

Bangladesh and the WTO's 11th Ministerial Conference: Issues and Perspectives

BEI Policy Brief

November 2017

This policy brief has been prepared by Manzur Ahmed, Parvez Abbasi and Mohammad A. Razzaque as part of a BEI project on Trade and Investment.



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I. Background

WTO ministers will meet for their 11th Ministerial Conference at Buenos Aires in December in the backdrop of unprecedented slowdown in trade flows, with world trade declining in absolute terms both in 2015 and 2016, and the rise of globalization backlash causing political upheavals in Europe and the USA. Will they be able to deliver anything concrete to address the impasse that has stalled the long drawn out Doha Round of trade negotiations (also known as Doha Development Agenda)?

The Doha Round, at 16 years, is already the longest round in the history of GATT (General Agreement on Tariffs and Trade) and WTO negotiations and exceeds the duration of the second (Uruguay Round spanning 87 months) and third longest round (Tokyo Round spanning 74 months) put together! The interminable and labyrinthine nature of negotiations has resulted in “Doha fatigue” and optimism and enthusiasm for successfully clinching a deal and concluding the round has waned. This resulted in the proliferation of Regional Trading Agreements (RTAs) and mega trading blocs such as Trans-Pacific Partnership (TPP), Transatlantic Trade and Investment Partnership (TTIP) and Regional Comprehensive Economic Partnership (RCEP), threatening to undermine the role and relevance of trade multilateralism. However, following US policy reversal after the 2016 presidential election, the Mega RTA initiatives has lost considerable ground.

The Doha round's aim of reforming the international trading system by lowering trade barriers and revising trade rules in order to better integrate developing countries into the global architecture has been dented. Furthermore, the slowing down of trade has been accompanied by rise in protectionist sentiment stemming from the Global Financial Crisis of 2008. Although some of the major economies have shown restraint in recent months, there has been a steady increase in the stockpile of trade-restrictive measures implemented by them.¹ The prospect of greater protectionism in the world's largest economy, the USA, could amplify these trends.

The tenth Ministerial Conference at Nairobi showed deep fissures amongst the rank and file of WTO members. Some members had antithetical views regarding the relevance of the Doha Development issues. But others were insisting on realization of DDA before considering new issues. The Buenos Aires Ministerial Conference will take place in this backdrop.

This policy brief provides a snapshot of evolution of issues of interest to developing countries, particularly LDCs, leading to Buenos Aires Ministerial Conference, and highlights a number of issues for Bangladesh to prepare for in the negotiations. This is organized as follows: after the

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¹ 1,263 trade restrictive measures remain in place, an overwhelming majority of which is imposed by G20 nations. It has been estimated that LDCs have foregone \$264 billion in exports, during 2009-2013, due to these trade distortions.

background in Section I, Section II provides a summary of the main outcomes in various Ministerial Conferences leading to MC 11; Section III introduces likely issues for negotiations in Argentina; Section IV considers negotiating positions of Bangladesh in different issues of MC11; Section V concludes.

II. Notable Ministerial Conferences and Key Outcomes

Highlights of major outcomes prior to Nairobi

The Doha Round, launched during the 4th WTO MC at Doha, Qatar, covers wide-ranging trade-related areas ranging from agriculture, services, market access for nonagricultural products (NAMA), specific aspects of intellectual property (TRIPS), etc. to reduce trade barriers and thereby foster greater level of integration amongst all members within the multilateral trading system. The Round placed the interest of developing countries as the cornerstone of the negotiations. There was also an elaborate provision of Special and Differential Treatment (S&DT) in favour of developing countries and LDCs.

However, Multilateral Trade Negotiations (MTNs) have certain inherent features that raise the possibility for lengthy negotiations. This includes the need for reaching decisions based on consensus and not relying on the majority rule. Furthermore, member countries have to approve the deal in its entirety or none at all. The rise of emerging developing countries such as Brazil, Russia, India, China and South Africa (known as BRICS), as global powerhouse for economic growth and international trade and investment flows also contributed to harder negotiating stances by countries. Additionally, debates regarding the Singapore issues (Trade and Investment, interaction between Trade and Competition Policy, transparency in Government Procurement and trade facilitation) continued to divide the developed and developing countries into opposing camps.²

The Hong Kong Ministerial Conference in 2005 provided a much-needed fillip to the moribund Doha round. By publicly lowering expectations, the negotiating parties focused on issues which enjoyed broad agreement. The declaration provided for duty-free and quota-free (DFQF) access to the markets of developed nations for products originating in the least developed countries (LDCs), with some significant caveats. Phasing out of agricultural export subsidies by 2013 and the elimination of cotton subsidies by 2006 by developed countries placated many of the developing countries. Nevertheless, commercially meaningful market access for LDCs remained elusive. Regarding non-agricultural market access (NAMA), members adopted the "Swiss formula" requiring greater cuts in higher tariff rates although detailed modalities were to be established at a later date.

The ninth WTO Ministerial Conference (held at Bali, Indonesia) - termed as "Doha Lite Decaffeinated" by economist Jagdish Bhagwati - as many of the development-related issues were diluted or watered down. By excluding the contentious issues that had impeded past negotiations, Bali witnessed the members unanimously approving a package for LDCs. The LDC package mostly represented best intentions, rather than firm, binding commitments. Reaffirming prior commitments to DFQF access to LDCs would translate into little or no practical advantage without its implementation with the 100 percent coverage.

² Of the original Singapore issues, a new agreement has been reached on trade facilitation.

The most important achievement of the Bali Ministerial was the *Trade Facilitation Agreement*, which was the first multilateral deal since the establishment of the WTO in 1995. This was a standalone agreement, representing a departure from the single-undertaking principle, previously practiced by the WTO. The deal was expected to reduce red-tape, delay in crossing borders caused by complex customs procedures, and thereby to reduce transaction costs. The successful implementation of TFA is estimated to result in economic gains amounting to a trillion US dollars and substantial job creation.³ The Trade Facilitation Agreement came into force on 22 February 2017 while Bangladesh ratified it on 27th September 2016.⁴ The agreement provides for technical and financial assistance for LDCs in fulfilling their obligations.⁵

LDCs were further encouraged seeing the adoption of an improved Monitoring Mechanism by the WTO to analyze and review the implementation of Special and Differential Treatment (S&DT), which allowed monitoring of the duty free, quota free market access, and waivers for LDCs on services.⁶ Amongst others, regarding public stockholding for food security, an interim agreement or 'peace clause' was agreed before a permanent solution to be found.

Nairobi Ministerial Conference Outcomes

The 10th WTO MC held in Nairobi, Kenya perhaps introduced a profound change to the trajectory of the Doha development round. Critics point out that the development agenda has all been abandoned in name.⁷

Nevertheless, the Nairobi Package contained six Decisions on such issues as Export Competition; Public Stockholding for Food Security Purposes; Special Safeguard Mechanisms; Cotton; Preferential Rules of Origin; and Waiver on LDC Trade in Services.⁸

³ *Speeding up trade: benefits and challenges of implementing the WTO Trade Facilitation Agreement. World trade report 2015.* Geneva: WTO.

⁴ If successfully implemented, this Agreement would reduce the cost of doing business as it would accelerate the pace of digitization of customs clearance and documentation both in export and import business. The TFA contains provisions for expediting the movement, release and clearance of products, including goods in transit.

⁵ Accessed on 18.20.2017 from https://www.wto.org/english/news_e/news16_e/fac_27sep16_e.htm. Bangladesh will not have to identify the particular areas in which it requires assistance from the WTO and/or other countries to fulfill its obligations under the TFA. It may be pointed out that trade facilitation initiatives are already underway, funded by different donor programmes such as the implementation of ASYCUDA World in all the major Custom stations in the country. Government has undertaken plans to establish a National Single Window to implement paperless trade. The National Board of Revenue plans a Memorandum of Understanding to effectively implement National Single Window by harmonizing legislations among different ministries and organizations.

⁶ The waiver decision on services enabled members to notify and grant more favourable treatment to services and service suppliers of LDCs with respect to measures falling within the six categories of market access listed in Article XVI of GATS or any other measures, if approved by the Council for Trade in Services.

⁷ Developing Countries "Bite the Bullet" in Nairobi, IDN-InDepthNews, 20.12.2015, retrieved from the net as on 6.10.2017, <https://www.indepthnews.net/index.php/global-governance/other-intergovernmental-organisations-igos/11-developing-countries-bite-the-bullet-in-nairobi>

⁸ Unpacking the Nairobi Package: WTO MC10 Outcomes, Martha Getachew Bekele, Modern Ghana, retrieved from the net as on 15.10. 2017, <https://www.modernghana.com/news/675186/unpacking-the-nairobi-package-wto-mc10-outcomes.html>

Under the Decision on Export Competition, developed countries pledged to remove export subsidies, except for a handful of agricultural products, and developing countries committed to do so by 2018.

The Decision on public stockholding for food security purposes ensured the “peace clause” agreed in Bali would not expire in 2017. Developed countries agreed on not challenging developing countries’ food stockholding under WTO farm subsidy rules, while a “permanent solution” was negotiated.

The Ministerial Decision on a Special Safeguard Mechanism (SSM) allowed developing countries to temporarily increase tariffs in face of sudden increase in imports by using an SSM.

The Decision on Cotton included three elements: providing DFQF access for LDCs to the markets of developed countries and to those developing countries in a position to do so from 1 January 2016; continuing efforts to reform policies related to domestic support; prohibiting developed countries from providing export subsidies (developing countries would do so at a later date).

As regards preferential rules of origin for LDCs, the Decision in Nairobi expands on the corresponding 2013 Bali Ministerial Decision. It provides more detailed directions on specific issues such as methods for determining when a product qualifies as “made in an LDC,” and when inputs from other sources can be “cumulated” — or combined together — into the consideration of origin. It calls on preference-granting members to consider allowing the use of non-originating materials up to 75 percent of the final value of the product. The decision also calls on preference-granting members to consider simplifying documentary and procedural requirements related to origin. However, LDCs do not often have the capacity for carrying out domestic value addition to the tune of 25 percent of the overall value added and hence cannot take advantage of the preferential treatment. To further complicate matters, the language detailing the provisions, is essentially non-binding in nature.

A waiver for non-LDC countries to grant preferential market access for services providers from LDCs has been extended for another 15 years until end 2030. The waiver was to be granted immediately to all LDCs, with preferential treatment being conditional upon complying with non-trade issues. The waiver also has the provision of rules of origin which would not allow any other country to be a free rider, i.e. it prohibits other countries to take benefit of preferential access by establishing companies in LDCs. Given LDCs’ weak capacity, members are also requested to provide capacity building and technical support to LDCs so that they can take advantage of the services waiver.⁹ Some LDCs have expressed dissatisfaction regarding the scope of the notifications made so far to “operationalize” the services waiver, in response to their collective requests tabled by LDCs in 2014. Practical constraints such as high entry barriers in the form of restrictive visa regimes, visa fees, residence permits and stringent qualification requirements for granting licenses for LDC services suppliers and independent professionals mean that very little practical value is to be derived from this provision.

Last but not least, a deal on the schedule for the expansion of the Information Technology Agreement was also reached at Nairobi. It would eliminate tariffs on 201 IT products valued at over \$1.3 trillion per annum, accounting for around 10 percent of total global trade.¹⁰ Tariff

⁹ *ibid*

¹⁰ Retrieved from the net as on 5.11.2017, https://www.wto.org/english/tratop_e/inftec_e/itaintro_e.htm

lines would be completely phased out in four stages over three years. This meant that by 2019 almost all imports of the relevant products would be duty-free. Negotiations on the expanded Information Technology Agreement (ITA) were conducted by 53 WTO members, including both developed and developing countries, which accounted for approximately 90 per cent of world trade in these products. Then again, the agreement only addresses tariff reductions and does not include any regulatory issues. The existing provision does not effectively address the issues of digital trade and cross sectoral digital trade barriers.

Nairobi palpably demonstrated the divergence between many of the major economies who clearly wanted to move past the “strictures” of Doha in line with new realities and most developing countries and LDCs who still reaffirmed their commitment to the 2001 agenda of development. At the end of the Nairobi Ministerial Conference, negotiating Ministers acknowledged that members “have different views” on how to address the future of the Doha Round negotiations. Several members, particularly the European Union and the United States, wanted to bring new issues in the negotiations. These would include e-commerce; investment, including investment incentives and subsidies; competition policy; SMEs (small and medium enterprises); RTA (regional trade agreements); global value chains; food security in the context of a broader agriculture discussion; government procurement; consideration of Mode 5 in services;¹¹ environmentally harmful subsidies; tropical products; traditional knowledge in intellectual property and unilateral measures. However, LDCs and most developing countries did not want to deal with new issues until the Doha Development Agenda was realized.

III. Likely Issues for Buenos Aires Ministerial Conference

Most experts have low expectations about the upcoming Ministerial Conference at Buenos Aires. A series of preparatory meetings and negotiators could however pave the way for a few deliverables. As part of the preparatory process, a mini Ministerial, participated by 37 countries, was held in Marrakech (Morocco) early November. It emerges that the issue on which agreement in Buenos Aires is most likely is the reduction of fisheries subsidies. The Argentine Minister for Trade and the designated Chair for the MC11, Ms Susana Malcorra, identified public food stockholding, trade-distorting farm subsidies, and cotton as three key topics in the upcoming negotiations. Other issues that would probably come up for serious discussions include e-commerce, investment facilitation, services, small and medium-sized enterprises, etc.

Already there are suggestions for negotiators to work on unresolved issues beyond the scheduled duration of Buenos Aires. This indicates a pragmatic approach while pointing out to a host of possibly unresolved issues. As per discussions of experts and briefings in newspapers and other periodicals on the state of play of a few possible tangible deliverables have been identified.

¹¹ Mode 5 service exports are domestic intermediate services inputs that are incorporated in one country’s merchandise exports.

(1) Fisheries subsidies

The WTO negotiations on Fisheries Subsidies, are directly related to the Sustainable Development Goal 14, which aims to promote sustainable usage of ocean, sea and marine resources. The SDG 14.6 goal calls for prohibiting specific subsidies that causes overcapacity and overfishing, and ban subsidies that contribute to illegal, unreported and unregulated (IUU) fishing. The UN Food and Agriculture Organization (FAO) estimates that 31.4 percent of fish stocks are being “fished at a biologically unsustainable level, as mentioned in 2016 *State of World Fisheries and Aquaculture* report. According to an estimate, yearly losses from illegal and unreported fishing could account for up to US\$23.5 billion.¹² In the run up to MC 11, substantial progress has been made in compiling an integrated, informal text with focus on covering marine wild capture fishing and related activities, a focus on “specific subsidies” as described by existing WTO rules and ensuring subsidies are linked to a particular member.¹³ However, disagreements remain regarding the extent of subsidy coverage, determination of IUU fishing within WTO rules and the determination of subsidies provided to cover capital as opposed to operational costs of fishing. For many pacific countries, fishing subsidies is intricately related to livelihood issue. At present, Bangladesh does not provide subsidies on marine fisheries. However, it has enormous potential in harnessing the benefits of blue economy in light of securing a-200 nautical miles of exclusive economic zone. Thus, Bangladesh needs to have policy flexibility in this regard by anticipating future developments.

(2) Investment and investment facilitation

Investment facilitation aims to create investor-friendly business climate which would enable both local and foreign investors to invest, conduct day-to-day business, expand existing investments, and work in mutually beneficial ways. This, in turn, will facilitate cross-border investment as reduction in regulatory uncertainty and transaction costs set in. The WTO’s role lies in clarifying and improving upon the current rules. However, concerns regarding the erosion of right to regulate foreign investments in line with national objectives is often cited as a criticism of multilaterally binding framework on investment facilitation.

There has been visible interest among some members regarding Investment and investment facilitation. Several routes could be explored such as (a) trade facilitation approach to investment facilitation (b) restarting the working group on trade and investment, and (c) strengthening investment rules by building on GATS. A possible outcome at MC11 would be an agreement to restart discussions in this area with an exploratory agenda. Proposals for a WTO instrument on investment facilitation may not include investment protection rules or dispute settlement disciplines due to the objection of certain members.

¹² Agnew DJ, Pearce J, Pramod G, Peatman T, Watson R, Beddington JR, et al. (2009) Estimating the Worldwide Extent of Illegal Fishing. PLoS ONE4(2): e4570. <https://doi.org/10.1371/journal.pone.0004570>

¹³ WTO Negotiators Consider Integrated Text on Fish Subsidies, Bridges , Voloume 21-Nuber 34, retrieved from the net as on 21st October, 2017, <https://www.ictsd.org/bridges-news/bridges/news/wto-negotiators-consider-integrated-text-on-fish-subsidies>

(3) E-commerce

It may be recalled that the WTO's work programme on electronic commerce was launched in 1998. It was not a part of the Doha development agenda. There have been limited developments on this front. Between 2000 and 2015, internet penetration has increased from 6.5 to 43 per cent of the global population.¹⁴ E-commerce allows businesses to expand and compete on the global arena and effectively access and utilize global value chains. The combined information and communications services and ICT manufacturing sectors is reported to amount to 6.5 percent of global GDP. Some 100 million people worldwide are employed in ICT services, representing about 1.5 percent of total global employment (UNCTAD 2017). While mobile-cellular penetration reached over 90 percent in developing countries, mobile broadband stood at just above 40 percent, and fixed broadband was still below 10 percent. Moreover, only 40 percent of the people in developing countries in 2016 used the Internet, compared with more than 80 percent in developed countries. Mobile cellular subscriptions, in particular, soared from an average of only 5 per 100 people in 2005 to as much as 73 in 2016.

According to many, these facts highlight the need for a multilateral initiative to formulate and craft global policies regarding e-commerce. Regarding the WTO MC 11 event, members are typically divided in opposing camps. Costa Rica has proposed a draft ministerial decision, which has identified six priority areas such as ICT infrastructure and services; trade logistics; payment solutions; legal and regulatory frameworks; E-commerce skills development and technical assistance and access to finance for micro, small medium enterprises (MSME) and LDCs. A separate ministerial decision by Hong Kong, Japan and Taiwan proposed a separate ministerial decision, proposing the setting up of a working group and maintaining the current practice of not imposing customs duties on electronic transmissions.

Many African nations do not support the proposed multilateral framework on e-commerce because of their low levels of digital infrastructures and complex regulatory systems required for dealing with such issues as digital payment systems, data management, privacy, and cyber security.¹⁵ Nepal is reported to have expressed a similar opinion, mainly pointing to the digital divide. India is also not supportive of any changes in the current work program on e-commerce and is against a permanent moratorium on imposing custom duties on electronic transmissions. India and many developing countries fear that new rules could provide unfair market access to foreign companies, hurting the growing domestic e-commerce platforms.

A holistic approach will be needed to bridge the divide between the developing and industrialized countries, and modalities should be established to facilitate e-commerce and digital trade. There is a greater possibility of a plurilateral agreement on this issue instead of a wide-ranging multilateral agreement.

¹⁴ Building For Success: A World Trade Agenda For The Buenos Aires Ministerial, International Chamber Of Commerce, 2017.

¹⁵ Talking African Stakes in WTO Negotiations with Rwanda's Ambassador Francois Xavier Ngarambe, Bridges Africa, 8 November 2017.

(4) Agriculture

With progress in the Nairobi Summit regarding the elimination of export subsidies, attention could very well turn to the thorny issue of domestic support with China and the USA on opposing camps. The G-10 coalition of countries with highly-protected farm sectors, such as Japan and Norway, are against carrying out steep cuts as proposed by the African, Caribbean and Pacific (ACP) Group, India and China. Countries such as Australia, New Zealand and Chile have proposed a fixed cap option. Possible reduction routes that may be explored are (a) limits on overall trade-distorting support, (b) identifying cuts on different segments separately, (c) targeting concentration of subsidies in certain products, and (d) value chain approach to trade reducing support.

In terms of market access, the concern of developing countries would be around Special Safeguard Measures. Possibility on reaching a deal on that issue is low at best.

Sharp divergence of opinion on Public Food Stockholding was papered over with the peace clause in Bali. There was a commitment to find a permanent solution by 2017. The peace clause would stay in place in the event of a failure to find a solution. This is an important issue for countries such as China and India. The G-33 coalition of developing countries (which also includes India) has already pushed for finding a permanent solution to Public Stockholding during the mini-ministerial in Marrakech.

In cotton, the C4 countries namely Benin, Burkina Faso, Chad, and Mali have proposed for capping the overall level of trade-distorting support for cotton and as well as measures on “green box” support. The latter is required to be only minimally trade-distorting under current WTO rules. According to the proposal, developed countries engaged in highly trade distorting support would be required to carry out 70-90 percent reduction. Some developing countries such as Turkey and Brazil engaged in providing highly trade-distorting support would have to also carry out reductions. However, doubts remain regarding concrete realization of this proposal.

(5) Other issues

Regarding Trade in Services, the only potential source of progress, at this point would probably be steps taken in increasing the level of transparency of domestic regulation. Twenty-four countries have declared their preferential schemes under the LDC Services Waiver. However, LDCs including Bangladesh have not been able to use these schemes due to capacity constraints. Possible progress in this area could lay the basis for of future negotiations.

On special and differential treatment (S&DT), another area highlighted by some as a potential deliverable for MC11, an already narrowed-down proposal by the G90 focusing on 10 areas for reform (out of the 20 discussed before Nairobi) has been rejected by most OECD countries, partly on the ground that such proposals failed to differentiate among developing countries. However, this does not mean that Bangladesh will remain a passive bystander to ongoing negotiations surrounding this issue. It bears mentioning that Bangladesh, among the LDCs, has benefited from relatively effective utilization of facilities such as DFQF and TRIPS

exemption. Bangladesh's exports to European Union under the EBA initiative is a case in point. More than 70% of Bangladesh's exports go under DFQF facility.¹⁶ The notable performance of Bangladesh's pharmaceutical industry is mainly due to patent exemption under the TRIPS Agreement of WTO. The Council for Trade-Related Aspects of Intellectual Property Rights (TRIPS) extended the tenure of applying and enforcing Intellectual Property (IP) rights on pharmaceutical products until 2033. The decision was taken on 6th November 2015 by the WTO Committee on intellectual property rights, following high level negotiations between the USA and the LDCs.

Certain progress regarding the modalities of facilitating greater participation of micro, small and medium-sized enterprises (MSMEs) in world trade may be expected. MSMEs represent more than 90 percent of all companies worldwide and accounting for 60 percent of employment. However, they are not well represented in global trade especially in the case of developing countries and LDCs. Barriers include high fixed costs, lack of appropriate information and skills, customs procedure and limited access to finance. Friends of MSMEs have tabled a proposal on October 30 for a draft Ministerial Decision establishing a work programme for MSMEs at the WTO.

IV. Bangladesh's position under different issues in Buenos Aires

The Nairobi MC made clear the divergence between members in taking the original Doha mandates forward. This means there is a risk of certain issues of development interest to LDCs and Bangladesh, as envisaged in the Doha programme, can get bypassed as some members aim to make progress on new issues. Unlike previous occasions, in the run up to MC11 there appears to be no consideration of delivering a "package" for LDC. Therefore, in Buenos Aires, one strategic stance of Bangladesh as a prominent leader within the LDC group will be to keep the focus on traditional development agenda alive, while playing a constructive role in ensuring interest of LDCs in new areas. The following areas will need close attention in this respect.

Duty-free, quota-free market access

Despite references being made to LDCs in several different paragraphs of the Nairobi MC, no mention of the duty-free, quota-free markets access has been truly conspicuous. Since the global financial crisis, the share of LDCs in global trade has declined. At Nairobi, WTO Ministers expressed their commitment to addressing the marginalization of LDCs in international trade and to improving their effective participation in the multilateral trading system (paragraph 24 of MC10 Declaration). Given this, it is only imperative for the WTO to ensure effective market access for LDCs in both goods and services.

Bangladesh may call upon the 11th WTO Ministerial conference to implement the DFQF market access for LDCs (under paragraph 36 of Annex F of the Hong Kong Ministerial

¹⁶ Eleventh WTO Ministerial Conference: Current State of Play, Ali Ahmed, CEO Bangladesh Foreign Trade Institute

Declaration) immediately outside the single undertaking provision.¹⁷ This can be offered as a ‘development package’ to help LDCs attain SDGs with increased, predictable and sustainable trade in goods. All existing unilateral DFQF mechanisms including GSP Schemes extended to LDCs should be notified as mandated under the terms of paragraph 36 of Annex F of the Hong Kong Ministerial Declaration without discrimination amongst LDCs. Product coverage under this package should be all products or akin to the EU’s Everything-But-Arms scheme originating from all LDCs, including products already covered under any unilateral FTAs or mutual preferential market access schemes including GSP.

Services sector market access for LDCs

Under the GATS LDC waiver, which was adopted in 2011 at the 8th WTO Ministerial Conference in Geneva, WTO Members can provide preferential treatment to services and service suppliers of least-developed countries. However, as per the provision, this is on a temporary (annual) basis “subject to approval by the Council for Trade in Services under paragraph 1 of the waiver Decision”. This requires preference giving countries to submit, before the preferential treatment is granted, a notification to the Council for Trade in Services specifying the preferential treatment made available, the sectors or sub-sectors concerned and the period of time during which the Member intends to maintain those preferences. Moreover, countries that grant preferential access to LDC service suppliers must make a detailed notification every year to the Council for Trade in Services, which will review annually whether the exceptional circumstances justifying the waiver still exist.

The above conditionalities make the GATS LDC waiver inoperative, constraining any implementation mechanism that can be sustainable and predictable. In contrast, GATS LDC Modalities adopted in 2003 was a permanent mandatory obligation under GATS Article XIX: 3, guaranteeing special treatment for LDCs.

Bangladesh may call upon the WTO Council for Trade in Services to clarify under paragraph 2 of Article IX (WTO decision making Rules) and operationalize GATS LDC modalities 2003 as an obligation under GATS Articles 3 (iv) and XIX 3 to expedite LDC’s services trade.

TRIPS and Transfer of appropriate Technology

Bangladesh can draw attention to the moribund issue of TRIPS and transfer of appropriate technology in the eleventh ministerial conference. It could call for implementation of Article 66.2 of the TRIPS Agreement which created a legal obligation for developed country members to encourage technology transfer to the LDCs. The 2001 WTO Doha Decision on Implementation-Related Issues and Concerns reconfirms the binding nature of the obligation. In reality, transfer of technology from developed countries to LDCs has been very limited in nature. Bangladesh, as an LDC, can demand for transfer of technology from developed countries in areas such as as gasification of coal, clean and renewable energy, biotechnology, pharmaceuticals, environmental protection and pollution control.

¹⁷ The Trade Facilitation Agreement was advanced outside the provision of the single undertaking system.

Regional Trading Agreements (RTAs)

Bangladesh can forcefully argue for RTAs to comply with or operate within the framework of WTO rules. This is in line with the Nairobi Ministerial Declaration, where RTAs were recognized as complementary rather than as a substitute to the multilateral trading initiative. Recent experiences show a greater tendency of RTAs in creating WTO-plus provisions while facilitating trade flows between block members thereby discriminating against and creating barriers for countries excluded from RTAs in manner that would go much beyond the ambit of WTO rules and provisions. Issues such as investment, trade facilitation, government procurement, environmental and labour standards, intellectual property rights and competition policy are often included in new RTA initiatives. Thus, non-RTA members may face the possibility of being penalized for standards that they do not have to comply with under WTO requirements. This seriously undermines the WTO's capacity in overseeing trade rules and regulations.

New issues under WTO

The 10th WTO MC at Nairobi was notable for the introduction of a host of new issues which were not covered under the Doha Agenda. As discussed earlier, many member countries may want to pursue new issues under plurilateral negotiations rather than multilateral negotiations. Besides emphasizing on outstanding Doha issues, Bangladesh must frame its negotiating stand on the possible new issues that may be raised at Buenos Aires. They are as follows.

Fisheries subsidies

This will be a key area of negotiation as it is being thought to be a low-hanging fruit for MC11 delivery. The negotiation will be restricted to subsidies to maritime fishing and the issues will include how to address subsidies related to overfished stocks, overcapacity of fishing fleets, and illegal, unreported, and unregulated (IUU) fishing. Negotiations will also cover special and differential treatment for developing countries and LDCs, including their need for additional support or time to implement the new rules or certain other flexibilities.

Bangladesh may take the position that WTO Members should agree to exempt LDCs from accepting any obligations in the area of fisheries subsidies, on a permanent basis, as long as they have LDC status.¹⁸ Bangladesh should also take a strong position on protecting LDCs' rights to their Exclusive Economic Zones (EEZs). This should include prohibiting fishing in the EEZs without purchase of fishing rights. The transfer of fishing rights purchased by one government from another to third parties with subsidized prices should also be prohibited.

E-Commerce

Bangladesh's position on E-Commerce could be similar to the African Group or India who are opposed to the different draft ministerial decisions proposed by countries such as Japan, Hong Kong and Taiwan. Bangladesh, like many LDCs suffers from a digital divide. The tabled proposals may very well create opportunities for large multinational companies such as Amazon and e-bay to enter the domestic market which in turn may put local firms specializing

¹⁸ Considering its graduation prospect from the LDCs, Bangladesh can also propose that an LDC graduating to the developing country category will have a longer transition period of 5-10 years to implement fully the obligations set out in Annex VIII of the Agreement on Subsidies and Countervailing Measures.

in data management at a serious disadvantage. Problems related to privacy and cyber security can also occur. Bangladesh may refer to paragraph 34 of Nairobi MC Declaration which entails obtaining the consent of all members regarding the introduction of issues outside the Doha Development Agenda. Bangladesh could explore the option of exploring jointly with other LDCs the proposal of keeping LDCs out of any binding commitment on E-Commerce for a period of ten years.

Investment Facilitation

On paper, proposals regarding Investment Facilitation seem beneficial for the economy, as it reduces red tape and creating a business-friendly environment, Bangladesh has to pay close attention to the details concerning investment protection rules and dispute settlement or arbitration mechanism. Foreign and local Investors must conform to the same set of rules or national treatment should be applicable to all Investors. In terms of dispute settlement mechanism, in the event of a dispute between the host country and a foreign firm or multinational company, the dispute can be tried at the WTO Dispute Settlement Board, rather than referring them to Investor-state dispute settlement (ISDS) or investment court system (ICS). ISDS creates a pro- business judicial set up. A state can never sue a multinational company; rather, a multinational company can always sue the state. Under the ISDS mechanism, states never win. At best, they simply avoid losing and are let off with all or a part of legal fees, which is a huge sum already. Bangladesh can again refer to Article 34 of Nairobi declaration or ask for an exemption of ten years along with other LDCs.

Micro, small and medium sized enterprises (MSMEs)

In recent years, the issue of MSMEs has received a lot of attention with a number of countries are now calling for MC11 to create a Work Programme on this. There are several dimensions of this argument. The promotion of MSMEs is considered a positive step toward inclusive global trade in a time when an overwhelming proportion of world commercial activities is dominated by large multinationals. Most enterprises in developing countries are essentially MSMEs and these countries want to see them flourish. There has also been the argument that with the expanded e-commerce and digitalization, the cost of trading should decline helping MSMEs to become more competitive.

On the other hand, opponents argue that as most firms of developing countries and LDCs are MSMEs, the countries' positions at the WTO already reflect these circumstances. There is also an apprehension that new MSME agenda could replace S&D treatment in the WTO by giving attention to the firm size rather than countries' level of development.¹⁹ Others point out that MSME definitions and circumstances could differ significantly across countries and as such it is not clear if MSMEs could give developing countries any competitive edge.

Bangladesh will have to evaluate the arguments. If it is not going to be a distraction from the remaining Doha Development Agenda, Bangladesh may consider taking position in favour of facilitation of greater participation of MSMEs in global trade in goods and services.

¹⁹ https://www.southcentre.int/wp-content/uploads/2017/09/Ev_170925_SC-Workshop-on-E-Commerce-and-Domestic-Regulation_Presentation-The-MSME-Discussion-at-the-WTO-Aileen-Kwa_EN.pdf

V. Conclusion

The Argentine Trade Minister had presciently stated that there is life after Buenos Aires recognizing the fact that a host of issues will in all probability remain unresolved. A lot of work remains to be carried out. The diametrically opposed agendas of various member nations on a vast array of issues means that it would be difficult to reach consensus.

Not all WTO members would reaffirm Doha Mandate. So, there is a possibility that development issues will be diluted. Symptomatic of this is the fact that there is no mention of a LDC package in the run up to MC 11. Bangladesh must play a proactive role in keeping Doha Development issues (e.g., DFQF facilities, Services Waiver operationalization, etc.) at the forefront of multilateral negotiations.

Beyond trade negotiations and given the globalization backlash, Bangladesh should also consider MC11 as an opportunity for reviving trade multilateralism, which is the best means for protecting and promoting small, poor and vulnerable economies. Bangladesh should work with other LDCs to mobilise support for building trade capacity in LDCs. International trade has been considered as an important means for achieving sustainable development goals (SDGs). But, trade slowdown and protectionists' measures mean LDCs are unable to make the most of the trade route in promoting growth and development. Efforts must be made so that WTO Ministers at MC11 aim to deliver some concrete outcomes for LDCs.

Only by remaining engaged in the process of multilateral negotiations in tandem with others can Bangladesh hope to secure long-term benefits from the WTO. Disappointments regarding the slow pace of progress should not be allowed to stand in the way of long term gains. It should be also borne in mind that Bangladesh, in a decade or so, will graduate out of LDC status. Thus, it should also engage with developing countries on issues of shared interests. Bangladesh too needs to think about life after Buenos Aires in "*a brave new world*".