

LDCs in the WTO

From Bali to Nairobi

Debapriya Bhattacharya

Chair, Southern Voice on Post-MDG International Development Goals
and
Distinguished Fellow, Centre for Policy Dialogue (CPD)
<debapriya.bh@gmail.com>

UN-ESCAP, Bangkok
3rd November 2015

The Book

LDCs in the WTO: Challenges of Implementing the Bali Package

Editors:

Debapriya Bhattacharya and Mia Mikić

Authors:

Mostafa Abid Khan

Florian A. Albuero

John Gilbert

Contributors:

Noelan Arbis

Adam Heal

Rajan S. Ratna

Mari Tomova

The Book: *Six Chapters*

1. Introduction
2. The Bali Package: Implications for Asia-Pacific LDCs and the Way Forward
3. The WTO Agreement on Trade Facilitation: Consistency with Regional Trade Agreements and the Transition to Paperless Trade
4. The Potential Effects of Recent WTO Decisions Related to Agriculture on Trade Flows
5. Waiting for Service? Progress in Preferential Market Access for Asia-Pacific Least Developed Countries' Services Exports
6. Setting the road for post-Nairobi actions for Asia-Pacific LDCs

The Book: *Key Aspects*

- This monograph explores the challenges faced in implementing the WTO Bali package for the LDCs. It provides an analysis of the key decisions, and identifies opportunities and, in certain cases, outlines strategies for assessing the impact.
- The important aspects of this publication relate to policy advisory with regard to the preparedness of LDCs as a group for successful negotiations at WTO.
- Given the high trade costs faced by the LDCs, the study suggests that they must capitalize on the successful implementation of the Trade Facilitation Agreement.

The Book: *Key Aspects*

- The book also identifies the gaps in LDC capacities, and articulates the needs in terms of national and regional policies and capacity-building programs that will be called for to help them implement the Ministerial decisions in favor of the LDCs.
- The study aims at identifying the effects of the decisions related to public stockholding and its implications for food-importing countries, especially the economies in the Asia-Pacific region. It also looks at the progress in preferential market access for Asia-Pacific LDC's services exports
- The study also draws attention to what should be done towards finalization of the Doha Round and the ongoing WTO negotiations.

The Post-Bali Scenario

The Bali Outcome

- For the LDCs, the Ninth Ministerial Conference of the WTO held in Bali, Indonesia in December 2013 was of high importance
 - After five years of deadlock, the Bali Ministerial Declaration was able to infuse a new life into the stalled Doha Round, and in a way helped salvage the WTO as a negotiating forum and fulcrum of the multilateral trading system
 - It covered four areas:
 - ***Development and LDC issues***
 - ***Agreement on Trade Facilitation***
 - ***Agriculture*** – Public stockholding, TQRM
 - ***Cotton*** – market access, elimination of export subsidies
 - Subsequent decisions related to the Bali Ministerial Outcomes were adopted by the General Council in Geneva, Switzerland on November 2014

Development and LDC Issues

- ***Four major elements of the LDC Package:***
 - A decision on the implementation of duty-free and quota-free market access for LDCs
 - A decision on preferential rules of origin for LDCs
 - A decision on the operationalization of the LDC services waiver
 - Monitoring Mechanism on Special and Differential Treatment

Development and LDC Issues

Duty Free Quota Free (DFQF)

- In the 2005 Hong Kong Ministerial Conference, members adopted a decision in favour of LDCs where developed countries, and developing-country members declaring themselves in a position to do so, agreed to implement DFQF market access for products originating from LDCs.
- Since the adoption, certain progress has been made towards the goal
- At the 2013 Bali Conference, a draft decision was made that would further encourage developed countries to improve their existing DFQF coverage to LDCs.
- The text also included developing country members (declaring themselves in a position to do so)

Development and LDC Issues

Preferential Rules of Origin

- Rules of origin are the criteria used to determine where a product was made. Products that are deemed under such rules to be made in LDCs would qualify for preferential market access (DFQF) schemes for LDCs.
- Currently, these rules are designed on a unilateral basis without any harmonized standard.
- The decision contained a set of multilateral guidelines for the rules of origin that WTO members apply to their non-reciprocal preference schemes for LDCs.
- The guidelines recommend that preferential rules of origin and the related documentary requirements should be as transparent and simple as possible.

Development and LDC Issues

Services Waiver

- The WTO's Eighth Ministerial Conference in December 2011 adopted a decision on a “services waiver”, allowing WTO members to provide preferential treatment to services and services suppliers of LDCs.
- The Bali Ministerial Decision addressed the Council for Trade in Services to initiate a process aimed at promoting the *expeditious and effective operationalization* of the LDC services waiver.
- Members have also been asked to provide *technical assistance and capacity building* support to the LDCs to take advantage of the services waiver.

Progress since Bali

Services Waiver

- At a high-level meeting of the WTO Services Council on 5 February 2015, members discussed measures which would support the growth of services trade in least-developed countries (LDCs) by providing their services exports with preferential treatment.
- This was an important step in implementing a key Bali decision in support of LDCs, which aims to enhance their participation in world services trade.

Development and LDC Issues

Monitoring Mechanism on Special and Differential Treatment

- Members adopted the decision to establish a Monitoring Mechanism on S&D Treatment, which was to serve as “a focal point to analyse and review the implementation of the S&D provisions.”
- This decision foresees the holding of a high-level meeting where developed members (and those developing members in a position to do so) will respond to requests from LDCs and indicate where they intend to provide preferential access.

Trade Facilitation Agreement

- One of the major achievements of the Bali Package was the new WTO Trade Facilitation Agreement (TFA), which provides an excellent basis for economies, especially developing ones, to reduce trade transaction costs.
- As reported by ESCAP (2015a) there is a strong correlation between the levels of implementation of trade facilitation measures by Asia-Pacific economies and their trade costs.
- The results show that a 1 percent increase in the level of trade facilitation implementation is associated with a decrease in trade costs of 2.3 per cent.

Trade Facilitation Agreement

- At the regional level, many countries in Asia and the Pacific have at least partially implemented many of the measures included in the WTO TFA, including some of the most advanced measures such as Single Window facilities.
- A survey conducted by ESCAP in 2015 found that Electronic Single Window System had been implemented fully, partially or on a pilot basis by 40 per cent of the Asia-Pacific countries covered by the survey (ESCAP, 2015b).
- Countries of the region are, in fact, taking this step further, by looking for ways to enable paperless trade and the cross-border recognition of electronic data and documents for trade facilitation

Agriculture

- Agriculture, and more specifically food-stock holding, was an important topic at the Ninth Ministerial Conference, especially for developing Asia-Pacific countries.
- The Bali package decided, as an interim solution, that the public stockholding programmes for food security in developing countries were to be shielded from legal challenge even if a country's agreed limit for trade-distorting domestic support were breached.
- It envisaged that a permanent solution would be negotiated by the WTO members as a post-Bali work programme.
- This decision may have different implications for different countries, depending on whether they are net food exporters or importers; thus a detailed analysis needs to be carried out by each WTO member to examine the implications

Progress since Bali

Services Waiver

- At a high-level meeting of the WTO Services Council on 5 February 2015, members discussed measures which would support the growth of services trade in least-developed countries (LDCs) by providing their services exports with preferential treatment.
- This was an important step in implementing a key Bali decision in support of LDCs, which aims to enhance their participation in world services trade.

Progress since Bali

The Post-Bali Work Programme

- There was no smooth sailing for the post-Bali work programme.
- A deadline for agreeing on the work programme mandated in the Bali Declaration had to be moved forward to 15 July 2015 (WTO, 2014)
- When the deadline approached, the recognition of the major obstacles still present had to be acknowledged.
- In principle, the post-Bali work programme focused on two areas:
 - The implementation of the Bali Package
 - Reviving those elements of the Doha Round that had not been agreed on in Bali (for example, agriculture and services market access)

Progress since Bali

- Unfortunately, because of the lack of consensus among members, progress has been slow
- Although TFA had been agreed on, and as of late October 2015, 51 countries had already ratified it, only a small portion of the LDC Package had harvested real results
- Some positive movements were noted with regard to the operationalisation of the services waiver for the LDCs, with 17 countries notifying their list for preferential market access.
- However, not much can be reported on the other three decisions – DFQF, Preferential Rules of Origin, and Special and Differential Treatment - as they continue to elude a consensus

The Road to Nairobi

Backdrop

- The Tenth Ministerial Conference of the WTO is to be held from **15 to 18 December 2015** in **Nairobi, Kenya**
- According to the WTO Director-General Roberto Azevedo, this conference will be a milestone for the future of the WTO
- “What we deliver in Nairobi and the path we follow will be crucial in determining the future role of this organization as a forum for trade negotiations”

Main Focus: Development?

- High emphasis on LDC outcomes – LDC Ministerial to take place in Nairobi on 14 December 2015. Work is yet to start
- What will be there for Africa?
 - First Ministerial Conference to be held in Africa, so Africa should be a priority, as it contains the most number of LDCs
 - ACP declaration has come out
- The General Council meeting on 8 and 9 October 2015 identified potential deliverables for MC10:
 - Development issues with a particular focus on LDCs
 - Export competition in agriculture
 - A set of possible outcomes to improve transparency in a number of areas

Key Issues

- Accession of Liberia
- Preferential Rules of Origin
- IP Waiver on Pharmaceutical Products
- Agriculture – S&DT, OTDS, AMS, Export subsidies, public stock holding
- Non Agriculture Market Access (NAMA)
- Small and Vulnerable Economies (SVEs)
- EIF Pledging Conference
- Systemic Concerns

Key Issues

Accession of Liberia

- On June 2007, Liberia submitted its formal request for accession to the WTO.
- At the second meeting of the Working Party on Liberia's WTO Accession on 7 May 2015, members demonstrated consensus for the conclusion of Liberia's accession at the WTO's Nairobi Conference.
- Becoming a WTO member is part of the overall development and post-Ebola recovery plans of Liberia

Key Issues

Accession of Liberia

- On 6 October 2015, WTO members negotiating Liberia's accession agreed, by consensus, upon the country's conditions for WTO accession, marking the end of a eight-and-a-half-year accession process
- Liberia will become the eight LDC to join the WTO since it was founded in 1995.
- Twenty countries are still negotiating their accession terms, including 7 other LDCs: Afghanistan, Bhutan, Comoros, Equatorial Guinea, São Tome and Principe, Ethiopia and Sudan

Key Issues

Preferential Rules of Origin

- According to the LDC group, preferential rules of origin from the Bali package has “remained largely non-operationalized.”
- Members of the LDC group, led by Bangladesh, introduced a new proposal on 20 October which they said would build upon existing guidelines for establishing preferential rules of origin in favor of LDC exports.

Key Issues

Preferential Rules of Origin – Key Elements

- Adopting **simple and transparent methods** for determining qualification through "substantial transformation." For example, when using ad valorem percentage criterion, this would include adopting a maximum percentage of non-originating materials of at least 75% in the total value of the final qualifying good and allowing for the deduction of freight and insurance costs.
- Providing LDCs with cumulation of working and process operations and materials with other LDCs, with preference-granting countries, with GSP beneficiaries, with countries that are members of the same regional grouping, and with countries with which the preference-granting country has concluded a regional trade agreement;
- Abolishing certain requirements such as certificates of non-manipulation or any other form of certification for products shipped by LDCs across other countries, and recognizing self-certification of rules of origin.

Key Issues

IP Waiver on Pharmaceutical Products

- Negotiations have been ongoing at the WTO over the extension of a waiver allowing LDCs not to grant or enforce intellectual property rights on pharmaceutical products
- The waiver, for LDCs to enforce IP rights on pharmaceutical products under the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), was meant to expire on 1 January 2016.
- On 31 October 2015, it was informally agreed that this waiver will be extended till 2032, giving LDCs exemption from paying royalty for producing patent drug for another 17 years.

Key Issues

Agriculture

- Special and Differential treatment for LDCs and SVEs.
- Need to achieve “meaningful cuts” in Overall Trade Distorting Support (OTDS) and Aggregate Measurement of Support (AMS)
- Progressive elimination of all export subsidies and export measures, including in the area of Food Aid, taking into account the problems faced by developing countries, specially LDCs and SVEs
- Calls members to find a solution on “public stockholding for food security purposes”

Key Issues

Non-Agricultural Market Access (NAMA)

- Need to maintain the flexibilities contained in the 2008 draft modalities, which fully takes into account the development priorities, exempting the LDCs from taking any tariff reductions.

Small and Vulnerable Economies

- Address “meaningfully and substantially the structural disadvantages and vulnerabilities” faced by SVEs

Key Issues

EIF Pledging Conference

- In January 2016, the EIF will start its Phase Two (2016-2022) decided by the partnership after an independent positive evaluation of the results of Phase One (2009-2015).
- The Pledging Conference for Phase Two of the EIF will take place on 14 December 2015 in Nairobi, at the outset of the WTO Tenth Ministerial Conference. The amount is between US\$274 and 320 million.
 - To provide additional Aid for Trade (AfT) funding in the area of infrastructure development, productive capacity, trade finance, connectivity, and costs of adjustments
- According to WTO Director General Roberto Azevêdo, “a successful pledging conference would be a significant outcome of the ministerial conference”

Key Issues

Systemic Concerns

Plurilateral Agreements

- **Trade in Services Agreement (TiSA)**
 - A trade agreement currently being negotiated (outside the DDA) by 23 members of the World Trade Organisation (WTO), including the EU.
 - Together, the participating countries account for 70% of world trade in services.
 - By July 2015, 13 negotiation rounds have taken place.
 - Disadvantageous implications for LDCs

Key Issues

Systemic Concerns

Mega-Trading Blocs

- **Trans-Pacific Partnership (TPP)**
 - a proposed trade agreement among twelve Pacific Rim countries concerning a variety of matters of economic policy, about which agreement was reached on 5 October 2015 after 7 years of negotiations.
- **Transatlantic Trade and Investment Partnership (TTIP)**
 - a proposed free trade agreement between the European Union and the United States, with the aim of promoting multilateral economic growth.
 - If an agreement is to be made, it is not expected to be finalized before 2016
- **LDCs – misery of the excluded**

Other Concerns

- After the General Council meeting on 8 and 9 October 2015, the chairman of the TNC observed that in four areas progress not expected:
 - Domestic support in agriculture
 - Market access in agriculture
 - Non Agriculture Market Access
 - Services
- It will not be viable or credible to announce it as an agreed conclusion of the DDA single undertaking
- Different options in terms of the type of the Nairobi outcome
 - A Ministerial Declaration
 - A non-consensual Chairperson's statement
 - A hybrid of some sort
- The Council agreed the outcome must be progressive

End Observations

Nairobi outcome will have implications for the three roles of WTO:

- Trade Negotiations
 - Surveillance of the trading environment and
 - Dispute settlement
-
- Nairobi Outcome vs DDA Minus
 - Conclusion of DDA vs Post-Nairobi Work Plan

Thank You