# Outcome of MC 10 of WTO and Way Forward for Developing Countries

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# DOHA DEVELOPMENT AGENDA

1. DDA is still on-going, it has not been concluded

Decisions at the WTO must be taken by consensus (Marrakesh Agreement Article IX.1). The Doha Round remains on-going until there is consensus to conclude it. Despite efforts by some Members, there was no consensus to conclude the Round in Nairobi.

"The WTO shall continue the practice of decision-making by consensus followed under GATT 1947. Except as otherwise provided, where a decision cannot be arrived at by consensus, the matter at issue shall be decided by voting".

Para 30 of the Nairobi MD:

''We recognise that many Members reaffirm the Doha Development Agenda, and the Declarations and Decisions adopted at Doha and at the Ministerial Conferences held since the, and reaffirm their full commitment to conclude the DDA on that basis. Other Members do not reaffirm the Doha mandates, as they believe new approaches are necessary to achieve meaningful outcomes in multilateral negotiations. Members have different views on how to address the negotiations. We acknowledge the strong legal structure of this Organisation''.

As one African Member noted in the 10th Feb informal TNC: '

"the mere expression of divergent views on the DDA does not mean its death. By way of example; the mere expressions of marital discontent in public, by a spouse … does not necessarily mean the dissolution of the marriage. It may lead to, but it is not, a divorce."

## 2. **Conditions that must be fulfilled before the Round is closed**

The Doha Declaration provides the conditions to be fulfilled for the completion of the DDA negotiations:

Para 45 states that

"When the results of the negotiations in all areas have been established, a Special Session of the Ministerial Conference will be held to take decisions regarding the adoption and implementation of those results".

Para 48 states that

"Decisions on the outcomes of the negotiations shall be taken only by WTO Members".

Hence at least 3 conditions must be fulfilled for the conclusion of the Round:

- A Special Session of the Ministerial Conference must be held and the purpose of this Special Session is for Ministers to declare the Round concluded.
- Decisions regarding the 'adoption and implementation of those results'.
- It has to have been a decision taken by WTO Members.

## 3. Should developing countries throw out the DDA or keep it? Why the DDA mandates (not just issues) are important for developing countries

- Special and Differential Treatment (S&D) mandate of para 44 – making 'precise, effective and operational' existing S&D provisions
- Domestic supports in agriculture- not simply negotiations on the issue but specifically the disciplines as captured in the July Framework; Hong Kong Declaration; and in the 2008 Chair's text (Rev.4)
- Less than full reciprocity –in relation to NAMA negotiations
- Sectoral negotiations in NAMA are voluntary
- Para 1g of the July Framework keeping the three Singapore issues outside the WTO during the Doha Round:

**Relationship between Trade and Investment, Interaction between Trade and Competition Policy and Transparency in Government Procurement:** the Council agrees that these issues, mentioned in the Doha Ministerial Declaration in paragraphs 20-22, 23-25 and 26 respectively, will not form part of the Work Programme set out in that Declaration and therefore no work towards negotiations on any of these issues will take place within the WTO during the Doha Round.

- The DDA cotton mandates are very valuable. The Hong Kong Declaration says that cotton must be dealt with 'ambitiously, expeditiously and specifically'. The main issue in cotton is and remains domestic supports. The Nairobi language in the cotton Decision on domestic supports is not strong. It simply makes the observation that 'some more efforts remain to be made'. In contrast, the Hong Kong language goes much further:
  - Market access: Developed countries provide DFQF for cotton exports from LDCs
  - Domestic Supports: 'trade-distorting domestic supports for cotton production be reduced more ambitiously than under whatever general formula is agreed (in the DDA) and that it should be implemented over a shorter period of time than generally applicable.' (Hong Kong Declaration, para 11).

- Development (S&D) provisions applicable to all developing countries (DDA para 2)
- Small and Vulnerable Economies – flexibilities as captured in Hong Kong para 41; the Rev.4 and Rev.3.
- Recently Acceded Members (RAMS) – as captured in Rev.4 and Rev.3.
- LDCs – July Framework para 45; Hong Kong Declaration para 20 – LDCs exempted from reduction commitments.
- DFQF for LDCs for all products or at least 97% of products by the start of the implementation period of the DDA (Hong Kong Declaration, Annex F, para 36).
- Public Stockholding – whilst this is both a Doha issues and also a stand-alone issue now, separate from the DDA, the 'stabilised' solution reached on this issue in 2008 (the Green Box) is already contained in the draft agriculture modalities text (Rev.4, 2008).
- Special Safeguard Mechanism – also now a stand-alone issue, nevertheless important elements have been elaborated on in the Hong Kong Declaration; and the Rev.4.
- Implementation Issues – para 12 of DDA
- **Single Undertaking and the need for Overall Balance in the package**

# NEW ISSUES

4. **What are new issues?**

The new issues raised mainly by developed countries include

- Global value chains (GVCs)
- Micro and Small and Medium-sized Enterprises (MSMEs)

  - Investment
  - E-commerce
  - Competition
  - Government procurement
  - Deep services liberalisation and regulatory rules in services sectors
  - Climate change etc.

GVCs and MSMEs are the broad over-arching themes or frameworks which have been used to explain the need for new rules in investment, e-commerce, deep services liberalisation etc.

5. **There was no agreement to begin discussions on new issues.** Para 34 simply highlights the different views on identification and discussion of 'other issues for negotiation'.

Para 34 of the Nairobi Ministerial Declaration states:

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

6. **On the Singapore issues, there must be consensus - a GC or MC Decision - before discussions can begin because of para 1g, July Framework**

Para 1g of the July Framework:

***'Relationship between Trade and Investment, Interaction between Trade and Competition Policy and Transparency in Government Procurement:*** *the Council agrees that these issues, mentioned in the Doha Ministerial Declaration in paragraphs 20-22, 23-25 and 26 respectively, will not form part of the Work Programme set out in that Declaration and therefore no work towards negotiations on any of these issues will take place within the WTO during the Doha Round.'*

Paragraph 1g of the July Framework cannot be over-turned or undone except by a General Council or Ministerial Conference Decision that it no longer applies.

Similarly, the Doha Round, its mandates and Decisions, cannot be terminated except by a decision of the General Council or Ministerial Conference that the DDA has concluded.

Para 1g is clear – ***'no work towards negotiations on any of these issues will take place within the WTO during the Doha Round***'.

*Members have understood this to mean no discussions, hence after the 2004 July Package, no further discussions on the three Singapore issues (investment, competition, transparency in government procurement) took place.*

Para 34 of the Nairobi Ministerial Declaration is clear that 'discussions' on new issues are part of the preparatory work for negotiations – '*some wish to identify and* ***discuss other issues for negotiation'*** *(para 34, Nairobi Ministerial Declaration).*

## 7. Are they 'mutually advantageous'?

*Preamble of the Marrakesh Agreement: 'Recognising that their relations in the field of trade and economic endeavour should be conducted with a view to raising standards of living, ensuring full employment and a large steadily growing volume to real income ...'.*

It also goes on to note that the Parties are desirous to contribute to these above objectives *'by entering into reciprocal and mutually advantageous arrangements...'.*

Any issue that some Member would like to bring into the WTO must first be evaluated to ascertain if it is 'mutually advantageous'.

## 8. Do they concern Members' 'multilateral trade relations'?

Article III.2 of the Marrakesh Agreement says that

*'The WTO may also provide a forum for further negotiations among its Members concerning their multilateral trade relations'.*

Any new issue that Members may want to introduce into the WTO has to first pass the test of Article III.2. Many of the 'new issues' are primarily domestic regulatory issues, not issues concerning WTO Members' 'multilateral trade relations'.

# Investment

Multilateral investment treaty at the WTO:

- Investment is not just real capital (imports of machinery, equipment, installation of production capacity). It also includes incomes from existing stock of investment; speculative capital (that puts countries' financial stability at risk); transfer of ownership of existing firms to foreign ones.

- No correlation between an investment agreement and real investment flows into a country (E.g. Brazil, South Africa, US-China)

- Non-discrimination and national treatment in the area of investment (CFTA will be there in name only)

- It would be more difficult for governments to have Performance Requirements on foreign investors (eg. Equity share – black economic empowerment in SA; technology transfer; employment criteria; requirements on the production of inputs; local content in services).

- Regulatory chill - As with the experience of BITS, with 'fair and equitable treatment' that have to be provided to investors, and clauses around indirect expropriation, governments can easily be sued for changes in regulation that impact on the investor (social, environmental, other national objectives)

# E-commerce

- Freedom of cross border data flow – cannot prevent eg. US suppliers from transferring information across borders (e-markets cannot be segmented – cannot have the blocking of websites) i.e. markets are completely open (But there are also sovereignty /security issues)

- Shift away from local storage of data. There should be no restrictions on location of server (or if there are restrictions, it cannot be a disguised restriction to trade). China and others have said that they need their own data centers. This prevents US from benefiting in 'cloud-based' services eg. Business software; online music; travel services etc etc.

    - No need for local presence to do business in a country;
    - No need to build data centers in other countries i.e. markets cannot be segmented according to national boundaries

- No duties on trade (Impact on tariff revenue, also impact on national producers)

- E-commerce under Telecommunications: Access to the physical infrastructure and networks in another country TPP Telecoms Chapter: national treatment in terms of access to spectrum (range of frequencies in transmission of data); rights of way, phone numbers etc

- No need for local presence to do business

**Implications for developing countries: In the area of goods and services, we have not completely dismantled barriers. In E-Commerce, the model is a single international digital marketplace with no barriers:**

- **The big middle-class market in developing countries is the target and can be very easily reached. In many cases, the advantages of location for local suppliers are nullified**
- **Domestic firms easily left behind- very difficult to be globally competitive, or competitive in their own market. Now, they have to compete i) with brand names and marketing but also ii) having state of the art technology becomes a major criteria in this race.**

# Political Assessment: Two main options

DDA

- We insist that on-going negotiations are still under DDA mandates

- No New Singapore Issues (because of July Framework para 1g)

DDA Issues

- No more DDA architecture

- New issues – we do not have the protection of 1g. (need consensus to have ‘work towards negotiations)

What is developing Members' assessment ?

- **Do we want something from the Doha Round / Doha issues?**
- Can we get something meaningful for which we would not have to pay an unreasonable price? (I.e. it is still worthwhile to push for negotiating our demands)

IF YES (we want to get something eg. Domestic supports):

a) Stick to DDA and pay with NAMA? *(Is this realistic? Will the US actually give on domestic supports? Highly unlikely as we saw in 2015 – developing countries wanted a decent ambition in domestic supports but we did not get close)*

b) We let go of DDA, let go of NAMA, pay for domestic supports with new issues? *(Even then, is it likely we will get decent ambition in domestic supports?)*

IF NO (we want to get something but we dont think it is realistic that we will be given something of value)

c) We find ways to stick to the status quo eg. Continue to insist on the DDA + no new issues

d) Go into Doha issues, and continue to say no to new issues (But is this not more difficult than c?)

**The Main Question:**

**How Strong and for How Long can developing countries say NO? What is the Best Strategy so that we can stretch our No especially to New Issues for the longest time?**

# PROCESS ISSUES

**Process and how negotiations are conducted, its transparency, inclusiveness or otherwise has a major impact on the substantive outcomes in a set of negotiations.**

Many Members have been very unhappy about the process. Some have spoken about it:

Zimbabwe:

'Allow me to express my delegation's real and deep concern about process and outcome of the Nairobi Ministerial Conference… It is trite that the Nairobi package was negotiated and drafted without the involvement of the majority of developing countries. It was then simply presented as a fait accompli on a take-it-or-leave-it basis after consultation with an unrepresentative group of five countries. Africa was marginalised on its very soil. There was no transparency, inclusiveness and participation in decision-making. In the end, the much heralded first WTO Ministerial in Africa brought to the fore the fact that Africa remains in the margins of a largely unequal and unjust global trading system.

'…Clearly a process at which a few selected countries discuss key WTO issues and then the rest are railroaded into a manufactured consensus around the positions of a few countries will not be acceptable to us going forward. We know from experience that conditions are created, at these Ministerial Meetings, which eliminate the possibility of small countries like ours from standing up to oppose the final package. So we are forced to abandon our own national interests and sign up the the agenda dictated by richer and more powerful states.

'It is now time that the WTO established basic rules of democracy, good governance and accountability. Without these rules, the WTO will continue to be seen as a forum in which the demands of the most powerful are afforded more importance than the needs of the most vulnerable, and its free trade agenda will continue to threaten people's rights. Thus it is time that we reform the negotaiting procedures at WTO Ministerial Conerences. It is also time to review the Green Room processes to make them more representative…'

**Uganda:**

‘We would like to register our profound disappointment with the manner in which the negotiations were conducted in Nairobi. We always pride ourselves in the fact that this is a member driven Organisation riding on the principles of transparency, inclusivness and bottom-up approach. In fact this ithe process we had set up in Geneva, prior to Nairobi. However, what transpired in Nairobi left a lot to be desired. Nairobi did not portray our being a member driven Organisation.’

‘Section III (of the Ministerial Declaration)… was managed in a very ISOLATIONIST manner.

It ought to be recalled that this was the most critical part of the Decalration and yet, the vast majority of the Membership did not participate in shaping its outcome. We were never consulted. Even when we prompted discussion on this issue in the bilateral, we were greeted with silence. We do not even know who was consulted. This attitude should stop. It cannot become the norm that we all surrender our sovereign right either to the Secretariat, or to a handful of handpicked delegations to decide on our behalf. Our Ministers were relegated to coffee cup bearers instead of negotiating their trading rights. This Organisation is made up of 164 Members and we all have a stake in this Organisation.’

Even those in the G5 were concerned about process:

India:

‘we agree with the views expressed by a number of Members who spoke before me that we need to introspect and reflect on the process both leading up to a Ministerial as well as during the Ministerial as well. This would be in the interest of preserving the credibility of the negotiating arm of the Organisation.’

9. Most important issues that developed countries want out of the MC are not discussed or negotiated by the Membership at the Ministerial, but they are decided upon!

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11. Extension of the Conference

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