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UNPACKING TRADE & INVESTMENT

3 CONFLICTING INTERESTS AND CONTROVERSIES AT THE WTO

3 Conflicting interests and controversies at the WTO

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Governments from around the world recently endorsed the Sustainable Development Goals (SDGs) negotiated through the United Nations. These include key goals such as reducing poverty and inequality, eradicating hunger, and ensuring universal access to essential services such as health care, education, water, and energy.

In order to achieve these goals, countries must have the policy space to invest in domestic agricultural production to achieve food security and food sovereignty; to regulate the financial sector to ensure financial stability; to scale up public provision of essential services to guarantee education, health, water, and energy access; to harness the power of government procurement to promote small and medium enterprises (SMEs); to utilize tax revenues, including tariffs, strategically to foment sustainable development and the creation of jobs with decent work; and to ensure that foreign investment serves the interests of the national development plan.

However, this policy space is currently constrained by existing rules of the WTO. The vast majority of WTO members, all of them developing countries, have been demanding for over 20 years that these rules must be changed. The policy space is further threatened by efforts of a few developed countries to replace the development mandates with 'new issues' designed to further increase transnational corporate profits.

Most developing countries realized that the agreements included in the WTO at its founding in 1995 left them at a disadvantage in the global trade system. Building on the General Agreement on Tariffs and Trade (GATT), which came into effect in 1948, the WTO established itself outside of the United Nations system (which the GATT had been under) and created its own enforceable Dispute Settlement Mechanism. It also vastly expanded its mandate from tariffs on goods to include a series of agreements on services and agriculture, as well as Trade-Related Intellectual Property Rights (TRIPs), which, rather than a liberalization agreement, is a protectionist agreement in favour of the specific class of patent- and copyright-holders, the vast majority of whom are from developed countries. It also included an investment agreement for the first time, the Trade-Related Investment Measures (TRIMs) Agreement, which limits the ways that countries can ensure that foreign investment benefits the local economy by restricting local content requirements, technology transfer, trade balancing requirements, capital transfer restrictions, and other policies, on the grounds that they 'distort trade'. The new WTO also included the Sanitary and Phytosanitary Measures Agreement (SPS), Technical Barriers to Trade Agreement (TBT), the Agreement on Government Procurement, and other deals on issues not previously included in the GATT.

Since that time, developing countries have circulated more than a hundred proposals to ameliorate the worst of the economic harms they experienced upon implementing the

WTO's radical new provisions through what came to be known as the 'Implementation Agenda.' This included, for example, less stringent conditions for developing countries experiencing balance of payments issues and more flexibilities from the TRIMs and GATT rules so that developing countries could foster job creation and promote infant industries and utilize industrialization policies (that developed countries used in their own development trajectories) to improve the standard of living of their citizens. It also included clarifications to the TRIPs agreement on 'intellectual property,' that patents inconsistent with the Convention on Biological Diversity, as well as on all living organisms (and biological and other natural processes for the production of plants, animals and their parts), shall not be granted. Further, it included a mandate to make the Special and Differential Treatment (SDT) provisions more precise, effective, and operational. SDT provisions provide extended time periods for developing countries to adhere to many of the onerous new rules, along with exemptions from, or in some cases technical assistance for, LDC compliance. Recognition of the asymmetries between developed and developing countries and allowing for SDT has been part of the international trade structure since the original GATT.

Developing countries then also opposed the corporate agenda to launch a new round of negotiations to expand the WTO. In the aftermath of the 9/11 terror attacks, however, developing countries agreed to the developed countries' demand to launch a new round in 2001, but only with the specific promise – and mandate – that the round would focus on the development issues described above. In fact, negotiations on the outstanding issues of the implementation agenda were the first item on the Work Programme of the mandate for the new round, as set forth in the Doha Declaration. This was to include correcting the existing problems and imbalances in the WTO, as well as a particular focus on improving the extremely unbalanced agriculture rules.

Unfortunately, since then, developed countries have succeeded again and again on relegating this development agenda of implementation issues and SDT to the background, while insisting that their 'market access' demands and new issues to expand the scope and coverage of the WTO rise to the top priority in the negotiations.

So at this point, what are the most important contested issues in the current WTO process, and what do these issues really mean?

WRONG AGENDA:
Further Liberalization of Goods and Services

The primary corporate agenda of developed countries in the WTO focuses on the further liberalization of trade in goods and services, and adding new issues from the corporate wish list, while marginalizing needed changes to agricultural rules.

TRADE IN GOODS: Industrialization and Job Creation, or Kicking Away the Ladder?

Traditionally, trade agreements focused on reducing tariffs and non-tariff barriers (NTBs) on trade in goods. Countries negotiated the reduction of tariffs and NTBs under the GATT for decades until the GATT became part of the WTO in 1994. In the Doha Round, the negotiations to reduce tariffs and NTBs on goods are called the Non-Agricultural Market Access, or NAMA, negotiations. NAMA includes industrial and manufactured goods, textiles and footwear, jewellery, fuels and mining products, forestry products, fish and fisheries, and chemicals.

The tariff rate at which countries agree (according to their trade agreements) not to increase their tariffs is called the *bound* rate. The rate at which a country may be actually applying to that product, which legally should be less than the bound rate, is called the *applied* rate.

Tariffs are taxes paid by corporations that wish to sell products in another country, to the government of the country in which they intend to make a profit. This ensures that some of the benefit of the sale goes to the public; in many developing countries, tariffs can account for 20 % of the national budgets that are utilized for health care, education, infrastructure, and other key expenditures.

But they also serve another important purpose. Throughout history, countries – especially developed countries – have used tariffs to protect infant industries from foreign competition in order to give those industries a price advantage compared to imports. For example, a country may choose to lower tariffs on mobile phones to allow for greater national connectivity, but then choose to increase them for a period to help a domestic manufacturer become competitive, and then lower them again to reduce consumer prices. And while nearly all developed countries utilized this key development tool throughout history, they now seek to impose universal tariff cuts on goods through the NAMA negotiations of the Doha Round – a position referred to as 'kicking away the ladder' of development tools by the esteemed development economist, Ha-Joon Chang.

The latest text on the NAMA negotiations to cut tariffs and reduce non-tariff barriers on goods is based on a formula in which developing countries would have to slash their bound tariffs by an average of about 60 %, while developed countries would have to cut their own tariffs by half as much (about 28 %). This is the *opposite* of the mandate of the NAMA negotiations set forth in the Doha Work Programme, which call for 'Less Than Full Reciprocity,' meaning that developed countries are supposed to provide greater tariff cuts – i.e., more market access – for developing countries' exports, than the reverse. This text has been rejected by the group of developing countries organized to defend their industrial interests against such unfair proposals, called the NAMA 11 group of countries (which includes Argentina, Brazil, Egypt, India, Indonesia, Namibia, Philippines, South Africa, Tunisia, and Venezuela). Trade unions from those countries, as well as the International Trade Union Confederation (ITUC) have strenuously rejected the proposals as well.

In the negotiations, manufacturing sectors are being targeted, which are of particular interest to developed country corporations, rather than with a focus on increasing export opportunities for products from developing countries. However, reducing tariffs in developing countries before domestic industries have the time and technology to develop competitiveness would jeopardize job growth and the fomenting of industrial development. The structural transformation that is required for many African countries and Least Developed Countries (LDCs) to create jobs and alleviate poverty – key aspects of the Sustainable Development Goals – requires the protection of infant industries, the promotion of added-value exports, technology transfer, and other tools that

were used by every developed country on their path to development. In addition, the global jobs crisis, in which tens of millions of people remain unemployed, cannot be resolved with more liberalization of trade in goods.

However, since the Doha Round has been stalled for many years, neoliberal advocates have pushed tariff liberalization through two 'plurilateral' agreements within the WTO; one focused on information technology (IT) goods, and another under the umbrella of 'environmental goods.'

The Information Technology Agreement (ITA), originally concluded in 1996, mandates that tariffs be eliminated on computers, telecommunication equipment, semiconductors, software, scientific instruments, as well as most of the parts and accessories of these products. The ITA was expanded in December of 2015 by 53 countries by including newer high-tech products such as touch screens, GPS navigation equipment, video game consoles, and medical equipment such as magnetic resonance imaging products. While a few developing countries are members of the ITA, the vast majority of IT products – representing 10 % of world trade in goods – are produced in developed countries. The agreement will save the global technology industries, along with investors and traders, tens of billions of dollars that would otherwise have gone to the public coffers of importing countries. It remains to be seen how much of the 'savings' is passed on to consumers in the form of cheaper prices.

Negotiations on an Environmental Goods Agreement (EGA) began in 2014 and are ongoing. Proponents seek to portray the EGA as inherently environmentally friendly, because it will eliminate tariffs on environmental goods. However, critics have noted that the agreement does not define 'environmental goods', and that many of the goods included in the list could be utilized in ways that are harmful as well as helpful for the environment. This includes waste incinerators, centrifuges, gas turbines, sludge compactors and a variety of technical machinery – which could be used in drilling for oil and gas just as well as for 'environmental' reasons.

Unfortunately, all these negotiations focus on the narrow agenda of reducing corporate taxes, rather than focusing on job creation and the Decent Work agenda developed by the International Labour Organization working in conjunction with the global labour movement. Expansion of the ITA and creation of a new EGA would actually contract the policy space required for developing countries to be able to use tariff policy as a tool to advance industrial development and structural transformation of poor economies. An expanded ITA and the conclusion of the proposed EGA would also likely benefit transnational corporations in countries with advanced technological development, particularly given patent monopolies and the lack of technology transfer. In addition to impacting employment, tariff elimination reduces revenues that governments could have used for spending on other important developmental activities, such as health care, education, and infrastructure.

Negotiations on non-agricultural market access should instead focus on enabling the process of industrial development, including through reviewing and enhancing flexibilities available to developing countries and through fulfilling the Special and Differential Treatment principle, such as providing essential flexibilities under the Agreement on Trade-Related Investment Measures (TRIMs) that would allow developing countries to use policy tools important for industrial development and job creation. Unfortunately, this key demand of the Implementation Agenda has yet to be agreed to in the WTO.

LIBERALIZATION AND DEREGULATION OF SERVICES

Strong public oversight over both public and private services is crucial for democracy, the public interest and development, as well as for the orderly functioning of the services markets. In the WTO, rules to constrain public regulation of markets in favour of foreign corporations' 'rights'

to participate in domestic markets come under the General Agreement on Trade in Services, or GATS. As expert Jane Kelsey notes in her book, '*Serving Whose Interests? The Political Economy of Trade in Services Agreements*,' the GATS was an invention of the financial sector in the United States to use the 'trade' model to achieve the deregulation that they could not achieve through democratic means, where multiple stakeholders including elected officials, regulators, consumers and services workers also participate.

The deregulation of the financial sector was encouraged in part through 1990s–era rules of GATS that led to the global financial crisis and the ensuing worldwide wave of recessions. Global financial stability demands strong public oversight of the financial sector. Environmental conservation requires strong public oversight over environmental and mining services; the same is true for nearly every service that is operated primarily by the private sector.

In addition, if countries are to ensure economic and social rights for their citizens, then ensuring quality, accessible public services such as health care, postal distribution, education, public transportation, sanitation, and water and energy provision must take precedent over allowing foreign corporations 'rights' to participate in a market under deregulated conditions. As well, developing countries require robust investment in the public provision of these services to achieve the SDGs, including access to water, energy, education, health, and other multilaterally agreed goals.

Developing countries resisted the inclusion of GATS in the WTO, but agreed to include it under limited conditions, in exchange for including agriculture, an area in which they have comparative advantage. However the GATS negotiations, which would bind countries to GATS disciplines (which limit the way governments can regulate services, and provide corporations guarantees of access to services markets) in an expanded number of services sectors, have also stalled for years.

In 2012, at the behest of global financial, logistics, energy, technology, and transportation services transnational corporations, a group of about 50 countries launched talks to create a 'Trade in Services Agreement,' or TiSA, outside of the WTO. The secret unofficial talks intend to further liberalize trade and investment in services, and expand 'regulatory disciplines' on all services sectors, including many public services. The disciplines, or treaty rules, would provide all foreign services corporations access to domestic markets at 'no less favourable' conditions as domestic suppliers, and would restrict governments' ability to regulate services. This would essentially change the regulation of many public and privatized or commercial services from serving the public interest to serving the profit interests of private, foreign corporations.

TiSA negotiators concluded the 18th round of negotiations in Geneva in June of 2016. Current participants include Australia, Canada, Chile, Colombia, Costa Rica, Hong Kong, Iceland, Israel, Japan, Liechtenstein, Mauritius, Mexico, New Zealand, Norway, Panama, Pakistan, Peru, South Korea, Switzerland, Taiwan, Turkey, the United States, and the 28 members of the EU.

A public campaign by trade unions and environmental groups in Uruguay resulted in the government taking an unprecedented step to undertake a review of the potential impact of the proposed TiSA on each ministry. While it would seem natural that governments would undertake this type of impact assessment prior to negotiating a binding treaty, in reality they are rarely if ever undertaken. The near-universal realization by the various ministries of the negative potential impact of the proposed TiSA across the board led to the governments' rescinding of its participation in October of 2015. Paraguay followed suit.

Deregulation of services negotiations still continue, both in the WTO GATS as well as in TiSA, putting global financial stability, environmental conservation, transportation safety, and the achievement of the SDGs through quality, accessible public services at risk.

THE RIGHT AGENDA:
Agricultural Transformation and Special and Differential Treatment

Instead of the corporate agenda of further liberalization, developing countries and LDCs have long made concrete proposals in the WTO regarding the development mandate, including implementation issues, strengthening and operationalizing Special and Differential Treatment (SDT), LDCs' issues, and the key issue of the transformation of the existing agricultural rules. Each of these areas are detailed more fully in Bhagirath Lal Das's excellent '*The WTO Agreements: Deficiencies, Imbalances and Required Changes,*' published by the Third World Network in 1998.

THE URGENCY OF CHANGING GLOBAL AGRICULTURAL RULES IN THE WTO

The WTO's Agreement on Agriculture (AoA) entered into force at the founding of the WTO in 1995. In the decades preceding the WTO, developing countries had advocated for an International Trade Organization (ITO) that would discipline farm subsidies in the North. While developing countries produced agricultural products more competitively, developed countries were able to keep those products out of their markets by subsidizing their own producers. During the negotiations to found the WTO, agricultural products finally came under the disciplines of global trade rules, along with a host of other issues like TRIMs and TRIPs that provide a distinct advantage to corporations from the global North. Unfortunately, the final AoA was drafted predominantly by US and EU agribusiness corporations, and disadvantages small family farmers in those countries as well as agricultural producers across the global South.

The AoA intended to provide 'market access' to foreign exporters through the reduction of tariffs, and to limit the subsidies and other supports countries can provide to domestic production, either throughout the production process (called 'domestic supports') or directly during the moment of exporting (called 'export competition' policies). The Doha Round mandate focused on these three pillars, with a mandate to expand market access through tariff reductions while reducing domestic supports and the elimination of export competition policies.

Unfortunately, the goal of the AoA and the Doha negotiations is to expand trade in agricultural products through reducing tariffs and subsidies, rather than ensuring the right to food or achieving the SDG of eliminating hunger and promoting sustainable agricultural production, particularly among small-holder farmers.

‘Market Access’

On the issue of tariffs, the Doha Round negotiations include both tariff cuts as well as flexibilities to those cuts. Developing countries that are facing historical underinvestment in agricultural production as well as floods of subsidized imports need the policy space to be able to use tariffs as a protective measure for their domestic farmers. Tariff cuts under the Doha Round would put hundreds of millions more farmers at risk of being wiped out by subsidized imports.
A group of now 48 developing countries from Latin America, the Caribbean, Africa and Asia (called the G33) have put forward a proposal in the WTO to keep certain products necessary for food security, rural development, and farmers’ livelihoods in developing countries out of the tariff cut formula. This proposal is called the Special Products proposal. Fortunately, since the Doha Round has been stalled, the need to exclude products from the tariff cuts remains moot, but will need to be revived if the overall tariff cuts proposals come back into play.

However, the current havoc wrought on developing country agricultural markets due to dumping of subsidized products calls out for an immediate solution. The G33 has long advocated a proposal to create a Special Safeguard Mechanism (SSM) that would allow developing countries to protect their food security, farmers’ livelihoods, and rural development in times of import surges. A similar provision exists in the current WTO, called the Special Safeguard (SSG), but its criteria apply almost exclusively to the developed, rather than developing, countries! Achieving a workable SSM would be an important step towards restoring countries’ food sovereignty that has been so eroded by the current imbalances in the WTO rules. The latest agricultural texts, from 2008, include a proposed SSM, but with such onerous conditionalities as to render it practically unusable by developing countries. The Nairobi Ministerial in December of 2016 concluded with a mandate to negotiate a workable SSM. Developing countries are currently fighting to ensure that the SSM is de-linked from mandates to cut tariffs before being able to utilize the safeguard measure.

‘Export Competition’

Beyond tariffs, however, the larger issues in the Doha Round centre on the subsidies and other supports that countries (mostly developed countries) provide to give advantages for their domestic producers in the international markets. The Nairobi Ministerial concluded with a package of provisions to eliminate most forms of export competition policies, which are the most obviously trade-distorting in that they are only offered at the time that products are exported. However, these types of policies are no longer in extensive use, and those that are in use are to be eliminated and over fairly long timelines with extensive flexibilities. Thus, while the agreement was a step in the right direction, developing countries will not gain much new access for their agricultural products from the agreement.

‘Domestic Support’

The much larger elephant in the room looming in the WTO’s Doha Round is the issue of ‘domestic support.’ This includes subsidies that are categorized as trade-distorting, and thus are subject to caps and reductions, and those categorized as non-trade-distorting, and thus not subject to caps and reductions. These subsidies are generally called ‘Amber Box’ and ‘Green Box’ respectively. However, it is crucial to understand that the distinction is not so clear-cut.

Developed countries were able to get many of the types of subsidies they use to be categorized as ‘Green Box’, even if they do distort trade and damage developing countries’ agricultural markets. In a 2014 report by Rashmi Banga, ‘Impact of Green Box Subsidies on Agricultural Productivity, Production and International Trade,’ UNCTAD estimated that Green Box subsidies on production and trade increase risk taking capacities, land prices, the availability of credits, and labour participation, and that these subsidies have increased agricultural productivity by around 60 % in the EU and 51 % in the U.S. since the inception of the WTO.

At the same time, any types of subsidies that were not specifically negotiated to be considered 'Green Box' are automatically counted as 'Amber Box' even if they do not distort trade. Countries are also allowed *de minimis* subsidies (indicating that they are minimal or too small to count): developing countries are allowed up to 10 % of the value of production by product and by total volume, while developed countries are allowed 5 %.

In addition, it is essential to understand that countries were allowed to subsidize at the levels at which they were subsidizing when the WTO came into existence (or when they joined it), with those allowed levels subject to reductions over time. Thus, the United States is still allowed to subsidize its agricultural production in ways that are known to distort trade, to the extent of $19.1 billion per year under the Amber Box (also called Aggregated Measures of Support, or AMS) category. The EU is allowed a whopping €72.2 billion per annum.

At the same time, the vast majority of developing countries were not using subsidies at the time the categories were negotiated, either because of lack of resources or because the International Monetary Fund (IMF) and World Bank proscribed such policies, and therefore do not have Amber Box allocations. That's right: rich countries are allowed under WTO to subsidize agriculture in ways that distort trade, but the vast majority of developing countries are not.

However, the world has changed vastly since these rules were first put in place in 1995. The world has experienced several global food crises, as a result of decreasing domestic production, volatile import prices resulting from commodity speculation, consolidation in the retail and production chains, and climate change, among other factors. Over the years, many developing countries have turned away from the 'universal wisdom' proffered by international institutions including the IMF and World Bank, which admonished them to stop supporting domestic agricultural production and focus only on cash crops for export – advice that has created a world in which *more than a billion people are food insecure*.

The SDGs implore developing countries to 'end hunger' (2.1); 'end all forms of malnutrition' (2.2); 'double the agricultural productivity and incomes of small-scale food producers, in particular women, indigenous peoples, family farmers, pastoralists and fishers, including through secure and equal access to land, other productive resources and inputs, knowledge, financial services, markets and opportunities for value addition and non-farm employment' (2.3); 'ensure sustainable food production systems and implement resilient agricultural practices that increase productivity and production, that help maintain ecosystems' (2.4) among other goals. They put forth under the means of implementation, policies such as the need to 'increase investment … in order to enhance agricultural productive capacity in developing countries' (2.a); 'correct and prevent trade restrictions and distortions in world agricultural markets' (2.b), among other methods. These goals were agreed to by nearly every country under the auspices of the United Nations in 2015.

Likewise, the concept of the Right to Food has emerged as an important point of departure for advocates, agencies, and many governments, with the obligation squarely falling on the state to ensure its vindication, beginning with Article 25 of the Universal Declaration of Human Rights (UDHR) in 1948, Article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) which entered into force in 1976 and amplified the mandate of the Special Rapporteur on the right to food established by the UN's Commission on Human Rights in 2000. In addition, the Member Nations of the Food and Agriculture Organization (FAO*)* adopted by consensus the *Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security* (Right to Food Guidelines) in 2004, to assist the 30 countries that have enshrined the right to food in their constitutions as well as myriad other states seeking guidance on how to ensure this right.

One of the best ways that countries have found to achieve these goals is through *public*

stockholding, in which food is procured from resource-poor farmers (providing price stability and ensuring a decent income), and that food is distributed among the poor at reduced or no cost. Thus, public stockholding helps ensure that poverty and hunger is reduced among both consumers and producers.

Because of this sea change, and realizing that the complete revision of the AoA promised under the Doha Round was a long way off, in 2013 the G33 group of 46 developing countries made a proposal to remove limits on developing countries' investing in their own food security by categorizing public stockholding for food security in the so-called 'Green Box.'

Amazingly, despite many food security programs being promoted by the U.S. administration, both domestically and internationally, the United States steadfastly opposed this re-categorization. Thus the Bali Ministerial in 2013 concluded with a Peace Clause, a band-aid solution meaning that existing public stockholding for food security programs would not be subject to challenge in the WTO, if they met some very onerous conditions (that go beyond what developed countries are required in order to access their own trade-distorting subsidy limits).

After a two-year struggle, WTO members agreed in Nairobi to find a permanent solution to the issue of public stockholding for food security by the following Ministerial meeting in December of 2017. This is one of the hottest issues in the WTO today, and one that would benefit from expanded advocacy from anti-hunger and development advocates, along with farmers.

By contrast, Nairobi provided no solutions to the looming problem of the need to reduce developed countries' domestic support allocations. In fact, the lack of will in the United States to resolve this issue is what led to the breakdown in the Doha Round as far back as 2008, and remains its most intractable issue.

Thus, in one of the most hypocritical positions in the history of global trade negotiations, some developed countries not only oppose the right of poor countries to feed themselves, but also refuse to reduce their own domestic supports that damage developing countries' domestic markets.

In contrast, many social movements support the concept of food sovereignty, in which countries should be allowed to undertake domestic supports of agricultural production, but no country should be allowed to export subsidized food in a way that damages other countries' markets.

It is difficult to accept that developed, but not developing, countries are allowed extensive levels of trade-distorting domestic support. Developing countries continue to advocate in the WTO that negotiations on these issues progress, while many developed countries repeatedly block them.

At the same time, the need for public stockholding for food security to be re-categorized as a 'Green Box,' and for developing countries to be able to protect their farmers from import surges through the SSM, are live issues in the WTO and would benefit from increased visibility and advocacy among civil society and farmers' organizations.

FULFILLING THE DEVELOPMENT MANDATE: Strengthening SDT for All Developing Countries

Along with transforming the global rules governing agricultural trade, developing countries have long advocated for other changes to the existing WTO to increase flexibilities for developing countries to enable them to enact policies that would promote development.

In 2015, a group of 90 (G90) developing countries made concrete proposals for changes to existing WTO rules that would remove some WTO constraints on national pro-development

policies. Many of them are updated versions of the 'Implementation Agenda' which formed the basis of developing country critiques of the existing WTO since the time of its foundation. Many of these proposals parallel the civil society demands encompassed in the **Turnaround Statement**, available on the website of the global Our World Is Not for Sale (OWINFS) network, endorsed by hundreds of civil society groups from around the world.

However, according to inside reports by the South-North Development Monitor SUNS and available on the Third World Network website, the United States and a few allies are attempting to decide for themselves which developing countries should be able to utilize these flexibilities, dividing developing countries according to non-existent, subjective criteria and attempting to treat so-called 'emerging markets' as if they were already developed. This approach has no basis in WTO law, in development policy, nor in economic reality. 70 % of the world's poor live in so-called 'middle income' countries; narrowing the scope of the G90's special and differential treatment proposals would condemn a billion people to living under WTO rules that are inappropriate for their level of development, without the flexibilities and policy space requisite for their countries to achieve the multilateral SDGs. For these reasons, SDT should be strengthened and made operational for all developing countries, while providing additional flexibilities to LDCs that attend to their specific developmental, financial and economic needs.

Even worse, just one WTO member – the United States – appears to be not only refusing to agree to the full G90 package, but also working to ensure that the development mandate in the WTO is permanently abandoned. The abandonment of the entire development mandate would likely block the potential to fulfil this mandate in the future, thus locking the world into the existing inequalities and imbalances forever – at the behest of one member of the WTO, an institution that claims to operate by consensus.

FULFILLING THE DEVELOPMENT MANDATE: LDC Rights and Flexibilities

Even in the area that all WTO members should be able to agree on – ensuring benefits for the LDCs – consensus has not yet been reached. Although it was a priority mandate for the post-Bali period, the small LDC package agreed in the WTO Ministerial in Bali in 2013 has yet to be operationalized. This includes ensuring 100 % Duty-Free, Quota-Free (DFQF) market access for LDCs' exports; full simplification of the Rules of Origin (RoO; these rules define how much of the value of a product has to be produced in the country to qualify for reduced-tariff benefits); and providing actual binding commitments for the LDC services waiver, which allows developed countries to provide LDCs market access in services without offering reciprocal access to other countries (a 'flexibility' which has proven almost impossible to operationalize).

In addition, cotton farmers in Africa have been damaged for years due to the subsidies that rich countries agreed long ago to reduce in an 'expedited' manner. Cotton subsidies provided to approximately 20,000 producers in the United States depress global prices and damage market access opportunities for millions of farmers in Africa. Despite an agreement at the Hong Kong Ministerial meeting of the WTO in 2005 to deal with damaging cotton subsidies 'expeditiously,' the United States has still refused to reduce these trade-distorting subsidies and is thus responsible for the impoverishment of farmers across the 'Cotton Four' countries of Benin, Burkina Faso, Chad, Mali, as well as other cotton producing countries like Zimbabwe. The 2015 Nairobi Ministerial included a small concession to increase market access for Cotton Four producers, but this will not come close to offsetting the damage done by keeping the harmful subsidies in place.

More important even than these small concessions to LDCs is the waiver on the implementation of TRIPS rules on intellectual property, including patents on medicines as well as copyrights on books, music, and other works. TRIPS should be understood as inherently trade-distorting, because they are rules which intervene in the market in favour of a specific class of people (patent and copyright holders) by giving them special protections which make medicines and books thousands of times more expensive than they would be in a 'free' market. These rules distort trade to a vast extent more than do tariffs or other non-tariff barriers. Given that the overwhelming majority of patent and copyright holders are in developed countries, 'intellectual property' rules are far more advantageous to developed countries than developing countries.

For many years, LDCs were given a two-year waiver on implementing these rules, because of the recognition that they would be cut off from access to life-saving and other essential medicines otherwise. Last year, however, LDCs made a duly motivated request for a waiver to be in place for as long as a country is still classified as an LDC, meaning that their Gross National Income (GNI) per capita is below $1,035 per year (in 2015). Although this was an original demand of the Implementation Agenda, it was steadfastly opposed by the United States; the EU was slightly more amenable. After strong negotiating by the LDC group and support from civil society and international health agencies around the world, WTO members agreed in 2015 on a 17-year extension for the TRIPS waiver. This decision will provide predictability for generic manufacturers to expand their production to a stable market, and will thus allow LDCs to stretch their health budgets to ensure medicines for millions of people who would otherwise not be able to afford the patented versions.

EMERGING THREAT AT THE WTO:
New Issues

The 2015 Nairobi Ministerial was characterized by the emergence of an even greater threat than the Doha Round market access agenda in the WTO: the intention of the United States, the European Union and other countries to introduce the issues that they have been negotiating in bilateral and regional corporate trade agreements, sometimes called free trade agreements (FTAs), into the WTO.

As far back as the Cancun Ministerial in 2004, WTO members agreed that several of these issues, which are called the Singapore Issues because they were put on the agenda by developed countries at the 1996 Singapore Ministerial meeting, could not be discussed while the Doha Round is still being negotiated. These include investment, competition policy, and government procurement. This is perhaps a bigger danger

than the (very remote) possibility that the WTO's Doha Round could conclude: the fact that if the Doha Round is officially suspended, the door is opened for these and other issues to be back on the negotiating table.

Developing countries, and the public at large, have great reason for concern about introducing these issues into the WTO. This is especially the case with the issue of investment. Opposition to international investment agreements (IIAs) is increasing, because of the way in which they privilege foreign investors over citizens, communities, the environment, and the public interest generally, whether they appear in bilateral, plurilateral, or multilateral forums. Multiple governments have taken heed of the explosion of cases brought by investors against sovereign governments, and are re-shaping national investment rules to ensure that they benefit the national interest. During this time of shifting public debate on the negative impacts of such agreements, it is outrageous to think of allowing this ejected topic back into the WTO.

The situation is similar to opening up 'government procurement' to foreign corporations. Foreign multinationals are eager to gain access to these markets, which corresponds to 13 and 20 % of Gross Domestic Product (GDP) on average in developed and developing countries, respectively, according to the Organization for Economic Co-operation and Development (OECD), the figures do not include state-owned utilities, which would account for even more.

Government procurement (or public purchasing) is an important engine for local development and job creation, and for addressing inequities within countries, by giving disadvantaged groups (such as women, 'minorities', Indigenous peoples, the disabled, and veterans) preferential access to public contracts. Likewise, the United Nations Environment Program (UNEP) promotes a Sustainable Public Procurement (SPP) Programme. These social and environmental goals should take precedence over opening markets for transnational bidders. While there is an existing plurilateral Agreement on Government Procurement (AGP), very few developing countries have signed on to it.

Transnational companies are also seeking to reinsert 'competition policy' in the WTO agenda. While some aspects of competition policies, such as limiting monopoly control over sectors like telecommunications or banking, can have important benefits, the appropriate types of competition policies, as with many areas of economic regulation, depend greatly on the level of development of a country, and whether companies are already globally competitive. Thus, a one-size-fits-all model based on developed countries' current practices is not appropriate across the board.

These are not primarily trade issues and they must not be allowed on the WTO agenda. Because of the 2004 Cancun agreement, there is not even any legal basis in the WTO to bring them in until after the development demands of developing countries have been addressed (meaning that the proposals of the Implementation Agenda have been agreed).

Only one of the Singapore issues was allowed to remain on the agenda after 2003, and that was 'Trade Facilitation.' And after years of developing countries' pursuing life-or-death changes to agriculture rules in the WTO, the first 'early harvest' of the Doha Round was not agriculture, but the Trade Facilitation Agreement (TFA), concluded at the Bali Ministerial in 2013. This agreement binds developing countries to following existing, highly technological practices in rich countries to speed up border-crossing procedures for traded goods and make trading easier and less costly. The WTO gained the support of the World Bank and other institutions in promoting its alleged benefits for development.

But critics have raised concerns that the deal will likely increase imports into developing countries, rather than increase exports into developed countries, and thus could exacerbate job loss and trade imbalances in poor countries. WTO members are now in the process of ratifying the agreement on a domestic basis. TFA implementation is a primary focus of developed countries' Chambers of Commerce, but they have yet to reach the threshold of ratification by two thirds of WTO members for it to enter into force.

But the effort of developed countries is not limited to the Singapore issues. During the World Economic Forum in January of 2016, the issue of electronic commerce, or 'e-commerce,' emerged as a corporate priority. This issue would give new 'rights' to advanced technology corporations to unlimited cross-border data transfers – putting data privacy in jeopardy – and at the same time limiting public and multi-stakeholder participation in governance of the internet.

Some members also appear interested in imposing on the WTO membership disciplines (constraints) on state-owned enterprises (SOEs). SOEs can be a key engine of domestic economic growth in many countries. But corporations view them as recipients of unfair domestic competition. Disciplines on SOEs have been included in many recent trade agreements, including the Trans-Pacific Partnership, and will thus be a priority in the current talks.

The full scope of 'new issues' has still yet to be defined, even by members seeking the mandate to discuss them. However, developed countries (and some developing allies) have carefully utilized the growing debate around the emergence of 'global value chains (GVCs)' to argue that the above issues, including but not limited to investment, government procurement, competition policy, e-commerce, and SOEs, become prioritized at the WTO as so-called '21st century issues,' further displacing the long term urgent agenda of changing existing rules on agriculture, development issues, and LDC concerns.

WHAT DIRECTION FOR THE WTO?

The achievement of the SDGs globally urgently requires changes to existing global trade rules so that they facilitate rather than hinder development. This includes the transformation of existing rules on agriculture (including a permanent solution on food security), flexibilities to existing rules that constrain job creation and industrialization, the operationalizing of Special and Differential Treatment, and the LDC proposals. These proposals must be prioritized and concluded before the 'market access' agenda of GATS and NAMA expansion are concluded, and before other developed-country, corporate agendas of so-called new issues of investment, government procurement, competition policy, e-commerce, and SOEs should be allowed on the negotiating agenda.

Whether developing countries and advocates of global justice and shared prosperity worldwide can succeed in achieving these goals, or whether the corporate agenda retains primacy, will depend significantly on the pressure from and support of civil society in holding their governments accountable to the need for a fair, just and environmentally sustainable global trading system.

INDEX OF ACRONYMS

ACP African, Caribbean and Pacific
ACTA Anti-Counterfeiting Trade Agreement
AGOA African Growth and Opportunity Act
AGP Agreement on Government Procurement
AMS Aggregated Measures of Support
AoA Agreement on Agriculture
APEC Asia-Pacific Economic Co-operation
ARA Advisory Referendum Act
ASEAN Association of Southeast Asian Nations
BIT Bilateral Investment Treaty
BRICS Brazil, Russia, India, China, and South Africa
CAP Common Agricultural Policy
CDS Credit Default Swaps
CETA Comprehensive Economic and Trade Agreement
CSI Coalition of Services Industries
DDA Doha Development Agenda
DDR Doha Development Round
DFQF Duty-Free, Quota-Free
EAC East African Community
ECIPE European Centre for International Political Economy
EGA Environmental Goods Agreement
EAHC East African High Commission
EPA Economic Partnership Agreement
ESF European Services Forum
FAN Friends of Anti-Dumping
FAO Food and Agriculture Organization
FET Fair and Equitable Treatment
FTA Free Trade Agreement
FTAA Free Trade Area of the Americas
FTAAP Free Trade Area of the Asia-Pacific
GATS General Agreement on Trade in Services
GATT General Agreement on Tariffs and Trade
GFC Global Financial Crisis
GDP Gross Domestic Product
GVC Global Value Chain
GI Geographical Indication
GM/GMO Genetically Modified/ Genetically Modified Organism
GEMC Group of European Mining Companies
GPA Agreement on Government Procurement
GSC Global Services Coalition
GSP General Preferencial Scheme
GSP+ General Preferencial Scheme Plus
GVC Global Value Chain
ICESCR International Covenant on Economic, Social and Cultural Rights
ICS Investor Court System
ICSID International Centre for Settlement of Investment Disputes
IIA International Investment Agreements
IMF International Monetary Fund
IFC International Finance Corporation
IP Intellectual Property
ISDS Investor-State Dispute Settlement
ITA Information Technology Agreement
ITUC International Trade Union Confederation
JEC Joint EPA Council
LDC Least Developed Countries
LVC Local value chain
MA Market Access
MAI Multilateral Agreement on Investment
MERCOSUR Southern Common Market *Mercado Común del Sur (es)*
MFN Most Favoured Nation
MTA Mega Trade Agreement
NAFTA North American Free Trade Agreement
NAMA[1] Friends of Ambition; also
NAMA[2] Non-Agricultural Market Access
NATO North Atlantic Treaty Organization
NIEO New International Economic Order
NMB Nairobi Ministerial Declaration
NSG Nuclear Supplier Group
NTB Non-Tariff Barriers
OECD Organisation for Economic Co-operation and Development
OPEC Organisation of Petroleum Exporting Countries
OTC Over the Counter
OWINFS Our World Is Not for Sale
PAP Processed Agricultural Product
RCC Regulatory Cooperation Council
RCEP Regional Comprehensive Economic Partnership
RMI Raw Material Initiative
RoO Rules of Origin
RTA Regional Trade Agreement
RVC Regional value chain
S&D Special and Differentiated Treatment
SACU South African Customs Union
SAP Structural Adjustment Program
SCM Subsidies and Countervailing Measures Agreement
SDG Sustainable Development Goals
SDT Special and Differential Treatment; also S&T
SOE State-Owned Enterprises
SP Special Products
SPP Sustainable Public Procurement
SPS Agreement on the Application of Sanitary and Phytosanitary Measures
SSG Special Safeguard
SSM Special Safeguard Mechanism
SUNS South North Development Monitor
SVE Small and Vulnerable Economies
TAFTA Transatlantic Free Trade Agreement
TBT Agreement on Technical Barriers to Trade
TFA Trade Facilitation Agreement
TFEU Treaty of the Functioning of the EU
TiSA/TISA Trade in Services Agreement
TNC Transnational Corporations
TPP Trans-Pacific Partnership
TRIMS Agreement on Trade-Related Investment Measures
TRIPS Agreement on Trade-Related Aspects of Intellectual Property Rights
TTIP Transatlantic Trade and Investment Partnership
UDHR Universal Declaration of Human Rights
UNECA United Nations Economic Commission for Africa
UNEP United Nations Environment Program
UNCITRAL United Nations Commission on International Trade Law
UNCTAD United Nations Conference on Trade and Development
UPOV International Union for the Protection of New Varieties of Plants
VCLT Vienna Convention on the Law of Treaties
WTO World Trade Organization

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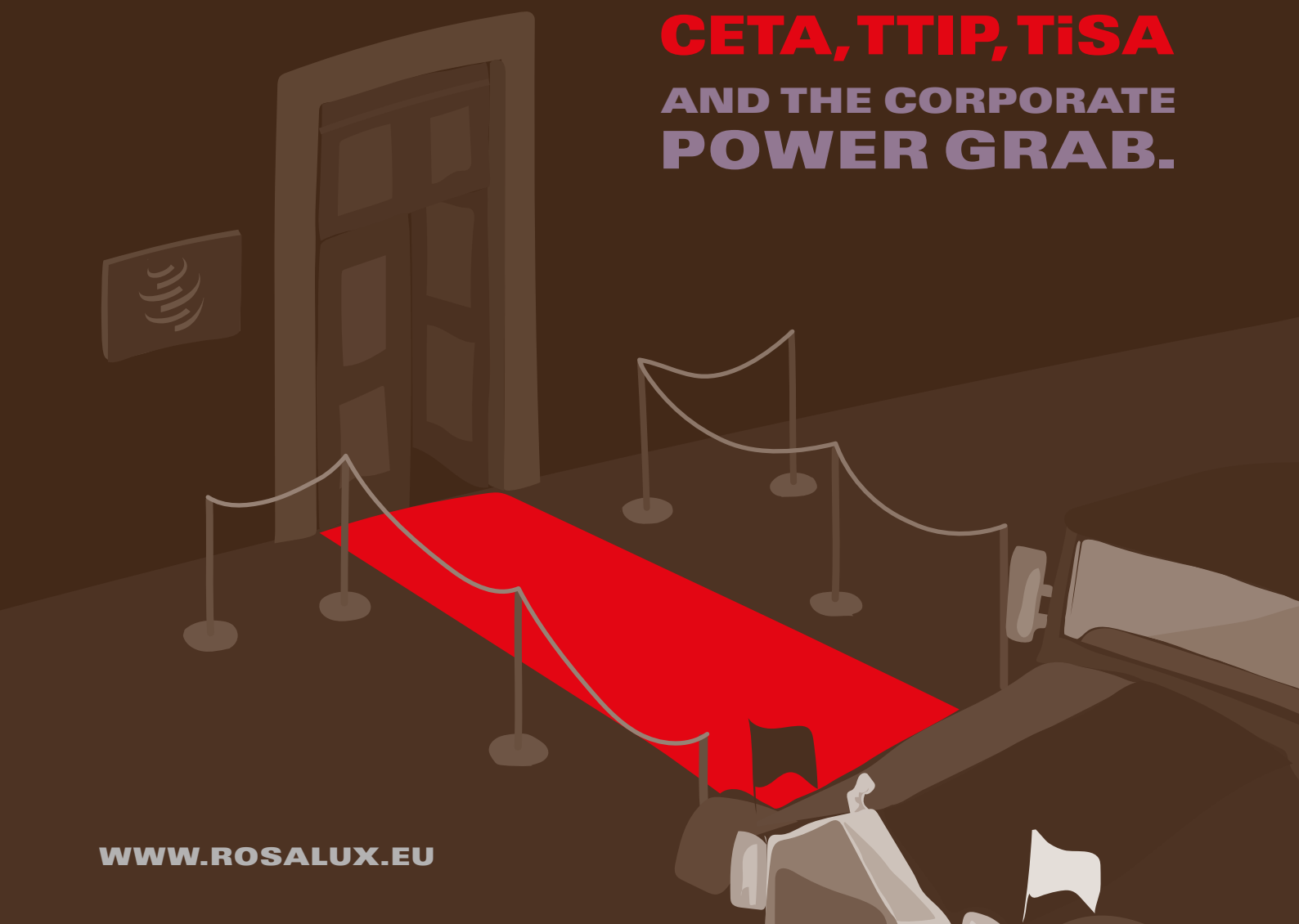

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