

trade hottopics

Build up to the Ninth WTO Ministerial Conference: Issues of Interest to LDCs

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The World Trade Organization (WTO) will hold its ninth Ministerial Conference (MC9) this year at Bali, Indonesia, from 3 to 6 December. The intention is that MC9 would not be a mere 'housekeeping Ministerial', but that it would produce some substantive results, especially in areas that are being negotiated as part of the Doha Development Agenda (DDA). This is in keeping with the general recognition among WTO members that alternative negotiating approaches to conclude the DDA will have to be explored, including the possibility of trying to forge consensus on a select set of issues, before the full conclusion of the negotiations.

Accordingly, members have started reflecting on possible deliverables at the Bali Ministerial. While the process of negotiating the outcome at Bali is yet to be launched, there are a number of issues which seem to have attracted member's attention as the work towards Bali gains traction. These include, *inter alia*, the ongoing negotiations to finalise an agreement on Trade Facilitation, some aspects of agriculture negotiations, and certain key development issues. It is in the context of the latter that there seems to be a growing recognition that the Bali Ministerial must also pronounce itself on a number of least developed country (LDC) issues and the LDC Group in Geneva has

increasingly started to focus its attention on what is being termed as an 'LDC package for Bali'.

This issue of *Commonwealth Trade Hot Topics* highlights some of the major issues that the LDCs would like to see being addressed in the build-up to the Bali Ministerial.

In October 2012, the LDC Group in the WTO held a retreat and outlined some of the issues that were important for them and which they would like to see addressed in the context of MC9. To what extent the LDCs would be able to realise the goals set out therein would depend very much on how they engage with the membership and the ensuing negotiations on these issues. Also the evolution of the overall negotiating environment during the course of the year would have an impact on the deliverables for LDCs. Nonetheless, this paper attempts to define a very broad non-exhaustive list of issues that the LDCs are pursuing and which could form a part of a possible LDC package at Bali.

Market access

Meaningful and enhanced market access for their exports has, and will, remain one of the top-most priorities for the LDC Group. This has always been a

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critical issue for the LDCs since they export only a narrow range of products and even within this narrow range a few products face high duties in some markets. The Hong Kong Ministerial Conference in 2005 marked an important step by agreeing to grant at least 97 per cent duty free and quota free (DFQF) access to products originating from LDCs. Most developed members today grant either full or nearly full DFQF access to LDC products. A number of developing country trading partners of LDCs have also adopted preferential market access schemes that will provide DFQF access to an increasingly large percentage of LDC exports. But, despite this progress, LDC exports still face duties in some key markets and the Bali Ministerial presents an opportunity for the LDCs to pursue full implementation of the DFQF Decision.

While some key members are reluctant to offer DFQF access in line with the DFQF Decision, there are also some differences among the Asian and African LDCs over the implementation of the Decision. The main concern expressed by some African LDCs is about the likely impact that provision of 97 per cent DFQF access in key markets could have on their existing share in those markets. Studies are ongoing to assess the implications of the full implementation of the DFQF access, and if, as appears to be the case from some preliminary results, there are only a modest number of overlapping tariff lines between Asian and African LDCs, then perhaps a mutually acceptable solution could be found; a solution that gives additional commercial meaningful market access to all LDCs, without adversely impacting on the market access currently being enjoyed by certain LDCs.

In any case the LDCs would need to initiate a process of engagement, at the earliest, both among themselves and with their key trading partners if an outcome is to be achieved at Bali.

At the meeting of the WTO's Committee on Trade Development (CTD) held on 4 March 2013, the LDC Group introduced their submission¹ which seeks information, on a line-by-line basis, of the DFQF access being provided by different members. The communication calls on developed country members as well as those developing member countries declaring themselves in a position to do so to submit information about their plans to implement the DFQF Decision. At that meeting a number of countries expressed support for the general thrust of the proposal. The USA explained the reasons for not yet being in a position to implement the Hong

Kong Decision, including because of the possible negative impact that the implementation of the Decision could have on countries that are already benefiting from the USA's existing preference programmes. This issue will remain on the agenda of the CTD and in the coming months the LDC Group is likely to press for full transparency of DFQF access currently being provided as well as full implementation of the Decision.

At the same time, it is important that along with extending DFQF treatment to LDC exports, it is also ensured that the 'preferential rules of origin applicable to imports from LDCs are transparent and simple, and contribute to facilitating market access'.² Even though there has been limited progress in the multilateral discussion on this topic at the WTO, Canada, the European Union and Switzerland have adopted revised Rules of Origin criteria which are reported to have had a positive impact on exports from LDCs to their markets. However, more could be done, in the context of the guidance provided by ministers at the Hong Kong Ministerial Conference. Therefore, in the coming months, the LDCs need to engage with their trading partners so that a decision could be taken at Bali which ensures that the accompanying preferential rules of origin are liberal, match the present state of manufacturing capacity in the LDCs, and take into account the dynamics of global value chains.

Implementation of the services waiver

The second delivery for the LDCs at, or even before, Bali could be to have some concrete results from the first ever services waiver that members adopted at the last Ministerial Conference in 2011, that is, a waiver from MFN (most favoured nation) obligations under the General Agreement on Trade in Services (GATS) which would permit members to grant preferential market access to LDC services and service suppliers. The services waiver represents an important step forward in the multilateral trading system, to help LDCs secure an increasing share in world trade in services — a sector which is continually growing and making bigger contributions in the GDP of countries. In fact, recent research of trade in value added undertaken by the Organisation for Economic Co-operation and Development (OECD) shows that services are playing a far more significant role in the production of manufactured goods, and the value created by services as intermediate inputs could represent over 30 per cent of the total value added in manufactured goods.

Studies are being undertaken to assess the strengths of services sector in LDCs. However, a higher share of services in the GDP is not necessarily positively correlated with higher services exports from LDCs. While the contribution of services to GDP in the LDCs has consistently been more than 40 per cent for the last decade, at the same time their share in world commercial services remained virtually static at around 0.5 per cent — demonstrating the fact that they have been unable to participate in the global growth in this sector, with the notable exception of the tourism sector. This makes the implementation of the waiver even more important.

Achieving meaningful implementation of the services waiver will not be easy. This is a new territory for members to navigate and some grounds need to be covered before LDCs see the light of some preferential access in services trade. Benefiting from the waiver hinges on a host of factors. First, the waiver does not necessarily oblige members to automatically grant preferences to the LDCs. Second, even if a member wishes to adopt a services preference scheme, its efficacy will depend on its coverage and to what extent the LDCs have the capacity to make use of the sectors and modes covered under the preferences.

The commitments undertaken by members through their services schedules or offers made by Members in the DDA currently contain sectors and modes that are of limited interest to the LDCs. This is largely due to the lack of commitments on low-skilled workers — an area where the LDCs may have some comparative advantage — as a result of some political sensitivity on the part of some members. Given the level of development of LDCs, if the entry of natural persons under mode 4 is conditioned on the existence of a commercial presence — which is the predominant trend in the current schedules — then such commitment is of little immediate value to the LDCs since most of them are not significant foreign investors. Another area where the LDCs have demonstrated some niche is tourism, where the scope of the waiver is also somewhat limited since it is other WTO members that would need to take on domestic measures that encourage their people to consume tourism services in LDCs.

Despite some limitations with scope, the services waiver holds potential. The waiver stipulates that preferential treatment shall be designed to promote the trade of LDCs in those sectors and modes of supply that are of particular export interest to LDCs. This has, somewhat, thrown the ball into LDCs' court

to undertake a process of identifying their sectors and modes of supply of export interest. In this regard, some initial work was done in 2006 when the LDC Group identified only one mode of supply of export interest to them, namely mode 4. Recently, the LDC Group has started to build on that work and some organisations are coming forward to assist them. But much more effort will have to be undertaken given the complex and technical nature of the task, and the limited amount of statistical data available on LDCs' services trade.

Extension of the TRIPS transition period

Another area where the LDCs are pushing WTO members to take a decision is the extension of transition period under the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), which is going to expire on 1 July 2013. It is the intention of WTO members to treat this issue within the regular work of the WTO (i.e. under the aegis of the TRIPS Council), since this is not necessarily a DDA issue. In fact, a decision prior to the expiry of the present transition period in July will augur well for the Bali Ministerial.

When the TRIPS Agreement was agreed in 1995, LDCs were allowed an initial 10-year transition period (1995-2005), exempting them from applying the minimum standards of the TRIPS Agreement. In 2005, WTO members granted a second extension for a period of seven-and-a-half years up until 1 July 2013. This second extension was accompanied by provisions such as enhanced technical assistance to LDCs based on individual priority needs as well as with a 'non-roll back' clause, that is, any changes in laws, regulations and practice made in the transition period should not result in a lesser degree of consistency with the TRIPS Agreement.

A request for an extension of the transition period was tabled by the LDCs last November.³ In their proposal, the LDC Group has sought exemption from TRIPS obligations until they cease to be an LDC — that is, until they graduate from LDC status. Informal consultations have begun in the WTO from the beginning of this year to try and arrive at a decision. This proposal was discussed at length at the formal meeting of the TRIPS Council held on 5 March 2013. There is broad support for an extension, in principle. However, the 'open-ended' or 'indefinite nature' of

¹ WTO Document WT/COMTD/W/194.

² Annex F of the Hong Kong Ministerial Declaration contained in WT/MIN(05)/DEC.

³ WTO Document IP/C/W/583.

the extension proposal received mixed reactions from members. The discussion in the TRIPS Council is likely to make the LDCs reflect on how they would like to pursue their proposal; either by continuing to ask for an indefinite extension of the existing transition period, or by accepting a time-limited extension. The LDCs could also consider setting up a process in order for them to continue to address their intellectual property (IP) needs. In extending the transition period in 2005, the LDCs were asked to identify priority needs for technical and financial assistance. Only 8 out of 34 WTO members have submitted this so far. Given the level of IP development, the LDCs should not miss the opportunity to articulate their capacity-building needs to access technology, increase innovation capacity, modernise IP law and increase capacity for enforcement.

Special and differential treatment

LDCs are also pushing for a possible outcome in the area of special and differential treatment (S&D) provisions. It may be recalled that at the Cancún Ministerial Conference of the WTO in 2003, members had reached an in-principle agreement on 28 proposals relating to various S&D provisions in WTO Agreements. However, those proposals were never formally adopted. At MC8, ministers agreed to take stock of these proposals, given that they were agreed to nine years before, and that subsequent developments may have impacted on the relevance of the language contained in some of these proposals. For instance, the text of the proposals on market access for LDCs needs to incorporate the elements of the subsequent DFQF decision taken at the Hong Kong Ministerial Conference in 2005. But opening a few of the proposals, which somewhat modifies the substance, could potentially also lead to the demand to 'review' or open the others, which could affect the possible adoption of these proposals at Bali. This is still being discussed by members.

Another area being negotiated in the Special Session of the CTD is the Monitoring Mechanism. While not limited only to the LDCs, the adoption of such a Mechanism could have positive spill-overs for the LDCs. The Monitoring Mechanism is intended to add value to the existing review mechanisms in relevant WTO bodies to analyse and review the implementation of all S&D provisions contained in WTO Agreements and Decisions. This Mechanism, if adopted, will be able to put a spotlight on the effectiveness of the S&D provisions, and will provide the LDCs with a forum where they can raise issues

and flag difficulties being encountered in the implementation of these provisions. The elements of the Mechanism that are being negotiated also include the possibility to make recommendations, for appropriate actions, to the relevant WTO bodies. Negotiations to finalise the Monitoring Mechanism are proceeding, although some differences in the interpretation of the Doha mandate and the manner of its reflection in the draft text of the Mechanism is holding back progress.

Trade facilitation

And finally, a few words on the negotiations on Trade Facilitation. Again, even though this is not an LDC-specific subject any assessment in the context of the Bali Ministerial meeting would be incomplete without a reference to this issue. As indicated, some members regard this as the big ticket item for Bali, though there are others who continue to question the likely benefits from such an agreement to facilitate trade. The ongoing negotiations on Trade Facilitation are proposing measures to simplify export/import processes including customs rules and procedures. Technical assistance and capacity-building have been an integral component of the discussions where for the first time in the WTO, implementation of certain commitments has been linked with the acquisition of adequate capacity-building.

Moreover, flexibility is proposed to be given to developing countries and LDCs to the extent that they would be able to self-designate the type of commitments that they could assume and the ones they would do in a phased manner. So far, the LDC Group has not taken a very proactive approach in the substantive measures being proposed in the negotiations. Given that there is a momentum to conclude a Trade Facilitation Agreement at Bali, it would be worthwhile for the LDCs to consider the merits of such Agreement *per se* and ensure that the capacity-building section provides them with appropriate levels of flexibility which, *inter alia*, can further improve their trade logistics infrastructure. After all, the LDCs have a stake in minimising trade transaction costs.

Enhanced Integrated Framework (EIF)

A non-negotiating subject matter, but of critical importance to the LDCs in the context of their trade capacity-building is the EIF programme which aims to build institutional and productive capacity in the LDCs. The stakeholders of this initiative are now currently engaged in the operationalisation of the

recommendations stemming from the mid-term review of the programme carried out last year. An EIF heads of agency meeting is contemplated in July this year at the side line of the fourth Global Review of Aid-for-Trade. The meeting is expected to provide directions for a plan of action for strengthened synergies among the core agencies co-operating on the EIF.

The EIF is also an instrument for the LDCs to access larger aid-for-trade resources. In fact, the LDCs could very well use the occasion of the Bali Ministerial to further reinforce the aid-for-trade initiative in the WTO. A solid EIF process with clear articulation of priority needs could leverage the much needed resources from the larger aid-for-trade pool. The forthcoming Global Aid-for-Trade Review gives another occasion for the LDCs to examine how to better integrate into the global value chains which will be the main focus of the review. Moving up the value chains should be an overriding objective of LDCs' trade strategies as global value chains increasingly dominate the feature of world trade.

Conclusion

The preparation of LDCs and their pace of engagement with WTO members will determine

whether some of the issues highlighted above could be harvested at Bali. These issues are by no means exhaustive since LDCs, like other members, can raise any issue for a decision at the Bali Conference, provided those are tabled within stipulated time lines. A number of LDC issues are somewhat dormant at present and could pick up in the coming days. These include the trade-related aspects of cotton and on food security issues. The LDCs need to carefully assess the issues and the process that evolve over the year and see what could be realistically achieved at Bali. Given the current political will, a pragmatic and constructive engagement from the LDCs and outreach with other members to ensure that their specific issues are appreciated will probably safeguard that Bali delivers by addressing some of the current issues of importance to them in the multilateral trading system (MTS).

In conclusion, the Bali Ministerial Conference offers an opportunity to WTO members to make another effort to further integrate LDCs into the MTS, so that they do not remain on the margins of global trade. Of course, any such efforts would be buttressed if the United Nations system's post-2015 agenda made a priority of promoting trade-led growth and development.

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29-31 October 2012: Commonwealth Investment Guide and Promotion of the New Negotiator's Handbook for Developing Countries held in Port of Spain, Trinidad & Tobago

11-13 September 2012: South Asia Economic Summit (SAES V) held in Islamabad, Pakistan

7-8 September 2012: Istanbul Programme of Action for LDCs (2011-2020): LDC IV Monitor Expert Group Meeting held in Dhaka, Bangladesh

3-4 September 2012: Strengthening Competitiveness of South Asia through Regional Supply Chains — consultation workshop on leather and Leather products, held in Chennai, India

29-August 2012: A Commonwealth Roundtable with Prof. Joseph Stiglitz on 'Aid for Trade: Perspectives on Progress and Emerging Issues' held in Marlborough House, London

9-13 July 2012: A Briefing Session on Commonwealth Secretariat's Work Programme on International Trade, 24th WTO Geneva Week, held in Geneva, Switzerland

9-10 July 2012: Workshop on Trade Policy for Commonwealth Parliamentarians (African Region) held in Mahe, Seychelles

11-12 June 2012: Roundtable on Trade Policy Negotiations and the Implementation Agenda held in Bridgetown, Barbados

28-May 2012: Consultation workshop on 'Potential Supply Chains in Agriculture in South Asia' held in Dhaka, Bangladesh

Selected ITRC Publications

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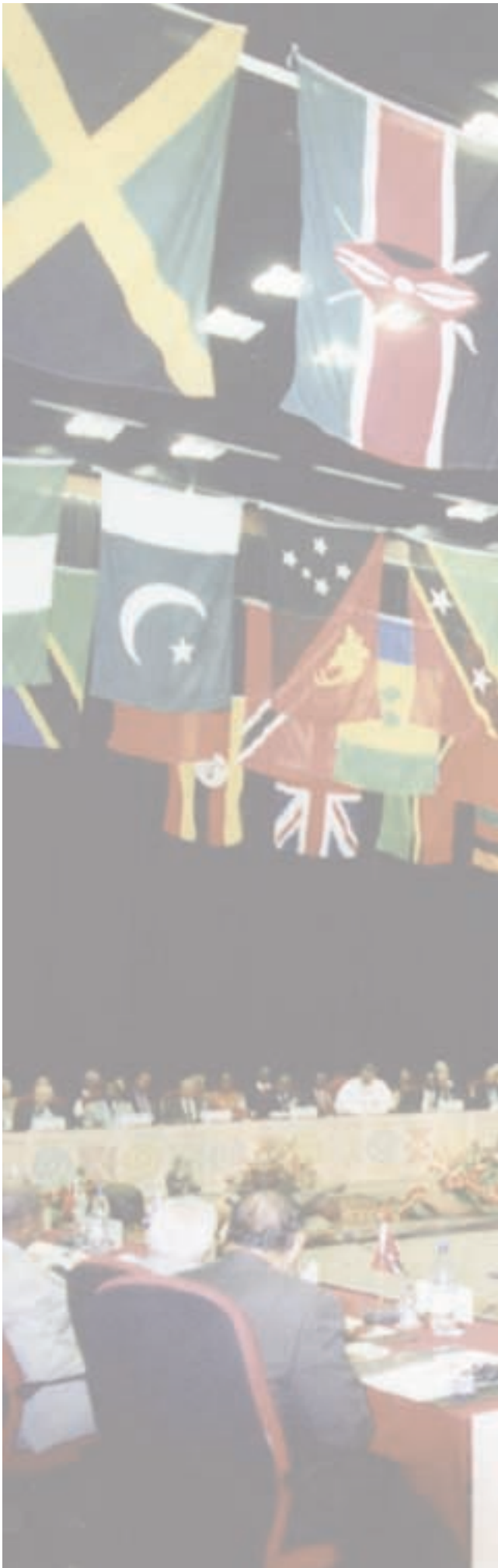
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