

# Update on the Post-Nairobi Work Programme and key issues for WTO MC11

**African Regional Consultation on Multilateral, Regional and Emerging Trade Issues**

**25-26 May 2017  
Intercontinental Resort  
BalACLava, Mauritius**

*Rabson Wanjala  
Counsellor  
Permanent Mission of Kenya, Geneva*

# **OUTLINE OF THE PRESENTATION**

- 1. BACKGROUND**
- 2. STATE OF PLAY ON OUTSTANDING DDA ISSUES**
- 3. OTHER ISSUES**
- 4. REFLECTIONS ON THE POSSIBLE PACKAGE FOR MC11**

# 1. BACKGROUND

At MC10, Ministers adopted the Nairobi Ministerial Declaration which included a series of 6 Ministerial Decisions on [Doha Development Agenda \(DDA\)](#)

- **Agriculture**
  - Export Competition – Elimination of export subsidies;
  - Cotton;
  - Special Safeguard Mechanism for developing countries;
  - Public Stockholding for the purpose of food security;
- **LDC issues**
  - Preferential Rules of Origin for Least-Developed Countries; and
  - Implementation of Preferential Treatment in Favour of Services and Services Suppliers from LDCs

## BACKGROUND (CON'T)

The MC10 Nairobi Declaration also contains Ministerial Decisions on the [Regular Work of the General Council](#)

- Work programme on Small Economies:
- TRIPS Non-violation and Situations Complaints:
- Work Programme on Electronic Commerce:
- Welcomed the TRIPS Decision: The extension of the Transition Period for LDC Under Article 66.1 of the TRIPS Agreement for LDCs for certain obligations with respect to pharmaceutical products as well as related Waiver Decision adopted by the General Council concerning LDCs obligations under Article 70.8 and 70.9 of the TRIPS Agreement.

## BACKGROUND (CON'T)

### Nairobi Declaration on WTO future work programme

- The Nairobi Ministerial Declaration, however, contrary to previous Ministerial Declarations, does not contain a work program on the outstanding Doha Development Agenda (DDA) issues.
- Lack of consensus among the members on some issues.
- under paragraph 30 of the Nairobi Declaration, Members have divergent views on whether to continue negotiations on outstanding DDA issues **on the basis of the Doha mandate.**
- Notwithstanding divergent views on the reaffirmation of the Doha mandate, under paragraph 31 of the Ministerial Declaration, all Members agreed to continue negotiations on the remaining Doha issues.

## BACKGROUND (CON'T)

Par 34. *“ While we concur that officials should prioritize work where results have not yet been achieved, some wish to identify and discuss other issues for negotiation; others do not. Any decision to launch negotiations multilaterally on such issues would need to be agreed by all Members”*

### Other issues:

- E-commerce
- Investment facilitation
- Micro, Small and Medium Enterprises (MSMEs)

## 2. STATE OF PLAY ON OUTSTANDING DDA ISSUES

### a) Agriculture

- **Market Access**
  - Multilateral Vs Regional/FTA Approach
- **Domestic support**
  - Capping of the Overall Trade Distorting Subsidies (OTDS)- *AMS, Blue Box & De minimis*
  - Disciplines on anti-concentration – prevent product concentration of support
- **Export Subsidies**
  - Implementation of the Nairobi Declaration
- **Cotton** – Limit support to *de minimis* levels (5% for Developed & 10% for developing)

# STATE OF PLAY ON OUTSTANDING DDA ISSUES (CON'T)

## Agriculture (Con't)

- **Public Stockholding for Food Security**

- Members are expected to agree on a permanent solution for public stock holding for food security by 2017
- G33 - Transfer market price support for public stockholding to Green Box

- **Special Safeguard Mechanism (SSM)**

- An SSM is a tool that will allow developing countries to temporarily deal with import surges or price falls in agricultural products.
- G33 – use of price-based and volume-based SSM



## STATE OF PLAY ON OUTSTANDING DDA ISSUES ( CON'T)

### **b) Non-Agricultural Market Access (NAMA)**

- Discussions on the way forward for NAMA negotiations have witnessed the emergence of different positions among Members on the way forward.
- Some Members want negotiations to continue on tariffs and Non-Tariff Barriers (NTBs) in parallel.
- Others do not see the WTO as the right forum to negotiate NAMA issues and therefore see regional trade agreements or FTAs as the appropriate forum.
- We also have some Members who prefer the status quo and therefore keen on preserving their policy space. NAMA is one areas where building convergence to move forwards will not be easy and it might not be a candidate for MC11.

# STATE OF PLAY ON OUTSTANDING DDA ISSUES ( CON'T)

## c) Services Negotiations

- **Market access in services**

- Some Members prefer multilateral approach while others believe that plurilateral approach pursued under TISA would deliver tangible results.

- **Domestic regulation**

- A number of proposals have been submitted. These proposals seek to ensure that **licensing requirements and procedures; qualification requirements and procedure; and technical standards** applicable in services sector do not constitute unnecessary restrictions to trade in service. The proposals also call for transparency in the process of revising or developing new regulations that affect trade in service.
- India has also submitted a proposal on **“Trade Facilitation Agreement for Services”** modelled on the new Trade Facilitation Agreement in goods.

## STATE OF PLAY ON OUTSTANDING DDA ISSUES ( CON'T)

**d) WTO Rules:** Fisheries subsidies, anti-dumping (AD), and subsidies and countervailing measures (ASCM)

### **i) Fisheries subsidies**

- Discussions based on mandate for WTO fisheries subsidies negotiations and targets set out in the SDG 14.6, which commits governments to prohibiting certain forms of fisheries subsidies by 2020
- Prohibit subsidies to vessels engaged in IUU fishing, and subsidies that contribute to overfishing and overcapacity
- Special and differential treatment for developing and least developed countries

## STATE OF PLAY ON OUTSTANDING DDA ISSUES ( CON'T)

### Key questions being addressed in the discussions on fisheries subsidies

- What sorts of fisheries subsidies should be prohibited?
- What role, if any, Regional Fisheries Management Organizations (RFMOs) and/or national fisheries management systems should have in any package of disciplines?
- How to define subsistence, small-scale and artisanal fishing and what subsidy disciplines should apply to these activities?; and
- How an agreement on fisheries subsidies could address future development needs of developing and least developed members?

## STATE OF PLAY ON OUTSTANDING DDA ISSUES ( CON'T)

### ii) Anti-dumping (AD), and subsidies and countervailing measures (ASCM)

The China proposal on AD and ASCM seek addresses the following aspects:

- a. Enhancing transparency and strengthening due process
- b. Preventing AD/CM measures from becoming "permanent"
- c. Preventing AD/CM measures from "overreaching"
- d. Special consideration and treatment of SMEs

## STATE OF PLAY ON OUTSTANDING DDA ISSUES ( CON'T)

### e) Development Issues – Special and Differential Treatment (S&D)

The African Group has indentified 10 specific proposals which are in the process of being finalized and will be soon submitted for discussions. These proposals are in the following areas:

- Agreement on Trade-Related Investment Measures
- Article XVIII. A and C of GATT 1994
- Balance of Payment- Article XVIII of GATT 1994 – Section B
- Agreement on the Application of Sanitary and Phytosanitary Measures
- Agreement on Technical Barriers to Trade
- Agreement on Subsidies and Countervailing Measures
- Agreement on Customs Valuation
- Enabling Clause and other non-reciprocal preference schemes
- Accession of Least Developed Countries (LDCS)

# STATE OF PLAY ON OUTSTANDING DDA ISSUES

## f) Trade and Environment

- A group of 24 WTO Members have been negotiating for an Environmental Goods Agreement (EGA) and are of the view that plurilateral approach is the best route to achieve the desired results.
- However, on issues concerning the relationship between MEAS and the WTO many Members are of the view that multilateral approach is the best way forward.

## 3. OTHER ISSUES

### a) E-commerce

- Free flow of data – No requirement for localization of data
- Protection of Intellectual Property Rights
- Open networks
- Trade facilitation elements
  - E-signature, electronic authentication, online payment solution, transparency, consumer protection
- Permanent moratorium of not imposing customs duties on electronic transmissions



## **b) Investment facilitation**

- Informal platform at the WTO on investment facilitation
- Discussions aimed at improving regulatory environment
- Investment protection and investor-state disputes to be excluded

## **c) Micro, Small and Medium Enterprise (MSMEs)**

- Informal dialogue to discuss issues affecting the participation of MSMEs in international trade.

## 4. REFLECTIONS ON THE POSSIBLE PACKAGE FOR MC11

Four clusters of issues

1. **Agriculture:** Domestic Support, Cotton, Public stockholding; and SSM
2. Fisheries
3. Special and Differential Treatment
4. Multilateral rules
  - E-commerce
  - Domestic regulation in services
5. Investment facilitation and MSMEs?

**THANK YOU**