

Exploring elements of a global development agenda for international trade and investment

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The world, it seems, is on the brink of negotiating a new global development agenda.

The United Nations is currently pursuing two parallel processes on reaching a global development agenda for perhaps the next 15 years. The first of these is the Sustainable Development Goals (SDGs) process under the Open Working Group (OWG) mandated by the Rio+20 Conference on Sustainable Development. The second is the post-2015 process which is the legacy of the Millennium Development Goals (MDGs) and is supposed to be negotiated at the UN General Assembly from September 2014 onwards.

It is clear that if the world has to see a global development agenda through, it is the *global* content that matters the most. There has to be something in this framework that can deliver above and beyond what national governments can deliver on their own. This is why the question of enabling global policy has emerged across the different processes over time as critical to the delivery of a realistic sustainable development agenda.

However, lessons from the past show that while the MDGs have been criticized for their limited and minimalist approach and the inability to build in qualitative aspects of development, the single most important weakness of the MDGs remains the “global” element of the framework, namely, Goal 8 of the MDGs on “global partnership for development.” While other goals were measurable and “monitor-able” at least to a certain extent, the monitoring, assessment and implementation mechanism of Goal 8 has been near absent. This is one of the major reasons behind what so many analysts and activists see as the failure of the MDGs.

It is evident from the discussions so far that international trade rules form a key part of this “global partnership.” Civil society and UN member states have repeatedly stressed the essentiality of providing appropriate means of implementation and an enhanced global partnership, which include not only finance and technology but also fair rules of trade. International trade rules can obstruct the delivery of development goals and targets,

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rendering commitments to reach development goals meaningless. A target on trade was also part of Goal 8 under the MDGs, and also forms a key part of the current discussions at the OWG.

The “Future We Want” outcome document adopted at the Rio+20 conference stresses the importance of a “balanced and development-oriented conclusion to the Doha Development Agenda, while respecting the principles of transparency, inclusiveness and consensual decision-making.” It also says that “in order to effectively participate in the WTO [World Trade Organization] work programme and fully realize trade opportunities, developing countries need assistance and enhanced cooperation of all relevant stakeholders” (paragraph 282).

The report of the High-Level Panel constituted by the UN Secretary-General on the post-2015 development agenda suggests a Goal 12 on creating a “global enabling environment”, which includes the target of “support[ing] an open, fair and development-friendly trading system, substantially reducing trade-distorting measures, including agricultural subsidies, while improving market access of developing country products” (Annex II, p. 54). These formulations on international trade in existing mandates and documents are not perfect from a development perspective but nevertheless establish the need to have fair trade rules that must work for development and not against it.

Since multilateral trade is referred to in the above documents as well as in current discussions at the OWG, it is necessary to explore what kind of trade rules under the current framework of the WTO can help achieve the post-2015 and SDG frameworks. This is what this paper aims to do, using the Rio+20 outcome document, the Millennium Declaration and the MDGs and the Co-Chairs’ focus areas document at the OWG (18 March version) as reference points, remembering of course that all WTO member states agreed that the ongoing Doha Round of multilateral trade talks should be a development round.

However, we must not forget that the role of free trade agreements (FTAs) and bilateral investment treaties (BITs) is also crucially important, as these pacts, especially those signed between developing countries/least developed countries (LDCs) and developed countries, severely constrain the industrial, macroeconomic, financial, social and

environmental policies of developing countries. These agreements are designed on the basis of a corporate perspective rather than a development perspective and do not serve the purpose of a global development agenda.

If we start with what happened at the December 2013 WTO Bali Ministerial Conference, the South Centre and other commentators have noted that the outcome from that conference was unbalanced in favour of developed countries, because it had a binding enforceable agreement on trade facilitation – a so-called “Singapore issue” pushed by developed countries – whereas the LDC issues had non-binding outcomes in Bali.

The post-Bali developments in no way abate this concern. Some developed countries have been pushing for new issues to be included on the WTO agenda, including other Singapore issues such as investment and competition. This is in contrast to the fact that a number of developing countries (e.g., Brazil, Bolivia, Ecuador, Jordan, South Africa) have been calling for the WTO to focus on fixing 20th-century problems such as the so-called “implementation issues.” The LDCs have asked to avoid new issues, as well as to address the longstanding LDC issues, including agriculture and development. This paper looks briefly at some examples of what these trade and investment rules should be, given the above benchmarks.

Some key issues in the WTO and the SDG/post-2015 framework

1. Poverty eradication and development

These concerns lie at the core of the SDG and post-2015 processes.

- Poor African countries such as Benin, Chad, Mali and Burkina Faso have long demanded that cotton subsidies given by the USA – impoverishing some 10 million rural poor people in West and Central Africa alone – be eliminated. LDCs have asked for elimination of trade-distorting domestic support measures and export subsidies, yet the Bali Ministerial Conference still has not ensured elimination of these subsidies, and this issue needs to be dealt with post-Bali.
- It is important here to remember that the Rio+20 outcome document stated: “We reaf-

firm that a universal, rules-based, open, non-discriminatory and equitable multilateral trading system will promote agricultural and rural development in developing countries and contribute to world food security” (paragraph 118). The comments made by several member states during the OWG process are also pertinent. For example, Tanzania, speaking on behalf of the African Group on means of implementation (MOI) during the recently concluded 10th session of the OWG, asked to “eliminate export subsidies for agricultural products in developed countries” and also “by 2020, eliminate all trade protectionist measures to increase the volume of exports from developing States in particular African States – Africa contributes only 3% of global trade.”

- Addressing the needs of the LDCs had been part of Goal 8 of the MDGs and affirmed in the Millennium Declaration. The LDC issues, which were only non-binding in the Bali Ministerial Conference outcome, should be resolved post-Bali in a pro-development, enforceable way. Speaking on poverty eradication and promoting equality during the 10th session of the OWG, Benin on behalf of the LDCs said “we must ensure economic growth directed towards the LDCs,” and underscored the need for differential and preferential treatment for LDCs (DPTL). Benin also underlined the necessity of a multilateral, non-discriminatory trading system with duty-free, quota-free (DFQF) market access for LDCs.¹ Zambia, speaking on MOI on behalf of the Southern Africa Group, called for “improv[ing] market access and remov[ing] prohibitive tariffs that stifle competitive trading.”

The OWG Co-Chairs’ focus areas document also mentions preferential market access for LDCs, yet the Bali Ministerial Conference did not require developed countries to provide 97% or 100% DFQF, nor was the services waiver for LDCs effectively operationalized; both of these need to be done post-Bali.

- In general, important tools for poverty alleviation such as government procurement for underprivileged constituencies have been used by Malaysia, India, South Africa and several

other developing countries to reduce poverty. However, the prospect of the issue of government procurement being revived at the WTO threatens the use of this key development instrument. This is also being pushed through the FTAs, especially in North-South FTAs with the European Union and the USA.

2. Hunger and food security

This is another key focus of the MDGs and the SDGs. The Co-Chairs’ document has Focus Area 2 on sustainable agriculture, food security and nutrition.

- Agricultural subsidies given by developed countries have affected not only cotton farmers but food producers across the developing world and have threatened productivity and agricultural growth, especially for small farmers. The Rio+20 outcome document refers to addressing “trade-distorting subsidies” and the current Co-Chairs’ document at the OWG includes “elimination of harmful subsidies” as a possible target. During the 10th session of the OWG, Bolivia, Ecuador and Argentina asked for “elimination of incentives and agricultural subsidies in developed countries,” while Egypt asked for “increase[d] market access for agricultural products from developing countries by 2020.”
- Government purchase and public stockholding of food is important for food security in developing countries and is also a buffer against global food price volatility (which is mentioned as a concern in the Rio+20 outcome document, paragraph 117). During the 10th session of the OWG, Benin elaborated its concept of SHIFT (starting with “Small scale food producers empowered” to “Trade policies re-shaped”) with regard to food security, which underlines the role of public food stockholding for protection against food price volatility. It is also noteworthy that the UN Non-Governmental Liaison Service (UN-NGLS) publication “Advancing Regional Recommendations on the Post-2015 Development Agenda” reported recommendations by civil society organizations for “the promotion of public programmes on food stockholding, which benefit small producers through price support, as well as poor consumers.”

¹ Ranja Sengupta and Mirza Alas, “SDGs: Recognise global realities to tackle poverty eradication and promote equality, South urges”, TWN Info Service on UN Sustainable Development: Reports on the 10th session of the OWG, 22 April 2014.

But current WTO rules do not allow appropriate use of public food stockholding as they limit even essential production (domestic) subsidies by developing countries as illegal. Furthermore, the use of 1986-88 global prices as the reference price for subsidy calculation significantly overestimates the amount of so-called “trade-distorting subsidy.” This is an anomaly given that developed countries such as the USA and the EU provide huge domestic subsidies under different programmes to their farmers. In response to demands by the G-33 developing-country grouping that subsidies for public stockholding be allowed under the so-called Green Box category (which is allowed without limits and is used extensively by the USA and the EU), the Bali Ministerial Conference gave developing countries a “peace clause” until a permanent solution (such as inclusion under the Green Box) is found. However, this “peace clause” is limited only to the Agreement on Agriculture, covers only existing programmes and traditional staples, and imposes such onerous data-sharing conditions that it is very difficult to use.

If food security and long-term agricultural production growth has to be ensured across the developing world, there is a need to provide a permanent solution for public stockholding by developing countries for food security along the lines of the G-33 proposal.

3. Ensuring adequate policy space for industrial development

This has been a key demand of the developing countries and constitutes the first point under the focus area of industrialization in the OWG Co-Chairs’ document.

The former head of the UN Conference on Trade and Development (UNCTAD)’s macroeconomic branch has pointed out that all industrialized economies except Hong Kong used infant-industry protection to industrialize. This possibility should be recognized in any WTO negotiations on non-agricultural market access (NAMA) including negotiations on sectorals, Information Technology Agreement (ITA) and environmental goods.

- Implementation-issue discussions at the WTO have included a demand for a permanent exception to the prohibition in the Agree-

ment on Trade-Related Investment Measures (TRIMs) of local-content requirements for developing countries, as these were widely used by developed countries when they were industrializing.

- Focus areas 8 and 9, on economic growth and industrialization respectively, in the Co-Chairs’ text refer to value addition. One way of achieving value addition which has been widely used by developed countries such as the UK and developing countries is export taxes on raw materials. Indonesia’s successful transformation from exporting raw logs into the largest plywood exporter in the world (from a 4% market share to 80%) in a few years is due to a combination of export taxes, export restrictions and government procurement of domestic plywood. India and Kenya have both boosted their leather industries by imposing export taxes on raw leather. However, a 2011 text by the Chair of the NAMA negotiations in the WTO contains a European Union proposal to bind export taxes at a level to be negotiated (except for LDCs). This would be damaging for value addition in developing countries. In fact, it is already the case in FTAs with developed countries, which often ban export taxes.

4. Economic growth

The OWG discussions have witnessed repeated calls by developing countries and LDCs for the promotion of broad-based economic growth and structural transformation.

- The world has seen severe setbacks to growth from financial crises. The International Monetary Fund, the Commission of Experts of the President of the UN General Assembly and other experts recognize the role that capital controls on hot money inflows and outflows can play to reduce the likelihood of financial crisis and prevent quicker and easier exit of such volatile short-term capital flows.² Yet some BITs and investment chapters under FTAs prevent capital controls, even under financial crises. Therefore it is imperative that the Singapore issue of investment should not be part of the WTO’s post-Bali work pro-

² For example, in a letter to the ministers of foreign affairs and international trade of the governments negotiating the Trans-Pacific Partnership Agreement, over 100 scholars and intellectuals called on the officials to ensure that the eventual document their governments sign on to does not preclude, or impose sanctions against, the use of capital controls.

gramme, while this issue needs to be revisited in the context of FTAs and BITs.

5. Investment rules in bilateral and plurilateral FTAs and BITs

Rules on investment protection which give very strong rights to foreign investors, especially to sue national governments in international tribunals outside the scope of domestic laws, have emerged as a severe threat to government policy space for regulation even when such regulation is in the public interest.

The UN-NGLS report cited above, in its summary of civil society recommendations, suggests “review[ing] international trade and investment agreements, which restrict the ability of governments to regulate foreign investments in the public interest, impose barriers to technology transfer, prevent fair taxation, and include other measures not consistent with the objectives of sustainable development.”

The following few examples highlight this looming threat.

- Debt sustainability has been a recurrent concern which was expressed under the Millennium Declaration, included under Goal 8 of the MDGs. The SDG process so far has heard several calls from experts and developing countries for sovereign debt restructuring (SDR) mechanisms. For example, during the 10th session of the OWG the African Group called for “cancel[ing] external debt of heavily indebted poor countries (HIPC)s to reduce debt distress” and “ensur[ing] developing countries achieve debt sustainability through debt financing, debt relief and debt restructuring.”

However, as UNCTAD’s Investment Division notes, when Argentina undertook SDR with a 66% and 75% “haircut,” it was sued for \$1 billion under BITs. Similarly, another study³ shows that Greece was required to do SDR in the face of the current financial crisis by the IMF, European Commission and European Central Bank, but is being sued for this under BITs.

³ http://corporateeurope.org/sites/default/files/profitting-from-crisis_0.pdf

- The subject of affordable safe water and natural resources is in both the Millennium Declaration and the SDG focus areas.

The Cochabamba case and other disputes under BITs show that when governments try to ensure that water is affordable, they are sued under investment protection provisions including under BITs. In fact the majority of the known outstanding investor-state dispute cases under the USA’s FTAs and BITs (totalling \$11 billion in claims) relate to natural resource policies. Nearly half of the 129 cases pending before the World Bank’s investment dispute facility relate to natural resources. Threats to natural resources and access to water also have a disproportionate impact on marginalized groups such as indigenous peoples, women and children.

So it is evident that access to critical natural resources is threatened by negotiations and current agreements such as BITs in the areas of both services and investment. There is also a threat of these issues coming under the WTO’s post-Bali work programme. For example, Canada proposed investment in the post-Bali work programme, which, if agreed to, will severely undermine the mandate of the SDG negotiations.

In the ongoing WTO negotiations on disciplines on domestic regulations in services, provisions in the Chair’s text⁴ may restrict the ability of governments to set maximum prices for these essential services if they have committed themselves to opening their countries’ services sectors at the WTO.

- The Millennium Declaration talks about the need to reverse the spread of HIV/AIDS, malaria and other major diseases, and Goal 6 under the MDGs is “combat HIV/AIDS, malaria and other diseases.” This has come up repeatedly in the OWG discussions and is included in the Co-Chairs’ document as “ensuring affordable essential medicines and vaccines for all.” Therefore provisions in FTAs which go beyond the intellectual property protection standards set by the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) need to be avoided and removed and should not be multilateralized.

⁴ The 2011 text by the chair of the negotiations on domestic regulations at the WTO.

The investment protection provisions that have allowed the pharmaceutical company Eli Lilly to challenge TRIPS-compliant patent revocations in Canada should not be brought into the WTO.

- Environmental protection and support for the principles of sustainable development are included under MDG 7 and the OWG Co-Chairs' text. Therefore the investment protection provisions which have been proven to allow successful challenges to environmental laws and regulations in investor-state disputes under BITs and FTA investment chapters need to be reviewed from a development and environment perspective and definitely should not be brought into the WTO. The recently launched talks on environment goods and services also seem to be more about increasing developed-country exports rather than genuine environmental considerations.
- On biodiversity, the SDG focus area talks of "ensuring fair and equitable sharing of the benefits from the utilization of genetic resources." There was a clear proposal in 2011 from the African, Caribbean and Pacific (ACP) Group and eight other developing countries which would go a long way to achieving this by ensuring that patent applications on genetic resources or traditional knowledge must prove prior informed consent and fair and equitable benefit-sharing. However, developed countries have been opposing this. If this SDG focus area has to be committed to, this proposal should be agreed to in the post-Bali work of the WTO.
- Technology transfer is a target under several focus areas under the Co-Chairs' document (Focus Area 8 on economic growth, paragraph 1; Focus Area 9 on industrialization, paragraph b). Most developing countries have emphasized the need for technology transfer during OWG discussions.

Therefore, investment protection provisions in FTAs and BITs which explicitly prohibit or restrict technology transfer should not be agreed to or brought into the WTO. Further, the European Union is requesting developing countries to remove technology transfer requirements in the current services market

access negotiations at the WTO. This new demand is clearly against the mandate of a global development agenda.

In addition to investment provisions, affordable access to technology is clearly hampered by intellectual property rights required by the WTO's TRIPS Agreement. The implementation issues which are a recognized part of the Doha work programme according to the Doha Declaration include a new transition period for developing countries for the TRIPS Agreement and allowing LDCs to have a TRIPS transition period for as long as they remain LDCs. This needs to be addressed.

Finally, there are issues which cut across goals. For example, the South Centre has noted that one of the most important aspects of the post-2015 agenda is to create an enabling international environment to allow every country to pursue development objectives according to their own priorities with policies of their own choice. To have this policy space, it noted, it is necessary to reform multilateral and bilateral arrangements to allow developing countries to use as many economic policies as developed countries used during their own industrialization. Clearly, resolution of the implementation issues at the WTO, including those mentioned above, would increase developing countries' economic policy space, whereas the Singapore issues and other issues proposed by developed countries would restrict the policy options for developing countries and prevent them from using a number of the development pathways that today's industrialized countries used themselves.

It is obvious that a serious rethink of global trade and investment rules is needed if they are to move in tandem with the world's development needs. If the global leadership is serious about delivering on a global development agenda, development-centred changes in trade-related rules and institutions are a prerequisite.

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