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BRIDGES NEGOTIATION BRIEFING

A Brief Guide to Negotiations at the WTO's Ninth Ministerial Conference

SPECIAL BALI ISSUE - DECEMBER 2013

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BRIDGES NEGOTIATION BRIEFING

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WTO Ministerial: Bali Package Hanging in the Balance

Trade ministers are set to meet in the Indonesian island province of Bali from 3-6 December for the WTO's Ninth Ministerial Conference, in a meeting that has been touted – for better or worse – as a turning point for the 159-member organisation. Yet on the eve of the conference, what will actually be on the agenda in Bali remains fluid.

Geneva-based negotiators have spent the last several months feverishly negotiating a small package of concessions that, if achieved, would mark the first multilateral trade deal since the WTO was formed in 1995. A deal in Bali, officials and observers alike had said throughout the year, would provide a major boost to the organisation's credibility at what many have deemed to be a critical moment in its history.

Days before the ministerial, however, WTO Director-General Roberto Azevêdo confirmed that, despite a "tremendous effort" on behalf of the membership and some significant advances, they had not yet agreed on a deal to present to their ministers – leaving the fate of the Bali conference hanging in the balance.

"At this point in time we cannot tell the world that we've delivered," he told members at a General Council meeting on 26 November. "And I will inform the ministers that we have failed to find convergence. I will tell them that we came truly close to a successful outcome, but that, once more, the finish line eluded us."

In light of the impasse in Geneva, the current Bali texts will be presented to ministers as they stand: as texts that have been stabilised, but not agreed. What becomes of them – and the next steps for the organisation as a negotiating body – will lie in the hands of the ministers.

What was on the table

In the months leading up to the Bali conference, WTO members have set their sights on finalising a three-pronged package of deliverables, pulled from the broader Doha Round negotiations. The planned centrepiece has been an agreement on trade facilitation, which aims to ease customs procedures in order to expedite trade flows. Members have also sought the adoption of a set of proposals relating to agriculture, along with some development-related components – including proposals focusing on the needs of least developed countries.

While the Doha process has dominated the Bali speculation, other initiatives – such as updating the list of products covered by WTO's Information Technology Agreement (ITA) – have also been ramping up with an eye to achieving a result at the ministerial. Less than two weeks before the meeting, however, the group negotiating the ITA expansion suspended the process due to internal disagreements, and at the time of this writing had not announced dates for resuming the talks.

A dozen Doha years

The Doha story began in 2001, when the WTO – a group that then numbered 142 members – kicked off a new negotiating round at their Fourth Ministerial Conference in the Qatari capital. Development was placed at the core of the new round, with the aim of addressing the needs of developing countries. When ministers began the negotiations, they expected to finish them in just four years.

Twelve years and several setbacks later, the Doha process has no clear end in sight. Even if ministers do manage to seal a deal in Bali, what will happen with the rest of the Doha Round agenda - along with the various "new issues" that have emerged over the past two decades - remains the subject of heated debate.

The following set of briefings are meant to provide an overview of the different Doha elements that have dominated Geneva trade discussions in the months leading up to the Bali meeting: trade facilitation, agriculture, and development. These notes outline the relevant history of these negotiating areas, their respective mandates, and the state of play at the time of the 26 November General Council.

The Bridges Reporting Team

TRADE FACILITATION

Reducing border inefficiencies

Centrepiece of proposed Bali package aims to cut "red tape" at the border

The trade facilitation talks aim to simplify customs rules and reduce inefficiencies that create long lag times in cross-border flows of trade. The topic has grown in prominence in recent years due to the increased integration of global supply chains, and the resulting need to increase efficiency within such chains.

Recent estimates – such as analysis done by the Peterson Institute for International Economics for the International Chamber of Commerce – have suggested that a trade facilitation deal could add close to US$1 trillion to the global economy.

Since trade facilitation was formally added to the WTO's Doha Round agenda in the early 2000s, the talks have proceeded with notably substantive engagement. At the time that the talks were launched, trade facilitation was included under the Round's principle of the "single undertaking" – in other words, that nothing in the Round is agreed until everything is agreed.

In the wake of the WTO's Eighth Ministerial Conference in December 2011, where the Doha Round negotiations were formally acknowledged as "deadlocked," trade facilitation quickly emerged as an area that could form the centrepiece of an "early harvest."

However, over the past year rifts have deepened within the trade facilitation negotiations, with problems arising on both a technical and political level. Geneva-based negotiations in the weeks leading up to the ministerial proceeded at a frenetic pace, making significant progress toward their goal of a Bali deal.

However, with gaps still remaining, WTO Director-General Roberto Azevêdo declared the process at an "impasse" just days before the ministerial. Political action by ministers, he said at the time, would be the last hope for achieving even meagre success in Bali.

Singapore issues

The trade facilitation negotiations formally kicked off in 2004, after years of discussions in working groups launched at the WTO's First Ministerial Conference in Singapore. Along with trade facilitation, WTO members had been examining whether to add a series of topics – trade and competition; trade and investment; and transparency in government procurement – to the existing Doha Round negotiations.

The four topics were collectively known as the Singapore Issues, and many had originally expected these to all be added to the Doha Round agenda. Eventually, WTO members began to consider agreeing on discrete sets of "modalities," rather than a collective set. In 2003, the Least Developed Country (LDC) group, with the support of over a dozen other developing countries including China and India, proposed dropping three topics, except trade facilitation, from the work programme.

In April of the following year, a "core group" of developing countries and LDCs said they were ready to discuss trade facilitation, but only for clarifying substantive modalities for negotiations. In July 2004, developing countries accepted negotiations on trade facilitation as part of a broader "July Package"– a framework deal aimed at keeping the Doha talks alive after the breakdown of the 2003 ministerial in Cancún.

The 2004 decision to include trade facilitation was widely viewed as a result of development language that was considered "unprecedented" in the global trade body's history, and perceived progress in agriculture following the 2003 Cancún ministerial.

According to the trade facilitation mandate, negotiations in this area aim to clarify and improve three articles of the WTO's General Agreement on Tariffs and Trade (GATT) 1994: Article V, involving freedom of transit; Article VIII, which deals with limiting border fees and formalities; and Article X, regarding publication and administration of regulations.

The text is divided into two parts: the first, involving specific commitments countries will take to improve their customs procedures (Section I); the second involving special and differential treatment for developing and least developed countries (Section II).

In the years that followed the July 2004 decision, members tabled a series of proposals on various topics, refining them repeatedly in order to eventually develop a text upon which they could negotiate. In December 2009, a draft consolidated text was released that encapsulated the proposals raised to date, which have served as the basis for negotiations since.

Specific commitments

The first section of the trade facilitation draft text deals with a series of commitments that – if agreed – WTO members will take to expedite trade flows across their borders. These involve areas such as improving transparency, standardising documentation requirements and trade-related fees, and streamlining existing border procedures in order to eliminate inefficiencies and duplicated work.

The proposed commitments span across a range of areas. The 14 articles in the current text deal with topics such as whether to extend the right to appeal customs/border decisions to any person or company; whether to eliminate the use of customs brokers; whether members can employ private companies on the territory of other members to verify details of goods destined for import; and the issuing of binding decisions – known as advance rulings – by customs authorities ahead of the export or import of goods, so long as they fulfil certain conditions.

Some of these commitments, such as the use of customs brokers, remain in brackets, according to a copy of the stabilised text seen by Bridges. Expedited shipments – which involve those from exporters that use security, logistics, and tracking technologies to follow and control shipments at every point during their conveyance – is another area that has proven difficult to resolve.

Another particularly contentious area in Section I involves transit, which is an area of particular interest for land-locked countries. During the talks, some countries have tabled possible disciplines that would require that WTO members treat goods from all fellow members equally, for the purposes of transit, and allow traders from other countries the freedom to choose transit routes. One of the main areas of difficulty involves how to deal with goods being transported through "fixed infrastructure," particularly energy products such as oil and gas being moved through pipelines.

Other areas, such as single window clearance, are currently free of brackets. Single windows attempt to speed up the passage of goods through customs by consolidating all trade documentation requirements in one office also responsible for customs clearance.

Until recently, customs cooperation had been one of hardest parts of Section 1. This topic involves how to exchange information between importing and exporting authorities of member countries, in order to address fraud. Customs cooperation has been difficult because of concerns such as how to handle the increased volume of requests for such data, as well as the issue of confidential information.

Members were able to achieve a breakthrough in this area earlier this month. According to a copy of the stabilised text seen by Bridges, the article dealing with customs cooperation currently includes a series of provisions relating to confidentiality, ways to account for administrative burdens, details on the manner in which this information will be provided, and what the terms of these requests will involve.

December 1996
Ministers agree at the Singapore Ministerial Conference to launch working groups on trade facilitation; trade and competition; investment; and transparency in government procurement – collectively known as the "Singapore issues."

November 2001
Trade ministers launch WTO "Doha Round" in Qatar – the ninth negotiating round since WWII.

September 2003
WTO Cancún Ministerial Conference collapses. Members deeply divided over Singapore issues.

July 2004
Members sign off on "framework package" aimed at saving Doha Round; trade facilitation added to negotiating agenda while other Singapore issues are dropped.

2004-2009
Members circulate, refine proposals for potential text in a trade facilitation deal.

2008
Geneva "mini-ministerial" attempts to conclude Round; talks breakdown.

December 2009
First consolidated draft text of a trade facilitation agreement released.

April 2011
Chair of trade facilitation talks releases updated draft text; only negotiating group chair to do so.

December 2011
Doha Round talks formally declared at an impasse at ministerial in Geneva; ministers direct members to explore new negotiating approaches.

2012-2013
Convergence begins to emerge around negotiating an "early harvest" for trade facilitation, selected other issues from Doha Round. Negotiations push in earnest for Bali outcome.

November 2013
Geneva-based preparations for Bali ministerial declared at an impasse by WTO Director-General.

Implementation: binding or best endeavour?

The trade facilitation mandate is notable in that it also includes language saying that developing countries will not be required to implement the commitments they take in Section I of the agreement unless they receive the technical assistance to do so.

Achieving this balance between establishing firm commitments in Section I with developing countries' respective needs for technical assistance and capacity-building to implement them, as outlined in Section II, has long been a major stumbling block.

In trade facilitation, commitments for developing and least developed countries can fall under three potential categories. Category A includes those provisions that will be implemented immediately upon the agreement's entry into force; category B includes those commitments that will require a transition period; and category C involves those commitments that will require both a transition period and technical assistance.

Developing countries called for clear assurances that they will receive the necessary support to implement their new Section I commitments. Otherwise, they said, many of these commitments may need to be made on a "best endeavour" basis – a suggestion that many developed countries have said would nullify many of the agreement's potential benefits, since "best endeavour" often results in non-implementation.

The trade facilitation mandate, as outlined in Annex D of the July 2004 Package, notes that members shall work to "identify their trade facilitation needs and priorities," especially those of developing country members, and will also "address the concerns" of such members regarding the cost implications of measures taken under a trade facilitation deal.

Notably, the mandate also says that members, in particular developing countries, have made a commitment to "adequately ensure such support and assistance" during the talks, and that developing and least developed country members will also receive support – such as for infrastructure development – in order to implement new trade facilitation measures.

Much of Section II – which had been, until then, the "hardest nut to crack" – had been resolved in the days before the 26 November General Council meeting. The remaining differences, sources say, are primarily in Section I of the draft text. Brackets reportedly lie around 50 or so items – a substantial reduction from the several hundred that were in place just months ago.

Geneva impasse leaves Bali outcome uncertain

A week ahead of the Bali ministerial conference, WTO Director-General Roberto Azevêdo confirmed that the Geneva negotiating process had not been able to yield a Bali deal. The 26 November announcement shocked the trade world, and has left the prospects for the upcoming conference markedly uncertain.

In the weeks leading up to the ministerial, a deal had appeared close, with texts nearly completed in the agriculture and development parts of the Bali package. However, marathon-length negotiating sessions on trade facilitation ended without a final resolution on Monday 24 November.

The next steps for the trade facilitation agreement remained unclear at the time of this writing. Sources say the difficulties in Section I are both technical and political, making it difficult to predict what approach ministers might take to break the impasse, and whether an agreement will be possible at Bali at all, or even in the weeks thereafter.

AGRICULTURE

Small steps forward on farm trade?

A "low-ambition" package of farm trade measures is still generating heat at the WTO.

Despite lack of agreement among negotiators on the "small package" of measures for the WTO's Ninth Ministerial Conference in Bali, draft texts on farm trade are being sent on to ministers. Director-General Roberto Azevêdo, however, has clarified that these measures would not be presented as "agreed."

The current package had been put forward as a down-payment on a bigger set of issues under negotiation as part of the Doha Round of trade talks, which were declared at an impasse in 2011. Prospects of a deal on trade facilitation reinvigorated talks on agriculture this year, which developing countries in particular have argued must be part of any Doha "early harvest."

The G-20 group of developing countries that favour reform in developed country farm trade policies have tabled proposals on export subsidies and similar measures, and on easing administrative processes that affect their farm exports. At the same time, the G-33 coalition of developing countries – which are home to sizeable populations of small farmers – have rallied around a proposal from India on public food stockholding schemes.

A separate proposal from West African countries on cotton is being considered as part of a set of "development" issues, including those affecting least-developed countries.

Background

Agriculture talks under the Doha Round were meant to build on governments' commitment to move toward a "fair and market-oriented agricultural trading system." The overall aim was to achieve substantial reductions in trade-distorting domestic support for farm goods, substantial improvements in market access, and export subsidy reductions, with a view to phasing them out completely. Trade ministers also agreed that special and differential treatment for developing countries was to be an integral part of all elements of the negotiations.

Despite missing the original 2005 deadline for wrapping up the talks, negotiators made gradual progress in agreeing on a broad outline of a possible deal – prompting a bid in July 2008 to finalise a deal at a high-level meeting in Geneva. When talks broke down at the so-called Mini-Ministerial Conference, momentum was only sluggish until ministers acknowledged the round was at an "impasse" three years later. Farm trade issues have since been at the forefront of efforts to agree on small steps toward a bigger deal in the run-up to the Bali Ministerial.

What do countries want on farm trade?

Countries that are efficient farm exporters have traditionally pushed for agricultural trade liberalisation, with the Cairns Group uniting developed countries like Australia with developing countries such as Brazil and Argentina. In contrast, countries with heavily-protected farm sectors have argued against steep tariff and subsidy cuts: the G-10 group defending this stance again brings together developed countries, such as Japan and Switzerland, with those classing themselves as developing, such as South Korea.

The US and EU – both major farm trading powers – have sought to open markets for farm goods, while defending their current farm subsidy ceilings. The G-20 developing country group has been seeking to reform trade-distorting farm policies across the developed world since 2003, when China and India joined forces with farm-exporting nations such as Brazil. Finally, the G-33 developing country group has argued for special treatment for their smallholder farmers; this coalition brings together large countries such as China and India with far smaller ones such as Barbados and Saint Lucia.

1994
GATT Uruguay Round sets up WTO, concludes Agreement on Agriculture, including Art. XX on continuing reform.

1999
Seattle ministerial breaks down, no agreement to launch new round.

2001
WTO ministerial launches Doha Round, including talks on farm trade

2003
First draft texts. G-20 developing country group set up. WTO Cancún ministerial breaks down.

2005
Hong Kong ministerial agrees to end agriculture export subsidies.

2006-2007
successive draft texts refine basis for Doha deal

2008
Mini-Ministerial in Geneva comes close to concluding Round, divergence on industrial goods and agricultural safeguard prompt breakdown

2011
Ministerial in Geneva recognises Doha Round "impasse"

2013
Bali Ministerial aims for deal on "small package"

"Peace clause" on food stockholding?

India has spearheaded a push by the G-33 coalition for WTO rules to be updated in order to grant developing countries greater flexibility for food purchased at administered prices when building public stocks for food security purposes. Under current rules, purchases made at market prices can be included without limits under the WTO's "green box," for farm subsidies that cause only minimal trade distortion. However, the group contends that price inflation has eroded countries' scope to make purchases at government-set prices since WTO members first agreed on a methodology for calculating farm subsidies – potentially curtailing India's scope to roll out an ambitious new food security scheme without being challenged under the global trade body's dispute procedure.

Developed countries and also some developing countries argue that allowing unlimited amounts of market price support to be included in the green box could distort trade, and even undermine food security elsewhere. As a possible compromise, countries have negotiated the outlines of a possible "peace clause" that would commit all countries to refraining from initiating legal action on these schemes under the WTO's agriculture agreement, in exchange for greater information and transparency on how they operate. Countries are expected to agree to work towards a permanent solution in the meantime.

Easing farm import quotas

The G-20 has argued that developed countries should make it easier for farm exporters to access their markets in cases where import quotas are persistently not filled. The US in particular has responded by insisting that large developing countries such as China should undertake similar commitments – which Beijing has long indicated would be hard for it to accept. Countries appear close to agreement on a consensus solution which would see the US, alone among developed countries, exempted from post-2019 rules on market access in this area.

Japan, which had also warned it would find it hard to accept similar conditions, recently indicated it would refrain from joining the US on a list of countries that plan to opt out from proposed future disciplines, so long as countries could agree on ambitious outcomes in other areas of the Bali talks. G-20 members welcomed the move, as well as similar indications from the EU, Norway, and Switzerland.

Ending export subsidies and similar measures

G-20 countries had also called for WTO members to recognise that trade ministers had agreed eight years ago to end all export subsidies and similar measures in 2013. Although the US and EU have insisted that this deal was conditional on progress on the broader Doha package, the G-20 have still argued that concrete steps are needed to show that WTO members remain serious about achieving their goal, even if the specific target is missed.

A draft text on the issue – which negotiators had expected would take the form of a draft declaration – would commit countries to maintaining progress towards eliminating export subsidies and other measures with equivalent effects, and to keep these "significantly below" the level of current commitments. However, farm exporting countries such as Argentina remain disappointed that the proposed accord is still far weaker than they had hoped.

G-33 exception

Of the various elements put forward for a Bali deal, one of the least controversial has been a proposal from the G-33 for WTO members to recognise that a set of farm subsidy schemes should be exempt from ceilings at the global trade body, on the basis that they cause only minimal trade distortion. These include various "general services" programmes related to land reform and rural livelihood security, such as those for land rehabilitation, soil conservation, drought and flood management, rural employment, issuing property titles, and farmer settlement.

SPECIAL AND DIFFERENTIAL TREATMENT

Ensuring flexibilities for developing countries

A step forward on the Monitoring Mechanism

Special and Differential Treatment (S&DT) has long been considered a crucial part of the Doha Round's development dimension. Originally created as an overarching mechanism to give preferential treatment to developing and least developed countries (LDCs), the measure aimed to help these countries more easily integrate into the multilateral trading system. To this end, paragraph 44 of the Doha Ministerial Declaration granted a mandate to review all S&DT provisions with a view to making them stronger, more precise, effective, and operational. At the Geneva Ministerial Conference in 2011, ministers agreed to expedite work towards finalising a "Monitoring Mechanism" to provide regular reviews of existing S&DT provisions.

Cancún proposals

In 2003, members managed to agree in principle on a group of 28 S&DT proposals, out of an original 88, in time for the Cancún Ministerial. However, when ministers failed to reach a deal on the package, the 28 proposals were relegated to the "waiting room."

Negotiators revisited the S&DT subject two years later in Hong Kong, and then again at the 2011 Ministerial Conference in Geneva, when ministers requested a special negotiating session of the CTD-SS to "take stock" of the dormant package, with a view to formal adoption.

Despite having previously been considered as a possible deliverable for Bali, the proposals were dropped from this year's proposed "package" earlier this autumn, with sources faulting the complexities that emerged in revisiting the decade-old proposals.

Monitoring Mechanism

One development-focused subject that has seen notable advances ahead of Bali involves the Monitoring Mechanism, which aims to review the functioning of provisions in multilateral trade rules for S&DT for developing countries.

Negotiations on the mechanism date back to a July 2002 decision by the General Council endorsing an African Group proposal on the subject, which also directed the Committee on Trade and Development Special Session (CTD-SS) to establish terms for how it would work. The talks then languished for years as the Mechanism was linked to calls by some developed countries for "differentiation" among non-LDC developing countries – a famously controversial issue in WTO politics.

In the months leading up to this year's Bali ministerial, members were divided over how to best balance developed countries' aim of avoiding the creation of a permanent negotiating forum versus developing countries' desire for something beyond a transparency exercise.

However, members were able to reach a tentative resolution in November, with the current draft text indicating that the Mechanism will serve as a focal point within the WTO to analyse and review all aspects of implementation of S&DT provisions. In cases where the review identifies a problem, the Mechanism may make recommendations, including, if necessary, for launching of negotiations, to the relevant WTO body.

Recommendations emerging from the Mechanism, according to the draft text, would inform the work of the relevant body, but not define or limit its final determination. If approved, the Mechanism would operate in dedicated sessions of the Committee on Trade and Development (CTD) and meet twice a year, though additional meetings could be convened as appropriate. The status of recommendations emerging from the Mechanism would then be included in the annual report of the CTD to the General Council. According to the text, the Mechanism would be reviewed three years after its first formal meeting.

LDC ISSUES

Poor countries look for progress in Bali

Members seek Doha "down-payment" to address poor country needs

Improving the trading prospects of developing countries was the Doha Round's "raison d'être" when the negotiations began in 2001. Prior to the Round's launch, the organisation had been subjected to harsh scrutiny by some critics who charged that its rules, in their current form, placed too much of a focus on rich country interests. The monumental task in updating such rules, however, has met repeated negotiating setbacks which the Round has yet to resolve. For a brief period at the WTO's Eighth Ministerial Conference in Geneva, an "early harvest" for some LDC issues appeared possible, only for the process to be derailed weeks before the 2011 meeting. This year's Bali process has aimed to bring some of these issues back to the fore, in hope of achieving deliverables for the organisation's poorest members.

Advances since 2011

Despite the formal declaration that the Doha talks were at an impasse at 2011, ministers did adopt a waiver that would allow members to grant preferential treatment to services and service suppliers from least developed countries (LDCs). In the two years since, two of the other decisions that emerged from the 2011 conference – specifically involving LDC accessions and their implementation of intellectual property rules – have also seen advances at the global trade body.

WTO members at the 2011 ministerial had committed themselves to revising the accession guidelines for the world's poorest countries, agreeing to strengthen, streamline, and operationalise a previous set that had been established in 2002. These revised guidelines were approved by the General Council in July 2012, just ahead of the mandated deadline. These revised guidelines establish a series of benchmarks, particularly with regards to goods market access, as well as elements on special and differential treatment (S&DT), transition periods, transparency, and technical assistance.

Ministers in Bali are now expected to formally sign off on the accession of Yemen – the seventh LDC to join the organisation's ranks since 1995. Yemen will have until June of next year to ratify its accession package.

In June 2013, WTO members then agreed to extend until July 2021 the "transition period" for LDCs to implement WTO rules on intellectual property rights. The original transition period was set to expire this past July.

Priority issues

Last May, the LDC Group submitted a proposal outlining the priority issues that they wished members to consider for a potential Bali "early harvest" in December. Consultations since then have focused on developing draft texts regarding rules of origin, operationalising the services waiver, duty-free quota-free (DFQF) market access, and cotton.

These were originally designed as draft decisions for ministers to agree on in Bali, and currently contain no brackets. However, the impasse announced on 26 November by Director-General Roberto Azevêdo has – as with the rest of the Bali package – left the future of these texts an open question.

Rules of Origin

Rules of Origin (RoO) confer an economic nationality on products traded across borders, defining how much processing must take place locally before goods are considered to be the product of the exporting country. In the case of LDCs, preferential RoO are often considered too restrictive and inflexible, making it difficult for them to take advantage of

2002
Members adopt guidelines to help facilitate WTO accession negotiations for LDCs

2005
Ministers in Hong Kong adopt decision setting goal to provide DFQF market access on a lasting basis for all products originating from LDCs.

Members also agree to eliminate cotton export subsidies, and that developed countries would allow cotton from LDCs into their markets duty-free and without quotas.

December 2011
TRIPS Council is instructed to consider LDCs request for extension of TRIPS transition period.

WTO ministers adopt waiver that would allow members to grant preferential treatment to services and service suppliers from LDCs.

July 2012
WTO General Council formally signs off on revised LDC accession guidelines, aimed at further strengthening, streamlining, and operationalizing 2002 version

May 2013
LDC Group submits communication highlighting their priority issues for Bali ministerial conference.

June 2013
WTO members agree to extend TRIPS transition period for LDCs until July 2021

Autumn 2013
Convergence deemed "close" for some LDC draft decisions for Bali ministerial. Subsequent impasse in Geneva process puts full Bali package in question.

the intended preference. Furthermore, these are currently designed on a unilateral basis, without any harmonised standard.

Several methodologies exist for establishing substantial transformation, which is designed to evaluate the extent of meaningful local production. Part of the complexity, analysts say, is that no single method stands out as being the most appropriate in conferring origin across all product categories.

Negotiators first attempted to address the issue in the context of the DFQF initiative introduced at the WTO's First Ministerial Conference in Singapore in 1996. Little progress was made in the following decade, although the 2005 Hong Kong Ministerial Declaration does feature a brief reference calling for action to simplify preferential RoO processes, as well as making them more transparent. This text formed the basis for the more detailed proposals on RoO reform from the LDC Group.

In June 2006, the LDC group put forward a proposal aimed at promoting a focused debate on RoO and LDCs. However, this did not receive much traction from preference-giving countries. Emphasising that the responses to the 2006 submission "have not been encouraging," the LDC Group highlighted in its May 2013 proposal various bilateral movements as an indication of the necessity for reform; examples include the EU's decision in 2011 to recognise the specific needs of LDCs in RoO by differentiating them from other developing economies.

In an October 2013 submission, the LDC Group set out the technical aspects of preferential rules of origin and discussed different methodologies to determine when substantial or sufficient transformation has taken place. The draft decision also details provisions related to transparency and cumulation – the latter of which allows two or more parties to a preferential scheme to jointly fulfil the relevant local processing requirement.

Currently, this draft decision is in the form of non-binding guidelines, implying that developed country members are free to choose to adopt these guidelines or not. It states that "members should endeavour to develop or build on their individual RoO arrangements applicable to imports from LDCs in accordance with the following guidelines."

Whether a product is eligible for any preferences offered under a trade agreement depends on the level of transformation. The submission therefore proposes that levels of substantive or sufficient transformation be determined using a percentage criterion based on the value of underlying materials.

Considering their limited productive capacity, LDCs wish to keep the threshold level of value addition as low as possible, and to allow foreign inputs up to 75 percent of product's value in order to qualify for preferential treatment. However, they note that the choice of a single rule should not preclude preference for product-specific rules where these are in the interest of LDCs – for example, in the clothing sector.

Services waiver
Although the 2011 services waiver represented a significant step forward for LDCs, analysts have warned that the waiver will only confer economic benefits if it is operationalised in a commercially meaningful way. So far, no request to use the waiver has been made by LDCs, and no preferences have been granted by their trading partners.

The services waiver has its origin in the development provisions of the WTO's General Agreement on Trade in Services (GATS), with Article IV calling on members to facilitate increased participation of developing countries in services trade through "negotiated specific commitments." The text goes on to state that LDCs should be given "special priority," instructing members to progressively agree on a set of LDC "negotiating guidelines" to pin-down the mechanics of granting this priority. The 2005 Hong Kong Ministerial Declaration affirmed the need to develop "appropriate mechanisms for according special priority," and by 2008 it was decided that this mechanism would take the form of a waiver.

The 2011 decision provides a two-track approach. On the one hand, market access preferences of the type referred to in GATS Article XVI would be automatically covered by the waiver. On the other hand, non-market access measures are not automatic, but can be authorised by the WTO Council for Trade in Services (CTS). These can include, for example, regulatory preferences, preferential national treatment, and exemptions for quotas or taxes. Any preferences granted will apply immediately and unconditionally to all services and services providers from LDCs and will be annexed to the waiver.

In order to release the potential economic benefit of the waiver, the draft decision that was negotiated for the Bali ministerial would, if and when agreed, instruct the CTS to launch a process aimed at promoting ''the expeditious and effective operationalisation" of the waiver, including a periodic review.

A high-level meeting of the committee would take place six months after LDCs submit a collective request to identify sectors and modes of supply of particular interest. Developed and developing countries ''in a position to do so" would then be expected to indicate where they could provide preferential treatment to LDC services and services providers.

The LDC Group has also underlined the need for increased technical assistance and capacity building, such as through the Aid for Trade (AfT) initiative, in order to overcome their supply side constraints to services trade. The process of identifying preferences in services for LDCs has started, and efforts are underway to define the interests of the LDCs – sector by sector, export market by market.

Return of cotton

The controversial topic of cotton resurfaced just a few weeks prior to this year's ministerial, after Benin, Burkina Faso, Chad, and Mali – a group of West African cotton producers collectively known as the C-4 – tabled a proposal on the subject in late October. Their proposal builds on nearly a decade of negotiations, dating back to the 2005 call by ministers in Hong Kong to address the subject "ambitiously, expeditiously and specifically."

West African producers have long pushed for a change in the WTO's rules on cotton, arguing that developed country subsidy schemes have kept global prices of the commodity artificially low, hurting their cotton-dependent economies.

The October proposal requested that cotton imports from LDC markets be granted DFQF market access from 1 January 2015 onwards, and called for the elimination of cotton export subsidies. The current draft text, however, no longer features to these specific requests.

Instead, it suggests that members hold bi-annual dedicated discussions, within the context of the broader Doha agriculture talks, that would focus on trade-related developments regarding export competition, domestic support, and tariff and non-tariff measures involving cotton trade.

Looking ahead, members are expected to continue on the work towards the previously agreed-upon 2005 objectives, using the 2008 revised draft agriculture modalities as a reference point.

Duty-Free Quota-Free access

The 1996 Singapore Ministerial saw the launch of discussions on an initiative aimed at providing duty-free quota-free market (DFQF) access for LDC goods. Five years later in Doha, ministers committed to providing products from LDCs with DFQF market access. In 2005, ministers in Hong Kong achieved a major break-through in this area, including an annex in their final declaration which stated that those members in a position to do so should implement DFQF market access for all products originating from LDCs.

The deadline was set for 2008, or for no later than the start of the implementation period. Members with difficulty meeting this requirement would have the option of providing DFQF access for 97 percent of LDC products, while working to progressively achieve full compliance.

However, the DFQF negotiations have seen little substantial progress since then, with the debate largely focusing instead on the potential gains that could be achieved under a 97 percent DFQF scheme as opposed to full coverage, as well as on related rules of origin.

Members have struggled with multiple hurdles in trying to achieve a concrete outcome in this area. It has even proven divisive within the LDC Group itself, given that some members fear the possibility of "preference erosion."

The draft text being forwarded to ministers in Bali would, if agreed, further encourage developed countries to improve their existing DFQF coverage for LDC products in order to facilitate greater market access. Members would be instructed to notify DFQF for LDCs to the Transparency Mechanism for Preferential Trade Arrangements. The Committee on Trade and Development (CTD) would also conduct annual reviews on efforts taken to provide LDCs with DFQF market access, providing reports to the General Council for the appropriate action.

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