

Reviving the Multilateral Trading System

Post-Bali Issues

23-24 November 2014

Dhaka, Bangladesh

(Summary of Discussion)

Background and Ambition

The International Roundtable titled “Reviving the Multilateral Trading System: Post-Bali Issues” was hosted in Dhaka, Bangladesh by the Centre for Policy Dialogue (CPD) in collaboration with South African Institute of International Affairs (SAIIA) on 23-24 November 2014. This event was part of a series of International Roundtables to examine and discuss possible strategies to infuse momentum in the WTO negotiations in Geneva and to identify approaches and means to implement the decisions taken at the ninth Ministerial Conference of the WTO in Bali (MC-9). The Dhaka Roundtable brought together 14 eminent experts and negotiators on WTO issues from Europe, North America, Africa and Asia. They were joined by a select group of experts, academics and high officials from Bangladesh.

The two-days long intensive and interactive deliberations was concentrated on three broad areas concerning both the built-in agendas of the WTO and also the newly emerging issues. Thus, the focus of the Roundtable was to: (a) identify approaches to reviving the stalled Doha Round Negotiations; (b) examine the outcomes of the MC-9 in Bali; (c) review the state of the post-Bali negotiations in the WTO and (d) discuss newly emerging issues which had systemic implications for multilateral trading system and the WTO. A defining feature of the Dhaka deliberations, which gave it a distinctive flavour, was that in their deliberations the participants paid special attention to the concerns and interests of the least developed countries (LDCs) such as Bangladesh. Thus, whilst there was a dedicated session to discuss LDC issues in the Bali package, a common thread that binded the discussions in the other six sessions was to identify measures which would strengthen the ‘development content’ of a Round which was floated in 2001 as the “Doha *Development* Round”.

In light of the above, the Dhaka International dialogue set out to achieve the followings: (a) review the post-Bali developments in some of the key areas of negotiation; (b) undertake a thorough analysis of the major issues involved in each of the identified areas; (c) try to tease out the emerging tensions and conflicting perspectives of major players and interest groups; (d) examine approaches that could be pursued towards practicable and desirable solutions to issues with

conflicting interests; (e) articulate strategies to secure and safeguard LDC interests in view of the above.

The discussion was held in seven sessions: (a) WTO in the Post-Bali Phase: Whither LDC Issues?; (b) Plurilaterals; Systemic Concerns and the Interests of the LDCs; (c) The Issue of Public Stockholding in the WTO; (d) Mega Trade-Blocs: Implications and Coping Strategies for the Excluded; (e) Participating in the Global Value Chain: How Low-Income Countries can Maximise the Potential Benefits; (f) Post-2015 International Development Agenda and Multilateral Trading System. The last, seventh session, wrapped up the discussion with concluding observations concerning the way forward.

Evolving Global Trading Scenario and What this Meant for the Future of the WTO

Participants observed that nature and content of global trading regime was undergoing important changes. This was related to the followings: (a) structure of trade, with gradual ascendancy of services trade; (b) nature of cross-border goods and factor market interfaces, characterised by expanding value chains and enhanced production networks, and (c) preferential market access through mega trading blocs that promoted WTO plus responsibilities and obligations. These new developments had important implications for WTO as the institutional anchor of the multilateral trading system. Participants agreed that WTO will need to reposition itself if it was to remain relevant and important in view of the evolving and changing global trade scenario. In absence of this, major trading countries will lose interest in the WTO and the organisation could lose its relevance. WTO will need to calibrate both its negotiating modalities and operational approaches in response to the emerging changes. WTO's rules relating to market access and preferential rules of origin will need to follow the patterns of cross-border global value chains (GVCs) and production network, trade facilitation related obligations should gain due importance in the WTO system, market opening in services sector should parallel the pace of market opening in the goods sector. In this context, the importance of cumulative RoO and regional RoO were felt to be important in promoting the interests of the LDCs in the GVCs. Participants felt that whilst WTO ought to take cognisance of the new developments and react accordingly, the resultant outcomes were likely to have important implications for global integration of low income countries, specially the LDCs. The idea of putting in place the needed supporting measures and compensatory mechanisms found strong resonance in the discussion. It was felt that these measures were needed to safeguard against likely preference erosion and enhance competitive strength of the LDCs. To ensure this, the

special and differential treatment (S&DT) provisions in the WTO in support of LDCs needed to be strengthened from the perspective of implementation and enforcement. The newly proposed *Monitoring Mechanism* could serve as an important tool in this context if its mandate and operational modalities are appropriately designed. If mega-blocs such as trans-pacific partnership (TPP), Trans-Atlantic Investment Areas (TAIA) and RCEP become full-blown supra-regional trading arrangements, these RTAs will set the rules of the game for a significant part of the global trade, and define the global trade and investment regime also for other countries who are not members of those mega-trading blocs. Low income countries which are not able to comply with the high standards of labour, intellectual property rights, copyrights and patenting rules informing the working of these super RTAs will find it difficult to join those even if they operate on the basis of *open-regionalism*. If WTO fails to change accordingly, it will lose its relevance – low income countries will not see benefits while developed countries will be incentivised to focus on these mega-RTAs. Participants agreed that helping the low income countries and the LDCs to strengthen compliance capacity, through targeted support, will be critical to maintaining their competitive strength in view of these emerging developments and the increasingly competitive global trading regime.

Systemic Issues and What these Meant for the Future of the WTO

It was noted that, *plurilaterals* as a systemic issue, as also the modality of *single undertaking* as a cornerstone of decision-making in the WTO, have attracted a lot of attention in the recent discourse concerning the future of the WTO. Some participants felt that the idea of plurilaterals should be given serious consideration as a negotiating modality. Whilst a number of participants argued that plurilaterals, by definition, undermined the core WTO objectives since WTO was founded on multilateralism and single undertaking and worked on the basis of consensus, others felt that plurilaterals were the way forward if WTO was to be rescued from its current existential crisis. They argued that, the focus on plurilaterals originated from frustration as regards the slow progress of the Doha Round Negotiations, the most protracted in GATT/WTO history. They felt that plurilaterals have featured in earlier WTO negotiations and should be accommodated within the WTO. According to them, if WTO was to remain relevant, it must itself evolve accordingly. It was recalled that, in services negotiations plurilaterals was the modality of negotiations. Examples of negotiations on ITA and environmental goods launched in 2014 were also cited in this connection. In support of this argument, it was also pointed out that *sectorals* in NAMA, in a way, was an example of plurilateral approach in the WTO negotiations. It was observed in this connection that, in

areas where plurilaterals were being put forward as negotiating modality, participating countries will need to have the *critical mass* (their combined trade will have to account for a significant share of the global trade). Critical mass will thus address the problem of *free rider* to some extent, it was noted. Furthermore, there was an opportunity to MFN-ise the plurilaterals and bring it under the ambit of the WTO.

It was argued that plurilaterals will have two advantages if allowed as negotiating modality within the ambit of the WTO: the WTO Secretariat will have a *say* as regards the negotiations, and countries will be able to take recourse to the *Dispute Settlement Body (DSB)* to redress any likely grievances and disputes. It was also pointed out that there was also an issue of approach relating to the plurilaterals. In favour of this line of argument, it was observed that in the RTAs, market access conditionalities are determined without any participation of the LDCs (if they were not members of the respective RTA). On the other hand, plurilaterals, if brought within the WTO, will allow LDCs to remain engaged in the discussion. There was no consensus in this regard, however. Some participants were apprehensive that plurilaterals essentially endorsed the *big boy's club* approach in the WTO, and low income and LDCs will remain innocent bystanders in the process of negotiations. It was felt that the principle of S&DT and non-reciprocal preferences accorded to the LDCs will be undermined if plurilaterals were accepted as a negotiating modality. Plurilaterals could lead to fragmentation of the multilateral decision making process and the fine balance that single undertaking ensures could be harmed. However, there was a general agreement that plurilaterals came as a reaction to the reality of the current stalemate in the WTO negotiations. Participants felt that the developed country members in the WTO should show leadership in moving the negotiations forward in Geneva. There was a consensus that, if plurilaterals are accepted as an approach to discussion on any particular negotiating agenda, the interests of LDCs ought to be adequately safeguarded. This could also have positive impact on the position of the weaker members of the WTO who were at present hesitant to take a stance in this regard.

Public Stockholding and the Options in Going Forward

As regards the issue of public food stockholding, it was felt by the participants that food security was of heightened importance to many developing countries and their concerns must be addressed in the process of negotiations. As would be recalled, spearheaded by India, the G-33 coalition of developing countries, representing sizeable population of small holding farmers, proposed that current WTO farm subsidy rules should be relaxed to allow governments more policy-space to buy

food from low-income and resource-poor producers, at administered prices, as part of their food stockholding programmes. This was a *non-trade* concern which had critical trade implications, from the perspective of both *offensive and defensive interests* of developing member countries. Whilst the issue of raising the threshold of *de-minimis* support in agriculture (aggregate measure of support, fixed at 10 per cent of agriculture GDP) was mooted, participants felt that, this was not a good idea as it could unravel the *Agreement on Agriculture (AoA)*. It was pointed out that if administrative price was in line with tariff inclusive import or export parity price, this would be only minimally trade distorting. On the other hand, buying at lower than import parity price would be equivalent to taxing agriculture.

Four options were considered by the participants towards identifying elements of a permanent solution: (a) accepting the G-33 proposal (the proposal envisages exemption of purchases at administered prices from counting towards a product's AMS); (b) allowing countries to reflect the effect of inflation in estimating price support; (c) refixing the reference price (to be applicable to a more recent year or on the basis of a three year rolling average price); (d) when administered price was at below the world market price, it should not be viewed as providing price support (and hence considered as *green box* compatible). There was no consensus as regards any one particular option; however, the need for finding a permanent solution that catered to the needs of small farmers in developing countries and their food security was emphasised by all participants. Participants noted that this was not just a *North-South issue*; developing country farmers are also being increasingly affected by the agricultural policies of other developing countries. It was argued that, the decision in the WTO as regards public stockholding could have important implications for food availability and global food prices. This in its turn could have adverse implications for offensive interests of food-exporting LDCs and defensive interests of food-importing LDCs. Some participants argued that the discourse should not be confined to only food price, but ought to also focus on food availability, productivity and nutritional aspects. Participants were of the opinion that whilst the search for a permanent solution should go on, to define the WTO rules once the *peace clause* expired in 2017, the concerns of LDCs should be kept in the perspective in future negotiations to identify a *permanent solution*. The need to undertake serious study on likely impact of a decision on public stockholding on food prices, food availability and broader interests of the LDCs was strongly emphasised.

Global Value Chains and the Newly Emerging Demands

The focus of discussion in this session concerned identifying ways to enable more effective participation of LDCs in regional and global value chains and how WTO could facilitate this. Participants observed that a significant part of global trade is taking place through intra-company and intra-industry trade in the backdrop of increasing expansion of value chains and broadening of production networks, across countries and regions. However, many developing countries, and particularly, LDCs are confronted with formidable obstacles in participating in the regional and global value chains and production networks. It was noted that, whilst South-South trade's share in the global trade was on the rise, Southern producers were not being able to translate their comparative advantages into competitive advantages through participation in cross border production networks due to poor state of trade facilitation. According to GVC participation index, LDCs remain at the bottom with only 8 per cent of total value added while shares of developing and developed countries were 27 per cent and 65 per cent respectively.

The case for more closer integration of producers and enterprises from weaker economies involved three types of issues: *Horizontal issues* (more participation); *Vertical issues* (better quality participation); *Diagonal issues* (sustainable development). Participants agreed that land-lockedness, poor connectivity, cumbersome business processes, border infrastructure etc. were major barriers that needed to be addressed if LDCs were to more effectively participate in the emerging value chains. If LDCs are stuck at the lower-end of the value chain, it will be difficult for them to translate higher trade into greater well-being of people through increased value retention, higher productivity and higher wages. In this context, the issue of taking advantage of the opportunities that could emerge from WTO was discussed by the participants. The newly introduced trade facilitation agreement was a window to address customs-related barriers but here need for aid for trade facilitation was perceived to be the key enabler. On the other hand, it was also recognised that a number of cross-cutting issues needed close attention if the LDCs were to take advantage of the global value chains. In this connection, LDCs were advised to take an active interest in the ongoing WTO negotiations involving TRIPS, TRIMS, GATS Mode-4 (*movement of natural persons*) and GATS Mode-3 (*commercial presence*). A comprehensive examination of relevant WTO agreements, S&D clauses and aid for trade for LDCs should be undertaken in view of the aforesaid developments. The focus of such an exercise would be to identify measures and initiatives within the WTO system to help LDCs strengthen their participation capacity in these networks.

Embedding the Post-MDGs Aspirations in WTO Work Programme

The discussion on the theme of post-2015 International Development Agenda and multilateral trading system was premised on the observation that Goal-8 in the MDGs was the weakest link in the context of the implementation of the MDGs and the experience and learnings in this regard. MDG-8 talked of making global partnership, including in trade areas, work for attaining the MDG targets and indicators. However, appropriate indicators to measure the progress being made in this regard were absent. Also questions remained as regards the tools deployed, and efficacy of the trade-related tools and measures towards attainment of the MDGs by the low income countries. It was observed that trade was becoming a key vehicle of socio-economic development of the developing countries. In the backdrop of the growing importance of value chains and production networks, compliance assurance and standards, ascendancy of mega-trading blocs and the rising South-South trade, the nature of global trade has been undergoing rapid changes. In view of the growing importance of the South-South (S-S) trade, rules and regulations informing S-S trade was also becoming increasingly important. These changing dynamics had important implications for the way low income countries would be able to make trade work for development. It was recognised by the participants that market access barriers, non-tariff issues, lack of infrastructure and weak trade facilitation were major impediments that inhibited participation of LDCs and low income countries in the global trading system. It was noted that, trade issues received recognition in all the key SDG-related reports including the ones prepared by OWG, HLP, SDSN and UNGC. The need for an open, rule-based, non-discriminatory international trading system was highlighted in all these documents. At the same time, the need to help LDCs and low income countries in their quest for strengthened capacity towards global integration also received prominence in the discussion. It was emphasised that there should be clear and quantifiable indicators which will demonstrate that LDCs were being able to reap the benefits of global trade through higher share of exports enjoying duty-free market access, by taking advantage of the full operationalization of the services waiver, by way of increased share in global trade, through tangible reduction in trade transaction costs and support through significantly higher disbursement of aid for trade.

Bali LDC Package: the Next Steps

As was noted earlier, whilst the discussions at the Dhaka Round Table focused on various dimensions of the issues on the table in various sessions, interests of the LDCs was viewed as a cross-cutting theme that called for special attention. Thus, LDC interests and perspectives received

prominence in the Dhaka deliberations. One session was specially dedicated to the discussion on implementation of the Bali Package for the LDCs.

As is known, the LDC package was seen as a key deliverable of the MC-9. The package dealt with four areas: (a) Duty-free and Quota-Free (DF-QF) market access; (b) Preferential Rules of Origins; (c) operationalization of the services waiver, and (d) Monitoring Mechanism on Special and Differential Treatment. Discussion at the Roundtable concerning the LDC package focused on three areas: (i) an indepth review of the different components of the Bali Package; (ii) an analysis of the concerns emerging from the Bali decision; (c) recommendations as regards the way forward in view of negotiations in Geneva during the run up to MC-10.

It was felt that, whilst the Bali Package was not the best option for the LDCs, and many of their issues of concern and interest remained unaddressed, this should not deter the LDCs from undertaking the appropriate homework to secure the deliverables from the Bali package. Emphasis was put on conducting sound and rigorous analytical studies to identify products in the '97 per cent list' which would assuage the concerns of the African AGoA beneficiary LDCs, and at the same time ensure *commercially meaningful* implementation of the DF-QF decision through enhanced market access for the Asia-Pacific LDCs. It was also felt that serious analytical work was needed in view of the ongoing negotiations on preferential rules of origin so that LDCs are not faced with onerous RoO criteria in accessing DF-QF facility. In this context a cautionary note was sounded to the effect that LDCs should also put their effort to enhance domestic value addition by building strong backward and forward linkages. This was needed for higher domestic value retention by the LDCs. The issue of helping LDCs to move up the value chain was also discussed and in this connection transfer of technology, attracting FDI and facilitating Mode-3 (commercial presence) and Mode-4 (movement of natural persons) in the services trade were given prominence.

The issue of operationalization of services waiver was examined by participants from the point of view of maximising potential benefits to be accrued to the LDCs. It was felt that the confusion as regards the distinction between Mode-3 and Mode-4, for the purposes of the waiver, should be resolved in a manner that addressed LDC concerns in this regard. The existence of non-tariff barriers in the context of market access in services was duly recognised and it was felt that further work was required to identify the NTBs for which the LDCs would like the developed countries to provide flexibility and extend support to address those NTBs.

The issue of how to make the S&D clauses work to advance their trade interests remained a key concern for the LDCs and received close attention in the discussion. Here, whilst welcoming the Bali decision as regards the monitoring mechanism for S&D provisions, it was argued that this mechanism should not just be a forum for *diagnostic exercise*, but should be endowed with *prescriptive role*. That the decision does not mention any time-bound commitment to address the concerns raised by the LDCs was perceived to be a weakness that needed to be corrected through further follow-up discussion. However, it was suggested that LDCs should be proactively engaged in the work of the monitoring mechanism and whenever there was a concern relating to particular S&D provisions, they should come up with concrete actionable suggestions towards redress and solution and ask for a report as regards measures that were taken in view of discussions in the preceding meetings.

It was recognised that the decision on public food stockholding whilst being resolved for the time being through the *peace clause* was likely to remain a hotly contested area. The elements of any *permanent solution* will have important implications for global food stocks and food prices which in turn could impact on interests of both food exporting and food importing LDCs. LDCs were well-advised to remain engaged in the discourse, identify how the decision in this regard could impact on the global import prices (defensive interests) or the global export prices (offensive interests) and put forward concrete measures to mitigate the likely adverse implications on their food security, domestic prices, balance of payments and relative competitiveness of foodgrains produced domestically (if there was dumping in their market).

In view of the agreement on trade facilitation, LDCs had their work cut out. They needed to focus on three areas: (a) identify the three categories of TF related measures by undertaking a thorough audit of current TF situation; follow this up by taking domestic measures (relating to categories A & B measures) and notify the WTO (relating to category C measures); (b) appoint respective TF focal points and define their terms of reference and operational modality; (c) identify areas where they would seek technical and financial support to address category C measures, under the EIF and through other windows. A critical perspective that emerged in the discussion on TF was that TF tended to focus mainly on customs and border measures whilst what LDCs needed most was financial and other support measures to build up trade-related infrastructure including in areas of transport, seamless connectivity and compliance assurance. Here, the need for more proactive involvement of development partners and multilateral development agencies was highlighted. LDCs were advised to make active use of appropriate fora in this regard. In this connection LDCs were encouraged to explore opportunities of funding support from the newly established *BRICS Bank* and the proposed (by China) *Asian Infrastructure Investment Bank*.

Moving Forward Towards MC-10

The concluding session saw an interesting exchange of ideas as regards possible ways to conclude the protracted Doha Round, now in its fifteenth year. It was emphasised that, the WTO, as a system, must evolve itself into a trading institution for the twenty-first century. For the organisation to be so, it must accommodate the new modalities of arriving at practical solution. Three ideas were discussed in this connection: (a) The idea of addressing *low hanging fruit* issues first, to be followed by launching of a *new Round*; (b) The Doha Round agenda included different issues and areas of negotiation that needed to be addressed in a comprehensive manner and in their entirety, and there were important trade-offs involved. Hence, efforts should be geared towards conclusion of the Round as it was originally envisaged. As regards sequencing of negotiations, some participants thought that services negotiations should be given prominence and NAMA and agriculture negotiations then could follow. However, others felt that since under the single undertaking a fine balance needs to be maintained in negotiations in all key areas, negotiations should be carried forward in earnest on all the important components in the Doha Development agendas; (c) Plurilaterals provided a window to conclude the Doha Round and the opportunities of this modality should be explored to the fullest extent possible. Efforts should thus be concentrated on addressing some issues through the window of single undertaking, and others by taking advantage of the plurilaterals which would then be gradually multilateralised and *MFN-ised* within the WTO. Participants agreed that, safeguarding the defensive interests of the LDCs and securing their offensive interests, as a cross-cutting concern, should be given highest priority in all the negotiations in the WTO. There was a consensus that whilst it remained to be seen how negotiations progressed in Geneva during the run up to the MC-10, issues of interest and concern to the low income countries and LDCs should not be held hostage to the uncertainties in the negotiations. Implementation of the Bali decision concerning the LDCs Package should be accorded topmost priority and measures towards strengthened regional and global integration of the LDCs through appropriately designed support measures ought to receive urgent attention in the WTO. The discourse on the post-2015 international development agendas should provide an opportunity to come forward with comprehensive and quantifiable proposals in this regard. Hence the issue of coherence ought to receive highest importance from all WTO members, in discussions in all relevant fora, both within, and without, the WTO.

Prepared by:
Mustafizur Rahman
Executive Director, CPD