

# trade hot topics

## The Eighth Ministerial Conference of the WTO: A Forward Looking Agenda for Development

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The Eighth Ministerial Conference of the World Trade Organization (WTO) in Geneva, Switzerland, from 15 to 17 December 2011 offers a critical opportunity to generate fresh perspectives that would provide direction on strengthening the multilateral trading system and bring momentum back to trade talks in ways to secure development-friendly outcomes. Failure to address adequately the interests of the poorest and most vulnerable member states not only damages the development prospects of these countries, but also presents clear risks for the credibility of the multilateral trading system. Rather than being merely a routine exercise, the Ministerial Conference can be extremely useful to take stock of where progress has been made, where it falls short, and what needs to be done for the poorest and most vulnerable countries.

Derived from consultations with members, the Chairman of the WTO's General Council on 30 November 2011 released a document titled 'Elements for Political Guidance' for consideration by the ministers. The document outlines three areas where ministers intend to provide direction and guidance: (1) strengthening multilateralism; (2) trade and development; and (3) the Doha Development Agenda (DDA).

For many of the least developed countries (LDCs), low-income developing countries (such as non-LDC Sub-Saharan African countries) and small vulnerable economies (SVEs), the 'Elements for Political Guidance' are considered to reflect progress on some issues, particularly in procedural terms, for which their negotiators have valiantly fought. However, as the document repeats a number of well-worn promises, it actually reveals how few concrete development outcomes have been achieved over the past decade.

The Ministerial Conference is an opportunity to set a clear roadmap of priorities for ensuring more concrete outcomes for LDCs, other Sub-Saharan African countries, and SVEs. This issue of *Commonwealth Trade Hot Topics* emphasises this fact and sets out key areas where such attention should be focused.

### Why responding to development needs matters: Risks and opportunities

The failure of the multilateral trading system over the past decade to adequately deliver concrete development-friendly outcomes has pernicious implications for many developing countries. For small and poor countries, it frustrates their efforts to

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achieve greater participation in world trade and to boost trade-led development, poverty reduction, and economic diversification. At a time of increasing uncertainty in the global economy, steps to improve the resilience of small and poor countries are especially pressing. The economic fortunes of these countries are driven by international markets to a greater extent than ever. Dependence on exports of a few primary commodities and fuel, widespread food insecurity, low income levels, and weak institutional capacities render them especially susceptible to fluctuations in world prices and the least able to respond to such shocks.

Another risk of further stagnation in WTO discussions is that it will reinforce the shifting locus of trade negotiations away from the multilateral level. For the poorest and small members, a multilateral approach to trade relations, with all its imperfections, continues to offer the best prospect for managing collectively the mercantilist power plays that define global trade relations. In bilateral negotiations, these countries are even more vulnerable to asymmetric negotiating dynamics and such talks do not offer the prospect of global rules that address their needs.

Inadequate attention to the needs of the weakest countries also presents risks for other WTO members. Together, small and poor countries comprise at least half of the WTO's members and observers. Failure to deliver on development further corrodes the spirit of multilateralism. Postponing concrete actions leaves poor and vulnerable countries to trail behind and serves only to perpetuate cycles of poverty and political unrest, the impacts of which ultimately ricochet back to more prosperous countries.

On the other hand, a proactive set of decisions that offer concrete outcomes for poor, small and vulnerable countries within clear time-frames would provide several benefits. It would send an important signal of the enduring potential for constructive intergovernmental co-operation on critical economic issues. It would provide real and long-awaited economic benefits to the hundreds of millions of citizens in the recipient countries, which in turn would be a small but useful positive step for global markets amidst resurgent financial and economic crises. It would also simply be the right thing to do; it would demonstrate that the international community's stated commitments to fairness and inclusiveness can amount to more than lofty rhetoric.

## Agenda for Ministerial Conference and beyond

This section assesses the text of the 'Elements for Political Guidance' in the three areas where ministers are expected to focus at the forthcoming Ministerial Conference, and proposes some steps that could still be taken to further the interests of poor, small and vulnerable countries.

### *Strengthening and improving the functioning of the WTO*

The 'Elements for Political Guidance' text calls for improving and strengthening the functioning of the WTO. It does not, however, suggest any process for such efforts. Nor is there any mention of doing so in ways that respond to the particular needs of its weakest members. If proposed discussions on the WTO's functioning proceed in ways that do not explicitly tackle the particular challenges facing the poorest, smallest and most vulnerable countries, they risk reinforcing the imbalances of the past.

A core priority in this respect concerns the WTO's negotiating function. Promises of greater inclusiveness and transparency in WTO negotiations are often made, but notoriously difficult to fulfil.

On a positive note, the fact that there are some outcomes for the WTO's weakest members, particularly LDCs, in the 'Elements for Political Guidance' reflects their increasing engagement in negotiations. Indeed, over the past decade, poor, small and vulnerable economies have projected their voice more assertively, acquired more visibility, and drawn more attention to their concerns, particularly through coalition-building and more specific articulation of demands. This is also reflected in the fact that many draft Doha negotiating texts recognise the need to take account of the diversity in the needs and capabilities of members, specifically through differentiated proposed treatment of various groups of countries. However, the influence of the WTO's weakest members on the outcome of negotiations continues to be impeded by a lack of clarity on the part of many such countries about their negotiating interests, underlying institutional weaknesses, and by several constraining characteristics of WTO negotiation processes. Too often, poor, small and vulnerable countries are marginalised while the 'big players' in global trade negotiations spar.

The issue of LDC accessions provides a case in point. Although WTO members adopted guidelines on LDC accessions in 2002 with the aim of expediting their accession process for LDCs and making it less

onerous, in practice, progress over the past nine years has been uneven. Amidst demands for improvements in the guidelines, WTO members decided in recent weeks to call for an agreement by July 2012 on benchmarks that could help guide LDC accessions — and the decision in this respect has been forwarded to the Ministerial Conference (see WTO/COMTD/LDC/19). While there is value in the notion of such benchmarks to guide LDCs' terms of accession, their utility in assuring greater clarity, speed and fairness in the accession process remains to be seen.

On other WTO functions, the 'Elements for Political Guidance' rightly emphasise the importance of monitoring of trade commitments in the context of financial crisis and improving the Trade Policy Review (TPR) process. At present, the poorest countries participate only minimally in discussions of the performance of other WTO members and, even when their own country is discussed, many governments do not participate at a high level. The focus of the TPR process on compliance does too little to help countries explore how they can better take advantage of the multilateral trading system, identify what additional support they need, or reinforce development-oriented national trade policy-making. A positive step is that Aid for Trade is now being included in the TPR process for a few LDCs on a pilot basis. Monitoring could also be used to help ensure implementation of development commitments by developed countries, both in terms of trade rules and Aid for Trade.

In the area of dispute settlement, poor and small WTO members face well-documented challenges of ensuring that larger trading partners adhere to their commitments under WTO agreements. LDCs, African countries and SVEs often face acute shortages of legal capacity, which in turn reduces their ability to use the WTO's Dispute Settlement Mechanism. They lack the resources to regularly survey foreign markets for violations of WTO rules that harm their interests and to identify disputes they could beneficially pursue. Moreover, even if LDCs and SVEs are able to mount and win a case, they have few prospects for retaliation or cross-retaliation. Except in very specific cases, the deterrent effects of potential threats to development assistance and fears of informal political or trade retaliation limit the feasibility of small countries using either retaliation or cross-retaliation. At present, assistance focuses on explaining the system (for example, by the WTO

Secretariat) or to helping countries litigate (for example, the Advisory Centre on WTO Law) but little is done to help countries address pre- or post-litigation constraints or associated perceptions and fears with regard to political pressure.

At the Ministerial Conference and beyond, governments should: (i) define a political process that engages ministers in identifying key areas for institutional improvement and strengthening, and for taking action in ways that specifically prioritise attention to the needs of the WTO's smallest and poorest members; and (ii) complement the proposed 2012 agreement on benchmarks for LDC accession with specific decisions that simplify accession procedures for LDCs, boost transparency, and limit the scope for excessive demands of LDCs.

In so doing, governments should ensure attention to boosting the 'policy dialogue' function of the WTO on trade matters beyond WTO Agreements, whether through regular committees, the General Council, ministerial conferences, co-operation with other international organisations, or additional new mechanisms. The debate over how to address 'new issues' at the WTO highlights that such venues will prove increasingly important for keeping the WTO dynamic and relevant. Moreover, it highlights the question of 'who decides' which issues warrant attention from the membership, in what form (i.e. as topics of negotiation, information-sharing or general discussion) and how the WTO's weakest members can ensure they have a say.

Finally, members should also consider options for adding an assessment or evaluation function to the WTO system to review the effects of actual and proposed trade rules against objectives such as sustainable development and employment, and to identify national trade-related hurdles that impede their realisation. Such a function could take place under the auspices of the WTO Committee on Trade and Development, the General Council or the Ministerial Conference. Given political concerns about the potential for links to dispute settlement proceedings, such a function should be separate to the peer review/transparency function of the TPR. To ensure independence and impartiality, it could be implemented for member states by a network of independent research institutions or think tanks.

#### *Trade and development*

The 'Elements for Political Guidance' rightly reaffirm the importance of progress on trade and development at the WTO both within and beyond

the context of the DDA. However, the document makes too few concrete improvements on already existing commitments and promises.

In the 2001 Doha Ministerial Declaration, WTO members confirmed that the open, multilateral trading system and sustainable development ‘can and must be mutually supportive’ and made development the stated purpose of the Doha Round. Indeed, the 2001 Ministerial Declaration is replete with references to development. It makes a special reference to the vulnerabilities of LDCs and commits itself to addressing their marginalisation in international trade and to improving their effective participation in the multilateral trading system. It also recognises that ‘small and vulnerable economies’ (SVEs) need support to improve their integration into the international trading system.

Over the past decade, there have been several important developments and decisions in line with these objectives. These include, among others, the amendment of the TRIPS Agreement in a 2005 Decision related to flexibilities dealing with public health issues; a Hong Kong Ministerial decision to provide duty-free and quota-free (DFQF) market access to LDCs; a 2006 agreement to create a Transparency Mechanism for regional trade agreements (RTAs); the inclusion of Aid for Trade (AfT) discussions in multilateral trade talks and a mechanism for monitoring AfT flows; and the adoption of special services modalities for LDCs in 2003 and support for further elaboration.

Despite the significance of the above, a close look at the current state of play reveals that ten long years of negotiations have still not delivered much in concrete terms in the areas of most decisive interest to poor, small and vulnerable countries. For instance, a 2005 agreement to ensure elimination of all forms of agricultural export subsidies by the end of 2013 remains dependent on the conclusion of the DDA negotiations. Similarly, commitments for a longer time-frame to phase out TRIMS-inconsistent trade-related investment measures are linked to broader progress in the Round. The decision on DFQF market access for LDCs has yielded improvements in market access offers by several countries but critical shortcomings remain (see discussion under DDA below).

The cotton issue provides a further example. A Committee on Cotton was established in 2004 to look at the trade distorting policies affecting the comparative advantage of four of the WTO’s poorest members, namely, Benin, Burkina Faso, Chad and

Mali. The expectation was that the reduction of domestic support for cotton in developed countries would be advanced more ambitiously than the general reduction of subsidies as part of the DDA Agriculture negotiations. While it is true that attention to development assistance for these countries has increased since 2004, WTO members need to offer far more than further periodic reports on such development aspects of cotton and ‘ongoing dialogue and engagement’. As the DDA negotiations now have the scope for issues to be concluded at a variable pace (see below), WTO members should offer greater specificity on how precisely meaningful reductions in domestic cotton subsidies will be given the priority they deserve in the agricultural negotiations.

On the issue of AfT, there is evidence that support for trade facilitation has contributed to lowering the cost of trading, and enhancing the competitiveness of many LDCs, SVEs and Sub-Saharan African countries. However, the contribution of AfT to improving productive capacity and structural transformation is less clear. For countries where exports are highly concentrated around a few preference-dependent product lines, any loss of favourable treatment from, for instance, preference erosion due to multilateral or regional trade liberalisation, can have disastrous consequences. Although AfT is a potential route to address this issue, until now relatively few AfT resources have been used to help countries with such trade-related adjustments. A further issue for governments to address is how the AfT system can help beneficiaries to best use available resources to their advantage - for instance, helping them to better assess their needs, formulate effective projects, negotiate with donors, utilise resources productively, ensure regional coordination, and co-ordinate among ministries and with stakeholders.

On Special and Differential Treatment, the ‘Elements for Political Guidance’ state only agreement on expediting work in the context of the DDA. While there are 28 Agreement-specific proposals already on the table in this respect (in Annex C of the draft Cancun text), many of the poorest countries remain dissatisfied with them. Governments need to agree on a specific timeline by which they will finalise proposals for making a broader range of S&D proposals more precise, effective and operational and on the establishment of an S&D Monitoring Mechanism.

### ***Doha Development Agenda***

In the 'Elements for Political Guidance', governments concede that no breakthroughs needed to push the Doha Round to a conclusion will occur at the 2011 Ministerial. Instead, they note agreement on continuing to pursuing the Doha mandate, building on the work undertaken thus far, and maintaining a development focus. In an important departure from current practice, the document states that governments will move beyond the single undertaking, and instead pursue 'different negotiating approaches while respecting the principles of transparency and inclusiveness'.

For the poor and vulnerable countries, the 'Elements for Political Guidance' on the DDA is disappointing on the substance and the process. While it emphasises the importance of addressing development, it provides no concrete commitments as to how and when this will be achieved.

On the process for moving the DDA negotiations forward, the 'Elements for Political Guidance' propose advancing negotiations in those areas where progress can be achieved such that members might 'reach provisional or definitive agreements based on consensus earlier than the full conclusion of the single undertaking'. Given well-documented problems of inadequate inclusiveness in WTO negotiations to date, there are clear grounds for scepticism that promises of inclusiveness in the context of new approaches will translate into reality. While the prospect of variable speed negotiations offers some opportunities (for example, reopens the possibility of completing the 'Early Harvest' for LDCs), the proposal for new negotiating approaches also poses significant risks. The challenge incumbent upon ministers is to ensure that the spirit of multilateralism is retained by giving meaning to the term 'consensus' and formulating concrete guidelines that provide for transparency, openness, and inclusiveness at all stages of the forthcoming negotiations. Yet the 'Elements for Political Guidance' offer no more concrete explanations or proposals as to how this delicate balance will be achieved. A key scenario to avoid is one where small and poor countries are only engaged on a narrow set of issues, such as discussion of cotton, market access, and S&D, while the broader systemic and regulatory issues that define the multilateral system are negotiated exclusively by larger players.

With regard to the substance of the 'Elements for Political Guidance' on the Doha Development

Agenda, the text offers little by way of specifics. While there have been some commitments reached in the course of negotiations that offer some important potential benefits for the WTO's weakest members, most of these remain as yet unrealised in practice, in many instances because commitments require the conclusion of the Round for their formalisation and implementation.

In the lead-up to the Ministerial discussion, for instance, the push for an 'Early Harvest' of decisions that would favour LDCs (focused on more Duty Free Quota Free Market Access, a decision on domestic subsidies for cotton, and a Services Waiver) was abandoned. While some important commitments for LDCs were nonetheless secured (for example, Agreement on a Services Waiver discussed below, and a commitment to addressing their needs in the DDA as a priority), the hard reality is that many of the details on more concrete development outcomes remain postponed for future negotiation and implementation.

The issue of Duty Free Quota Free access for LDCs highlights the mixed progress. At the outset of the Round, whereas LDCs had hoped to receive complete DFQF product coverage in all developed countries, the Hong Kong Ministerial provided such access for only 97 per cent of tariff lines 'by 2008 or by the start of the implementation of the results of the DDA' and urged developing countries 'in a position to do so', to extend similar preferential treatment to LDC products. Subsequently, many initiatives have been marked by omissions, exceptions and stringent rules of origin that limit their impact. On the other hand, while the quest for 100 per cent DFQF continues, negotiators from LDCs note that the fact of multilateral discussions has made a positive contribution by yielding new bilateral offers from both developed and emerging countries, and prompting some efforts to simplify rules of origin requirements.

In services, the category of GATS negotiations that has made the least progress in terms of commitments by WTO members is the one that holds the greatest promise for small and poor countries, namely Mode 4 (temporary movement of natural persons), yet the 2005 Hong Kong Ministerial Declaration asks WTO members to develop mechanisms for according special priority to services sectors and modes of supply of interest to LDCs, explicitly calling for liberalisation commitments in such priority areas. In the lead-up to the 2011 WTO Ministerial, an agreement in

principle was reached on a 15-year waiver that effectively authorises discrimination in favour of LDC services providers. The decision, which will be forwarded to the Ministerial for approval, includes a proviso that the definition of services suppliers will include individuals (which may be useful for LDCs in future discussions of Mode 4). The prospective existence of such a waiver will not, however, automatically improve LDCs' capacity to supply services; nor will it automatically enhance developed countries' willingness to expand Mode 4. In short, while the Services Waiver is an important step forward, much remains to be negotiated to deliver concrete outcomes.

In terms of the DDA negotiations, ministers should:

- (a) specify exactly how they agree to 'fast track' decision-making on key priority issues for the WTO's weakest members, such as agreement on a Special Safeguard Mechanism in agriculture, reduction of domestic subsidies on cotton, progress in Mode 4

services discussions, and S&D provisions and measures in agricultural and non-agricultural market access negotiations that would minimise negative effects of preference erosion; and (b) set a concrete time-frame for the implementation of DFQF with 100 per cent coverage.

## Conclusion

The forthcoming Ministerial Conference is an opportunity that governments can seize to boost the responsiveness of the WTO to its poorest and most vulnerable members. Key achievable outcomes and commitments can be made in each of the three areas where ministers have been asked to provide political guidance; these would in turn set the stage for work in the next biennium. The Ministerial is also a time for ministers from LDCs, SVEs and Sub-Saharan African countries to clearly articulate their priorities and to take measures among themselves so they can bolster their engagement.

# International Trade & Regional Co-operation Section at the Commonwealth Secretariat

This Trade Hot Topic is brought out by the International Trade and Regional Co-operation (ITRC) Section of the Economic Affairs Division (EAD) of the Commonwealth Secretariat, which is the main intergovernmental agency of the Commonwealth — an association of 54 independent states, comprising large and small, developed and developing, landlocked and island economies — facilitating consultation and co-operation among member governments and countries in the common interest of their peoples and in the promotion of international consensus-building.

ITRC is entrusted with the responsibilities of undertaking policy-oriented research and analysis on trade and development issues and providing informed inputs into the related discourses involving Commonwealth members. The ITRC approach is to scan the trade and development landscape for areas where orthodox approaches are ineffective or where there are public policy failures or gaps, and to seek heterodox approaches to address those. Its work plan is flexible to enable quick response to emerging issues in the international trading environment that impact particularly on two highly vulnerable Commonwealth constituencies — least developed countries (LDCs) and small states.

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ITRC undertakes activities principally in three broad areas:

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- It conducts policy research and consultations increase understanding of the changing of the international trading environment and of policy options for successful adaptation.
- It contributes to the processes involving the multilateral and bilateral trade regimes that advance the more beneficial participation of Commonwealth developing country members, particularly small states and LDCs.

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ITRC's most recent activities focus on assisting member states in the WTO Doha Round and the Economic Partnership Agreement (EPA) negotiations involving the African, Caribbean and Pacific countries (ACP) the European Union (EU), undertaking analytical research on a range of trade policy and development issues, and supporting workshops/dialogues for facilitating consensus-building on issues of Commonwealth members' interest, exchange of ideas, and disseminating results from informed analysis.

## Selected Recent Meetings/Workshops supported by ITRC

20-21 October 2011: Commonwealth Investment Experts Group Meeting for the African region held in Kampala, Uganda

26-27 September 2011: Workshop on Elements of a Pro-Development Doha Round Result held in Hampshire, UK

19-21 September 2011: Panel Discussion on "The Doha Round and Multilateralism: Stakes for LDC's and SVE's" at the WTO Public Forum held in Geneva, Switzerland

18 July 2011: ACP/COMSEC/OIF/UNEP Joint Meeting on Environment, Climate Change and Trade held in Brussels, Belgium

07 July 2011: Brainstorming Session on "Negotiating Better" for Trade Negotiators from Small States held in London, UK

29 June - 01 July 2011: Regional Consultative Meeting on Procurement Development in the Pacific held in Brisbane, Australia

22-24 June 2011: ACP High Level Meeting in Preparation for the 3rd Global Review on Aid for Trade held in Geneva, Switzerland

13-14 June 2011: Meeting on Climate Change Mitigation and Safeguarding the Trading Interests of Small States and LDCs held in Hampshire, UK

9-13 May 2011: Meeting and Symposium on LDC development events at the UN LDC IV Conference held in Istanbul, Turkey

5-6 May 2011: Trade Policy Seminar for Commonwealth Parliamentarians (Southern Africa) held in Livingstone, Zambia

6-8 April 2011: Roundtable on Competition Law and Policy held in, Boston, USA

28-29 March 2011: OECD workshop on Aid for Trade held in Paris, France



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