

How to push the WTO Doha Round in the current RTA talks?

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Ministerial Declaration adopted in November 2001 has launched Doha Development Agenda with the Work Programme covering wide ranges of issues divided into negotiating issues, i.e., agriculture, services, market access for non-agricultural products (NAMA), TRIPS, trade facilitation, WTO rules, dispute settlement understanding (DSU), trade and environment; and non-negotiating issues, i.e., investment, competition policy, transparency in government procurement, implementation issues and concerns, electronic commerce, small economies, trade debt and finance, trade and transfer of technology, technical cooperation and capacity building, least developed countries and special and differential treatment.

It was prescribed in the Declaration that the conduct, conclusion and entry into force of the outcome of the negotiations shall be treated as parts of a single undertaking with the exception of DSU. However, *agreements reached at an early stage may be implemented on a provisional or a definitive basis* (WT/MIN(01)/DEC/1).

Meanwhile, WTO membership has increased from 143 members with China's accession at the fourth Ministerial Conference to 159 members at present. WTO Doha round to be concluded by 2005 or within 4 years has been negotiated and extended for 12 years but the conclusion is still far-fetched.

It was hopeful in the seventh Ministerial Conference in December 2009 that the Doha round could be wrapped up by the end of 2010. However, the negotiations came so close to that when modalities of NAMA and Agriculture were agreed upon but unfortunately two members were in disagreement on the threshold of import triggers for the operationalization of agriculture's special safeguard mechanism for developing countries. At the same period, advancements on other areas such as services, rules and trade facilitation seemed to be forth coming.

At the Conference, there was broad agreement that the growing number of bilateral and regional trade agreements was an issue for the multilateral trading system, and that there was a need to ensure that the two approaches to trade opening continue to complement each other. Some support was expressed for the eventual convergence of the two approaches. However, the idea of extending to all Members benefits offered in a regional context was questioned by some.

There were suggestions that while the WTO RTA transparency mechanism had worked quite well, there was still room for improvement, through making the mechanism permanent, highlighting better the common elements in different RTAs and introducing an annual review (Chairman's Summary).

At the eighth Ministerial Conference, Ministers recognized the negotiations were at an impasse and not all elements of the Doha Development Round could be concluded simultaneously in the near future. Members then needed to fully explore different negotiating approaches on the possible results that they can achieve in certain areas of the single undertaking. This could be done by taking the advantage of the Ministerial Declaration that allowed Members to reach provisional or definitive agreements based on consensus earlier than the full conclusion of the single undertaking.

Ministers stressed the centrality of development. Many underlined the need to give priority to issues of interest to LDCs, including cotton. Many mentioned the importance of all three pillars in the agriculture negotiations. Many also mentioned trade facilitation, special and differential treatment, S&D Monitoring Mechanism and non-tariff measures. And to unlock the current impasse would be the balance in contributions and responsibilities between emerging and advanced economies

In addition, Ministers pointed to the growing number of RTAs and stressed the need to ensure that they remain complementary to, not a substitute for, the multilateral trading system. In that regard, many Ministers stressed the need for the WTO to address the systemic implications of RTAs for the multilateral trading system and to study trends in RTAs and report to the ninth Ministerial Conference (WT/MIN(11)/11).

Deliverables at the ninth Ministerial Conference in Bali

The WTO scheduled its ninth Ministerial Conference during 3-6 December 2013 in Bali, Indonesia. In the Ministerial Meeting, Doha Round of Trade Negotiations will be pushed forward from the current stalemate on the deliverables to be agreed upon particularly on three main issues, namely, Trade Facilitation, some Agriculture issues and Development.

Before the meeting, negotiation timeframe during the month of October has been designed so that finalization of work would be ready this November. Realistic assessment with respect to the outcome of the ninth Ministerial Conference got to be done during the final countdown period.

Trade Facilitation

Negotiations on Trade Facilitation was initiated in July 2004 with the objective to clarify GATT Article V on Freedom of Transit, Article VIII on Fees and Formalities connected with Importation and Exportation and Article X on Publication and Administration of Trade Regulations and disciplines consisting of obligations on customs formalities of similar standards with development dimension and conditionality on technical assistance and flexibilities for developing countries.

The latest draft on Trade Facilitation was the 16th draft (2013) composed of 15 articles on rules in Section I specifying customs formalities in details on all aspects and on flexibilities for developing countries in Section II specifying implementation timeframes for WTO members under three categories. List A are rules to be complied with immediately; List B refer to rules that need some grace period; and List C are rules that need assistance on capacity building, together with other flexibilities such as members can specify their own rules and timeframe to comply with, allowing rule changes between List B and List C, extending grace period and requesting for peace clause from litigation under DSU.

However, WTO members are still divided into two groups on Trade Facilitation. The first one led by Jamaica and Dominica on behalf of APCs and LDCs demanding three issues on flexibilities, namely, a) financial assistance for the implementation of the agreement; b) 2-year period of submitting rules under List B; c) 3.5- year period for the procedures of notifying List C consisting of notifications under List C the agreement between the donor and the beneficiary specifying implementations timeframe on provisional basis to the Committee and final notification of implementation. The second group is composed of U.S.A., developed countries and some developing countries who could not accept the conditions on financial assistance and were of opinion that the proposed timeframes were unnecessary long and the implementation procedures under List C too complicated and troublesome including not specifying on implementation timeframe until the fourth year. As donors on technical assistance, they would like to have implementation timeframe beforehand and could like the procedures on flexibilities in List B and List C to be on the same direction.

There are still major disagreements on Trade Facilitation text to be resolved. In Section I, we might find the languages of different levels of commitments like “shall, may, endeavor, etc.”; the links between Trade Facilitation and other GATT agreements; confidentiality of information;

definitions and rules of customs measures such as advanced rulings, authorized operators, penalty and transit. In Section II, we have the conditions on flexibilities for beneficiary developing countries such as timeframes for notifications on each List, conditions for changing rules between List B and List C, linking the conditions on flexibilities, language and levels of commitments and technical and financial assistance.

The Agreement on Trade Facilitation will certainly have impacts on most developing countries that may have to amend their laws and regulations on customs formalities. Capacity Building such as technical and financial assistances could be the keys to successful implementation. Of course trade volume of developing countries has expanded at more rapid rate than that of developed countries. If developing countries can live up to the WTO minimum standards with respect to laws and regulations on customs formalities, trade with developing countries would be even more facilitated and consequently expanded at higher rates.

Agriculture Issues

TRQ Administration has been negotiated to a certain extent as specified in the Draft Modalities Rev. 4 which was destined to be one of the Early Harvest in the ninth Ministerial Conference.

The substance of TRQ Administration was to have rules for agricultural import administration under TRQ system, particularly; the issue of unfilled quota that required explanation or change on TRQ administration methods if the problem of unfilled quota persisted on continuous basis and complaints were made by their trading partners.

The issue was tabled by G20 and there was no clear cut objection from other WTO members. COASS Chairman has then concluded the issue as “not poison pill”.

Export Competition: G20 proposed a down payment on export competition in Bali package by having developed countries modified their budgetary outlay commitments to 50% less and subsidized volume commitments to the average of 2003-2005 based year level. In addition, the repayment of export credit shall not be more than 540 days.

Still US and EU who were entitled to such measures still opposed to the idea. US wanted to use it as bargaining chips in exchange for other issues. EU was of opinion that the proposal singled out only US and EU in contrary to the principle of parallelism.

Public Stockholding for Food Security: G33 particularly Indonesia, PRC and India want to include measures for food security and rural development for developing countries under the government service programmes or green box as well as public stock holding for food security by purchasing from small scale and poor farmers whether at the prices higher than market prices or not in the Early Harvest at the ninth Ministerial Conference. Developed countries opposed to the public stock holding for food security as they deemed as the problem on case by case basis and not the general problem of developing countries to amend the agreement and disagreed on having price support measures in the green box.

Development Issues

Monitoring mechanism for S&D: General Council has decided since 2002 to establish monitoring mechanism for S&D and since then text has been negotiated in the CTD SS up to now in the form of Chairman's compilation text. Members agreed that monitoring mechanism should be a neutral and pragmatic organization to follow up on the implementation of S&D provisions but they were different on the mandate of the monitoring mechanism whether addition or strengthening S&D provisions were included. Developed countries were against too extensive mandate for monitoring mechanism

At present, most members tended to agree on the form of monitoring mechanism as follows:

- Monitoring mechanism would not be a negotiating body on S&D provisions.
- Recommendations of monitoring mechanism should not be prejudged for S&D provisions.
- Any recommendation of monitoring mechanism would not change rights and obligations of members in accordance with various WTO agreements.
- Monitoring mechanism would work as a part of CTD and deemed as dedicated session of CTD.

African Group led by Egypt and LDC Group led by Nepal supported by PRC and India proposed additional text to increase role of monitoring mechanism to be focal point of all issues with authority to recommend negotiations for strengthening S&D provisions beneficial to developing countries. But developed countries like US, EU, Japan, Australia and Canada would like to limit the role of monitoring mechanism as a monitoring body on the implementation S&D provisions only and the amendments on S&D should

be left to technical committees on the issues such as SPS or Import Licensing to consider as CTD had no expertise on such technical knowledge.

Cancun 28 S&D agreement specific proposals: CTD has been assigned by the eighth Ministerial Conference to stock-take on 28 proposals on improving various WTO agreements that the Minister Meeting earlier agreed to in principle since the Cancun Conference 10 years ago. WTO Secretariat drafted a matrix-table briefing on the status of such proposals. Most of the proposals are still valid and only 6 proposals need to be updated such as TRIPS and DFQF issues. Nepal on behalf of LDC proposed for amendment of the 6 proposals and was in unofficial consultations with the US. For the remaining 22 proposals, it was informed by Chair that some members wished to have consultations so as to have common understanding on the meanings at current situations. It would not be regarded as reopening of negotiations and it would be up to members to decide after consultations.

Most members agreed the proposals were acceptable with improvement of the 6 proposals that were taken over by the delay.

LDC issues

DFQF: The decision of WTO Ministerial Conference in Hong Kong in 2005 was to give Duty-Free/Quota-Free treatments to the LDCs by which developed countries shall give DFQF to LDCs' exports at least 97 of tariff lines and other developing countries to give whenever they are ready.

In the past, several members gave DFQF to LDCs already, e.g. Japan (98% of tariff lines/99% of trade value), Switzerland (all), EU (all except weapons) , India (85% of tariff lines/ 92.5% of trade value), S. Korea (80% of tariff lines and to be increased later), Brazil (80% of tariff lines), PRC (60% of tariff lines at initial stage and to be increased to 95% of tariff lines for those with diplomatic relations)

Nepal submitted the proposal on behalf of LDC to the TNC on 31 May 2013 as part of Bali Package for developed countries to specify certain dates developed countries to implement their commitments on DFQF and requested other developing countries to give DFQF to the LDCs up to 97%.

Since all developed countries have fulfilled their commitments on DFQF except US, LDCs requested DFQF to be included in the Bali Package. To convince and get the approval of DFQF from the Congress, US requested major developing countries to give DFQF to LDCs as well.

US has conditioned its increase of DFQF from 82.5% up to at least 97% on the Doha Round conclusion under single undertaking approach. Sub-committee on LDCs is to take up on the issue later.

Rules of origin: LDCs by Nepal submitted a proposal on Rules of Origin under DFQF program on 31 May 2013 counting on percentage of local content as if classified by products, there would be lobbying by interest parties and as consequently non-transparency and trade distortion.

The issue is part of LDCs package and will be linked to other pillars. If other pillars are not supported, LDCs package may not be supported as it is unilateral demand. At the negotiations, other members may seek clarification from LDCs on the scope of its proposal.

Cotton: C-4 (Benin, Burkina Faso, Chad and Mali) has long proposed for deeper cut in shorter timeframe reduction of domestic subsidies on cotton than that of other agricultural products and now to be included as Early Harvest in the ninth Ministerial Conference. C-4 proposed the same documents, TN/AG/GEN/32 and TN/AG/SCC/GEN/32 as basis for the ninth Ministerial Conference to consider update texts by announcing standstill on cotton subsidies under new definition and more technical assistance. There has been no clear support from other members.

LDC service waiver: The eighth Ministerial Conference endorsed decision on LDC service waiver on trade preference for 15 years with no reciprocity. Members could define their own scope of trade preference and conditions granted to LDCs but CTS must be informed of such undertaking.

TRIPS

Extension of transitional period for LDC: Article 66.1 of TRIPS Agreement gave LDCs transitional period of 10 yrs. to comply with the Agreement ended 1 January 2006 and extended to 1 July 2013. The eighth Ministerial Conference requested TRIPS Council to give full consideration to the extension of transitional period as requested by LDCs. Moreover in 2002 TRIPS Council gave transitional period not having to comply with the Agreement to LDCs specifically on pharmaceutical patent until January 2016 in accordance with Doha Declaration on TRIPS and Public Health.

In the TRIPS Council Meeting in 6-7 November 2012, Haiti on behalf of LDCs asked the Council to consider extension to the one ended in July 2013 with additional requests, namely

- No end date for the new transition period as long as members are still LDCs.
- No non-roll back clause
- No linkage between transition period and technical assistance

Developed countries and LDCs could strike a deal acceptable to all and TRIPS Council Meeting of 11-12 June 2013 agreed to extension of transitional period for 8 more years until 2021 with weakening non-roll back clause and no conditions on technical assistance (JOB/IP/8)

Moratorium on TRIPS non-violation and situation complaints: According to GATT 1994 Article 23:1, members have the rights to file complaints with WTO if any benefit accruing to it directly or indirectly under WTO commitment is being nullified or impaired WTO commitments even though there is no violation of the Agreement. However, Article 64.2 of TRIPS has waived GATT 1994 Article 23:1 (b) and (c) on non-violation and situation complaints for 5 years and TRIPS Article 64.3 instructed TRIPS Council to consider scope and modalities and draft proposal to the Ministerial Conference. The moratorium has been extended for many times by Ministerial Conferences (2001, 2005, 2009 and 2011) and by General Council (2004) including instructing TRIPS Council to consider scope and modalities and recommendations to the next Ministerial Council. During the meanwhile, members will not file non-violation and situation complaints (decision of the eighth Ministerial Conference – WT/L/842)

Almost all WTO members (developed and developing countries including LDCs) pushed for not applying non-violation and situation complaints to dispute settlement under TRIPS Agreement on permanent basis or extending moratorium. There are only two members, namely US and Switzerland who pushed for the implementation of non-violation and situation complaints on dispute settlement under TRIPS Agreement.

Protocol amending TRIPS: Protocol Amending the TRIPS Agreement (WT/L/641) was approved by General Council on 6th December 2005. The Protocol made it easier for poorer countries to obtain cheaper generic versions of patented medicines by setting aside a provision of the TRIPS Agreement that could hinder exports of pharmaceuticals manufactured under compulsory licenses.

However, the Protocol would come into effects if it was ratified by two thirds of WTO's members (103 members). At present, the Protocol needed 34 more members to ratify. The timeframe for ratification has been extended by

the General Council for three times in 2007, 2009 and 2011. The last timeframe would be over by the end of 2013 (WT/L/829). WTO Secretariat was of opinion that such flexibilities would not create additional commitments and therefore amendments of domestic laws and so urged members to ratify. On the contrary, some members found out that domestic patent laws needed amendments to comply with such Protocol and might need time for parliamentary procedure.

Non-Agricultural Market Access

ITA Expansion: From 1996 up to present, 48 WTO members have joined WTO-ITA covering 97% of world IT trade. ITA is in the form of plurilateral agreement but MFN treatment is extended to all WTO members. ITA members initiated a new round of negotiations to extend tariff eliminations for more IT products with the timeframe to conclude the negotiations in July 2013 and serve as the outcome for the ninth Ministerial Conference.

For the time being, there are 25 WTO members in the negotiations, namely, US, EU, Japan, S. Korea, Chinese Taipei, Switzerland, Costa Rica, Canada, Norway, Hong Kong, Australia, New Zealand, PRC, Malaysia, Singapore, Philippines, Thailand, Israel, Croatia, Mauritius, Turkey, Montenegro, El Salvador, Iceland and Guatemala.

Even though members intended to conclude the negotiations by the timeframe but they are still different positions on some product groups such as consumer electronics, electrical equipment, medical devices etc. and that they are preparing their own sensitive list to be exchange with others by June 2013 before going into the final sessions of negotiations to be concluded by July 2013.

Others

E-Commerce: The topic was first discussed in the 2nd WTO Ministerial Conference in 1998. The main issue was whether to classify products delivered physically and products delivered electronically digitized products as merchandise or service. The differences between being merchandise or service that it would make are as follow:

- In case of merchandise, the principles of GATT both MFN and NT would apply without prohibition or quantitative restriction but import duties might be applied in accordance with its obligations and would be covered by other agreements such as trade remedies, subsidies, TBT and rules of origin.

- In case of service, members could request for MFN Exemptions, limitations to market access and national treatment according to GATS. However, GATS has no provisions on import prohibition or import duty but 6 restrictions to market access such as foreign equity participation, number of service provider, type of service, value of service and number of foreign labor.

Since members could not conclude whether they should be merchandise or service, there has been no clear direction or guidance on how to treat IT products.

At the previous and last meeting of WTO Ministers, E-commerce were on the agenda by drafting Work Programme on E-Commerce and Moratorium on import duty on e-transactions with their decisions to:

- Implement Work Programme on E-Commerce such as technical assistance, capacity building on accessibility to e-commerce
- Extend moratorium on import duty exemption on electronic transmission until the next Ministerial Conference since members could not yet find a conclusion.

Developed countries like EU, Australia and New Zealand supported the work programme without any objection from other members but Cuba and some other member want to make work programme clearer.

WTO accessions: In 2012 Montenegro, Samoa, Russia and Vanuatu have acceded to WTO as 154-157th members respectively. On 2 February 2013, Lao PDR has become 158th WTO member and on 2 March 2013, Tajikistan has become 159th WTO member

There are still many on-going accession processes of which progress has been made. Accession focus in 2013 consisted of 2 LDCs, namely and 4 non-LDCs, namely Seychelles, Kazakhstan, Bosnia and Herzegovina and Serbia.

Whether accession focus of the six countries could be MC9 deliverables or not would depend on progress made on the outcome of negotiations between acceding countries and interested members. Before Ministerial Conference, we would be able to have clearer picture of its progress made on such accession negotiations on which ones would be deliverable at the next Ministerial Conference. WTO members gave importance and tried to push WTO accession processes, particularly LDCs with flexibilities on bilateral negotiations with the acceding countries according to WTO accession processes.

Contributions of RTA Talks to Doha Development Agenda

It is no secret that the conclusion of DDA would be difficult to achieve as a single undertaking where consensus of 159 countries on wide range of issues is needed. Since Doha round of negotiations has been standstill for too long, members got to look at different approaches such as sequential. Members are now trying to focus and agree on the least controversial issues like trade facilitation, development and some agriculture issues that could be doable and deliverable. Such agreements would provide momentum for members to go step further on more difficult issues. If members failed to do so in Bali, the multilateral system would be in difficult situations to further DDA negotiations and might have to be content with the administration of the existing agreements, dispute settlement and trade policy review mechanism.

On the contrary, RTA participants are limited in number and negotiating in wide range of issues. In the near future, issues taken up by DDA would be expanded to cover all mandated in the Ministerial Declaration after confidence building process was accorded to developing countries, particularly LDCs. And some RTAs are in the process expanding their membership by *new agreement* as in the case of TPP, *enlargement* as in the case of EU, *docking* as in the case JTEPA and AJCEP and *merging*.

RTAs are exempted from WTO MFNs treatment but are subject to conditions provided in the provisions of relevant WTO agreements. When it comes to rules, most RTAs would normally apply WTO rules *mutatis mutandis*. However, RTAs may apply higher standards or value-added mechanism such as Joint Committee to solve problems between them on issues like SPS, TBT, etc. or wider coverage of issues like investment, environments and labor.

It would be useful for WTO Secretariat to keep record of RTA commitments on various issues of the parties to the agreement and make analysis on how far they can go as far as commitments are concerned. The WTO Secretariat might do such kind of simulation as they did in NAMA to assure members the outcome after the conclusion of negotiations on each issue. It would be ideal if such RTA commitments could be extended to WTO on MFNs in any possible way that we could design on such as docking.

RTAs could not be a substitute for the multilateral trading system in case of rules, particularly on agriculture; trade policy reviews and dispute settlement mechanism as effectively as that in the WTO but they could remain complementary or as building blocks to the multilateral trading system. Since it took times for WTO to come out with new development of rules and modern

trade issues, RTAs might respond more timely to the fast changing trade environments such as in the fields of e-commerce, paperless trading, global supply chain, consumer protection, investment, competition policy, government procurement, trade and finance, trade and technology, etc.
