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BRIDGES NEGOTIATION BRIEFING

A Brief Guide to Negotiations at the WTO's Tenth Ministerial Conference

SPECIAL NAIROBI ISSUE - DECEMBER 2015

An ICTSD guide to the Nairobi ministerial

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International Centre for Trade and Sustainable Development

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WTO Ministerial: A Time for Reflection in Nairobi on the Future of Global Trade

Within a matter of days, trade ministers will gather together in the Kenyan capital city of Nairobi for the WTO's Tenth Ministerial Conference, marking the first time that the global trade body's highest-level meeting will be held in sub-Saharan Africa.

The occasion will also allow for a celebration of the WTO's 20th anniversary, as well as giving ministers a chance to agree on a possible set of deliverables from the areas of agriculture, development and least developed country issues, and "rules," as well as chart the course of the international organisation's future work – particularly regarding the Doha Round and so-called new issues.

Beyond the fanfare, however, is the worry that months of preparations and negotiations may all be for naught. Headed into this year's ministerial, disagreements among WTO members both over the content of various specific deliverables – as well as how to address the organisation's future negotiating work – remained unresolved, leaving ministers with some very difficult decisions to make in the days ahead, as well as in the months and years to come.

Meanwhile, the structure of trade governance is changing rapidly, leaving questions over how - and if - the global trade club will be able to respond and appropriately adapt.

As the world turns, what role for WTO?

The Doha Round negotiations just hit the 14-year mark last month, having been launched in the Qatari capital in November 2001. At that stage, WTO members were aiming to wrap up this new round of negotiations – designed to have development at its core – by January 2005.

The years since, however, have taught WTO members a strikingly different lesson with multiple high-profile failures and stalls in the negotiations. The adjectives and metaphors used to describe the Doha talks in recent years have now become familiar in their negativity: the Round is struggling, stalled, moribund, a zombie, or just plain dead. The inability to update global trade rules has, in turn, fuelled fears that the challenges of the Doha Round would eventually drive the organisation into irrelevance, unable to adapt to changing realities.

Whether the original Doha mandate fully addresses the needs of the world of today - versus that of 2001 - is another question being raised in some trade circles. Abandoning it, however, has been referred to as untenable by others.

Global trade realities have indeed altered significantly in the WTO's 20 year history. The WTO has gone from the 128 signatories of the General Agreement on

Tariffs and Trade (GATT) in 1994 to 162 members, with Kazakhstan the latest to enter the organisation on 30 November of this year.

China, which joined the WTO in 2001, has now become the world's largest exporter. Developing countries, particularly emerging economies such as Brazil, Russia, India, China, and South Africa, are playing an ever-greater role in world merchandise trade, according to this year's edition of the WTO's International Trade Statistics.

Regional and bilateral trade deals are also on the rise, with 619 being notified to the international organisation as of this month, with over 400 of these in force. "Mega-regional" pacts, such as the recently-concluded Trans-Pacific Partnership (TPP) negotiations, have drawn particular notice for their potential commercial impacts and their forays into areas not traditionally dealt with in trade deals.

Average applied tariffs, meanwhile, have dropped in half – from 15 percent in 1995 to less than eight percent today. Trade volumes have doubled, though recent years have shown worrying signs of slowing trade growth in the wake of the global financial crisis. Meanwhile, the digital economy has taken off, with electronic commerce being credited for slashing trade costs and boosting cross-border trade, thanks to the advent of new technologies and the internet.

As the global economy continues to evolve, the Doha Round, otherwise known as the Doha Development Agenda or DDA, has meanwhile showed comparatively little progress, with some critics calling it a drag on the organisation's work, reputation, and potential while criticising the scope of its mandate as either too broad to yield an outcome or too narrow to address the rapidly-changing trade scene.

As a result, the global trade body as a whole has repeatedly been said to be arriving at a crossroads, despite the fact that the organisation's other key pillars – trade monitoring and the work of the WTO's regular bodies, as well as the dispute settlement system – have been widely applauded for their success.

Trade monitoring, for example, played a significant role during and after the 2008 financial crisis in boosting transparency on the trade policy measures being taken by WTO members, while in the area of dispute settlement the global trade body hit a notable milestone in November with its 500th dispute.

However, questions on how to build upon and improve the work of these other pillars, have been raised. The pace of notifications by members across various areas has proven slower than what was originally envisioned. The dispute settlement system, for its part, has essentially been a victim of its own success, now facing a caseload that in both number and complexity calls for more resources than what are currently available, leading to significant delays. This is now the subject of discussions between the membership and WTO officials on how to address such challenges.

Even so, the pace of the Doha Round negotiations still seem to capture the bulk of the headlines when it comes to the WTO – as well as the harshest scrutiny.

From post-Bali to post-Nairobi

After a series of high-profile collapses and setbacks, the 2013 ministerial conference in Bali, Indonesia, provided a brief reprieve from these criticisms: ministers were able to announce that they had successfully negotiated the first global trade agreement since the WTO opened its doors in 1995.

This new deal, known as the Trade Facilitation Agreement (TFA), would ease customs procedures in order to speed up trade flows, while providing developing countries with technical assistance and capacity-building in order to implement these commitments. It also achieved a notable first for WTO agreements, in that the commitments adopted by members would be linked to their capacity to implement them.

Estimates on the economic impact of the agreement have widely varied, with this year's World Trade Report placing the annual increase in merchandise exports at US$1 trillion once in force. When that entry into force occurs, however, is yet unclear, with only 56 WTO members having ratified the agreement at press time – just under half of the number required.

A handful of other deliverables relating to agriculture and development were also announced in Bali, although these were mainly non-binding. Perhaps most notable of all, however, was a commitment by ministers to reinvigorate the Doha Round trade talks, specifically by developing a "clearly defined" post-Bali "work programme." Ministers agreed to prioritise areas that did not yield binding outcomes at the time and directed members to resume exploring options within WTO committees and negotiating groups for those issues not addressed at the conference.

The results from Bali were widely heralded as a shot in the arm for the organisation. Now, two years later, the momentum from the 2013 ministerial has been replaced by frustration in many quarters, as trade negotiators have struggled to overcome their differences, both old and new.

Earlier this year, members had attempted to return to the toughest issues of the Doha Round – agriculture, non-agricultural market access (NAMA), services, and rules – as they worked to craft the work programme mandated in Bali. These efforts, however, were unsuccessful, after members were unable to resolve disagreement over issues such as whether to use the 2008 draft texts in agriculture and NAMA – and if so, to what extent – as well as what ambition to aim toward in time for a 31 July 2015 work programme deadline.

With such a troubled history and low expectations, what are the actual stakes for the upcoming Nairobi meeting? Will ministers be able to reach an outcome that can draw back the interest of those stakeholders who have largely written off the WTO's negotiating function, or will the global trade body's 162 members instead be entering uncharted waters, without a clear course to follow or significant deliverables to applaud?

Key in answering these questions, at least partially, is how members address in their planned "ministerial declaration" the Doha Round, the future work of the

organisation, and so-called new issues that do not currently fall within the scope of the negotiations' mandate.

Some major traders, such as the US, EU, and Japan, have been opposing specific language referring to the reaffirmation of the Doha ministerial declaration and subsequent ministerial outcome documents, as well as language regarding the continuation of the Doha Round, expressing an interest instead in discussing those same topics outside of that framework, together with exploring newer issues.

Meanwhile, various emerging economies and some developing countries, such as China, India, South Africa, Ecuador, Venezuela, and Indonesia, have publicly proposed language in the declaration that would include a reaffirmation of the Doha Round and the ministerial declarations and decisions taken since. Similar language has also been backed by the African Group.

New members, possible plurilateral outcomes

While most eyes will be on the multilateral discussions in Nairobi, some interesting signals could come from the "plurilateral" front. For one, a group of WTO members that has been working to expand the product coverage of the Information Technology Agreement (ITA) – a tariff-eliminating deal on various information and communication technology (ICT) goods – in order to bring it up to date with the times and commercial realities could be formally completed in Nairobi.

That group of members had already announced in July that they had reached agreement on a "product list" of over 200 goods to add to the ITA's coverage. Since then, they have been negotiating to finalise the scheduling of the tariff phase-outs for these products, with a view to having an outcome ready to forward to ministers from that group in Nairobi.

Another tariff-cutting initiative, focusing specifically on environmental goods trade, has also been working toward reaching a finalised product list in the near-term, though sources indicate that this be ready in time for Nairobi and may instead be delivered at some stage in the coming year. This proposed pact, known as the Environmental Goods Agreement, was launched in the Swiss ski resort town of Davos in January 2014, with negotiations kicking off later that same year.

Two countries are also expected to be invited into the WTO during the Nairobi meeting, with both being least developed countries (LDCs). These are Afghanistan and Liberia, whose accession packages were approved ad referendum earlier this autumn.

The following set of briefings are designed to provide an overview of the negotiations that have taken place in Geneva, Switzerland, throughout 2015 in preparation for the Nairobi ministerial conference. These notes provide a brief recap of the relevant history of these negotiating areas, their respective mandates, and the state of play shortly prior to the ministerial.

The Bridges Reporting Team

AGRICULTURE

Towards new rules for agricultural markets?

Farm trade once again in the spotlight as ministers prepare to meet in Kenya.

As WTO members prepare for the global trade body's tenth ministerial conference in Nairobi, Kenya, agricultural trade issues are – once again – central to negotiators' concerns. With rules on farm trade remaining essentially untouched now for over two decades, many countries would like to see much faster progress towards the "fair and market-oriented agricultural trading system" that countries agreed they would try to establish when the Uruguay Round of multilateral trade negotiations ended in 1994. At the same time, changing markets and policies have further complicated the task of negotiators.

Many governments also remain strongly attached to the negotiating mandates on agriculture that were agreed at the Doha ministerial conference in 2001: to achieve "substantial improvements" in market access; "substantial reductions" in trade-distorting domestic support; and "reductions of, with a view to phasing out, all forms of export subsidies." However, countries have disagreed over how to act on another key part of the mandate: how best to ensure that special and differential treatment for developing countries is "an integral part" of all areas of the talks.

In 2008, trade ministers were close to reaching agreement on a draft text that would have set new ceilings on countries' trade-distorting agricultural domestic support, laid out rules for how much countries should expand market access for farm goods, and set down disciplines that would eliminate the use of export subsidies and similar measures. However, disagreement between major developed and developing country trading powers meant the draft deal was never finalised.

Bali boost

After a lengthy hiatus – including a 2011 ministerial conference declaring Doha to be at an "impasse" – WTO members managed to take small steps forward at the Bali conference in 2013. New momentum around negotiations for a Trade Facilitation Agreement meant that some agriculture elements could be included in a small package of measures that were ultimately opted by ministers. Members also agreed to make progress towards a "clearly defined work programme" for the remaining Doha issues.

Talks since then have seen members slate a raft of proposals for salvaging the Doha agenda and adapting to new realities in global markets for food and agriculture. Members proposed new approaches to market access, such as a "request and offer" process, and also on domestic support, but failed to reach consensus on these "core" farm trade issues ahead of an extended end-July deadline this year. In September, WTO Director-General Roberto Azevêdo told members that agricultural export competition seemed more likely to yield an outcome than other agriculture topics, as part of a package that could include development and LDC issues, along with progress on improving transparency. Several negotiating groups have nonetheless tabled proposals since then which address a broader set of trade concerns, including proposed new domestic support and market access disciplines.

Agricultural export competition

WTO members agreed a decade ago at the Hong Kong ministerial conference that agricultural export subsidies would be eliminated by 2013, and that disciplines would be established on all export measures with equivalent effect. The EU – the main user of export subsidies at the time – was keen that similar US measures such as export credits would also be covered by the deal, along with exporting state trading enterprises in countries such as Australia and New Zealand. WTO talks on food aid had also sought to

1994
GATT Uruguay Round sets up WTO, concludes Agreement on Agriculture, including Art. XX on continuing reform.

1999
Seattle ministerial breaks down, no agreement to launch new round.

2001
WTO ministerial launches Doha Round, including talks on farm trade

2003
First draft texts. G-20 developing country group set up. WTO Cancún ministerial breaks down.

2005
Hong Kong ministerial agrees to end agriculture export subsidies.

2006-2007
Successive draft texts refine basis for Doha deal

2008
Mini-Ministerial in Geneva comes close to concluding Round, divergence on industrial goods and agricultural safeguard prompt breakdown

Food prices spike.

2011
Ministerial in Geneva recognises Doha Round "impasse"

Food prices start falling.

2013
Bali Ministerial reaches deal on "small package," including on select agriculture deliverables.

allow countries to respond effectively to emergencies, while ensuring that in-kind aid in non-emergency situations did not effectively serve as a disguised export subsidy.

In November this year, Brazil and the EU joined forces with Argentina, New Zealand, Paraguay, Peru, and Uruguay[1] to table a proposal on all of these "export competition" issues, which was closely based on the draft Doha text from 2008 - dubbed "Rev.4" by negotiators. The proposal would add five years to the export subsidy elimination deadlines set out in the draft text, meaning developed countries would have to do so by 2018, and developing countries would have to end most types of export subsidies by 2021.

However, a clause would still allow developing countries to provide export subsidies for marketing and transport until 2026 - which Australia has complained would allow India legal cover for its export subsidies for sugar. A separate proposal from Tunisia would remove any phase-out deadline for this type of payments for net food-importing developing countries. Meanwhile, another communication from the group of least developed countries would have developed countries phase out all kinds of export subsidies in three years, and have developing countries do so in six years. The chair of the WTO agriculture talks had previously proposed adding seven years to the deadlines in Rev.4.

Australia and Chile have also proposed that all WTO members ensure that they do not provide export subsidies to farm goods that they send to least developed countries or small, vulnerable economies, from January 2016 onwards. The two agricultural exporting countries have also joined with Colombia and Ukraine to propose establishing additional limits on the use of export subsidies during any implementation period that members agree to: these include tighter disciplines on countries which are major exporters of a particular product, and benchmarking subsidies against historical levels that countries have reported to the WTO.

In a bid to respond to US concerns over proposed disciplines on export credits, a clause in the Brazil-EU proposal would allow WTO members to provide export financing for up to nine months instead of the six months previously included in the 2008 draft, so long as risk-based fees charged to loan recipients are benchmarked against the Organisation for Economic Co-operation and Development (OECD) minimum premium rates. The US had previously accepted a similar arrangement as part of the settlement of its WTO dispute with Brazil over cotton subsidies.

Another clause in the same proposal would allow a to-be-determined percentage of food aid in both emergency and non-emergency situations to be "monetised" – or sold to raise donor funds. In contrast, a separate US food aid proposal would impose no firm restrictions on donors' ability to sell in-kind aid. A proposal from the African Group calls for new disciplines to be based on the 2008 draft, as did a communication from the Philippines that called for the Rev.4 text to be maintained in several of the areas where other members had suggested making changes.

A US proposal on agricultural state trading enterprises would allow least developed countries to maintain these bodies, but establish deadlines by which developed and developing countries would need to phase them out. Like the EU-Brazil proposal, the US submission would exempt enterprises that are only responsible for less than 0.25 percent of world trade during a base period. A separate proposal from Chile criticises the clause, which trade officials say would allow New Zealand to maintain a firm with a monopoly in kiwi fruit exports.

Special safeguard mechanism

China, India, Indonesia, and other smaller countries in the G-33 coalition have called for the Nairobi ministerial to adopt a draft decision on a proposed new "special safeguard mechanism," which would allow them to raise tariffs temporarily in the event of a sudden import surge or price depression.

The safeguard proponents have long argued that most developing countries are unable to take advantage of a separate mechanism that was included at the end of the Uruguay Round for countries that converted other kinds of border measures into tariffs at that time.

However, many agricultural exporting countries have said that any new safeguard should be negotiated as part of a broader deal to cut tariffs and other market access barriers. Developing countries such as Brazil, Pakistan, and Paraguay have taken this stance, along with developed countries such as Australia, the EU, and the US.

Controversy over the extent to which developing countries should be allowed to use the safeguard to exceed their WTO tariff ceilings was an important factor that contributed to the breakdown of WTO talks in 2008. The G-33's latest submission proposes that countries should negotiate the conditions under which this should be possible.

Public stockholding

The G-33 have also argued that the Nairobi ministerial should result in an agreement on a "permanent solution" to some of the problems that developing countries say they face in operating public food stockholding programmes under WTO farm subsidy rules.

The Bali ministerial saw countries agree not to challenge these schemes under the WTO's dispute settlement process, so long as developing countries provided more information about the types of programmes they are operating. The trade body's General Council then agreed one year ago that this arrangement would apply until a permanent solution could be found, and set an end-2015 deadline for doing so.

Currently, if developing countries buy food at government-set prices when operating these schemes, they are required to count these purchases towards their overall ceiling on trade-distorting support at the WTO. While there is no cap on how much food governments can buy for public stocks at market prices, or on the amount of domestic food aid that can be provided to poor citizens, the G-33 have said that price inflation has eroded their ability to buy food at administered prices under existing rules.

A new proposal from the G-33 would remove the requirement to count purchases made under these programmes towards developing countries' ceiling on trade-distorting support. However, agricultural exporting countries remain concerned that doing so could allow countries to distort global markets for food and agriculture: another proposal from Australia, Paraguay and Canada calls for countries to use the Bali ministerial decision as a basis for negotiating a permanent solution. Meanwhile, a separate submission from least developed countries has called for their own purchases at administered prices under these programmes to be exempt from WTO ceilings on trade-distorting support.

Cotton

African countries have seen only slow progress in WTO negotiations since ministers agreed a decade ago to address cotton "ambitiously, expeditiously and specifically" at the trade body's Hong Kong ministerial conference, despite evolutions in policy in key countries such as the US and China, and a successful legal challenge to Washington's programmes by Brazil.

A draft decision tabled by the C-4 West African cotton producers – Benin, Burkina Faso, Chad, and Mali – seeks to build on talks to date, by proposing trade commitments on market access, domestic support, and export competition, as well as complementary actions on development assistance.

The proposal calls for developed countries to grant, from 1 January 2016, duty-free, quota-free market access to cotton exports from least developed countries. Developing countries in a position to do so would undertake the same commitment.

Developed countries would cut their most trade-distorting "amber box" domestic support for cotton in three tranches, with a view to phasing out completely by the beginning of 2018. Half of the support would be cut from the start of 2016. Developed countries' production-limiting payments in the WTO's "blue box" would also be reduced over the same period.

Developing countries would have until the end of 2021 to cut both amber and blue box payments, the C-4 have said, with successive cuts of 20 percent from January 2017 onwards.

The decision would confirm that cotton export subsidies are prohibited for developed countries, but allow developing countries until January 2018 to comply with the prohibition. Other export competition disciplines affecting cotton, such as on export credits, would apply to developed countries from the start of 2016 and to developing countries from 2018.

The US has linked progress on cotton to the agriculture negotiations as a whole, as well as to the extent to which large developing countries such as China would also be required to undertake new commitments.

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❶ A revised submission later also included Moldova and Montenegro as co-sponsors.

DEVELOPMENT AND LDC ISSUES

From Bali to Nairobi: Securing a meaningful outcome for LDCs

Members debate a potentially revamped LDC package

As trade delegates gear up for the WTO's Tenth Ministerial Conference in Nairobi, Kenya – the first such meeting to ever be held in Africa – expectations are high that the conference will, at least, deliver concrete progress on a development-oriented package for the organisation's poorest members.

Least developed countries' (LDCs) issues received a renewed impetus in 2013 during the WTO's Ninth Ministerial Conference in Bali, Indonesia, when ministers adopted, among other elements, four LDC-related decisions on duty-free quota-free (DFQF) market access, preferential rules of origin, operationalisation of the LDC services waiver, and on cotton. LDCs now want "substantive, binding, LDC specific decisions which should be commercially meaningful on all four elements of the Bali package," said Ambassador Shameem Ahsan of Bangladesh, Coordinator of the LDC Group at the WTO, in a recent interview.

Constituting only a subset of the overall development pillar, which itself is part of a broader set of issues being considered under the Doha Development Agenda (DDA), the LDC package attempts to address some of the structural constraints which the world's poorest countries face when participating in global trade. As some experts note, most LDC issues are bilateral in nature and therefore follow their own dynamics, compared to other areas such as agriculture or rules where the setting is truly multilateral and where positions are significantly more entrenched.

The run-up to the Nairobi ministerial conference has, however, also shown some of the political constraints surrounding these discussions across the broader WTO membership, in some cases highlighting some of the limits of the solidarity between developing – and emerging – countries.

Some noticeable progress

Along with the 2013 Bali package, other LDC issues have gained traction over the years, despite slow progress in the overall Doha talks. For example, a waiver that would allow members to grant preferential treatment to services and service suppliers from LDCs was adopted in 2011 and followed by a practical process which culminated this year with – at press time – 19 notifications from WTO members of concrete sectors and modes of supply where they intend to provide preferential treatment to LDC services and services suppliers. Two of the other decisions that emerged from the 2011 ministerial conference, specifically involving LDC accessions and their implementation of intellectual property rules, have also seen advances at the global trade body.

At the 2011 ministerial, WTO members committed to revise the accession guidelines for LDCs, agreeing to strengthen, streamline, and operationalise the previous 2002 version. These revised guidelines were approved by the General Council just before the mandated deadline in July 2012. These establish a series of benchmarks, particularly regarding goods market access, as well as elements on Special and Differential Treatment (S&DT), transition periods, transparency, and technical assistance.

Since then, Yemen and Seychelles, both LDCs, have joined the organisation's ranks. Out of the LDCs that have been negotiating their membership terms since 1995, two accession packages for Afghanistan and Liberia were finalised this year and will be presented at the Nairobi Ministerial Conference for formal adoption. Six more LDCs are currently

2002
Members adopt guidelines to help facilitate WTO accession negotiations for LDCs

2005
Ministers in Hong Kong adopt decision setting goal to provide DFQF market access on a lasting basis for all products originating from LDCs.

Members also agree to eliminate cotton export subsidies, and that developed countries would allow cotton from LDCs into their markets duty-free and without quotas.

December 2011
TRIPS Council is instructed to consider LDCs request for extension of TRIPS transition period.

WTO ministers adopt waiver that would allow members to grant preferential treatment to services and service suppliers from LDCs.

July 2012
WTO General Council formally signs off on revised LDC accession guidelines, aimed at further strengthening, streamlining, and operationalizing 2002 version

May 2013
LDC Group submits communication highlighting their priority issues for Bali ministerial conference.

June 2013
WTO members agree to extend TRIPS transition period for LDCs until July 2021

December 2013
Ministers agree on LDC decisions in Bali, Indonesia.

negotiating to join the WTO: Bhutan, Comoros, Equatorial Guinea, Ethiopia, Sao Tomé and Principe, and Sudan.

This year was also marked by the 17-year extension of the transitional period for LDCs to enforce global trade rules protecting pharmaceutical patents and clinical data, with a new expiration date now set for 1 January 2033. Lately, the question of extending this transition period for the WTO's poorest members had taken on a particular urgency, given that the existing version was set to expire on 1 January 2016.

Two years ago, WTO members agreed to extend a separate transition period for LDCs to apply the provisions of the full TRIPS Agreement until July 2021.

A "mini" package for LDCs in Nairobi?
At a time when developed and emerging countries' respective positions seem hopelessly fixed, particularly on how to advance "core issues," many observers suggest that there is still a chance for LDCs to secure some commitments in Nairobi, which would also help ensure the credibility and the inclusivity of the multilateral trading system. To date, a range of proposals related to LDC issues have been put forward, with the LDC Group also circulating a submission on 5 November outlining the priority issues that they wished members to consider during the Nairobi ministerial conference.

A good step forward on services waiver
If finding consensus in other areas of relevance for LDCs has proved difficult so far, prospects are looking up for the operationalisation of the services waiver, following the progress seen this year. During a review of the notifications of preferential measures for LDC services and services suppliers at the WTO's Council on Trade in Services (CTS) on 2 November, the LDC Group lauded efforts by WTO members to advance services supply from LDCs.

Agreed at the 2011 Geneva ministerial conference, the LDC services waiver decision had initially struggled to gain traction. In the years that followed, no preferences were requested by LDCs or granted to them, prompting WTO members to reconsider ways to move this decision forward.

In July 2014, the LDC Group submitted a collective request regarding the preferential treatment it wanted to see for its members' services exports. At a high-level meeting in February this year, 22 WTO members responded to this collective request by indicating sectors and modes where they were considering providing preferences as well as support for projects on technical cooperation.

Since then, the LDC Group has been encouraging WTO members to formally notify the CTS of their actual preferences, including detailed information regarding the sectors or sub-sectors concerned and the period of time during which the member plans to maintain those preferences.

The assessment report of the notifications presented during the 2 November meeting put clear emphasis on the importance of these notifications as the only means to bring the services waiver into effect.

To date, 19 WTO members, including the 28-nation EU, Canada, Australia, Norway, Korea, China, Hong Kong, Chinese Taipei, Singapore, New Zealand, Switzerland, Japan, Mexico, Turkey, the United States, India, Chile, Iceland, and Brazil have submitted notifications. Another notification from South Africa is reportedly underway and should be submitted soon.

During the CTS meeting, the LDC Group noted that all four modes of supply and more than half of the sectors listed in the LDCs' collective request under the waiver had been covered.

The LDCs also welcomed the fact that some WTO members managed to provide preferences beyond the market access provisions under Article 16 of the General Agreement on Trade in Services (GATS). In a recent submission on the services waiver, the group urged the CTS to approve such measures "expeditiously."

Though the waiver decision does allow such an extension, notifications so far – with a few exceptions – have restricted themselves to Article 16, which deals with market access. Non-market access measures are not automatically covered, but can be authorised by the CTS.

The LDC Group, however, expressed various concerns regarding the lack of preferences on Mode 4, which concerns the movement of physical persons; insufficient clarity in individual notifications on where preferences are being granted; the risk of preference erosion; the need to improve some of the preferences; and the waiver's duration.

The draft text slated for Nairobi contains binding language on reducing administrative procedures and fees for visas, work permits, residence permits, and licenses in favour of LDC service suppliers and independent professionals as well as on the issue of mutual recognition of qualification. Some trade experts have, however, commented that while this constitutes an important request, it will likely be very sensitive to address given the political sensitivities involved.

In the draft decision, the LDC Group recognises the efforts made by WTO members in notifying preferences to date, urging those members who have not done so to expedite their notifications.

The draft text also specifies that further guidance may be needed to clarify the definition of "preferential treatment" as referred to in the WTO services waiver decision.

Generally, WTO members, particularly developed country members, agree that turning these preferences into real market opportunities will require LDCs to confront their supply side capacity constraints and reform their domestic regulatory framework, which the draft decision acknowledges. The text further calls upon WTO members to give priority attention to addressing regulatory barriers that impact LDC services trade.

One key feature of the draft decision concerns the waiver's duration, which the LDC Group says was "depleted by three years" before the first notifications materialised this year. LDCs therefore request an extension of 15 years for the services waiver from the date of the notification.

The text also requests additional definition of the term "preferential treatment" in the sense of the waiver.

Rules of origin: a "shall" commitment this time?

WTO negotiators first attempted to address the issue of preferential rules of origin (RoO) in the context of the DFQF initiative, which was introduced at the WTO's First Ministerial Conference in Singapore in 1996.

Little progress was made in the following decade, although the 2005 Hong Kong Ministerial Declaration does feature a brief reference calling upon developed countries and developing countries in a position to do so to design "simplified and transparent rules of origin so as to facilitate exports from LDCs."

Since the ministerial conference in Bali, the LDC Group has been actively pursuing work to operationalise the guidelines on RoO adopted by ministers through various submissions: a report was presented in October 2014 by the Group to the multilateral organisation's Committee on Rules of Origin (CRO), calling for a more effective design of preferential RoO; the LDC Group then submitted a paper aimed at stimulating a discussion among WTO members with regard to the implementation of the Bali ministerial decision on RoO.

Since last September, the LDC Group has revisited the subject on several occasions with various RoO submissions.

According to LDCs, existing preferential RoO are old, have not followed evolutions in world trade and, therefore need to be reformed. In its 2014 report, the Group used the examples of RoO reforms in Canada (2003) and the EU (2011) to illustrate how a shift towards more lenient and flexible RoO can be conducive to development in preference-receiving countries and invited some WTO members, particularly the United States and Japan, to review the substance and form of their RoO systems.

Another challenge consists in finding a common ground on the various methodologies that exist for establishing substantial transformation designed to evaluate the extent of meaningful local production. Part of the complexity of this issue is that no single methodology stands out as being the most appropriate to confer origin across all product categories.

A submission on RoO dated from 21 September triggered mixed reactions within the WTO membership as some were concerned that the LDC Group proposal went beyond the Bali decision or would require substantial changes in their national systems which they were not in a position to offer at this stage. Other countries raised questions over the push to obtain legally binding obligations as articulated in the LDC proposal at the time. Active discussions on this issue have been ongoing since then.

The use of the term "shall" instead of "should" in the most recent submissions seems to indicate that the group seeks to include binding elements in the Bali decision on preferential rules of origin, which was previously adopted in the form of non-binding guidelines essentially outlining technical aspects of RoO.

Recent submissions show that the members have been discussing extensively the threshold level of value addition, which have oscillated between 75 percent down to 60 percent over the past few weeks. The threshold level would determine the amount of foreign inputs allowed to make up a product's value in order to qualify for preferential treatment.

Discussions have also focused around the inclusion of differential treatment for developing country preference-giving countries such as India, Brazil and Chile.

The most recent draft text includes provisions regarding cumulation, simplification of documentary requirements and implementation and transparency, specifying 31 December 2016 as a deadline for preference-granting members to notify measures in compliance with its terms. A chair's report and bracketed draft text has now been sent to MC10 for possible negotiation.

Cotton on the table, again

A group of West African cotton producers, collectively known as the C-4, have long pushed for a change in the WTO's rules on cotton, arguing that developed countries' subsidy schemes have kept global prices of the commodity artificially low and hurt their cotton-dependent economies. So far, the trade aspects of cotton have seen few advances, reflecting the limited progress in the overall agriculture negotiations within which cotton is being considered.

Last October, the C-4 African countries tabled a wide-ranging draft decision, building on nearly a decade of negotiations, dating back to the 2005 call by ministers in Hong Kong to address the subject "ambitiously, expeditiously and specifically." This proposal on cotton for Nairobi includes action in the areas of market access, domestic support, export competition, and development assistance. To date, prospects for a ministerial decision on select elements of the paper appear to be within reach. (For more details on cotton, please see the agriculture briefing in this edition).

Searching for consensus on DFQF

DFQF market access was a prominent item in the "LDC package" at the 2013 ministerial conference in Bali, where WTO members were asked to improve their DFQF coverage for LDC products. This follows the 2005 Hong Kong Ministerial Conference when 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. For WTO members with difficulty meeting this requirement, the text included the option of providing DFQF access for 97 percent of LDC products, while working to progressively achieve full compliance.

Although some progress has been made since then, significant hurdles remain and the debate has concentrated on the potential gains under a 97 percent DFQF scheme – since the three percent of excluded tariff lines could potentially cover between 90-98 percent of all LDC exports – versus full coverage, as well as on the position of some members regarding increasing duty-free tariff lines for LDCs.

For example, the US provides nearly complete duty-free access for several African LDCs through the African Growth and Opportunity Act (AGOA), which was renewed for another decade in June 2015. However, Washington remains reluctant to include textiles and apparel in its duty-free treatment, which are key areas for Asian LDCs. Additionally, given their increased role in world trade, many LDCs argue that large emerging markets could also further extend their DFQF coverage.

In that regard, China, India, and Chile announced in 2014 that they would make certain improvements, with Chile and India submitting a formal notification. China declared last year that it will extend zero tariff treatment to 97 percent of tax items from LDCs by the end of 2015. In a similar vein, last month India notified the WTO Council for Trade in Goods that it would raise the share of tariff lines covered by the programme from 94 percent to 98.2 percent, without reporting specifically the duty-free coverage of the revised scheme.

Members have struggled with multiple hurdles in trying to achieve a concrete outcome in this area. One of these comes from within the LDC Group itself, as some members fear the possibility of "preference erosion." Many LDCs benefit from non-reciprocal preferences granted primarily by developed countries, but applying DFQF to all LDCs could result, however, in some countries losing their competitive advantages that such preferences have provided.

WTO members agreed this autumn at a dedicated session of the organisation's Committee for Trade and Development that the WTO secretariat would complete a study on the implementation of the Hong Kong ministerial decision on DFQF market access by mid-November 2015. According to informed sources, members could not agree on the parameters of the study. Discussions on the DFQF issue, despite the momentum, are now more likely to continue in a post-Nairobi context.

According to informed sources, the LDC Group is proposing to resolve the DFQF issue for all LDCs by conducting a tariff line analysis with regards to clothing. The objective is to determine which tariff lines should be included under DFQF while preserving preferences under the US' AGOA and the Cotonou Partnership Agreement involving the EU.

The LDC Group has specified that any outcome on the DFQF market access issue requires binding commitments from preference-granting countries through appropriate scheduling.

At the time of this writing, no specific textual proposal had been tabled either by the LDC Group or by any of its members individually.

Another missed opportunity for S&DT?

Special and Differential Treatment (S&DT) constitutes a central element of the Doha Round's development dimension. As an overarching principle intended to ease the integration of developing countries and least developed countries into the multilateral trading system, it provides those countries with special rights and preferential treatment. S&DT provisions cover transitional time periods, flexibility of commitments, measures aimed at increasing the trade opportunities of developing countries and safeguarding their trade interests, as well as trade-related technical assistance. Some S&DT elements also specifically target WTO's poorest members, the LDCs.

In 2001, ministers agreed in Doha that all S&DT provisions contained in WTO agreements should be reviewed, with a view to strengthening them and making them more precise, effective and operational. This mandate, as contained in paragraph 44 of the 2001 Doha Ministerial Declaration, has since formed the basis for the work on S&DT undertaken by WTO members. This work, despite a clear mandate and efforts by members, has so far only yielded very limited results.

A total of 88 S&DT proposals were tabled in the Special Session of the Committee on Trade and Development (CTD SS), mostly by the African Group and the LDC Group. Although members then agreed in principle on a group of 28 proposals (out of the original 88) in the run-up to the Cancún ministerial in 2003, the breakdown of the conference relegated the proposals to the "waiting room."

The only notable step forward since Cancún regarding work on these 88 agreement-specific proposals has been the adoption, in Hong Kong in 2005, of five LDC-specific decisions – based on six of the proposals. These include a decision on DFQF market access for LDCs. Other attempts to advance some of the proposals since then have failed to produce any meaningful result, notably in 2011 or in 2013 in the lead-up to the Bali Ministerial.

In Bali, WTO members nonetheless agreed on a Monitoring Mechanism, which had first been proposed by the African Group in 2002. The purpose of this mechanism is to provide, within the WTO system, a focal point for the monitoring of S&DT provisions, via written input from WTO members and other WTO bodies. Four dedicated sessions of the CTD took place since the mechanism's adoption, but the lack of written submissions has so far prevented any substantive discussion in that framework.

In July 2015, the G-90 – which comprises the African Group, the LDC Group, and the ACP Group – has tabled 25 S&DT proposals, seeking to revive talks on reviewing existing S&DT provisions and aiming for a potential result at this year's Nairobi ministerial. However, discussions on the basis of this submission, and a subsequent revision submitted in November by the G-90, have so far failed to produce a consensus on a set of proposals that could be transmitted to ministers for adoption this December. In particular, some provisions aimed at preserving more policy options for developing countries' industrialisation strategies have proven particularly contentious.

Members also remain divided on the thorny question of differentiation. Developed countries seem willing to seriously consider some of the proposals, but insist on being able to know who would be able to benefit from those provisions. The November revision submitted by the G-90 attempted to take a step in that direction, by trying to refocus some of the proposals on LDCs and SVEs. Although several developed countries have indicated their willingness to consider "LDC plus" provisions, some also argue that language including SVEs does not provide enough certainty, since no formal category exists for such countries at the WTO.

While the Chair of the CTD SS had identified a small subset of proposals that could be able to garner more support, no consensus had emerged at the conclusion of talks in Geneva on the S&DT issue.

EIF pledging conference: A potentially significant outcome

In its November submission highlighting LDCs' priorities for Nairobi, the LDC Group called on WTO members to enhance capacity building measures, explicitly mentioning Aid for Trade and the Enhanced Integrated Framework (EIF).

The second phase of the EIF, a multi-donor Aid for Trade programme designed exclusively for the LDCs, was launched in July at the WTO. The EIF will hold its pledging conference for phase two alongside the Nairobi Ministerial, which will be of crucial importance for the programme's ability to deliver for the organisation's poorest members in the coming years. As underlined by WTO Director-General Roberto Azevêdo at the launch of EIF's second phase, a successful pledging conference would be a significant outcome of the ministerial conference.

The Aid for Trade Initiative seeks to mobilise resources to address the trade-related constraints identified by developing and least developed countries. Since the initiative's 2006 launch, almost US$250 billion have been disbursed in aid-for-trade programmes and projects, according to the latest Aid for Trade at a Glance report by the WTO and the Organisation for Economic Co-operation and Development (OECD).

However, funding through Aid for Trade is often perceived by some LDCs as not being equally distributed. For example, over 40 percent of total country-specific disbursement since 2006 is concentrated on the top 10 recipients, among which only three are LDCs – Afghanistan, Ethiopia, and Tanzania. LDCs, which have received 31 percent of Aid for Trade disbursements between 2006 and 2013, often claim that they are not receiving their fair share.

Conclusion

At this stage, it is clear that Nairobi will not constitute an ideal resolution of the DDA. However, it could be an opportunity for LDCs to obtain concrete results on a subset of issues of particular interest to them, to assert the need to continue the work on other topics, and above all to reaffirm the importance they attach to the multilateral trading system.

In a context marked by the proliferation of preferential agreements, such as mega-regionals, many analysts warn that LDCs might be severely affected if major players continue to pursue large trade pacts elsewhere without concurrently aiming for significant progress within the WTO negotiating framework. Be it within the Doha mandate or via a new format, these experts suggest that it is crucial for LDCs that meaningful international trade negotiations continue to be conducted in an inclusive forum, allowing them to pursue shared goals on trade together.

RULES

"Rules" outcomes on fisheries, trade remedies remain elusive ahead of Nairobi ministerial

Ambition, timing prove tricky in "rules" talks

The past year has seen a resurgence of activity in the WTO's "rules negotiations," as various members of the global trade body revived debates on how to boost disciplines relating to anti-dumping duties, subsidies and countervailing measures, fisheries subsidies, and regional trade agreements (RTAs). With just days to go before the start of the organisation's Tenth Ministerial Conference in Nairobi, Kenya, whether this increased engagement will translate into concrete outcomes – and of what value – remains extremely uncertain.

As part of the broader global trade round launched in Doha, Qatar, in 2001, WTO members have been attempting to negotiate clarifications and improvements in disciplines involving the above-mentioned areas, given the increased use of anti-dumping and countervailing measures, as well as the problems facing global fish stocks and the rapid proliferation of RTAs.

"Dumping," in trade jargon, refers to a situation where a product is sold abroad for less than on its home market or below cost of production. The General Agreement on Tariffs and Trade (GATT)'s Article VI and the related Anti-Dumping (AD) Agreement allow a WTO member to apply import duties on another member when dumping is proven to injure a domestic industry. These rules give basic guidance on the investigation, determination, and application of these duties. In implementation at the national level, however, this remains a complex process.

"Countervailing," meanwhile, relates to the duties a WTO member may apply if another member's subsidised imports are hurting domestic producers, with such measures governed by the Agreement on Subsidies and Countervailing Measures (SCM). This agreement also includes notification requirements, as well as rules on conducting countervailing duty investigations.

On fisheries subsidies, in addition to the 2001 Doha mandate, WTO members agreed at the 2005 Hong Kong ministerial to work towards a prohibition of certain forms of fisheries subsidies that contribute to overcapacity and overfishing, taking into account appropriate special and differential treatment (S&DT) for developing and least developed members as an integral element.

Regarding RTAs, while these co-exist with the WTO system, the rising number of such deals over the last two decades – along with their increased complexity and commercial scope – has prompted questions among experts and members alike around the implications these have for third parties in various areas, as well as for the multilateral trading system as whole.

Renewed interest

Over the years the rules negotiations have waxed and waned in parallel with the Doha Round's broader struggles. The anti-dumping and fisheries subsidies talks have arguably been the most active, and significant technical progress was made between 2005 and 2011, though limited advances have been evident since.

This year has seen a comparative renewal of activity, given the efforts among WTO members to ink a "post-Bali" work programme for the overall Doha Round, potentially including rules, in time for a July 2015 deadline.

The release in late March by the African, Caribbean and Pacific (ACP) Group of countries of elements it said should define a potential WTO work programme included tackling fisheries subsidies that contribute to overcapacity and overfishing. The document appeared to indicate a growing interest among a wider set of WTO members in addressing this particular issue.

A particularly notable feature of the document, however, was the suggestion to reach agreement by the WTO's Tenth Ministerial Conference on capping and progressively phasing out subsidies provided to vessels engaged in fishing practices that have a significant impact on vulnerable marine ecosystems; to any vessel engaged in illegal, unreported, or unregulated (IUU) fishing; and to activities affecting unequivocally overfished stocks.

A separate communication from a group of six countries in June then also outlined elements for effective disciplines on fisheries subsidies to be included in the post-Bali work programme and for an outcome in Nairobi, followed by technical paper issued by New Zealand in July.

While several other communications followed relating to fisheries and other rules issues, the talks themselves moved slowly, as resistance emerged early on from some camps wanting to first see how the "core" Doha areas – agriculture, non-agricultural market access (NAMA), and services – would be addressed within the work programme. The disagreements across those areas ultimately meant that the July deadline was missed.

Against this backdrop, delegates returning in September began to re-focus efforts on potential Nairobi deliverables, and various members in this context circulated rules-relevant proposals.

The approaches put forward since September on rules can be roughly organised into three groups based on common elements. This includes those asking for some form of prohibitions on harmful fisheries subsidies; those pushing for more transparency either on fisheries subsidies or for the four rules areas in general; and proponents of improving transparency and due process in relation to anti-dumping disciplines.

Flurry of activity on fisheries

On 3 December 2015 the ACP and Peru circulated a non-paper consolidating proposals they had each submitted for a ministerial decision on fisheries subsidies to be taken in Nairobi.

A copy of the draft decision seen by Bridges would have WTO members agree to establish, within a year of the Nairobi ministerial, a prohibition of subsidies to vessels engaged in IUU fishing and of subsidies that negatively affected unequivocally overfished stocks, as well as additional notification requirements beyond those in Article 25 of the SCM agreement for WTO members responsible for more than a certain percentage of global wild fisheries catch.

This particular article includes requirements regarding the notification of "specific" subsidies to the relevant WTO committee.

Broader negotiations should also continue beyond the two bans, accounting for the importance of S&DT for developing nations. The proposal adds that members should refrain from providing capacity-enhancing subsidies to fishing fleets that affect the sustainability of fish stocks and undermine development, livelihoods, or food security of developing countries while negotiations continue at the WTO.

The non-paper builds on a document circulated on 18 November by the ACP for a draft decision on developmental and food security aspects of fisheries subsidies disciplines. It also incorporates a proposal from Peru circulated on 20 October, which targeted prohibitions on subsidies to fishing activities affecting overfished stocks and those provided to any vessel engaged in IUU fishing, with an undefined period of years, and the

provision of additional information relevant to fisheries such as vessel construction and fuel subsidies.

As part of these talks members would, within one year of adopting the decision, establish a prohibition on subsidies to any vessel engaged in IUU fishing and to any vessel or activity negatively affecting fish stocks that are in an unequivocally overfished condition.

The ACP group draft decision proposal also includes additional notification requirements beyond those in Article 25 of the SCM Agreement for members accounting for a certain portion of global wild fisheries catch, though this threshold is not defined. The proposal adds that members should refrain from providing capacity-enhancing subsidies to fishing fleets and those that undermine development, livelihoods, or food security while negotiations continue at the WTO.

Earlier in November the ACP group had submitted a separate proposal to amend the SCM Agreement to include prohibitions on subsidies to IUU fishing and those negatively affecting fish stocks in an unequivocally overfished condition, additional notification arrangements on fisheries, and transitional arrangements for any offending subsidies.

The document met with resistance, however, from some other members who argued that there was not enough time at that stage to negotiate amendments to WTO texts before the Nairobi meet.

The bid to secure prohibitions on certain harmful fisheries subsidies in time for or within a set period after the Nairobi ministerial has also hit hurdles this year. India and South Africa, for example, have argued that prohibitions and additional transparency measures would not constitute a sufficient development outcome and would add extra reporting burdens.

Other members have raised questions around how to put into practice the outlined prohibitions, given that no government has a budget line for illegal activity, making it challenging to monitor the implementation of an IUU fishing subsidy ban.

Some members have also argued that the phrase "unequivocally overfished" used by the ACP regarding the overfishing prohibition is incompatible with terminology used in scientific assessments and therefore risks weakening any eventual ban.

Transparency only

Meanwhile, several members have voiced preferences for a notification outcome on fisheries subsidies only at Nairobi, a move criticised by supporters of the prohibitions. According to the WTO, around 43 percent of members failed to make any notifications in 2013.

Australia on 2 November outlined a best endeavour commitment to notify information on fisheries subsidies on top of that required in Article 25 of the SCM Agreement. Along similar lines, the EU on 20 October put forward a technical paper for transparency improvements across the four rules negotiating areas, building on an earlier July proposal, suggesting in the area of fisheries various options for improving existing WTO subsidies notifications – including by drawing on ideas outlined by other members.

The EU would also improve general subsidies notifications and data by having WTO members that report on countervailing duty actions taken first check whether the subsidy measures at issue have been notified and, if not, notify "supplementary" information. The proposal also suggests taking up discussions on improving transparency related to members' anti-dumping practices and on RTAs based on two chair's texts from 2011 on negotiating state of play.

Beyond Nairobi

Many of the submissions above are drafted with the objective of securing an operative decision in "part two" of the Nairobi ministerial declaration. However, some members are

also pushing for language on fisheries subsidies in the third part of that document that aims to determine the future of multilateral trade talks, although discussion in this area is necessarily linked to the potential part two outcomes under consideration.

On this front, New Zealand tabled text on 11 November that would recognise the central role of the WTO in addressing fisheries subsidies, committing members to clarify and improve disciplines in this area. In the interim, Wellington's text would reaffirm a pledge made at a 2012 UN sustainable development conference in Rio de Janeiro, Brazil, to refrain from introducing, extending, or enhancing subsidies that contribute to overcapacity and overfishing.

Global fisheries context

Although strongly supported by a wider environmental community, negotiations on tackling harmful fisheries subsidies have long proved challenging at the global trade body, given the difficulty of identifying which forms of subsidies exactly contribute to the overcapacity and overfishing challenge and how to design S&DT flexibilities to balance development priorities with the long-term sustainability of fisheries activities.

Latest estimates from the UN Food and Agriculture Organization (FAO) suggest that 29 percent of commercially important marine fish stocks are overfished, while around 61 percent are fully fished, with no room for expansion. Fish provide around three billion people with almost 20 percent of their animal protein intake, many of these in developing countries, and rising demand may increase future pressures on fish stocks.

In 2007, the chair of the rules negotiating group published a text weaving together various ideas on fisheries subsidies discussed to date, outlining a system of rules and exceptions that would have included some prohibitions, some general exceptions for beneficial subsides, and graduated S&DT for most, but not all, of the subsidy bans. Some ideas from this text, such as prohibiting subsidies to illegal, unreported, and unregulated (IUU) fishing and to overfished stocks, have resurfaced in the proposals made this year.

A report tabled by the chair in 2011 on the negotiating state of play signalled that divisions had been strong around issues such as the measurement of fuel subsidies, among others. Some convergence had emerged around the idea of prohibiting subsidies to IUU fishing and overfishing stocks, though many outstanding technical questions remained on how these would work in practice – concerns that have re-emerged this year.

Despite the effective hiatus in the WTO fisheries subsidies talks between 2011 and early 2015, the issue has received attention elsewhere. Among the Sustainable Development Goals (SDGs) as part of the UN's newly-adopted 2030 Agenda for Sustainable Development, SDG 14.6 picks up on ideas outlined by the Rio+20 pledge, and sets a target to eliminating subsidies to IUU fishing, prohibiting those that contribute to overcapacity and overfishing, and implementing a standstill on these subsidies by 2020.

The outcome document from a UN conference on financing for development held in July in Addis Ababa, Ethiopia, echoes this target and includes commitments to support the monitoring, control, and surveillance of fishing vessels. Both of these processes, however, do not impose legally binding obligations, putting the onus on member states to ensure their implementation and monitoring.

Most recently, the 12 economies that negotiated the freshly-inked Trans-Pacific Partnership (TPP) trade deal have agreed to implement, within three years of the agreement's entry into force for each nation, a prohibition on subsidies to both overfished stocks – with stock status determined by a national government, regional fisheries management organisations (RFMOs), or "best scientific evidence available" – and to vessels engaged in IUU fishing. Vietnam has been granted an extra two years to assess its fish stocks and rectify any offending support programmes.

The SDG and TPP developments have reportedly been referred to in recent Nairobi-related discussions, with some members suggesting these signal the importance for WTO members to secure some kind of deal.

According to some experts, the WTO remains the most optimal forum to tackle fisheries subsidies, by virtue of its institutional role in monitoring existing subsidy rules in the SCM Agreement, its dispute settlement mechanism, and the wide scope of its membership.

Clarifying trade remedy rules

A third approach by some members in rules has focused on improvements around anti-dumping and broader subsidy notifications.

Russia on 2 December circulated a draft ministerial decision that would refer to the Committees on Anti-Dumping Practices and on Subsidies and Countervailing Measures the task of clarifying how a list of procedures related to transparency in the AD and SCM Agreements should be implemented, with a report presented to the General Council within one year of the Nairobi ministerial. Areas spotlighted in the draft include a review of members' anti-dumping and countervailing duty policies and practices, disclosure of essential facts under consideration, among others.

This comes after Moscow circulated a draft ministerial decision on 12 November that would instruct the WTO Committee on Anti-Dumping Practices and the Committee on Subsidies and Countervailing Measures to draw up certain requirements relating to non-confidential summaries of information submitted in confidence during anti-dumping and countervailing investigations, for adoption by the General Council within twelve months.

In the interim period members would, to the extent possible, agree to a set of guidelines for providing confidential information and non-confidential summaries in such proceedings.

Japan circulated its own communication on 22 October following up on an earlier co-sponsored paper by 11 other WTO members, known as the "Friends of Anti-Dumping" (FANs), which focused on boosting transparency and due process in anti-dumping investigation proceedings, given the apparent convergence on this topic seen in the rules chair's 2011 "anti-dumping text."

Japan's document outlined various reform proposals to the AD Agreement rules covering, among other areas, semi-annual reports; anti-dumping policy review mechanisms, disclosure and public notices, accountability, publication of legal instruments, access to non-confidential information, and calculation methodologies.

These anti-dumping proposals in various incarnations have nevertheless faced pushback from some other WTO members, due to questions in various quarters regarding the level of clarity in some initial proposals, and concerns again from others that changing WTO texts in time for Nairobi would be unfeasible.

These members have also repeatedly said that the additional transparency efforts around anti-dumping processes were too ambitious and would place an excessive burden on developing and least developed countries.

Some industry voices have expressed warnings around the proliferating use of trade remedies in recent years that may threaten expansion or investment in sectors, with the trend also drawing scrutiny from the WTO. According to a report by the global trade body, some 208 anti-dumping procedures were initiated in 2014, compared to around 160 launched in 2009. For several experts, a rise in anti-dumping measures are considered a form of "murky protectionism," while others argue that these are important to level the trade playing field and ensure fair competition.

For the proponents of anti-dumping rules reform in Nairobi, transparency and due process in AD procedures are deemed important to better understand members' individual investigative processes, in order to sufficiently be able to defend any interests at stake. The proponents also argued that transparency and due process would help such probes, by enabling authorities to make fair, impartial, and even-handed determinations, which could eventually withstand any challenges at the global trade arbiter.

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