

# The 10th WTO Ministerial Conference, Nairobi

## From Bali to Nairobi

### Tracing 'Development' in the Doha Development Agenda

Issue Brief #3

#### Background

The explicit aim of the Doha Development Agenda (DDA) was to conclude a broad deal to facilitate development through trade and thereby better integrate developing and least developed countries (LDCs) into the global economy. The focus of negotiations has, therefore, been on reforming agricultural subsidies, improving access to global markets, ensuring that new liberalisation in the global economy respects the need for sustainable economic growth along with work on other issues, in particular, the implementation of the current WTO agreements.

The breadth of issues covered in the Doha Round, however, has made it difficult to assemble a package agreeable to all WTO Members, and progress in the DDA was stalled in 2008.

After years of stagnation the WTO received a boost at the 9th WTO Ministerial Conference held in Bali, Indonesia, in December 2013 with an agreement on Trade Facilitation and several other decisions. Of the 21 subjects that were part of the original Doha Declaration (WT/MIN (01)/DEC/1), the Bali Package addressed only four of them, namely: agriculture; LDC issues; cotton; and trade facilitation. Regarding the Regular Work under the WTO General Council, the subjects covered were e-commerce; intellectual property; small economies; and trade and technology transfer.

The Bali Package was an effort to break the long-lasting stalemate in multilateral trade negotiations. In Bali, the WTO Members agreed to formulate a clearly defined post-Bali work programme (PBWP) on the outstanding issues of the DDA, with a view to overcoming the key stumbling blocks to the conclusion of the DDA negotiations.

The deadline to produce a working document on the PBWP was December 2014. However, the Members missed this deadline due to differences in opinion on the priorities to be accorded to various DDA issues and agreed to extend the deadline to July 2015. That was missed too.

This Issue Brief traces the progress that has been made on agreed issues in the PBWP. It shows that in spite of the progress that was made in Bali, work on these issues has been lacking. It will, therefore, remain to be seen whether the WTO Members will continue with the momentum that was gained in Bali to the broader agenda at the 10th Ministerial Conference (MC10) to be held in Nairobi in December 2015.

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#### Doha Development Agenda

##### Agriculture

##### Doha Declaration

Members committed to comprehensive negotiations aimed at:

- Substantial improvements in market access;
- Reductions of, with a view to phasing out, all forms of export subsidies; and
- Substantial reductions in trade-distorting domestic support.

The declaration makes special and differential treatment for developing countries integral throughout the negotiations, both in countries' new commitments and in any relevant new or revised rules and disciplines. It says that the outcome should be effective in practice and should enable developing countries meet their needs, in particular in food security and rural development.

### ***Bali Ministerial Declaration***

#### **(a) Public stockholding for food security purposes (WT/MIN (13)/38)**

The Members agreed on an interim solution to not challenge and take to dispute settlement measures utilised by developing countries to enable public stockholding programmes for food security purposes that exist as of the date of the decision. A permanent solution was to be found by 2017.

#### **(b) Tariff rate quota administration provisions of agricultural products (WT/MIN (13)/39)**

According to the decision, the Members must evaluate the allocation of import licenses and consider the allocation of new ones when licenses held by private operators are under-filled for reasons other than those that would be expected to be followed by a normal commercial operator. If there is no commercial reason for under-filled licenses countries must request holders of these licenses whether they would be prepared to make them available to other potential users. Countries must provide for an effective re-allocation mechanism of import licenses when member states do not notify their quota-fill rate or if the fill rate is below 65%.

#### **(c) Export Competition (WT/MIN (13)/40)**

The Bali Ministerial Declaration acknowledged the importance of the subject and regretted that no agreement could be reached in 2013 on the manner in which export subsidies and equivalent measures could be eliminated. At the Bali Ministerial, the commitment to eliminate all subsidies to agricultural exports, including financial

contributions and other advantages gained from government-supported export credit and insurance was watered down. The Members promised to "exercise utmost restraint" in using any form of export subsidy and also promised to "ensure to the maximum extent possible" progress in eliminating all forms of export subsidies.

#### **(d) Cotton (WT/MIN (13)/41)**

No agreement could be reached on this issue. However, Ministers agreed that twice a year, the Members will discuss developments for cotton related to trade – particularly in market access, domestic support and export competition. Based on a proposal presented by the co-sponsors of the Sectoral Initiative in Favour of Cotton – Burkina Faso, Benin, Chad and Mali (the Cotton Four or C-4), dedicated discussions are to take place in the context of the agriculture negotiations, with the aim of increasing transparency and strengthening monitoring.

### ***Post Bali Developments***

In the first half of 2014, the agriculture negotiations focused on developing a work programme for completing the agriculture part of the Doha Round, as instructed by the Bali Ministerial Declaration. The Members gave priority to issues where legally binding outcomes could not be achieved in Bali, for example in export competition and cotton.

Export competition (export subsidies and export measures with equivalent effect) was considered to be an area where members have a well-developed idea of the potential landing zone for agreement.

As far as cotton related issues were concerned, it was agreed that additional information on relevant policy developments would be sought through a questionnaire, Trade Policy Review reports and further International Cotton Advisory Committee (ICAC) inputs. The Chair also noted that cotton will be an important element in the context of the post-Bali work programme.

*The General Council reached an agreement in late November that stated that members will strive for a permanent solution on food stockpiling by December 2015 instead of 2017.*

On domestic support, early in 2014, some Members objected that the timeline for a permanent solution set at 2017 was too long. The disagreement over the timing eventually led in

July to the freezing of virtually all negotiations under the DDA. Finally the General Council reached an agreement in late November that stated that members will strive for a permanent solution on food stockpiling by December 2015.

## Development and Least Developed Countries (LDCs) Issues

### **Doha Declaration**

In the Doha Declaration, the WTO Members committed themselves to the objective of duty-free, quota-free market access for LDCs' products and to consider additional measures to improve market access for these exports. The Members also agreed to try to ensure that least-developed countries can negotiate WTO membership faster and more easily.

In addition, the Sub-Committee for LDCs (a subsidiary body of the WTO Committee on Trade and Development) designed a work programme in February 2002, as instructed by the Doha Declaration, taking into account the parts of the declaration related to trade that was issued at the UN LDC Conference.

### **Bali Declaration**

#### **(a) Duty-Free And Quota-Free (DFQF) Market Access For Least-Developed Countries (WT/MIN(13)/44)**

The text adopted at the Bali Ministerial, encouraged developed and developing countries to improve their existing DFQF coverage for LDC products in order to facilitate greater market access. It instructed members to notify DFQF for LDCs to the Transparency Mechanism for Preferential Trade Arrangements and called for the

Committee on Trade and Development (CTD) to conduct annual reviews on efforts taken to provide LDCs with DFQF market access, providing reports to the General Council for appropriate action. However, because WTO Members are not legally bound to these provisions, resultant progress has been slow.

#### **(b) Operationalization of the Waiver Concerning Preferential Treatment to Services of LDCs (WT/MIN(13)/43)**

The decision at Bali sought to seek the expeditious operationalisation of the waiver through a periodic review operated by the Council for Trade in Services. Ministers agreed to work at increasing the participation of LDCs in world services trade and made a decision to promote the granting of preferences to LDCs under the LDC services waiver.

The ministerial decision also states that a high-level meeting of the Committee on Trade in Services will take place six months after LDCs submit a collective request identifying sectors and modes of supply of particular interest to them and all developed and developing countries that are in a position to do so will be expected to indicate where they can provide preferential treatment to LDC services and services providers.

#### **(c) Preferential Rules of origin for Least-Developed Countries (WT/MIN(13)/42)**

The ministerial decision contains a set of multilateral guidelines for the rules of origin that WTO Members should apply to their non-reciprocal preference schemes for LDCs to make it easier for LDC exports to qualify for preferential market access.

#### **(d) Monitoring Mechanism On Special And Differential Treatment (WT/MIN(13)/45)**

The ministerial decision adopted on the Monitoring Mechanism indicates that the Mechanism shall act as a focal point within the WTO to analyse and review all aspects of implementation of S&D provisions, and where the review identifies a problem, the Mechanism may make recommendations,

including, if necessary, for initiation of negotiations, to the relevant WTO body in charge of the technical substance.

### **Post Bali**

**Duty Free Quota Free Market Access:** While country members agreed to implement DFQF market access for products originating from LDCs, for WTO Members with difficulty meeting this requirement, the text included the option of providing DFQF access for 97 percent of LDC products, while working to progressively achieve full compliance.

Although some progress has been made since then, significant hurdles remain and the debate has concentrated on the potential gains under a 97 percent DFQF scheme – since the three percent of excluded tariff lines could potentially cover between 90-98 percent of all LDC exports – versus full coverage, as well as on the position of some members regarding increasing duty-free tariff lines for LDCs.

**Waiver on Services:** To date, 19 Members, including the major markets, have already notified their intention to offer preferences in sectors and modes of service supply of export interest to LDCs. In the area of services, preferences envisaged in the context of the exemption on services could offer new opportunities. Notification from more countries is awaited and will most probably be discussed at MC10.

**Rules of Origin:** The rules are designed on a unilateral basis without any harmonised standard, which critics say creates additional problems for the WTO's poorest Members, forcing them to adapt to a range of rules depending on the intended export market.

Moreover, the decision on rules of origin, as important as it is, only constitutes a best endeavour agreement. LDCs are calling for the adoption of a number of changes to make it easier to comply with preferential rules of origin. In addition, they also seek to simplify documentary elements by, for instance, abolishing certain certificates of non-manipulation, and recognizing self-certification of origin.

## **Trade Facilitation**

### **Doha Declaration**

Trade facilitation became a topic of discussion at the WTO at the Singapore Ministerial Conference in December 1996, however, it was only after several years of exploratory work that WTO Members formally agreed to launch negotiations on trade facilitation in July 2004 to clarify and improve GATT Article V (Freedom of Transit), Article VIII (Fees and Formalities connected with Importation and Exportation), and Article X (Publication and Administration of Trade Regulations).

### **Bali Declaration and beyond**

In December 2013, WTO Members concluded negotiations on a Trade Facilitation Agreement (TFA) at the Bali Ministerial Conference. The TFA will enter into force once two-thirds of the WTO membership has formally accepted the Agreement. The number of ratifications for TFA has increased sharply since the middle of the year with Kenya becoming the 57th WTO Member and the sixth African nation to ratify the TFA, on 10<sup>th</sup> December, 2015.

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## **Regular Work under the General Council**

### **E-commerce**

The Declaration on global electronic commerce adopted on 20 May 1998 (WT/MIN(98)/DEC/2) instructed the General Council to establish a comprehensive Work Programme to examine all trade-related issues relating to global electronic commerce, including issues identified by Members.

### **Doha Declaration**

Under the declaration the General Council was instructed to consider the most appropriate institutional arrangements for handling the

Work Programme, and to report on further progress to the Fifth Session of the Ministerial Conference.

### ***Up to Bali and beyond***

Ministers have considered the Work Programme on Electronic Commerce Ministers at their Ministerial Conferences in Geneva 1998; Doha 2001; Hong Kong 2005; Geneva in 2009; Geneva 2011; and Bali 2013. At those Conferences, Ministers have taken note of the reports on electronic commerce and have instructed the General Council and its relevant subsidiary bodies to continue their work on e-commerce. Ministers have also agreed to continue the practice of not imposing customs duties on electronic transmissions- the Moratorium on e-commerce. Ministers will take a decision on the E-Commerce Moratorium, which will expire at the Nairobi Ministerial Conference.

## **Trade- related aspects of Intellectual Property Rights (TRIPs)**

### ***Doha Declaration***

The following aims were iterated under the declaration with respect to TRIPs:

- Completion of the work started in the Council for TRIPs on the implementation of Article 23.4 for the establishment of a multilateral system of notification and registration of Geographical Indications (GI) for wines and spirits by the Fifth Session of the Ministerial Conference.
- Review Article 27.3(b), the implementation of the TRIPs Agreement under Article 71 to examine, inter alia, the relationship between the TRIPs Agreement and the Convention on Biological Diversity (CBD), the protection of traditional knowledge and folklore, and other relevant new developments raised by members pursuant to Article 71.1.

### ***What's happened since Doha?***

Neither of these objectives were achieved at the 5<sup>th</sup> Ministerial Conference at Cancun.

At a Trade Negotiations Committee Meeting in 2011, (WT/GC/W/633) delegations continued to

voice the divergent views and remained divided over the scope and the substance of both GI. And with respect to the extension of Article 23 coverage. Moreover, Members continue to differ on whether the formulation and application of a specific, tailored disclosure mechanism relating in particular to genetic resources in ensuring that the patent system promoted CBD objectives, or whether other mechanisms should be preferred, thus attaining no convergence on these issues.

These issues were also mentioned by several members in the TRIPs Council's discussions on related items during 2014 but no significant advances were made.

A separate declaration on TRIPs and public health at Doha (WT/MIN(01)/DEC/2), designed to respond to concerns about the possible implications of the TRIPs Agreement for access to medicines has met progress. The 2001 Doha Ministerial Declaration on TRIPs and Public Health had already instructed the TRIPs Council to extend the period for them to comply with provisions on pharmaceuticals until 2016. The TRIPs Council formally adopted a decision implementing this in 2002. In November 2015, it took a decision that further extends this transition period until 1 January 2033 or when a particular country ceases to be in the least developed category if that happens before 2033. This decision is expected to be adopted at the Nairobi MC.

Moreover, pursuant to the Ministerial Decision at the 8<sup>th</sup> MC at Geneva on "TRIPs Non-Violation and Situation Complaints" (WT/L/842) and the declaration at Bali (WT/MIN(13)/31) to continue examination of the scope and modalities for complaints of these complaints, the TRIPs Council agreed on 23 November, 2015 on a draft ministerial decision on so-called non-violation disputes in the area of intellectual property for a further extension of the moratorium until the Eleventh Ministerial Conference in 2017. The decision is expected to be adopted at the Nairobi Ministerial Conference in December.

## Small Economies

### **Doha Declaration**

The Doha Declaration mandates the General Council to examine challenges to participation of Small Economies in world trade and to make recommendations to the next Ministerial Conference as to what trade-related measures could improve the integration of small economies.

On 1 March 2002, the General Council agreed that small economies would be a standing item on its agenda and that the Committee would hold dedicated sessions on this matter and report regularly.

Since the launch of the Doha Round, a number of additional Ministerial or General Council decisions regarding the work programme on small economies have been taken. More recent work under the work programme has focused on the follow-up to the Ministerial Decision taken in 2011 (WT/L/844), which called for the dedicated session of the Committee to examine the effects of non-tariff measures (NTMs) on the exports of small economies.

### **Bali Declaration**

A decision on the work programme on small economies was taken at the Ninth Ministerial Conference in December 2013 (WT/L/908). The WTO Secretariat was instructed to provide relevant information and factual analysis for discussion among members in the Committee's dedicated session on, among other things, the challenges and opportunities experienced by small economies when linking into global value chains for trade in goods and services.

## Conclusion

On 31 July, 2015, Director General Azvedo announced that the WTO would not be able to deliver a clearly defined PBWP on the remaining DDA issues and urged Members to reflect on what might be doable from their perspectives.

Even in respect to Bali deliverables very little progress has been made. Additionally, the continuous inter-dependency of progress in contentious areas is resulting in stalling of negotiations in all avenues.

For instance, at an informal meeting of the Trade in Services Council on 23 June, 2015, Members iterated that in light of the absence of progress in the negotiations on agriculture and industrial goods, the level of ambition in services could not be set higher than in those areas. Whereas, on the issue of market access in agriculture, the Chairman of the negotiating group declared that advancement "is not something that can occur in isolation from all the work that continues on the other pillars of the negotiation," i.e. domestic support and export competition.

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Members will have to work out how the outstanding issues under the DDA should be followed up after MC10. It is time that the deliberations take the form of decisions and give some respite to an immensely protracted negotiation that either gives nothing or not enough.

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