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Research Report 3

Upcoming WTO MC11 and Interests of Bangladesh as an LDC

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Acronyms

AMS	Aggregate Measure of Support
AoA	Agreement on Agriculture
CTS	Council for Trade in Services
DoF	Department of Fisheries
DDA	Doha Round Agenda
DDR	Doha Development Round
DF-QF	Duty-free and Quota-free
DSB	Dispute settlement Body
EEZ	Economic Exclusive Zones
ENT	Economic Needs Test
EU	European Union
GDP	Gross Domestic Product
ICT	Information and Communication Technology
ICTSD	International Centre for Trade and Sustainable Development
IPR	International Property Rights
LDCs	Least Developed Countries
MC	Ministerial Conference
MFN	Most Favoured Nations
MSP	Minimum Support Price
MSME	Micro, Small and Medium Enterprises
RoO	Rules of Origin
SDG(s)	Sustainable Development Goal(s)
S&DT	Special and Differential Treatment
TFA	Trade Facilitation Agreement
TRIPS	Trade-Related Aspects of Intellectual Property Rights
WTO	World Trade Organization

Introduction

World Trade Organization Ministerial Conference (WTO MC) which take place every two years, is the highest decision making body of the WTO. MCs provide a unique opportunity to discuss trade-related issues of interest to all members of the WTO¹ - developed, developing and least developed country (LDC) members. Ministers endorse the agreements reached at the various negotiating groups, working in Geneva, and try to resolve outstanding issues in order to arrive a consensus-based Ministerial Decision. However, there have been instances where Ministers were not able to come up with a Ministerial declaration (e.g. MC3 in Seattle in 1999, MC5 in Cancún in 2003) because of non-reconcilable differences (WTO 1999; WTO 2003).

The eleventh Ministerial meeting of the WTO is going to take place in Buenos Aires, Argentina on December 10-13, 2017 (WTO, 2017a). For the increasingly globalising economy of Bangladesh (Rahman & Bari, 2016), the workings of the multilateral trading system, with its rules, regulations, disciplines, flexibilities and derogations, remains a critically important area of attention and focus on the part of policymakers and concerned stakeholders (Rahman, n.d.). This paper makes an attempt to situate MC11 in the backdrop of recent global developments and articulates major areas of discussions and negotiations in the run up to MC11 (Section 1). The paper articulates Bangladesh's offensive and defensive interests in view of the above (Section 2) and presents a set of possible strategies in pursuance of the interests of Bangladesh and other LDCs in anticipation of negotiations at MC11 (Section 3). The paper concludes with a postscript.

Section I. Disquieting Developments in the Run-up to MC11

Following the setback at the third MC (MC3) of the WTO in Seattle in 1999, the launching of the Doha Round at MC4 in 2001 had infused exceptional enthusiasm among the developing and LDCs. This positive vive originated from the 'development dimensions' which informed the ambitions set out in the Doha Round Agenda (DDA). It will not be too far off the mark to pass the judgment, in the backdrop of the six subsequent MCs, including the MC10 in Nairobi, Kenya, that the initial expectations have been significantly toned down by now. Indeed, the Nairobi Ministerial Declaration (point 30) had come up with the following statement: "We recognize that many Members reaffirm the Doha Development Agenda, and the Declarations and Decisions adopted at Doha and at the Ministerial Conferences held since then, 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 Organization" (WTO, 2015). By any reckoning, this was a major setback as far as the Doha Round ambitions were concerned. As one author has appropriately pointed out: "The flowers of Doha did not produce the fruit that was promised" (Dieye, 2017).

It is pertinent to recall here that, LDC IV in Istanbul had set the ambition of halving the number of LDCs by 2020 (LDC IV Monitor, 2014). According to the LDC IV Programme of Actions, multilateral trading system and better market access were supposed to play an important role in achieving this ambition. The Agenda 2030 has set the target (Sustainable Development Goal (SDG)-17) of doubling the share of the LDCs in global exports by 2020 and has also asked developed countries to help developing countries and LDCs to attain the SDGs through a

¹ WTO currently has 164 members.

supportive global trading system including implementation of the duty-free and quota-free (DF-QF) market access decision of the WTO (UN, 2016). These decisions affirm the intention of the global community to help the relatively weaker economies to undertake a transformational journey, with the help of a supportive multilateral trading system. However, the reality has not corresponded with the declared aspirations.

As it emerges from the aforesaid developments leading to Buenos Aires, WTO MC11 stands at the vortex of two opposing trends: one evinces optimism and seeks to infuse a new life into the multilateral trading system; the other, on the contrary, transmits a pessimistic view that it is perhaps time to abandon the lofty ambitions of the Doha Development Round (DDR) and go for a new beginning. The challenge before the LDCs is to navigate these opposing developments and strategises as to how best to safeguard their defensive interests and how to secure their offensive interests in view of the unfolding scenarios of negotiations on various issues leading upto MC11.

A number of new developments have compounded the difficulties faced by the LDCs in the context of the global trading system: (a) *slow recovery*: global economic recovery since the financial crisis of 2007-08 has been rather slow – average annual growth of global trade flow has been significantly lower than global gross domestic product (GDP) growth rate which is a significant reversal of the trends of the past decades prior to the crisis. Only in the recent past trade growth has started to catch up with GDP growth (3.6 per cent world merchandise growth versus 2.8 per cent global GDP growth projected for 2017). To compare, for two decades prior to the crisis, global trade was growing three times as fast as that of global GDP (WTO, 2017b); (b) *protectionist policies*: propensity on the part of many developed countries to pursue protectionist policies has been on the rise during the post-crisis period by way of deviation from national treatment and most favoured nation (MFN) principles of the WTO. Number of cases (submission of complaints; setting up of panels) brought to the WTO-Dispute Settlement Body (DSB) has been sharply on the rise (Rahman, n.d.; Erixon & Sally, 2010; European Commission, 2016); (c) *new developments*: new developments such as United Kingdom's exit from the European Union (EU) popularly known as Brexit, volatility in commodity market, the rise of global value chains and aid fatigue are the "new normal" in the evolving global trade architecture (European Commission, 2016); (d) *systemic issues*: frustrated by the slow pace of negotiations in the WTO, a number of countries are preferring plurilateral negotiations outside the ambit of the WTO. The principle of 'single undertaking'² has come under question (Rahman, n.d.); (e) *new issues*: some WTO members are arguing for inclusion of new economy issues in the MC11 agenda along with the traditional economy issues. Some are arguing for extending the built-in agenda (e.g. fisheries subsidies; disciplines in e-commerce) others are calling to bring in new issues (investment-related issues). It is clear that compared to the Bali Ministerial (where an LDC package was adopted) and Nairobi Ministerial, there is no visible appetite to deal with issues of interests to developing countries and LDCs as members move towards MC11. Instead, developed countries are keen to pursue and fast-track the new issues such as investment facilitation, enhancing access of micro, small and medium enterprises (MSME) in international trade and trade facilitation in services alongside negotiations on e-commerce. This, if allowed in Buenos Aires, will lead to further erosion of the development agenda and dilute the development dimension of DDR.³

² Nothing is agreed until everything is agreed.

³ Bridges Africa; ICTSD. Vol. 6, issued 8; November, 2017.

The LDCs⁴ and Bangladesh will need to take cognisance of the unfolding scenarios, both in the context of the global developments, as also in view of the ongoing negotiations in the WTO, to (a) identify priorities, (b) assess the negotiating agendas from the perspectives of offensive and defensive interests, (c) firm up negotiating stance in view of the MC11 agendas and (d) identify strategies to pursue their interests including possible opportunities of coalition-building. As it stands, LDCs will need to consider three sets of issues: (i) ongoing WTO negotiating agendas; (ii) built-in WTO agendas and (iii) new issues. For Bangladesh some of the key ongoing agendas include operationalisation of: (a) DF-QF decision (MC6 decision in Hong Kong), (b) Implementation modalities of S&D provisions (MC9 decision)⁵, (c) Services Waiver (extended till 2030: MC10 decision), (d) The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) and Pharmaceuticals (Doha declaration extended till 2032: MC10 decision); (e) Rules of origin for LDCs (MC10 decision), (f) Trade Facilitation Agreement (TFA) (MC9 decision); (g) Aid for Trade. Built-in agendas with regard to which some progress have been made in the negotiations include Agreement on Agriculture (AoA) and electronic commerce (E-commerce). One area with regard to which some decision is highly likely include issues of fisheries subsidies.

Section II. WTO-MC11: Key Offensive and Defensive Interests of Bangladesh and Proposed Stance

This section identifies Bangladesh's offensive and defensive interests and the stance that Bangladesh could take in this regard.

DF-QF Market Access

DF-QF market access remains a key issue of interest to Bangladesh, as also of many other LDCs, particularly from the Asia-Pacific region. In spite of attempts to facilitate the decision's effective operationalisation through such incremental clarifications as 'enhanced market access' and 'commercially meaningful market access', till now nothing concrete has happened in implementing this decision (Ancharaz & Laird, 2013; Rahman & Jahan, 2015). Bali and Nairobi MCs have failed to meet LDC expectations in terms of realising the DF-QF decision (WTO, 2014a; WTO, 2015). One suggested strategy is for the LDCs to pursue the modality of number-based commitments from developed countries to extend respective coverage of DF-QF facility in export value terms. LDCs should also ask for more generous offers on the part of developing WTO members. In line with MC10 Decision, LDCs should argue for flexible Rules of Origin (RoO)⁶ so that they are able to take advantage of the decision (South Centre, 2015). Asia-Pacific LDCs should continue their efforts to pursue African LDCs to come out in support of the DF-QF decision more strongly. LDCs should demand a clear time line for countries 'facing difficulties in implementing

⁴ There are at present 47 LDCs (following recent graduation of Equatorial Guinea). Of these 36 are members of the WTO. Seven LDCs are at various stages in the accession process and currently are observers. These are: Bhutan, Comoros, Ethiopia, Sao Tomé & Príncipe, Somalia, Sudan and Timor-Leste.

⁵ Operationalisation of S&D Provisions Favouring LDCs: Several decisions were taken in the past in the WTO in favour of LDCs as part of successive WTO-MCs. There are 139 special and differential treatment (SDT) provisions favouring developing countries (including LDCs) in the agreements of the WTO, of which 14 are specific to the LDCs.

⁶ RoO criteria of 25 per cent domestic value addition and single transformation for the purposes of preferential market access.

the DF-QF decision at this time' to move from 97 per cent of the products originating from the LDCs to 100 per cent of the products. Of all LDCs, Bangladesh, Cambodia, and to extent Nepal, have the most interest in this issue. However, efforts should be continued to reduce the gaps in approach and perspective with African LDCs.

Domestic Support for Public Stockholding

In view of the Nairobi (MC10) Decision as regards seeking a permanent solution for domestic support on public stockholding within 2017, LDCs has an interest in the negotiations on this agenda in the upcoming MC11 (ICTSD, 2016). Permanent solution of domestic support on public stockholding should be regarded as an issue of interest to Bangladesh as a (some time) food-importing country.⁷ Bangladesh has both offensive and defensive interests in this regard. A permanent solution with adequate safeguards should be Bangladesh's preferred option.

As may be recalled, the Bali decision agreed to the '*peace clause*' whereby developed countries agreed not to go to the WTO DSB if food stockholding by developing countries exceeded the permissible limits of Aggregate Measure of Support (AMS) as stipulated under the AoA. This was allowed for four years, and a decision in this regard will now have to be taken at MC11 (Díaz-Bonilla, 2014; Matthews, 2014; South Centre, 2014; ICTSD, 2016). There is significant divergence in the positions articulated by WTO members during the discussions on this issue. Some members such as Australia feel that subsidies for public stockholding programmes are trade-distorting⁸ and hence there is a need to put these under some discipline (cap). On the other hand, the Group of 33 countries (G33), which include India, China and Indonesia, has proposed for a permanent solution which would allow public stockholding for food security to include procurement of food products from farmers at minimum support price (MSP) and their distribution at subsidised rates to the poor and the needy. Subsidies on account of these programmes were not be included in the category of trade distorting subsidies that disrupt markets and prices of food items. In this regard, fixed reference price for AMS calculation is also a long-debated issue (ICTSD, 2016; South Centre, 2014).⁹ If no agreement is reached at MC11 in this regard, members may go for further extension of the *Peace Clause* timeline unless a permanent solution is sought.¹⁰ However, in this case the current provisions in the *Peace Clause* will need to be changed (WTO, 2014a).¹¹

⁷ 42 out of the 47 LDCs are net food-importing countries.

⁸ It is to be noted that the stockholding programmes are regarded as trade distorting when governments purchase 'a staple food product' from farmers at fixed prices, known as "supported" or "administered" prices. Some countries argue that such subsidies disrupt market for food items and food prices. The concern is only on the purchasing side. There are no limits on supplying cheap or free food specifically to the poor or malnourished (WTO, 2014b).

⁹ The reference period, currently taken to be the average price for 1986-88, leads to an artificially inflated amount of subsidy for purposes of calculation. This then results in lower levels of allowed procurement.

¹⁰ General Council decision [WT/GC/W/688](#)

¹¹ The changes proposed are along the following lines: (a) delete the word 'existing programme' from paragraph 2 of the *Peace Clause* and allow new programmes on public stockholding under agreed conditions (South Centre, 2017); (b) *Peace Clause* only covers public stockholding for 'primary agricultural products that are predominant staples in the traditional diet of a developing Member- which limits developing countries scope to promote agricultural diversity both in terms of crop and non-crop products; (c) bringing change in the methodology to reduce the effect of artificially inflated calculation of AMS subsidy (by developing countries). As an alternative solution, latest three years average administrative price

The concern for Bangladesh is two-fold. Food subsidies do dampen domestic food prices in the providing countries. And when they export, the spill-over impact on export prices do give the subsidising countries certain advantage. As a net food-importing country, Bangladesh stands to benefit from the lower food prices in the global market. On the other hand, Bangladesh as a (some time) food exporting country stands to face more competition in the global market on account of this. This is also particularly important because LDCs such as Bangladesh do not have the financial muscle to allocate significant amount of resources to subsidise food stockholding to the tune where AMS caps could become a problem. On the other hand, from medium to long-term perspective, the issue of subsidy calculation is of particular relevance to Bangladesh as the country may need to go for high incentives to stimulate agricultural practices that are tuned to addressing climate vulnerabilities and agricultural (both crop and non-crop) diversification challenges.

In view of this, it may be advisable for Bangladesh to go with the developing countries who are keen to have a permanent solution that take care of their concern. However, as a bargaining point, Bangladesh should ask WTO members to agree not to ban exports, or put minimum export prices, as far as LDCs were concerned, during times of high food price volatility.¹²

Fisheries Subsidies

Many WTO members have complained that, domestic subsidies on fishing¹³ by major fish capturing countries (e.g. Japan, UK, EU, China) distort global markets and incentivises overfishing and overcapacity¹⁴. This demand is also in line with the SDGs [Goal: 14.6] which call for sustainable fishing (UN, 2016). LDCs have an interest to eliminate illegal, unreported and unregulated (IUU) fishing which is being proposed by some countries. A group of countries that include US, Australia, New Zealand, Norway, Chile, Colombia, Peru and Iceland, referred to as “Friends of Fish”, have been demanding strong and enforceable rules against granting subsidies to the fisheries sector, pointing mainly two types of subsidy that lead to a country’s enhanced capacity of fishing and ultimately to overfishing: (i) subsidies granted for construction of fishing vessels and fleet modernisation and (ii) subsidies that reduce operating costs such as fuel subsidy¹⁵.

(notified by respective countries in the WTO) may be adopted as the reference price (Matthews, 2014; South Centre 2014; ICSTD 2016)

¹² Export ban and minimum export-price were enforced by resorted to some foodgrains exporting developing countries at the time of the food price hike experienced during the 2007-08 period. Food-importing LDCs such as Bangladesh had to suffer because of this.

¹³ Total global fisheries subsidies were about USD 35 billion in 2009 dollars of which 65 per cent of total subsidies provided by developed countries (Japan, 19.7 per cent; US 19.6 per cent; China 19.6 per cent). In the regional context, Asia is by far the highest subsidising region to global fisheries subsidy (43 per cent) followed by Europe (25 per cent) and North America (16 per cent) (Sumaila *et al.*, 2016).

¹⁴ Capacity-enhancing subsidies accounted for about about 57 per cent (USD 20 billion) of the total global fisheries subsidy (Sumaila *et al.*, 2016).

¹⁵ Fuel subsidy constitutes about 22 per cent of total global fisheries subsidy (Sumaila *et al.*, 2016).

A recent study report stated that according to FAO estimates, 31 per cent of global fish stocks are overfished. About 37 per cent of all catch in central Eastern Atlantic (to the detriment of many LDCs in the region) is illegal and unreported, (the global losses from which has been estimated to be between 10 billion USD to 23 billion USD) (Tipping, 2017). Proposals have been put to limit subsidies to operating costs (considered to contribute to overfishing) and to capital costs (considered to contribute to overcapacity in fishing fleets). Subsidies to fuel often support fishing in distant areas that infringes upon Economic Exclusive Zones (EEZs) of many LDCs. Shipping companies from developed countries register their ship with other countries (*flags of convenience*) and subsidies given to those other-flag carrying ship is not counted against their respective fisheries subsidies.

LDCs have both offensive and defensive interests in this issue. They are keen to safeguard the interests of their fisheries sector and fishing communities. At the same time, some LDCs have export interest in fisheries sector. Many LDCs don't have adequate financial capacity to provide domestic support for fish vessel construction and modernisation to support the sector (Bahety & Mukiibi, 2017; South Centre, 2017). They face unfair competition from rich subsidising countries. Compliance with regulations proposed by group of Friends of Fish, if granted, will require significant investment from small LDCs and other small fish catching developing economies. Reducing fuel subsidy may make millions of fishermen and their families in LDCs vulnerable. If decision is taken with regard to containing overfishing and reducing subsidies, LDC should demand that adequate flexibilities and S&D provisions are put in place to safeguard their interests (Bahety & Mukiibi, 2017; South Centre, 2017). Considering what has been mentioned earlier, an special and differential treatment (S&DT) provision may be negotiated in line with the proposals in the various submissions.¹⁶ Some of the possible elements of the S&DT could be the followings:

Countries that don't contribute more than a certain percentage (e.g. x %) of global fish export should be exempted from agreed provisions and obligations. For LDCs, this provision should be more flexible on following grounds: (a) support for livelihood and social safety net programmes for fishermen involved in artisanal fishing; (b) revenue from fishing licenses granted to other countries is an important earning component for many small island LDCs; (c) enhanced policy space and lower disciplines as the present state of overfishing and overexploitation is largely accounted for by the industrialised nations; (d) LDCs should be allowed to exploit the opportunities of commercially viable fish stock in international water territories; (e) LDCs should be provided with technical assistance for fish stock assessment, monitoring and reporting on fish stock, research and development in fisheries sector; (f) as regards assessment and reporting of fish stock, S&DT should also include a provision where LDCs will be allowed a time period of few additional years following entry into force of Fishers Subsidies Agreement.

According to the data of the Department of Fisheries (DoF), at present the total fish production of Bangladesh was about 3.7 million MT (in FY2015-16) of which marine fisheries accounted for only about 16.3 per cent (share of artisanal fishing was 14 per cent and commercial fishing was 2.3 per cent). Both inland and marine fisheries of Bangladesh are mostly carried out at subsistence level. Bangladesh should pursue the negotiations in WTO by anticipating the rapid future growth of its marine commercial fisheries industry. To harness the opportunity of the blue

¹⁶ Seven proposals have been submitted by various combinations of Members including one by the LDC group).

economy, significant investments will be required to provide incentives to make it happen. Hence, Bangladeshi policymakers while negotiating need to keep this perspective in the mind.

Services Negotiations and Services Waiver for LDCs

Trade in services plays an increasingly important role in global trade. Services accounts for over 70 per cent of the world's GDP, 45 per cent of the world's employment and about 40 per cent of the world's stock of foreign direct investment. However, participation of LDCs in world trade in commercial services remains marginal – LDCs account for only about 0.7 per cent of exports and 1.8 per cent of imports of global services.¹⁷ Services trade are increasingly important component of the global trade, with its current share spending at 23 per cent. In 2016, share of developing countries was 30.5 per cent in services trade. A more sophisticated analysis which looks only at value added shows that, trade in services accounts for 50 per cent of current world trade, surpassing the contribution of the both agriculture and manufacturing sectors the two traditional focus of global trade.¹⁸

Service waiver for LDCs has two types of preferences: (a) *Market access preference* (e.g. that allow midwives from LDCs to provide service (mode 4) under an LDC-only quota); (b) *Non-market access preference* (e.g. if a developed country provides preference in terms of lower years of experience for a professional from LDC in sanctioning work permit) subject to the authorisation by the Council for Trade in Services (CTS). It is to be noted that, preferential treatment in services covered by the LDC *Services Waiver* may be accorded to any LDC regardless of the membership of WTO. Till date 25 (51 country EU member states individually) non-LDCs (including EU as a single entity) have submitted their notifications of preferential schemes (offer lists). Bali Ministerial (MC-9) took a number of decisions towards implementation of the LDC waiver (WTO, 2014b). Nepal, on behalf of the LDCs, had submitted a “request preferences” in 24 July, 2014 (in 74 areas). Some preferences would include: expanding access for temporary movement of business people (Mode 4) from LDCs for a range of services professions and occupations; waiving fees for business and employment visas for LDC persons; not imposing economic needs and labour market tests for LDC members; and extending the duration of stay of LDC professionals in the markets of preference granting members. This was followed by a High level meeting was held in February 2015 to discuss issues of operationalisation. Adequate utilisation of service waiver will help LDCs to increase their export earnings from trade in services (Drake-Brockman *et al.*, 2015; Greenidge & Wamai, 2017). Introduction of quantitative factors (in the form of quotas), waiver from restrictive practices such as economic needs test (ENT) should be considered to operationalise the *Services Waiver*. LDCs should review the notifications received from offering countries, keeping in mind the key issues of offensive interest, demand-side dynamics in offering countries and their own supply-side capacities. The waiver could be a good opportunity for Bangladesh to enhance its export of semi-skilled and skilled human resources in such sectors as garments, construction, information and communication technology (ICT), care industry and education. While drawing up the list of possible preferences, particular attention should be paid to preferences under mode 4 where Bangladesh has significant export potential. Country-specific demand assessment for semi-skilled and skilled human resources will be critically important for

¹⁷ Authors' calculation based on UNCTADSTAT data

¹⁸ Speech of WTO Secretary General Roberto Azevêdo on October 17, 2017.

Bangladesh to meet the skill requirements in offering markets. Bangladesh should undertake a thorough study to identify its sectors of offensive interest in view of Services Waiver.

Some members (e.g. India) are pushing for trade facilitation in services, in line with WTO-Trade facilitation Agreement. However, excepting Turkey and Switzerland, this proposal did not get any traction. On the other hand, a group of other countries¹⁹ is pushing for disciplines on domestic regulations on services (technical standards, licensing requirements, qualification requirement and procedures). However, majority of members are opposing this move on the ground that this will entail additional financial and administrative burden and obligations and will also limit policy flexibility. For example, when a member wishes to develop a “measure” – which is defined as “any law, regulation, rule, procedure, decision, administrative action or any other form” – the said member has to ensure that the measure is based on objective and transparent criteria, is not more burdensome than necessary, is conducted with reasonable and impartial procedures, and that the member has granted all interested foreign states and companies unrestricted access to the policymaking processes and taken their views into account. However, such a mandatory rule would most likely invite significant pressure from the multinational companies on domestic regulatory processes and would undermine the right to regulate on the part of LDC governments. As it appears from the statement by the Chair of the negotiating committee, the divergence remains too wide for a text to be agreed upon and tabled at MC11.

E-commerce

E-commerce has been gaining momentum in recent years with increasing internet penetration. Between 2000 and 2016 internet penetration has increased from 6.5 per cent to nearly 47 per cent of the global population. Global B2C e-commerce is expected to increase to USD 1.84 trillion in 2017, and Asia Pacific will have the highest share of total B2C e-commerce turnover; i.e. 50 per cent of overall turnover (Economic Foundation, 2017). A number of members are keen to bring e-commerce within the ambit of discussion and negotiation in the WTO, which in many instances tend to go beyond the 1998 work programme.

From July 2016, the debate on *e-commerce* in the WTO has intensified when several Members (most notably US, EU and Japan) proposed negotiations on new rules, in addition to the existing ones, in the WTO Agreements. The US submission refers to (a) prohibiting digital customs duties, (b) securing basic non-discrimination principles (national treatment and MFN principles), (c) enabling cross-border data flows, (d) promoting a free and open internet, (e) preventing localisation barriers, (f) barring forced technology transfers; (g) protecting critical source code; (h) ensuring technology choice etc.²⁰ New proposals have referred to several provisions towards e-commerce facilitation. These include *inter alia*: no customs duties/non-discrimination, enabling cross-border data flows and promoting a free and open internet, flexible rules for digital payments for international transactions. No localisation barriers, ensuring technology choice and safeguarding network competition. However, this was opposed by a number of developing countries including India on the ground that it would go beyond the 1998 mandate.

¹⁹ These include Australia, EU, Japan, Mexico, Colombia, and others.

²⁰ Non-Paper from the United States under Work Programme on Electronic Commerce (JOB/GC/94)

The opponents of e-commerce discussions/negotiation such as Africa Group, LDCs, India and others have stressed the need for policy space, importance of having a data strategy and the ability to regulate data. In this context, they have reaffirmed continuation of the 1998 E-Commerce Work Programme. A research paper by Centre for WTO Studies suggests that for an evolving digital economy like India the proposed e-commerce disciplines at WTO - (a) will limit the scope of rightful governance on e-commerce sector and also curtail the flexibilities to implement the existing and alternative policies, (b) may adversely affect the future potential and outcome of Government's initiatives by limiting the market structure, technology choice and development of domestic capacities (Gupta, 2017). The paper has argued that even without multilateral rules, global e-commerce market is growing with robust pace and consistency. In fact, eMarketer are expecting that retail ecommerce sales will increase to USD 4.1 trillion in 2020 (The eMarketer, 2016). Therefore, a legally binding rule could only play an insignificant role to generate additional growth while such rule could significantly undermine the opportunities of growing digital economics.

The ground reality is that trade policy makers from developing countries and civil society actors are not well-informed as regards the nuances which could directly affect the way digital rights and safeguards will be affected by a deal on e-commerce. E-commerce markets in LDCs are lagging behind in terms of competitiveness and skills on account of the digital divide and infrastructural deficit. For Bangladesh and other LDCs, securing their own interest in e-commerce negotiations is one of heightened importance. In case of any deal, LDCs should demand adequate safeguard through appropriate S&DT provisions. LDCs lack adequate infrastructure and logistics services to bear costs of handling smaller consignments and 'track & trace' capability. To take advantage of e-commerce, LDCs will require significant investment in hard and soft (e.g. improving the speed of internet) infrastructure. LDCs should pursue the case for concessional financing in view of current state of their digital divide. Comprehensive reforms of legal architecture will also be required towards speedy internet services in most LDCs. Enabling cross-border data flows and promoting a free and open internet may hurt the opportunity to develop a well-functioning domestic industry in the field of e-commerce and e-business in the LDCs. Freedom should be there to pursue domestic regulations to ensure technology choice, protect domestic providers and safeguard network competition in view of national development plans and priorities. Flexible rules for e-payment and data sharing will be important while dealing with intellectual property rights (IPR) and cyber security issues.

Nevertheless, proponents of e-commerce at MC11 are keen to start discussion on at least the following two issues: (i) a decision on stock taking exercise to examine which current WTO provisions are relevant to e-commerce, (ii) a decision to review e-commerce chapters in preferential trade agreements in order to identify provisions that go beyond current WTO rules.

However, till now, no consensus among the involved parties could be reached as to how to put the issue forward at MC11. It is likely that at MC11, US and other members will likely push for a Working Group to be set up on e-commerce to examine such issues as e-payment modalities, data generation, data localization, data protection, cyber security, IPR, big data analysis, trade facilitation and custom duties as regards e-trade and e-services. If a Working Group is constituted to discuss e-commerce related issues, LDCs should remain engaged with the process.

Decision on Cotton Subsidies

Although the Nairobi MC10 took an important step to reach a global solution regards the cotton issue, the cotton-4²¹ countries have strongly criticised the lack of progress with regard to any binding commitment (WTO, 2015). There will be a significant pressure in Buenos Aires towards a decision on cotton as part of reducing domestic subsidies in agriculture. The proposal submitted by the C-4 stipulates a ceiling on overall level of trade distorting support on cotton, has also been with respect to measures on (“non-trade distorting”) green-box support. Reduction of highly trade-distorting amber-box support, to the range of 70-90 per cent of such support on cotton is also proposed.

At the time of Uruguay round, developed and developing countries were given 6 and 10 years respectively to meet their reduction commitments. The commitment for developed and developing countries was to reduce their respective AMS by 20 per cent and 13 per cent, during the aforesaid implementation period. The AMS entitlement allowed these countries to shift their domestic support on agriculture between products. In contrast, members without these commitments had to keep the domestic supports within 5 per cent of the value of production (i.e. the “de minimis” level); 10 per cent in the case of developing countries. Consequently, most developing countries (e.g. India, China etc.) are not allowed to shift their domestic support between products. For instance, because of flexible way of AMS calculation, according to WTO notification submitted by US, in 2013 the country was able to provide domestic support of 10.8 per cent on cotton, 12.6 per cent on dairy, 57.8 per cent on sugar. If this was not allowed, US would have to keep their domestic product-specific support to within the 5 per cent limit. The existing rules allow the US to provide significant amount of subsidies to cotton producers while remaining within the AMS limit. This goes against the interest of African cotton producers which they are asking to rectify.

While India and China are supportive of the proposal, partly because they are not asked to undertake reduction, US (perhaps for this reason) has opposed the proposal. Bangladesh has traditionally extended support to the cause of C-4, in anticipation perhaps of winning the African LDCs over to its DF-QF cause.²² On the other hand, if there is a decision in this regard, it will have important implications for Bangladesh. Bangladesh is at present the foremost importer of cotton in the world (accounting for about one-fifth of the global cotton imports) (USDA, 2017). Bangladesh’s cotton importers may have to face higher prices as a result of reduction in farm subsidies on cotton. Production cost of Bangladesh’s exporters of RMG, using imported cotton, will go up. While this will equally affect the other cotton-importing competitors of Bangladesh such as Cambodia and Vietnam, cotton producing ones such as Pakistan and India will likely benefit both as producer of cotton as also as exporter of apparels. Bangladesh may continue to support C-4, as an expression of LDC solidarity, in exchange for garnering African LDC support for DF-QF market access decision. However, if the past is an indicator, this is hardly likely. While Bangladesh should not deviate from its principled position of supporting C-4, any concrete decision is highly unlikely because of the US opposition to the proposal tabled by the C-4.

²¹ The C-4 countries are Benin, Burkina Faso, Chad and Mali with global export of about USD 1.5 billion (USDA, 2017)

²² Thus, however, did not happen.

Issues concerning the ability of MSMEs to access information has emerged as an important agenda in various WTO fora. However, no structured discussion has taken place on this issues till now. Some members are keen to bring trade-related investment issues on the negotiating table. The successful negotiation of the Trade Facilitation Agreement (TFA) in the WTO has added momentum to these talks. The argument is that investment facilitation is an integral part of trade facilitation and trade. A recurring challenge here is the scope and coverage of the issues to be dealt with in this context within the purview of WTO. Discussions on the MSME issues at the MC11 could also overlap with the ongoing discussions on e-commerce in WTO with focus on rules. These could concern: (a) binding technology transfer arrangements; (b) binding financial assistance with localization requirements to develop infrastructure and technical capacities in data processing and analysis; (c) binding financial assistance in technological know-how.

Bangladesh, LDCs and most developing countries do not agree that MSME issues should be taken up as a horizontal issue within the WTO. Bangladesh should follow the discussion on this resurgent 'Singapore Issue' very closely. There is a danger that the disciplines proposed will further narrow down policy space that the LDCs have in pursuing strategic trade and investment policies towards the development of their domestic industrial sector, including the MSME sector.

Section III. Strategies in View of MC11 in Buenos Aires

There is a general agreement among the LDCs that a rule-based multilateral trading system is in the interest of the relatively weaker countries (Rahman, n.d.). However, LDCs need the policy space and policy flexibilities to ensure that global trade regime create a conducive environment for these countries to attain their socio-economic aspirations including elimination of poverty, creation of decent jobs, industrialisation and higher purchasing power for its citizens. Indeed, as was noted earlier, these aspirations have been enshrined in the SDGs and given recognition in the IPoA for the LDCs (LDC IV Monitor, 2014; UN 2016). The role of trade in this context has been clearly spelt out in both these global documents. In the WTO along with *traditional economy issues* LDCs are also having to deal with *new economy issues*. Both demand careful examination. LDCs will need to remain engaged in the discussions and debate in the WTO, in an informed way, drawing insights from evidence-based research, taking cognisance of global emerging scenarios and developments and building strategic coalitions in support of their offensive and defensive interests.

For Bangladesh, remaining actively engaged with the WTO process is particularly important in the context of its increasing integration with the global economy, and the growing role that trade is playing in stimulating economic growth, investment and employment. Thanks to its relatively more endowed supply-side capacities, Bangladesh has been able to benefit from many of the special and differential provisions in the WTO, as distinct from many other LDCs. However, as the discussion has shown, the need for Bangladesh to be more proactively engaged with the WTO process cannot be overemphasised, both from the perspectives of continuing to benefit as a member, and also through contributing to the negotiations to secure the interests of LDCs. As a key LDC member in the WTO Bangladesh has an important role to play in ensuring that the LDC deliverables in the WTO are actually delivered. In the context of the upcoming WTO MC11, and the likely agendas for discussions and negotiations, Bangladesh should consider pursuing the following strategies:

Emphasis on the Doha Round Deliverables

There is a growing concern and apprehension that Doha Round may be abandoned and the so-called *new issues* will gradually dominate the negotiating agenda. In view of this, along with other LDCs and developing country members, Bangladesh should strongly argue in favour of securing the development dimensions of the Doha Round and that the deliverables agreed are delivered. MC11 ought to reiterate the WTO commitment towards an inclusive multilateral trading system. The historic back slide in the Nairobi Ministerial decision ought to be corrected.

Ensuring Implementation of the Decisions Favouring LDCs

Bangladesh should strongly argue in favour of designing implementation modalities in respect of decisions of the earlier MCs, particularly the Hong Kong Ministerial decisions with regard to DF-QF market access and subsequent MC decisions pertaining to *Services Waiver* for LDCs, decision with regard to *TRIPS and Pharmaceuticals*, the Bali LDC package and implementation of S&D provisions for the LDCs. WTO members have to be reminded about the support promised under the TFA, in the area of technology transfer, aid for trade and through other avenues and in other forms in order to enable the LDCs to take advantage of market access and other preferential provisions accorded in the WTO. With respect to a number of issues such as implementation of the decision on *Services Waiver*, Bangladesh and other LDCs have a number of concerns. These relate to areas in the offer lists submitted by members (for preferential treatment to service providers from the LDCs), requirements (ENT, certification, equivalence etc), market share (quota for LDCs), and relative importance given to modes of supply (LDC priority for Mode 4 on movement of natural persons). MC11 should be taken as an opportunity to bring more clarity on these issues to ensure meaningful implementation of the waiver.

An Early Harvest

The fact remains that the Doha Round has been dragging for about seventeen years. While a number of decisions have been taken in favour of the LDCs, most are contingent upon successful completion of the Round. In view of this, Bangladesh and other LDCs should argue for decoupling the implementation of the decisions favouring the LDCs from completion of the Doha round. The decision with regard to DF-QF market access, RoO and others should not be held hostage to negotiations on other issues and completion of the Round.²³

An Appreciation of New Dynamics, New Players, New Issues

The emerging global scenario is changing fast, in respect of the dynamics of the global trade regime, the relative strength of players and the issues which are crucially pertinent for contemporary trade. Correlation of forces in the WTO is changing; countries such as India and China are playing increasingly important role with their shifting focus and priorities; coalitions are shifting; global value chains are becoming integral part of global trade; South-South trade is in the ascendancy; the role of regional and sub-regional trade and economic cooperation is becoming prominent. All these change in dynamics are making trade issues more complex. It is becoming a world of *variable geometry*. Bangladesh will need to be alert to this new dynamics and, if and when needed, be open to options and opportunities to remain engaged. It is foreseen that systemic issues in the WTO will increasingly come to be questioned, debated and discussed.

²³ This argument was also forcefully put forward in a recent *Policy Brief* prepared by the BEI titled "Bangladesh and the WTO's 11th Ministerial Conference: Issues and Perspectives (November, 2017).

There is an apprehension that plurilaterals could dominate the global trade scenario. As is known, plurilaterals are exclusive and without an opportunity for many developing countries and the LDCs to be part of the rule-setting agenda. Some members are arguing in favour of multilateralising the plurilaterals. However, if this be the case, LDCs will be mere takers. Bangladesh and other LDCs should argue that plurilateral negotiations should not forget the development objects and should be in tune with the spirit of the Doha Round. It is, thus, important that when LDCs are not part of these negotiations, S&D provisions are embedded in the plurilateral negotiations. Support of sympathetic participants in plurilateral negotiations may be sought in this context.

Being Engaged with New Issues

In all likelihood, there will be a big push to have decisions, or at least discuss, with regard to the new issues. It is anticipated that at the MC11 there may be a decision on fisheries subsidies (a text has been circulated by the session Chair), some progress with regard to public stockholding, as regards setting up at least a working group in e-commerce. Bangladesh should remain engaged in these discussions and safeguard its interests by putting forward proposals in the form of S&D provisions, technical support and aid for trade. The flexibilities, safeguard and support provisions for the LDCs put in the TFA could serve as a good example to follow in this regard.

Taking Cognisance of Dual Identity

Bangladesh is expected to be considered for LDC-graduation in 2018, and to finally graduate out of the group, following two subsequent triennial reviews, by 2024.²⁴ In this backdrop, Bangladesh will need to be alert to its *dual identity* – as an LDC now, and as a non-LDC developing country in the medium term. Four considerations emanate from this, Bangladesh should: (a) strongly argue at MC11 (here it should be able to mobilise support of many other LDCs that are set to graduate in foreseeable future) that negotiations must be geared to support LDC graduation through supportive decisions; (b) keep in the perspective the implications of MC11 decisions not only for the LDCs but also non-LDC developing countries and, if required, calibrate its negotiating stance in view of this; (c) strive to build up partnerships and coalitions which will best serve not only to its immediate needs but also medium-term strategic trade interests; (d) negotiate as a group to maintain the existing preferential treatments received as an LDC (such as TRIPS) which extends beyond the timeline of LDC graduation

Engaging in the Discussion on Post-MC11 Work Plan

There is a general agreement that expectations should remain ‘realistic’ with regard to MC11 outcomes. This means that few concrete modalities and decisions are envisaged at MC11. It is highly likely that the Doha agenda will be revisited, and a post-Buenos Aires Work Plan will be discussed and agreed upon by members. Bangladesh, as also other LDCs, should remain proactively engaged in these discussions during the MC11 negotiations. One would tend to agree with the following statement: “LDCs cannot afford not to participate in redefining the terms of engagement of future negotiations. They should actively contribute to designing a clear post-Buenos Aires roadmap in which LDC priorities are front and centre” (Bellmann, 2017). Identifying modalities, S&D provisions and flexibilities in view of the discussions on the post-MC11 Work

²⁴ The next triennial review by the Committee on Development Policy (CDP) of UNCTAD is to take place in 2018. In all likelihood Bangladesh will cross two graduation thresholds (if not three) by 2018 which will make it eligible for graduation.

Plan, to secure and safeguard offensive and defensive interests of its own and the LDCs, should receive highest priority on the part of Bangladesh's negotiators.

Postscript

By the time this report was published, the WTO MC11 had already taken place. As it transpired in the end, MC11 failed to come up with an agreed decision and a Ministerial Declaration. Conflicting perspectives of some of the key players were much in evidence from the very beginning of the Conference in Buenos Aires. These differences could not be bridged in the course of the four days of deliberations at MC11. Consequently, Ministers went back without any tangible results. However, progress was made with respect to a number of issues including e-commerce, fisheries subsidies, MSMEs and others. Discussion has been initiated to prepare a post-MC11 Work Plan. in view of this: (a) LDCs must remain engaged in this process by ensuring that issues of their interest get reflected in the Work Plan; (b) LDCs should try to build coalitions in support of their issues of interest. Bangladesh should take necessary preparation to firm-up its negotiating stance in view of upcoming negotiations in Geneva in light of the Work Plan.

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