which contribute to overcapacity and overfishing, eliminate subsidies that contribute to illegal, unregulated, and unreported (IUU) 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 WTO fisheries subsidies negotiation (UNDP, Goal 14 Targets).

This SDG might be perceived to either complement and refurbish (UNCTAD 2017) or substitute (Azevedo 2017) the mandate pertaining to fisheries subsidies in Doha work programme. The members also committed to



improve the reporting of existing fisheries subsidy programmes (Article 25.3 of the Agreement on Subsidies and Countervailing Measures). Pursuant to the commitment, WTO members have met as the Negotiating Group on Rules on 30 January 2018, under the chairpersonship of Ambassador Wayne McCook (Jamaica) and discussed organization of work on fisheries subsidies (WTO 2018, 30 January).

It is interesting to note that while the discussions on curbing fisheries subsidies was led by an informal group of members called 'Friends of Fish', with Pakistan and New Zealand as members of the informal group, the stiff opposition to an agreement on the curb came from India and China. China was in favour of subsidy prohibitions, but only for IUU fishing and not for overfished stocks. With the other members being reluctant to grant China exemptions, thereby rendering the nature of special and differential treatment that would be meted out unclear, India apparently was hesitant in conceding to the agreement (Sen 2017). Despite all agreeing that special and differential treatment was ardently desirable and necessary for small-scale fisheries in developing countries, India could not be sure whether it would be enough to protect the country's interest. India is keen on getting flexibilities in the implementation of commitments to curb subsidies, as the subsidies it provides, in the form of support for motorization of fishing boats, fuel rebates and infrastructure support, fall under the targeted subsidies list at the WTO (Sen 2018). Other than the lack of clarity in flexibility provisions, India's opposition to the deal could be traced to potential adverse political fallout in the country's coastal states (Mishra 2017).

Countries including Malaysia, Cameroon, Oman, Paraguay and the Philippines, too, have expressed their opinions against commitments to reduce fisheries subsidies at the Ministerial. The Africa Group has expressed its willingness to go along with commitments on disciplining fisheries subsidies as long as developing and less developed countries are exempt (Sen 2017).

In the face of an impasse, a draft ministerial decision on policy dialogue that was initiated to bring new issues such as gender and trade, labour and trade, and environment into international trade was blocked.

### **Plurilateral Initiatives: Fatal Blow to Multilateralism?**

The erosion of the multilateral framework of the WTO has been coupled with a number of plurilateral initiatives. Amidst the multilevel collapse of MC11, the proponents of new initiatives resorted to plurilateralism and went on to announce their initiatives even though they were rejected at the open-ended multilateral sessions in Buenos Aires. Such initiatives carry the peril of creating “two negotiating engines at the WTO”:

...while the work on the mandated multilateral issues such as the permanent solution for public stockholding programmes will proceed at a halting speed given the opposition from the US and other countries, work on the plurilateral initiatives will be intensified to create a miasma that multilateral outcomes on developmental trade issues have no future (Kanth 2017: 15).

A closer look into the concept of plurilateral agreements reveals that there are essentially two types of such plurilateral agreements, an exclusive and an open variant. While the former apply among the signatories only, the latter are implemented on a MFN basis (Adlung and Mamdouh 2018). To preclude ‘free riding’, the entry into force of such open agreements is usually conditioned on the participation of a ‘critical mass’ of countries, representing market shares of some 80% or more- quite a challenging benchmark (Adlung and Mamdouh 2018).

Arguments have, however been advanced, that plurilateral initiatives do not necessarily strike a fatal blow to the multilateral regime. Allegedly, the multilateral trading regime institutionalized in the WTO had started out in the form of several plurilateral initiatives (Singh 2018). The potential for open plurilateral agreements among interested Members in the form of coordinated improvements of current commitments or, if not covered by the existing WTO framework, by way of “WTO-extra” understandings has been projected as an alternative worthy of exploration (Adlung and Mamdouh 2018). Pursuant to such assertions, and certain other factors elucidated below, it has been argued in part VII of this lecture that the plethora of bilateral and regional arrangements in sync with the rule-based scheme of the WTO may actually be perceived as prudent alternative for the African and Asian regions.

### **Aftermath of the Ministerial**

The collapse of the Ministerial, if anything, could be deemed to be yet another link in the chain of events which have catalyzed in the recent past. Proliferation of free trade agreements is now an acknowledged phenomenon; whether or not multilateral negotiations sustain, preferential/ regional trading arrangements are going to stay. US, under Trump administration is “not out to wreck the (multilateral) system” per se, but to “reset the rules governing it” (Editorial EPW 2017). And this endeavor to reset the rules, under the garb of populist nationalism, might spell havoc for the interests of the developing countries. Taking note of this bipolarity of interests, with “the rich world on one side, the poor and middle-income on the other” (De Sarkar 2017), Kurtz had cautioned:

...in using their increasing influence within the WTO, developing countries should be careful not to overplay their hand. The danger is not that occasional Ministerials - and by extension, negotiating deadlines - such as Cancun or Seattle pass without formal conclusion or agreement....Instead, the real danger in the perception, rather than reality, of developing country intransigence is that powerful countries will increasingly shift their trade policy emphases from the multilateral to regional and even more problematic bilateral arenas (Kurtz 2004: 293-294).

This shift has already begun, and even at the Ministerial meet the unwillingness of the developing country members to let certain new issues be introduced and deliberated upon whilst the old ones face stagnation was met with plurilateral initiatives in the stead. The WTO Mini Ministerial-the follow-up event to the MC11, attended by fifty odd states at New Delhi, was unable to produce any cogent or tangible outcome (Sengupta 2018). The demand from India and China for a permanent solution to the issue of public stockholding of foodgrain was rejected again (Sengupta 2018). Although it was heartening to note that conversation started “post-Buenos Aires chill” (Mahajan 2018), the Mini Ministerial, which was meant to salvage the failed outcome in Buenos Aires, bore no significant results except, perhaps, for the realization that the rule-based bilateral ties ought to be strengthened and talks on FTAs revived (Mahajan 2018).

The world is teetering on the brink of a trade war between China and the US (Joshi 2018), and this has generated some opinions in the international community (Walker 2018). It is heartening to note, however, that both China and US have resorted to the WTO dispute settlement mechanism to voice their differences (WTO, 9 April 2018; WTO, 5 April 2018; WTO, 26 March 2018). Whilst US has also initiated WTO complaint against India over export subsidy programmes under the Agreement on Subsidies and Countervailing Measures (WTO, 19 March 2018), India has heeded to the recommendation of experts (PTI 2018) regarding dragging the US into the WTO's dispute settlement mechanism against the latter's move to hike import duties on steel and aluminium, as the decision will impact exports and is not in compliance with the global trade norms (WTO, Dispute Settlement 2018). The world trading order is in turmoil, and reasonable apprehensions hint that much is yet to unfold.

### **An Analysis of Africa and Asia's Stakes in the Current Multilateral**

Despite most African economies being members of the multilateral trading system, the absence of effective participation of the countries in the global economy could be attributed to two interlinked factors. Firstly, capacity constraints, predominantly human as opposed to technical, due to limited resources has led to ineffective participation as well as shifting of focus to Regional Trade Agreements (RTAs) (Concept Paper, CUTS International). Such shift in focus has again been ascribed to commonality in trade interests and increased predictability in terms of positive trade negotiation outcomes (Concept Paper, CUTS International). Secondly, it has been argued that the flexibilities accorded to the developing economies of Africa have demotivated them to boost their trade competitiveness, and rendered them as ineffective participants in the regime (Stiglitz and Charlton 2005; Hart and Dymond 2003).

While African economies have resorted to RTAs or Free Trade Agreements (FTAs) out of compulsion, Asia's option for FTAs is more market driven. The motivation behind the numerous FTAs in Asia is to use the same as integration platforms to the global economy and not necessarily as a substitute to the multilateral trading platform (Concept Paper, CUTS International). Asian countries' participation in multilateral trading regime, often lauded as a successful model of development through trade, is marked by a focus on building an export driven economy and a tendency

to specialize in specific stages of production process in global value chains (Concept Paper, CUTS International). Also, the recently released White Paper on Chinese engagement with the WTO vouches for the same (The State Council Information Office of the People's Republic of China 2018).

The well-being of international trading regime in Asia and Africa is still dependent on the presence of a rule based institutionalized set up which would ensure efficacious trade liberalization and effective settlement of trade disputes, mindful of both the regions' "socio-economic development needs" (Concept Paper, CUTS International). The seemingly easier route of utilization of plurilateral and bilateral trade arrangements might lead to imposition of stringent parameters as well as fragmentation of the regime, thereby undermining free and fair trade. For instance, the European Union (EU) and the African, Caribbean and Pacific (ACP) Economic Partnership Agreement configuration has exclusive Intellectual Property and Standards Regulations that are higher than the minimum threshold permitted in the WTO (Concept Paper, CUTS International). Therefore, despite the systemic challenges faced by the WTO, it is important for African as well as Asian economies that the institution persists.

Three converging points wherein the WTO could play a role have been enumerated in this regard (Concept Paper, CUTS International):

- (a) a rules based system is required to monitor and evaluate the efficacy of RTAs to which both regions are active members, in terms of not only meeting the respective regions' socio-economic needs, but also fuller participation in the global trading system;
- (b) the dispute settlement mechanism of the WTO ought to be utilized in order to set jurisprudence on emerging issues in rule-based trade, and the system needs to exist with additional flexibilities to encourage more participation by African members;
- (c) the DDA still remains a common ground for Asia and Africa, and both the regions have been keen on successfully concluding and fully implementing the DDA which cannot be done at the plurilateral or regional level, but needs a structured and timely process which can only be enabled within the purview of the WTO.

It has been suggested that world trade governance is heading towards a two-pillar system, one pillar being the WTO, which continues to govern traditional trade as it has done since it was founded in 1995, and the other being a system where disciplines on trade in intermediate goods and services, investment and intellectual property protection, capital flows, and the movement of key personnel are multilateralised in megaregionals (Baldwin 2016: 114). However, it would be safer to suggest from an Asian-African perspective that instead of a two-pillar system, bilateral or regional arrangements could indeed be utilized as prudent alternatives, only when such arrangements are orchestrated within the purview of the rule-based system of the WTO.

### **Conclusion**

The distributional arrangement embodied in the institutionalized international trade regime, the WTO, is repeatedly being brought under scanner these days, and the regime tagged unfair (Goodman 2018). It is not enough to simply rebut this view by suggesting that all the members are better off than would have been the case in the absence of such cooperation. Indeed, there exists a plethora of such arrangements and “the real exercise is the choice among these various alternatives” (Nash 1950). The conduct of “fair trade” is an operationalization of the idea of “just trade” (Rawls 1958). In order to be fair, trade ought to generate equitable outcomes, taking note of the specific and special circumstances of the parties to the arrangement. Ensuring fairness, in true sense of the term, both procedurally and substantively, in WTO, could be a step towards combating imperialism, towards imparting the organization with a human face and containing its contribution towards constituting the nascent imperial global state. Such a step must seek fair rules as well as fair negotiations to arrive at those rules. Participation of the key stakeholders in the process of negotiation could address the problem dissociation of the regime from the third world states and peoples, and usher in deliberative democracy.

The idea of fair trade urges invocation of some variant of the Rawlsian difference principle (Rawls 1971: 303): the countries historically worse-off in economic terms ought to be offered some concessions to the generally applicable ideal of reciprocity. In the present scheme of things, it is worthy to acknowledge that some amount of concession indeed had been granted

to the developing economies in the WTO, albeit the institution's conspicuous shortcomings. On the other hand, the increasingly entangling "spaghetti bowl" (Bhagwati 1995) of preferential, regional, or bilateral trading agreements, along all the axes, might reduce the international trading regime to an Orwellian scheme of affairs where "all animals are equal but some animals are more equal than the others" (Orwell 1996). The latest step of certain developed countries in their perennial quest to be assertive and dominant in international trade has been the patina of populist nationalism. Their tendency to promote and procure assertions on issues of relevance to them at a particular point of time has hindered and continues to interfere with the provision of GPGs to the impoverished class, predominantly residing in the developing and the least developed economies of Asia and Africa.

It is heartening to note that the introduction of the new issues was stalled by the concerted efforts of developing countries like India and China. They were able not to yield to arm twisting, unlike the times when the issue of trade facilitation was introduced at the behest of the developed economies. Nevertheless, it is important to be cautious, yet optimistic, of this development. There lie innate implications for developing countries if the developed economies perpetuate their shift in trade policy emphasis away from the multilateral to regional and bilateral arenas. Unequal bargaining power and a still-developing legal prowess might expose the developing economies to a trading scenario worse than the one propagated by the WTO.

It would indeed be conducive to the developed economies' interests to go back to the pre-WTO system where abiding by a verdict of the dispute settlement mechanism was not binding and the winning country had to sit down and negotiate with the losing party, which could end up giving more powers to large developed countries to arm-twist their small economic partners (Mishra 2018). Suggestions have been made that since WTO started out in the form of several plurilaterals, there is no wonder that the WTO is headed again towards that direction (Singh 2018).

Free trade and multilateralism had been portrayed as the apotheosis of trading arrangements since the days of Ricardo. But now the developing countries have been inured to the fact that the popularity of a multilateral

regime assuring special and differential treatment to them is on the decline. The time is, therefore, ripe for developing countries like China and India to take certain steps to reclaim negotiation space as well as to realize indispensable issues like food security. The problems underlying the Doha Round must be solved sooner or later, even if there is a less than complete outcome (VanGrasstek 2013: viii). This will preconfigure a future negotiating agenda. A realistic negotiating agenda ought to be chalked out, instead of the “wish-list compendium” (Baldwin 2006) enshrined in the Doha work programme. One needs to note that the USTR’s statement at the conclusion of the conference mentioned that the US “need(s) a result on agriculture that is based on the realities of today, rather than a 16-year-old, outdated and unworkable framework,” (Office of the USTR 2017) a clear deprecating reference to the foundational structure of the Doha Development Round.

It has been argued that the WTO has suffered from ‘Doha fatigue’ for over a decade. It is understandable that WTO Members turned their attention elsewhere when the Doha Round lost energy and momentum (International Chamber of Commerce 2017). Additionally, a cue might be taken from the WTO-compatible reciprocal trade deals- the Economic Partnership Agreements. Mega regional preferential arrangements on similar lines might be formulated amongst developing countries willing to use market access concessions as the “currency for trade negotiations” (Fasan 2018), thereby adducing a boost to the negotiating prowess of the developing countries. The need for the developing economies to focus on expediting negotiations and fast-tracking the signing new bilateral and regional trade pacts, anticipating a collapse of the MC11, had been in place for some time (Mohammad 2017).

#### Notes

1. The views expressed in this paper are purely personal and do not constitute legal advice. I would like to thank Devdatta Mukherjee for her efficient research assistance.
2. For example, in the third Ministerial Conference in Seattle in 1999; and the negotiations leading to the Doha Ministerial Declaration in 2001.



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