

Defining Success for MC12

Notes for remarks of

Alan Wm. Wolff

Peterson Institute for International Economics¹

Harvard JFK School

29 October 2021

The future well-being of the world economy and amicable relations among countries may well depend on what can be agreed at this Conference. The Ministerial is likely to be an inflexion point, towards either more multilateral cooperation or more fragmentation.

It is extremely important for the future of the international trading system that the upcoming WTO Ministerial Conference be seen to be a success. Success can be achieved if all Members approach the Ministerial with a broad view of what is good for the system rather than what they seek more narrowly for themselves. Success will be achieved if the Members who unanimously backed an activist for the post of Director-General will now support her by crafting an agreed Declaration.

The Ministerial Conference will be a success if the agreed declaration is seen to improve international cooperation with respect to global health during this pandemic, and if that achievement is not marred by failure to agree to effective disciplines on the grant of fisheries subsidies. It will be a success if enough Members join together to address climate change and take ownership of their role as stewards of the planet's environment. It will be a success if added to this is a path forward with respect to better rules for agriculture and addressing the growing problem of industrial subsidies.

The multilateral trading system, also called the world trading system, is, and always should be, a work in progress. It was started in the 1940s, proceeded through eight great rounds of multilateral trade negotiations in the half-century duration of the GATT 1947. The last two of these rounds added to the global trade rule book, as well as continuing the opening of markets.

The WTO, created in the Uruguay Round concluded in 1993/94, was a significant step in the process of building the global trading system. During the last twenty-six years, from 1995

¹ The views expressed are personal and not intended as representing the view of others, including at PIIE.

when the WTO came into being, trade liberalization slowed in several respects. There were no successful rounds of across-the-board tariff cutting, no further opening of agricultural markets, and no additional disciplines on subsidies, either for agricultural commodities or industrial goods. While there was nothing accomplished on the scale of the last two GATT rounds, nevertheless there was additional progress in the form of a duty-free pharmaceutical agreement, a duty-free information technology agreement (with one subsequent update), a telecommunications reference paper, the Trade Facilitation Agreement, and a ban on agricultural export subsidies.

The advance continued but in a muted way at MC11 held in Buenos Aires in 2017. There were no commemorative T-shirts imprinted to celebrate MC11. There should have been, for at that meeting a way forward was found to continue the process of building the trading system. At Buenos Aires were born the Joint Statement Initiatives (JSIs), negotiations proceeding despite opposition from some WTO Members who did not wish to see the negotiating agenda expanded on these subjects. An important step forward had been taken.

What is needed as the MC12 outcome?

First, there must be an agreed declaration. If there is not, the system will deteriorate. It will not end, but it will evolve in a less coherent way. It will become less multilateral and less global. It is imperative that all participants understand what the stakes are.

What should be in an agreed declaration?

We know by now what the outlines of the possible outcomes are at MC12, ranging from some of them being close to certain to some being merely probable.

The first item in this list is essential.

1. **Trade and health.** This would be a statement concerning appropriate behavior to deal with the current pandemic. This would cover export restrictions; trade facilitation, regulatory coherence and cooperation, and tariffs; the role of services trade; transparency and monitoring; collaboration with other international organizations and engagement with key stakeholders; and a framework for future pandemics and crises. It appears that nothing would be agreed if no compromise is found on the question of the TRIPS waiver for COVID-19 vaccines.

The second item has an importance not just because of its intrinsic value but due to its long history of attempts at resolution. It requires reaching:

2. **Agreed disciplines on fisheries subsidies.**

- This has become a litmus test for the WTO. If the Members cannot find a way to carry out an often-renewed pledge after 21 years of negotiation, the feeling will

become more widespread that little can be accomplished applicable to global trade.

Objectively, the third requirement should be

3. **A clear pledge to deal with trade and climate**, and other environmental issues (marine plastics pollution, fossil fuels, etc. – this last, probably unspecified).
- The effort is likely to take the form of an open plurilateral negotiation, a joint statement initiative. This is now a path more often chosen, as agreement among 164 disparate sovereigns is becoming close to impossible to achieve.

Other expected outcomes:

4. The conclusion of the JSI on **domestic regulation of services**.
5. The already agreed result for the JSI on **micro, small and medium-sized enterprises (MSMEs)**.
6. Progress reports on the JSIs on **e-commerce and investment facilitation**; and
7. The creation of a **WTO Reform** effort with a general mandate, citing as objectives at a minimum -- restoring the negotiating function, putting into place an agreed dispute settlement mechanism, and some enhanced transparency.

More uncertain, but highly desirable:

- An inclusive **work program for agriculture**, and adoption of the pledge not to place export restrictions on food purchases by the **World Food Programme**.
- An **extension of the moratorium on the placing of tariffs on electronic transmissions** (paired with a continuing moratorium on the bringing of TRIPS non-violation cases); and
- A statement on the importance of trade in the cause of making more possible **peace for conflict-affected countries**.

What **not** to expect:

- **Binding (enforceable) multilateral agreements** with the exception of a fisheries subsidies agreement.
- **An immediate solution to the dispute settlement impasse**.

- **An agreed statement dealing with forced labor** (a new entrant agreed among the G7 trade ministers)

Commentators will view whatever accomplishments there are as positive or inadequate depending on their point of view. Few will say that the results are transformative -- because transformation is not on the agenda. Transformation of the trading system will not begin, if at all, until 2022.

What should come next, beyond MC12?

The challenges that threaten the multilateral trading system are numerous. Among these are the strains caused by national measures taken to deal with the pandemic, the planned measures to address climate change, geopolitical divisions, the rise of populism and nationalism, and all too many nations turning inward to give domestic issues exclusive priority. In these countries, there is a far more cramped vision of national self-interest than that which allowed the creation of the world trading system three-quarters of a century ago. The answers for the future of the multilateral trading system (WTO) lie in three categories: (1) governance of the multilateral trading system, (2) a change in Member attitudes, and (3) the negotiation of new substantive rules.

Reforms that should be adopted starting next year:

⇒ *The negotiating pillar -- Members overcome stasis*

- **There is an end to the convoy system for negotiated outcomes, the existing system where all must agree or none can agree.**
- “Consensus” is no longer to be misconstrued as requiring unanimity. It exists where a majority decides to move an issue forward and the rest acquiesce.
- A veto cannot be used to prevent agreements among like-minded Members.
 - However, when like-minding Members move forward to reach agreements among themselves, they cannot in doing so increase the obligations of any Member without its consent, nor reduce its existing rights.
- There is no veto over the budget or on the adoption of an agenda for a meeting. Vetoes are to be reserved for matters of strong national interest, and only as the result affects them directly.

- JSIs (open plurilaterals) are declared to be legitimate as part of the core functions of the WTO. Forward-leaning Members are encouraged to engage in open plurilaterals to expand the scope and effectiveness of the multilateral trading system.
- ⇒ **Members make explicit what has always been implicit, that the core understanding of the multilateral trading system is that market forces, not state interventions, are to determine competitive outcomes.** Members should agree --
- that the WTO is about convergence, not co-existence, and
 - that to prevent market forces from generally determining competitive outcomes would be inconsistent with a Member's WTO commitments.
- ⇒ **Reaffirm that the multilateral trading system is about progressive trade liberalization, which includes ongoing improvements in the rules.**
- An example would be prompt restarting and achieving an ambitious conclusion to an environmental goods agreement.
- ⇒ **Each sub-multilateral (regional and bilateral) agreement should be justified according to whether it is likely to be more trade-creating for non-parties than trade-diverting.** This would include existing agreements.
- An FTA should not be considered acceptable merely because it covers substantially all trade, an inadequate standard that is in any event increasingly honored in the breach.
- ⇒ **An overarching principle is that the WTO is to provide fairness – in line with the founding of the system.**
- Part of the answer is to restore trade remedies to their rightful place in the system.
 - Another part of the answer lies in intensifying trade facilitation assistance, supporting the implementation of the African Continental Free Trade Agreement, promoting equitable access to supplies during the pandemic and working with international organizations to restore trade finance.

⇒ **The dispute settlement pillar**

- **Quasi-judicial overreach** – The solution is to be found in Members agreeing to extend the coverage of the agreed rules, particularly for industrial and agricultural subsidies and forced technology transfer.
 - Ministerial guidance (e.g., a panel’s factual findings are not reviewable on appeal, trade remedies are not to be treated as exceptions to the rules, a narrowing of their availability) that there is to be no gap-filling and that the dispute settlement system is not designed to make law, absent explicit consent of the Members. Panels are to concentrate on resolving disputes, not amending the rules.
 - Checks and balances – providing for DSB or other review of adherence to the guidance which has been given.
 - Structural change – substantially expand the number of appellate body members to deepen the amount of available expertise and increase diversity of representation, make no provision for collegial working arrangements among different appellate panels, and require strict adherence to time limits which should help to limit “judicial activism”.

⇒ **Establishing the executive functions of the WTO**

- **A mandate is given for the Director-General to become far more proactive,** overtly leading Members to negotiate compromises and tabling proposals to resolve negotiating impasses.
- **Transparency**
 - **The Secretariat is called upon to engage in proactive, autonomous monitoring,** using facts available, of measures affecting trade, both restrictive and trade-facilitating, noting which measures Members verify and for which there is no Member response.
 - Tougher penalties for failure to file notifications are put into place.
- **Development**
 - Echoing this Director-General’s efforts to bring vaccines and vaccine production to developing countries, she should convene a meeting of major commercial banks and international financial institutions to pledge to restore trade finance.

- **Dispute settlement**
 - The Director-General should table elements of a solution to the Appellate Body impasse.
 - The Director-General should announce that **appeals into the void (appeals filed with the Secretariat for the Appellate Body, although none exists) will no longer be accepted.** The WTO dispute settlement process is not to give advisory opinions unless a Member bringing a case so requests. If no alternative arrangements are made by the parties for an appellate process, every panel report will be deemed final.

- **Strategic foresight**
 - Given the likelihood of continuing major challenges to the global trading system, require the Secretariat to engage in Strategic Foresight, reporting its conclusions autonomously, not subject to advance Member review or censorship.

- **Policy planning**
 - The Director-General is asked to create a policy planning function within the Secretariat.

- **Liaison with sister international organizations**
 - Representatives of the WTO are posted with the World Bank, IMF, OECD, FAO, the AfCFTA Secretariat, and the ILO

- **Budget**
 - Provide the WTO with a self-sustaining budget based on a sliding scale tied to share of world exports. Activities of the Secretariat are not to be manipulated through the undue influence of individual Members over the WTO budget.

⇒ **Adding to the rule book**

- **Trade and health**

- A working party should be formed to consider how the WTO should respond to the current pandemic and to future pandemics.
- Part of its mandate would be to determine what should have been done starting in March 2020 when the scope of the pandemic first became clear.
- Possible elements for study and recommendation:
 - A new accord on trade and health should contain a binding international understanding limiting the use of export restrictions, defining the WTO-rule-promised “equitable share” of supply that is to be made available to the world outside one’s own national boundaries (required by GATT Art. XX(j) when export controls are put into place). Assigning a number to that share would be a crude but potentially effective way to make the WTO rule have clear effect. Commitments should be made to have imports of essential goods duty-free.
 - As suggested by a colleague of mine at PIIE, Chad Bown, agree to a positive approach to subsidies when the object of support is the production of inputs for vaccines and vaccine manufacture itself.
- China and India should join the Pharmaceutical Agreement, providing for duty-free treatment of covered products, thus restoring the coverage of the agreement to 90% of world trade in these products.
- Negotiations are inaugurated to update the Information Technology Agreement to include medical equipment, making them duty-free.

- **Agriculture**

- Agreement to begin negotiations on reducing domestic support (including cotton subsidies), increasing market access and food security, with a fixed timetable for results, to which specific new limits on domestic support would be added.

- **Non-agricultural market access (NAMA)**

- A work program is created for progressive reduction of tariffs.

- **Trade and climate**
 - Intensive discussions begin to determine rules for carbon border adjustment measures (CBAMs).
 - A work program would include the fostering of circular economy, green credit, sustainable finance, etc.
 - The Trade and Environmental Sustainability Structured Discussions begin to home in on negotiated results, and
 - The Environmental Goods Agreement (EGA) negotiations resume.
- **Resilient global value chains/supply (the subject of the 2021 WTO Public Forum)**
 - A working party is formed, not limited to essential goods for the pandemic, to address the concern that re-balancing in the name of assuring adequate supplies of essential goods could move too far inward, over-emphasizing near-shoring, hurting all economies. Some shortening of supply lines as a hedge against disruptions can be expected but should be limited by the need to avoid unnecessary costs, and the reality that global diversity of supplies will provide the surest security.
- **State involvement**
 - Disciplines are deepened and broadened with respect to state-owned, state-invested, and state-influenced enterprises,
 - Disciplines are created for industrial subsidies and forced technology transfer, and
 - Competition policy is enlisted to shore up market orientation.
- **Inclusive trade**
 - Efforts continue to assure that the benefits of the trading system are extended with respect to women, and more generally workers, farmers, engaging business associations and civil society organizations etc.
 - A declaration is adopted on the relationship of labor rights to the WTO, among other human rights.

- **Accessions**
 - Additional emphasis is given to the need to conclude long-standing accessions and achieve universality in the WTO's trade coverage, recognizing that the accession process is a leading edge of continuing WTO reform.
- **AfCFTA**
 - A major WTO initiative is inaugurated dedicated to making the African Continental Free Trade Agreement a success.
- **Accountability**
 - The Secretariat is to inform the Members of trade actions threatened or taken that may be inconsistent with Member obligations or against the general welfare of the Members.
 - Administrative measures: Member in arrears either have a payment schedule to which they must adhere, or they are barred from speaking.
- **Unilateral measures for the good of the system**
 - Self-declaration of developing country status with its implied claim of eligibility for special and differential treatment) ceases.
 - Global leadership has costs. The multilateral trading system needs greater investment from all its Members, including all of the largest Members.
 - The countries whose economic standing has progressed the most since the WTO was founded should take the lead in proposing trade-liberalizing negotiations, with higher tariffs cut more deeply.
- **Re-balancing**
 - The major trading Members, particularly, the United States, the European Union, and China each seek to restrike the balance envisaged by the GATT and WTO, giving up some flexibilities (unilateral measures, excessive claims of the need to resort to national security and safeguard measures; domestic support, lowering tariffs on a harmonized basis etc.). Trade remedies are recognized as a necessary price paid for greater openness on average.

Conclusion

My intention in this listing of what should occur in 2022 is not put forward as a criticism of whatever results come out of MC12, where significant results are still possible. It is to indicate that the work of multilateral cooperation does not end with MC12. If anything, MC12, like MC11, should be a launchpad for further efforts.