State of Play in the Run-up to MC11

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WTO at the End of the Nairobi Ministerial

- Ministerial Declaration exposed the divisions among Members on the future of the Doha Round
  - "Many Members reaffirm the Doha Development Agenda, and the Declarations and Decisions adopted at Doha and at the Ministerial Conferences held since then, and reaffirm their full commitment to conclude the DDA on that basis"
  - "Other Members do not reaffirm the Doha mandates, as they believe new approaches are necessary to achieve meaningful outcomes in multilateral negotiations"
  - *"Nevertheless*, there remains a strong commitment of all Members to advance negotiations on the remaining Doha issues"
    - ✓ Advancing work in all three pillars of agriculture, namely domestic support, market access and export competition
    - ✓ Non-agriculture market access
    - ✓ Services
    - ✓ Development
    - ✓ TRIPS and rules

Key Issues for MC11

- Members from 35 Member states met in Marrakesh in October 2017 and focused on the following issues
  - Agriculture
    - ✓ Domestic support
    - ✓ Cotton
    - ✓ Public stockholding for food security
    - ✓ Special Safeguard Mechanism (SSM)
  - Fisheries subsidies
  - Domestic regulation in services
  - Special and differential treatment
  - Electronic commerce
  - Micro, Small and Medium Enterprises
  - Investment facilitation

Agriculture in the Doha Round

- Agriculture negotiations in the Doha Round has been a North-South battleground
- Two significant developing country coalitions, namely, the G-33 and G-20, strongly voiced the interests of the group as a whole
  - Resisted the efforts of the US and the EU to amend the Agreement on Agriculture (AoA), making it more "market oriented"
  - Argued for introducing additional layers of protection for small farmers through the recognition of "Special Products" and Special Safeguard Mechanism (SSM)

... Evidence of a new dynamic in the run-up to MC11

Brazil, European Union, Colombia, Peru and Uruguay

- Propose restructuring domestic support disciplines of AoA
  - Comprehensive limit for all forms of trade-distorting domestic support (except those applicable for low-income or resource poor farmers), applicable to both developing and developed countries
    - ✓ Developing countries to enjoy a longer transition period to conform to the limit as compared to the developed countries

OR

  - Comprehensive limit for trade-distorting domestic support for developing countries to be marginally higher than that for the developed countries

New Zealand, Australia, Canada, Chile, Paraguay and Argentina

- Propose that entitlements of Members to use trade-distorting forms of support should be based on their past use of this form of support.
- Implications of this proposal
  - United States would be allowed to double their use of trade distorting support because of their “low” usage
  - India would be allowed a nominal increase
  - All other South Asian developing countries will have to limit their domestic support within US $ 2 billion

Guyana on Behalf of the ACP Group

- Preserve the special flexibilities for least-developed countries (LDCs), small and vulnerable economies (SVEs) and net food-importing developing countries (NFIDCs) and other developing country Members
  - Flexibilities in the level of commitments and the schedules of implementation
  - Exemption for LDCs, SVEs, NFIDCs, and developing country Members with no Final Bound Total AMS commitments from undertaking any reduction commitments
  - Technical assistance and capacity building to address institutional and financial constraints faced in the implementation of disciplines

Public Stockholding for Food Security

- At stake is the "permanent solution" to the issue that is currently covered by a "peace clause"
- Some Members have supported the "permanent solution", but most have added a number of conditions for using this facility
  - G-33
    - ✓ Operation of food security programmes shall be transparent and conducted in accordance with officially published objective criteria or guidelines
  - Brazil, European Union, Colombia, Peru and Uruguay
    - ✓ Value of the stocks procured does not exceed [10%] of the average value of production of that product in that Member as notified in the three latest domestic support notifications
  - Russian Federation and Paraguay
    - ✓ Anti-circumvention/Safeguards – Food security stocks procured should not distort trade or adversely affect the food security of other Members
    - ✓ Value of the stocks procured does not exceed [x%] of the average value of production of that product in that Member as notified in the three latest domestic support notifications

Fisheries Subsidies

- Growing consensus on need to act to prevent the harmful impacts of certain fisheries subsidies on sustainability of marine resources
- To implement by 2020, the commitment taken by WTO members under 2030 Agenda for Sustainable Development to effectively regulate harvesting and end overfishing, illegal, unreported and unregulated fishing and destructive fishing practices ...
- Implementing S&D provisions, whereby developing countries are allowed to grant or maintain fisheries subsidies to its artisanal fisheries activities, subject to several conditions

Work Programme for MSMEs in the WTO

- Proposal by the Friends of MSMEs (an informal 28 Member group)
  - To establish a Work Programme for MSMEs, which shall include, among others, the following issues
  - Improve access to information on trade requirements, regulations and markets for MSMEs;
  - Consider ways to promote a more predictable regulatory environment for MSMEs
  - Identify measures that contribute to reducing trade costs for MSMEs in areas such as trade facilitation, shipping and logistics, and procedures and requirements related to origin
  - Promote, including through cooperation with other multilateral institutions, access to trade finance for MSMEs
  - Further identify issues of particular interest to MSMEs that could be addressed in WTO Trade Policy reports
  - Consider how technical assistance and capacity building initiatives could take into account the trade needs and challenges of MSMEs.

Electronic Commerce

- WTO Secretariat definition (2015)
  - Sale or purchase of goods or services conducted over the internet or other computer networks that can be between enterprises, households, individuals, governments and other public or private organizations
- OECD definition (2011)
  - An electronic transaction is the sale or purchase of goods or services, whether between businesses, households, individuals, governments, and other public or private organisations, conducted over computer-mediated networks

Electronic Commerce in the WTO

- Ministerial Declaration on Global Electronic Commerce in 1998 introduced electronic commerce in the WTO, with the following mandate for WTO members
  - To examine all trade-related issues relating to global electronic commerce
  - To take into account the economic, financial, and development needs of developing countries, and recognize that work is also being undertaken in other international fora
  - To continue their practice of not imposing customs duties on electronic transmissions
- Moratorium on imposing customs duties on e-commerce has been renewed in every Ministerial Conference held since
- In the on-going deliberations, there are demands for making the moratorium permanent

Proposals for Including E-Commerce in WTO

- Key feature of the discussions on e-commerce is the active participation by a 12-member group of developing countries, the Friends of E-Commerce for Development (FED)
  - Electronic commerce is a tool that brings together the digital, social and development agendas and as an enabler of sustainable and inclusive growth for MSMEs, especially those from developing and least developed countries
- FED is the first non-negotiating group of countries
  - To put its imprint on an issue that would expand the coverage of the WTO
  - To forge coalitions with a number of developed countries, which is somewhat unusual for developing countries dealing with a new issue in the WTO

Proposals for Including E-Commerce in WTO

- European Union and developing countries like Côte d'Ivoire, Paraguay and Singapore proposed amending the WTO rules and the overall structure of trade policies for making them more suited to the functioning of the digital economy
- The proposal offered a tentative list of all trade-related elements relevant for e-commerce that need to be discussed
  - Regulatory frameworks
  - Open markets
  - Initiatives facilitating the development of e-commerce
  - Transparency of the multilateral trading system
- China - identify the elements acceptable to Members that may be reflected in the MC11 Work Programme on Electronic Commerce
  - Moratorium of customs duties on electronic transmissions
  - Facilitating cross-border e-commerce
  - Promoting paperless trading
  - Transparency
  - Development and co-operation

The "Other" Voice on E-Commerce

- African Group has countered the countries backing inclusion of electronic commerce in WTO
  - Questioned the view that e-commerce can help develop the MSMEs and eliminate "the supply-side constraints, lack of technology and lack of finance, and other non-tariff barriers that many MSMEs face
  - Argued that MSMEs cannot effectively compete with multinational corporations, who have
    - ✓Become global digital leaders
    - ✓Decimated smaller companies
    - ✓Benefitted from digital industrial policies such as subsidies, R&D subsidies, development of, and have access to, and ownership of technologies, economies of scale, government-sponsored infrastructure, tax benefits

Assessing the Proposals on E-Commerce

- Proposals for inclusion of electronic commerce
  - Have argued that this platform benefits MSMEs, and is hence favourable to developing and least developed countries
  - Advocated the need for "open markets", ratcheting-up the trade liberalisation agenda
- This view lacks consensus, with a few strong voices, especially the African Group, questioning the arguments of the demandeurs about MSMEs benefiting from e-commerce
  - Inadequate digital infrastructure in most developing countries lends weight to the African Group view
- Unlike in the run-up to the Trade Facilitation Agreement, current discussions on e-commerce has ignored the deficiencies in the digital infrastructure and other capacities of developing countries

Proposed Investment Facilitation Agreement

- Elements of an Investment Facilitation Agreement (IFA) were identified by Argentina, Brazil, China and Russia
- Related issues were raised by two informal groups
  - MIKTA (Mexico, Indonesia, Korea, Turkey and Argentina)
  - Friends of Investment Facilitation, or FIFD (Argentina, Brazil, Chile, China, Colombia, Hong Kong, Kazakhstan, Mexico, Nigeria, Pakistan, Qatar, and South Korea)
- High-Level Trade and Investment Facilitation Forum for Development, joint initiative of Nigeria, the Commission of the Economic Community for West African States (ECOWAS) and FIFD, discussed the role of the WTO in promoting foreign investment flows on 3-4 November 2017
  - Discussed why scaling up of investment is critical for expanding trade and development across the continent, something that African countries were already engaged in, and how cooperative global approaches in the WTO could reinforce, advance, and build upon their efforts

Elements of Investment Facilitation Agreement

- Identified by Argentina, Brazil, Russia and China
  - Scope
  - Domestic regulation
  - Transparency
  - Formalities and Documentation
  - Requirements Single Electronic Window
  - National Institutional Arrangements
  - Cooperation among National Focal Points/Ombudspersons
  - Multilateral Institutional Arrangements
  - Implementation
  - Special and Differential Treatment
- Russia included two additional elements
  - Dispute prevention and resolution
  - Basis for future market access and treatment disciplines

Positions of Informal Groups on WTO's Role

- "Friends of Investment Facilitation for Development"
  - Further advance the discussions on how the WTO could contribute to facilitating cross-border investment, with the ultimate aim of promoting more inclusive trade and growth for its Members, especially developing and least-developed Members
- MIKTA
  - Discussions in the WTO could contribute to
    - ✓Strengthening trade and investment policy coherence;
  - Facilitating trade and investment flows;
  - Mobilising trade and investment for development;
  - Exploring where multilateral rules could be usefully strengthened or expanded to support these objectives

Future of Investment Facilitation in the WTO

- Demandeurs of Investment Facilitation in the WTO are divided as to how far this issue should capture the elements of an “Investment Agreement” in the WTO
- Engagement on this issue is still restricted to a relatively small number of members
- Inclusion of the issue in the Ministerial Decision at Buenos Aires is not likely, but the stage seems to getting set for engagement in the post-MC11 phase

Implications of Including the "New" Issues

- The "new" issues are intended to provide significant momentum to the trade and investment liberalisation agenda
- Liberalisation agenda being proposed without offering meaningful benefits to an overwhelming majority of members
  - The concept of reciprocal benefits has gone missing
- The "new" issues are therefore striking a discordant note at a time when the global community is paying considerable attention to making trade more inclusive, besides seeking appropriate responses to the imperatives of sustainable development

WTO in the Run-up to MC11

- WTO is a divided house – engagements on the "new" issues seem to be driving the wedge further
- These developments are clearly posing serious challenges to the decision making capabilities of organisation
- At this crucial juncture, WTO needs directions from the Trade Ministers as to how the organization can enhance its credibility among the larger share of its members by providing inclusive outcomes

Thank you