



Trade Hot Topics

The Bali LDC Package: How to Take It Forward

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Background

The 2013 Bali Ministerial Conference (MC9) of the World Trade Organisation (WTO) has provided an important breakthrough in the stalled Doha negotiations. Although at its heart is a comprehensive agreement on Trade Facilitation, and some decisions on Agriculture, MC9 also adopted a package of decisions for the least developed countries (LDCs) in the areas identified by them as a priority in the run-up to MC9. This issue of *Commonwealth Trade Hot Topics* highlights the LDC decisions taken by WTO Members at Bali, and some of the ways in which those decisions can be followed-up with a view to ensuring meaningful gains for the LDCs.

The LDC Package

The LDC package consists of three specific decisions relating to duty-free and quota-free (DFQF) market access, preferential rules of origin and the LDC services waiver (a decision to facilitate granting of preferences to LDCs in services). A fourth decision on cotton is also of particular importance to the LDCs. Critics may point to the 'best endeavour' nature of most of these decisions, but given the complex, sensitive and political nature

of all these issues, they represent a significant outcome with the potential to advance the cause of LDCs in the multilateral trading system. For instance, the decision on preferential rules of origin is the first of its kind under the aegis of the multilateral trading system and provides World Trade Organization (WTO) members with a set of guidelines as they formulate origin rules for LDCs. Some decisions (like the one on DFQF) contain certain directions for members to adhere to, while others (like the one on LDC services waiver) put in motion a process with a view to ensuring that LDCs secure meaningful preferences in the area of trade in services.

Before going into some depth on all of the above decisions, and how consideration of some specific steps can realise their full promise, it is worthwhile to mention that Bali does not signify the conclusion of Doha Development Agenda (DDA), and its outcome represents only a subset of broader issues being considered under it. Members are to put in place a work programme, by the end of this year, laying out a path to conclude the DDA. Discussions have begun to ascertain what could form part of the post-Bali work programme, and LDCs are working to make a submission on the LDC specific components that they would like to see forming part of this work

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programme. The specific LDC Bali decisions are examined below.

Duty-free and quota-free market access

The Decision on DFQF represents a further step forward towards the implementation of DFQF market access for LDC products. The merits of the decision are three-fold. First, what is inherent in the decision is 'gradual' or 'progressive' improvement of DFQF access for LDC products towards 97 per cent coverage of national tariff lines. Second, it in a way delinks the consideration of enhanced DFQF treatment to LDC products independent of the single undertaking, which was somewhat of a constraining provision under the Hong Kong DFQF Decision adopted in 2005. Third, it brings enhanced transparency to the review of members' DFQF schemes, including through report to be prepared by the WTO Secretariat on a tariff-line basis. However, further progress to some extent also depends on the LDCs themselves, in particular how they make use of the opportunity provided through the forum provided by the Committee on Trade and Development (CTD) which is also the body to review the progress of the decision. In fact, in each meeting of that Committee LDCs have an opportunity to push this agenda.

As far as the developed members are concerned, the implementation of the DFQF Decision taken at Bali would require only one member – the USA – to increase the number of duty-free lines, that is, to increase its present coverage from some 82.5 per cent towards 97 per cent of its tariff lines. The DFQF implementation in the US market has never been a straightforward issue. The USA maintains multiple preference schemes, along with different levels of DFQF access. Concerns have also been expressed by a few LDCs, as well as by a few developing countries, over the likely impact of the implementation of the DFQF Decision on their current exports to the US market. Available evidence suggests that most of the LDCs register trade with the USA on a narrow range of tariff lines, and there may therefore be space for the USA to consider improving its present DFQF coverage while accommodating the interests of other stakeholders.

The challenge in the post-Bali period will be whether the LDC Group can come up with a proposal with the full backing of all its members to take this issue forward – a proposal that also takes on board the concerns of some developing countries dependent on preferences in the US market. At the same time, LDCs could continue to ask developing countries to further open up their markets for LDC products

given that more than half of LDC exports are now destined to developing countries. Some key developing countries have already undertaken DFQF schemes for LDCs (e.g. China, India, South Korea), but more could be done.

Preferential rules of origin

The MC9 marked an important step forward in the multilateral trading system by adopting the first ever set of multilateral guidelines on preferential rules of origin for LDCs. This was in response to a long-standing demand from the LDCs to make rules of origin associated with preference programmes simple and flexible, and commensurate with the level of their development. The Bali decision thus brings this issue under the umbrella of the WTO for the first time.

The decision asks members to take into account the guidelines detailed therein, as they develop or build on to their rules of origin frameworks for LDCs. Even though it does not bind members to strictly follow those guidelines, the strength of the decision lies in its marriage of normative guidance with the discretion allowed to the governments something which many preference granting countries feel is necessary for such multilateral preferential schemes. For example, the guidelines contain illustrations of different possibilities of cumulation of inputs which can help LDCs source materials in an efficient and competitive manner. The guidelines also invite governments to consider flexible compliance rules that would require minimal administrative effort from the LDCs.

What could the LDCs do more in this area in the coming months? The first annual review of developments vis-à-vis the guidelines is expected to take place in the latter half of this year – in the Rules of Origin Committee. It will become clear at the review whether any WTO member has undertaken any action based on these guidelines. A number of important trading partners of LDCs (e.g. Canada, the European Union) have already implemented some reforms in their rules of origin requirements from LDCs – which more or less correspond to the letter and spirit of the guidelines – and which have proved to be beneficial for the LDCs. It is up to LDCs to identify markets where rules of origin conditions are still considered stringent and pursue them, both bilaterally and through appropriate forums provided by the WTO. The LDC Group may also reflect on the utility of a detailed decision on rules of origin which they originally envisaged prior to Bali but which could not be negotiated because of lack of time; especially in view of its long treaty language nature. It

is also to be mentioned that rules of origin issues are highly technical, requiring specialised knowledge and expertise not readily available in all delegations in Geneva.

LDC services waiver

Perhaps the most immediate task of the LDC Group in the post-Bali period, and where there is interest and enthusiasm in the trade and development community, is the preparation of a collective request from LDCs which can pave the way for securing preferences for LDC services and service suppliers. This work stems from the Bali Decision on LDC services waiver which sets out a sequence of activities to help LDCs benefit from the waiver which was adopted in 2011. The adoption of the waiver itself represented a breakthrough in 2011 (permitting members to extend preferences to LDCs without according the same treatment to others) in the context of the General Agreement on Trade in Services (GATS) where preferential market access treatment was previously not possible without such an instrument.

The Bali Decision on LDC services waiver essentially addresses the 'when' issue and left the 'what' issue to a process that will be taken forward by the WTO Services Council. Members, so far, have not granted any preferences to LDCs in trade in services, and they are now expected to indicate what they could do, at a meeting to be convened once the LDCs have submitted their collective request. A number of organisations are reportedly assisting the LDC Group with the necessary background research needed to come up with a specific submission. Preliminary investigations have indicated that there are data challenges, in particular with regard to information on trade flows from LDCs under each mode of supply as well as information on actual and potential demands in target markets.

There are certainly some challenges as members seek to operationalise the waiver. Preferences under the waiver that would benefit most the dominant modes of supply for LDCs might be relatively difficult to grant, since they would need to apply to service suppliers located *outside* the territory of the preference granting member (mode 1), or indirectly to service consumers (mode 2). Preferences granted, on the other hand, to service suppliers *within* the territory of the preference giving member might not necessarily be effective for LDCs, since mode 3 for an LDC exporter would likely be limited for capacity reasons, and members have traditionally been reluctant to liberalise market access in mode 4.

Perhaps such issues relating to the scope of the waiver and the type of preference that LDCs can seek can be tested in the discussions that have been recently initiated under the aegis of the Services Council – a process independent of the one that will be triggered following the submission of the LDC collective request. Regular dialogue and exchange of country experiences with regional preferences can help advance meaningful preferences for LDCs in services.

Cotton

The MC9 also delivered an outcome on cotton, maintaining the spotlight on cotton and renewing the push for negotiations that the dossier needed. A dossier often dubbed as a litmus test for the DDA, both from a political as well as a developmental perspective. So far, the trade aspects of cotton have seen very little progress, reflecting the lack of clear progress in the overall agricultural negotiations within which cotton is being considered. However, with regard to the development aspects of cotton, WTO Director General's Consultative Mechanism on cotton continues to monitor cotton development assistance as well as trends in production and prices of cotton; some discussions on the qualitative aspects of cotton development assistance have also begun.

While the Bali Decision on cotton aims at enhanced transparency and monitoring of trade-related aspects of cotton and envisages, for the first time, the consideration of non-tariff measures applied to cotton exports from LDCs in markets of interest to them, the LDCs, in particular the cotton proponents, need to define their ambitions in the current phase of DDA negotiations. Given that production is gradually expanding in Francophone Africa and that the level of average prices for cotton has witnessed some stability in the past few years, along with a downward trend in price-linked cotton subsidies, the cotton proponents might need to come out with the definitive trade resolution they seek at this stage of the DDA negotiations.

Trade Facilitation

A necessary follow-up work for all developing country members, including the LDCs, is to examine the Trade Facilitation Agreement where the LDCs received additional time-frame and special consideration over and above other developing countries. However, at some point they will have to comply with the Agreement. Needless to mention that certain types of commitments will only come

into effect if the LDCs receive adequate technical assistance and capacity-building support, which is one of the defining features of the Trade Facilitation Agreement adopted by members at Bali. While LDCs have sufficient time to notify 'Category A' commitments (up to one year after the entry into force of the Agreement), it is important that they identify on a priority basis those categories of commitments where they will require assistance to implement their obligations. Upfront commitment from the LDCs on the Agreement (early ratification) may facilitate receiving donor support for their identified needs. The benefits of trade facilitation will accrue to all members including LDCs since most of the measures deal with easing of customs procedures which hold potential to reduce trade transaction costs – a factor that still undermines the export competitiveness of LDCs.

Conclusion

It can be said that since the launch of the DDA negotiations in 2001, WTO members have shown their responsiveness in taking decisions in a number of areas of interest to LDCs. Over the last decade there has been incremental progress – both on offensive as well as on defensive side. What more LDCs could harvest in the remaining phase of DDA will very much depend on the overall evolving dynamics in the coming months. For instance, agricultural market access is a priority issue for many members. If negotiations resume in some form or other, it is obvious that the LDCs would need to pursue the in-principle agreement made during the framework modalities stage back in 2004 that they be exempted from any tariff reduction commitment. Same is the case with industrial goods tariff reduction negotiations where LDCs too benefit

from an in-principle agreement of not applying the formula in having to reduce their bound tariffs.

One obvious candidate in the post-Bali work programme would be to resume work on the Cancún 28 agreement specific proposals (agreed in principle at the Cancún Ministerial Conference in 2003). There was a mandate given at MC8 (2011) to take stock of those proposals with a view to reaching agreements. However, this work could not be completed. While some proposals have already been overtaken by events/developments since 2003, and some may have lost some of their commercial sheen, a number of them still merit consideration by the LDCs as they could offer important flexibility to LDCs in the application of WTO rules (e.g. procedure for recourse to Article XVIII C of GATT) or could advance trade interests of the LDC Group (e.g. effectiveness of special priority under GATS Article IV).

In the end, what LDCs achieve in the post-Bali phase of DDA work will very much depend on how they pursue the implementation of the Bali decisions, as well as how they position themselves on other issues forming part of the Post-Bali Work Programme. The LDC Bali package offers tangible benefits to LDCs. However, all these areas will require appropriate follow-up action to ensure that the benefits they promise are fully delivered. If LDCs collectively back a proposal on DFQF implementation; if they do their groundwork on services request; if they remain focused on pursuing markets where there is scope for improvement on preferential rules of origin in line with the agreed guidelines; and if they make definitive proposals to address distortions in cotton markets considering today's realities – they can indeed realise meaningful and further outcomes in all these areas.

