

# The 10th WTO Ministerial Conference, Nairobi

## What's on the table?

Issue Brief #1

### Background

With the 10<sup>th</sup> WTO Ministerial Conference drawing near, members are looking to produce a successful meeting that delivers concrete results in key negotiating areas to not only make significant contributions towards promoting economic growth and inclusive development, but also play a central role in reaffirming faith in the multilateral trading system and WTO's role in governance.

However, the upcoming conference faces division among Members coupled with disparate pressure to achieve deliverables, particularly in light of proliferation of Mega Regional Trade Agreements such as the recently agreed Trans-Pacific Partnership (TPP) and others under negotiation, such as the Transatlantic Trade and Investment Partnership (TTIP) that pose as alternatives to the multilateral negotiating platform.

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group consists primarily of developing countries. Others argue that after years of limited success under the Doha architecture, it is unlikely that this framework will yield any further progress, especially on the more difficult issues.

These countries which include the United States are reluctant to continue engaging in negotiations under this current framework. These members also believe that for the organization to function properly, it has to evolve and address whatever new issues members want to talk about. For these members, it is critical that the WTO addresses new concerns; otherwise it risks losing its relevance.

### What can we expect out of the Nairobi Ministerial Conference?

On 27 November, the three facilitators<sup>1</sup> who were appointed by Director-General Roberto Azevêdo to support members to develop a Ministerial Declaration for the WTO's 10th Ministerial Conference presented their draft Declaration text at a meeting of all members.

The draft is divided into three parts with Part 1 comprising of the Preamble and a note on the WTO's achievements and challenges over the past 20 years.

Part 2 provides language on the decisions that will be adopted at the Session where it has made mention of three Draft Ministerial Decisions, namely:

- TRIPs Non-violation and Situation Complaints
- Work Programme on Electronic Commerce
- Work Programme on Small Economies

It also states that Members "further welcome the adoption by the TRIPs Council of the Decision on the Extension of the Transition Period under Article 66.1 of the TRIPs Agreement for Least-developed Country Members for certain

obligations with respect to pharmaceutical products.”

In the Bali Ministerial Declaration these three specific issues were categorised under what was Part 1, ‘Regular Work under the General Council.’ Part 2 comprised of the decisions that were adopted under the “Doha Development Agenda.”

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It is notable that the current draft does not have this distinction and at present does not contain any issues that were previously categorised as DDA issues last year.

Part 3 of the draft Nairobi Ministerial Declaration provides concluding language. Unlike the Bali Declaration where Members took “note of the progress that has been made towards carrying out the Doha Work Programme” and acknowledged that the decisions were “an important stepping stone towards the completion of the Doha Round”, the draft Nairobi Ministerial welcomes “the advances made in the Doha Development Agenda” and “regret that it has not been possible to reach agreement on all areas of negotiations.”

Indeed, as Azevêdo indicated, in an attempt to arrive at a consensus, the consolidated draft for the Nairobi Ministerial Declaration has left out “the most contentious issues, such as the reaffirmation of the DDA and instructions on the way forward through a different process.”

## **What may be discussed under the Doha Development Agenda?**

Although there are currently no draft ministerial decisions on any DDA issues, in previous speeches, Director-General, Roberto Azevêdo has stated that the trade body’s members should

explore options for a less ambitious package for the Nairobi ministerial, which is likely to focus on:

- agricultural export competition;
- least developed country (LDC) and development issues; and
- improved transparency.

Although still uncertain, these issues along with a few others garnered from the proposals submitted by various Members and blocs may be likable contestants for discussion at the Ministerial.

### **Agricultural Export Competition**

If proposed and adopted, this decision would be one of the WTO’s most significant negotiated outcome on agriculture and forms a particularly important issue for many Members, particularly, developing and least developed countries. On export competition, the proposal calls for export subsidies to be eliminated and for export credit and food aid to be subject to the disciplines set out in the 2008 draft Doha text.

Negotiations have mainly focused on how quickly the subsidies should be phased out. The work is based on the 2008 revised negotiating text on agriculture, known as the Rev.4 text. A number of delegations have now submitted a set of proposed written amendments to the Rev. 4 text.

### **LDC Package**

Taking forward the LDC-specific decisions reached in Bali is critical and LDC issues are likely to be an integral part of the Nairobi package, as consistently iterated by Director General Azevêdo. Four elements of interest to LDCs namely:

- more favourable rules of origin;
- the operationalisation of the services waiver;
- duty-free quota-free (DFQF) market access; and
- cotton.

This led to the adoption of decisions during the WTO's last ministerial conference in Bali, Indonesia two years ago. Since then, the group's focus has mainly consisted in turning some of these outcomes into legally-binding outcomes.

### **Transparency Provisions**

A set of possible outcomes to improve transparency on rules and regulations in areas such as services, fisheries subsidies, domestic regulation and anti-dumping have been proposed. Under services, a number of WTO members said at an informal meeting of the Services Council on 9 October that developing disciplines to make their domestic services regulations more transparent is the most doable outcome for the Nairobi Ministerial Conference.

Regarding fisheries subsidies, key elements common to several proposals involving fisheries subsidies have included the prohibition of subsidies provided to vessels engaged in IUU fishing; the prohibition of subsidies to fishing that targets overfished stocks; and improved transparency around fisheries subsidies.

On horizontal subsidies, a proposal has been tabled for improving general subsidies notifications and data by having WTO members that report on countervailing duty actions taken to first check whether the subsidy measures at issue have been notified and, if not, provide supplementary notification information.

With regard to the rules on the Anti-Dumping Agreement, this would cover, 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.

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### **Conclusion**

Numerous longstanding unresolved areas from the DDA that are of particular importance to developing countries such as public stockholding and the Special Safeguard Mechanism are looking less likely to gain traction in discussions leading to the Nairobi Ministerial.

While the potential outcomes at Nairobi could have a real developmental impact, it is unlikely to be enough to declare the conclusion of the Doha Round. The WTO will have to ensure a strong development outcome at the Nairobi Ministerial Conference of the WTO with significant gains for developing and least developed countries.

1 Ambassador Gabriel Duque of Colombia, Ambassador Harald Neple of Norway and Ambassador Stephen Karau of Kenya