

**Expert Group meeting for Least Developed Countries
on the preparation for the
World Trade Organization Ministerial Conference,
Bali, Indonesia**

11 November 2013

Road to Bali – opportunities and challenges for LDCs
DDA negotiations, LDC issues, Road to Bali and Post Bali

by

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Single undertaking and MC8 guidance

Negotiation on key Doha Development issues is at an impasse. Since 2008, there has been little progress in the areas identified in the Doha Work Programme.

Over the years, single undertaking was underlined as the way to conclude the negotiations in the range of issues (Doha Declaration para 47: ‘... *the conduct, conclusion and entry into force of the outcome of the negotiations shall be treated as parts of a single undertaking*’).

Although Doha Declaration in the same para anticipated possibility of reaching an agreement on some issues earlier than others (*‘agreements reached at an early stage may be implemented on a provisional or a definitive basis’*), an explicit departure from the notion of single undertaking happened only in 2011.

The Eighth Ministerial Conference signaled a departure. It was then acknowledged it is 'unlikely that all elements of the Doha Development Round could be concluded simultaneously in the near future'. Members agreed to 'advance negotiations, where progress can be achieved' to reach provisional or definitive agreements earlier than the full conclusion of the single undertaking (MC8 ‘Elements for Political Guidance’).

This guidance from the Ministers has helped advanced certain issues in the substantive preparation for the Bali Ministerial.

Two importance aspects of MC8 mandate has been ignored though:

- Work to find the ways to tackle difficult issues as well (*‘Ministers also stress that they will intensify their efforts to look into ways that may allow Members to overcome the most critical and fundamental stalemates in the areas where multilateral convergence has proven to be especially challenging’*). Main and mostly contested issues of the Round have not been tackled.
- Give priority to LDC issues (*‘Ministers acknowledge the needs of LDCs and commit themselves to ensure that LDCs’ interests are given due priority in the future work of the WTO’*). There have been some engagements on some of the LDC issues but these have not received the priority they deserve.

Possible Bali Outcome and question of balance

Bali outcome is perceived to be a 'small and 'doable' package. However, the benchmark of doability is subject to debate. How can the ambitious Trade Facilitation deal be doable and the little issues raised by the most vulnerable countries not be doable? Anyway, TF, some elements of agriculture and development/LDC issues have been the three pillars of negotiations. How balanced has the focus been and will the outcome be is a key question. TF has clearly received most of the time and energy. Except in Trade Facilitation, nowhere else Members, particularly the developed ones, are posed to make binding comments.

The 28 Agreement Specific S&D proposals, known as Cancun 28, have been dropped from negotiations. Strength of Monitoring Mechanism (to monitor S&D provisions) has been reduced. G33 proposal to amend AoA to correct imbalance and anachronism has been reduced to interim measure of short period. G20's export competition will just have a political statement. Even in the 'easiest' issue of TRQ, principle of S&D is being contested. Proposed outcomes on LDCs' services waiver and Rules of Origin are just moderate. Other two issues face uncertainties. Balance is visibly lacking.

This week is critical as it will give a possible scenario of whether there will be an outcome for Bali or not. Latest indication is that there will be. Trade Facilitation will be at the limelight of the outcome and there will be very moderate outcome on development and LDC issues. A major concern is that not more than two weeks are left and there has been no discussion on how DDA will be concluded. What will happen to the whole range of issues and the DDA's development content?

Why DDA

What does lack of progress on DDA mean for LDCs? What they were supposed to gain from the Round?

Marrakesh Agreement recognized the need for 'positive efforts' designed to ensure that LDCs secure a fair share in international trade. Doha Work Plan articulated ways and means.

It said that integration of the LDCs into the multilateral trading system requires meaningful market access as well as support to build productive capacity. It established market access as the principal support measures for LDCs and created an imperative to that direction. This led to the HK Decision.

It established LDCs' accession as a priority for WTO. Guidelines to simplify and streamline LDCs' accession was developed in 2002 (WT/L/508) and further revised in 2012 (WT/L/508/Add.1). A number of LDCs have acceded since then. The accession decisions oblige Members to exercise restraint in seeking concessions and commitments.

In Doha WP, LDCs' supply side capacity constraint received focus. Members committed to provide increased, predictable, and additional funding on a multi-year basis through IF (now EIF). EIF Mid Term Review has reaffirmed relevance and usefulness of the programme for LDCs and its continuity is now LDCs' demand.

Cotton became a prominent issue in round as well. Members committed to eliminate all forms of export subsidies in 2006. Commitment was also made to offer DFQF market access for cotton.

In the services negotiations, Members committed to give priority to the sectors and modes of supply of export interest to LDCs, particularly with regard to movement of service providers under Mode 4.

Merits of DDA are not limited to the LDC specific issues. They benefit from every development aspect of Doha – Work Programme on S&D and implementation issues, TRIPS and public health, protection of TKGR, S&Ds in negotiations of goods and services commitments.

Key LDC proposals under DDA negotiations

Like other Members or Groups of members, LDCs actively participated in DDA negotiations in its heyday. The Group worked hard to make the best of the development orientation of the Round.

| Areas | Proposal | Status of progress |
|----------------------------|--|--|
| Preferential market access | Proposal on S&D Treatment for LDCs (TN/CTD/W/4, 24 May 2002) Proposal on Implementation of HK Decision T(N/AG/GEN/23 or TN/MA/W/78 , 30 June 2006) | Hong Kong Decision Hong Kong Decision has been reflected in NAMA and Ag Rev texts of 2008 Most developed countries have implemented the HK decision. Several developing countries have offered DFQF schemes to LDCs Key developed country is yet to implement |
| Rules of Origin | Proposal binding agreement on preferential rules of origin applicable to LDCs' exports (TN/AG/GEN/20 or TN/MA/W/74, 12 June 2006). Revised submissions in 2010, 2011 and 2013. | Reflected in both NAMA and Ag Rev texts – Members are urged to use the model provided in document TN/MA/W/74, as appropriate, in the design of the rules of origin for their autonomous preference programs. MC9 may have a decision on guidelines to improve |
| NAMA negotiations | Proposal on modalities that could be adopted for the participation of the LDCs in the negotiations for the improvement of market access for non-agricultural products (TN/MA/W/22, 8 January 2003) | Reflected in Rev 4 NAMA modalities |
| Services | Proposal on modalities for the Special Treatment for LDCs in Services Negotiations (TN/S/W/13, 7 May 2003) A Mechanism to Operationalize Article IV: 3 of the GATS (TN/S/W/59, 28 March 2006) LDC Group Request on Mode 4 (JOB(06)/155, 24 May 2006) | Modalities has been agreed Waiver decision made in 2011, but no preference has been offered so far This important proposal was not well received |
| Trade Facilitation | Proposal to ensure technical and financial assistance and capacity building (TN/TF/W/147, 18 July 2007), Subsequent submission were made in 2009 and 2010 | Negotiations ongoing |
| S&D | Proposal to strengthen certain S&D provision (TN/CTD/W/4, 24 May 2002 and TN/CTD/W/4/Add.1, 1 July 2002) | No progress in S&D negotiations |
| TRIPS | Implementation of Article 66.2 of the TRIPS Agreement (IP/C/W/390, 26 November 2002) | 2003 decision on reporting mechanism Effective implementation of Art 66.2 has not been achieved |

Most key issues of LDCs, including DFQF, have been linked up with the conclusion of DDA. The developed country that has not implemented DFQF for LDCs keeps on saying that it will do so with the conclusion of the Round. DDA impasse has been a setback to LDCs' aspirations to expand trade and export earnings. This is why we have called for early harvest.

LDCs package for Bali

LDC Group on 31st of May submitted an LDC package to form a part of Bali outcome. The submission represented key priority issues of the LDC Group - contained concrete proposals on the implementation of DFQF Decision and on the adoption of simple and flexible preferential rules of origin while on cotton and services waiver we indicated that the proposals are in the making.

On DFQF, we demand that developed country Members that yet do not provide duty-free quota-free market access for at least 97 % of LDC products shall do so by a certain timeframe. We tried to strike a balance between the enhanced and commercially-meaningful market access for all LDCs and the notion of no harm to LDCs that already have greater market access.

We also demanded that developing country Members that have provided DFQF expand the coverage and those that have not announce their offers.

Possible outcome on this issue is yet to take a shape at this moment.

On Rules of origin, we proposed a multilateral agreement on preferential rules of origin applicable for LDCs' exports. We demanded an across the board percentage criterion to determine origin of LDC products.

We proposed that value content is calculated on the basis of the value of non-originating materials or value of originating materials. We demanded that up to 75 percent of non-originating material should be allowed and freight and insurance costs be not included in the value of non-originating materials. The best practice so far is EU's 70 percent with inclusion of freight and insurance.

We proposed that cumulation be extensive that include cumulation with respective preference granting countries, among LDCs, members for regional groups and countries with which preference granting countries have a PTA.

We proposed product specific rules for textiles and apparel goods and sought that single stage transformation (ie manufacturing of articles of garments from imported fabrics) be recognized as sufficient transformation.

Members have expressed concerns that the LDCs' submission is too technical and too rigid. It aims at harmonization of countries' domestic practices. It will require years of negotiations – harmonization works in CRO went over a decade and is at complete impasse right now. Preference schemes are autonomous undertakings and cannot subject to a binding multilateral agreement. Provisions were substantively difficult. Too liberal rules of origin will not benefit LDCs but will allow tariff circumvention.

Revised submission was made (TN/C/W/63/Add.1, 17 September 2013). We retained the key elements of our original proposal but showed flexibilities in our approach. Our revised recognize that better rules of origin may be achieved in different ways. We made it explicit that the LDCs do not propose a single set of rules but seek simplicity, transparency and coherence, not harmonization. We demanded that criteria of origin determination should match with the low level of industrial development of LDCs.

A draft decision has been stabilized which is not the optimum outcome for LDCs but could be taken as a step forward. It has some important elements. It asks that value addition threshold be kept low in view of LDCs' low productive capacity. LDCs' demand for allowing 75 percent of foreign inputs has been noted. Range of cumulation possibilities has been recognized. There is also a provision related to simplicity of documentary requirement. CRO shall annually review development in preferential rules of origin.

On Cotton, negotiation is ongoing on the new proposal from C4 countries (TN/AG/GEN/33, TN/AG/SCC/GEN/12). The proposal, about which we may hear from C4 colleagues later, contains both trade and development aspects. Key demands are granting of DFQF for cotton by Jan 1 2015; reporting on Members' implementation of HK Decision to eliminate all forms of export subsidies for cotton; and linking development aspect of cotton with Aid for Trade.

Negotiation on operationalization of services Waiver was undertaken on the basis of LDCs' proposal TN/C/W/63/Add.2. An outcome has been stabilized. The proposed decision provides for periodic review by the Council on Trade in Services of the operationalization of the waiver. The CTS can make recommendations on steps to be taken to implement the waiver. A High-level meeting will be convened in which Members will indicate preferential offers to LDCs. The proposed decision asks that Members could any time develop preferential schemes for LDCs, including the elimination of economic needs tests and other quantitative limitations. Schemes similar to PTAs could be unilaterally offered to LDCs. The proposed decision also has provision related to enhanced technical assistance and capacity building to help LDCs benefit from preferential offers.

Among the issues of LDC package, two major issues are yet to be settled - DFQF and Cotton. We have made it clear that there must be progress on these issues so that Bali outcome could be acceptable for LDCs.

Other Bali issues

Besides, LDCs are actively involved in TF negotiation – in section I provisions as individual delegations and in section II as group. Self-assessment of capacity to implement difficult obligations had been our principal demand. So has been strong provision on technical financial assistance. On Agriculture we have expressed our general support to the issues put forth by developing countries. On the mechanism to monitor S&D provisions, our demand has been a strong and effective mechanism to ensure that it is able to make recommendations to relevant WTO bodies to strengthen S&D provisions. The notion of strengthening S&D provisions has been a difficult issue for developed countries.

In MC9 our ministers will also be taking note of some progress made in regular non DDA issues. Members have agreed to extend the transition period for LDCs under article 66.1 of the TRIPS Agreement. Members have also agreed on the revised work programme for LDCs that integrates trade related aspects of the Istanbul Programme of Action. Likewise, there is a new decision to streamline and strengthen 2002 accession guidelines. Our Ministers will call for faithful implementation of the guidelines. Accession of two fellow LDCs (Lao PDR and Yemen) has been concluded and Ministers will welcome the new LDC member into the house of MTS.

Aid for Trade and EIF will be important issues for LDC ministers. We will underline the need for additional and predictable Aid-for-Trade resources, and call on members to increase LDCs' share in AfT and increase the share of grants. We will request to extend the EIF beyond 2015 and scale up support to the programme in a substantial and meaningful manner.

Post Bali WTO works

In the discussion of post-Bali works, LDCs will emphasize two things - first, early conclusion of the Doha Round negotiation with an ambitious and development-friendly outcome giving priority to the issues of interest to LDCs and second, resolution of longstanding LDC issues without linking those to the full conclusion of the single undertaking of the Round.

This brings me again to the broader political question of DDA. DDA, in fact the MTS as a whole, faces two major challenges: the proliferation of 'mega deals' of FTAs and the tendency to divert to plurilateral deals. Key players often say that they have options – they have resources and routes of bilateral and regional deals and the weakest don't. One thing we all have to be clear – big or small- WTO is for everyone, maybe more for big traders. LDCs will oppose any attempt to

undermine the sanctity of rules based multilateral trading system.

DDA is not a burden but an attempt to address the existing imbalance of the trading system. Some members may have waited to see DDA off. But let us not forget that years whisk away, while issues don't - unless they are appropriately and adequately addressed. It is not a right approach to view development issues as obstacles to advancement of trade negotiations. Best way to advance is to accept development challenges as realities and see how trade negotiations can best take care of these challenges.

Bali could be a stepping stone for future. To be so, Bali must reaffirm commitment to rule-based multilateral trading system that is transparent, inclusive and development-friendly. It must underscore the continued importance of development dimension in WTO; provide a clear roadmap to accomplish Doha Round at the earliest opportunity; and must deliver concrete and meaningful results especially in favour of LDCs.

Thank you!