



# The 11th WTO Ministerial and the stakes for people's economic rights



Now on its 11th Ministerial Conference (MC11), the World Trade Organisation (WTO) has been an institution for twenty-two years, now with 160 member countries.<sup>1</sup> The WTO concerns itself with global trade and investment rules. With the International Monetary Fund (IMF) and the World Bank Group (WBG), these three have been described as a troika of neo-liberal globalisation.<sup>2</sup>

WTO Ministerials gather trade ministers from the member countries for "multilateral" negotiations on trade rules. These rules are oriented towards liberalising trade and investment, and opening of markets in the developing world. Ministerial Conferences are supposed to be a venue for all countries to decide via "consensus". This has been criticised as undemocratic in reality, with developed country

pressure on smaller states, or with results produced in by-invitation-only "Green Room discussions". Significant progress in negotiations could also happen in the "run-up" to a Ministerial: in various small meetings months before finalised positions in the Ministerial itself. For the upcoming MC11, some of the issues to be settled through "consensus" include fishing sector subsidies, developing countries' agriculture,

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and the threat of future WTO expansion to electronic commerce (e-commerce) rules.

Trade liberalisation, meanwhile, has been criticised for resulting to unequal trade relations, worsening poverty and violating peoples' rights. According to the UN Conference on Trade and Development (UNCTAD), women employed in sectors facilitated by liberalisation all face lower wages than men, and inferior to precarious work conditions. These included the sectors of tourism, call centres, export-oriented manufacturing and export-oriented agriculture. The UNCTAD thus claimed that "less trade liberalisation, especially in developing countries, may in fact promote the expansion of domestic manufacturing and thereby women's industrial employment."<sup>3</sup>

Neo-liberal assumptions in "free trade", such as perfect competition and the benefits of open markets also do not hold today. A global rise in market concentration shows that benefits are for a few: only 10% of the world's publicly-listed companies accounting for 80% of total profits.<sup>4</sup> Companies from developed countries also profit the most in key industries such as pharmaceuticals and information technology (IT), with profits linked to patents, copyrights, and sheer size of the companies.<sup>5</sup>

Despite all these, the WTO has been known to have an expanding mandate.<sup>6</sup> It concerns itself not only on trade and tariff issues, as in the General Agreement on Tariffs and Trade, but on many "trade-related" issues as well. For instance, the so-called "Singapore issues" that emerged

in the 1996 Ministerial are concerned with investment, competition policy, government procurement, and reducing government "red tape" for businesses. Forwarded by developed countries and their allies, these tend to favour narrow interests of corporations looking to find markets and suppliers in the global South. Backlash of countries and peoples of the global South against these dominant interests forced developed countries to concede the so-called Doha "development agenda" (DDA).

### **WTO AND FTAs: TWO-PRONGED ATTACK WITH ONE AGENDA**

It has been previously agreed within the WTO that the Singapore issues would not be discussed unless Doha issues have been settled. Critics see that developed countries are eager to bypass this by either *de facto* ending the Doha round or pushing the Singapore issues in ways other than multilateral negotiations.

On the latter, examples would be the various regional free trade agreements (FTAs) that have emerged in the last decade. In contrast to WTO negotiations, FTAs are negotiated among a smaller regional grouping of countries and usually feature fewer developed states as leading players. These FTAs include the now-uncertain Trade in Services Agreement (TISA); the Transpacific Partnership (TPP) — once-led by the U.S. but now continuing without it; the China-led Regional Comprehensive Economic Partnership (RCEP); and EU-led Economic Partnership

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Agreements (EPAs) in Africa. “Plurilateral” arrangements in WTO negotiations have also been raised in the run-up to MC11, especially if outcomes prove unsatisfactory for developed countries.<sup>7</sup>

The WTO and FTAs make up a two-pronged attack that forwards trade and investment liberalisation. Despite the Doha’s supposed pro-developing country agenda, the WTO remains premised on “free trade” principles. That is, even though developing countries attempt to claim some protection for domestic agriculture and industries, the primary purpose of the WTO remains to be a wholesale lowering of “trade barriers” through elimination of tariffs and, especially today, “non-tariff barriers” such as domestic regulation and government subsidies.

Meanwhile, some of the current FTAs also push developed country issues currently not in the immediate WTO agenda. For instance, the TPP and RCEP have chapters on competition policy and government procurement (which are “Singapore issues”), thus allowing greater developed country access to global South markets.

The last Ministerial Declaration in Nairobi (tenth WTO Ministerial, or MC10) worsens the stalemate in the Doha agenda, with “some countries want[ing] to push with the agenda while some do not.” Critics claim that the Nairobi outcome effectively meant the end of the Doha agenda.<sup>8</sup> Given so-called “consensus” decision-making, disagreement among groups of countries in the DDA could mean further stalling on the issues, and at the most, making it non-operational in practice.

### **Buenos Aires Issues: Potential Setbacks for People’s Rights in Trade and Investment**

The upcoming MC11 will be held from December 11 to 14 in Buenos Aires, Argentina. MC11 will likely feature a more extensive role of business interests, for example through the world’s largest business organisation, the International Chamber of Commerce (ICC). While previously ICC influence included lobby work that provided recommendations, in MC11 this will be strengthened as the ICC will hold a first-ever “Business Forum”.<sup>9</sup> To be held in partnership with the Argentine government, the forum will attempt to formalise private sector role in the future of the WTO. No such official platforms have ever been available for civil society and people’s organisations.

Also worth noting is the position of the United States (U.S.) in the run-up that, in general, “no negotiated outcome is possible in the 11th Ministerial,” and that there will be no ministerial declaration.<sup>10</sup> This imposing stance was questioned by developing countries, especially those that push for settling the Doha issues. The U.S. has also been seen as “disengaged” in most WTO bodies months before the MC11, sending only “low-level delegations”.<sup>11</sup>

News circulating in the run-up indicates that the WTO might in the future (if not in the 2017 Ministerial) expand its rules into new areas such as e-commerce. While significant e-commerce outcome in December are unlikely, the fact that such proposals exist portend further expansion

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of the WTO's scope, again at the expense of developing countries and their peoples.

An outcome on the issue of fisheries subsidies will be likely, as negotiations have moved considerably as early as October. Other issues that have been raised pre-MC11 include those related to facilitating investments and cutting back government "red tape" for corporations in services ("trade facilitation"). Issues of developing countries' agriculture were also raised, such as on domestic support and public stockholding for food security.

#### **Further defeats in developing countries' agriculture demands?**

After decades, many countries still argue that the negative effects of the Agreement on Agriculture should be redressed. Developing countries have not yet recovered from the agricultural decline as an effect of the Agreement on Agriculture decades prior.<sup>12</sup> By MC10 in 2015, the elimination of agricultural export subsidies has been touted by the WTO as "the most significant outcome" on the matter.<sup>13</sup> Contrary to this branding, some claim it is a weak outcome since the use of export subsidies has already been in decline, while the primary forms used by developed country exporters was mired in "weak language" in MC10.<sup>14</sup> Worse, many developing countries will also have to remove their export subsidies on agriculture as early as 2018, revealing how this outcome remains to be within the goals of the liberalisation agenda.

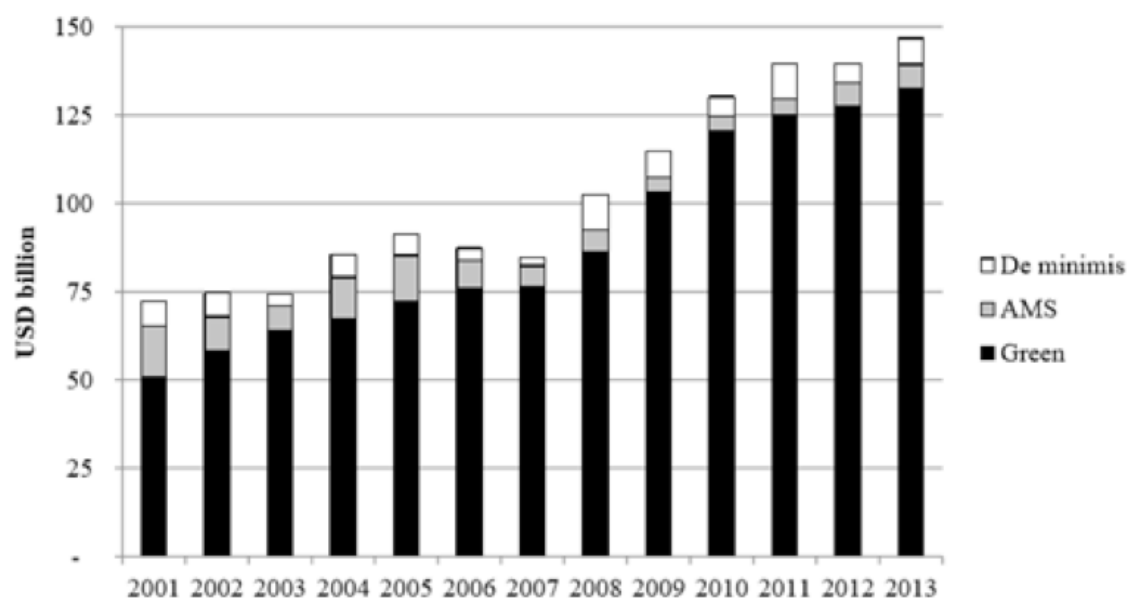
There were also no substantive outcomes on developing country demands on agriculture in 2015, and were just put off for other discussions. These include those regarding special safeguard mechanisms (SSM) for agriculture (the option for developing countries to increase their tariffs during times of surges of imports), and public stockholding for food security (the option for governments to buy agricultural goods at fixed prices, for storage and distribution in the future).

Even in the upcoming Ministerial, some countries are anticipated to push for the elimination of trade-distorting subsidies of rich industrialised countries—such as China, India, the Cotton 4 group of African countries – and even stricter disciplines on the notorious Green Box.<sup>15</sup> Both have led to bad outcomes for peoples in the global South.

But some of the global South countries' efforts to assert their claims have previously been blocked by developed countries such as the U.S, or at least have not reached significant success. The U.S. and other industrialised countries are foreseen to not be interested in any outcome on the issue of public stockholding. Developing countries such as Indonesia have stressed the need for outcomes on the issue, along with special safeguard mechanisms to protect developing countries, but without bright prospects at least months before the MC11.

The negotiations on domestic support have in the past years reached a stalemate due to a U.S. position: that China cut its domestic support subsidies on agriculture before the U.S. would do so.<sup>16</sup> Established

**Chart 1. Amount and kind of US support to its exporting agricultural sector, as recorded in the WTO, 2001-2013**



Source: South Centre. The WTO's Agriculture Subsidies Negotiations.  
<https://www.southcentre.int/analytical-note-january-2017/#more-9428>

in the Agreement on Agriculture twenty years prior, "domestic support" refers to government subsidies to agriculture. Some are deemed to artificially affect "free trade" (that is, "trade-distorting") and thus should be reduced, while other subsidies are deemed minimally or not trade distorting (called the "Green Box"). The former includes subsidies linked to the production and pricing of goods, while Green Box subsidies include those that supposedly do not impact price and production directly, such as direct income support for farmers.

Subsidies are important for developing countries especially as support for rural development, but developed countries have the financial capacity and the space within the WTO to use them, and so benefit more. The WTO facilitated large sums of trade-distorting subsidies for developed country governments (measured in the so-called "Aggregate Measure of Support" or AMS). This increased their exports at cheaper prices to developing countries, at

the expense of smaller farmers in the global South whose products had to "compete" with the imports. Countries such as those in Africa have actually been net importers of agricultural goods.<sup>17</sup> With the restrictions on certain kinds of subsidies, developed countries made use of the limitless "Green Box" to *de facto* subsidise bigger farmers for export within WTO rules. A large part of U.S. agricultural subsidies were increasingly channelled into this (see **Chart**).

#### **Fishing subsidies: rights of small-scale fisherfolk at stake**

An outcome on fishing subsidies is said to be likely in MC11. Fisheries constitute an important sector for developing countries: around 57 million people are engaged in fisheries and aquaculture in 2014, with an estimated 95% residing in developing countries. The participation of women in the fisheries sector has also been notable.



For corporations that provide foreign services in developing countries, trade facilitation could mean easier access to these countries, through simpler and more predictable government “qualification requirements and procedures, technical standards and licensing requirements and procedures”.

For least-developing countries (LDCs), the issue at hand is that current “overfishing and overexploitation” are by commercial fleets of industrialised countries; that revenues from fishing licenses are essential to LDCs’ revenue; and for peoples and their organisations, that the economic rights of small-scale fishers should be protected.<sup>18</sup>

A resurgence of the issue of reducing subsidies that worsen overfishing, and those linked to illegal, unreported and unregulated (IUU) fishing is linked to its mention in the UN Sustainable Development Goals. Within the last two years, proposals on fisheries subsidies have been tabled by at least seven countries and groupings. For some, ample leeway for developing countries and their fisherfolk should be taken into account in any prohibitions on fisheries subsidies,<sup>19</sup> along with the need for rules that limit big commercial fishers. This is important for regions such as Africa where 40.5% of fish caught in its “exclusive economic zones” in 2014 were by foreign vessels.<sup>20</sup>

But prohibitions on subsidies could also compromise least-developed countries’ policy space to support and develop small-scale fisherfolk. For instance, the EU proposal tries to prohibit only those subsidies that are currently used sparingly by developed countries (i.e., subsidies that increase capacities of fishing vessels), while exempting others (e.g., subsidies on fuel). Given that the subsidies the EU wishes to prohibit are already banned under EU rules, some see that the EU

proposal pushes other countries to stop subsidising the improvement of vessels’ capacities at the expense of smaller states’ development of their fisheries sectors.<sup>21</sup>

The proposed rules threaten to be “too weak” for big commercial fishers, but “too strong” for countries with small fishing capacities”.<sup>22</sup> Like in the aftermath of the Agreement on Agriculture, this could mean worsened inequality for small fishers.<sup>23</sup> Others warn that small-scale and subsistence fishers might be included under one definition of “illegal, unreported and unregulated” fishing, which includes activities unreported to national authorities and those by unregistered fishing vessels.<sup>24</sup> Indications just two months before the MC11 point to how countries are more or less in agreement in using this definition, which originated from the UN Food and Agriculture Organisation (UN FAO).<sup>25</sup>

### **Return of the “Singapore issues”?**

In the past, the Singapore issues have been the subject of ire of peoples due to how these issues are mainly concerned with developed countries’ need for global South markets. In 2017, there were attempts to revive the Singapore issue of “investment facilitation” (the promotion of foreign investment especially to the global South), with Russia, China, Brazil, along with Mexico, Indonesia, Korea, Turkey and Australia raising it as a possible item for negotiation. This was supported by the WTO

### Ideal E-commerce Rules for the United States?

The "Work Programme On Electronic Commerce: Non-Paper From The United States", was a discussion paper released July 2016, with its content similar to parts of the above ICC document. This was not a "negotiating proposal," only intended to "contribute to constructive discussion among Members, a process in which the United States looks forward to participating actively."

Among others, U.S. ideas that one-sidedly favour big technology firms include:

- Prohibit customs duties on digital products (e.g. music, video, software, etc)
- Foreign ICT/telecommunications providers allowed "most favoured nation" treatment — *foreign corporations treated the same as domestic firms*
- No national barriers on movement of data, and *governments cannot "locally hold" data*
- Digital companies "relying on cloud computing and delivering Internet-based products and services should not need to build physical infrastructure and expensive data centers in every country they seek to serve"
- Barring technology transfers to developing countries; protection for foreign companies' intellectual property (e.g. software code, etc); rules that do not require foreign companies to purchase or utilise local technology
- Use of WTO Trade Facilitation Agreement

Source: *Work Programme in E-commerce: Non-paper from the United States*. 2016. JOB/GC/94. <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/JOBS/GC/94.pdf>

Director-General Azevedo, but was opposed by other developing countries, with India, South Africa, Cuba, Venezuela, Uganda, among others. Some questioned the link between multilateral trade and investment rules and development altogether, since foreign investors' real criteria are low wages and large markets in developing countries.<sup>26</sup>

WTO members are also divided on "trade facilitation," or the supposed simplification of countries' regulations and processes to encourage foreign goods and services. Trade facilitation could be considered the most successful "Singapore issue" in the WTO so far. In 2017, the Trade Facilitation Agreement (for goods) has started implementation, intended to promote "less discriminatory business environments".<sup>27</sup> The WTO has a mandate to supposedly prevent what it calls "undesirable regulatory

practices" and "hidden protectionism", towards smoother liberalisation of trade.<sup>28</sup>

For corporations that provide foreign services in developing countries, trade facilitation could mean easier access to these countries, through simpler and more predictable government "qualification requirements and procedures, technical standards and licensing requirements and procedures". What is at stake for developing and least-developed countries are their governments' power (and policy space) to supposedly regulate corporations that trade in goods and services. Earlier in the year, the African group along with least-developed countries countered proposals for trade facilitation in services. Cuba on the other hand refused to discuss domestic regulation without resolving a permanent solution for agricultural issues

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such as public stockholding for food security and the special safeguard mechanism.<sup>29</sup>

Given a divided house, WTO Director-General Azevedo has mentioned the possibility of pushing trade facilitation in services in plurilateral talks – i.e., negotiations and agreements applying only to smaller groups – within the 11th Ministerial.<sup>30</sup> He also encouraged business lobby groups to urge governments to focus on the issue. One such business group, the Global Services Coalition, urged the WTO (and the Asia-Pacific Economic Co-operation, or APEC) "to reaffirm the critical importance of promoting services liberalization and digital trade", and for governments to continue the Trade in Services Agreement (TISA), an FTA widely opposed by peoples and movements.<sup>31</sup>

### **E-commerce and the trade liberalisation of the future: at expense of right to development**

A final issue, one controversial even in the months before MC11, is e-commerce. Defined as "the production, distribution, marketing, sale or delivery of goods and services by electronic means",<sup>32</sup> this emerges in a context where big technology and digital firms such as Apple, Alphabet (the parent company of Google), Microsoft, have gained clout in rich industrialised countries such as the United States. The WTO does not have a mandate to produce binding rules on e-commerce, but only allowed exploratory *discussions*.<sup>33</sup> In MC10, it was decided that work will

continue under this programme. During the run-up to MC11, a conclusive outcome seems unlikely on this "new issue".

But the attempts by developed countries and their allies to move e-commerce forward are notable, and were rejected by a large majority of developing countries.<sup>34</sup> Countries that have huge digital firms such as the U.S. were also promoters of the e-commerce agenda (see **Box**).<sup>35</sup>

This recent push towards e-commerce in the WTO has been made through touting its supposed benefits to micro, small and medium enterprises (MSMEs). Allegedly, these small businesses in the poorest of areas would have greater access to the world's markets through digital technology. But this does not mean big corporations are not in the picture. A paper released by the International Chamber of Commerce, with support from the G20 bloc of developed countries, talked about how ideal WTO rules should pursue "an effective e-commerce environment [that] must level the playing field for all businesses—including global enterprises," with the latter supposedly integrating small businesses in global value chains and markets.<sup>36</sup>

In contrast, India, countries from South America and also from the African Group are more concerned with the "digital divide" – the gaps in developing countries and their peoples' access to ICT goods and services.<sup>37</sup> This is a symptom of gaps not only in infrastructure but also in basic economic capacities within poorer countries, and the uneven development among countries, with the technical



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knowledge (e.g., research and development phases of ICT) and infrastructure mainly monopolised by rich industrialised states.

E-commerce rhetoric also rests on branding information technology as cure-alls for development woes, but this is paired with the underlying goals of using ICT to “integrate developing countries” — including the smallest of businesses — in the multilateral trading system.<sup>38</sup> These reveal that behind e-commerce promotion is the neo-liberal dream of a “friction-free” global market.

Further consolidation of trade liberalisation threatens to scale back and even foreclose chances at government regulation and barriers to ICT goods and services (via “trade facilitation”). Integrating Southern countries to the global trading system entrenches a model that always seeks to appeal to foreign investors, decreasing Southern countries’ chances at pursuing the “developmental space” for strategic industrial policy on their own terms.<sup>39</sup> This compromises peoples’ right not only to enjoy but also to contribute and participate in development processes. E-commerce texts such as that of the U.S. threaten to push a corporate capture of data produced around the world, and could compromise political rights to data privacy and security for purposes of big private profit.

## **TOWARDS PEOPLE-CENTRED TRADE AND INVESTMENT INSTITUTIONS**

These potential attacks to the social, political, and economic rights of peoples

in the global South are all linked to the dubious premise that “free trade” and trade liberalisation necessarily contribute to development. As seen above, the WTO push for this agenda resulted to and continues to pose harmful effects for developing countries’ farmers, workers, especially women, among other sectors.

In contrast to this wholesale promotion of trade liberalisation, principles necessary for an alternative trade body and people-centred trade must be forwarded. It is assumed that any international trade body is made up of states, but state institutions could be and in many cases, are, captured by pro-business domestic and international elite interests. To move towards a trade body that is premised on protecting people’s rights, peoples’ organisations and movements need to push state institutions to rethink the usual acceptance of trade liberalisation, and change the character of elite-captured states.

Some characteristics of a possible alternative trade body include the following, all of which based on the need to protect and assert rights of the poor and marginalised – including farmers, workers, fisherfolk, urban and rural poor, indigenous peoples.

- *A trade body not founded on wholesale trade and investment liberalisation –* With increasing recognition that neo-liberalism does not create pro-people results, an alternative trade body should move to dismantle or at least move away from this policy track. The important role of state regulation, and the state’s duty to promote peoples’ right to development in both urban and rural

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areas are paramount. Complementarity, solidarity and mutual aid should also be the prime principles for trade, and not "beggar thy neighbour" practices.

- *A trade body that considers small-scale producers' needs as primary* – Development and people's needs are only secondary in a multilateral body premised on opening markets for transnational corporations. There is a need not only to move from a mere "development agenda" within the WTO, to an institution founded on the necessity of addressing farmers, workers, indigenous peoples' needs and demands.
- *A trade body that assesses impacts on people's rights* – A trade body for the people, and accountable to the people, should institute mechanisms to evaluate the impacts of trade rules on the grassroots. This could be done through enforcing states to submit assessment studies, or through fact-finding teams.
- *A trade body that is genuinely democratic* – A democratic trade body should have no exclusive negotiations decided only among a few parties. In contrast to currently-dominant business lobby groups, democracy means encouraging participation of peoples, movements and civil society organisations as development actors themselves, with official venues for important stakeholders in trade:

farmers, workers, indigenous peoples, women's grassroots organisations.

- *A trade body that shuns the "extractivist" model of economic growth* – To complement the need to protect people's rights for the future, the economic paradigm based on rampant exploitation of natural resources should be overturned. A sustainable trade body should promote sustainable practices of subsistence and small producers, such as indigenous peoples, in the global South.

Despite developing country representation and attempts at protecting their interests within the WTO, the institution's inherent premise for every Ministerial is towards ever-deepening trade liberalisation, and towards expanding its mandate to new areas. Given these considerations, peoples' demands for MC11 include:

- The halting of WTO expansion to new areas, and cutting its current grip on strictly non-trade concerns as a primary way of protecting developing countries.
  - » *WTO should not be concerned with domestic policies* — Peoples should demand the WTO to scale down the scope of its rules away from influencing non-trade areas such as government rules on licensing and customs, matters of domestic policy.
  - » *Need for government intervention for small producers* — The

WTO should also move away from outright discouraging government roles in subsidies for small-scale farmers and fisherfolk, and in shielding fledgling industries, especially in least-developed countries and smaller developing countries.

- » *No mandate for e-commerce* — Peoples should also assert that the WTO has no mandate for e-commerce, and should not expand “free trade” rules to ICT which do not address the pervading lack of transparency and accountability for tech-corporations.

- Unless WTO rules are truly limited to trade, perhaps representatives in the negotiations should heed people’s demands to abolish the WTO. This is an important way to prevent any further moves towards wholesale trade liberalisation especially in the global South, with elites from developed countries and their corporations opening markets at the expense of peoples’ right to develop the agricultural economy, including the fisheries sector, and national industries.
- At the national level, peoples and movements should also compel state actors to assess the impacts of decades of WTO-initiated reforms on the rights of marginalised sectors.

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