Country Update

Beyond the 11th Ministerial Conference: Issues and Interests of the East African Community Members: Kenya's Stakeholder Perspective

Provided by

Susanne Rabisch

Introduction

The WTO Ministerial Conference met in Buenos Aires Argentina, in December 2017 and decisions were made in the areas of fisheries subsidies, the work programme on electronic commerce, TRIPs and the work programme on small economies. However, the Ministerial Conference ended on the 13th December 2017 without a Ministerial Declaration. According to the Principal Secretary of International Trade Kenya, "this was because the Ministers were unable to bridge the gap left by the negotiators in Geneva on all the issues under negotiations". He further reported that "some members especially those from developed economies feel that the current negotiations under the architect agreed in Doha no longer serves their interests while the developing and least developing country members insist that the promises made to them in Doha must be addressed to remove the current imbalance and distortions in international trade which favour the developed countries"[1].

In Kenya's negotiation focus areas of agriculture, Non-Agricultural Market Access (NAMA), Services, TRIPS, Development, Trade and Environment and WTO Rules, no substantive results were obtained. It was highlighted by Kenyan representatives, that, under the public stock holding of food for food security purposes, there was a mandate to conclude a permanent solution by the 11th Ministerial Conference. However, this was not achieved. Nevertheless, the Kenyan government reiterates that "in spite of the disappointment, the Ministers committed to move forward and undertake negotiations on all the outstanding issues including to advance work on the three pillars of agriculture (domestic support, market access and export competition) as well as non-agricultural market access, services, development, TRIPS, rules, and trade and environment". [2]

Beyond MC11: Kenya's Interests and Issues

During his Jamhuri Day speech in December 2017, President Kenyatta outlined that his administration would focus on his "Big Four" priority areas of food security, affordable housing, manufacturing and affordable healthcare during his second term in office. While placing heavy emphasis on the expansion of the manufacturing sector, the Head of State said that his administration would focus on boosting four manufacturing sub-sectors among which is the *Blue Economy and Agro-Processing*. The President further highlighted that "The Big Four" will create jobs and enhance the standard of living of the Kenyan people [3].

Owing to the development prioritization of food security, industrialization and resulting employment creation, the WTO decisions of MC11, relevant to this Country Update Note are Fisheries Subsidies and Electronic Commerce. In the following sections, the topic of Fisheries Subsidies as well as Micro Small and Medium enterprises (and as they relate to E-commerce) will be discussed to outline the current challenges Kenya faces in these sectors both domestically and in the multilateral trading system. Further, some proposed solutions to overcome these challenges as suggested by experts in the respective fields will be highlighted (see boxes).

Fisheries Subsidies in the WTO and Kenyan Development

Under the Ministerial Decision on Fisheries Subsidies, Ministers committed to have a deal which delivers on United Nations Sustainable Development Goal (SDG) target 14.6 and improve the reporting of existing fisheries subsidy programmes by the next Ministerial Conference to be held in 2019. SDG target 14.6 sets a deadline of 2020 for the elimination of fisheries subsidies relating to illegal, unreported and unregulated fishing (IUU). Kenya supported the ban of IUU fishing in Buenos Aires. Already, Kenya is a signatory to many regional and international conventions, protocols and agreements that contain policies and guidelines for management of fisheries resources. Also, the following Regional Fishery Bodies operate in Kenya:

- The Indian Ocean Tuna Commission (IOTC)
- The South West Indian Ocean Fisheries Commission (SWIOFC), and
- The Indian Ocean Commission (IOC)

According to the Ministry of Agriculture Fisheries Department and the Association of Kenya Fish Processors and Exporters, Kenya's fishing technology and fish processing industries are still in infancy stages, especially when it comes to wild marine fishing. Currently, the majority of Kenyan fishermen are classified as artisanal small scale or subsistence fishermen whom are utilizing very simple and traditional fishing methods, which do not produce very large yields per trip[4]. Hence, due to their relatively small threat to global overfishing, artisanal fishing methods are excluded from the WTO protocols. The vast majority of Kenyan fishing activities take place in Lake Victoria and to a much smaller degree in other lakes such as Lake Turkana. Hence, the WTO instrument of elimination of subsidies for fisheries does not apply to the majority of fisheries in Kenya to date since they classify as inland water body fishing. When it comes to marine fishing, Kenyan fishermen can only travel 20 nautical miles from the shores of Kenya to fish, which leaves the 230,000 square kilometres of Exclusive Economic Zone in the Indian Ocean almost entirely untouched by Kenyan fisheries[5]. Kenya is allowed to operate 72 fleets of marine fishing vessels, but it only operates 3 vessels. The maximum sustainable yield of Kenya's marine and coastal waters is between 150 000 and 300 000 metric tonnes, while the current production level is only about 9 000 metric tonnes per annum[6].

This data shows the substantial export and employment/value chain potential Kenya is missing out on by not subsidizing its marine fisheries sector and this should be taken into consideration in future WTO negotiations on fisheries subsidies. Due to the lack of technology and capacity Kenya does miss out on Tuna fishing opportunities off the coast of Lamu, which has the largest Tuna reserves off the African coast. This leads to illegal vessels from other countries fishing Tuna in Kenyan waters. The government has confirmed that in the construction of the new Lamu port, sections will be dedicated for fishing vessels to land. This is mainly due to the mandate the government has been given by the President to develop the Blue economy and will advance Kenya's fisheries sector[7].

As a result of its underdeveloped fishing technology and industry, Kenya has a very large fish deficit, which is mitigated through fish imports mostly from the Chinese wholesale market. The prices are comparatively extremely low and the local fishing industry cannot compete with Chinese fish imports. Fish sold in Chinese wholesale markets are acquired from various Asian countries including Vietnam. The fish industry in Asian countries is however heavily subsidized in the name of food security. Therefore, Kenyan fish, which is currently unsubsidized, cannot compete with the low prices of imported fish. Tilapia from China trades at Sh150-300 a kilogram, while the Kenyan variety goes for Sh400[8].. In addition to the absence of large vessels for deep sea fishing in the Exclusive Economic Zone, Kenya has the challenge of a lack of technology for post-harvest handling and value chains. Storage facilities with appropriate cooling are barely available and if they are, it is purely meant for export fish, not for fish intended for the domestic market. This leads to inefficiencies and high post-harvest losses. This leaves Kenya deprived of the manufacturing and value chain opportunities that could develop with a subsidized fishing sector in which the government supports the infrastructure and value chain development.

Kenya has great potential for exploiting its largely untapped potential for wild marine fishing. According to the Food and Agriculture Organization (FAO), Kenya's tuna fishery has the potential to transform into productive and sustainable modern, commercially oriented coastal and oceanic fisheries with direct positive impacts on employment, wealth creation, improved outcomes and foreign exchange earnings. Kenya's 2014-2017 National Nutrition Action Plan recognizes fisheries as one of the major sectors that contribute to the goals of the national nutrition agenda. Also, Vision 2030, recognizes the contributions of the fisheries sector towards transforming the country into an industrializing middle-income nation. To that effect, the Government of Kenya has launched its first ever Tuna Fisheries Development and Management Strategy 2013 to 2018 to build an effective governance system of the marine fisheries sector. Furthermore, FAO and the Kenyan Government have launched the "Blue Growth Initiative" to promote a more productive, sustainable and responsible Mari culture in Kenya. These efforts will now need to be coordinated with the multilateral trade negotiations on fisheries subsidies to support the national marine fishing development agenda.

Stakeholder view: Kenya Fish Processors and Exporters Association

The Kenya Fish processors and Exporters Association advocates for tax incentives and the removal of road levies charged for fishing vessels while travelling in Kenyan waters. Further, the Association recommends a Fisheries Partnership Agreement with Europe to develop Kenyan fishing infrastructure with European support similar to the case of Seychelles.

Other aspects that may warrant subsidies for the fisheries sector in Kenya are issues of food security, which is one of the top four priorities of set by the President of Kenya. Increased capacity in fishing through government investments in fisheries infrastructure could help the cause of food security domestically as well as foster fish exports and create employment in the fish processing sector. All this should of course be implemented with sustainability of the fisheries in mind to preserve future fish stocks in Kenyan waters. However, the large untapped food security and economic potential of the Kenyan fisheries sector should be exploited through government subsidies in for the sector. The opportunities should be explored now that MC11 has not had any substantive outcomes on fisheries subsidies and negotiations have essentially stalled.

Further, the Association of Kenya Fish Processors and Exporters recommends that government should provide observer vessels to monitor illegal fishing in Kenyan waters while developing the deep-water fishing capacity through government incentives for private investors and public investment in fishing and fish-processing infrastructure. These recommendations should be taken into account during the upcoming WTO negotiations on Fisheries Subsidies.

Contact Person:

Beth Wagude, Kenya Fish Processors and Exporters Association, email: beth.wagude@gmail.com

Kenyan Micro, Small and Medium Enterprises in the WTO system

Micro Small and Medium Enterprise development is particularly relevant to Kenya's national development agenda because it has the potential to create more jobs thereby reducing poverty; accelerating economic growth, uplifting youth and women through gainful employment; increased tax revenues collected by the government and the creation of a healthy current account status by avoiding excessive imports of goods and services, which can be produced locally. As mentioned above, Kenya's President has prioritized four manufacturing sub-sectors among which "agro-processing" and the "blue economy" can be found. Therefore, the government and WTO negotiators could place emphasis on the boosting of MSMEs operating in these two sub-sectors through both domestic development policy and favourable trade conditions for MSMEs.

The Philippines proposed MSME related issues to be part of the WTO multilateral trade negotiations, yet during the MC11 no decisions on the subject area have been reached. Going forward in multilateral trade negotiations, the Kenya Private Sector Alliance and the Kenyan government have highlighted in the Kenyan negotiation position for MC11 is that there are a number of challenges to the incorporation of MSMEs from developing countries into WTO negotiations. Firstly, there is no universal definition of MSMEs, which would make it challenging to establish favourable trade conditions for less developed MSMEs, which fall into the same category. For example, a medium sized enterprise in Kenya and a medium sized firm in Germany are vastly different in capacity, technology and international trading potential. MSMEs face varying challenges in developing and developed countries respectively. Developed countries MSMEs are keen on market access, while their developing country counterparts focus on domestic market access. The African position is that the Doha Development Agenda should be the main avenue for MSME empowerment since most African enterprises are MSMEs [9]. Going forward, the Kenyan government had proposed the establishment of a working group on MSMEs to create a clear structure to manage the above-mentioned challenges to the incorporation of MSMEs into multilateral trade negotiations.

At present, the developing country MSME sector is facing a number of constraints, which hinder it from reaching its full development potential including its potential for internationalization. In its Global Trade Report, the WTO identifies a number of obstacles to SME participation in trade. “Fixed market entry costs, such as access to information about foreign distribution networks, border regulations and standards, are the main barriers hindering SMEs from engaging in exporting activities. However, recent evidence suggests that all trading costs, including those that increase with the size of shipments, impede SME participation in trade more than that of larger firms. E-commerce and participation in global value chains are two ways in which SMEs can partially overcome these barriers and improve their participation in global trade. E-commerce allows SMEs to reach customers at much lower costs. Global value chains give SMEs a way to access foreign distribution networks and exploit economies of scale. Yet, SMEs face specific obstacles in seizing these opportunities. The main issues SMEs face with web sales relate to: the logistics of shipping a good or delivering a service; security and data protection; and payments. Among the major challenges SMEs face in joining global value chains are: logistic and infrastructure costs; regulatory uncertainty; and access to skilled labour”[10].

Hence, the above findings clearly show the relevance of WTO negotiations on Electronic Commerce for Kenyan MSMEs. During MC11, Ministers agreed to maintain the current practice for Electronic Commerce of not imposing customs duties on electronic transmissions until 2019. This has been the practice for several past Ministerial Conferences including Nairobi. They also agreed to reinvigorate the work on electronic commerce as per the 1998 agreed work programme. To push the agenda for MSME growth through exports, Kenya should consider MSME challenges in global E-Commerce and push for a favourable multilateral trade framework for domestic enterprises.

Stakeholder view: Kenya Private Sector Alliance

According to the Kenya Private Sector Alliance, “most MSMEs in developing countries have remained MSMEs for decades and there’s a “missing middle” of Medium-Sized (SILVER & GOLD) enterprises. Moving to a new competitive path of development into medium-to-large-to multinational enterprises requires a supportive policy, legal and processes framework and an appetite for constantly innovating and boosting productivity." In order to be able to compete with MSMEs from developed countries, there are certain preconditions that should be met by the Kenyan government and other actors to successfully secure international market access for Kenyan MSMEs and during WTO negotiations on MSMEs:

- ✓ Innovation and ICT adoption
- ✓ Capability Development and Advisory
- ✓ Mentorship and Partnership Programmes
- ✓ Access to public procurement
- ✓ SME financing initiatives
- ✓ Industry clustering and incubation
- ✓ Conducive regulatory framework
- ✓ Branding and Global marketing of MSMEs products and services
- ✓ Linkage and Expansion
- ✓ Capacity Building in human resource development and corporate governance

These measures would address the most pressing challenges, which MSMEs currently face in Kenya. "A model WTO focused on SME development should aim to support MSMEs scale up from small to medium to large home-based, globally oriented companies."

Contact Person:

Victor Ogalo, Kenya Private Sector Alliance, email: vogalo@kepsa.or.ke

Conclusion

Kenya placed its highest priority for negotiators at 11th Ministerial conference on SPS and the proposed adoption of Ministerial Decision on Maximum Pesticide Residues. However, there was no outcome achieved, which implies that specifically the EU can adjust levels of pesticide residues for its agricultural imports from countries like Kenya without providing scientific evidence. Despite its contentious nature, negotiations in the agricultural field will remain atop the agenda for agriculture-dependent economies like Kenya. Nevertheless, the above outlined areas of interest post-MC11 have a good potential to help achieve Kenya's development goals through their relevance to food security, industrialization, employment creation and the resulting reduction of (youth) unemployment. Both the fisheries sector, as well as the overall MSMEs sector in Kenya have great growth potential. A favourable international trade environment and/or the negotiation outcomes that will both encourage developing countries' ability to develop infant industries and facilitate ease of internationalization and domestic growth of Kenyan MSMEs could be taken into consideration by negotiators for upcoming WTO negotiations.

References

CUTS International, Geneva

CUTS International, Geneva is a non-profit NGO that catalyses the pro-trade, pro-equity voices of the Global South in international trade and development debates in Geneva. We and our sister CUTS organizations in India, Kenya, Zambia, Vietnam, and Ghana have made our footprints in the realm of economic governance across the developing world.

37-39, Rue de Vermont, 1202 Geneva, Switzerland
geneva@cuts.org ● www.cuts-geneva.org
Ph: +41 (0) 22 734 60 80 | Fax:+41 (0) 22 734 39 14 | Skype: cuts.grc

PROMOTING AGRICULTURE, CLIMATE AND TRADE LINKAGES IN THE EAST AFRICAN COMMUNITY – PHASE 2
The PACT EAC2 project builds capacities of East African stakeholders for climate-aware, trade-driven and food security-enhancing agro-processing in

SWEDEN

The PACT EAC2 project is undertaken with funding support from the Swedish International Development Cooperation Agency (Sida).

their region. Web: www.cuts-geneva.org/pacteac2

[1] Brief on the 11th World Trade Organization Ministerial Conference, Held in Buenos Aires, Argentina, 10th-13th December 2017 by Principal Secretary for Trade (Kenya)

[2] ibit.

[3] https://citizentv.co.ke/news/president-kenyatta-my-big-four-plan-for-economic-development-185170/

[4] Interview with Brahma Lito Kaleve, Ministry of Foreign Affairs and International Trade Kenya

[5] Ministry of Fisheries development

[6] UN Food and Agriculture Organization http://www.fao.org/fishery/facp/KEN/en

[7] Point raised by Mr. Ephraim Wairanga, Kenyan Fisheries Department, Ministry of Agriculture

[8] https://www.nation.co.ke/news/Kenya-imports-fish-from-China-meet-demand-CS-Adan-Mohamed/1056-4282440-op040bz/index.html

[9] Matrix on Kenyan Position in WTO negotiations (Kenyan government).