

CPD-FES Dialogue on
**Recapturing the Momentum in the Post-Bali
Process of the WTO**

WTO in the Post-Bali Phase: Whither LDC Issues?

Presented by

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Contents

2

1. Introduction
2. LDCs at a Glance
3. Bali Outcomes and Subsequent Developments:
An Assessment
4. Systemic Issues
5. Other Issues
6. Concluding Remarks: Going Forward

1. Introduction

3

- ▶ Degree of openness of LDC economies has been on the rise. LDCs have demonstrated their interest and willingness to be active members of the multilateral trading system through active engagement.
- ▶ 34 of the 49 LDCs are members of WTO. 8 LDCs are in the process of accession.
- ▶ However, whether their concerns and interests are being appropriately reflected and addressed in the WTO remain an open question.
 - ▶ As a matter of record, many trade-related issues of priority interest to the LDCs have continued to remain under discussion but unaddressed over the past years, particularly in view of the non-binding nature of the S&D provisions designed for them.
 - ▶ Doha Development Round (DDR) – initiated with much promise, but not much progress as yet.
 - ▶ Whilst the LDC package in Bali was a progress, developments in the past one year in Geneva show that not much has happened that can be termed encouraging.
 - ▶ It is in this context that a discussion on upholding the LDC cause in the negotiations in Geneva, in the run up to MC-10, is pertinent and important.

2. LDCs at a Glance: Some Stylized Facts

4

Number of LDCs by Region and Geographical Location	Total LDCs = 49. Africa 34, Asia and the Pacific 14, Latin America and Caribbean 1; among which, 16 landlocked and 11 small islands
Number of LDCs that are WTO Members	34
Number of LDCs in Accession Process	8
Total Population	838.3 Million (12.6% of global population)
GDP (Current USD)	775.3 billion
GDP Share as % of Global GDP	1.04%
Degree of openness of LDCs	59%
Exports of Goods and Commercial Services (Current USD)	213.9 billion (1.1% of global exports)
Imports of Goods and Commercial Services (Current USD)	244.6 billion (1.3% of global imports)

NB: Figures are for 2013.

Source: World Bank (2014), UNCTAD (2014), UNCTAD STAT (2014)

2.2 Trends in Exports of Goods and Services

5

Figure 1: Composition of African LDCs' Exports (including Haiti), average 2010-2012 (Percentage of total exports)

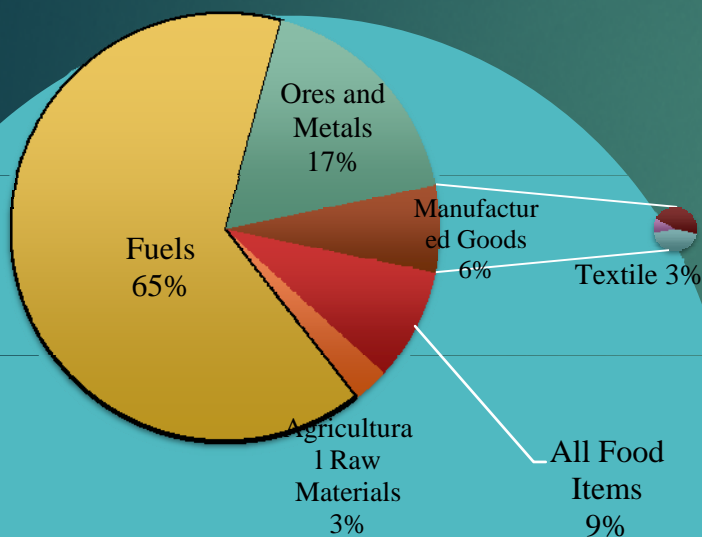
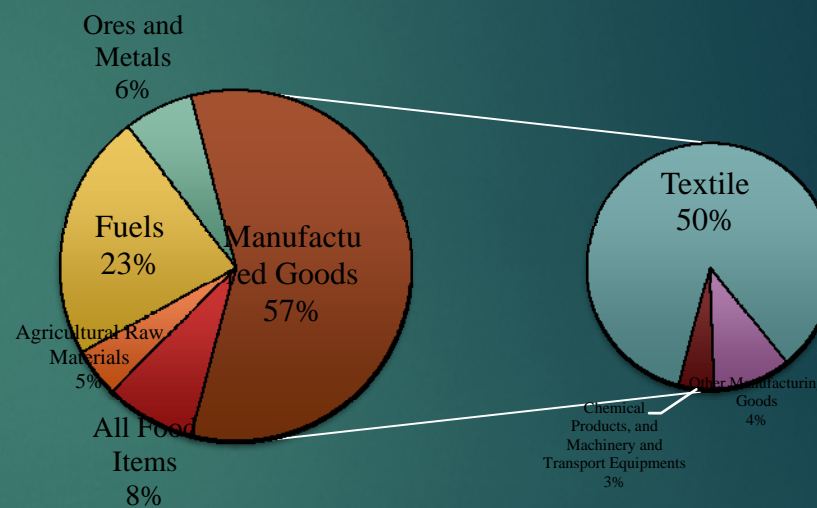


Figure 2: Composition of Asian LDCs' Exports, average 2010-2012 (Percentage of total exports)



Source: Authors' elaboration based on UNCTAD (2013) data.

While exports of African LDCs are dominated by commodities and extractive industries. Exports of Asian LDCs are dominated by manufacturing goods, particularly apparels.

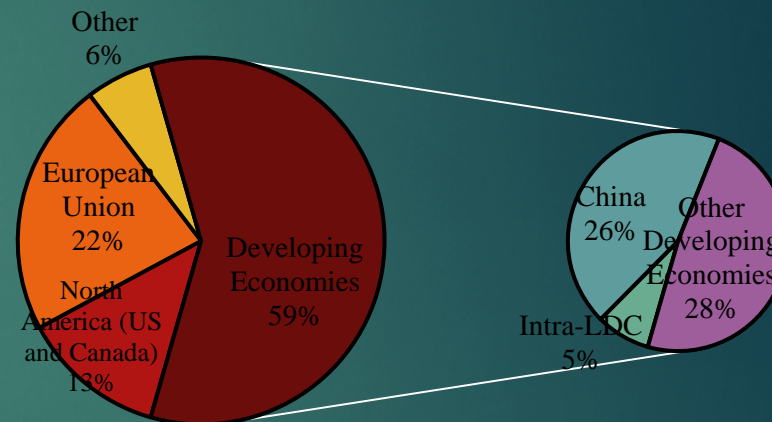
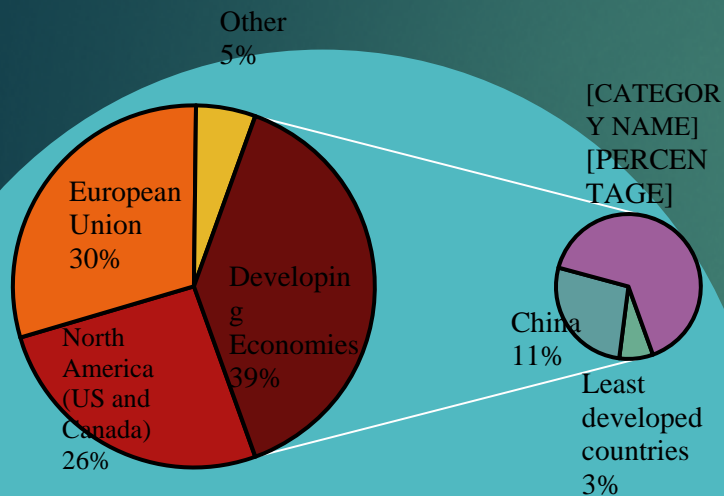
2.3 Direction of Trade

LDCs' Merchandise Exports by Destination

6

2000

2013



Authors' calculation and elaboration from UNCTAD STAT data (2014).

A notable change in export pattern of the LDCs has been the continuing shift favouring South-South trade.

3. Bali Outcomes and Subsequent Developments: An Assessment

- ▶ For the LDCs, the Ninth Ministerial Conference (MC-9) held in Bali in December 2003 was of high importance.
 - After five years of impasse, the “Bali package” was able to infuse a new life into the stalled Doha Round, and in a way helped salvage the WTO as a negotiating forum and fulcrum of the multilateral trade system.
 - The Bali package with its four pillars of Development and LDC Issues, Trade Facilitation, Agriculture, and Cotton - concerned a number of areas where LDCs had both offensive and defensive interests.
 - It was expected that the Work Program agreed in Bali would be followed by subsequent negotiations in Geneva to arrive at solutions that will advance LDC interests.
- ▶ However, regrettably one year after Bali, there is hardly anything to show for as regards the 10 decision points adopted in Bali.

3.1 LDC Package

- ▶ The LDC package focused on
 - Duty-free and Quota-Free (DF-QF) market access
 - Preferential Rules of Origins
 - Operationalization of the services waiver
 - Monitoring Mechanism on Special and Differential Treatment

3.1.1 LDC Package: DF-QF Market Access

- ▶ DF-QF treatment of LDC goods was of critical importance to the LDCs, since it was expected to offer secured, predictable and 'on lasting basis' market access for all products of export originating from all LDCs.
- ▶ Implementation of the Hong-Kong Ministerial's DF-QF decision through a commercially meaningful market access was a key demand of the LDCs in the context of the DDR.
- ▶ In spite of the various GSP schemes providing DF-QF treatment to LDC products, important LDC exportables (such as textiles) continue to face high tariffs in some of the developed country markets, most notably in the US.
- ▶ For Bangladesh and Asian LDCs, the issue of DF-QF is important also because apparels, their major export is not covered under the US GSP scheme (In case of Bangladesh, only 0.5% of the total exports to the US is covered under the US-GSP scheme; duties imposed at import stage on Bangladesh apparels was about US \$750 million in 2013).

- ▶ The decision in Bali merely reiterated what was decided at the of Hong Kong Ministerial. At Bali, Members were asked to *notify their respective DF-QF schemes for the LDCs*.
- ▶ The Committee on Trade and Development (CTD) was asked to continue to undertake *annual review of the steps* taken by Members to implement the decision to the General Council for appropriate action.
- ▶ No specific and transparent timeline was mentioned regarding the progressive inclusion of the ‘3% exclusion list’; neither was any decision taken as regards submissions upfront of the list of items by those member countries which had indicated their readiness to cover only $x\%$ of items ($97\% \leq x < 100\%$).

3.1.2 Post-Bali Developments: DF-QF Market Access

11

- ▶ The post-Bali work on DF-QF has been progressing in Geneva without any meaningful engagement on the part of Members.
- ▶ The difference in the perspectives of AGOA – beneficiary LDCs and Asian LDCs continue to persist.
 - ▶ The only notable development was the adoption of Chile's DFQF scheme for LDCs, which grants DF-QF access for 99.5% of its tariff lines (however, the average tariff in Chile is already quite low).
 - ▶ WTO's CTD is mandated to undertake annual review of the steps taken by Members in providing DF-QF access to the LDCs. This annual review will take place on 27 November 2014.

3.1.3 LDC: Package: Preferential Rules of Origins

12

- ▶ As is known, the onerous domestic content and processing requirement often makes it difficult for the LDCs to realise preferential market access opportunities. *Preferential rules of origin* are thus key to ensuring that LDCs are actually able to benefit from the market access provided as part of the DF-QF initiative.
- ▶ LDCs argued that the domestic value addition requirement criteria should be defined in such a way that it takes cognisance of domestic supply-side and productive capacities of the LDCs and are easy for them to comply with.
- ▶ The Bali decision contains, for the first time, *a set of multilaterally agreed guidelines for the RoOs* that the Members should apply to their non-reciprocal preference schemes for LDCs. This was expected to make their exports easier to qualify for preferential market access. However, the decision remains in the form of *non-binding guidelines*.
- ▶ Members were asked to consider allowing *cumulation facilities* to the LDCs and the documentary requirements for compliance were to be *simple and transparent*.

3.1.4 Post-Bali Developments: Preferential Rules of Origins

13

- ▶ The Bali Decision requires the *Committee on Rules of Origin* to annually review the developments as regards preferential rules of origin. This was held on 30 October 2014.
- ▶ LDCs have tabled a communication outlining the challenges faced by them in complying with preferential rules of origin (Submission by Uganda on behalf of LDCs).
 - The document reveals that the rules of origin provisions by the US and Japan has remained unchanged since the 1970s, and have not adapted to the “evolution of the world trade”.
 - While RoO calculations can be done in many forms, LDCs have proposed that: (i) the formulae is carried out on the basis of a value of materials calculation, (ii) percentage level should be set at 15%-25% depending on the product categories reflecting the global value chains and adequate to the LDCs’ industrial capacity, and (iii) special situation of LDCs relating to their *transport costs* of input materials should be allowed to be adjusted. LDCs pointed out that most of these practices are already contained in some FTAs.

3.1.4 Post-Bali Developments: Preferential Rules of Origins

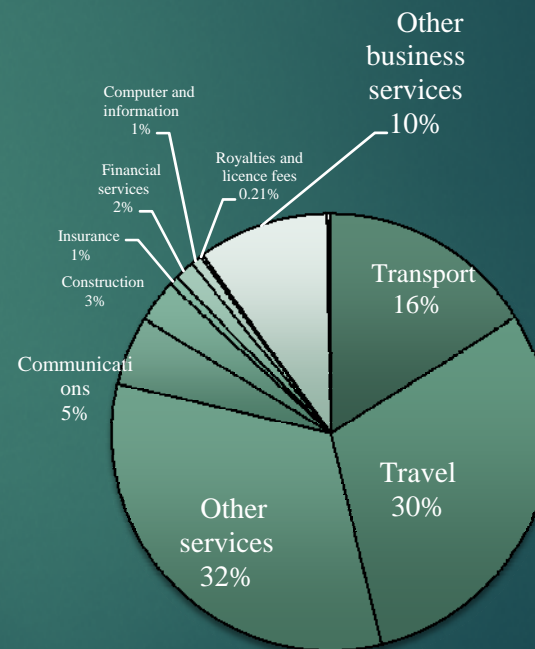
14

- ▶ On the other hand, LDCs need to be more specific in identifying markets where they want a change in rules of origin requirements. Homework to do.
- ▶ Hopefully, in the upcoming discussions the submission by the LDCs will be taken cognisance of through appropriate follow-up actions.

3.1.5 LDC: Package: Services Waiver

- ▶ The service sector has become a key driver of growth and development in LDCs.
- ▶ In 2013, share of services accounted for 42.2% of the LDCs' GDP. However, LDCs' export only 0.7% of global commercial services (an estimated value of US \$31.5 billion), mostly in the areas of travel, communications and other services.
- ▶ GATS Mode 4 (movement of natural persons) is a key area of interest to the LDCs. In 2012, LDCs received US \$30.6 billion as remittance, which was 5.8% of the global migrant remittance (UNCTAD, 2014).

Figure 6: Percentage Share of Commercial Service Sector Exports by LDCs in 2013



3.1.5 LDC: Package: Services Waiver

16

- ▶ In Bali, Members recalled the Waiver decision of MC-8, which allowed a derogation from MFN obligations as a modality for special and differential treatment, and which to be accorded to services and service suppliers from the LDCs.
- ▶ Members instructed the WTO council for Trade and Services (CTS) to initiate a process aimed at promoting the *expeditious and effective operationalisation* of the LDC service waiver, with provisions for periodic review.
- ▶ CTS was asked to convene a high-level meeting six months after the submission by LDCs of a *collective request* identifying the *sectors and modes of supply* in which they would like to receive preferences. Developed and developing country members, in a position to do so, were asked to indicate “sectors and modes of supply where they intend to provide preferential treatment to LDC services and service providers”.
- ▶ Members have also been asked to provide *technical assistance and capacity building* support to the LDCs to take advantage of the services waiver.

3.1.6 Post-Bali Developments: Services Waiver

17

- ▶ In February 2014, Members have initiated discussion on how to operationalise the waiver at the CTS of the WTO.
- ▶ LDCs tabled their Collective Request in July 2014 (submitted by Uganda on behalf of LDCs) indicating the type of preferences they would like to have and identifying the sectors and modes of supply where they have particular interests.
 - The request makes the point that the most formidable market access as well as national treatment restrictions were associated *with mode 4*. The submission lists some *horizontal points* across all sectors. These include: creation of a special temporary entry visa quota for LDCs, removal of restrictions on the category of contractual service suppliers and independent professionals, residency requirements, social security deductions.
 - Waiver requests relating to *Mode 3* include: ENT and labour market tests, conditions on local hires and other market entry barriers.
 - Some *sector specific requests* were made as regards travel/tourism, transport and logistics, banking and insurance services. A number of professions of interest identified including education, ICT, business processing outsourcing and creative industry.
 - As regards, services '*non-tariff barriers*', which essentially acts as barriers to market access, other requests made include: preferential treatment for LDCs on licensing/work permit/visa fees, recognition of qualification of LDC professionals and accreditation of LDC institutions.

3.1.6 Post-Bali Developments: Services Waiver

18

- ▶ After submission of the collective request, there has been no concrete progress. Indeed, no country has granted voluntary preference to the LDCs since the adoption of waiver in 2011.
- ▶ A Services Council meeting is scheduled for the 27 November 2014, where LDCs are expected to present ideas as to how they would like the high-level meeting to be organized.
- ▶ At present, WTO Members are mute about the schedule of the high level meeting. There has been no indication on the part of developed countries as to the *offers* to be made by them. LDCs are pursuing that this be held in mid-January 2015.

3.1.7 LDC Package: Monitoring Mechanism on Special and Differential Treatment

19

- ▶ A *Monitoring Mechanism* under the S&D provisions was perceived to be of high interest to the LDCs. The mechanism was to assess the utilization of preference treatment by the developing countries and LDCs.
- ▶ In Bali, Members adopted the decision to establish a *Monitoring Mechanism on S&D Treatment*, which was to serve as ‘a focal point to analyse and review the implementation of the S&D provisions’.
- ▶ The Mechanism may make recommendations for consideration of actions to improve implementation of the relevant S&D provision including, if necessary, *launching of negotiations* in the relevant WTO body.
- ▶ The decision does not mention any time-bound commitment (*at the earliest opportunity*) regarding consideration of the Mechanism’s recommendations to the relevant body. The *timeline* of review of the Mechanism (three years after its first formal meeting) is also a rather protracted one.
- ▶ WTO's CTD will have a dedicated session for Monitoring Mechanism on S&D treatment at the *annual review* meeting, which is to be held on the 27 November 2014.

3.2 Trade Facilitation Agreement

20

- ▶ As is known, TF was a key new element in the Bali package. This was one of the four “Singapore issues” which was brought within the ambit of WTO negotiations for the first time.
- ▶ Major objectives of TF included: accelerating customs procedure, reducing costs, bringing clarity, efficiency and transparency in customs dealing, reducing bureaucracy and corruption, and promoting the use of modern tools and technology at customs clearance points.
- ▶ Some (Hoekman, 2014) have raised concerns on the grounds that: a) TF could move WTO away from binding enforceable commitments (as many provisions are best endeavor); b) does not limit S&D treatment for countries that need it; c) moves WTO Secretariat into the realm of development assistance where it does not have comparative advantage; d) TF is being used as a negotiating chip with respect to other areas (Agriculture).
- ▶ On the other hand, concerns from developing members: a) TF could act as import facilitation; b) benefits remain uncertain if commensurate export facilitation measures are not put in place; c) TFA does little to reduce trade costs since other factors (internal transport cost, weak infrastructure, lack of institutions, weak trade governance, account for lion’s share of total trade).

3.2 Trade Facilitation Agreement

21

- ▶ While it was true that addressing “at the border” and “behind the border” constraints could potentially benefit the LDCs, there were a number of concerns in this regard.
- ▶ Many LDCs and poor countries were not *demandeurs* in this area mostly because LDCs apprehended the TF commitments to be onerous, which could lock them into costly commitments.
- ▶ Some developing countries with weak export capabilities also apprehended that trade facilitation would only contribute to *increasing imports*, but do little to tackle *supply-side constraints* affecting exports, and thus, is likely to adversely affect their trade balance.

3.2 Trade Facilitation Agreement

22

- ▶ The TF decision adopted in Bali MC-9 is divided into two parts:
 - Section I involving specific commitments countries will make to improve their customs procedures;
 - Section II comprising special and differential treatment for developing countries and LDCs.
- ▶ To reconcile these two objectives, the final agreement contain a set of landmark provisions allowing for *flexibility in* the implementation timeframe, and linking commitments to help build the required trade related capacity through technical assistance.
- ▶ Developing countries and LDCs are allowed to self-define their implementation period within three categories of implementation modalities.
 - Category A → those provisions that will be implemented immediately upon the agreement's entry into force;
 - Category B → those commitments that will be implemented after a self-selected transition period;
 - Category C → those commitments that will be implemented after self-selected transition period and require acquisition of implementation capacity through technical assistance and support for capacity building.

3.2 Trade Facilitation Agreement

23

- ▶ The text of TF Agreement finalized in Bali have clear timeframe for ratification starting from December 2013 (no later than 31 July 2014) and ending with acceptance of the protocol by 31 July 2015. Developing countries and LDCs have been given grace periods to implement the TF ranging from two, six to eight years.
- ▶ However, Members missed the (first) deadline for the adoption of the protocol of amendment on the TFA in July 2014 in view of the stance taken by India.
- ▶ Whilst the stalemate now appears to have been resolved, LDCs are keen to have a clear understanding as to the quantum and nature of Aid for Trade Facilitation and other support that they may expect to help them comply with their TF obligations.

3.3 Agriculture

24

- ▶ The MC-9 outcome on agriculture focused on four distinct areas.
 - Expansion of the list of general services (including land rehabilitation, soil conservation and resource management, drought management and flood control, rural employment, issuing land ownership titles and settlement issues)
 - Tariff rate Quota
 - Export Subsidies
 - Public stockholding for food security purposes

3.3 Agriculture: Public Stockholding for Food Security Purposes

25

- ▶ The issue of public stockholding is important for all the LDCs.
- ▶ Over the last seven years, agriculture and food prices have been both high and volatile, often exacerbated by weather-related production shortfalls and other crises.
- ▶ In 2013, basic food items (excluding tea, coffee, cocoa and spices) had cost LDCs about US \$37.5 billion, accounting for 15% of the total LDC import.
- ▶ Agricultural raw materials and all food items accounted for one-third of the global LDC import.
- ▶ For many developing countries and LDCs, stock adjustments serve as a buffer for both their producers and consumers against quirks of price volatility in basic food products. Under the existing WTO rules, state support and expenditure incurred for stocks that are considered trade distorting, and therefore, is subject to a limit (AMS being equivalent to 10% of country's GDP).
- ▶ At MC-9 India argued that, *price support schemes* should be compatible with the “green box” and be subject to no limitations; WTO rules should not get in the way of Members' right to food security.

3.3 Agriculture: Public Stockholding for Food Security Purposes

26

- ▶ On the other side of the spectrum, developed countries (and some developing countries) expressed concern that such a proposal would affect the fundamental requirement of the green box (i.e. that measures included should not provide price support to producers), while others were concerned that surplus stocks built through such schemes could eventually be dumped in the world market, further exacerbating the price volatility and affecting the third countries' producers.
- ▶ In Bali, Members opted for an interim solution in the form of a *peace clause* and committed to finding a permanent solution by the 2017.
- ▶ There are diversity of interests between the developing countries and LDCs. Majority of LDCs are *net food importers*. However, in 2013, food items consisted of 9% of overall LDCs' exports. Thus, LDCs have both *defensive* and *offensive* interests in this sector.
- ▶ Support and subsidies beyond the AMS threshold could lead to lowering food prices in some of the developing countries. Consequently, island LDCs and food exporting LDCs that have export interest in these countries might be adversely affected.

3.3 Agriculture: Public Stockholding for Food Security Purposes

27

- ▶ Post-Bali, as WTO members started to work towards a permanent solution, several options were proposed.
 - Allowing countries to reflect on the *impact of inflation* in calculating price support (Hoda and Gulatti, 2013).
 - Reference price based on a more recent period or alternatively calculated as a *three-year rolling average* of the world prices .
 - If the *administered price* is at or below the *world market price*, it should not be considered as providing price support, and hence could be considered green-box compatible (Diaz-Bonilla, 2013).
- ▶ The recent agreement between India and the US regarding food stockpiling has removed a major obstacle clearing the way for the TF agreement, infusing new life to the WTO.
- ▶ LDCs will need to examine on a continuing basis, the possible implications of the solution on their offensive and defensive interests. If needed, they will need to design flanking strategies to ensure their food security.

3.4 Cotton

28

- ▶ The issue of cotton was of heightened interest to the four the Cotton exporting African countries (C-4): Benin, Burkina Faso, Chad and Mali.
- ▶ The cotton initiative focused on the “coherence between trade and development aspects of the cotton issue”: while the trade component covered negotiations on trade barriers, domestic support and export subsidies, the development component covered various aspects of helping the less developed cotton producers confront market conditions and other related needs.
- ▶ The decision adopted in Bali recognizes that WTO was yet to deliver on the cotton initiative and decided that dedicated discussions in this area are to be held on biannual basis.
- ▶ Linking cotton with the broader agricultural negotiations, WTO members reaffirmed that all forms of export support and subsidies would be eliminated. It is not clear when this will start to be enforced.
- ▶ On 20 June 2014, a *cotton development meeting* was held, where a *decline in assistance for cotton was reported*. Members have discussed the pros and cons of sticking to the current draft text tabled since 2008, but no specific proposal have been made.

4. Systemic Issues

29

- ▶ As the world becomes increasingly fragmented into different regional blocs based on comparative advantage, global value chains, green goods and services, investment and competition policies, Plurilateral Agreements (PA) under the WTO umbrella, which advances the agenda of common interest, to some members (critical mass), without extending the benefits to other WTO members, has been suggested as a viable mechanism to break the impasse of Bali and the broader DDA (Hoekman, 2013).
- ▶ LDCs have a number of concerns in view of this: Plurilateral Agreements are likely to result in removal of trade barriers among participating countries resulting in *preference erosion* for LDCs and other small economies.
- ▶ If the developed and economically powerful countries join PAs and set up 'rules of the games' of the agreements on the basis of their economic interests, it would create systemic barriers for the LDCs to join these initiatives at some subsequent period.
- ▶ It would in effect introduce another element of permitted discrimination into the multilateral trading system.

5. Other Issues

30

- ▶ There are still many unfinished agendas of interests to the LDCs, which were not taken up in Bali (e.g. NAMA; TRIPS).
- ▶ LDCs remain ambivalent about the stalemate of NAMA as it would result in significant preference erosion for them.
- ▶ Responding to the LDCs' special needs in intellectual property, the transition period of the TRIPS agreement has been extended till July 2021. However, concern remains as regards lack of technical and financial assistance to support LDCs to take advantage of this extended transition period.

6. Concluding Remarks: Going Forward

31

- ▶ LDCs will need to take initiatives to narrow down the differences within the LDC Group (e.g. as regards DF-QF).
- ▶ LDCs will have to undertake the needed homework (e.g. identification of category-specific concerns with respect to TFA).
- ▶ With regard to submission relating to Services waiver, LDCs will need to remain actively engaged in the future Request-Offer negotiations in Geneva.
- ▶ Serious work will need to be done by the LDCs to articulate their demands (e.g. preferential RoOs) and concerns (e.g. possible ramifications of food stockpiling for LDCs' food securities and implications of Plurilaterals for their trade interests).
- ▶ Trade-related resource mobilization should remain a major concern for LDCs (e.g. AfT and Aid for trade facilitation; other support measures; ensuring coherence).
- ▶ Coalition building and partnerships will matter in advancing LDC interests in post-Bali negotiations in Geneva during the run up to MC-10.