

A photograph of a person from behind, wearing a grey hoodie with the words "DOWN DOWN WTO!" printed in large, bold, white capital letters. The person is also wearing a dark cap. They are surrounded by police officers in riot gear, including helmets and shields. In the background, there are buildings with signs for "PLATINUM CREDIT LTD" and "SERVANT LOANS".

Envisioning A Better World Without the WTO

A DOSSIER BY
Focus on the Global South

JUNE 2022



Cover photo by Afsar Jafri, Focus on the Global South - India Office, during the #EndWTO Mobilisation in Nairobi, Kenya, December 2015.

PREFACE

Big Pharma and Big Tech Win at the WTO — #MC12 Fails the Global South

June 22, 2022

The outcome of the 12th Ministerial Meeting (MC12) of the World Trade Organisation (WTO) is a big win for rich countries, but a massive defeat for the global South. Developing countries incurred big losses in several negotiating areas, while issues of critical importance—especially in the face of the continuing COVID pandemic, accelerating climate change, and looming food and economic crises—were once again disregarded and set aside. In a clear breach of WTO procedures, draft texts agreed in exclusive ‘green rooms’ were rammed through in the early hours of 17 June without adequate time for all WTO delegations to study them. Negotiation and decision-making processes skewed in favour of wealthy countries is a persisting problem in WTO Ministerial Conferences. But they reached a new low at MC12 with inordinate pressure by the WTO Director General (DG) and wealthy countries to produce a semblance of success from a failing institution.

No waiver of TRIPS rules

The text adopted on June 17 is not a waiver of TRIPS rules to increase access to COVID vaccines and medical tools. Despite worldwide support for a comprehensive TRIPS waiver from over one hundred countries, thousands of civil society organisations (CSOs) and health workers' unions, the WTO shamefully sabotaged the possibility to save millions of lives in the developing world and hasten the end of the pandemic. Acting on behalf of the big pharma industry and rich countries, the WTO DG and Secretariat pushed a text that contains only a few clarifications and allows a limited five- year exemption for using compulsory licenses for export of only COVID-19 vaccines. These clarifications only restate existing flexibilities in the TRIPS agreement and none of them add any new benefits to developing countries.

Loss of Fisheries Subsidies

The fisheries agreement text is a significant setback for developing countries. While the negotiating mandate recognizes special and differential treatment for developing and least developed countries, this principle was reduced to a two-year exemption from actions. This very short grace period means that subsidies provided by developing countries, including those to small-scale and artisanal fishers, would be subjected to WTO rules. The agreement also contains a loophole that would allow states to continue subsidising if these measures are implemented to rebuild fish stocks to a sustainable level. This carve-out favors developed country members such as the European Union, Japan and the US that

have the necessary resources, and have been able to build up their industry infrastructure and systems due to long standing subsidy programs. Importantly, the fisheries agreement extends WTO disciplines into governance areas where it has neither institutional expertise, nor legitimate authority.

Food Security, Agriculture and Public Stockholding

The Declaration on the Emergency Response to Food Insecurity offers nothing by way of tackling the structural and systemic causes of hunger and malnutrition; instead, it commits members to further liberalisation of trade in food and agriculture products through global markets and adherence to WTO disciplines. The Declaration's preamble expresses "concern" about the impacts of excessive price volatility for food and agricultural products, fiscal constraints and deteriorating terms of trade on food security, but then goes on to express "determination" to make progress towards a fair and market-oriented agricultural system.

A market-oriented agricultural trading system can hardly be fair when producers in wealthy and poor countries live in vastly unequal conditions, and when the terms of trade are skewed against small-scale food producers in developing countries by WTO rules that curtail their access to essential public infrastructure, support and services. Point 10 of the Declaration recognises the importance of domestic food stocks, but decisions regarding public stockholding programmes and public procurement that are important to developing countries have been kicked

down the road yet again to the next Ministerial Conference.

Similarly, the Declaration on the WTO response to the COVID-19 pandemic and preparedness for future pandemics focuses on keeping global supply chains running unhindered through the WTO Trade Facilitation Agreement, and upholding WTO rules in the agreements on Services, Agriculture and TRIPS. Despite verbiage on public health and scientific capacity, the Declaration offers no decisions on rescinding intellectual property rights protection on products, production processes and services, and on technology transfer that are crucial for building robust public health systems and pandemic preparedness in developing countries.

Moratorium on E-Commerce Duties

The continued extension of the moratorium on e-commerce duties is yet another big win for developed countries and the big tech industry. Developing countries have already lost billions in tax revenues since 1998 and yet another extension ensures that they continue to be relegated to the backwaters of digital industrialisation.

The Impossibility of WTO reform

Critical issues of reform that are a priority for developing countries, namely operationalising special and differential treatment and the functioning of the dispute settlement system, have been sidelined and deferred once again. The reference to WTO reforms is a clear case of doublespeak, wherein submissions by developed countries sideline multilateralism and legitimise plurilateral clubs.

CSOs and social movements have raised concerns regarding new mechanisms that will bolster corporate control of WTO processes, the Joint Statement Initiatives (JSI) that undermine the Marrakesh Agreement and the multilateral basis of the WTO, and what is already unacceptable overreach of the organisation in areas such as health, food, gender, environment and sustainability. Provisions being discussed under e-commerce have implications for data systems that impinge on the domestic policy space and sovereignty of developing countries.

Conclusion

A question that begs deeper reflection is why developing countries did not stand their ground in upholding the priorities of their peoples at a time of deepening crises. Clues to this can be found in the pernicious institutional culture that has been a hallmark of the WTO since its establishment in 1995. Practices of powerful countries resorting to arm-twisting, exclusion through the 'green room' processes, co-optation, and forum shopping both within and outside of the WTO are now well established through its chequered history and were demonstrated once again at MC12. The push-through-agreements-at-all-costs approach that has been exhibited by the current WTO DG provides no confidence for the protection of developing country interests going forward.

South unity in the WTO has been progressively undermined by an increasingly fragmented agenda without any attention to guiding principles and rules—especially Special and Differential Treatment. The lack of unity and collapse

of southern coalitions such as the Group of 33, African, Caribbean and Pacific (ACP), African Group, G-90 and G-20 were important factors that led to the bad outcomes at MC12. Upon her appointment by consensus in 2021, Director General Ngozi Okonjo-Iweala was expected to promote and protect the interests of the global South. Instead, she became the leading edge of an effort to bamboozle them to produce decisions in favor of the global North.

One of the biggest tragedies of the MC12 is that a failing institution that was on its

last legs has been resurrected as an instrument of a more advanced and dangerous form of neoliberalism. Despite this adverse outcome, we will redouble our efforts with allies across the world to monitor the impacts of the WTO's dangerous agreements and intensify our campaign calling on developing countries to pursue avenues for economic and trade cooperation outside of the WTO's neoliberal free trade dogma. More than ever, we must raise our collective voice to demand the dismantling of the World Trade Organisation.

The articles in this dossier were written in the run up to the MC12. They present analyses by Focus on the Global South, social movements and civil Society Organisations on the issues at stake at MC 12, deep flaws in WTO agreements and why developing countries need to walk away from the WTO. The outcomes of MC12 further substantiate our analyses and reinforce our position that the WTO never has been and never will be an institution to enable countries of the global south to pursue their developmental needs.

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The Global South in the WTO: Time to Move from the Defensive to the Offensive

by Walden Bello

June 9, 2022



#EndWTO Mobilisation in Nairobi Kenya, December 2015. Photo by Afsar Jafri, Focus on the Global South — India Programme.

The World Trade Organization will be holding its 12th Ministerial Meeting in Geneva from June 12 to 15. Yet little if anything is expected from the meeting except the usual exchanges of conflicting views between representatives of the global North and those of the global South. There might be something like a “Ministerial Declaration” that tries to paper over differences with some conciliatory language, but anything resembling a consensus on any key issue is unlikely. Consensus is the prime decision-making method in the WTO, and it’s been a long, long time since there was consensus achieved on anything related to global trade rules.

The WTO is in a comatose state, and a key reason for this has been the angry reaction of the governments of the global North to the ability of governments of the global South and their civil society allies to fend off demands for more concessions from the US and other developed countries that had originally intended the organization to be the prime instrument of prying open the economies of the South and integrating them more fully to a global economy dominated by northern transnational corporations.

The WTO was a key agency of corporate-driven globalization. Globalization has, however, been shown to be a fragile order fraught with many deep-seated structural weaknesses, such as collapsing global supply chains, that have been exposed by the “perfect storm” of Covid 19, the war in Ukraine, inexorably rising oil prices, global warming, and other contingencies. As deglobalization gathers momentum, developing countries must move from a purely defensive to an offensive strategy at the WTO, taking advantage of the crisis of the organization, especially its moribund dispute settlement system, to take back the concessions it made to the global North during the Uruguay Round. Regaining the policy space abolished by these concessions will be essential to developing countries if they are to adjust effectively to the emerging new global order.

The Path to Paralysis

To some, the WTO’s descent into paralysis can be traced back to the Third Ministerial Meeting in Seattle in 1999. There, the United States and the

European Union’s aggressive push for new trade negotiations to follow the Uruguay Round that established the WTO provoked resistance from developing country governments and civil society organizations, leading to the collapse of the ministerial amidst widespread street protests and a police riot.

The rich countries struck back during the Fourth Ministerial in Doha in 2001, using 9/11 as an excuse to pressure the developing countries to agree to the launch of a new trade round, deviously labeling it the “Doha Development Round” to calm the latter’s apprehensions that their development concerns would be sidelined in the negotiations.

Then, in 2003, with the heft provided by India, Brazil, and China (a WTO member since 2001), during the Fifth Ministerial in Cancun, developing countries were able to prevent the U.S. and EU’s attempt to dismantle critical government protections for small farmers. They also foiled attempts to tighten the already restrictive Trade Related Intellectual Property Rights Agreement (TRIPS) and prevented an attempt to bring investment, government procurement, and competition policy under the WTO’s ambit.

As developing country resistance consolidated under the leadership of India, Brazil, and China, the United States began to move away from a strategy of multilateral trade liberalization via the WTO. After the Cancun ministerial collapse in 2003, the Bush administration’s point man on trade, U.S.

Trade Representative Robert Zoellick, warned: "As WTO members ponder the future, the U.S. will not wait: we will move towards free trade with can-do countries."

Over the next few years, the United States and the European Union put their efforts into trying to forge bilateral trade agreements or limited multilateral agreements, like the failed Trans-Pacific Partnership (TPP) favored by the Obama administration. Still, hope that the WTO would regain its usefulness as the main engine for trade liberalization flared anew when a trade facilitation deal was hammered out in Bali in December 2013. But the deal fell apart a few months later when India withdrew its approval after it failed to secure a firm commitment from developed countries to a permanent solution to its subsidized food stockpiling policy.

The US on the Warpath of Unilateralism

The US move towards unilateralism accelerated in 2016, when the supposedly multilateralist administration of Barack Obama ousted a Korean Appellate Body member because it did not agree with the latter's judgments in four trade disputes involving the United States.

Donald Trump continued Obama's emasculation of the Appellate Court, with Washington vetoing new appointees, so that by December 2019 it had stopped functioning altogether, with just one judge left. With a non-functional Appellate Court, the WTO was robbed of its teeth to enforce compliance with the 60 agreements and other key decisions

that were sealed during the Uruguay Round that established the WTO, probably the most important of which were commitments to bring down industrial tariffs, the Agreement on Agriculture, and the Trade Related Intellectual Property Rights Agreement (TRIPS).

Trump was not worried about having a dysfunctional dispute settlement mechanism since he believed that the only way the US could get its way was via unilateral means such as trade wars. Here he threatened both traditional US allies as well as rivals, but he deployed it especially against China. Although China fulfilled the commitments it promised upon joining the WTO on time, Trump and Washington's "nationalist lobby" saw China as an economic power which could not be disciplined by WTO rules since these did not address what they saw as the source of "inequality" between China and its trading partners: the state capitalist system that allowed Beijing to subsidize Chinese enterprises. Indeed, Trump and his key economic adviser, Peter Navarro, saw the WTO as legitimizing China's trade practices. From their perspective, the most consequential WTO decision in the decade and a half preceding Trump's reign was China's admission in 2001, from which China had gained everything and the US nothing except deindustrialization.

Unable to overcome Washington's obstructionism within the WTO while brazenly violating its *raison d'être* of multilateral settling of disputes by engaging in unilateral trade warfare, WTO Director-General Roberto Azevêdo of Brazil resigned in 2020, a year before

his term was supposed to end. Nigerian diplomat Ngozi Okonjo-Iweala was favored by most members as a replacement, but the Trump administration delayed the process while holding out for another candidate who was deemed more sympathetic to U.S. interests.

With the transition to the Biden administration in 2021, members of the trade body looked for more cooperation from Washington. The Biden team's first move seemed encouraging: it ceased blocking Okonjo-Iweala, who is now the first woman to head the WTO. But even as it floated fresh rhetoric about supporting the WTO, the US trade team, now led by United States Trade Representative Katherine Tai, has not ended the Trump administration's blocking of appointments to the WTO appellate court.

More broadly, the Biden administration has not departed from Trump's unilateralism since it has not walked back from his predecessor's defining China as a threat to the US owing to its state capitalist system. In a recent WTO review of China's trade policy, Washington said the organization has failed to counter China's "unfair" practices 20 years after it joined the trade body. With China being seen as one of the leaders of the developing country bloc in the WTO, the Biden administration is likely to have its posture at the WTO follow its strategy of isolating China on all fronts. In the words of a US trade official cited by Politico, "China has used the imprimatur of WTO membership to become the WTO's largest trader, while doubling down on

its state-led, non-market approach to trade, to the detriment of workers and businesses in the United States and other countries."

The TRIPS Waiver Debate

The spillover of the US efforts to contain China into the WTO is but one of the many issues preventing the resurrection of the WTO from its comatose state. Likely to be the central topic at the 12th Ministerial is the so-called TRIPS waiver that has been the major source of North-South conflict within the WTO ever since India and South Africa first proposed it in October 2020 in response to the then raging Covid 19 pandemic. The TRIPS waiver would involve temporary suspension of a set of intellectual-property provisions that prevent developing nations' access to the technology needed to make their own versions of Western-made Covid-19 vaccines, diagnostics, and therapeutics. Some 100 W.T.O. member-governments now support the move; some 60 of them are official sponsors.

Big Pharma has strenuously resisted the TRIPS waiver with the European Union, Germany, the United Kingdom, Norway, and other developed countries taking up the cudgels for it in the WTO. The EU position has been that there are "flexibilities" in TRIPS that make a waiver unnecessary. Owing to strong pressure from US civil society and progressives in the Democratic Party, the Biden administration decided to support the waiver in May 2021. Since then, however, it has been relatively passive and cautious, disappointing developing country governments that felt that had Washington decided to really take up

their cause, it would be able to successfully pressure the EU and other naysayers to join the waiver bandwagon and thus produce the consensus needed for the waiver to become official.

There are, in fact, skeptics that suspect that Washington simply fell behind the waiver but deliberately refrained from promoting it, leaving other developed countries to continue to oppose it and thus prevent consensus. In this view, the new administration was playing an opportunistic game of scoring brownie points with developing countries while letting other rich countries take the flak for holding on to a position that Washington secretly favors.

As the 12th Ministerial approaches, the Director General has circulated a negotiating text that seeks to be the basis of a compromise. This text is very far from the comprehensive waiver that was initially tabled by India and South Africa. According to Medecins Sans Frontieres, "key limitations of the leaked text include that it covers only vaccines, is geographically limited, and covers only patents and does not address other intellectual property barriers, such as trade secrets, which may cover critical information needed to facilitate manufacturing."

There has been practically no convergence between the developing countries and the rich countries in the last two and a half months. The United Kingdom, for instance, notes the Third World Network, has been constantly pushing to narrow application of an already very restricted waiver proposed in the negotiating text on exports from a

developing country with manufacturing capacity to other developing countries to apply only to vaccines, denying application of the export waiver to ingredients and other inputs and processes required to produce the vaccines, thus "making the entire decision unworkable."

To many frustrated developing country governments and their allies, the long agony of the WTO over the TRIPS waiver has simply underlined the body's inability to respond to the needs of the global South. Nobel laureate Joseph Stiglitz of Columbia University cut to the chase. "The drug companies did not want a quick response," he said. "The slower the response, the higher their profits. More people died, but that's not their concern. Their concern was profits over people's lives."

Aside from the TRIPS waiver, topics that have been flagged by the Director General for discussion at the ministerial include the current food crisis, fisheries subsidies, agricultural reform, and "WTO reform." These "thematic" meetings that have been taking place in "Green Rooms" where participation is restricted are not likely to produce breakthroughs, though the final Ministerial Declaration will try to give the impression that there is movement on these issues. (Unlikely does not mean impossible, and to show that the WTO is not dead, a compromise might be reached around the question of fisheries subsidies, the latest text of which disadvantages small fishers and small fishing nations while being lax with countries now accounting for the bulk of subsidies, according to civil society organizations following the issue.)

All in all, however, the possibility is greater that, triggered by the TRIPS waiver debate, the negotiations may break out in acrimony, sealing the fate of the organization. Another event that could bring about this outcome is if the US decides to use the ministerial to justify the trade and other punitive economic measures that Washington and its allies are taking against Russia over Ukraine, something that is sure to be resisted by most member governments from the global South.

From Defensive to Offensive

With their relative unity since the early 2000's, the developing countries have been successful in fending off the demands for more trade and trade-related concessions by the global North during the long Doha Round, to be added to those they had made in the preceding Uruguay Round that established the WTO. But the question is, should they be contented with simply maintaining a defensive strategy? Should they not, in fact, take a more offensive strategy, taking advantage of the current state of disarray of the WTO?

In becoming members of the WTO in 1995, most developing countries made far-reaching concessions that reduced their policy space significantly, making development well-nigh impossible for many. The elimination of quotas on agricultural imports and their replacement with "minimum access volumes," as demanded by the Agreement on Agriculture, spelled disaster for many local producers of many commodities. To protect themselves from the massive tide of imports from the developed countries,

especially in agriculture, governments in the global South have had to rely on the very restrictive "flexibilities" of existing mechanisms like "WTO-consistent" anti-dumping measures or sanitary and phyto-sanitary standards in their efforts to gain more control over trade policy.

It is time for developing country governments to launch an offensive to retake that critical policy space they yielded in joining the WTO. This is the best time to launch this, with the WTO's dispute settlement mechanism all but dead and with a unilateralist US showing little interest, if not hostile to reviving it owing to its fear of being filled by judges unsympathetic to it. Indeed, Washington has refused to join a stop-gap mechanism set up by 25 countries to adjudicate trade disputes among themselves, the "Multi-Party Interim Arbitration Arrangement."

For instance, governments can bring back quotas on agricultural imports that were banned by the Agreement on Agriculture. They can move either individually or collectively. Rather than a frontal assault, they may move quietly, restoring quotas sequentially. When it comes to manufacturing, governments can bring back banned trade policies like "local content" measures to build up their industries. Indeed, they may eventually decide to make the TRIPS waiver no longer a matter of negotiation but, to use diplomatese, a "fact on the ground."

Making their economies less vulnerable to the vagaries of global free trade has indeed become a matter of survival, as many critical global supply chains in both agriculture and industry are ceasing to

function owing to what some have called the “perfect storm” in global trade owing to the conjoining of the impact of Covid 19, the war in Ukraine, inexorably rising oil prices, global warming, and other global contingencies. Even in the developed countries and among global corporations, there are strong movements to “reshore” industrial production by embedding supply chains at the regional or local level. The fragility and inefficiencies of globalization are leading to its reversal, and this is likely to gather momentum.

The World Trade Organization was the “crown jewel” of a globalized world. That world is giving way to an era of deglobalization, and the countries of the global South must ensure they are leaders and not followers in this process. Taking back the policy space they yielded during the Uruguay Round is essential to their survival in this Brave New World, and now is the time to do this.

WTO MC12: What's at Stake and what lies ahead for people's resistance

by Joseph Purugganan

June 12, 2022



MC12 will take place at WTO headquarters in Geneva, Switzerland from 12 to 15 June 2022. The conference was due to take place in late 2021 but was postponed due to the outbreak of the Omicron variant of COVID-19. Photo from <https://www.wto.org/images/mc12/mc12wtobanner.jpg>.

Introduction

The 12th Ministerial Conference (MC12) of the WTO will take place against the backdrop of multiple crises—the continuing global health and economic crises brought about by the Covid 19 pandemic and a looming food crisis.

At the onset of the pandemic, around 400 civil society organizations issued an open letter to governments demanding a stop to all trade negotiations in the wake of the crisis. The demand was made to allow governments to focus their time and energies on the more urgent task of

responding to the health and economic needs of their peoples.

Those demands fell on deaf ears as governments not only continued trade negotiations but used the pandemic to intensify the trade liberalization agenda. The Regional Comprehensive Economic Partnership Agreement (RCEP), the mega free trade deal between ASEAN and its partners China, Korea, Japan, Australia and New Zealand was signed in November 2020, and took effect for most parties in January this year. And a week from now, the WTO Ministerial will be pushing through in Geneva.

Overcoming crisis is the overarching theme of MC 12. The embattled institution is attempting to jolt itself out of a moribund state brought about by an internal crisis of legitimacy and relevance in order to position itself as a multilateral institution offering solutions to many of the world's problems including the pandemic and global health issues, the food crisis, and environmental and resource management issues among others.

Another key motivation driving MC 12 is the desire to bounce back from the failure in Buenos Aires (MC11) and prevent another stalemate in the negotiations. MC11 held five years ago failed to produce any substantive outcome, except a decision to continue talks on fisheries subsidies and a work programme on electronic commerce.

What's on the Agenda

The call of Director General Ngozi Okonjo-Iweala for "simple, short, beautiful and balanced" texts for

consideration of Ministers belies the fundamental divisions among Members across all key areas of negotiations.

The Push for final agreement on Disciplining Fisheries Subsidies. The [mandate](#) is to negotiate disciplines to eliminate subsidies for illegal, unreported and unregulated fishing and to prohibit certain forms of fisheries subsidies that contribute to overcapacity and overfishing, with special and differential treatment for developing and least developed countries integral to the negotiations.

A recent [study](#) estimated "global fisheries subsidies at USD 35.4 billion (2018), of which capacity-enhancing subsidies are USD 22.2 billion." The report also identified the top five subsidizing political entities as China, European Union, USA, Republic of Korea and Japan, which contribute "58% (USD 20.5 billion) of the total estimated subsidy."

While the negotiations are couched in addressing concerns that are important to small, artisanal fishers—like environmental degradation, overfishing, and unfair trade competition—there is a serious concern among them that the proposed agreement could in fact narrow down further the support given to these subsistence fishers, favoring instead the interests of large subsidizers who are the cause of the problem to begin with.

Small fisheries across the developing world have come out strongly against the proposed fisheries subsidies agreement. The Pacific Network on Globalization (PANG) issued an [open letter](#) to Ministers

on the WTO Fisheries Subsidies Negotiations, which was endorsed by over 80 international, regional and national organizations outlining the reasons why the talks will fail the mandate and called on States to “make sure that any outcome on fisheries subsidies negotiations targets those who have the greatest historical responsibility for overfishing and stock depletion, excludes all small-scale fishers from any subsidy prohibitions, prevents the WTO from ruling on the validity of conservation and management measures of members, and upholds the sovereign rights of countries under UNCLOS.”

The [National Fishworkers Forum \(NFF\)](#), a national federation of state level trade unions in India from the 10 coastal states with 13 Unions representing the interests of the fishing community across the country expressed their similar concerns against the agreement and called on the Indian government to “categorically reject this Agreement as it will destroy our livelihoods as well as food security for millions of Indians in the future.”

In Agriculture, there is the long-standing issue of the permanent solution to the issue of Public Stockholding for Food Security Purposes. The issue revolves around the concern over food security and the important role played by State-run food programmes to address this concern. The debates are centered around the demand of developing countries, led by India and the G33 group of countries, to exempt programs aimed at addressing food security needs from subsidy limits under the Agreement on Agriculture.

There is a strong push from India and G33 for MC12 to finally deliver on the permanent solution to this question. At the Bali conference nine years ago, Members agreed as part of the so-called Bali Package on a temporary interim mechanism via a ‘peace clause’ that would exempt these programs from legal challenge as countries continue to work out a permanent solution.

There is an equally strong push back however from the United States, the European Union and agriculture food exporting countries under the Cairns Group to prevent agreement on public stockholding at MC12 arguing that any outcome on PSH should be linked to the market access component related to domestic support reforms. The big agriculture exporting countries are touting a package that includes a work program that outlines continuing work on a permanent solution (possibly by MC 13), a declaration on food security, and an agreement on the Singapore proposal to waive the UN World Food Programme’s (WFP) food purchases from any export restrictions.

Another major agenda in MC12 , particularly for developing countries is the long awaited decision on the TRIPS-Waiver. An outcome document was circulated to Ministers in May 2022 by the Director General reflecting the compromise text developed through informal negotiations among the QUAD–United States, European Union, and the original proponents of the Waiver proposal, India and South Africa. While some view the QUAD text as a breakthrough in the talks, the overwhelming view from civil society

organizations and health movements is that the proposal has narrowed down the scope of the waiver to cover only vaccines and exclude therapeutics and diagnostics, and therefore will not be able to remove barriers and ease burdens to equitable access to Covid 19 treatment.

Also on the table for possible outcomes are decisions related to the proposal for investment facilitation for development, and electronic commerce.

What's at Stake?

The debates around contentious issues in the key areas in the MC 12 agenda, are underpinned by a much broader concern over the future of the WTO. In the lead up to the Buenos Aires conference then Director General Roberto Azevedo spelled out that what is at stake is the credibility of the WTO and the feasibility of multilateral rule making. In the wake of the multiple crises, the credibility and feasibility of the WTO to respond and remain relevant in the time of global shocks and emergencies like the pandemic is once again put to question.

Even prior to the pandemic however, an internal crisis has already been plaguing the WTO. Its 27 year old history has been marked by a number of failed negotiations, failure to find consensus and move forward on the Doha round, and impasse in its dispute settlement mechanism. We characterized the crisis of the WTO as one of legitimacy and relevance.

The WTO's legitimacy is undermined by a democratic deficit underscored by its failure to live up to the promise of a rules

based system with a democratic, consensus decision making process. Instead what we have seen over almost 3 decades is a rule by the few and powerful. IATP described the decision making process in the WTO as a broken process characterized by exclusive so-called 'green room discussions', mini-ministerial meetings, a chair driven process, closed-door deals, and a general power imbalance, manifested in the lack of staff of member states. And the aggressive rather than the neutral and facilitative role of the Secretariat.

THE WTO is also suffering from a development deficit underscored by its failure to live up to the supposed development agenda driving the Doha round negotiations.

As Focus pointed out in its [statement](#) at the conclusion of MC 11 : "The fiction of the Doha Development Agenda (DDA)- that the agreement could be an instrument for development, and that somehow through implementing the Doha commitments , the WTO can be reformed to address fundamental problems of inequity and poverty- should once and for all be laid to rest, buried under the rubble of (20) years of failed promises."

What happened to the so-called development agenda?

Over the years, the development agenda has acquired new names: MSMEs, women and development, fisheries subsidies, investment facilitation for development, all of these were nothing more than attempts to whitewash the deeply rooted corporate agenda.

WTO Multilateralism

WTO's relevance on the other hand is hinged on multilateralism- the continued assertion that the multilateral trade body is working for everybody and that it has the solutions to and the capacity to lead us out of these crises.

There was a strong call in Buenos Aires to support WTO multilateralism in the wake of the aggressive efforts of the United States, (especially under Trump) to unilaterally push its agenda. While we must continue to call on our governments to reject the unilateralism and jingoism of the US, we must also continue to push for the rejection of the multilateralism of the WTO that for close to three decades has overseen an aggressive agenda of economic liberalization, and the construction of global trade rules that have further exacerbated global inequities and weakened the capacities of States- particularly in poor countries- to advance trade in the context of their own development objectives in the midst of crises and uncertainties.

Trade and Economic Resilience

In the wake of the pandemic, the WTO's assertion of relevance is once again put to the test. The buzzword now is economic resilience. While there is a recognition that globalization, which has deepened trade links and 'hyper-connectedness', has made the world more vulnerable to shocks, there is a stronger assertion that globalization has also made the world more "resilient to these shocks when they strike."

The logic that is being advanced is that the problem is also the solution. The

disadvantages could also provide advantages. Trade increases vulnerabilities but trade also increases productivity that can lead to resources to deal with these vulnerabilities; and these resources help us prepare for future shocks.

On the one hand there is a recognition that trade mobility is a vector for disease transmission but mobility also offers solutions as it could provide greater diffusion of knowledge that can lead to finding cures. Dependence on global value chains (GVC) can lead to disruption of supplies but also accelerate recovery of production across the chain.

The narrative that is being pushed is that there should be no turning back from the agenda of economic liberalization, if we want to effectively respond to crises. And that the reform agenda are necessary to better able to respond to crises and shocks. The imperatives for reforms being advanced include enhancing transparency and predictability in pandemic-related trade measures, removing bottlenecks in supply chains, and pushing negotiations in key new areas to create more opportunities.

But who is driving the so-called reform agenda?

The International Chamber of Commerce for example has advanced what it calls [Global Business priorities for the WTO](#), a set of reform proposals that it is advancing to "write new rules to ensure that the WTO continues to serve the needs of the businesses- the ultimate end users of the global trading system."

A [South Centre report](#) on WTO reform

and the crisis of multilateralism broke down what the proposals, aimed at pushing new “pathways to progress”, seek to achieve. According to the report, the reforms are meant to change existing rules in favor of developed countries (once again), change the focus away from issues that are sensitive to developed countries (like agriculture) towards areas of where they are competitive (i.e. digital trade), and erode the gains made by developing countries (SDT).

Imperatives for People’s Movements

MC 12 should be viewed in light of the multiple crises in health, the economy, climate and environment, and food.

We should challenge, along different fronts and through multiple but coordinated campaign platforms, the notion that the WTO as an institution and the solutions that it is propping up can solve the multiple crises.

The battle lines have been drawn. On the pandemic response, we should amplify calls for a TRIPS Waiver that is broad in

scope and effectively addresses the issue of vaccine justice. On the food crisis, we should solidify further the campaign against multistakeholderism as an approach to the governance of food systems; On climate we should continue to work with climate justice movements to push back the corporate capture and resistance to market-based solutions; on human rights, we should intensify work to dismantle corporate power and demand stronger, legally binding instruments to hold corporations accountable for crimes and human rights violations.

MC 12 can be an opportunity to tilt the narrative against business-as-usual responses to crises driven by the corporate agenda, in favor of real, and progressive solutions advanced by people’s movements.

Agriculture Negotiations at the WTO: No Sight of Real Solutions

by Ranjini Basu and Shalmali Guttal

June 13, 2022



Midday Meal—Woman serving the meal at children's school. © ILO/ Shyamal Das

The 12th Ministerial Conference (MC 12) of the World Trade Organisation (WTO) is taking place against the backdrop of the Covid-19 pandemic, accelerating climate change, the Russia-Ukraine war and a fast-aggravating global food crisis. Since the Ministerial is taking place after a gap of five years, the expectations of developing country members are that longstanding trade issues, which are crucial for the vast majority of the world's poorest and most vulnerable populations, will be adequately resolved. However, news from Geneva shows that there have been concerted efforts by the rich and developed nations to circumvent the concerns

of developing countries regarding provisions in the Agreement on Agriculture (AoA) that threaten food sovereignty in the guise of 'crisis management'.

A Persisting Threat to Food Sovereignty

The WTO has presented a clear danger to food sovereignty and the right to food from its establishment in 1995. Trade liberalization rules enshrined in the WTO's AoA and agreements on Trade Related Intellectual Property Rights (TRIPs), Application of Sanitary and Phytosanitary Measures (SPS) and Technical Barriers to Trade (TBT), among others, formalized the contours of a corporate food regime resulting in the 'de-territorialization of food production and circulation'.^[1] These and other WTO agreements on investment, industry, services, trade facilitation and e-commerce have shored up trade and investment privileges for transnational corporations (TNCs) from the North, undermining the rights and capacities of small-scale food producers, workers and peoples in the South to make autonomous decisions about their lives, livelihoods and food systems.

The birth of the WTO was preceded by the proliferation of structural adjustment loans in developing countries that were conditioned on reducing government support for domestic agriculture and public goods and services, and enabling privatization and trade liberalisation in key sectors such as agriculture. The AoA's rules were designed to expand global agricultural trade on terms that favoured the economic and political interests of wealthy, industrialised countries and

their corporations, at the cost of food and economic self-sufficiency in developing countries still reeling from colonial era extractivism. Trade liberalisation under the WTO increased the power of agricultural trading firms, and advanced the extra-territorial ambitions of TNCs to source foods and agricultural products through global value and supply chains.

The Importance of Self Reliance

Even before the Covid-19 pandemic struck in 2020, world hunger levels were abysmally high. The lockdowns, job and income losses, and economic crisis that followed the pandemic have made the crisis even more complex. The latest report of the State of Food Security and Nutrition in the World (SOFI) states that between 720 and 811 million people faced hunger in 2020.^[2] There have been vast regional disparities, with the majority of hungry people concentrated in Africa, Latin America and Asia. The number of under-nourished people in 2020 was around 768 million, of which more than half lived in Asia and one-third in Africa.

These shocking conditions of hunger and malnutrition are expected to deepen and aggravate due to disruptions in the availability of wheat, maize, barley, edible oil, natural gas, coal, crude oil, and fertilizers among other commodities triggered by the Russia-Ukraine war. The economic sanctions imposed by US led allied countries on Russia, have rendered a vast section of the world's population dependent on imported food and fertilizer supplies, vulnerable to hunger and starvation.^[3] Compared to the beginning of this year, world wheat and

maize prices have shot up by a whopping 42 and 60 percent respectively as of the month of June.[4] Countries are facing high food inflation especially in wheat and cooking oil, rising prices of fertilizers and higher energy prices with net food importing countries being the worst off. As the war situation continues, more countries have started restricting their exports to cater to their domestic needs, which however have further contributed to the global inflationary trends in agricultural commodities. [5]

These multiple interlinked crises have again brought to fore the fundamental issues of self-reliance in food production and autonomy in food policy and governance—what social movements and civil society call food sovereignty. The disruptions in supply chains and economic sanctions led by the US and its allies have compelled developing and least developed country (LDC) WTO members to push more aggressively their concerns regarding the unequal terms of trade in the AoA, which jeopardize their production capacities, economic security and food sovereignty.

Contentious Issues in the Negotiations

Led by Chad, the LDCs have tabled a strong agenda (JOB/AG/227) for the reform of the AoA with a clear emphasis on the food security needs of LDCs and all developing countries. LDCs are calling for a permanent solution to the conflicts over Public Stock Holding (PSH) suggesting that, 'the scope of the PSH programme should not be defined in terms of specific crops nor subject to an upper limit on total procurement of the domestic production quantity. Rather it

should cover any programme for the acquisition of foodstuffs at administered prices, provided that its objective is to support low-income or resource-poor producers'.

The PSH has been a crucial tool, particularly during the Covid-19 pandemic, for developing countries to provide price-supports to smallholder and marginal farmers, as well as subsidized food to poor consumers. Under the present AoA regime, there are severe restrictions on the expansion and implementation of the PSH programme due to limited de-minimis subsidies calculated at the outdated external reference price levels of 1986-88. Further, the peace clause accepted at the Bali Ministerial in 2013 is restricted to PSH programmes in operation till 2013, therefore limiting expansion of new public distribution programs.

In support of obtaining a permanent solution to PSH, 80 countries[6] including the African and ACP (African, Caribbean and Pacific) group and G33[7] have circulated a proposal (JOB/AG/229), in which they have proposed an alternative calculation of the external reference price for estimating the Aggregate Measurement of Support (AMS). According to the decision taken at the Bali WTO Ministerial Conference in 2013, the issue of a permanent solution for PSH was to be clinched by 2017. However, despite several proposals shared by the developing countries, the issue has been repeatedly opposed and put aside by the developed countries and the Cairns group.

Other important concerns[8] relate to

the Special Safeguard Mechanism (SSM), which is an important tariff tool for developing countries to be able to limit imports in case of domestic price volatility as a result of import surges in order to protect poor and small-scale food producers. Further, developing countries have repeatedly raised concerns regarding disproportionate trade distorting subsidies accessed by developed countries, allowing them to dump cheap commodities and foods in the markets of developing countries and curtailing the already meagre incomes of smallholder farmers.

Given the impacts of Covid-19 disruptions felt by the poor cotton producers in Africa and other LDCs, the pending issue of resolving trade-distorting domestic supports that affects cotton markets has garnered immediate importance.[9] The proposals floated by LDCs (JOB/AD/227) asks for freezing the cotton subsidies at 2019-20 levels while a final solution continues to be discussed. The longstanding issue of cotton subsidies is a case in point of devaluing the priorities of poor farmers from developing countries at the WTO negotiations over the years. In contrast, developed countries and the wealthy members of the Cairns group have repeatedly raised disputes related to domestic supports and market access against the developing countries.[10]

Opposition by wealthy countries to the demands and concerns of developing countries, including those of the LDCs and NFDCs (Net Food Importing Developing Countries), has been widening, with the agriculture export-oriented Cairns group joining resistance

to permanent solutions to the PSH and SSM issues.

Brazil, a member of the Cairns group, has floated a counter proposal to the demands for a permanent solution on PSH.[11] It considers the PSH, which it sees as a price support policy, as the 'most price distortive agricultural policy'. Brazil's proposal calls for "continuing discussions on a compromise solution on PSH for MC13 that focus on those Members that need the most help in fighting food insecurity. The following proposal also seeks to preserve the WTO at the core of the multilateral trading system. It provides rights but also obligations." In their opposition to PSH, the Cairns group and developed countries obliterate the reality of widespread poverty across the developing world, and the crucial role of PSH programmes in countering hunger and malnutrition, as well as protecting the livelihoods of thousands of small-scale food producers.[12] The developed countries represented by the G7 are defending the AoA regime and have called for more transparency in subsidy notifications by countries.[13] Adherence to more stringent standards of transparency requires greater financial investment into the mechanism and would prove to be an extra burden on already resource strapped developing countries.

It is due to the pressure from developed countries and the Cairns group that the Chair of the agriculture negotiations, Ambassador Gloria Abraham Peralta, seems to be making a case for postponing the PSH decision to MC13 on grounds of detailed technical work, and

linking it with the issue of reviewing and disciplining trade-distorting domestic supports (TDDS).[14] Here again, the attempts are to link the PSH merely with the AoA's AMS regime, foregoing its non-trade related role of meeting food security needs. Using the pretext of the global food crisis, there has also been growing pressure by the Chair of the agriculture negotiations to adopt outcomes from the MC12 even if they go against the concerns and priorities of the developing countries.[15]

The latest analysis[16] of the agriculture negotiations from MC12 show that the latest drafts of the Draft Ministerial Declaration on Trade and Food Security and other agendas do not provide any substantial headway in resolving the concerns of developing and LDC countries. The drafts reiterate decisions that were agreed in earlier Ministerial rounds, except a few mentions of 'special needs of developing countries, LDCs and NFIDCs'. The provision on expanding production in developing countries, which will also enable diversifying sources of export in the long run, is likely to be opposed by the developed countries and Cairns group. The push for an outcome on removing export restrictions on World Food Programme procurements seems to be projecting a quick win, without advancing on the more important structural concerns regarding the AoA.

The preamble of the AoA mentions food security as 'non-trade concern.' But it is in the realm of food that the AoA and other relevant WTO agreements have most served the interests of northern TNCs. The tricks and technicalities of

trade rules fashioned to advance a global, de-territorialised market have enabled corporations of wealthy countries to dominate food and agriculture markets by dispersing their operations across countries of the South.

Enabling Corporate Concentration

The 'de-territorialization' of food production and circulation has been made possible by corporate-led global value and supply chains (GVCs) that unbundle and fragment production, processing and other operations across multiple geographic locations. Through GVCs, TNCs take advantage of low wages, lax labour and environmental laws, tax breaks, preferential access to land and raw materials, and other benefits offered by developing country governments desperate to attract foreign investment and integrate into the global economy.

GVCs in food and agriculture are transnational structures of a highly concentrated, corporate dominated global food system. Research shows that corporations are consolidating value chain operations vertically and horizontally in all agri-food sectors from staples, horticulture, meat, poultry and seafood to agrochemicals, ready-to-eat products and retail.[17] A small number of corporations exercise a high degree of influence within and over this system through mergers and acquisitions to form giant 'mega-companies' that are profoundly reconfiguring the world food economy.[18] The Big Six firms that dominated the agricultural inputs in the early 2000s have now become four large firms: Bayer, Corteva, ChemChina-Syngenta and BASF. Food processors and retailers (brick & mortar as well as e-

retailers) are merging into giant supermarket chains and overall, corporate agri-food supply chains constitute approximately '30 to 50 percent of the food systems in China, Latin America, and Southeast Asia, and 20 percent of the food systems in Africa and South Asia.'[19]

Over the past decades financial actors have become increasingly involved in agri-food supply and value chains through complex financial instruments. Finance corporations have invested in commodity production, processing, retailing, agrochemicals digital technology, logistics (transportation and storage) and large-scale land deals, and are increasingly the hidden faces behind land, water and resource grabbing and dispossession of the peasantry. The scale at which asset management firms are increasing horizontal and vertical shareholdings in food related sectors is resulting in "interlocking oligopolies operating all along agri-food supply chains" with anti-competitive impacts in seeds, supermarkets and more.'[20]

Corporate concentration in agri-food supply chains have far-reaching implications for food security, nutrition, public health, livelihoods and governance through: shaping markets, technologies, safety standards, and product and food labelling; controlling seeds and breeds; determining commodity and food prices, workers' wages and work conditions; increasing the availability of highly processed foods over fresh, seasonal produce; and privatizing a range of key public functions such as procurement, agricultural research and extension, school meals, maintenance of land

records, etc. Such concentration undermines the agency of small-scale food producers, workers and low-income consumers, who find themselves faced with adverse conditions and poor choices regarding livelihoods, incomes, food and nutrition. It undermines local/regional territorially embedded food systems, and reduces the diversity of food staples, fruits, vegetables and animal proteins available to ward off hunger and malnutrition, especially for populations with low purchasing power. Regulations in developing countries with high exposure to corporate supply chains do not protect and support local producers, processors, workers and businesses, leaving crucial goals of national food and income security to the vagaries of markets and corporate profits.

Market rule and corporate concentration in food systems have been enabled and boosted through the WTO and its Bretton Woods partner, the World Bank. In its 2008 World Development Report, Agriculture for Development, the World Bank elaborates a strategy for using agriculture as the basis for economic growth involving private sector led extensive value chains linking producers and consumers. Although present day value chains are far more complex than the Northern agro-export imperatives that shaped the AoA, trade and investment facilitation rules to ensure multilateral support for GVCs continue to be pushed in the WTO by Northern TNCs through their powerful host governments.

The Failure of global value/supply chains

In the 21st century there have been two momentous events that have shown the inadequacy of global trade and supply chains in ensuring food access to low-income, poor and vulnerable populations, and the dangers of relying on them to meet national food security needs. The first was the food crisis of 2007-2008 that was precipitated by a combination of events/factors including bad weather, financial speculation in agricultural commodities, increased demand for high protein foods, the expansion of biofuel production and export restrictions. The 2007-2008 food crisis triggered protests and riots in numerous developing countries, demonstrating the susceptibility of ruling regimes to hunger induced anger among their populations. It also – ironically – resulted in aggressive waves of land and territory grabbing and venture capital speculation in agricultural production, resulting in widespread dislocation of small-scale food production and dispossession of rural peoples across the South from their lands. The aggressive expansion of global private capital into the agri-food and land sectors heightened financialization of these sectors and spurred a new era of smallholder producers being integrated into corporate value chains and facing increased land insecurity.[21]

The second momentous event is the COVID 19 pandemic, which continues today and has demonstrated the vulnerability of the global supply chain model in virtually every sphere, especially food and public health. Border closures and other measures to contain the spread of the virus crippled the movement of goods within and across

borders, as well as production and processing by restrictions on the movement of migrant workers, who perform a significant proportion of the work of food production in food value chains. A shocking contradiction of the global food chain model made visible by the pandemic was that food system workers were compelled to work in crowded, unsafe conditions and deprived of basic protective gear and access to adequate healthcare and sanitary living conditions.

While various multilateral agencies and Northern governments cautioned the importance of keeping the global food supply chains free from disruptions to prevent hunger and social unrest, there was no recognition among them that the looming food and health emergency was both, created and magnified by global value and supply chains, trade rules and economic policies that undermined national self-sufficiency in critical sectors such as food, public health, and the production of essential goods.

The 2007-2008 food crisis and 2008-2009 global financial crisis should have catalysed serious re-thinking by governments, multilateral institutions, and International Financial Institutions (IFIs) about the wisdom of relying on global supply chains and financial markets for food and industrial goods. But instead of strengthening local-regional food systems for domestic consumption and commerce, governments enabled global supply chains to become even longer, allowing corporate agribusinesses to corner large swathes of fertile farmlands and natural resources, and relegating small-scale

food provision to subsistence levels.[22]

Such dangerous short-sightedness has a long history. A study on policy responses to the impacts on the global food system from COVID-19 points to how past policy responses to crises set the stage for food crises we face today and will likely face in the future: 'Policy responses to previous episodes of crisis in food systems over the past 70 years have encouraged the rise of a global food system based on principles of industrial production, specialization and global trade that is progressively taking place via complex global food supply chains dominated by large private sector corporations.'[23]

WTO Out of Food and Agriculture

The history of the WTO and its AoA provides ample evidence that the WTO regime has failed to provide any real, lasting solutions to the problems of hunger and food insecurity among the majority of the populations in the developing world. Over the past 20 years, it has failed to make good on commitments to meaningfully address the needs and priorities of developing countries in agriculture, intellectual property rights, fisheries, investment and trade facilitation. Instead, it has introduced rules and mechanisms that have weakened the productive capacities of the poorer countries, and made them dependent on unreliable global markets for food, increasing their vulnerability to widespread hunger, especially during times of crisis. The WTO's unequal, iniquitous trade regime has impoverished peasant and small-scale agricultural producers, fishers and workers in countries of the South, and continued to widen the gap between rich

and poor countries.

Since the inception of the WTO, global agricultural trade has been increasingly dominated by TNCs from developed countries that have pried open the economies of the South through global value and supply chains. The motivation to keep developing countries dependent on food imports from the North has been a central motif guiding the negotiating positions of the WTO's wealthy members. Given widely varying levels of economic potential, capacities and interests, developing countries have been pulled and pushed into alliances that have weakened South solidarity against an undemocratic trade regime in which coercion parades as consensus, and where the fine print of negotiations is often hammered out in backroom deals and exclusionary groups (the notorious Green Rooms).

Regardless of rhetoric about feeding the world, saving lives, and building economic resilience, WTO responses to any and all crises are about securing the dominant place of TNCs from the North in the global economy through increasingly advanced trade liberalization agreements and extensive value and supply chains that will continue to impoverish the South, and destroy its diverse and vibrant environments, food systems and economies. If wealthy WTO members cannot see beyond corporate profits in the face of global public health, food and climate crises, it is a dangerous mistake to think that rich and poor countries can find common ground in the WTO.

In the MC 12, we urge all developing

countries to unite and defend the rights, dignity and livelihoods of small-scale food producers, workers, and rural and urban poor in the South. Hold firm to reclaim the policy space that was lost in the Uruguay Round and is being eroded in subsequent negotiations, that are essential to revitalise national capacities for addressing crises, building social-economic resilience, and moving out of

In the intermediate and long term, we call for the dismantling of all WTO agreements that affect food and agriculture, and for embedding trade governance in principles of food and economic sovereignty, peoples' rights, dignity, solidarity, and respect for nature. For the people and the planet to survive, the WTO must go.

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REVOKE WTO TRIPS: NO COMPROMISE ON EQUITABLE ACCESS TO COVID 19 TREATMENT

Statement from Focus on the Global South

June 13, 2022



Thai epidemiologists conduct active case investigations for COVID-19 during the Ramadan fasting period, resulting in the identification of more than 300 cases in the villages of Pattani, Yala and Narathiwat Provinces from 17-18 April 2020. Photo by CDC Global.

The proposed compromise text on the WTO TRIPS waiver, which has become the basis of the on-going WTO Ministerial negotiations and been touted as a critical step towards a multilateral agreement on the suspension of IPRs to respond to the COVID-19 pandemic, falls short of what is urgently and desperately needed to address the on-going global health emergency.

It is important to underscore the extent of the crisis that prompted the proposal for a TRIPS waiver. In the wake of continuing surges across the globe of new COVID-19 cases,

vaccination has become an indispensable tool to prevent the rapid spread of the disease, reduce the severity of infections and deaths. Unfortunately, while rich countries are able to secure much of the vaccine supplies, poorer countries that are in fact most vulnerable to the disease have been left out and have to rely on multi stakeholder programs like Covax . The WHO, itself has called out developed countries over the huge [vaccination gap](#), where 56 percent of the doses have been administered in high-income countries accounting for 16 percent of the global population. While just 0.1 percent have been administered in the 29 lowest-income countries, home to nine percent of the global population.

Across Asia, with vaccinations averaging only around 56.8 percent of the population, the region remains highly susceptible to the impact of surges in new infections, and the emergence of new Covid-19 variants.

The TRIPS waiver was proposed as a critical global action to shore up more equitable production and distribution of life-saving vaccines and treatment amidst an unprecedented global health emergency. Suspension of several provisions under TRIPS was proposed as a way to address the barriers to scale up global manufacturing, and facilitate more equitable access to vaccines and treatment.

Critique of the text

The proposed compromise unfortunately **narrows the scope of the waiver** considerably. The proposed compromise

text is focused solely on Article 31 of the TRIPS Agreement (Other Use without authorisation) which covers only section 5 on patents of the TRIPS agreement. The India- South Africa waiver proposal on the other hand calls for a waiver on obligations not just on patents, but obligations on copyright, industrial designs, and protection of undisclosed information as well. This wider scope of application is necessary to address other barriers posed by intellectual property rights beyond patents.

The proposed compromise is also **very specific on vaccines and excludes other health products and technologies** including diagnostics, therapeutics, vaccines, medical devices, PPES, their material or components, and their methods and means of manufacture for the prevention, treatment or containment of COVID 19.

As such the scope of the compromise runs counter to the logic of ‘prevention, containment....’ as highlighted by international health response agencies as MSF (Access Campaign), public health and development practitioners, as it fails to take into account the essential components and enabling conditions for effective response by the emphasis only on patents and vaccines.

A number of elements in the compromise text on duration of suspension of patents; eligibility requirements in addition to the deferred discussion on treatment and testing, and exclusion of ‘technology transfer and trade secrets’ will **exclude a number of developing and least developed countries** from being able to avail of

governments across the globe to:

1. Pledge not to use the WTO's and other trade and investment agreements' dispute mechanisms or other means in an attempt to stop or dissuade countries from producing, distributing or using medical technologies or from sharing information on how to do so regardless of WTO and free trade agreement IP rules;
2. To take every step necessary to save lives and end the pandemic, including by fully using the WTO's existing, albeit limited, flexibilities;
3. To circumvent the WTO's pharmaceutical monopoly rules when possible and outright defy those rules when needed.

The health of hundreds of millions of people in the world should not be compromised to serve the interest of big

pharma to secure more profits. Equitable access to COVID treatment especially for countries in the global south should take precedence over intellectual property rights. In the short term, a comprehensive TRIPS waiver is urgently required to protect populations against the continuing COVID pandemic. In the long term, a public health and public interest oriented multilateral framework under the aegis of the World Health Organisation is needed where health is not made subservient to trade interests. Over the past 27 years, the TRIPS agreement has been thoroughly exposed as a dangerous weapon in the arsenal of corporate power. It is about time to revoke it once and for all. We call upon Governments to urgently initiate this process.

DEVELOPING COUNTRIES SHOULD WALK OUT OF THE WTO MINISTERIAL – TIME TO START PROCESS OF DISMANTLING THE WTO

Press Release from Focus on the Global South

June 14, 2022



On the penultimate day of the 12th Ministerial Conference (MC) of the World Trade Organisation (WTO) currently taking place in Geneva, leaders from trade unions, farmers organisations and civil society called upon developing country negotiators to reject compromise outcomes at the WTO MC 12 and instead reclaim policy space lost during the Uruguay Round by taking strategic steps to dismantle the WTO.

They were speaking at an online press conference titled “WTO@27: End of the Road” convened by [Focus on the Global South](#) to take stock of the current negotiations and look at

the way ahead for global trade policy. Speakers from the Philippines, South Africa, India, Pakistan and Australia shared their insights on the negotiating texts currently being tabled at the MC12, assessed the WTOs record especially its role during the pandemic, and articulated the way forward for a genuine democratic multilateralism that puts economic, social and environmental justice at the forefront.

Panelists included Professor Walden Bello from Focus on the Global South, Kate Lappin from [Public Services International](#), Farooq Tariq from [Pakistan Kissan Rabita Committee](#) and [La Via Campesina](#), Sagari Ramdas from Kudali Learning Centre and Food Sovereignty Alliance, Pablo Rosales from [PANGISDA-Pilipinas](#), and Dr. Lauren Paremoer from the [People's Health Movement \(PHM\)](#). Shalmali Guttal, Executive Director of Focus on the Global South, moderated the press conference.

In her opening remarks, **Shalmali Guttal** pointed to the crisis of legitimacy that the WTO is facing: *"The WTO has failed to facilitate timely, appropriate responses to food and health crises—which are most stark during the COVID pandemic on the issue of IPRs on testing, treatment and vaccines. There has not been a single positive outcome for developing countries from the WTO. The last MC held in Buenos Aires had no outcome because of this. Now in Geneva, they want to avoid a repeat of that fiasco and so there is a strong push for compromises at the MC12."*

'WTO declarations with some nice language does not mean there is actual consensus on contentious issues. Using the current crisis

of the WTO, developing countries must move from defensive to offensive positions and reclaim the policy space lost in the Uruguay Round,' said **Walden Bello**.

Kate Lappin argued that as the world continues to face vaccine apartheid, we need to ensure that the WTO has no role whatsoever in global health policy including on access to vaccines and treatment. Lappin also noted that at the MC12, developed countries are pushing through very anti-democratic rules around domestic regulations in the services sector that will constrain legitimate sovereign policy making spaces of governments.

Farooq Tariq spoke on the impact of the Agreement on Agriculture (AoA) on rural farming communities in the global south. He said that AoAs free trade, pro corporate farming model has brought food riots, poverty, hunger and misery to millions of farmers in the global south. *"They are trying to control everything,"* said Tariq. *"WTO agreements limit peasants' ability to grow seeds. Industrial agriculture exploits cheap migrant labor, particularly of women & girls"*. Tariq asserted that the way forward for agriculture was the La Via Campesina proposal for a new international framework based on food sovereignty.

Sagari Ramdas spoke about how three decades of neoliberal pro corporate WTO policies in agriculture have enabled the reproduction of old patterns of colonial exploitation. She also highlighted the Indian Government's duplicitous position on the WTO. *"On the one hand at Geneva, they are defending farmers and the right to public stockholding. But back home in Delhi*

they are embracing neoliberal policies that cut subsidies and impoverish small farmers. India's embrace of a pro corporate model of farming has decimated cooperatives and led to dispossession and displacement of millions of small-scale food producers – especially women from indigenous and marginalised backgrounds that represent a vast majority of India's agricultural workforce,” said Ramdas.

Pablo Rosales pointed out how the Philippine government failed to improve the conditions of small-scale fisherfolk even as it promised to do so by joining the WTO in 1995. The fisherfolk remain as one of the poorest sections of society due to greater liberalisation and deregulation of fisheries. ‘Our experience over the past two decades has led us to demand that fisheries should be out of the WTO’, asserted Rosales.

Lauren Paremour from PHM said that the current TRIPS text being negotiated in Geneva is not the waiver proposal submitted by South Africa and India, but a far more limited text drafted by the WTO Secretariat that makes it more cumbersome to apply flexibilities during

COVID19 than otherwise. *“The best option for developing countries on the current TRIPS text at the MC12 is to reject it and walk away. No outcome is better than a bad one.”*

Panelists at the press conference were of the opinion that there should be no compromise by developing countries at the MC 12. While the short term goal would be to block any bad outcomes at MC 12 and resist any further encroachment by the WTO in new arenas such as the digital economy and e-commerce, the long term strategic goal for social movements across the world should be for dismantling the WTO. Walden Bello concluded that, instead of the WTO, developing countries should be looking at various UN fora and mechanisms, and multilateral agreements built on as the Universal Declaration on Human Rights to promote economic development, cooperation, sustainable development and well-being.

The press conference can be watched in its entirety at Focus on the Global South Facebook page on the link [here](#).

Governments Must Break Big Pharma-WTO Stranglehold on Access to Medicine by Taking Immediate Action to Prioritize Human Lives Over Pharmaceutical Monopolies

June 10, 2022

Joint Statement



Photo from GTW Action.

More than two years into a pandemic that has killed 15 million people, World Trade Organization intellectual property barriers shamefully remain a deadly obstruction limiting global access to COVID-19 vaccines, tests & treatments. A few wealthy countries promoting pharmaceutical corporation interests have been able to block the use of the WTO's waiver mechanism to temporarily suspend such barriers despite more than 100 WTO member

countries supporting a waiver. The WTO's notoriously exclusionary, oppressive processes have been deployed instead to force through a sham text that will not improve global access to COVID-19 medicines because it not only fails to remove IP obstacles but outrageously adds further constraints to existing WTO flexibilities for medicines production. This outrageous situation underscores that governments must take immediate actions to bypass the WTO's prioritization of pharmaceutical monopolies over human lives.

By acting on behalf of pharmaceutical interests and blocking WTO removal of intellectual property (IP) barriers to global vaccines, tests, and treatment access, the European Union, Switzerland and United Kingdom have betrayed the billions of people worldwide who still need access to lifesaving vaccines, medications, and diagnostics. In failing to deliver on a vaccine waiver for which it announced support and blocking the inclusion of treatments and tests, the United States has also turned its back on a planet desperate for the COVID pandemic to end.

The failure to temporarily waive the WTO's Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) as demanded by the vast majority of the world's countries and by public health experts and health workers, generic medicine manufacturers, human rights advocates, faith leaders, labor unions, community groups, scores of Nobel laureates and former heads of state, the World Health Organization Director-General and even the Pope spotlights just how broken and

dangerously out-of-touch the WTO remains.

Health needs cannot be subservient to pharmaceutical monopoly's profits. In response to the ongoing failure to adopt a temporary waiver of pharmaceutical IP monopolies on COVID medical countermeasures, civil society organizations around the globe are calling on governments to:

1. Pledge not to use the WTO's and other trade and investment agreements' dispute mechanisms or other means in an attempt to stop or dissuade countries from producing, distributing or using medical technologies or from sharing information on how to do so regardless of WTO and free trade agreement IP rules;
 2. Take every step necessary to save lives and end the pandemic, including by fully using the WTO's existing, albeit limited, flexibilities;
 3. Circumvent the WTO's pharmaceutical monopoly rules when possible and outright defy those rules when needed.
- This united call comes as the WTO concludes its most significant decision-making meeting since the start of the COVID-19 — the 12th WTO ministerial Conference — without agreeing to temporarily remove WTO IP rules that restrict the production and supply of COVID vaccines, diagnostics and therapeutics.

For roughly 20 months, the obstinance and bullying of a few very economically-powerful WTO member states was allowed to run roughshod over the

wishes of more than 100 countries to waive WTO TRIPS obstacles to global access to COVID-19 medical tools. The TRIPS waiver text proposed in October 2020 by South Africa and India enjoyed cosponsorship from 65 WTO member countries, but outrageously negotiations on this text were never allowed. Under the WTO's unacceptable processes, a text written by the WTO Secretariat and supported only by the main waiver-blocker, the European Union, was pushed forward to be railroaded through the Ministerial. History will harshly record the WTO's contribution to COVID vaccine, treatment and test apartheid.

The WTO's threat to global access to medicines did not start with COVID-19. For decades, the WTO has steadfastly refused to put shared global priorities like saving lives and ending pandemics ahead of the narrow profit and power-seeking interest of pharmaceutical monopolies. This was clear at the turn of the century during the peak of the HIV/AIDS crisis, and has only become even more clear with the WTO's unconscionable inaction during the COVID crisis today.

The WTO's draconian IP rules have already contributed to prolonging the

current pandemic and, if countries can't get these rules out of the way, they will continue to contribute to massive public health, economic and social damage during future pandemics as well. And pandemics are not the only matters of concern. Billions of people lack access to lifesaving medicines that prevent, treat and cure illnesses because intellectual property regimes distort research priorities, create scarcity by artificially restricting supplies, and allow excessive pricing and inequitable distribution that affects the poor and people living in lower-income countries. Countries that don't accept these rules are subjected to trade threats and repercussions, undermining their own sovereign processes and rules. This cannot continue.

The world must not allow the deadly vaccine apartheid that characterized the first generation of COVID vaccine manufacturing and distribution to be recreated when it comes to COVID diagnostics, treatments and second-generation vaccines. With the WTO process failing to suspend WTO IP rules to prevent this ongoing and disastrous injustice, governments who are also WTO member states must now act in good faith outside of the WTO's strictures.

Read the statement with full list of signatories [here](#).

PROPOSED WTO AGREEMENT ON FISHERIES IS AGAINST THE INTERESTS OF INDIA AND FISHING COMMUNITIES

Urgent Letter from the National Fishworkers' Forum (NFF) of India

June 10, 2022



Indian fisherman at work. In an early morning, a fisherman is checking and repairing his fishing net in Kerala, India. Photo: hadynyah from Getty Images.

Dear Minister Goyal,

We are writing this urgent letter to you on behalf of the National Fishworkers' Forum (NFF) to express our principled opposition to the proposed World Trade Organisation (WTO) Agreement to eliminate fisheries subsidies which is expected to be adopted during the upcoming 12th WTO Ministerial Conference (MC) in Geneva from 12-15 June 2022.

The NFF is a national federation of state level trade unions in India from the 10 coastal states of India with 13 Unions

representing the interests of the fishing community across the country.

We are extremely worried about our livelihoods as the proposed WTO Agreement will eliminate critical subsidies for the fisheries sector that we depend on for our livelihoods. Fisheries is a crucial sector for livelihoods in India supporting nearly one crore fishworkers. It is also important from a food-security and nutrition perspective.

The purported aim of this Agreement is to meet sustainability objectives of marine conservation under Sustainable Development Goal (SDG) 14.6. Rather the fact is that it is the fishing community that is fulfilling these objectives through our sustainable practices. On the other hand, many developed country proponents of this Agreement fish on an industrial scale with large corporate trawlers and also engage in unsustainable deep-water fishing.

However, the irony is that we have to bear a disproportionate burden of meeting sustainability objectives. We are extremely worried that India will have to remove all subsidies under the three pillars of the negotiations; Illegal, Unreported, Unregulated (IUU) fishing, overfished stocks (OS) and overcapacity and overfishing (OCOF).

We want to raise these specific concerns for your attention.

(1) Our first concern is that exemptions for 'low-income and resource-poor fishing and fishing related activities' are extremely limited. Under the three pillars of negotiations, such fishers who operate

within 12 Nautical Miles (NM) or the territorial waters can get exemption from subsidy cuts, but not those who fish in the Exclusive Economic Zone (EEZ). Most small fishers regularly cross the boundary of 12 NM, sometimes even without realising it. The WTO Agreement will then imply they cannot get subsidies anymore. Not only is this unfair it is also difficult to evaluate and implement. We note here that the UN Conference on Law of the Seas (UNCLOS) recognizes that countries have full rights over the EEZ and up to 250 NM in continental zones. We cannot allow the WTO to deny this right and impose its jurisdiction and rules on the sovereign rights of our country.

(2) Secondly, under IUU and the overfished stocks pillar, the exemption is limited only to two years and this period might be further reduced during the negotiations. Again, this is totally arbitrary and unrealistic given that small-fishers in India are especially vulnerable and will need state support much beyond the projected two years. Therefore, such time limits and zonal boundaries will further aggravate the already precarious conditions of small-scale fishers in India. We must have full flexibilities to give subsidies for fishworkers and fishing activities up to the EEZ.

(3) The definition of IUU that is now used by SDG 14.6 and the WTO has been much contested by small fishers across the world. In India and many other developing countries, the government mechanisms for registration are weak in many areas. Many small fishers cannot access these processes and are seen as

“unreported and unregulated”. This already reduces their ability to benefit from specific government support. The WTO attempt to take away their full access to subsidies on the basis of such baseless categorisation is unjust.

(4) India has also been under pressure to accept weak special and differential treatment (S&D) and all exemptions for small-scale fishers have been clubbed along with S&D. Under the overcapacity and overfishing pillar India has also been excluded from the special and differential treatment under Paragraph 5.4.b.i) which is limited to those countries that contribute less than 0.7% of annual global marine capture. India's share is around 4.53% so it cannot benefit from this provision. India must demand exemption for developing countries from all such obligations.

(5) We are alarmed to see that Members who are responsible for environmental damage by engaging in over-fishing through industrial and deep-water fishing, are being favoured through sustainability clauses under article 5.1.1. There are easy terms of operation for deep-water fishing and those with advanced management and monitoring mechanisms. It is clear that only rich countries have managed to institute such mechanisms by subsidising their fisheries sector for long. This is special and differential treatment for advanced countries. In fact, these countries should have higher obligations for causing historical environmental damage, but the current negotiations are heading in the opposite direction.

(6) The negotiations also ignore that

many developing countries such as India have large fishing populations and give very small subsidies per fisher. India has about 97.9 lakh fishers accounting for 26% of global fisher population. India gives only 141 million USD as total subsidies to the sector, which means the subsidy is only 14.50 USD per fisher. This is nothing compared to the rich countries. The US subsidy is 4956 USD, Japan's 8385 USD and Canada's is 31800 USD per fisher. But it is India's fishworkers who will bear the brunt of the outcome.

We are now faced with deepening crisis where the disruption of fishing and related activities due to the COVID-19 pandemic is now immediately followed by skyrocketing fuel prices that are driving our costs up and putting our livelihoods at risk. At such a time, withdrawal of subsidies will put us in great jeopardy. We also want to ask the Indian government whether the Agreement will offer flexibilities for managing such future crises.

We are convinced that the WTO outcome will be heavily balanced against the fishing community in India while benefitting rich countries with industrial and deep-water fishing. Many proposals put forward by India regarding strong S&D, restricting subsidies for deep-water fishing, including non-specific fuel subsidies in the scope, have all been ignored so far. It is clear that if there is any outcome at MC12, it will further strengthen the power of wealthy nations to continue to unfairly subsidise their fishing companies and reinforce their aggressive control over global fisheries markets.

Therefore, we call on our government to categorically reject this Agreement as it will destroy our livelihoods as well as food security for millions of Indians in the future.

We also submit that the Government of India start the process of withdrawing from the WTO as it has continuously

attacked the livelihoods of small farmers and fishers, and India has not got any benefit from this flawed institution in the last 27 years.

We hope that you will carry our voice to the WTO and act in the interests of the fishing communities.

Read the original letter [here](#).

OPEN LETTER: CONCERNED CIVIL SOCIETY SUBMISSION ON AGRICULTURE RELATED ISSUES AT WTO MC12

Open Letter from Thailand Civil Society Organisations

June 11, 2022



Rice straw is gathered, bound and carried from the rice paddies to a central place after the harvest.
Photo by Takeaway from Wikimedia commons is licensed under CC BY-SA 4.0.

Dear Deputy Prime Minister and Minister of Commerce Jurin Laksanawisit,

We are writing to you ahead of the 12th Ministerial Conference (MC) of the World Trade Organisation (WTO) being held in Geneva from 12-15 June 2022, with particular reference to key issues related to agriculture and food security that are on the negotiating table.

We want to express our concerns, especially on the issue of the proposed permanent solution for public stockholding

(PSH) programmes for food security purposes, and respectfully submit that the government takes into consideration our voices when it negotiates these issues at the WTO.

Several developing countries use PSH programmes both to support farmers' incomes and maintain production, as well as to directly subsidise, distribute, and grant to the poor the necessary access to food. The ongoing COVID-19 pandemic and the current food crisis have shown the importance of this policy tool for developing countries and Least-Developed Countries (LDCs), particularly towards hunger relief. Any market support price or administered price paid by the government while buying for such PSH programmes can ensure a remunerative price for farmers that covers their costs. In addition, with the current escalation in food, fertiliser and fuel prices, farmers across the global south are facing prohibitive input costs, further underlining the need for subsidies.

However, the Agreement on Agriculture (AoA) of the WTO has mandated that such subsidies cannot exceed the '*de minimis*' limit of 10% of the value of production per product. In this case it is important to note that price support calculations as per the AoA are based on 1986-88 prices, which are far lower than the current global prices. Also, these calculations are on the entire production that is "eligible" to receive this subsidy rather than the actual procured volume that receives the subsidy. This method artificially inflates the subsidy, making it prone to breaching '*de minimis*' limits.

In 2013, at the WTO Bali MC, the G33 group of developing countries managed to get an Interim Peace Clause (PC) to continue providing such subsidies and not be sued for breaching the '*de minimis*' limit. However, the PC had many complex conditionalities which made it very difficult to implement. One of those conditions which is of great significance, especially for Thai small-scale farmers, is that only programmes which were in operation in 2013 can use the PC. This means Thailand cannot use the current PC unless the scope is expanded to cover new programmes. This robs the Thai Government of the sovereign right to enact such farmer-friendly policies in the future.

The Bali decision mandated a permanent solution to be in place by 2017, but in spite of several proposals submitted by the G33 and the African Group, this has not happened. Their demand has been to get this long overdue outcome at least by MC12 while developed countries and dominant leaders of the Cairns Group (of which Thailand is a member) have consistently opposed this.

Recently nearly 80 WTO members comprising the African Group, the African, Caribbean and Pacific (ACP) Group and the G-33 Group of countries submitted a joint proposal on a permanent solution (JOB/AG/229). This proposal suggests several improvements to the Bali Decision, including extending it to all programmes, old and new, and adjusting the Reference Price to reflect current market conditions. The proposal also provides safeguards against misuse of such an instrument. But the developed countries have refused to

even consider it and have also been insisting on delaying any outcome on this issue to MC 13 slated for 2024 or even later.

In this context, we are shocked to read that the Government of Thailand has been supporting the position of the rich countries and the bigger players of the Cairns Group such as Australia, Brazil, New Zealand, Costa Rica and others on this matter. According to news reports, Thailand has even questioned a footnote in the recent document placed by the WTO Director-General that indicates the possibility of a permanent solution on PSH at MC12. This reflects Thailand's clear objection towards the pushing of a permanent solution.

We would expect that Thailand's interest is in aligning with other developing countries and LDCs in asking for a permanent solution by MC12, as this can be a critical policy instrument for the government to support its small-scale farmers and the poor, especially the urban poor and slum dwellers. Even though Thailand is a food exporter, it still has a vulnerable farming sector and there are millions of small-scale farmers who desperately need the government's support. The current multiple crises will only deepen as we grapple with the fallout of the pandemic and environmental disasters, in which PSH programmes are increasingly important for developing countries and LDCs. At the minimum, Thailand should show solidarity with the 80 countries and fully

support rather than oppose this proposal.

Thailand should support not only the permanent solution on public food stockholding programmes for food security purposes, but also the Special Safeguard Mechanism (SSM), which would allow the government to raise import duties if there is a sudden import surge. Particularly as the continuation of the rich countries' subsidies and premature liberalisation in agriculture pushed by the WTO have triggered import surges across developing countries, and have generated volatility, uncertainty, and unfair competition for their farmers.

We want to call on our government to show solidarity with our own small-scale farmers and food-insecure people, as well as stand together with other developing countries and LDCs. Only then can the global south move ahead. Further, Thailand should not be aligning with the powerful countries and agribusiness corporations as our interests are not overlapping but at conflict. The rich countries have used massive subsidies through Aggregate Measurement of Support (AMS) entitlements and the 'Green Box' to rob developing country farmers of their incomes and fair share of global markets. Without correcting those rules, the WTO will create a catastrophe for small-scale farmers and contributing to the food crisis in Thailand and globally.

Read the original letter [here](#).



FOCUS ON THE GLOBAL SOUTH

Focus on the Global South is an Asia-based regional think tank that conducts research and policy analysis on the political economy of trade and development, democracy and people's alternatives. It works in national, regional and international coalitions with peoples' movements and civil society organisations and has offices in New Delhi, Manila, Phnom Penh and Bangkok.