

What next for Africa after another disappointing WTO Ministerial?

The eleventh World Trade Organisation (WTO) Ministerial Conference (MC11) ended last December, in Buenos Aires, Argentina, with no clear mandate on almost all the issues that members took to Argentina especially issues of interest to Africa such as agriculture and development which were blocked by developed countries, writes ***Sylvester Bagooro**.



Head of Delegates Meeting - WTO Ministerial

At the close of the Ministerial, the Chair, Minister Susan Malcorra of Argentina, summarized the outcome of the ministerial conference as follows: guidelines on future work on fisheries subsidies, renewal of the moratorium on electronic transmission duties and moratorium on Non-Violation and Situation Complaints of the Intellectual Property Rights Agreement (IPRA). She

also noted the lack of progress on most of the issues tabled at the Ministerial and announced the formation of informal working groups on each of the following: e-commerce, investment facilitation and Micro, Small and Medium Enterprises (MSMEs).

The moratorium on electronic transmission of goods allows goods to be imported electronically without du-

ties charged on them. That of the IPRA allows, for example, government to take measures of public interest such as issuance of compulsory licenses on health grounds, enforcing proper packaging on harmful products, among others, without being challenged at the WTO even if the measures are consistent with TRIPS obligations.

Though these decisions are of interest

to the generality of the WTO members and while African countries will benefit from them, they do not compensate for the failure to address the issues of specific challenge and interest to Africa.

The demands of Africa over the years have been about addressing the imbalances within the Multilateral Trading System. Hence the Africa Group, long before the ministerial called on the WTO to demonstrate real commitment to its purported stance on development especially for the most vulnerable members and regions. These demands were, again, re-echoed in the morning prior to the official opening of the ministerial by Africa Trade Ministers.

First and foremost, a proposal was tabled to address the imbalances in the Agreement on Agriculture. One of the areas under this agreement has been the huge domestic support given, mostly, by developed countries-US, EU, Japan-to their farmers. For instance, total notified domestic support by the US in 2014 stood at one hundred and forty-six (146) billion US dollars, that of the EU in 2012/2013 was one hundred and thirty (130) billion US dollars and Japan's stood at thirty-three billion (33 billion dollars). These subsidies normally lead to artificial lowering of prices of agriculture commodities in the global markets and wreaking havoc on African producers.

A clear example is the United States. The US is the world's largest exporter of agricultural commodities globally according to a new research by the Institute for Agriculture and Trade Policy (IATP). In fact, in 2015, according to this new research, the U.S. was exporting major agricultural commodities at dumping-level prices: corn at 12 percent below production costs, soybeans at 10 percent, cotton at 23 percent, and wheat at 32 percent and rice at 2 percent. Thanks to the imbalances in the WTO. However, throughout the Ministerial, the US blocked all attempts to have any progress in the area of agriculture. At the collapse of the conference, the US Trade Representative said, "We are proud to defend the interests of U.S. stakeholders at the WTO, including our farmers and ranchers..."

Secondly Africa negotiators, called

for an effective, easy-to-use Special Safeguard Mechanism (SSM) as a trade remedy instrument to protect farmers from import surges and low-priced imports. The SSM constituted an important part of the promises offered to the developing countries at the Doha Ministerial. It is a protection/safeguard measure for developing countries to take contingency restrictions against agricultural imports that are causing injuries to domestic farmers. However, its design and use has been an area of conflict since the Doha Ministerial where developing countries were given concession to adopt it. At MC11 this too was deeply frozen and not much was heard of it.

In fact, its counterpart, used by most of the developed countries, is the Special Safeguard Provision (SSG). This allows these countries, despite all the huge subsidies, also to regulate influx of imports. Its invocation is also automatic. This was obtained in the Agreement on Agriculture, adopted during the Uruguay Round-The Round of Negotiations leading up to the establishment of the WTO. Still in the area of Agriculture, India supported by Africa, tabled a clear demand for permanent solution for Public Stocking Holding (PSH) that would allow developing countries to buy food for security purposes. In 2013, at the ninth Ministerial conference in Bali, Indonesia, a stop-gap measure in the form of a Peace Clause was reached. This insulates countries from being hauled before the WTO Dispute Settlement Body (DSB) for programmes that were in place before the ninth Ministerial pending permanent resolution.

At MC11 also there was no progress on PSH. As the Ministerial conference inched towards collapse, surprised texts began to spring up. One of them was the draft text on agriculture on the second full day of negotiations which was drafted by only 7 countries together with the chair and sprang on other members. Secondly, the proposed text was far worse than the Peace Clause, which itself suffered from several problems such as onerous notification requirements, restriction to staple crops which itself is undefined, and that the relevant subsidy do not distort trade or adversely affect the food

security of others. These almost impossible notification and safeguard conditions were all retained in the draft text.

To make matters worse, during the second full day of negotiations, the United States told other members it could not accept a permanent solution on public stockholding for food security purposes. That clearly blocked any meaningful progress on this issue.

Other important demand of Africa was Special and Differential Treatment (S&DT) to enable Africa take measures to deal with the imperatives of structural economic transformation. S&DT is a preferential treatment accorded countries in trade relations, due to the asymmetrical nature of capacities, needs and development. But special and differential treatment within the Multilateral system underwent a radical change from a development instrument to merely an adjustment tool especially during the Uruguay round of trade negotiations. So, Africa is calling for real S&DT and relaxation of some the rules in the WTO.

A clear example is the Trade-Related Investment Measures (TRIMS) which prohibit governments for requiring the purchase or use by an enterprise of domestic products. That is restriction on local content requirement. But this is necessary for building linkages in the domestic economy especially in most African countries where local content policies are being designed.

So, in July 2017, the Group of Ninety consisting of the Least Developed Countries (LDC), Africa Caribbean and Pacific (ACP) and African Group (G90) formally presented a proposal on Development, which included, among other things, relaxation of the TRIMS Rules, in the Committee on Trade and Development in Special Session (CTD SS). But this faced a lot of resistance at the committee level and at the Ministerial too, there was no progress.

At MC11 one African delegate, speaking to African CSOs, said 'In the Uruguay Round developed countries, crafted rules that favor them and closed the door for developing countries. They have huge subsidies and also curtailed the policy instruments that are needed for development. 'That is why the Africa

Group is calling for relaxation of rules in the area of Trade Related Investment Measures (TRIMS) and those governing Infant Industry.

New Initiatives, approaches and implications for Africa

As Africa continues the struggle for its issues of interest to be addressed, a new page of fight against negotiating mandate on new issues opened at MC11 with the formation of three informal groups on these issues. At the closing meeting of MC11, the Chair announced three informal initiatives on electronic commerce, investment facilitation and Micro Small and Medium Enterprises (MSMEs) proposed by some members.

The membership of these initiatives is worthy of note. The main proponents over the years had been developed countries. However, MC11 witnessed some reconfiguration where new entrants, including some African countries, contrary to the Africa Group's explicit stance against these issues. Nigeria is a member of the working group on e-commerce and Investment facilitation. Liberia, Benin and Togo are in the Investment Facilitation Group and finally Kenya is in the informal working group on MSMEs. The implication of these issues on Africa's development are profound.

First and foremost is the issue of e-commerce which became topical leading up to and during the Ministerial Conference. The point must be made upfront that Africa is not against electronic commerce. What has been the contention is the kind of rules being proposed in the name of e-commerce within the multilateral trading system? In other words, the attempt to pass-off rules making at the WTO as the benefits of e-commerce.

Before MC11 two models of liberalisation on e-commerce were tabled. The first being the 1998 work programme and the second was the set of new rules proposed by mostly developed countries. The former is based on the existing WTO Rules and how that could be fine-tuned to cover e-commerce. Africa and most developing countries support this model. That is adherence to the existing non-binding 1998 work program that



Deputy Director-Generals of WTO

requires members to explore e-commerce from all areas and not to engage in any proposals for negotiating rules and disciplines.

This, most African countries have argued that technology is evolving rapidly and characterised by uncertainties and so agreeing to any kind of binding rules in the multilateral system would be like a leap in the dark which could have disastrous consequences for people in the developing world especially Africa.

The second model, mainly by developed countries, calls for negotiating mandate for rules that would ensure free data flows, no localisation (no local servers in host countries), no disclosure of source code among others. These have sparked lots of debate on the grounds of how Africa and some other developing will develop their digital industry as well as security considerations.

Briefly on 'no disclosure of source', some have argued, for instance, that Governments may need access to source code in several situations such as procurement of critical infrastructure for example a nuclear power station to make sure it cannot be hacked or procurement of military technology or other sensitive products. This is because a number of governments have been concerned that several U.S. -based technology companies like Cisco and Apple may have installed so - called back doors into their products based on leaks by whistleblower Edward Snowden that exposed U.S. espionage activities across the world.

Again, free data flows would allow data whether sensitive or otherwise to leave the shores of countries and stored

on foreign servers. Related to this is the issue where companies would not be required to set up local servers in host countries. This would, among other things, not lead to any technology transfer and that the proposed rules would not help Africa address the digital divide.

In fact, in Africa 75 percent of the population do not have internet according to facts and figures from the UN International Telecommunication Union (ITU). The ITU stated that while the world is getting connected, international bandwidth is unequally distributed and that most developing countries continue to lag behind. More than half of the world's population is not using internet notably 75 percent of people in Africa do not have internet. The current proposed rules bear no semblance to solutions to the digital divide in Africa

Rather, experts and analysts, see the proposed rules as a way of entrenching the business models of Google, Amazon, Facebook, Apple which are mainly US-based technology giants. That is using rules to ensure their continued monopolistic control and thereby curtail any competitor in the future.

So, prior to, and during the Ministerial conference, the Africa Group of Ambassadors and experts stated that although e-commerce can be used for development and has many benefits, the kind of rules being proposed at the WTO are not necessarily going to contribute towards development. Making of multilateral rules cannot be passed off as benefits of e-commerce. For instance, Vahini Naidu, Counsellor at the South African Permanent Mission to the WTO,

stated that “cross-border-commerce is highly unbalanced in nature and monopolized by US-based technology giants and these developed without rules anyway”.

Second is the issue of ‘Investment Facilitation for Development’. Again, African countries are not against investment. In fact, they are interested in investment and investment rules that would aid Africa to address its development challenges. The proposals on the table, however, would deliver the contrary. Analysing the proposals tabled by the EU, US, Japan among others, African countries have sensed the return of the spirit and letter of the Singapore issues (Investment, government procurement, competition and trade facilitation) that led to the collapse of WTO ministerial in 2003 in Cancun. Of course, trade facilitation has been accepted now. Investment proposals then called for corporate-driven investor rights, such as national treatment, free flow of capital, pre-establishment rights, right of entry among others with draconian enforcement mechanisms. These were rejected at that Ministerial and attempts are being made to smuggle them through the current investment facilitation proposals. The proposals at MC11 focused on capturing administrative processes, regulatory actions in relation to investment-related policies. That is demands on sharing information to enable “stakeholders” to influence national investment policy making. This is intrusive on domestic policy making and a clamp on legitimate government policies.

To this the Africa Group opposed on grounds that such proposed investment facilitation rules do not recognize differentiated approaches that countries may take in managing regulatory processes, nor do they recognize constitutional and political differences at regional, sub-regional, national and sub-national governmental levels .

The third area, of which an informal working group was formed, is MSMEs. Again, it is important to state that African countries are not against the development of MSMEs. In fact, most African countries have recognized the importance of MSMEs in job creation and development in general and are focused

on promoting the sector.

The Africa Group have argued that the issue of rules to facilitate trade for MSMEs and SMEs has been brought into discussions at the WTO in general terms without clarifying what types of multilateral rules could be relevant. Proponents have not defined companies falling under that category since MSMEs /SMEs in developed countries vary dramatically from those in developing countries and LDCs.

This is could be problematic and would rather entrench the dominance of large transnational corporations rather than support MSMEs. A clear example is Amazon.com. In the USA alone, Amazon.com has been responsible for causing an estimated 135 million square feet of retail space to become vacant (that is, about 700 empty big-box stores plus 22,000 shuttered Main Street businesses). This has a lot of implication for job creation

So, Africa negotiators at the MC11 stated that multilateral rules that are currently proposed to address obstacles facing MSMEs in international trade are not yet clear, especially in terms of how such rules would address African MSMEs in the current global competitive environment given their basic constraints rooted in the structural impediments of Africa’s economies such as productive capacities and capabilities; lack of technology; access to finance among others.

Lastly, was domestic regulation in services. Domestic Regulation in services finds its mandate under Article VI.4 of the General Agreement on Trade in Services (GATS), where it requires Members to develop any necessary disciplines, to ensure that measures relating to qualification requirements and procedures, technical standards and licensing requirements do not constitute unnecessary barriers to trade in services. So, this is not a new issue within the WTO. However new rules were proposed for negotiations.

The proposals on domestic regulation in services, demanded that any measure in the area of domestic regulation must be published to ensure ‘transparency’ and allow entities to comment and their interest taken into account. Also,

the measure must be based on ‘objective criteria’, and be ‘reasonable’.

The new proposed rules suggest that before Africa adopt any laws and regulations , countries must first publish them in advance, with sufficient detail, to allow members and also non-state actors to determine whether and how their interests will be affected. In so doing countries must explain themselves, on the purpose and rationale for such law and/or regulation. In the event that those interests are affected, countries must allow them to comment and also consider their comments. This again, is an intrusion on domestic policy making in Africa

Fortunately, the Africa Group stood its ground against any outcome on these issues. In fact, reacting to the outcome of the conference, an African delegate, who preferred not to be mentioned, said that, they had stopped intrusive rules to happen through e-commerce, investment facilitation, MSMEs and Domestic Regulation.

In the light of all these and the re-configuration around the new issues Africa must assess its downside and benefits in relation to the WTO and take the following two measures: First, find enduring ways to ensure a unified front on all the issues being tabled at the multilateral space especially in the area of new issues where the following countries Nigeria, Kenya, Togo, Benin and Liberia have explicitly joined the informal working groups against the stance of the Africa Group.

Second, Africa, must make good use of the few trade instruments like export taxes and policy space that exist now within the current regime. Some of these, though, are being eroded by Free Trade Agreements and Bilateral Investment treaties.

Also trade and development activists and campaigners in Africa must begin to analyse the new areas that are emerging informed by Africa’s specificities so as to play an effective role in the contestation on the issues of concern to Africa and its development.

**Sylvester Bagooro, is programme officer, Political Economy, TWN-Africa. sbagooro@twnafrica.org*