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LDC stakes for Nairobi: Going all in?

EXCLUSIVE INTERVIEWS

Ambassador of Bangladesh and Coordinator of the LDC Group at the WTO, Shameem Ahsan
Ambassador of Lesotho and Coordinator of the African Group at the WTO, Nkopane Raseeng Monyane

WTO

How to redistribute roles and redefine rights and obligations among WTO members?

WTO MC10 NAIROBI 2015

LDC stakes for Nairobi and beyond



International Centre for Trade
and Sustainable Development

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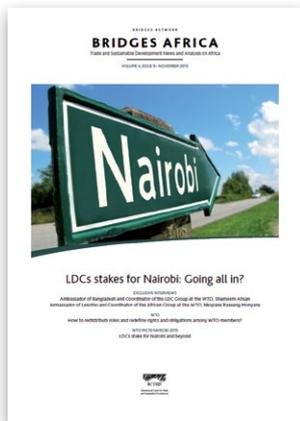
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LDC stakes for Nairobi: Going all in?



Although WTO negotiators are concentrating on advancing what could stand as a “mini Nairobi package” despite the global deadlock, there is growing consensus on the fact that it will be difficult to hide behind a meagre harvest to be able to envisage a future era with serenity. “Whatever we deliver in Nairobi, clearly it would not be viable, or credible, to announce it as a satisfactory conclusion of the DDA,” said WTO Director-General Roberto Azevêdo in Brussels, Belgium while attending a meeting of African Caribbean and Pacific (ACP) trade ministers.

All eyes are now turned towards an uncertain post-Nairobi era. Neither the content nor the framework of further negotiations is designed at this stage. The only certain thing is that WTO members will have to address those issues as soon as possible, because both the credibility and the survival of the system are at stake.

Meanwhile, expectations are high that the upcoming first WTO ministerial conference in Africa will, at least, deliver concrete progress on a development-oriented package of concern to Least Developed Countries (LDCs). For LDCs, will Nairobi result in a mere repetition of the decisions taken in Bali or will it reinvigorate LDC issues which have been put forward in recent months?

At a time when developed and emerging countries' respective positions seem hopelessly crystallised, there is still a slight chance that at least LDCs get a few commitments. A limited harvest could occur in fields such as cotton, preferential rules of origin, services waiver, duty-free quota-free market access, fisheries, TRIPS waiver, and less likely on S&D.

For a harvest to be possible, LDC requests need to be calibrated to what other members are ready to give. For these requests to be useful for LDCs, they have to be based on evidence that they are economically meaningful for them.

LDCs are not responsible for the current deadlock which has led more powerful members to achieve their own offensive interests through exclusive agreements such as megadeals, megaregionals or plurilaterals. However, as they have no alternative, LDCs and other poorer members will be the most impacted countries by a weakening of the negotiating function of the WTO.

This special issue of Bridges Africa dedicated to LDC concerns and interests on the eve of the MC10 –produced in collaboration with IDEAS Centre – gathers views on both the content and the process on the way to Nairobi.

We hope you enjoy reading this issue and invite you to consult our upcoming Doha Round Briefing Series prior the Conference as well as ICTSD's Bridges Daily Update during the conference. In addition to our renowned on-the-ground reporting, ICTSD will also organise a Trade and Development Symposium on the sidelines of the ministerial conference in Nairobi.

INTERVIEW

Bangladesh Ambassador Shameem Ahsan on LDC issues ahead of the MC10



Shameem Ahsan
Ambassador and Permanent Representative of Bangladesh to the United Nations Offices in Geneva, Switzerland and the current Coordinator of the LDC Consultative group at the WTO.

Ambassador Shameem Ahsan is a career diplomat with nearly 30 years of service. Prior to his position in Geneva, he was Ambassador of Bangladesh in Brazil, in Iran and High Commissioner of Bangladesh in Brunei.

He is a Medical Graduate of the University of Rajshahi and Bangladesh and holds a post-graduate "Diplôme d'études Supérieures Spécialisés (DESS)" in Diplomacy.

[Bridges Africa] Nairobi is in a few weeks. How do you assess the road travelled and the work since Bali?

[Shameem Ahsan] Between 2013 and 2015, we have concentrated on negotiating the Trade Facilitation Agreement (TFA) and there was a second important task of defining a post Bali work program. The agreement on TFA took time because of well-known factors which delayed its conclusion until November last year, which is past the deadline for the definition of a post Bali work program originally set for July 2015. These two factors together pushed us back, and we lost nearly a year.

So the implementation of WTO Bali decisions, which is the most important issue for the period between Bali and the next ministerial conference in Nairobi, was also, by default, pushed back. We did not achieve what we thought we should achieve!

However, there's a silver lining. We did have a high-level meeting on services in February this year, and since then the road traveled is quite promising. We are still not there, but the work continues. We also think that on Duty-Free Quota-Free (DFQF), in a very small way, some forward movement has taken place as well. For example, Chile and Thailand made announcements of their offers. This is, in a nutshell, how we saw the road traveled.

[BA] What are your expectations for Nairobi?

[SA] We are definitely looking at an outcome which would be in line with the demand of the situation as regards the unfulfilled promises to the LDCs. We want substantive, binding, LDC specific decisions which should be commercially meaningful on all four elements of the Bali package i.e DFQF market access, rules of origin, the operationalisation of the service waiver and cotton. We are also hopeful that we will have an outcome close to our satisfaction on the special and differential treatment (S&DT).

[BA] Nairobi is not the end, but nobody knows what will follow: A continuation of the DDA? A new negotiating format? News issues? How do you see the post-Nairobi era?

[SA] I can only tell you that we had high expectations of the Doha Development Agenda (DDA). It was not fulfilled and there is a long road travelled between 2001 and now. We still think that DDA issues are important and they are not dead. We believe that these issues should be somehow discussed after Nairobi. That is our intention. That is our preference.

[BA] At present, the achievement of the DDA objectives seems out of reach for Nairobi. It seems that some delegations would prefer to cover the development objectives through an LDC package only. Do you see the possibility to have a credible LDC package, if there are no or only minimal concessions in favor of all the developing countries?

[SA] I think the intention of going for a meaningful, substantive LDC package is there. That is what we discern in members' statement. But once we get into negotiations, only then we know where we can get! It is an ongoing process... it is a work in progress. So I believe it is rather foolhardy to predict anything at this point. I think there are good signs that we will get an LDC package which will be meaningful for us.

[BA] Being the first WTO Ministerial ever held in Africa, hopes are high for a development outcome, including on LDC specific issues. In your view which elements of a potential LDC package should be prioritised and why?

[SA] As I said before, the full Bali LDC issues including rules of origin and S&DT look promising, but all these elements need more work and more engagement from all WTO members. There are other issues of importance and interest to other developing countries and other major players. Therefore, we need a combined approach and collective effort from all members.

We believe that, if we can sincerely engage, and the time is very short, no doubt, we will definitely get there in terms of prioritising the issues of LDCs. As a general rule from the WTO Bali Ministerial decisions, all those issues where a binding decision was not possible, should now be prioritised, under paragraph 1.11, annex F of the Bali declaration.

[BA] Has the LDC group managed to find common ground on the DFQF issue?

[SA] The DFQF issue is, again, a work in progress. It is being discussed in a particular mode. A dedicated session was held at WTO Committee on Trade and Development (CTD) and we are now developing the parameters of a study on DFQF which will tell us the way to follow on this issue. That is where we stand currently.

LDCs are not in a “give and take” situation, which is the case with other members, or the rest of the membership.

[BA] LDCs have a real chance to get something at Nairobi, as this MC won't be called a success without a substantive LDC package which is not limited to best endeavors. How do you promote the specificity of the LDCs, LDC needs and LDC interests in these negotiations?

[SA] Very good question! Actually, the LDCs have a unique status in the membership of the WTO because LDCs are exempt from any kind of obligations. LDCs are not in a 'give and take' situation, which is the case with other members, or the rest of the membership. Therefore, for the LDCs, the specificity lies in the fact that, firstly, they would like to see the decisions, the declarations on issues of interest for them being implemented. So this is the specific angle of the LDCs: we always look for implementation.

Secondly, it is not a good sign that often members want to reinterpret and, in fact, rehash WTO ministerial decisions without going for their implementation. For the benefit of the LDCs, the implementation of ministerial decisions is important. If we tamper with it, then we are not going to get anywhere. In other words, you cannot try to re-invent things as they have been considered and decided upon by the ministers; that cannot be and should not be the case.

[BA] What are LDCs' expectations about the Trade Facilitation Agreement at Nairobi when, two years later, implementation is yet to happen?

[SA] I think those countries who have been engaged with this agreement definitely have one expectation: that this agreement should be implemented. But you know, there is this process of ratification which is a national process, on which you can extol, you can exalt, you can hope for, but you can't push it. Indeed independent, sovereign parliaments are involved in the process and they are the ones which give the stamp of approval. That process, unfortunately, is different for different countries. We are talking here about substantive procedure which can take time, therefore it is very, very important to understand that: one push from one corner will not get you anywhere! You will have to follow the procedure. No legislature, no national parliament will like to be pushed.

INTERVIEW

Lesotho Ambassador Nkopane Raseeng Monyane talks African stakes in WTO negotiations



Nkopane Raseeng Monyane

Ambassador Monyane was appointed Ambassador and Permanent Representative of the Kingdom of Lesotho to the United Nations Office, the World Trade organization and other international organisations in Geneva, Switzerland on July 2013. He is currently the Coordinator of the African Group on WTO matters.

Prior to his appointment as Ambassador, he held many positions in the banking, financial and textiles sectors in Lesotho. He was the Managing Director of the Lesotho Building Finance Corporation and worked as Managing Director of the Lesotho Bank. He was also General Manager of the Central Bank of Lesotho. From 2004 to 2013, he was the Regional Manager of the Gooway Group.

[Bridges Africa] Nairobi is in a few weeks. How do you assess the road travelled and the work since Bali?

[Nkopane Raseeng Monyane] Well, there has not been much road travelled since Bali. Firstly, there was an impasse: the Protocol of Amendment for the WTO's Trade Facilitation Agreement (TFA) could not be concluded before the end of July 2014. Once this situation was solved later on in the year, members were unable to come up with the work programme even though a detailed work programme had been mandated by the ministers in Bali. As a consequence we are now in a negotiating phase without any clarity as to what exactly has to be achieved. This is why we are now only looking at a small package of deliverables for Nairobi. Now on the substantive issues discussions have stalled in the area of agriculture which is of major importance for the members.

[BA] What are your expectations for Nairobi?

[NRM] Nairobi must deliver for Africa and for Least Developed Countries (LDCs). This continues to be a catchword. But the question is: "can we realistically expect anything out of the terms of the upcoming small package as it has developed?" It currently lists LDC issues, export competition and transparency as the most likely deliverables. The question is: "should we continue to have the usual expectations for Nairobi?"

[BA] Which fields do you identify as the most promising for a substantive Nairobi package?

[NRM] Well, the LDC package, export competition and transparency constitute the most promising elements of a Nairobi package. But the issue is this list is not what Africa is looking for! Africa is looking for reforms in agriculture. This was the basis of the Doha Development Agenda and Doha was the basis of reforms that should lead to development. Agriculture is the biggest part of such development if you take into account the related purposes of domestic needs and daily livelihood for people in Africa. So here we are quite disappointed as it appears like there will be no movement in the agriculture pillar, as we speak.

[BA] Nairobi is not the end, but nobody knows what will follow: a continuation of the DDA? A new negotiating format? News issues? How do you see the post-Nairobi era?

[NRM] First of all, any post-Nairobi dynamic will be determined by what happens in Nairobi. What is in that LDC package? There could be nothing in it and that would mean that Doha has not done anything to advance the development agenda. In the end if there's not much in the LDC package then it means that we still have to do something post-Nairobi to obtain an LDC package that is commercially meaningful.

Then there's also the question of export competition as a deliverable. But as we speak now there's not much on this. Regarding the issue of transparency, which is not a commercially meaningful outcome in itself for that matter, the question of who is going to pay for this transparency and what happens for those who are not in a position to do so need to be tackled.

In a post-Nairobi context one crucial question will consist in either considering that all issues are continuing under the Doha architecture or else issues continue but they are treated in a different form. There is this argument that Doha has not delivered over the

14 years, and that therefore changes are needed. My observation is that you cannot begin to talk about continuing issues and then begin to say that we have to change the architecture! Doha as a development agenda was crafted to take care and to take into account the needs of the underprivileged. And if we begin to talk about those needs in a manner that will not be inclusive, in a manner that might lead to some kind of coalition of the willing, then we are running away from the very origin of the issues. We have an incomplete DDA, those who want to change the architecture have to come up with a very clear proposal. If you want to make a change you have to make a proposal, justify it and sell it and then members can buy into it.

[BA] It seems that some delegations would prefer to cover the development objectives through an LDC package only. Do you see the possibility to have a credible LDC package, if there are no or only minimal concessions in favor of all the developing countries?

[NRM] There will be an LDC package. The question is how credible it will be. Everybody says there must be delivery for development but beyond that what is there? And that is where the credibility comes in. Are we true to development? With regard to the DFQF issue: what are we going to deliver, to who, to how many members? What will be the impact of a DFQF on LDCs industrialisation process? Is that going to assist with the questions of African economic integration? Is that going to make Africa itself competitive? DFQF is the biggest issue and we need to wonder what in it will truly assist LDCs to progress? There are benefits for one or two countries but not for many!

Rules of origin won't deliver anything in themselves; they are intimately tied to market access. Same goes for the LDC services waiver. We need to realise the commercial value of all these proposals.

There is a big drive of getting a binding outcome but the real question is: "what commercially meaningful outcomes do you get of such binding decisions for all LDCs and not just a minority of them?" After all, it is not up to the WTO membership to come up with a meaningful LDC package; LDCs' overall consensus has to be there.

[BA] How do you, as the African Group coordinator, manage to deal with the expectations of the members of your group which include LDCs and non-LDCs?

[NRM] As a coordinator, I do not think of LDCs and non-LDCs separately. I try to see what African priorities are and within the context of Africa how those priorities are determined by different members with different levels of aspirations. We are first Africans before being LDCs! The LDC component or any other configuration is only a subset of the permanent state of being Africa.

[BA] What does a ministerial conference in Africa represent notable since this is the first one held in Africa in WTO history?

[NRM] We appreciate the fact that the membership has begun to recognise Africa exists. In a way it is a pity the first ministerial conference in Africa take place 20 years after the establishment of an organisation which was originally established in Marrakesh, Africa. It will however sensitise our people to the role of the multilateral system and this kind of sensitisation is positive.

[BA] How do you see the changing global trading landscape affecting trade decision-making in the WTO with regard to Africa's agenda specifically?

[NRM] Well, to start with change is inevitable. Is that change for the better? What are the objectives of those pushing for the changes? All this goes back to the question of the post-Nairobi Agenda. For example mega-regionals are in the interests of specific countries but they are not in the interest of the multilateral trading system. With Nairobi we also want to say that Africa will engage constructively with the multilateral trading system.

The question is for whose products? We do not just want to be a growing consumer market; we want to be on the other side of the equation in the global economy. Africa must develop capacity to supply its growing markets and gain global competitiveness.

WTO

Shifting weights and balances within the WTO in a changing global trading landscape

Xiankun Lu

Fundamental changes have occurred since Doha was launched including major evolution of the world market, substantial transformation of the multilateral trading system and a significant shift of trading power between traditional advanced countries and emerging economies. One important question now arises, how to redistribute roles and redefine rights and obligations among WTO members?

In the past 14 years since the launch of the Doha Round Agenda (DDA), the WTO has witnessed significant changes on many aspects. In the eyes of its constituency, the WTO is simply not responding to those changes, and at least some of those constituents have experienced a fundamental evolution of mindset on the purpose of the DDA and whether the objectives set then were still worth attaining.

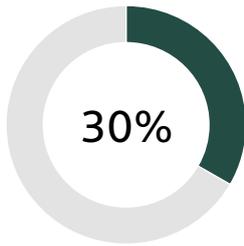
A multi-polar world

Since 2001, the shift of economic growth and trade expansion towards a rebalance between traditional advanced economies and major developing countries has been phenomenal. The global crisis in 2008 has exacerbated that shift, with developed countries tossed into a long period of recession while major developing countries have kept growing their economies and expanding their participation in global trade. The share of developing countries in global trade rose from 33 percent to 48 percent between 2000 and 2014. The rise of emerging economies, as represented mainly by the BRICS, is regarded as the most influential occurrence of the 21st century. Based on Purchasing Power Parity (PPP), they already accounted for over 50 percent of the global Gross Domestic Product (GDP) in 2005.

Within the WTO, the negotiating configuration has also undergone unprecedented changes. The QUAD, composed of the US, EU, Canada and Japan, no longer enjoys domination, while groups of developing countries, including the Least Developed Countries (LDCs), begin to play a central role with a far more affirmative voice. This surely is a positive development, rendering the WTO a more inclusive structure. However, this also means that it is more difficult to achieve consensus among 161 members with highly diversified priorities, objectives and institutional capacities. While advanced economies continue to be asked to make substantial contributions, there is also an increasing voice for emerging economies, which, for now, are entitled to Special and Differential Treatment (S&DT), to make more contributions than other poorer developing countries.

A changing global trading system

In the meantime, the world market has enormously evolved, to an extent that many things we now deem normal were unheard of in 2001. South-South trade accounts for up to 30 percent of world trade, up from approximately 10 percent twenty years ago. Technologies nurture the appearance of new business models on a daily basis, such as IT vis-à-vis e-commerce. Global value chains (GVCs) have revolutionised the manufacturing process and global trade pattern, shifting trade in products to trade in components and related services. Regional trading arrangements (RTAs), particularly the mega-regional ones such as the TPP, TTIP, RCEP and FTAAP, undermine the WTO as the dominant path for trade and investment liberalisation, resulting in serious fragmentation of global trade governance. International trade negotiations are increasingly affected by domestic and bilateral politics, particularly among major players when elections take place and bilateral relations fluctuate. Behind-the-borders measures and domestic regulations have proved to be far more restrictive on trade than the traditional barriers of tariff and duties, necessitating a switch of mindset on how to streamline global rules.



South-South trade accounts for 30 percent of world trade.
(author)

Since 1995, the WTO has expanded its membership with 33 new members, most of which acceded after the launch of DDA. It has also witnessed a considerable increase of disputes brought to it for settlement. However, in terms of negotiation mechanism, the global trading system has not evolved in a responsive manner towards the aforementioned evolution of global market, mainly due to the protracted DDA. With 161 members with different development levels and priorities, the traditional model of "Round" to achieve consensus under the Single Undertaking simply doesn't work. New negotiation approaches that are more flexible and more efficient must be introduced. Some plurilateral initiatives have already been tried, such as Trade in Services Agreement (TiSA), the Environmental Goods Agreement (EGA) and the Information Technology Agreement (ITA), but with totally different configurations, nature of potential results and coverage of benefitting countries. For the moment, it is hard to tell if these are useful pilot instruments for a new path of WTO negotiations or a distraction from or fragmentation of the multilateral trading system.

Meanwhile, the "21st century issues" such as investment, e-commerce, labor standards, environment, energy and competition continue to escape the rule-making/negotiation pillar within the inclusive WTO system, but are haphazardly dealt with on the plurilateral or bilateral level.

Emerging countries and LDCs

Trade between emerging countries and the LDCs has enormously expanded. China has become the first destination for LDCs exports, surpassing the US in 2008, absorbing today around 25 percent of the total exports of LDCs. Trade between LDCs and India and Brazil has also witnessed a similar trend, albeit on a different scale. Emerging economies, together with some developed countries, have announced Duty-Free Quota-Free (DFQF) market access to LDCs' exports and provide various assistance programs to LDCs, mainly through bilateral channels.

However, concerns have been raised about certain deficiencies characterising trade relations between emerging economies and the LDCs. For example, like developed countries, most emerging economies import from LDCs mainly natural resources such as oil and ore, while their exports of cheap manufactured products compete directly with local producers of similar products. Also, their bilateral assistance to LDCs is less conditional than the one provided by developed countries, thereby considered making only limited contribution to the improvement of good governance of LDCs.

Meanwhile, beyond pure bilateral relations, the linkages between emerging economies and LDCs are also getting more subtle. In early years after the launch of the DDA, all emerging countries — which then were all regarded as developing countries — and LDCs supported each other in negotiations for S&DT, with LDCs entitled for little or no commitments. The G-110 group, which includes not only G20 and G33 led by emerging economies, but also LDCs and Cotton-4, was a vivid exemplification. However, in later years, doubts seemed to have arisen among some LDCs and other poorer developing countries whether emerging economies should continue to enjoy S&D.

Obviously, the redistribution of rights and obligations among WTO members has become a fundamental issue that obstructs meaningful progress on DDA and undermines the negotiation arm of the system.

Towards a redefinition of rights and obligations of WTO Members

Obviously, the redistribution of rights and obligations among WTO members has become a fundamental issue that obstructs meaningful progress on DDA and undermines the negotiation arm of the system. As WTO Director-General Roberto Azevêdo expressed in

October 2015, the underlying issues of the DDA such as the one discussed here cannot be solved in Nairobi. Starting from Nairobi, WTO members should immediately sit down together to initiate a serious dialogue on how to redistribute rights and obligations among WTO Members. Such a dialogue should focus on the following parameters:

Firstly, this is not a technical issue so there is no magic formula, redefinition or regrouping that could be applied to achieve the redistribution of rights and obligations among WTO Members. On one hand, it is impossible for parliamentarians of developed countries to accept that emerging economies continue to be sheltered under S&D. On the other hand, however, it would be politically suicidal for emerging economies to accept that their obligations are the same as developed countries. Therefore, we have to fully recognise the high political sensitivity on both sides and explore potential resolutions with pragmatism.

... given their developmental challenges, emerging economies would not ... agree to be put into a different group and undertake obligations that they believe go beyond their developmental stage.

Secondly, neither standstill nor re-categorisation will work. Without a successful political dialogue among WTO members, particularly between developed countries and emerging economies, the multilateral trading system will continue to be thwarted from furthering trade and investment liberalisation. However, given their developmental challenges, emerging economies would not, at least not in the foreseeable future, agree to be put into a different group and undertake obligations that they believe go beyond their developmental stage.

Thirdly, one has to achieve this in particular negotiations by looking into the specifics of the subject and redefining the rights of obligations therein. Emerging economies must contribute more than other poorer developing countries but other members should refrain from crossing their red lines. Developed countries of course must contribute substantially so as to provide the necessary balance. For market access negotiations, the notion of "principle supplier", countries that account for a substantial percentage of trade in a given sector, used in GATT, could serve as a potential parameter to define members' contributions. Successful examples are already there such as the ITA to be concluded soon, in which China already accounts for over 30 percent of global exports. The Trade Facilitation Agreement settled at the end of 2013 also provides an interesting solution, where rights and obligations of developing countries are not defined under S&D but on their capability and technical assistance to be received.

Fourthly, LDCs should participate proactively in this political dialogue to ensure their claim of any results. Despite that, for the moment, this discussion centers around the shift of balances between developed countries and emerging economies. The potential redistribution of the rights and obligations as a result of this dialogue will weigh on the interests of LDCs; so they must be fully engaged to ensure that their interests will be protected or enhanced.

Conclusion

In conclusion, the upcoming WTO ministerial conference in Nairobi will be a decisive moment to start an open and inclusive reflection upon this fundamental issue among all WTO members: developed, emerging and LDCs. Emerging economies should be bold to initiate such a dialogue and exemplify their leadership role in development. WTO members must achieve some political understanding as soon as possible so as to revive the negotiation arm of the WTO. Otherwise, the most vulnerable LDCs, excluded from most RTAs, will suffer the most and the developmental objective of the organisation will be seriously undermined.



Xiankun Lu
Professor, China Institute for
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LEAST DEVELOPED COUNTRIES

What is at stake for LDCs in Nairobi?

Nicolas Imboden

If the upcoming WTO 10th Ministerial Conference should fail, the biggest losers would be those that have no responsibility for the current deadlock: the LDCs and Africa. They should take the lead in proposing solutions that cannot be refused in order to save Nairobi and the inclusive system.

There is less and less consensus among WTO members on what the on-going negotiations are all about. The only thing WTO members seem to agree on is that it will not be possible to obtain a result in Nairobi that could be presented as the achievement of the Doha Development Agenda (DDA). The main issues (agriculture, NAMA, services and development) do not seem to have gotten much traction. Moreover there is no agreement on how to proceed.

Some major powers have clearly indicated that they are not coming back to the negotiation table on the basis of the DDA. They argue that 15 years without results have shown that it is impossible to come to a consensus based on the current mandate; the world market situation has changed, and both the mandate and the negotiation process must also be changed. As a matter of fact, they have largely abandoned the inclusive multilateral system in favor of exclusive deals, such as megadeals and plurilateral agreements.

Other important players (India and other emerging countries) are starting to boycott any decision in Nairobi, preferring a clash rather than agreeing on de facto abandonment of the DDA.

Most WTO delegations are not in a consensus-seeking mood. There is neither a sense of urgency nor crisis, nor a serious effort to save the inclusive multilateral system through a search for compromise. Some negotiators seem to have already abandoned the inclusive multilateral negotiating system because they have turned to more efficient, exclusive ways of promoting their offensive interests, while others have abandoned it because they have lost any faith that the negotiations can deliver a result that would be acceptable to them.

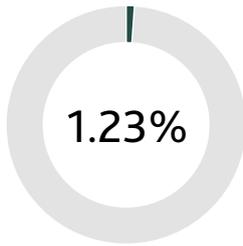
As we are celebrating the 20th birthday of the WTO, there is a genuine risk of Nairobi failing, which would jeopardise not only the DDA, but also the WTO's negotiation function leading to a diminished role of the inclusive trading system.

What does this mean for LDCs and what can they do about it?

It is the profound disagreement between the big trading powers regarding the redistribution of rights and obligations among them that is preventing any consensus from being reached, thereby constructing the main obstacle in the path to Nairobi. However, the Least Developed Countries (LDCs) are the ones who will suffer most from this disagreement.

It would be foolish to believe that the LDC package would be effective if the big issues were put aside: the only thing that LDCs could hope for would be some small, but tangible proof that the other WTO members are responsive to their plea for development.

The influence of LDCs on the course of the negotiations is limited: they have little to contribute, and hence, little negotiating power. However, they have never had nor will they ever again have as much political clout as they do now. Everybody agrees in principle that the first WTO ministerial conference in Africa has to deliver something for them. Whether that clout will translate into concrete actions depends largely on the LDCs, themselves.



The total share of LDC trade remains marginal at around 1.23% of the world's total (WTO).

When the big trading powers are more interested in confrontation than consensus, proposing compromises will be up to those who have the most to lose from a deadlock.

When the big trading powers are more interested in confrontation than consensus, proposing compromises will be up to those who have the most to lose from a deadlock.

Possible strategy for Nairobi and beyond

LDCs fundamental interests are twofold: 1) LDCs should receive some tangible proof that the other WTO members are responsive to their issues. The general climate of the negotiations, however, does not currently allow for solutions to the issues. Limited, but economically relevant small steps in the right direction are necessary and achievable. 2) LDCs should ensure that, the unresolved development issues continue to be a major objective of inclusive trade negotiations, even if the DDA should fail.

Both objectives are today in jeopardy, but still attainable. LDCs can and must contribute proactively to attaining them proactively by refusing to give in to the prevailing negative mood.

The LDC package

Members seem more interested in defining the impossible rather than the possible within the LDC package. It seems that delegations are focusing on placebos (such as best endeavours and aid for trade) rather than real commitments. LDCs have now presented their legitimate requests and expect a response from partners who have not yet entered into serious discussions. It is up to LDCs to propose tentative steps towards a response to their concerns, steps that their partners could not refuse in good faith. Such proposals are possible for practically all LDC requests:

- Cotton: a solution to the issue of subsidies is not within reach. Asking for substantial reductions in US cotton subsidies is not practical. However, it is possible to ask the major players on the international cotton market to take small, but specific steps towards a solution to the issues faced by LDC/African cotton growers. The US can be asked to limit its subsidies to the amounts calculated by their own budget committee when they approved the farm bill; China can provide DFQF market access to LDC cotton and accept some level of disciplines for the management of its stocks; India can limit the maximum amount of cotton subsidies it has been providing to its cotton growers. While this does not solve the cotton issue, it would send a clear signal that WTO members are willing to make a gesture towards a solution.
- Duty-Free Quota-Free market access: 100 percent DFQF appears to be an unachievable goal for Nairobi. However, all major trading powers can respond to specific and economically relevant requests to increase the number of products that benefit from DFQF market access. It is up to the LDCs to make specific and targeted requests for tariff lines that are currently excluded in the various DFQF and GSP schemes.
- RoO: the realistic LDC proposal on principles to be adopted by the Ministers does not seem to be attainable as a binding commitment. The alternative, however, cannot simply be yet another best endeavor clause. A compromise (in which the principles are adopted as best practices with a commitment by each member country to propose and implement specific measures they are willing and able to undertake to come closer to those best practices within a given time frame and a credible monitoring system) may very well be a useful and realistic outcome for Nairobi.

- Services waiver: it is expected that further notifications under the services waiver will be forthcoming for Nairobi and that there would be a credible package of concessions in this area that Ministers could include in their declarations/decisions. A ministerial commitment to engage in bilateral discussions with LDCs about facilitation of internal procedures (visa, certifications, etc.), which often negate the market access that is theoretically granted, could be introduced into any declaration and would be a useful additional step.

The post-Nairobi process

What may be even more important for the LDCs than the content of the LDC package is ensuring that the unresolved issues are addressed and that the inclusive negotiation process within the WTO is preserved. Simply saying that the negotiations will continue is not credible. To reinvigorate a credible process, the Ministers must face reality:

- 15 years of negotiation without any consensus provides a powerful argument to those who claim that the DDA is doomed;
- Negotiations that do not reflect the rapid evolution in world trade over the past 15 years both in terms of the content of trade (value chains, services), the distribution of trade (emerging countries) and the architecture of trade (megadeals, plurilaterals) are simply unappealing. That said, replacing non-resolved but still valid issues with new issues is not a viable solution either.

In Nairobi, Ministers should therefore define a credible way forward, which brings all parties back to the negotiation table.

In Nairobi, Ministers should therefore define a credible way forward, which brings all parties back to the negotiation table. Restoring the negotiation function of the WTO requires:

- Basic agreement on how to handle the fact that some developing countries have become major trading powers, thereby proving that they do not need same the Special and Differential Treatment as poorer developing countries, while still acknowledging that they have the characteristics of developing countries;
- Agreement that the unresolved 20th century issues have to be addressed, but that 21st century issues cannot be ignored without making the negotiations irrelevant for some WTO members;
- Agreement on the principles that should be observed by all members to ensure that megadeals and plurilaterals outside the WTO do not undermine the inclusive MTS. Facilitating the insertion of plurilaterals into the MTS, provided that they fulfill certain criteria and ensuring that megadeals do follow the basic WTO principles thereby avoiding that they undermine the achievements obtained at the multilateral level should be possible;
- Proposals for a more efficient future negotiation process by closer association and involvement of Ministers and high officials, among other measures.



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POST-NAIROBI

Prospects for LDCs in Nairobi and beyond

Christophe Bellmann

As we move to the WTO 10th Ministerial Conference in Nairobi, WTO members are discussing the contours of a possible outcome around export competition in agriculture, a small LDC package, probably focusing on duty-free quota-free market access, rules of origin, cotton and the services waiver, some horizontal disciplines on transparency covering the different rules area. What are LDCs prospects for Nairobi and beyond?

Least Developed Countries (LDCs) are not homogeneous as a group but they all suffer from a common set of structural handicaps such as low income levels, high economic vulnerability and weak human assets, which affect their ability to achieve sustained economic growth. In the WTO, these structural constraints have largely informed the positions and priorities of the LDC group. Such concerns can be broadly divided into three overlapping categories.

First, LDCs are vulnerable to disruptive trade practices applied by their trading partners. This is particularly the case in agriculture where trade distorting support provided in the EU, US, Japan and now increasingly India and China have depressed prices, reduced incentives to invest in LDC agriculture and ultimately affected livelihood and food security prospects. When prices became more volatile during the 2006 – 2011 food crisis, LDCs have also been hit hard by isolating policies such as export restrictions implemented by large exporters thereby exacerbating price spikes with disastrous effects on food security. In a similar vein, LDCs have suffered from the effect of capacity enhancing fisheries subsidies that have contributed to depleting fish stocks on which many LDCs rely for livelihood, income and food security.

Second, LDCs exports are directly affected by market access and market entry restrictions. While LDCs often benefit from preferential market access, duty-free quota-free schemes (DFQF) in OECD countries, and increasingly in emerging economies, tend to exclude certain products of interest to them or condition such access to demanding rules of origin. Overtime, such preferences have eroded not least as a result of the proliferation of regional trade agreements. Beyond tariffs, preferences in the area of service, as envisaged under the services waiver, might offer new opportunities if such schemes effectively target sectors where LDCs have export potential. Finally, meeting rapidly evolving public and private standards, traceability requirements, and other sanitary and phytosanitary measures in export markets, remains a significant challenge for LDCs and often put small producers with limited access to capital, at a disadvantage. Finally, given their limited human assets and high economic vulnerability, LDCs have highlighted the need for Special and Differential Treatment (S&DT) through less stringent levels of commitments in WTO disciplines. For example, owing to their low technological base, limited absorptive capacity and embryonic innovation systems in the area of intellectual property (IP) rights, LDCs are unlikely to benefit from strict IP protection as envisaged under the TRIPS Agreement. Flexibilities provided for LDCs in the various negotiating areas or the long standing debate on "implementation issues" are also symptomatic of this concern.

Overall, the prospects for addressing these priorities at the 10th WTO Ministerial Conference remain limited. Export competition has been a long-standing priority of the group. In practice, however, export subsidies — which in the early 1990s represented nearly 10 billion Euros a year in the EU — have practically disappeared in recent years. This should arguably make it easier for WTO members to reach an agreement by locking in existing reforms. However, beyond eliminating the possibility to reactivate such instruments in the future, the immediate economic gains will be limited. Prospects for an LDC package around DFQF, cotton, rules of origin and the services waiver are not brighter and the extent to which significant progress on these issues can be achieved beyond what was already agreed in Bali, remain highly uncertain (for further analysis on this point, see the article by N. Imboden in this issue). Finally transparency in rules, while always

welcome, will most likely result in additional burden for LDCs with little benefits for the group. Given these limited prospects, LDCs essentially have three combinable options.

1. Expand the set of deliverables in Nairobi

If the Nairobi LDC package is too narrow, it could be expanded by adding possible deliverables. These could include issues such as a commitment by large food exporting countries, not to impose export restrictions on products being exported to LDCs. The establishment of a working group to review all types of NTBs affecting developing countries exports and find possible solutions where those measures are difficult to comply with for LDCs. Or an agreement to establish a prohibition on fisheries subsidies granted to vessels engaged in Illegal Unreported and Unregulated fishing (IUU) or targeting unequivocally overfished stocks. The group could also seek to ensure that the flexibilities envisaged for LDCs under the core market access pillars of the Doha Development Agenda – agriculture, NAMA and services – would be locked in ahead of any future talks, not least because such flexibilities seem to attract broad consensus among the WTO membership. The extent to which the rest of the membership would be willing to take such decisions in Nairobi remains uncertain, but such issues should not be controversial in their own right and could result in important benefits for LDCs.

2. Establish a credible post-Nairobi work programme covering core LDC priorities

The major challenge in Nairobi will consist in finding a compromise between those WTO members who argue that the prospects for reaching an agreement under the DDA have been exhausted and that new approaches are needed, and those who argue that negotiations should continue under existing mandates and on the basis of existing draft texts. The core issues of agriculture, NAMA and services are unlikely to disappear from the agenda. However, as WTO members redefine or reaffirm the terms of engagement in the post-Nairobi context, the risk exists that LDCs specific concerns could be marginalised, as larger trading powers focus their attention on their own priority issues. Ensuring that LDC priorities which have not been resolved in Nairobi figure specifically and prominently in a credible post-Nairobi work programme seems therefore warranted.

After Nairobi, LDCs might see increased pressure to address “new issues” such as e-commerce, digital trade, competition policy, or investment to list just a few. To the extent that the Group has been able to secure some satisfactory “down payment” addressing their core issues, LDCs might want to show openness in exploring some of these issues, knowing that disciplines in those areas will be increasingly crafted outside of the WTO where LDCs are not represented. E-commerce, for example might be an area where SMEs in LDCs could significantly benefit if their specific needs are addressed.

3. Look beyond the WTO

Finally, given the lack of progress under the Doha Round, LDCs might not want to put all their eggs in the WTO basket. Regional integration, particularly for African LDCs, presents significant opportunities to foster the development of regional value chains and structural economic transformation not least because LDC export structure tends to be more diversified at the regional level than when trading with traditional partners such as the EU or US or with emerging economies. LDCs should also pay particular attention to developments under the so-called mega-regionals as these are likely to shape future trade conditions. For example, while the prospects for rules of origin harmonisation remain slim at the WTO, negotiations between the EU and US under the Transatlantic Trade and Investment Partnership (TTIP) will force these countries to agree on a common set of rules. If such harmonised rules are extended to countries which have a free trade agreement or preferential access to the EU and US, this could significantly help reduce the spaghetti bowl of rules of origin and allow for broader cumulation. In a similar vein, the focus on regulatory cooperation under TTIP has raised concerns that such agreement might raise the bar too high for many LDCs resulting in further marginalisation of the group. In this respect, extending the benefit of mutual recognition or of provisions facilitating bilateral trade amongst the EU and US to third countries would enable exporting developing countries to access both the EU and US market if they comply with the requirement of either one.



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SPECIAL AND DIFFERENTIAL TREATMENT

Rethinking Special and Differential Treatment: Towards an integration of S&D principles into the 21st century

Wayne McCook

S&D provisions must effectively address the needs of developing and least developed countries. How can we rethink them for that purpose?

Special and differential treatment (S&D) has been an integral feature of the multilateral trading system (MTS) as it has developed since the establishment of the GATT. S&D measures seek to address the gaps between developed and developing countries in their relative capacities to accept and implement various trade disciplines, including through the provision of trade-related assistance programmes. It has evolved over the years, from the early GATT focus on providing flexibility to developing countries (DCs) in the use of tariffs and quotas, to the Uruguay Round approach where the focus shifted to provisions for derogations, delays or exemptions from new disciplines, and best-endeavour commitments from developed countries to provide technical assistance and other forms of support to DCs and LDCs.

S&D in its modern form addresses special market access, policy space and the principle of less-than-full-reciprocity. Despite the evolution in S&D to encompass these important elements, it is argued that, in practice, S&D has, so far, failed to provide effective and adequate means for securing the better integration of many DCs and LDCs into the MTS or promote strong trade-led development.

The 2001 Doha Ministerial Declaration reaffirmed the importance of S&D provisions and stressed that the integration of DCs into the MTS will require meaningful market access, support for diversification of their production and export base, as well as trade-related Technical Assistance and Capacity-Building (TACB). It is argued that interpretative ambiguities and the absence of binding TACB commitments on the part of developed countries have undermined S&D in practice. Paragraph 44 of the Doha Ministerial Declaration, in which "members agreed that all S&D provisions shall be reviewed with a view to strengthening them and making them more precise, effective and operational", underscored members' recognition of the inadequacy of S&D as reflected so far in the various agreements and decisions of the GATT/WTO.

In order for the S&D provisions to be effective, practical and results-oriented measures designed to address the specific concerns and needs of beneficiary countries at the national level are required. Assistance should be prioritised in favour of those most in need, but must at the same time address the concerns of all developing countries. Programmes must also address the resource and capacity-related limitations that constrain the abilities of many countries to use these provisions to their advantage.

Technical assistance: a vital S&D component

Technical assistance granted in the context of special and differential treatment needs to be made more precise and must be properly aligned with local priorities and institutional arrangements, measured against appropriate benchmarks. Indeed, an assessment of Aid for Trade (AfT) programmes shows that from 2006 to 2013, nearly a quarter of the funds committed for AfT were not disbursed. The value of transition periods afforded to developing countries under the S&D provisions is put in question if no technical assistance or financing for development is provided during that time. Furthermore, the S&D practice

of simply extending transition provisions without addressing the root causes of the need for exceptions can reinforce rather than resolve the problem.

Technical assistance-related S&D provisions are non-binding and, therefore, it is difficult to assure their implementation. Nevertheless, greater effort can and should be made to ensure predictability of support once proffered. S&D cannot be a convenient means of getting smaller developing countries with limited shares of world trade to step aside, while others get on with the business of trade expansion. This seems, for example, to be the case for TRIPS article 66.2, where promises to assist LDCs to develop the capacities which would enable them to implement the disciplines of TRIPS article 66.1 seem to have been ignored in favour of rollovers of the exception.

Identifying and addressing some contemporary S&D challenges?

The approach to S&D adopted in the Trade Facilitation Agreement (TFA) addresses in part those limitations. By making the capacity to implement a provision of the TFA a precondition to being bound by that measure, the TFA seeks to enable WTO members to participate rather than derogate as a fundamental principle. While it still suffers from the as yet unresolved dilemma of "binding TACB", the clear priority given, under the TFA, to the inclusion of support for capacity-building as a feature of reporting on steps to determine the point of implementation of a new measure has increased accountability, if not enforceability, of the commitment to TACB. It remains to be seen whether this will have a positive impact on the further evolution of S&D.

There are many examples of developing countries voluntarily reducing their demands or increasing their contributions in certain WTO initiatives, without declaring themselves developed or suggesting that they no longer wish to access S&D measures.

The conceptual debate on S&D has become largely two-dimensional. On one level the calls for advanced developing countries to accept "graduation" and substantially abandon claims to S&D have become a mainstay of the debate on all aspects of the DDA. On the other is the effort to refocus S&D on LDCs. Either approach presents profound challenges for the principle of S&D as a tool for development through trade. If S&D is such a tool, then it certainly has a role to play as long as the country in question remains a developing country. There are many examples of DCs voluntarily reducing their demands or increasing their contributions in certain WTO initiatives, without declaring themselves developed or suggesting that they no longer wish to access S&D measures. This should be the guiding principle for adapting S&D for DCs with stronger capabilities in an area under negotiation. Indeed, the very nature of the WTO allows members considerable latitude in determining the scope and depth of any new commitments. S&D simply adds a development-oriented factor in the shaping of those member-driven flexibilities.

S&D measures should be developed so as to promote growth in DCs and contribute to the enlargement of the trade and economic pie without undermining the legitimate trade interests of developed countries. Equally, developed countries should not seek to "kick away the ladder" of protective or trade-promoting practices that are now disciplined in multilateral trade agreements (MTAs) without first considering their continued contribution in countries pursuing similar development paths.

At the same time, S&D should not seek to preserve inherently harmful practices. A balance needs to be struck between allowing developing countries the full scope of measures that have helped developed countries develop, and bringing to an end practices that are inherently harmful to all. DCs must also ensure that measures to preserve policy space are based on realistic assessments of need for the flexibilities in current or future policymaking.

Against this background, WTO members should use the Council for Trade and Development's newly established "monitoring mechanism" to consider the efficacy of S&D measures, with a view to helping members identify how these measures may deliver the trade and development impact intended. For many DCs and LDCs, agriculture continues to be the main source of foreign exchange earnings and employment. However, the share of agricultural exports from LDCs has been declining over time. Many developing countries have a substantial underutilised potential in agriculture. The development of their rural sector is a major development and food security priority. They therefore need changes in the rules that govern agricultural production in order to facilitate these objectives. The principal challenge for these countries is not preserving the *status quo* but securing opportunities to expand their exports and thereby strengthen prospects for economic growth and sustainable development.

For many DCs, including SVEs, the issue of non-tariff barriers (NTBs) remains a priority issue, as many see these as the main obstacle to improved trade performance. At the same time, the duty-free quota-free (DFQF) initiative is seen by LDCs as an important deliverable that would support the strengthened global integration of their economies. The demand for DFQF was forcefully advanced by LDCs when the DDA was launched in 2001. Whilst there was widespread support for DFQF market access favouring the LDCs, some of the developed countries, whose GSP scheme did not cover many of the important items of export from the LDCs, were opposed to an overarching DFQF initiative.

S&D therefore remains a vital and important measure of WTO's effectiveness and credibility as an institution supportive of development.

At the same time, some DCs and LDCs have raised concerns about the impact of full implementation of the initiative. The key concern raised is the potential erosion of benefits to some LDCs and DCs under preferential arrangements. This has to be addressed while recognising that for some DCs and LDCs, the importance of DFQF has increased due to the proliferation of certain preferential trade agreements. While recognizing that many developed and some DCs have applied the DFQF principle in their preferential schemes, the binding as well as expansion of the scope of some commitments could provide greater security and predictability of access to major markets.

Given the increasing contribution of the services sector in their economies, LDCs accord high importance to the GATS S&D provisions. Efforts to secure precise commitments under the LDC service waiver are a priority for many WTO members. At the same time, attention must be paid to the challenges that some DCs face in ensuring compliance with specific GATS commitments.

Conclusion

The WTO must provide rules that allow members to advance without impeding the progress of others. S&D therefore remains a vital and important measure of WTO's effectiveness and credibility as an institution supportive of development. An effective S&D approach for the 21st century must enable DCs and LDCs with flexible and effective tools for deepening their integration into the MTS and achieving sustainable development through trade. The S&D approach adopted in the Trade Facilitation Agreement and the efforts underway to pursue the goals set in paragraph 44 of the DDA provide avenues for updating S&D to further assist DCs and LDCs in the effort to promote trade led development. The simple message of paragraph 44 — that the S&D measures should be reviewed with a view to making those existing more precise, effective and operational — also underlines the importance of ensuring that all new S&D approaches meets this standard at the outset. The objectives set for an S&D measure must be clear and the measure adopted fit for its purpose. This is important as a systemic matter for the MTS and even more so for the countries for whom the measures are designed.



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MARKET ACCESS

Carving out a DFQF deal in Nairobi

Vinaye Ancharaz

The offer of a comprehensive DFQF scheme for all LDCs requires more than political will on the part of the US. African countries that have long resisted the move need to be assured that their interests will be safeguarded while the protagonists must be willing to settle for a less-than-perfect deal. Is a US DFQF scheme within reach at Nairobi?

Duty-free quota-free (DFQF) market access for the least developed countries (LDCs) can be traced back to the Millennium Development Goals (MDGs) of 2000. MDG 8, specifically, called for a global partnership for development, including through a trade system that provided “tariff- and quota-free access for LDC exports”. This intention was officially endorsed by the Doha Development Agenda of 2001. At the WTO ministerial conference in Bali in 2013, Ministers decided that: “Developed-country Members that do not yet provide duty-free and quota-free market access for at least 97% of products originating from LDCs... shall seek to improve their existing coverage for such products... prior to the next ministerial conference.” Bali also reiterated the original Hong Kong declaration, calling on developing countries “in a position to do so” to provide DFQF market access to LDCs.

97 percent is not 100 percent

Since then, the debate has focused on two issues: (a) the potential gains under a 97 percent DFQF scheme versus full product coverage; and (b) the reluctance of the United States to provide meaningful trade preferences to *all* LDCs. Whereas the first issue is now largely resolved, with available evidence showing that gains under a 97 percent DFQF scheme would be rather limited since the 3 percent of excluded tariff lines could cover virtually all of LDC exports (Laborde, 2008), the second has created deep divisions in the LDC group, pitting those who currently benefit from certain US trade preferences against those who do not.

The US – the big absentee

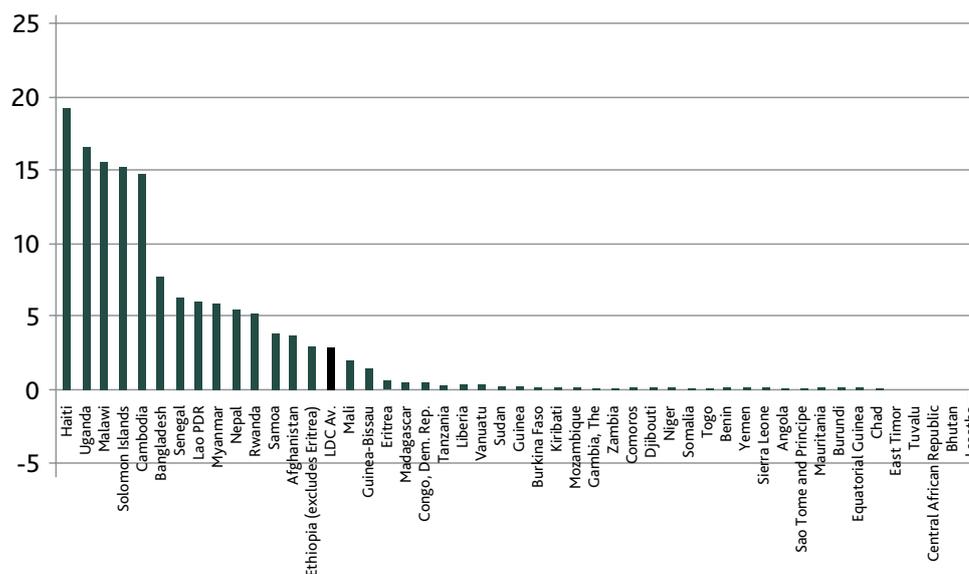
Most developed countries are already implementing DFQF schemes of various levels of ambition. Following the Hong Kong Declaration, a few emerging economies joined the league – notably, India in 2008 and China in 2010. The US has since 1976 implemented a GSP scheme for developing countries that is now set to expire in December 2017. It also has in place two regional duty-free schemes. The African Growth and Opportunity Act (AGOA) provides designated African countries (including 26 LDCs) duty-free treatment on some 1,835 products in addition to the GSP pool. AGOA was renewed for an additional 10 years in June 2015. The Caribbean Basin Trade Partnership Act (CBTPA) offers 17 beneficiary countries from Central America and the Caribbean (including one LDC — Haiti) duty-free access to the US market for most products, including textiles and apparel. Haiti enjoys additional trade preferences under special programs such as Haiti HOPE, HOPE II and HELP.

The US GSP scheme offers tariff preferences to over 5000 products. However, it excludes textiles and apparel, which are subject to an average 15 percent tariff, putting major apparel exporters like Bangladesh and Cambodia at a competitive disadvantage relative to African exporters, such as Lesotho, Kenya and Mauritius (the last 2 being non-LDCs), and Haiti. AGOA also excludes a number of products in which African countries are known to be competitive. Agricultural products are subject to tariff-rate quotas (TRQs), with products like sugar, peanuts and tobacco facing exorbitant tariffs. Furthermore, restrictions on sugar and dairy content limit eligible exports to raw materials and primary products, effectively robbing poor countries of opportunities for higher value-added agro-processing.

DFQF works

Research confirms that existing DFQF schemes are highly beneficial to LDCs. It is estimated that full implementation of DFQF by OECD countries would boost LDC exports by about US\$2 billion (or 17 percent) without affecting preference-granting countries in any major way (Bouet et al., 2010). A more recent study — commissioned by ICTSD — uses a partial equilibrium model to examine the impact of providing 100 percent duty-free treatment to LDCs' exports by a selected group of trade partners, including three emerging economies (China, India and Korea). The results show that LDC exports would expand by 2.9 percent, with the biggest impacts coming from India (21.7 percent increase in imports from LDCs), Korea (12.9 percent) and the United States (11.8 percent) (Laird, 2012). Impacts on the rest of the world would however be negligible (Figure 1).

Figure 1: Percentage change in imports from LDCs from implementation of a full DFQF scheme



Source: Adapted from Laird (2012)

Country-wise, Haiti, Uganda, Malawi, Cambodia, Bangladesh and Nepal are among the biggest gainers. At the other extreme, Lesotho appears as the only country to lose in a rather significant way. Even so, its loss is a mere 1 percent of imports, or about US\$5 million. To put the figure in perspective, consider that Lesotho received US\$20 million as aid for trade in 2014. The loss derives from the erosion of Lesotho's preference margins mainly on apparel exports to the US to the benefit of competing LDCs, such as Bangladesh and Cambodia.

DFQF tariff carve-outs

Lesotho's loss should not be a barrier to a DFQF deal in Nairobi. Unfortunately, negotiations in the LDC group are hung over by the intransigent positions taken by Haiti and Lesotho. Their fears are well understood and may be justified. For example, in Lesotho, where the clothing industry has enabled an entire value chain of activities, including a number of service providers, the estimated US\$5 million loss may be just the tip of the iceberg. Any deal on DFQF must therefore protect the interests of small LDCs that cannot expect to compete against clothing giants like Bangladesh and Cambodia.

One solution being considered at the LDC group level is a tariff carve-out that would safeguard the 'acquis' of Lesotho and Haiti by excluding their key exports from duty-free treatment in a future US DFQF scheme. This would ensure that Lesotho and Haiti face no direct competition from Bangladesh and Cambodia while providing additional preferences to these countries over and above GSP preferences. The idea has a simple logic; yet its implementation has generated some controversy. Analysts disagree over which countries to assign in the safeguard group — should Kenya and Mauritius be included in addition to Haiti and Lesotho? — what level of tariff disaggregation to use — HST 10, the level at which

US\$2 billion

It is estimated that full implementation of duty-free quota-free scheme by OECD countries would boost LDC exports by about US\$2 billion (or 17 percent) without affecting preference-granting countries in any major way (Bouet et al., 2010).

the US reports its tariff preferences, or HST 8, the tariff classification most commonly used? — and what critical thresholds to apply to imports in determining safeguard tariff lines?

In my initial analysis, I include Kenya and Mauritius in the safeguard group — for the simple reason that these countries could lobby against any proposal put forward by the LDC group, which they deem prejudicial to their national interest. I use a lower safeguard threshold of US\$5 million across all countries. This is an extension of the prudence concept that provides a higher degree of protection to existing beneficiaries than a threshold of US\$10 million would.❶ The analysis is conducted at the HST 8-digit level and concentrates on two apparel sectors that constitute the bulk of clothing exports into the US: knitted or crocheted garments (such as T-shirts, pullovers, men's or boys' trousers and shorts, women's or girls' blouses and skirts, etc.) and woven garments (such as jeans, shirts, trousers, etc.).

The carve-out approach consists of sorting imports by tariff line and identifying products with import values greater than US\$5 million. Selected tariff lines that occur in more than one country are counted only once. The analysis shows that excluding 27 tariff lines at the 8-digit level (see Table 1) in a future US DFQF scheme would shelter the bulk of apparel exports to the US by Haiti and AGOA beneficiaries. These tariff lines 'protect' 95 percent each of Lesotho's and Haiti's apparel exports, and about 87 percent of Mauritius's and Kenya's exports.

However, the 27 tariff lines would exclude 76 percent and 57 percent, respectively, of Bangladesh's and Cambodia's imports into the US from duty-free treatment. The higher share for Bangladesh suggests that the Asian LDC competes directly with AGOA exporters in most apparel categories. Indeed, the top 10 of the 27 tariff lines represented 72 percent of Bangladesh's exports to the US in 2014. Cambodia would still benefit from additional duty-free coverage on 43 percent of its apparel exports to the US; but at 24 percent additional coverage, gains to Bangladesh would be much smaller, though not insignificant.❷ Finally, it matters little whether the non-LDCs (Kenya and Mauritius) are included in the safeguard group since there are only three tariff lines specific to them.

Looking beyond apparel...and the US

By focusing almost exclusively on apparel, LDCs may miss a unique opportunity to obtain concessions on a range of other products in which they may have a competitive advantage, or could develop one in the future. Agro-processing offers the best chances for industrial development in many LDCs; yet many such products are subject to TRQs or otherwise subject to near-prohibitive tariffs. LDCs should not lose sight of such potential catalysts. As their own experiences with apparel exports suggest, trade preferences can help unlock export potential in sectors that would not otherwise be contemplated.

And then again, why focus on the US only? Why not urge emerging countries that are deemed to be in a position to provide commercially meaningful trade preferences for LDCs to do so while encouraging those with existing schemes to revisit them with a view to improving their coverage and effectiveness? As the evidence cited earlier suggests, some of these schemes – and India's in particular – can make a significant impact on LDC exports.

A done deal?

Any learned negotiator knows that positive framing is the right attitude to adopt in negotiations where stakes are high and chances for a dream deal dim. Bangladesh, which has been tirelessly lobbying the US for DFQF market access, surely understands the risks of asking for too much. Duty-free treatment on a mere 24 percent of its apparel imports into the US is not as appealing an option as complete coverage under the proverbial 100 percent DFQF scheme. But it is still better than nothing. Lesotho, on the other hand, should see in a US DFQF scheme the potential of a permanent agreement lodged under the Enabling Clause rather than the disruptive uncertainty associated with AGOA, which, in any case, may not exist beyond 2025.

In the end, the key protagonists will surely realise that their common enemy is outside the room. With the conclusion of the Trans-Pacific Partnership (TPP), they must brace themselves for competition from a mightier rival — Vietnam.

❶ Some analysts have applied the higher threshold of US\$10 million consistently across beneficiaries (e.g. South Centre, 2015) while others have used differential thresholds – US\$5 million for Lesotho, Kenya and Mauritius, and US\$10 million for Haiti (e.g. Elliott, 2013).

❷ These numbers are not markedly different from other estimates (for example, Elliott, 2013).

Table 1: 'Safeguard' tariff lines under a carved-out DFQF scheme

61034315	Men's or boys' trousers, breeches and shorts, knitted or crocheted, of synthetic fibers, nesoi*
61045320	Women's or girls' skirts and divided skirts, knitted or crocheted, of synthetic fibers, nesoi
61046220	Women's or girls' trousers, breeches and shorts, knitted or crocheted, of cotton
61046320	Women's or girls' trousers, breeches and shorts, knitted or crocheted, of synthetic fibers, nesoi
61051000	Men's or boys' shirts, knitted or crocheted, of cotton
61052020	Men's or boys' shirts, knitted or crocheted, of manmade fibers, nesoi
61081100	Women's or girls' slips and petticoats, knitted or crocheted, of man-made fibers
61082290	Women's or girls' briefs and panties (other than disposable), of man-made fibers, knitted or crocheted
61089200	Women's or girls' negligees, bathrobes, dressing gowns and similar articles, knitted or crocheted, of man-made fibers
61091000	T-shirts, singlets, tank tops and similar garments, knitted or crocheted, of cotton
61099010	T-shirts, singlets, tank tops and similar garments, knitted or crocheted, of man-made fibers
61102020	Sweaters, pullovers and similar articles, knitted or crocheted, of cotton, nesoi
61103030	Sweaters, pullovers and similar articles, knitted or crocheted, of manmade fibers, nesoi
61143010	Tops, knitted or crocheted, of man-made fibers
62011100	Men's or boys' overcoats, carcoats, capes, cloaks and similar coats of wool or fine animal hair, not knitted or crocheted
62031190	Men's or boys' suits of wool or fine animal hair, not knitted or crocheted, nesoi
62033190	Men's or boys' suit-type jackets and blazers, of wool or fine animal hair, not knitted or crocheted
62034240	Men's or boys' trousers and shorts, not bibs, not knitted or crocheted, of cotton, not containing 15% or more by weight of down, etc
62034340	Men's or boys' trousers, breeches & shorts, of synthetic fibers, con under 15% wt down etc, cont under 36% wt wool, n/water resist, not k/c
62046240	Women's or girls' trousers, breeches and shorts, not knitted or crocheted, of cotton, nesoi
62046335	Women's or girls' trousers, breeches and shorts, not knitted or crocheted, of synthetic fibers, nesoi
62046925	Women's or girls' trousers, breeches and shorts, not knitted or crocheted, of artificial fibers, nesoi
62052020	Men's or boys' shirts, not knitted or crocheted, of cotton, nesoi
62053020	Men's or boys' shirts, not knitted or crocheted, of manmade fibers, nesoi
62063030	Women's or girls' blouses and shirts, not knitted or crocheted, of cotton, nesoi
62092030	Babies' trousers, breeches and shorts, except those imported as parts of sets, not knitted or crocheted, of cotton
62114300	Women's or girls' track suits or other garments nesoi, not knitted or crocheted, of man-made fibers

Source: Author's calculations.

*Nesoi: Not Elsewhere Specified or Indicated

Views expressed in this article are the authors' own and do not represent the views of the ICTSD.



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RULES OF ORIGIN

From non-binding elements to mandatory criteria on rules of origin

Christian Pitschas

In order to facilitate market access for imports from LDCs, WTO members' DFQF schemes for LDCs have to rely on simple and transparent preferential RoO. For this to be achieved across the board, preferential RoO have to be based on mandatory criteria. The latter ought to be derived from the elements for preferential RoO that were adopted at the ministerial conference in Bali, Indonesia and subsequently elaborated on by the LDC Group.

The Doha Development Agenda's work programme places developing countries' needs and interests at its heart. For Least Developed Countries (LDCs), this means that their participation in the multilateral trading system has to be improved. One way of doing so is to facilitate market access for imports from LDCs through comprehensive Duty-Free Quota-Free (DFQF) schemes. However, market access opportunities offered under these schemes to imports from LDCs will remain elusive unless the preferential Rules of Origins (RoO) underlying these schemes are simple and transparent, taking account of the limitations and restraints faced by LDCs. While the WTO Agreement on RoO, Annex II, sets out a number of rules with respect to preferential RoO, these rules are considered to be insufficient, on their own, to ensure that LDCs enjoy effective market access under DFQF schemes. Therefore, these rules have to be supplemented.

As recently emphasised by the WTO Director-General, the next ministerial conference in Nairobi must deliver on development and, in particular, has to achieve clear results in support of LDCs. One such result should be a set of mandatory criteria for preferential RoO that would enable LDCs to seize in an effective manner the market access opportunities offered by WTO members' DFQF schemes. These mandatory criteria ought to be derived from the elements for preferential RoO that were agreed by the Bali ministerial conference and subsequently elaborated on by the LDC Group.

Elements for preferential rules of origin as per the Bali ministerial decision

The decisions regarding development and LDC issues adopted at the last ministerial conference in Bali, included a decision on preferential RoO. The latter provides for elements that WTO Members "should endeavour" to take into account when drawing up their preferential RoO arrangements applicable to imports from LDCs. These elements are non-binding rather than mandatory, as is clearly indicated by the words "should endeavour" and "guidelines". But there is a need for mandatory rules that WTO Members have to follow when designing preferential RoO in the framework of their DFQF schemes for imports from LDCs. This is because only mandatory criteria ensure that the preferential RoO of all DFQF schemes put in place by WTO Members are similarly simple and transparent, thereby making it easier for LDCs to comply with those preferential RoO and to benefit from the market access opportunities under the DFQF schemes.

LDC submissions since the Bali ministerial conference

Since the ministerial conference in Bali, the LDC Group has contributed to the discussion over preferential RoO by making three submissions: (i) a submission on the challenges faced by LDCs in complying with preferential RoO under unilateral preference schemes (G/RO/W/148, 28 October 2014); (ii) a submission on elements for a discussion on preferential RoO for LDCs (G/RO/W/154, 17 April 2015); and (iii) a submission on preferential rules of origin under unilateral preference schemes for LDCs (JOB/TNC/53, 24 September 2015).

The first submission of the LDC Group focused on the criterion of *ad valorem* percentage and proposed to calculate the percentage concerned based on the value of materials used in the production process, by relying either on the value of originating materials or the value of non-originating materials. Moreover, in view of the experiences with existing

supply chains the submission suggested that the level of percentage of the value of originating materials should be set at 15 to 25 per cent. Finally, the submission suggested that the required level of percentage be adjusted by the costs for insurance and freight given that many LDCs are landlocked countries or islands.

The second submission of the LDC Group put forward a number of questions to WTO members in relation to the elements on preferential RoO adopted at the Bali ministerial conference. These questions seek to determine whether and to which extent WTO members are prepared to modify their preferential RoO with a view to aligning them with said elements.

The third submission of the LDC Group seeks to transform the elements for preferential RoO contained in the Bali Ministerial Decision into mandatory criteria and to add some more mandatory criteria.

Nairobi outcome on preferential RoO for LDCs

Building on the Bali ministerial decision on preferential RoO and the three submissions made by the LDC Group since then, the ministerial conference in Nairobi should adopt a decision that sets forth mandatory criteria for preferential RoO for LDCs. At a minimum, these mandatory criteria should include the following:

- Criterion of *ad valorem* percentage: the percentage should be calculated on the basis of the value of originating or, alternatively, non-originating materials used in the production process; the level of percentage of the value of non-originating material should not be lower than 75 percent; the costs for freight and insurance should be deductible from the value of non-originating materials.
- Criterion of change of tariff classification: this criterion should not exclude the use of non-originating materials as long as an article of a different heading or sub-heading was created from such materials in an LDC; the use of non-originating materials from certain headings or sub-headings should not be restricted.
- Criterion of specific manufacturing or processing operation: this criterion should not be used in combination with the criterion of change of tariff classification, but an alternative use of both criteria should be permissible; a single transformation requirement should be sufficient for purposes of demonstrating a substantial transformation, for example: the transformation of fabrics into finished garments, the transformation of raw agricultural materials into processed agricultural products, the transformation of parts into finished products in the case of machinery and electronics, and a chemical reaction rule in the case of chemical products.
- Cumulation: cumulation with the preference-granting country, any other LDC or any other WTO member with which either the preference-receiving LDC or the preference-granting country forms a regional group should be allowed.
- Documentary requirements: any requirement to provide proof of non-manipulation or any other prescribed form of certification for products shipped from LDCs across other countries should be abolished.
- Transparency: preferential RoO should be notified to the Committee on RoO which should annually review the notifications and report to the General Council on the compliance of the notified RoO with the mandatory criteria for preferential RoO.

Conclusion

In light of the fact that development is at the heart of the DDA's work programme, LDCs rightly expect that the ministerial conference in Nairobi adopts a package of meaningful measures that will help them to effectively participate in the multilateral trading system in general and in global value chains in particular. Such a package should include a set of mandatory criteria that WTO members would have to use when designing the preferential RoO of their DFQF market access schemes for imports from LDCs.



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INTERVIEW

A conversation with the Cotton-4 Coordinator Aya Thiam Diallo



Aya Thiam Diallo
Ambassador and
Permanent Representative
of Mali to the UN in
Geneva, Switzerland and
current coordinator of the
C-4 group at the WTO.

[Bridges Africa] *You have introduced a draft ministerial decision. What guided your thought process as you were writing it? Is your strategy different from the one adopted in Bali? How do you see the negotiation procedure on the road to Nairobi?*

[Aya Thiam Diallo] Through their continuous efforts to seek a fair and equitable solution for all regarding the symbolic cotton issue at the WTO, the four countries that co-authored the sectoral initiative supporting African cotton (C-4) are making the most of every opportunity to help negotiations move forward. The C-4's proposal in the draft decision introduced at the 10th Ministerial Conference falls within this framework.

Even though the context is not the same as in Bali, the C-4 will be keeping the same strategy for Nairobi, albeit obviously with new proposals on the negotiating table. The group would like to continue negotiations on the C-4's proposal with all the partners and stakeholders involved on the cotton issue, with the hope of finding an acceptable agreement in the three pillars of agriculture.

Has this text already been discussed in the framework of agriculture negotiations? What was the result of these debates?

[ATD] The text was shared with all the interested parties. Discussions — and even negotiations — are ongoing to enrich the project with a view of achieving a consensual text before Nairobi.

In a situation where everyone is talking about lowering ambitions, what are you hoping to achieve?

[ATD] During the meeting of African trade ministers on 20 July, a call was made to lower the original ambitions, especially for agriculture, in order to break the deadlock on trade negotiations in the WTO. When it comes to cotton, let us not forget that the 2005 Hong Kong Ministerial Decision called for an "ambitious, specific and expeditious" treatment.

The C-4 still follows this idea and is dedicated to reaching an ambitious, specific and quick solution.

According to a recent study, the 2014 US Farm Bill could strike a serious blow to cotton producers in the rest of the world. How does the C-4 intend to work towards a trade system and domestic policies that help cotton become a fairer, more effective and more sustainable industry?

[ATD] The C-4 continues to believe that negotiation must be favoured, on the one hand to improve market access but also to substantially lower the causes of distortion on the international market. It is also negotiating to help African cotton producers significantly improve the production and productivity of African cotton while becoming more competitive.

The results presented in the aforementioned study could constitute a ground on which countries impacted by the United States' cotton policy initiate a dispute settlement action. Is the C-4 thinking of going down this path if no significant progress is made in Nairobi?

[ATD] Although we favour negotiations to reach a fair, equitable and sustainable solution to the African cotton issue, in the spirit of the 2005 Hong Kong WTO Ministerial Decision, the C-4 does not exclude any means that could be successful.

AGRICULTURE

How can LDCs best advance food security and rural development in Nairobi and beyond?

Jonathan Hepburn

In least developed countries (LDCs), around one in four people are estimated to be undernourished — some 250 million people in total. LDC governments have a number of options to try and ensure that trade rules help improve food security and rural development, both on the road to Nairobi and beyond.

With the majority of food-insecure people living in rural areas, trade rules and policies that affect agriculture remain important in tackling rural poverty, raising farm incomes and creating decent jobs. Though governments in poor countries can already take a number of steps under WTO rules to support agriculture and boost farm productivity, distortions on global markets for food and farm goods continue to undermine the viability of farming in the world's poorest countries, while trade barriers prevent otherwise competitive farmers from accessing markets or adding value to the goods they produce.

Arguably, the WTO remains a key forum for LDCs to pursue their negotiating objectives in these and other trade areas. While bilateral and regional negotiations often place LDCs at a disadvantage in talks with stronger trading partners, the multilateral system allows otherwise weaker countries to pursue shared goals on trade together.

However, LDCs have yet to see return on their investment in disappointing talks on the WTO's long-running Doha Development Agenda, which was first launched in 2001. Deep-seated differences between major players — especially from the largest developed and developing countries — have caused significant tension between the WTO members, and often held hostage the LDCs' concerns, including food security.

Meanwhile, many governments have sought to pursue their trade goals through other means — such as through the fast-growing web of preferential deals. The recently-concluded Trans-Pacific Partnership is one of the most high-profile examples of a phenomenon which risks leaving LDCs on the sidelines, neither benefitting from new market access arrangements nor participating in the design of new norms and standards.

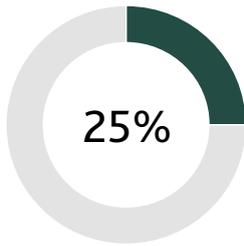
Nairobi is key

The WTO's 10th Ministerial Conference in Nairobi, Kenya could offer LDCs an important opportunity to achieve tangible progress on long-standing food security and rural development concerns. As the first such gathering in an African country, there are widespread expectations that this WTO ministerial conference should deliver real outcomes on issues of importance for the world's poorest countries.

In recent months, Roberto Azevêdo, the WTO's Director-General, suggested that LDC and development issues should form one of the three main focus areas for ministers at the conference. The other two, transparency, and export competition in agriculture, could also deliver significant results for LDCs.

At the same time, other issues that LDCs have highlighted as important — such as domestic agricultural support — remain bones of contention among major trading powers such as the US, China and India. Navigating the areas of common interest and divergence will be one of the most significant challenges LDCs will have to address both in the run-up to Nairobi and beyond.

Negotiating issues such as cotton, which members agreed a decade ago to address "ambitiously, expeditiously and specifically", illustrates clearly the potential pitfalls LDCs



Around 25% of the population of LDCs is estimated to be undernourished (FAO).

could face. Negotiators have had to tread a difficult line between crafting ambitious but realistic demands for meaningful reform of US cotton subsidies, while also taking into consideration Washington's calls for trade concessions in other key countries such as China.

On market access, while some WTO members have provided duty-free quota-free market access for the bulk of LDC exports, others, including many developing countries, have not done so. If LDCs could secure an outcome that improved their access to markets abroad, this could be a significant element in a broader Nairobi package.

LDCs have supported calls for a special safeguard mechanism to help raise tariffs temporarily in the event of a sudden surge in the volume of imports or a price depression. However, while the G-33 group has called for progress in this area at the Nairobi ministerial, it remains unclear what kind of concessions agricultural exporting countries may seek in return for greater flexibility in this area — and what sort of treatment they might envisage for LDCs.

Although many countries have already effectively phased out export subsidies and similar measures, a Nairobi outcome under the 'export competition' pillar could still be important to LDCs.

Equally important could be any progress in ensuring that trade rules help vulnerable consumers in poor food-importing countries to access food at affordable prices, even when prices spike on world markets. To do so, tighter disciplines might be needed on the ability of non-LDC food-exporting countries to impose export bans and other export barriers on foodstuffs that LDCs might need to procure.

'Export competition' in agriculture

Although many countries have already effectively phased out export subsidies and similar measures, a Nairobi outcome under the 'export competition' pillar could still be important to LDCs. These types of subsidy instruments have long been seen as particularly trade-distorting under WTO rules, and members agreed to eliminate them completely when they met at the trade body's Hong Kong ministerial ten years ago.

Along with export subsidies, WTO members will need to revisit the fine print of the draft agriculture deal that was prepared back in 2008, to see whether negotiators wish to make any change to the text. LDCs will have a particular interest in the talks on food aid, but potentially also on other issues such as export credits and exporting state trading enterprises.

WTO members have agreed that in-kind food aid for humanitarian emergencies should be protected under a 'safe box' in the negotiations on agriculture. However, new disciplines on the export of food in non-emergency situations could be important in safeguarding the livelihoods of farmers in LDC countries.

In the next few weeks, negotiators are expected to begin looking in more detail at issues such as proposed new rules on the 'monetisation' of food aid — meaning the sale of in-kind food aid in recipient countries to fund development activities. The US, which provides some aid in this form, is reportedly keen to revisit existing clauses which would prohibit this practice except under certain circumstances.

Washington is also expected to lock horns with farm exporting countries that would like to require shorter repayment periods for export financing, as well as with Beijing and some developed countries on issues such as exporting state trading enterprises. Producers

in LDCs could benefit if new rules in these areas reduce trade distortions that impact on their own farm production.

And what happens next?

Casting a long shadow over Nairobi, and potentially even undermining progress in the talks themselves, is the vexed question over what will happen to issues that members can't resolve at the conference. People in LDCs will arguably be affected by the outcome to this question — although their governments will also have a role in determining what this outcome might be.

The fruitless talks this year on agricultural domestic support are just the most recent illustration of how little common ground members appear to have on this critical question.

Most developing countries and LDCs are adamant that unresolved Doha issues should be addressed as a priority — with agriculture chief among them. However, developed countries are increasingly vocal in arguing that the Doha framework has failed to deliver real results, and needs to be replaced by something new.

At the heart of this stand-off is a difference of opinion over the question of special and differential treatment, in particular the nature of the concessions that large developing countries can reasonably be expected to shoulder, given their greater importance in the share of world trade, but also the relative poverty of their citizens compared to those in countries classed as developed. The fruitless talks this year on agricultural domestic support are just the most recent illustration of how little common ground members appear to have on this critical question.

By presenting negotiating proposals that can be addressed irrespective of the form that future negotiations take, LDC negotiators seem to have successfully positioned themselves in this debate by focusing as much on substance as on process. The extent to which WTO talks on trade actually deliver improved food security and rural development outcomes will depend in part on the willingness of trading partners to respond meaningfully to the issues that LDC countries have raised. But it may also depend on the extent to which LDC negotiators themselves are able to navigate the increasingly complex web of negotiating frameworks and national policies that are shaping the fast-changing landscape of markets for food and agriculture.

Conclusion

Global leaders recently agreed to a new set of sustainable development goals which include the target of ending hunger and malnutrition by 2030. Governments will need to revisit the global rules on trade they crafted two decades ago if these ambitious objectives are to be achieved on time.

The challenges that remain should not be underestimated. Rapid population growth means that, while the group of LDCs has seen its share of hungry people fall since the start of the 1990s, the absolute number of people without adequate nutrition has risen by about 40 million over the same period. Climate change is also due to create new disruptions on global markets, increasing the frequency and intensity of extreme weather events, and altering temperature and precipitation. If global markets are to help promote food security and rural development, governments must ensure that the Nairobi outcome represents a real step forward.



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FISHERIES

LDCs should support the global agenda on fisheries subsidies

Stephen Fevrier

The year 2015 is a pivotal one in regards to trade and sustainability related issues, such as fisheries. LDCs should seek to harness this opportunity to advance an agenda that balances their developmental imperatives with preservation of the environment.

The year 2015 is evolving into a pivotal year with respect to international norm creation on a host of environmental and international trade related disciplines. This is evidenced in the outcomes of the United Nations Sustainable Development Summit and an anticipated 'step forward' at the UN Climate Change Conference scheduled to take place in Paris, where the international community will seek to establish a successor framework agreement to the Kyoto Protocol. The 10th Ministerial Conference of the WTO, carded for Nairobi in December, can also play a leading role in advancing the twin agendas of ecological and economic sustainability.

LDCs and the sustainable fisheries agenda

While the WTO does not have a specific mandate to establish rules on the environment, WTO members have launched negotiations, the outcomes of which can confer positive impacts on the environmental, as well as economic prospects of developing and least developed countries (LDCs). These negotiations relate to the establishment of an Environmental Goods Agreement (EGA) as well as the promulgation of new disciplines on subsidies that contribute to overfishing and over-capacity and the prohibition of harmful fisheries practices.

In recognising that the WTO does not have cross-cutting competence with respect to environmental management, the Marrakech Agreement establishing the WTO, *inter alia* mandates the "optimal use of the world's resources in accordance with the objective of sustainable development, seeking both to protect and preserve the environment and to enhance the means for doing so in a manner consistent with the respective needs and concerns [of countries] at different levels of economic development." WTO members in general, and LDCs in particular, should therefore see Nairobi as an opportunity to build on Sustainable Development Goal 14 viz. 'Conserve and sustainably use the oceans, seas and marine resources for Sustainable Development.'

Goal 14.4 of the SDGs commits the international community to "effectively regulate harvesting and end overfishing, illegal, unregulated and unreported (IUU) and destructive fishing practices and implement science based management plans." This statement of intent reflects a growing consensus around the need to curtail the deployment of harmful subsidies that provide incentives for unsustainable practices. Historically, developed countries have been the main source of unsustainable and harmful subsidies. However, future rules will also impact on the ability of developing countries, including LDCs to provide support to nascent fisheries sectors, including to 'small scale' fisheries. The main challenge that confronts WTO negotiators is finding the appropriate balance between, on the one hand, disciplining the use of subsidies that result in overcapacity and resource depletion and, on the other, protecting the needs of developing and least developed countries (LDCs).

The deployment of capacity enhancing subsidies pose the twin risks of creating an unequal playing field between subsidising and non-subsidising countries, and more importantly, posing an existential threat to marine ecology and ecosystems.❶ In view of the assessed risks attributable to harmful subsidies, the Doha ministerial conference launched negotiations to 'clarify and improve' WTO disciplines on fisheries subsidies. Four years later, at the Hong Kong ministerial conference in 2005, WTO members agreed



See related BioRes edition Vol 9, N°2 The future of fish trade, March 2015.

to strengthen disciplines, including through a prohibition of certain forms of fisheries subsidies that contribute to 'overcapacity and overfishing'.

The challenge now facing negotiators is to develop stronger rules while respecting the important policy concerns of WTO members, particularly LDCs. More precisely, the challenge for the membership continues to be the balancing of ecological sustainability and trade concerns with flexibilities for developing countries which do not deploy capacity enhancing subsidies. In 2007, the chairman of the WTO rules negotiations issued a draft text on fisheries subsidies, which proposed prohibitions that sought to curtail capacity enhancing subsidies and simultaneously provide flexibilities for developing and LDCs. Of particular interest to LDCs is the *carte-blanche* exemption proposed under Article 3.1 of the draft chairman's text. This proposal aims to confer unconditional relief from the listed prohibition and the unconditional right to subsidise their industries.

In the lead up to the 10th Ministerial Conference, WTO members have not been able to move beyond the gateway negotiating issues of agriculture and industrial goods to tackle fisheries subsidies. Hence, members remain broadly divided on the sequencing of fisheries negotiations, the overall level of ambition, and even the role of the WTO as it relates to disciplining the application of fisheries subsidies. In the absence of consensus on a more comprehensive menu of prohibitions and flexibilities, WTO members should seek to make progress wherever possible. In this regard, there appears to be a high degree of convergence on the prohibition of subsidies that impact on vessels engaged in IUU fishing. This general approach has been endorsed by the international community in Sustainable Development Goal 14.6, which aims by 2020 to 'prohibit certain forms of fisheries subsidies which contribute to overcapacity and overfishing', and to 'eliminate subsidies that contribute to illegal, unreported and unregulated fishing'. Goal 14.6 further urges countries to 'refrain from introducing new [such] subsidies, recognising that appropriate and effective special and differential treatment for developing and least developed countries should be an integral part of the World Trade Organization fisheries subsidies negotiation'.

The pre-Nairobi process

In the weeks leading up to the ministerial conference, there has been a flurry of activity on Fisheries Subsidies with submissions from the EU, Australia, Peru, the LDC group and the African Caribbean Pacific (ACP) group. These submissions follow earlier communications received from New Zealand. While the details of these submissions differ, there appears to be common cause with respect to: (1) the reduction/elimination of subsidies the benefits of which impact on IUU fisheries (2) the reduction/elimination of subsidies the benefits of which are conferred on fishing vessels or activities that negatively impact on overfished stocks; and (3) enhanced transparency provisions. All three elements of common cause feature in the New Zealand submission contained in TN/RL/W/258. The communication from Australia captured in TN/RL/W/266, focuses on transparency and improving monitoring in relation to the notification of subsidies within the meaning of Article 1.1 of the Agreement on Subsidies and Countervailing Measures. Similarly, the submissions issued by the EU under document numbers TN/RL/W/260 and TN/RL/W/263, also address transparency. The LDC group is also elaborating an approach with respect to the three areas of common cause, while providing a framework for special and differential treatment. In its communication, Peru has also proposed measures to discipline IUU and overfished stocks while seeking to introduce more targeted transparency measures.

The submission issued on behalf of the ACP on 4 November, consolidates and proposes key disciplines, which enjoy a high degree of convergence throughout the membership. These proposed disciplines *inter alia* address: the elimination of subsidies that impact on IUU fishing as well as those that impact on overfished stocks. The proposal also provides a middle ground as it relates to notification requirements and a 'threshold' which would determine the extent of a Member's notification commitment. The ACP proposal as well as the submission by the LDCs, particularly as the latter relates to special and differential treatment provides for contours of a satisfactory outcome for developing countries and in particular, LDCs.

Relevance to LDCs

Finding a multilateral solution on fisheries subsidies is critically important for developing countries, and in particular for LDCs. Fisheries are of multi-dimensional importance to LDCs as they are a source of food security, employment, foreign exchange earnings, nutrition, and play a significant role in the culture and heritage of island and coastal communities. The fact that 87 percent of the world's marine fish stocks are fully exploited, overexploited or depleted is a growing source of concern to LDCs. Given that island and coastal LDCs disproportionately rely on fisheries, the impact of unsustainable practices will be disproportionately felt by those countries. Hence, island and coastal LDCs should play a leading role in the establishment of new international norms and governance frameworks relating to fisheries.

In light of the precarious state of global fisheries and the emerging consensus by the international community to address practices that contribute to unsustainable harvesting, LDCs have a role to play in ensuring that the rules which emerge are not blunt instruments that would unduly limit their ability to sustainably support and develop marine resources. Additionally, concerns have been raised that new disciplines on fisheries subsidies now being generated through mega-Regional Trade Agreements (RTAs) can have systemic impacts on the harvesting, production and trade of LDC originating fisheries, to the extent that these new rules are accepted and impose as new international best practices. Beyond the systemic impact that RTAs may have on international norms, the proliferation of eco-labeling and other private standards pose opportunities and challenges for LDCs. Utilising multilateral approaches developing countries and LDCs should also seek to consider the potential impact of private standards in the fisheries sector.

To achieve workable outcomes, the WTO LDC Group should seek to monitor and evaluate the systemic impacts of mega-RTAs, as well as coordinate with other members and groups on issues which enjoy a high degree of convergence among the membership, including on the prohibition of subsidies that impact on vessels engaged in IUU fishing.

Given the deep and entrenched divergences on what would constitute an effective outcome to the negotiations, LDCs should concentrate on harvesting low hanging fruits at the 10th WTO Ministerial. These can include the prohibition of subsidies that contribute to IUU fishing as well as transparency measures. However, with respect to transparency, LDCs should insist that any enhanced transparency obligations be applied flexibly and proportionate to their share of the value of global marine wild and conditional on the provision of technical assistance. Finally, all remaining elements of the 2007 draft chair's text should form the contours of the fisheries subsidies component of the post-Nairobi work programme.

Conclusion

Fisheries form part of the common heritage of humankind and their sustainability should be addressed through a range of internationally supported interventions. For this reason, the WTO membership should seek to seize the opportunity presented by the 10th Ministerial Conference to introduce disciplines on the most egregious forms of subsidies, around which consensus can be built. WTO members should also consider a transparency regime that provides enhanced oversight of the application and trends as it relates to fisheries subsidies. Given that LDCs are not the worst offenders, enhanced transparency rules should apply to LDCs with flexible conditions and only to the extent that they have acquired the capacity to implement new measures.

This year presents a unique opportunity for the WTO membership to support the reshaping of international governance as it concerns both trade measures and environmental sustainability. Least developed countries should seek to harness this opportunity to advance a sustainable development agenda that balances their developmental imperatives with the preservation of the common heritage of humankind.



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TRADE FACILITATION

A look into the WTO Trade Facilitation Agreement implementation status

Edouard Bizumuremyi and Iva Drobnyak

How far have we come since the conclusion of the Trade Facilitation Agreement and what are the next steps towards its implementation?

After nearly 10 years of negotiations, WTO members finally concluded talks on the Trade Facilitation Agreement (TFA) at the ninth WTO ministerial conference in Bali in December 2013. The Protocol of Amendment to insert the TFA into the WTO Agreement was adopted in November 2014. The Agreement aims to cut the red tape at the border and reduce trade costs and the time required for cross-border flow of goods. This in turn would boost trade, increasing income and employment worldwide.

The adoption of the Protocol by WTO members has cleared the way for standardising, simplifying and harmonising border procedures and has created opportunities to benefit from the widespread introduction of trade facilitation measures. How much individual members would profit from this will depend on how quickly they implement the Agreement and how committed they are to the process. What tasks lie ahead in preparation for the TFA implementation and what can African countries and low income countries in general do to ensure they reap their share of economic gains?

Maximising the potential of the TFA

For low-income countries, which are facing greater obstacles to international trade, increased competitiveness through savings in time and money would mean increased opportunities for their integration into global value chains and would provide an incentive for foreign investment. Any delay in the implementation of trade facilitation measures would only widen the gap in trade efficiency and competitiveness with the North.

A recent OECD analysis (June 2015)¹ shows that implementation of the TFA could reduce worldwide trade costs by between 12.5 percent and 17.5 percent. The potential cost reduction as a result of full implementation of the TFA (i.e. implementation of both the mandatory and the best-endeavour provisions of the agreement) is estimated at 16.5 percent for low-income countries (LICs), 17.4 percent for lower-middle-income countries (LMICs), 14.6 percent for upper-middle-income countries (UMICs) and 11.8 percent for OECD countries. If countries choose to implement only the mandatory provisions of the agreement, the potential cost reduction is estimated at 12.6 percent for LICs, 13.7 percent for LMICs, 12.8 percent for UMICs and 10.4 percent for OECD countries.

This demonstrates that there are greater opportunities for reducing trade costs in low-income and lower-middle-income countries. It also shows that such cost reductions would be more substantial if the countries are committed to the process and implement the TFA beyond just the minimal, binding requirements. In fact, implementing only the minimum standards may not be enough in a world where countries are already going far beyond by establishing new practices and ways to facilitate the cross-border trade. The case of Rwanda illustrates this point. In 2012, Rwanda introduced the electronic customs Single Window (a best endeavour provision under the TFA), enabling traders to submit customs documents online. This allowed cutting by half the time required to clear goods and helps businesses save around US\$ 10 million per year. In addition to this national initiative, the East-African region has benefited from a vibrant leadership on trade facilitation at the top level, which has addressed non-tariff barriers across the Northern Corridor with the result that the time it takes to move a container from the Mombasa port to Kigali has

12.5 - 17.5%

OECD Trade Facilitation Indicators (TFIs) find that the implementation of the TFA could reduce worldwide trade costs by between 12.5 percent -17.5 percent.

decreased from 21 to only 6 days. Regional infrastructure plans indicate that the situation will improve even more in the next few years.

[...] the political will to introduce trade facilitation reforms through full implementation of the provisions of the TFA (both the binding and best endeavour provisions) cannot fail to be beneficial.

The above examples prove that the political will to introduce trade facilitation reforms through full implementation of the provisions of the TFA (both the binding and best endeavour provisions) cannot fail to be beneficial. With the TFA, African countries will have the necessary framework in place and assistance at their disposal, enabling them to catch up and undertake the reforms that need to be made.

First steps: ratification of the Agreement and notification of category A provisions

The TFA will enter into force once two-thirds of the WTO members have ratified it and deposited their instruments of acceptance. The Protocol has been open for acceptance since November 2014. To date, 51 members have completed their national procedures and notified the WTO of their ratification. This number is still far from the 108, required for the TFA to enter into force. Although many would welcome the entry into force of the agreement by the Nairobi ministerial conference in December 2015, this target seems to be difficult to meet. Among the countries that have ratified the agreement, there are four African countries — Mauritius, Botswana, Niger and Togo — while three LDCs have ratified it so far (Niger, Togo and Lao PDR).

The dynamics of ratifications are being closely observed. When a country ratifies the TFA, this sends a positive signal to businesses and investors alike: it demonstrates a country's commitment towards creating a business-friendly environment, conducive to trade. African WTO members may want to set an example by speeding-up their ratification process so as to indicate to the private sector and potential investors their readiness to improve business conditions and their contribution to the speedy entry into force of the TFA.

In conjunction with their ratification of the agreement, WTO members should focus on assessing their capacity for implementing the agreement. Specifically, the agreement envisages flexibility for WTO developing members to delay application of certain provisions. To take advantage of this flexibility, the WTO developing members have to classify the TFA provisions into categories A, B or C, depending on the assessment of their national capacity to implement these provisions. Therefore, category A provisions would be those that the member will implement immediately upon entry into force of the TFA (up to one year delay permitted for LDCs); category B provisions are those that would be implemented after a certain transitional period; and category C would include those provisions that would be implemented after a transitional period subject to receiving the necessary technical and financial assistance for building the required capacity.

So far, 74 WTO members have notified their category A commitments. Sixteen Members from Africa, including 5 LDCs, have notified their category A commitments. This represents good progress which should be kept up. Incoming notifications indicate that many countries are doing their homework assessing their needs and capacities and are willing to work on building these further. Internally, the process helps countries clearly understand what their capacities, bottlenecks and constraints are; where they need to focus and improve, and how they should prioritise the introduction of trade facilitation measures in order for them to be most effective. Good preparation in this respect would lay a solid foundation for implementation, including for ensuring the necessary funding for the projects.

One of the instruments to assist developing countries in implementation: the WTO Trade Facilitation Agreement Facility (TFAF)

- Launched in July 2014 to support TFA implementation.
- Approximately CHF 6.5 million committed to the TFAF for the coming two-year period.
- The website of the TFAF (www.tfafacility.org) was launched in April 2015 to provide relevant information and facilitate matchmaking between donors and beneficiary governments.
- Other activities:
 - assists members in preparing notifications, i.e. conducting needs assessments.
 - provides capacity building on the TFA and its requirements.
 - provides grants for project development and implementation where other sources are not available. Grants would be available once the TFA enters into force.

National considerations notwithstanding, the TFA may also be used to speed up the African integration process at both the regional and continental levels. Indeed, the TFA, by harmonising procedures and establishing common minimal standards, would increase the benefits of national efforts. Improving trade procedures in one country is of limited benefit if its neighbours fail to take any measures. Giving priority to measures that contribute to regional integration would allow minimising costs and defining coherent programs for financing by donors and other stakeholders.

In that regard, trade facilitation — including both soft and hard infrastructure — is already an integral part of the implementation plans envisaged for the continental free trade area, with the goal of expediting cross-border trade among African countries, thereby boosting intra-African trade. From this perspective, the TFA can be considered a key component of regional integration in Africa, as long as it is effectively implemented.

Assistance for TFA implementation

In addition to the TFAF, assistance is available to members through various programmes on trade facilitation provided by bilateral donors, as well as international and regional organisations.

According to OECD data, since 2005, approximately US\$1.9 billion has been disbursed in aid for trade facilitation. Moreover, funding commitments for trade facilitation have been progressively increasing from an average of US\$80 million in the period 2002-2005 to over US\$381 million in 2011 and reaching US\$668 million in 2013. This increasingly strong support for trade facilitation is expected to continue.

Although trade facilitation-related initiatives and programmes have been widely implemented in the recent years, low-income countries should further utilise the new momentum created through adoption of the TFA to advance their trade facilitation agenda and achieve tangible benefits for their economies. A lot of work as well as resources are needed to put in place and maintain comprehensive trade facilitation frameworks and measures. However, this is a small sacrifice in comparison with the benefits that will come about with the implementation of such measures not only for businesses and consumers, but also for state budgets.



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① <http://bit.ly/1SXDQtQ>

NAMA

LDCs' challenges in NAMA negotiations

Magor Mbaye

Despite the fact that the central pillars of the negotiations have stalled, including for NAMA, it is essential that WTO members agree on the approach to take to continue discussions within the organisation.

With the WTO 10th Ministerial Conference (MC10) only a few weeks away, negotiations do not seem to be following the path hoped for by most developing countries. On the contrary, obstacles have been piling up since the ministerial conference in Bali (MC9) where Ministers mandated WTO members to develop a clear and detailed work programme with the aim of concluding the Doha Round. First, the adoption of the protocol of amendment that would enter the Trade Facilitation Agreement into the WTO legal framework proved difficult. In addition, even though a new deadline for the development of a work programme was set for 31 July 2015, until now no consensus could be found. To date, in spite of some proposals divergences on negotiating aspects which are known to be difficult have not been resolved. Furthermore, given the evolution of the discussions, it now seems clear that an agreement will not be reached on the central pillars of the negotiations – that is to say agriculture, NAMA and services – before the Nairobi Conference.

Since the April 2011 progress report on multilateral trade negotiations within the framework of the Doha Development Agenda (DDA), no significant progress has been made. On the road to MC9, this question had been set aside due to the difficulties encountered. The conclusion of the Bali Agreement however revived this issue in favour of the programme to be developed to close the DDA. As compromises for agriculture negotiations have proved to be impossible and considering the de facto link established with NAMA negotiations, WTO members have clearly acknowledged that all areas need to be taken into account to find mutual concessions; however, this was unsuccessful.

In this context, a natural question to ask would be whether discussions will still continue within the WTO on issues that will not be decided in Nairobi, Kenya. Will certain WTO members, mainly developed countries, give in to the temptation to find solutions outside of the multilateral framework? In this context, it is also important to revisit the Least Developed Countries (LDCs) stakes in NAMA within these negotiations.

The status of negotiations on NAMA

Negotiations on non-agricultural market access (NAMA) have revealed considerable differences between key Members. Developed countries and emerging countries do not share the same perspective on modalities for sectoral negotiations. Opposing points of view led to a stall in the negotiations. Most developing countries think that the negotiations should resume where they stopped in 2008 (revision 3). However, developed countries believe that the global economy has evolved and are calling for new approaches. Several formulas have been brought to the table in the past months, in addition to the Swiss formula which no longer seems to satisfy everyone, but no consensus has been reached so far.

In addition, developing countries would like to keep the special and differential treatment (S&DT) that has always underpinned multilateral trade negotiations. This principle aims to ensure that less effort is required from developing countries regarding commitments or implementation delays. In this area the systemic stakes are high. However, developed countries believe that emerging countries should devote more efforts than other developing countries.

The difference of opinions between emerging and developed country members regarding the appropriate level of ambition has been the main stumbling block for NAMA negotiations since mid-2008. However, this impasse has had an adverse effect on the entire DDA, since NAMA – along with agriculture – is one of the key drivers of the multilateral negotiations. This field presents challenges for all WTO members, including LDCs.

The difference of opinions between emerging and developed country members regarding the appropriate level of ambition has been the main stumbling block for NAMA negotiations since mid-2008.

What are the challenges for LDCs related to NAMA?

The Doha Ministerial Declaration called for negotiations to lower or eventually remove tariffs, including tariff peaks, high tariffs and tariff escalation. It also urged WTO members to address non-tariff barriers, particularly for products of export interest to developing countries and LDCs. All this was, among others, supposed to be implemented through the “less than full reciprocity” commitments, in accordance with Article XXVIII bis of GATT 1994 and the provisions quoted in paragraph 50 of the Doha Declaration.

Since 2008, NAMA negotiations have been taking place within the framework of the fourth revision of the draft modalities on non-agricultural market access. For LDCs, which are exempt from tariff cuts, the issue is the obligation to increase the scope of their binding coverage. Another aspect of interest to LDCs is the erosion of their preferential status caused by industry initiatives, regional agreements or decisions made by their trade partners. Finally, the issue of duty-free quota-free market access is crucial for LDCs and is part of the NAMA negotiations. Indeed, they are mainly interested in this issue.

What could the next WTO ministerial conference bring?

Despite little progress on the Doha Round, the possibility of concluding a package for LDCs in Nairobi is being declared more and more. However, no one can predict the content of this “package” with certainty. There is a widespread fear that WTO members will only agree on a “non-binding” package based on “best endeavour” decisions. In this respect, it is essential that binding commitments be adopted in favour of LDCs in December.

Will one of the aspects of this package relate to NAMA? There is no indication of this. In any case, even though there seems to be a general understanding that LDCs will be allowed to keep the flexibilities to which they are entitled, they must make sure that their interests are taken into account. For example, they could put forward a content component regarding development in this area. It could be a mechanism to temporarily protect their emerging industries or support for measures affecting their exports.

Conclusion

The adoption of an LDC package at Nairobi should include key aspects for them. Therefore, even if this development round is not entirely concluded during the MC10, it could already include certain developmental aspects. That said, it is essential for developing countries – particularly LDCs – that WTO members agree on the approach to take to continue discussions within the WTO. The continuation of the multilateral framework remains an important guarantee for most developing countries. These discussions could continue under the title of ‘Doha Round’ or under another name, as long as the dialogue and the search for mutually beneficially solutions are safeguarded.



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AFRICA

What is Africa worth in the international trading system?

Cheikh Tidiane Dieye

Despite popular opinion, Africa has been very active on the international trading stage, though results have been disappointing. At the ministerial conference in Bali, Indonesia in 2013, African countries failed to push for their needs. After progress and losses, what is the place of Africa in the multilateral trading system as the continent heads into the WTO ministerial conference in Nairobi, Kenya?

As the world is rushing towards regional and mega-regional trade agreements, it is necessary to review the place and role of the African continent in all of its evolutions. These have already transformed international trade relations and set the next boundaries of the global economic governance system. Africa's place in the multilateral trading system has often received special attention, even though it has mostly focused on the contextual and factual analysis of the weakness of the continent's contribution to global commercial transactions or the vagaries of the participation of African states in trade negotiations.

There has been more than enough criticism suggesting that Africa is not making sufficient effort to take part in international trade. On the contrary, African countries merit a spotlight on their significant progress to open up to trade.

A continent that has come a long way

Africa's place in the international trading system has often been simplified to a single statistic: less than 2 percent of international trade. The analyses that support the theory that African countries barely participate in international trade are mostly based on a quantitative approach. However, such a static approach hides the profound, crucial development dynamics as well as the extraordinary progress made by African countries – both for trade and trade negotiations, whether multilateral, regional or bilateral – in a global context that clearly has its pros and cons.

The truth is that Africa is not suffering from an integration deficit as much as from poor integration in international trade. Nearly all the African countries are members of the World Trade Organization (WTO) and with 43 out of the 162 members, African countries represent over a quarter of this organisation's stakeholders. They have almost all widely liberalised and bound their tariffs, even though for many of them – specifically least developed countries (LDCs) – it is not a requirement. All the African countries and their regional economic communities are participating, simultaneously, in a series of multilateral, regional and bilateral negotiations that welcome international commerce. It is therefore impossible to deny the fact that Africa is widening its availability to the international market.

The issue at hand is rather the continent's capacity to benefit from the opportunities created by international trade while minimising the negative effects that go hand in hand with liberalisation. Africa's inability to benefit from opening up to transactions can be explained by its integral position in international trade that offers little in the way of returns and produces little value addition and wealth. Its status is that of a supplier of basic commodities and raw materials in very limited quantities, which restricts it to the bottom of the international value chains. In addition, due to the rushed liberalisation policies that African countries have experienced in the past, their efforts towards industrialisation, valorisation and transformation of raw materials and towards diversification were thwarted by the sudden, forceful competition of imported goods. Many countries continue to suffer from the narrowing of their political space as well as their loss of sovereignty and control of their own economic and trade policy instruments created during this period.

43 African WTO members

With 43 out of the 162 members at the WTO, African countries represent over a quarter of this organisation's stakeholders.
(Author)

Consequently, saying that Africa is not doing enough to integrate with global trade is wholly unjustified. Between 1995 and now, trade has become a significant issue on the agenda of almost all African states, and its potential for economic growth and combating poverty is recognised by everyone, including the private sector and civil society.

Saying that Africa is not doing enough to integrate with global trade is wholly unjustified.

As early as the WTO's first year of operation, a group of four countries – Nigeria, Egypt, Morocco and Senegal – created the African Group. Being a "legal fiction" in the trading system, as it does not have a legal existence comparable to that of the European Union for example, the precursors of the African Group did not see fit to provide the African continent with a founding act that would formalise it. This Group has therefore remained informal until now and simply helps coordinate the positions of African countries and bring them in line with those of other groups. Today, nearly three-quarters of the activities of diplomatic missions of African countries to Geneva, Switzerland, the site of the WTO, are dedicated to multilateral trade negotiations. This demonstrates the importance that African countries attach to these negotiations, despite their limited resources.

On the continent, the trade agenda is notable for its series of new initiatives all aimed at strengthening economic development and integration by promoting free trade among African nations. One need only mention the Continental free trade area (CFTA) currently under consideration, the Tripartite free trade area (TFTA) in East Africa, or the implementation of the Common external tariff (CET) in West Africa, among others.

Shattered dreams and roadblocks to results

The Doha Round, which was launched in 2001 to correct the imbalances and imperfections of the trade agreements obtained from the Uruguay Round negotiations (1986-1993), raised much hope among developing countries. By committing to restructuring the prescriptive compromise at the core of economic and trade relationships between North and South, the Doha Round was expected to deliver a new product enshrining the central role of development in international trade negotiations. In Doha, all the African countries contributed to building the dream of an open, transparent, fair, non-discriminatory, and regulated trade and financial system.

Now that it is time to take stock, it is obvious that the statements of good intentions did not survive the states' conflicting interests and the power of financial lobbies, among others. The multilateral trading system was not able to produce inclusive, fair governance, but, whether consciously or not, established exclusive, unequal governance. Indeed, it is probably no coincidence that no African country has ever had the opportunity or the desire to appeal to the WTO's dispute settlement body (DSB), although there is no shortage of grievances. The example of the cotton issue, which has been unsuccessfully raised by African countries since 2003, is the most iconic case. Brazil referred the United States to the DSB for less than African countries have suffered – and won. The Africans who, for lack of a better choice, have followed the path of negotiation still continue to ask for the cotton issue to be dealt with "ambitiously, expeditiously and specifically." Their request is likely to fail.

Significantly, the development theme has been slowly eclipsed by the challenges of emergence, thereby justifying the shift in focus from developing countries to emerging countries. The latter are aware of their strength and are currently throwing their weight around the multilateral trading system, in order to influence it based on their interests and counteract developed countries' traditional stranglehold on the system. This is one of the elements that have led the WTO to the brink of the abyss over the past few years.

These very same developed countries, exasperated by the impasse the WTO has reached, are the ones creating regional, plurilateral and mega-regional trade agreements to bypass this system and establish new rules that they will later attempt to enforce as universal principles. They only give the WTO the bare minimum needed to keep it alive and to continue to benefit from the advantages granted by the current status quo, in particular when it comes to keeping the possibility of "protecting" themselves or of "subsidising" without having to submit to any legally binding obligations towards developing countries.

If 43 African countries speak together, no one will be able to ignore them.

Nairobi – Time to act

Despite its recurring setbacks and pitfalls, African countries still want to believe in the WTO. In Bali, in 2013, they showed a unique political commitment to saving the WTO when it had its back to the wall and might have felt the lasting impact of a failure. African countries did not defend any of the topics that they had nevertheless clearly identified and promised to defend during their many consultations. While India, for example, demanded and was granted a tailored agreement, the only ambition of the Africans was to save the WTO. Whether this behaviour is due to naivety or generosity, it now seems as though Africa needs to take responsibility and finally understand that taking part in international trade negotiations is not child's play. Only through their determination to further their own concerns, through thick and thin, will African countries manage to shift the lines. This calls for strong leadership, better consistency and clear political courage. At the WTO, if a single member country that does not feel included in a consensus refuses to join it, its voice is always heard. If 43 African countries speak together, no one will be able to ignore them.

During the next ministerial in Nairobi, the WTO's tenth ministerial and the first one to take place on African soil, the ball will be in their court. They will need to reject prevarication and empty, wishful statements. Nairobi must enshrine the come-back of development, leading to concrete actions and a clear, positive pro-development result. It is time Africa spoke up at last.



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SERVICES WAIVER

LDCs assess content, economic value of WTO services waiver offers

Earlier this month, the WTO's poorest members – known as the Least Developed Countries (LDC) Group – reviewed the notifications of preferential measures in support of LDC services and services suppliers during a dedicated session of the WTO's Council on Trade in Services (CTS).

According to sources familiar with the WTO Council of Trade in Services (CTS) which took place on 2 November meeting, the efforts made to date by members to make their pledges regarding preferential treatment for LDC services exports into reality were praised by Shameem Ahsan, Bangladesh's WTO Ambassador who spoke on behalf of the LDC Group.

Referring to the notifications of preferences received by the CTS so far, he explained that there is now "ample evidence on the table" demonstrating a commitment of WTO members to advance services supplied by LDCs.

The LDC services waiver decision stems from the outcome from a previous WTO Ministerial Conference held in Geneva, Switzerland, in 2011. However, in the years that followed, no preferences had been requested by LDCs or granted to them, prompting WTO members to reconsider ways to move this decision forward.

In July 2014 the group submitted a collective request regarding the preferential treatment it wanted to see for LDC services exports. At a high-level meeting in February, 22 WTO members responded to the collective request made by the LDC Group for preferential treatment in the services sector by indicating sectors and modes where they were considering providing preferences as well as support for projects on technical cooperation. (See Bridges Africa, [9 February 2015](#))

Since then, the LDC Group has been encouraging WTO members to formally notify the CTS of their actual preferences, including detailed information regarding the sectors or sub-sectors concerned and the period of time during which the member plans to maintain those preferences.

The assessment report of the notifications presented during this week's meeting - a copy of which has been seen by Bridges Africa - put clear emphasis on the importance of these notifications as the only means to trigger the effect of the services waiver.

A developed country delegate mentioned that going forward additional technical assistance and supply-side capacity building was also essential in order to take further advantage of any opportunities in that area.

Assessment of the preferences

Since pledges were made by WTO members earlier this year, the LDC Group has been working on an assessment report in order to evaluate the commercial value of the preferences on the table and the ensuing need for capacity building in the LDCs concerned.

To date, out of the 22 indications of preferences made by WTO members at the February high-level meeting, 16 have been notified to the CTS specifying these preferences, which the Group welcomes as an "impressive" achievement.

"About 54 percent of the Collective Request appears to be considered," states the report.

Sources indicated that, in general, the group agreed that a number of sectors and modes of supply where they sought preferential treatment were strongly reflected in the notifications submitted so far. Furthermore, the group reported that all modes of supply had been variously featured without any restriction in modes 1, 2, and 3.

In recent months, LDCs have also been exploring ways of extending the waiver beyond market access, sources say. Though there is a provision in the waiver decision to allow such an extension, notifications so far – with a few exceptions – have mainly covered Article 16 of the General Agreement on Trade in Services (GATS), which deals with market access. Non-market access measures are not automatically covered, but can be authorised by the WTO CTS.

The WTO CTS reportedly approved the notifications submitted earlier this year by China, Iceland, India, Norway, Switzerland, and Turkey, which featured preferences that go beyond market access commitments.

Some sources indicate that for example, Iceland, Norway, and Switzerland have included national treatment as part of their notifications and that in the same vein, the elimination of visa fees by India, authorised destination status by China, and waived work permits by Turkey have also been notified.

Among the remaining issues to be considered, the LDC Group pointed to the need to have clarity on the preferences offered. For example, they suggested that it would be important to have clarity on the nature and operability of the derogation, the extent to which non-LDCs would not receive similar treatment unless under other preferential arrangements.

A country-by-country assessment was conducted during the meeting on the basis of the notifications which have been submitted. Some members who have already submitted their notifications declared that they were prepared to engage into bilateral discussion on any issue that could arise over the offers.

Further notifications underway

To date, Canada, Australia, Norway, Korea, China, Hong Kong, Chinese Taipei, Singapore, New Zealand, Switzerland, Japan, Mexico, Turkey, the United States, India, Chile, and Iceland have notified their preferences to the CTS.

Other notifications from Brazil, the EU, and South Africa are reported to be underway and should be submitted soon.

Some developed country members reportedly expressed satisfaction about the preferences notified so far, explaining that it will provide an “extra boost” to LDC exports, but they also emphasised the need for LDCs to address their supply-side constraints in order to enhance their capacity in service exports.

Duration of the waiver under scrutiny

The timing of the operationalisation of the waiver has often been referred to as crucial in past discussions and has received more attention lately ahead of the upcoming WTO ministerial conference, which will be held in Nairobi, Kenya, this December. (See [Bridges Africa](#), 20 October 2015)

In recent consultations, the LDC group is reported to have sought a modification of the duration of the services waiver – including potentially through a ministerial decision in Nairobi – so that notified preferences can apply for 15 years from the date that a member submits its notification, a source said.

Some LDC delegates are of the view that the waiver has a shelf life of 15 years, which is the set duration of the waiver since its adoption in 2011, but that of these 15 years almost four years have passed with no notification of commitments from members.

The newsroom

Be sure to visit ictsd.org/news/bridgesafrica regularly for breaking African trade and development news.

Complex draft sent to Paris from climate talks

A week of multilateral talks in Bonn, Germany on a universal emissions-cutting regime saw familiar divisions between so-called "developed" and "developing" parties re-visited. Negotiators agreed to forward a ">51-page text" for consideration at an annual climate meet, the Twenty-first Conference of the Parties (COP 21) scheduled this year from 30 November-11 December in Paris, France.

The document includes both a 35-page "agreement" followed by 16 pages of "decisions" designed to give effect to the former. Together, these would in theory cover all manner of details relevant to the functioning and operationalisation of the new climate regime. Parties to the UN Framework Convention on Climate Change (UNFCCC) agreed in 2011 to conclude a global climate deal for the post-2020 period, taking effect upon the expiration of the current Kyoto Protocol, in time for the COP21.

ACP countries adopt text on the WTO MC10

Following a two-day meeting in Brussels, Belgium, trade ministers from the African, Caribbean and Pacific (ACP) countries adopted a declaration outlining their positions ahead of the WTO's 10th Ministerial Conference, which is due to be held in Nairobi this December.

The ACP declaration encourages WTO members to take "concrete steps to conclude the remaining issues in the DDA, with development as a key component."

The document further specifies that WTO members should ensure that all unresolved issues in the DDA on the development mandate should be addressed in a post-Nairobi context with a view of concluding the DDA "as soon as possible."

ACP ministers will meet as a group in Nairobi on 14 December, the eve of the 10th WTO Ministerial Conference, to take stock of the situation and agree on a final position.

WTO talks: Developing countries propose reforms

Three separate developing country groups have tabled negotiating proposals all raising issues central to the 2001 Doha Round of talks at the WTO ahead of the MC10.

One group of mainly agricultural-importing developing countries, the G-33, has tabled a proposal calling for a special safeguard mechanism for raising tariffs temporarily in the event of a price depression. Another group, the C-4 group of West African cotton-producing countries, has tabled a draft decision on cotton. Finally, the African Group at the WTO has tabled a set of "elements on agriculture" which they argue must be delivered in the Doha talks.

The proposals came after WTO Director-General Roberto Azevedo recommended that the trade body's members explore options for a mini-package for the Nairobi ministerial.

EU redefines relationship with Africa

The European Commission (EC) presented on 14 October its new trade and investment strategy. Entitled "Trade for all: towards a more responsible trade and investment policy", it is based on three key principles: efficiency, transparency, and promoting European values.

The new strategy prioritises major projects that are currently on the table of European trade diplomacy, like the Doha Round of WTO talks and the Transatlantic Trade and Investment Partnership and opens the door to new negotiations, especially in the Asia-Pacific region, and plans the modernisation of the existing Free Trade Agreements. Finally, it aims to deepen the EU's relationships with its partners on the African continent.

The EC strategy highlights the key role of regional integration on the African continent, pointing out the high costs for Africa of having fragmented markets and multiple barriers between countries while insisting on the significance of economic partnership agreements (EPAs).

Publications and resources



Synergising and Optimising Mineral Infrastructure in Regional Development Strategies – E15 – October 2015

The purpose of this paper is to explore the potential of mineral infrastructures as “anchors” for economic development and cross-border cooperation. It proposes some policy recommendations to make better use of existing frameworks to foster the utilisation of mineral infrastructures. It also points out that in some cases, rules may not be the most appropriate way to stimulate broader economic development out of resource infrastructures. <http://bit.ly/1NhBHbG>



Consequences of Cartelisation in Primary Commodities: Focus on Natural Rubber and Banana – E15 – October 2015

The paper briefly analyses the economic consequences of export cartels while highlighting the need for international rules. It describes the political economy of the genesis of export cartels and also deals with the different types of exemptions being granted to the export cartels under domestic competition laws. <http://bit.ly/1hEe2UF>



Trade Preferences for the Least Developed Countries: Opportunities Not Panaceas – E15 – October 2015

The paper suggests that the US should implement a DFQF program for all LDCs that covers as close to 100 percent of products as possible, and more than the minimum 97 percent it promised in Hong Kong. All preference programs for LDCs should make the rules of origin simple to use and flexible in meeting the needs of LDCs, including by incorporating cumulation zones that extend beyond narrow regional groupings to as much of the developing world as possible. <http://bit.ly/1FGd2eI>



The 2014 US Farm Bill and its Effects on the World Market for Cotton – ICTSD – September 2015

Under the 2014 US Farm Bill, US cotton producers will receive significant subsidies which will have trade-distorting effects irrespective of future cotton prices. At a futures market cotton price of US\$ 0.70/lb, US subsidy programmes are likely to suppress artificially the world cotton price by almost 7 percent, and result in about US\$3.3 billion of loss for cotton-producing countries around the world, most of which are developing countries. <http://bit.ly/1NfAW2R>



Industrial Policies in a Changing World: What Prospects for Low Income Countries? – E15 Initiative – May 2015

This paper focuses on some industrial policies and strategies adopted by Low Income Countries (LICs) and the conditions under which their objectives were achieved (or not). They include Bangladesh's successes in building up a pharmaceutical industry focusing on affordable generic drugs, and a readymade garments industry that has a large share of the world market, in addition to Ethiopia's success as an exporter of cut flowers. Looking forward, as the nature of industrialization and trade policies change, it looks at what policies LICs may adopt to catch up with the developed world. <http://bit.ly/1EIEJQz>



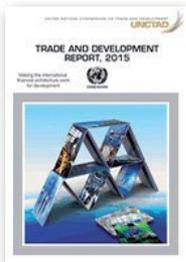
LDC newsletter N° 14 – The inclusive multilateral trading system at stake in Nairobi– IDEAS Centre – Novembre 2015

Although tested and shook, our optimism allows us identifying some small signs of possible outcome in Nairobi. The MC10 will not be a success but there is a little time remaining not to make it a failure. Political will is required to at least ensure that the system can deliver for its poorer members and that the organisation is worth fighting for it. However, one should be careful not to be fooled by the nostalgic atmosphere that surrounds the celebration of the past glory of the WTO. Looking forward rather than backward is more than recommended to prepare Nairobi ... <http://bit.ly/1Mwmf1T>



Inclusive Global Value Chains – OECD / The World Bank Group – Octobre 2015

This joint OECD and World Bank Group report focuses on the challenge of making GVCs more "inclusive" by overcoming participation constraints for Small and Medium Enterprises (SMEs) and facilitating access for Low Income Developing Countries (LIDCs). Results suggest that SME participation in GVCs is mostly taking place through indirect contribution to exports, rather than through exporting directly, and that a holistic approach to trade, investment and national and multilateral policy action is needed to create more inclusive GVCs. <http://bit.ly/1jNutj9>



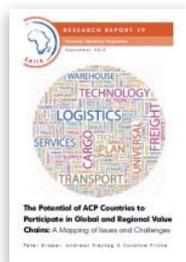
The Trade and Development Report (TDR) 2015: Making the international financial architecture work for development – UNCTAD – October 2015

TDR 2015 identifies some of the critical issues to be addressed in order to establish a more stable and inclusive international monetary and financial system which can support the development challenges over the coming years. It considers existing shortcomings, analyses emerging vulnerabilities and examines proposals and initiatives for reform. <http://bit.ly/1Lwv98R>



Planning Africa's Infrastructure in An Uncertain Climate Future – The World Bank – September 2015

Using a comprehensive, broad set of state-of-the-art climate projections, the study examines impacts in Africa's main river basins (Congo, Nile, Niger, Orange, Senegal, Volta and Zambezi) and across four electricity power pools (Western, Eastern, Central and the Southern Power Pool). The report uses a consistent, comprehensive set of climate projections to evaluate the possible economic impacts of climate change on Africa's infrastructure. <http://bit.ly/1za87P8>



The Potential of ACP Countries to Participate in Global and Regional Value Chains: A Mapping of Issues and Challenges – SAIIA – September 2015

International trade has changed dramatically since the 1980s. Due to enormous reductions in transportation and communications costs, as well as the worldwide liberalisation of trade in goods and – to a lesser extent – services, production processes have been fragmented while value chains have gone global. Some observers now speak of global production networks. <http://bit.ly/1Q49hmg>



East Africa: The next hub for apparel sourcing? – Mc Kinsey&Company – August 2015

Africa has received a great deal of attention thanks to the high publicity around the sourcing activities in East Africa of some of the leading global apparel brands and retailers, and to the expiration and the expected renewal of the African Growth and Opportunity Act (AGOA), which provides 39 African countries with duty-free access to the US. Within sub-Saharan Africa, East African countries—especially Ethiopia and Kenya, and to a lesser extent Uganda and Tanzania—are of interest to apparel buyers. The governments of both Ethiopia and Kenya are taking steps to develop their domestic textile and garment industries. <http://bit.ly/11RAy2I>

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