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# WTO MC9

## An Outcome Evaluation and Suggestions for Way Forward for ACP States

A Reflection Piece by Rashid S Kaukab



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Rashid S Kaukab is Director CUTS International, Geneva. However, the views expressed in this paper do not necessarily reflect the views of CUTS International. Moreover, this is a reflection piece to stimulate and facilitate the discussion in the ACP Group for its active and constructive participation in the WTO Post-Bali work programme. It is not intended to advocate specific positions on issues. The author is grateful to Anna Brezhneva and Matthias Maltha, interns at CUTS International, Geneva for the valuable research assistance.

## List of Acronyms

<b>ACP</b>	<i>African, Caribbean, and Pacific Group of States</i>	<b>SDT</b>	<i>Special and Differential Treatment</i>
<b>AMS</b>	<i>Aggregate Measurement of Support</i>	<b>SPs</b>	<i>Special Products</i>
<b>AoA</b>	<i>Agreement on Agriculture</i>	<b>SSM</b>	<i>Special Safeguard Mechanism</i>
<b>CB</b>	<i>Capacity building</i>	<b>SVE</b>	<i>Small, Vulnerable Economies</i>
<b>DDA</b>	<i>Doha Development Agenda</i>	<b>SIDS</b>	<i>Small Island Developing States</i>
<b>DFQF</b>	<i>Duty-Free Quota-Free</i>	<b>TF</b>	<i>Trade Facilitation</i>
<b>EIF</b>	<i>Enhanced Integrated Framework</i>	<b>TFA</b>	<i>Trade Facilitation Agreement</i>
<b>LDCs</b>	<i>Least-Developed Countries</i>	<b>TISA</b>	<i>Trade in Services Agreement</i>
<b>MC8</b>	<i>8<sup>th</sup> Ministerial Conference</i>	<b>TNC</b>	<i>Trade Negotiations Committee</i>
<b>MC9</b>	<i>9<sup>th</sup> Ministerial Conference</i>	<b>TPP</b>	<i>Trans-Pacific Partnership</i>
<b>MTS</b>	<i>Multilateral Trading System</i>	<b>TRQ</b>	<i>Tariff Rate Quota</i>
<b>NAMA</b>	<i>Non-Agricultural Market Access</i>	<b>TTIP</b>	<i>Transatlantic Trade and Investment Partnership</i>
<b>RTA</b>	<i>Regional Trade Agreement</i>	<b>WTO</b>	<i>World Trade Organisation</i>

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## Executive Summary

After years of stalemate, the WTO 9<sup>th</sup> Ministerial Conference (MC9), held in Bali, Indonesia in early December 2013, delivered positive movement in the Doha Development Agenda (DDA). The success at Bali, no matter how important, is not the end of the road. In fact, this can be termed as the start of a process. Continued and constructive engagement of WTO members in this process will be the key to the successful conclusion of DDA and to firmly establish the primacy of the multilateral trading system (MTS). This is the challenge for the WTO and its Members now. The Group of African, Caribbean and Pacific (ACP) states played an important and constructive role in the WTO negotiations leading to the success in Bali. ACP Group should therefore be ready to help the WTO and its Members face this challenge by articulating developmental dimension as well as substantive ideas and proposals to address them in the post-Bali negotiations. This will require reflecting on a number of issues as a Group, outlining options and strategy, and maintaining a sustained and constructive presence in the negotiations. The process can start by examining the following questions.

*Is Bali Package balanced?* The ACP Ministers in their Communiqué of 11 October 2013 had emphasized the need to ensure a balanced outcome at Bali within and between the pillars of Development, Less-Developed Countries (LDCs) Issues, Agriculture and Trade Facilitation. However, the criteria to judge the existence or otherwise of such a balance was not mentioned. In the absence of a clear and objective criteria, judging the balance of Bali outcomes within and between the pillars is not only difficult but can easily become a subjective exercise. To avoid that, following can be considered as elements of possible criteria to judge the balance:

- Balance in terms of *demandeurs*, i.e. who was the original *demandeur* of a particular issue as well as whose proposals/positions are reflected in the adopted outcome
- Balance in terms of the nature of outcomes, i.e. whether the outcomes are binding or otherwise
- Balance in terms of value-addition to the situation pre-Bali, i.e. whether the outcomes indicate a substantive, concrete, tangible improvement over the existing WTO/DDA agreements/draft Modalities/Decisions

A broad and preliminary evaluation of Bali Package in terms of the above would indicate balance in the Trade Facilitation and Agriculture pillars. However, the outcomes in the Development/LDC pillar are much weaker mainly because these are generally couched in non-binding language and do not add substantively to the situation existing pre-Bali.

*What are the main implementation challenges for ACP states?* Three implementation-related challenges of Bali Package for ACP states can be identified. First essentially relates to the cost of implementing the relevant Decisions in terms of the commitment of required human, financial, institutional, and regulatory resources which can be quite substantial, particularly keeping in mind the limited resources of ACP states. Second relates to continuously pursuing the developed countries to ensure implementation by them as the expected benefits of several Bali Decisions will accrue to ACP countries only if the developed countries implement their commitments. Third is related to the implementation of provisions for further work. All elements of Ministerial Declaration

and Decisions related to remaining/further work must be implemented within the given timeline to ensure balance and build on the fragile trust established in Bali. It also means that ACP states will face the challenge to commit substantial human and negotiating resources to participate actively with a view to ensuring that Bali Package is fully implemented.

*How to define ACP interests in the post-Bali work programme?* Bali Ministerial Declaration, *inter alia*, mandates that the post-Bali work programme gives priority to non-binding outcomes in the Bali Package, other issues be discussed in the relevant WTO Bodies, and the Trade Negotiations Committee (TNC) clearly defines a work programme on the remaining DDA issues by end 2014. ACP Ministerial Declaration of 11 October 2013 similarly emphasizes that post-Bali work should build on the achievements of MC9, and deliver on the remaining DDA issues. Keeping these in mind, as well as earlier ACP proposals/positions in the DDA, main issues of ACP interest in DDA should include: implementation-relates issues and concerns, agriculture, SDT, trade in services, and TRIPS. To these can be added strengthening of A4T, facilitating the accession of ACP acceding countries to the WTO, and strengthening and implementation of work programmes for Small Economies and Working Group on Trade and Transfer of Technology. While defining their post-Bali agenda, the ACP Group should aim to preserve and build upon the achievements so far. Some examples of such achievements include: Special Products (SPs) and Special Safeguard Mechanism (SSM) in agriculture, hybrid approach to identify environmental goods and services in trade and environment, measures to deal with preference erosion in agriculture and non-agricultural market access (NAMA), and special provisions for Small, Vulnerable Economies (SVEs) in agriculture and NAMA.

*How to improve prospects for increased commitment of WTO members to DDA post-Bali?* The success at Bali has generated hopes for a greater engagement by WTO Members, particularly the major developed and developing countries. However, these hopes will be fulfilled if the following five conditions are met: i) full and timely implementation of the Decisions and Declarations made in Bali; ii) addressing the remaining DDA issues; iii) balancing the needs of all WTO Members; iv) compliance by developed countries with their capacity building assistance commitments; and, v) continuing delivery in smaller but balanced packages.

*Can Bali "Small Package" approach be applied to remaining DDA negotiations?* The success at Bali was not due to only a "smaller package" - which had been tried for MC 7 (2009) and MC8 (2001) without success - but also to the perception of balance among the elements in the small package as well as tireless technical and political work. These conditions will have to be met if the small package approach is to be adopted successfully for the remainder of DDA. With these caveats in mind, a possible way to conclude would be to choose a sub-set of issues based on the balance of interests of various groups of countries in the WTO and with development at the centre and hold swift negotiations on them to reach early agreement. This process should be repeated till the conclusion of negotiations on all elements in a rationalized DDA.

*What strategic value can be extracted for ACP contribution to Bali success?* While acknowledging the universal recognition of ACP positive role for Bali success, it should be noted that balancing of substantive concessions among parties in the WTO negotiations takes place within defined and mutually understood settings, often within a particular timeframe. Hence, the concessions of substance to ACP Group for its positive role towards Bali outcome should already be in the Bali Package. ACP Group may now have to look for a strategic value elsewhere than substantive concessions in the future negotiations. Based on its large and diverse membership, it can play a catalytic role in reaching balanced outcomes in the WTO negotiations. Building on the experience of Bali, the ACP Group should aim to remain a key player in the DDA/WTO negotiations and advance its

substantive interests. This will also be a positive factor to keep development at the centre of DDA negotiations and outcomes.

*How can the TFA structure be replicated in other DDA disciplines?* TFA includes a robust approach to SDT by allowing for self-selection of obligations by developing and least-developed countries under the three categories of obligations, and by linking implementation of identified obligations with the delivery of capacity building assistance. However, their replication in other DDA disciplines is not automatic due to at least three elements related to the nature of TF and its WTO negotiations that allowed integration of these unique features in TFA. These are: developed countries being the *demandeurs* of TF had to “pay” for it; implementation of TF measures is resource-intensive; and identification and monetization of TF measures’ implementation is comparatively easier. It will be easy to replicate the TF structure in other DDA disciplines if at least one or more of the above elements are present. More importantly, there is a critical principle at the heart of SDT in the TFA, i.e., selection and implementation of obligations as a function of capacity. ACP Group should aim to integrate this principle in other DDA disciplines which will allow for tailored and targeted SDT specific to these disciplines.

*What can be the impact of Bali on RTAs, particularly mega-regionals and plurilaterals?* The increase in Regional Trade Agreements (RTAs) should not be interpreted as solely due to the failure of the MTS to conclude a Round. This phenomenon is also a response to greater globalization of production and value chains and facilitated by technological developments. This means that multilateralism can be in coexistence with regionalism, both ‘moving’ but not at the expense of each other. However, the “pace of movement” of one may be affected by the “pace of movement” of the other. In this more nuanced view, if one is stalemated (as DDA was), the pressure increases on the other. However, even when the stalemate in one is broken (as Bali seems to have done for DDA) the other may continue to move, *albeit* perhaps at a slower pace. Moreover, mega-regional such as the Trans-Pacific Partnership (TPP), Transatlantic Trade and Investment Partnership (TTIP), and plurilaterals such as Trade in Services Agreement (TISA) have their own specific dynamics (e.g. the immense and politically sensitive task of dealing with regulatory differences between the US and the EU) and composition (key emerging economies such as Brazil, China, and India are not in any of them) that would determine their pace of negotiations and success. To summarise, in the short run, the Bali Ministerial Conference seems to have reignited faith in the MTS. Thus, taking recourse to regionalism on a more intensive basis seems unlikely in the immediate post-Bali period. In the long run, however, the existence of RTAs is unlikely to be compromised by the decisions taken at Bali. They will continue to be driven by the demands of an increasingly interconnected global economy as well as the specific dynamics and composition of each RTA.

## **I. Introduction**

After years of stalemate, the WTO 9<sup>th</sup> Ministerial Conference (MC9), held in Bali, Indonesia in early December 2013, delivered positive movement in the Doha Development Agenda (DDA). This success came after difficult and prolonged negotiations before and in Bali and demonstrated that the WTO negotiating function can yield results with constructive engagement of all its Members and with the Director General of the WTO playing the role of an active and neutral facilitator.

The Group of African, Caribbean and Pacific (ACP) states played an important and constructive role in the WTO negotiations leading to the success in Bali. This is the largest group of countries in the WTO that participates in the negotiations as a Group.<sup>1</sup> Moreover, this very large group includes more than half of the LDCs as well as African countries that are WTO members, a substantial majority of SVEs, and many countries that are in the process of accession to the WTO.<sup>2</sup> Its very large membership as well as the diversity of development challenges that its various members face make the ACP a fulcrum to identify and advance a truly developmental agenda in the WTO negotiations. This is exactly the role that it played for Bali, i.e. striving to get development dimension reflected in all the Ministerial Declaration and Decisions adopted there.

The success at Bali, no matter how important, is not the end of the road. In fact, this can be termed as the start of a process. Continued and constructive engagement of WTO members in this process will be the key to the successful conclusion of DDA and to firmly establish the primacy of the MTS. This is the challenge for the WTO and its Members in 2014.

ACP Group should be ready to help the WTO and its members face this challenge by articulating developmental dimension as well as substantive ideas and proposals to address them in the post-Bali negotiations. This will require reflecting on a number of issues as a Group, outlining options and strategy, and maintaining a sustained and constructive presence in the negotiations. The process can start by examining the following questions:

***First, to what extent were ACP interests secured in the overall package and to what extent are the overall results balanced? Second, what are the implementation challenges posed to ACP States from the results of MC9? Third, what issues should the ACP promote as constituting the post-Bali Work Programme? Fourth, will the Bali package generate increased willingness of WTO Members (principally the major players) to advance the DDA or instead to retreat? Fifth, is the Bali Package approach (i.e. limited cluster of issues) the way forward for addressing the remaining DDA negotiations? Sixth, is there any strategic value that the ACP could extract in the post-Bali period given the universally constructive role the Group played in contributing to MC9's success? Seventh, can the structure of the***

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<sup>1</sup> The largest group in terms of numbers is the Informal Group of Developing Countries in the WTO. But this Group does not participate in the WTO negotiations as a Group.

<sup>2</sup> Other sub-categories of countries in the ACP Group include landlocked developing countries, small island developing states, and low-lying coastal developing countries.



***TF Agreement be replicated as a template in other DDA disciplines? Eighth, will MC9's conclusion dilute or spur the advance of RTAs such as the Trans-Pacific Partnership (TPP) or Trans-Atlantic Trade and Investment Partnership (TTIP) and plurilateral negotiations such as the Trade in Services Agreement (TISA)?***

In the following sections, this reflection piece attempts to provide a brief analysis and some thoughts to assist ACP Group find answers to the above questions. This is in no way a prescription for a particular course of action. Rather the objective is to facilitate deeper and objective reflection by the ACP Group as it prepares for post-Bali negotiations.

## ***II. ACP Interests and Overall Balance in Bali Package***

The so-called Bali Package consists of one overall Ministerial Declaration and fifteen Ministerial Decisions on specific issues. Five of the specific Ministerial Decisions are related to the regular WTO work programme, and ten, to the DDA.<sup>3</sup> The Ministerial Declaration also outlines a process for a post-Bali Work Programme to be established and provides guidance on the items to be prioritised.

A number of organisations and individuals have already analysed the Bali Package.<sup>4</sup> These contributions are available to ACP Group. Therefore, this reflection piece does not attempt to duplicate the efforts by providing detailed and issue-specific analysis of all the elements of Bali Package. Instead, it takes a strategic approach to evaluating the Bali Package from the perspective of ACP Group by broadly comparing the Bali outcomes with the objectives and positions of the ACP Group as articulated by ACP Ministers in the ACP Ministerial Communiqué on the Ninth Session of the WTO Ministerial Conference, issued in Brussels on 11 October 2013<sup>5</sup>, as well as the positions of other relevant groups, particularly the Group of LDCs, Africa group, and the Cotton Four (Benin, Burkina Faso, Chad, and Mali).<sup>6</sup> The outcomes of the Ministerial Conference are examined to analyse the extent of their

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<sup>3</sup> Ministerial Declaration and Decisions are available at <https://mc9.wto.org/draft-bali-ministerial-declaration>. The Ministerial Decisions cover e-commerce, TRIPS non-violation, Work Programme on Small Economies, Trade and Transfer of Technology and Aid for Trade from the regular work programme of the WTO, and Trade Facilitation (full agreement); public stockholdings for food security, Tariff Rate Quota (TRQ) administration, General Services, export competition (in Agriculture); operationalizing the Monitoring Mechanism, DFQF, services waiver, preferential rules of origin (in Development and LDCs); and Cotton.

<sup>4</sup> For example, 'Unpacking the Bali Package: A Snapshot of the Bali Ministerial Decisions of the WTO Members' by CUTS International (at [http://www.cuts-citee.org/pdf/Unpacking\\_the\\_Bali\\_Package-A\\_Snapshot\\_of\\_the\\_Bali\\_Ministerial\\_Decisions\\_of\\_the\\_WTO\\_Members.pdf](http://www.cuts-citee.org/pdf/Unpacking_the_Bali_Package-A_Snapshot_of_the_Bali_Ministerial_Decisions_of_the_WTO_Members.pdf)), 'Building on Bali: A Work Programme for the WTO' by Simon Evenett *et al*; 'Report and Summary Analysis of Outcomes at the WTO Ninth Ministerial Conference held in Bali, Indonesia 3-8 December 2013' by Alicia Greenidge; 'ACP Inspirations and Expectations and the Outcome of the Ninth WTO Bali Ministerial Conference' by the Technical Centre for Agricultural and Rural Cooperation; to name a few.

<sup>5</sup> Document circulated among WTO members as WT/MIN(13)/1 on 18 October 2013.

<sup>6</sup> The recourse to the positions of LDC and Africa Groups and Cotton Four makes sense as a majority of the members of these groups and all Cotton Four countries are members of the ACP Group, and the ACP group has been supportive of their interests and positions.

fulfilment of the ACP interests, as expressed in the ACP Declaration as well as the stated positions of LDC and Africa groups and the Cotton Four, or otherwise, in the form of a table,<sup>7</sup> followed by a brief issue-specific analysis. Some points regarding the overall balance are also offered at the end of this section.

### **Agriculture**

In the ACP Ministerial Declaration (2013), it is explicitly mentioned that agriculture is considered to be of great importance to the majority of the ACP group.

### **General Services**

One of the proposals made by the G-33 and the African group before the Bali Ministerial Conference was to expand the list of 'general services' under the 'Green Box', which essentially should contribute to the objectives of rural development, food security and poverty alleviation in developing countries.

As stipulated by the Ministerial Decision, land rehabilitation, soil conservation and resources management, drought management and flood control, rural employment, and issuing of property titles and farmer settlement programmes were added to the list of the General Services of the Green Box. While these programmes are all relevant to the agricultural sectors of ACP countries, most of the ACP countries may not have the financial resources to take full advantage of the Ministerial Decision.

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<sup>7</sup> In some areas related to agriculture, the positions and proposals by G-33 and G-20 have been relied upon as these Groups have often been at the forefront of agriculture negotiations and the ACP Group may not have made proposals on these specific issues. It is fully acknowledged that ACP as a Group may not share the proposals and positions of G-20 and G-33.

**Table 1: Comparison of Bali Outcomes with ACP Interests**

<b>Bali Package Issue</b>	<b>Key ACP Interests</b>	<b>Outcomes and Evaluation</b>
<p><b>Trade Facilitation (TF)</b></p>	<p><b>ACP Ministerial Declaration and Negotiating Proposals</b></p> <p>The ACP states were not the <i>demandeurs</i> of the TF initiative but “recognise the potential benefits of multilaterally agreed trade facilitation disciplines”</p> <p>ACP proposal on Section II</p> <ul style="list-style-type: none"> <li>• Mandatory S&amp;D treatment</li> <li>• Technical, financial, and capacity building assistance</li> <li>• Self-selection &amp; self-designation to undertake commitments under various categories</li> </ul>	<p><b>TF Agreement (TFA), Section II Excerpts</b></p> <p>1.2. “Assistance and support for capacity building should be provided to help developing and least-developed country Members implement the provisions of this agreement, in accordance with their nature and scope. The extent and the timing of implementing the provisions of this Agreement shall be related to the implementation capacities of developing and least developed country Members. Where a developing or least developed country Member continues to lack the necessary capacity, implementation of the provision(s) concerned will not be required until implementation capacity has been acquired.”</p> <p>1.3. “Least developed country Members will only be required to undertake commitments to the extent consistent with their individual development, financial and trade needs or their administrative and institutional capabilities”</p> <p>Commitments dependent on placement in a self-designated category</p> <p><b>ACP Interests Achieved</b></p>
<p><b>Cotton</b></p>	<p><b>C4 Proposal Main Elements</b></p> <ul style="list-style-type: none"> <li>• DFQF market access for cotton from 1 January 2015</li> <li>• Elimination of developed country export subsidies</li> </ul>	<p><b>Ministerial Decision Excerpts</b></p> <p>5. “In this context, we therefore undertake to enhance transparency and monitoring in relation to the trade-related aspects of cotton. To this end, we agree to hold a dedicated discussion on a biannual basis in the context of the Committee on Agriculture in Special Session to examine relevant trade-related developments across the three pillars of Market Access, Domestic Support and Export Competition in relation to cotton”</p> <p>8. “We reaffirm the importance of the development assistance aspects of cotton and in particular highlight the work of the Director-General's Consultative Framework Mechanism on Cotton in reviewing and tracking of cotton-specific assistance as well as</p>

		<p>infrastructure support programmes or other assistance related to the cotton sector. We commit to continued engagement in the Director-General’s Consultative Framework Mechanism on Cotton to strengthen the cotton sector in the LDCs.”</p> <p><b><i>C4 Interests Not Achieved as C4 Proposal Not Taken on Board in the Package.</i></b></p>
<b><i>Agriculture – General Services</i></b>	<p><b>G-33 and African Group Proposal Main Elements</b></p> <p>Expanding the list of General Services of the Green Box</p>	<p><b>Ministerial Decision Excerpts</b></p> <p>“Accordingly, Members note that, subject to Annex 2 of the Agreement on Agriculture, the types of programmes listed below could be considered as falling within the scope of the non-exhaustive list of general services programmes in Annex 2, paragraph 2 of the AoA.</p> <p>General Services programmes related to land reform and rural livelihood security, such as:</p> <ul style="list-style-type: none"> <li>i. land rehabilitation;</li> <li>ii. soil conservation and resource management;</li> <li>iii. drought management and flood control;</li> <li>iv. rural employment programmes;</li> <li>v. issuance of property titles; and</li> <li>vi. farmer settlement programmes</li> </ul> <p>in order to promote rural development and poverty alleviation.”</p> <p><b><i>G-33/Africa Group Interests Achieved</i></b></p>
<b><i>Agriculture – Public Stockholding for Food Security Purposes</i></b>	<p><b>G-33 Proposal Main Elements</b></p> <p>Seeking exemption from current <i>de minimis</i> AMS calculations when buying food for food security purposes at above market reference prices</p>	<p><b>Ministerial Decision Main Elements</b></p> <p>An interim mechanism “peace clause” until 2017 put in place to protect the existing programmes of developing countries from legal challenges in the WTO</p> <p>A permanent solution is to be negotiated during this time</p> <p>Link established between the time of operation of the “peace clause” and concluding the negotiations for a permanent solution</p> <p><b><i>G-33 Interests Achieved</i></b></p>
<b><i>Agriculture – TRQ Administration</i></b>	<p><b>G-20 Proposal Main Elements</b></p> <p>Granting licenses automatically after a certain period of time and/or when the quota fill rate is less than 65 percent</p>	<p><b>Ministerial Decision Excerpts</b></p> <p>“3. During the third and subsequent monitoring years, where:</p> <ul style="list-style-type: none"> <li>a. the fill rate has remained below 65 per cent for three consecutive years or no notification has been submitted for that period; and</li> </ul>

		<p>b. the fill rate has not increased, for each of the preceding three years, by annual increments of</p> <p>i. at least 8 percentage points when the fill rate is more than 40 per cent;</p> <p>ii. at least 12 percentage points when the fill rate equals or is less than 40 per cent;</p> <p>and</p> <p>c. the data-based discussions regarding market circumstances have not led to the conclusion among all interested parties these are in fact the reason for underfill; and</p> <p>d. an interested Member makes a statement in the Committee on Agriculture, that it wishes to initiate the final stage of the underfill mechanism.</p> <p>4. The importing Member shall then promptly provide unencumbered access via one of the following tariff quota administration methods: a first-come, first-served only basis (at the border); or an automatic, unconditional license on demand system within the tariff quota.”</p> <p><b><i>G-20 Interests Achieved</i></b></p>
<b><i>Agriculture – Export Competition</i></b>	<p><b>G-20 Proposal Main Elements</b></p> <p>Reducing export subsidies of developed countries by 50 percent, introducing a limit on repayment period for export credits, setting a new limit to quantities of subsidized exports</p>	<p><b>Ministerial Decision</b></p> <p>Only a political statement without any specific commitments to deadlines or quantities.</p> <p><b><i>G-20 Interests Not Achieved</i></b></p>
<b><i>LDC and Development Issues – Preferential Rules of Origin for LDCs</i></b>	<p><b>LDC Proposal Main Elements</b></p> <p>Setting out simple and flexible criteria for multilateral guidelines on preferential rules of origin</p>	<p><b>Ministerial Decision Main Elements</b></p> <p>Lists options for transformation requirements. Using foreign inputs up to 75% adopted in non-binding form. Elements are to be interpreted by Members, i.e. providing broad guidelines rather than a strict regime of rules.</p> <p><b><i>LDC Interests Only Partially Achieved</i></b></p>
<b><i>LDC and Development Issues – Services LDCs Waiver</i></b>	<p><b>LDC Proposal Main Elements</b></p> <p>Operationalising the preferential treatment to services and service suppliers of LDCs</p>	<p><b>Ministerial Decision Main Elements</b></p> <p>The operationalization of the services waiver has been put on the agenda with a timeline for further action. Preferential treatment formulated as a unilateral decision, thus no guarantees. Recognition of the need for technical assistance and capacity building.</p> <p><b><i>LDC Interests Partially Achieved</i></b></p>

<p><b>LDC and Development Issues – DFQF Market Access for LDCs</b></p>	<p><b>LDC Proposal Main Elements</b></p> <p>Striving for full Duty-Free-Quota-Free (DFQF) market access in developed countries and developing countries in a position to do so for products originating from LDCs</p>	<p><b>Ministerial Decision Main Elements</b></p> <p>Reiteration of the spirit of the Hong Ministerial Declaration.</p> <p><b>LDC Interests Not Achieved</b></p>
<p><b>LDC and Development Issues – Monitoring Mechanism on SDT</b></p>	<p><b>Africa Group Proposal Main Elements</b></p> <p>Establishing a Monitoring Mechanism which reviews the implementation of provisions on SDT with the power to make binding recommendations</p>	<p><b>Ministerial Decision Main Elements</b></p> <p>Monitoring Mechanism as main focal point for reviewing implementation of SDT provisions. In its complementary role, it is able to make recommendations to other relevant WTO bodies in order to initiate negotiations.</p> <p><b>Africa Group Interests Only Partially Achieved</b></p>

**Understanding on Tariff Rate Quota Administration Provisions of Agricultural Products**

Ministerial Decision is based on the draft submitted by the G-20 Group in November 2013. This can be construed as an achievement of the interests of G-20.

Given the fact that most ACP countries already enjoy DFQF access to the EU market, the Decision on TRQ Administration might not be of great interest to all the countries in the ACP group in the context of ACP-EU trade. However, some potential market access opportunity with commercial potential could be possible for producers of groundnuts, cotton, tobacco and preparations for animal feed.

On the other hand, the only three ACP countries which have TRQ commitments are Barbados, Dominican Republic and South Africa.

**Public Stockholding for Food Security Purposes**

The G-33 proposal aimed at getting exemption from current AMS calculations for developing countries when they buy food from farmers at supported prices to build public stocks for food security. These calculations are based on 1986 reference prices, which means that due to currency devaluations and price volatility developing countries can easily exceed the *de minimus* limit of ten per cent of the value of production.

In Bali, an interim mechanism was agreed while mandating negotiations for a permanent solution. This mechanism will remain in place until the Eleventh Ministerial Conference by which time a permanent solution should be agreed. Essentially, the interim mechanism will

allow the subsidy content in the existing programmes of developing countries to exceed the *de minimus* ceiling as WTO Members will refrain from lodging legal complaints through the WTO Dispute Settlement against these measures. On the other hand, the developing countries which benefit from this Decision must abide by the transparency requirements.

Benefits to ACP countries from this Decision will depend on i) whether they have such programmes; and ii) whether they have the financial resources to increase the subsidy content under such programmes.

Of greater potential benefit to ACP countries could be the permanent solution if that is applicable to all developing countries and includes elements other than domestic financial resources for food security.

### Export Competition

Before the Ninth Ministerial Conference, the G-20 Group had proposed that developed countries should reduce their export subsidies by 50 percent and also introduce a 540 day-limit in the repayment period for export credits (ideally 180 days). It had also been proposed to set a new limit on the quantities of subsidized exports (the average of subsidized exports in the period 2003-2005). This proposal should be seen in the context of having set 2013 as the deadline for the elimination of all forms of export subsidies, as agreed at the 2005 Hong Kong Ministerial Conference of the WTO.

However, while the highly trade distorting and protectionist nature of particular forms of export support, and the 2005 Hong Kong Ministerial Declaration have been reaffirmed, the Bali Ministerial Decision is only a political statement without any commitments to reductions or a time period.

### **Trade Facilitation**

TF is the only area where the ACP Group had tabled a proposal for Bali consensus building in order to ensure that ACP interests are secured. The ACP Group and other developing countries had accepted the TF negotiating modalities on condition that they were not required to implement the provisions unless adequate technical and capacity building assistance had been provided. Accordingly, the focus of ACP proposal was to have clear and binding special and differential treatment for developing and least-developed countries, mainly through the right to self-select the obligations and linking the implementation of some obligations with the provision of capacity building assistance. This has been achieved as Section II provides the basis for special and differential treatment and for technical and capacity building assistance needed for the implementation of the agreement, in some instances with specific deadlines and timetables.

The TFA includes three categories of commitments:

- a. Category A contains provisions that a developing country Member or a least developed country Member designates for implementation upon entry into force of this Agreement, or in the case of a least developed country Member within one year after entry into force.
- b. Category B contains provisions that a developing country Member or a least developed country Member designates for implementation on a date after a transitional period of time following the entry into force of this Agreement.
- c. Category C contains provisions that a developing country Member or a least developed country Member designates for implementation on a date after a transitional period of time following the entry into force of this Agreement and requiring the acquisition of implementation capacity through the provision of assistance and support for capacity building.

ACP Group played a key role in the creation of the above three categories. It had also insisted that implementation of TF could not take place until the required capacity is in place in developing and least-developed countries. Hence, while the TFA still envisages provision of capacity building assistance by developed countries on a “best endeavour” basis, it has to be in line with the needs of developing and least developed country WTO members and links the implementation of Category C commitments by them to the provision of capacity building assistance. This is a major achievement and the SDT provisions within TFA can potentially provide a framework through which the ACP countries can continue to seek similar approaches across other WTO areas and negotiations.

Finally, the TFA can be seen as a compromise between the divergent positions, i.e. the interest of the developed countries in enabling freer cross-border trade, and the interest of the developing countries/LDCs in ensuring S&D treatment and capacity-building provisions linked to implementation of commitments. This should help build the momentum for the conclusion of negotiations on other DDA issues.

### **Cotton**

In late October 2013, the Cotton Four (Benin, Burkina Faso, Chad and Mali) tabled a proposal with the following requests:

- I. Market access: cotton from LDCs should enjoy duty-free and quota-free (DFQF) access to the markets of developed countries (from 1<sup>st</sup> January 2015)
- II. Domestic support: negotiations in 2014 in order to reach an agreement on substantial reductions



- III. Export subsidies: all remaining cotton subsidies in developed countries should be eliminated immediately

The proposal also envisaged strengthening development assistance for cotton (currently handled in meetings that are separate from the negotiations), including linking it with the broader Aid for Trade; and sought regular monitoring and other improved information sharing on cotton.

However, focus of the Ministerial Decision on Cotton is on establishing bi-annual dedicated discussion on “trade-related developments regarding export competition, domestic support, and tariff and non-tariff measures involving cotton trade”. It also reaffirmed the importance of development assistance in the cotton sector and made a commitment to tracking cotton sector assistance.

The Cotton Four proposals were not taken on board in the package of proposals prepared for the Bali meeting; their interests were therefore not secured in the Bali Package.

## **Development and LDC Issues**

### *Preferential Rules of Origin for Least-Developed Countries*

Given that not only do the rules of origin serve as the criteria for determining where products are made, but that they also make clear which products produced in LDCs are eligible to preferential market schemes, it has been imperative for LDCs which have little productive capacity to promote simple and flexible criteria for such rules which should be least obstructive for their integration into multilateral trade. It was in this spirit that the LDC group had presented a proposal which laid out multilateral guidelines. Members were invited to draw from rather than copy its elements to develop their individual rules of origin arrangements for preferential market access to LDCs.

The Bali Ministerial Decision outlines several elements for preferential rules of origin. Besides that the rules should be transparent, simple and as objective as possible, keeping the value addition thresholds as low as possible, change of tariff classification, specific manufacturing or processing operation and cumulation of value addition are also mentioned. However, it is up to Members to interpret/implement the elements when developing their rules of origin criteria. For example, while the LDCs had proposed that they should be allowed to use foreign inputs up to 75% of the product’s value which should still qualify as originating from LDCs, it has been adopted by the Decision in a non-binding form. The Decision also lists the documentary requirements which should be simple and transparent. Finally, the Decision includes the transparency guidelines to facilitate better understanding, exchange of experiences and mainstreaming best practices.

### Operationalization of the Waiver Concerning Preferential Treatment to Services and Service Suppliers of Least-Developed Countries

At the Eight Ministerial Conference of the WTO held in Geneva in 2011 (MC8), a services waiver with the duration of 15 years had been adopted to allow developed and developing members to provide preferential treatment to services and service suppliers of least developed countries. However, the waiver is similar to the Enabling Clause for goods in the sense that Members choose for themselves whether to grant preferential access to the services of LDCs or not. The waiver is thus no guarantee for preferential treatment. This also shows in the fact that there has not been any record of developed and developing country Members taking specific steps to utilize the waiver since 2011.

As a reaffirmation of the Decision taken at MC8, the Bali Ministerial Decision called for initiating the process of promoting the operationalization of the LDC services waiver. Specifically, it directed to hold a High-level meeting six months after the submission of an LDC collective request which identifies the export sectors of interest to them. Also, it acknowledges that there is a need for technical assistance and capacity building in order for LDCs to benefit from the operationalization of the waiver, which should be facilitated through the use of the EIF and other relevant international institutions.

### DFQF Market Access for Least-Developed Countries

At the 2005 Hong Kong Ministerial Conference of the WTO (MC 6), Annex F of the Hong Ministerial Declaration was adopted which stipulated that developed countries and developing countries, which declared themselves in a position to do so, would implement DFQF market access for products originating from LDCs.

The Bali Ministerial Decision is a reiteration of that. It is acknowledged that there has been progress in the implementation of DFQF market access for all products originating from LDCs as most developed Members have either granted full or nearly full access and some developing countries have done so considerably. Developed Members which do not yet grant full access are urged to improve their DFQF coverage of LDC products, while developing Members to commit themselves to improving their existing coverage of products when in the position to do so. Besides having to report DFQF schemes for LDCs to the Transparency Mechanism for Preferential Trade Agreements, transparency is also enhanced through reviews undertaken by the Committee on Trade and Development and recommendation reports by the Secretariat.

It should be noted that this Decision on DFQF, in comparison to the EU ‘Everything But Arms’ initiative, does not deliver any concrete measures for full LDC product coverage, thereby falling short of LDC full DFQF aspirations.

### Monitoring Mechanism on Special and Differential Treatment

As stated in the Doha Declaration paragraph 44, one of the main objectives is to explore venues through which SDT could be “strengthened and made more precise, effective and operational”. To fulfil this mandate, the African Group initially submitted a proposal in 2002 which sought to establish a Monitoring Mechanism for SDT provisions. In July 2002, the General Council agreed to establish a mechanism for SDT but without any agreements on its functions and powers. Hence, the General Council decision could not be implemented. At the MC8 in Geneva in 2011, the Ministers agreed to work towards finalizing the Monitoring Mechanism.

According to the Bali Ministerial Decision, the Mechanism shall serve as a focal point within the WTO to analyse and review the implementation of SDT provisions. Its main purpose is to facilitate the integration of developing and least developed countries into the multilateral trading system. However, it should be noted that its role is complementary rather than replacing other relevant WTO bodies. Also, the Mechanism can make recommendations to other relevant WTO bodies for initiating negotiations on the SDT provisions which have been reviewed by the Mechanism. But its recommendations will not define or limit the final determination by the relevant bodies. The Mechanism will operate in Dedicated Sessions of the Committee on Trade and Development and meet twice a year and its functioning and effectiveness will be reviewed three years after its formal meeting.

The Mechanism has the potential to provide a forum for ACP countries to monitor the implementation of SDT provisions through regular reviews of existing SDT provisions and the making of recommendations.

### **Overall Balance**

The ACP Ministers in their Communiqué of 11 October 2013 had emphasized the need to ensure a balanced outcome at Bali within and between the pillars of Development, LDCS Issues, Agriculture and Trade Facilitation. However, the criteria to judge the existence or otherwise of such a balance was not mentioned.

In the absence of a clear and objective criteria, judging the balance of Bali outcomes within and between the pillars is not only difficult but can easily become a subjective exercise. To avoid that, this reflection piece proposes the following elements of a possible criteria:

- Balance in terms of *demandeurs*, i.e. who was the original *demandeur* of a particular issue as well as whose proposals/positions are reflected in the adopted outcome
- Balance in terms of the nature of outcomes, i.e. whether the outcomes are binding or otherwise
- Balance in terms of value-addition to the situation pre-Bali, i.e. whether the outcomes indicate a substantive, concrete, tangible improvement over the existing WTO/DDA agreements/draft Modalities/Decisions

A broad and preliminary evaluation of Bali Package in terms of the above would indicate balance in the Trade Facilitation and Agriculture pillars. However, the outcomes in the Development/LDC pillar are much weaker mainly because these are generally couched in non-binding language and do not add substantively to the situation existing pre-Bali.

### ***III. Bali Package Implementation Challenges for ACP States***

As stated earlier, adoption of Bali Package can be termed as the beginning of a process that will require sustained engagement by all WTO Members including ACP states to reach a satisfactory conclusion to DDA and place the MTS at the centre of international trading relations. Viewed in this context, a number of implementation challenges, particularly for the ACP States given their limited resources, can be identified. An understanding of these implementation challenges should help ACP states prepare themselves better for post-Bali undertakings as well as to take advantage of the potential benefits of Bali Package.

The implementation challenges of Bali Package for ACP states can be divided in the following three broad categories.

#### *Challenge for ACP Countries Related to Their Implementation of Bali Package*

These essentially relate to the cost of implementing the relevant Decisions in terms of the commitment of required human, financial, institutional, and regulatory resources. The experience of the implementation of Uruguay Round agreements has made it clear to developing and least-developed countries that implementing any WTO agreement, including those that are expected to be beneficial to them in the medium to long term, has a cost. This is true of agreements reached at Bali as well.

Agreements like the TFA require prior preparation, capacity building, and so on before they can be implemented. ACP States will have to undertake a thorough technical and consultative exercise to identify various categories of commitments that they can implement immediately upon entry into force of the TFA, those that would require a transition period, and those that would require a transition period and provision of capacity building assistance.<sup>8</sup>

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<sup>8</sup> A useful diagram to give a timeline of required actions under the TFA is given in the Annex.

Similarly, other Bali Decisions may require resources to implement. For example, implementing and taking advantage of the Decisions related to public stockholding for food security and general services in agriculture will depend on the availability of additional financial resources.

In general, the implantation costs will relate to:

- preparations for implementation
- identifying specific capacity needs and approaching donors
- implementation of commitments
- taking advantage of the potential opportunities

#### Challenges Related to Ensuring Implementation by developed Countries

The expected benefits of several Bali Decisions will accrue to ACP countries only if the developed countries implement their commitments. This includes provision of capacity building (CB) assistance for TFA, technical assistance to take advantage of the implementation of services waiver, following guidelines for preferential rules of origin, participation in the Consultative Framework Mechanism on Cotton, etc.

As the above illustrative list shows, the full and faithful implementation by developed countries of their commitments related to the following two aspects will be critical for the successful implementation of Bali Package from the perspective of ACP states:

- providing required technical and CB assistance
- implementing the Bali Ministerial Decisions that are couched in a non-binding language

Impact of the euro debt crisis and slower economic growth among developed countries may hamper their readiness/ability to follow through on their commitments. Hence the ACP countries will have to monitor and make efforts to continuously persuade the developed countries to implement all their commitments. This can be a big challenge as the history of such implementation in the past is not very encouraging.

#### Challenges Related to the Implementation of Provisions for Further Work

Bali Package, in many cases, is not a completely done deal. A number of Ministerial Decisions stipulate further work. For example, a “legal scrubbing” of the TFA is to be completed, a Consultative Framework Mechanism on Cotton is to be established, a High Level meeting is to be convened once the LDCs have made a collective request for preferential access for their service providers, etc.

In addition, at least two major negotiations are envisaged as a result of the Bali outcome. One, to find a permanent solution to the issue of public stockholding for food security as the “peace clause” is only an interim solution, and two, to agree on a work programme for the remaining DDA issues.

It should be obvious that all elements of Ministerial Decisions related to remaining/further work must be implemented within the given timeline. Any failure to do so will repeat the sad experience of DDA where virtually all deadlines were missed, ultimately leading to a near demise of the whole enterprise. On the other hand, if implemented fully and within the agreed deadlines, the Bali Package has the potential to revive DDA and the MTS.

It also means that ACP states will face the challenge to commit substantial human and negotiating resources to participate actively with a view to ensuring that Bali Package is fully implemented.

#### ***IV. ACP Interests in Post-Bali Work Programme***

As explicitly stated in the ACP Ministerial Declaration of 11 October 2013, the ACP countries had made it clear that a post-Bali work programme should not only build upon the achievements of MC9, but also deliver on development as a key component of the DDA. While trade facilitation and some issues related to agriculture, special and differential treatment, and the development of LDCs have been addressed through some of the adopted Bali Ministerial Decisions, not everything on the ACP agenda, as laid out in the ACP Ministerial Declaration, had been put at the heart of the WTO Bali Conference.

To summarize the overall post-Bali work programme as stipulated in the Bali Ministerial Declaration, the Ministers have instructed the Trade Negotiations Committee (TNC) to prepare within the next 12 months a clearly defined work program on the remaining DDA issues, which will build on the issues discussed at the Bali Ministerial Conference, such as agriculture, development and LDC issues. Also, issues in the Bali Package which are not legally binding will be given priority. Other issues which were not addressed at the Conference will be put at the heart of discussions in the relevant Committees or Negotiating Groups of the WTO.

This overlaps to a certain degree with the remainder of the ACP agenda. Despite the fact that MC9 produced a Decision on addressing the concerns of SVEs, it has not managed to discuss similar matters concerning landlocked developing countries, small island developing states (SIDS) and low-lying coastal developing countries which were pointed out in the ACP Ministerial Declaration. ACP group can bring these matters to the attention of WTO membership for appropriate action.

Also, while the ACP group has expressed its concerns over the slowness of the process of accession for its members, in particular LDCs and SVEs, there has not been any discussion at the Bali Conference on this topic. Out of the 24 countries currently in the accession process, eight are ACP states.<sup>9</sup> Keeping in mind their developmental challenges, they should not be asked to make onerous concessions during the accession process. ACP Group should continue to insist that WTO Members abide by the Guidelines regarding the accession of the LDCs, and respect the SDT provisions while negotiating terms of accession of non-LDCs.

Although the Bali Ministerial Conference has managed to produce a Decision which reiterates the commitment to the Aid for Trade programme which is laudable, the brevity of the Decision leaves much room for discussion and negotiation, particularly the operationalization of this commitment. It is good to note that the direction of the Aid for Trade programme has been set towards the post-2015 global development agenda. However, negotiations on the specifics of its structure and objectives are required to establish the sustained support of donors to contribute to the development of developing and least-developed countries through trade.

Finally, ACP Group needs to reflect on its post-Bali agenda in the context of broader DDA negotiations. The ACP Ministerial Declaration mentions that it is important “to preserve and build on progress achieved so far in the DDA negotiations and negotiated flexibilities in the draft modalities for agriculture....and non-agricultural goods market access.... for the ACP Group of States, including LDCs and SVEs”. Moreover, during their Expert Group Meeting in November 2013, the LDC Group also agreed that S&D treatment (which was only partially addressed at the Bali Conference by adopting the Monitoring Mechanism on S&D treatment) and TRIPS are still areas to be further explored. Other areas of interest to ACP Group could be Trade in Services, Implementation-Related Issues and Concerns and Environmental Goods and Services.

While defining their post-Bali agenda in the DDA on the issues above mentioned, the ACP group should aim to preserve and build upon the achievements so far. Some examples of such achievements include: Special Products (SPs) and SSM in agriculture, hybrid approach to identify environmental goods and services in trade and environment, measures to deal with preference erosion in agriculture and non-agricultural market access (NAMA), and special provisions for SVEs in agriculture and NAMA. All these required a lot of substantive and political work which must not be lost.

An important feature common to these achievements is that while adhering to the principle of single undertaking, the diversity in the needs and capabilities of various Members has been taken into account through differentiated proposed treatment for various groups of

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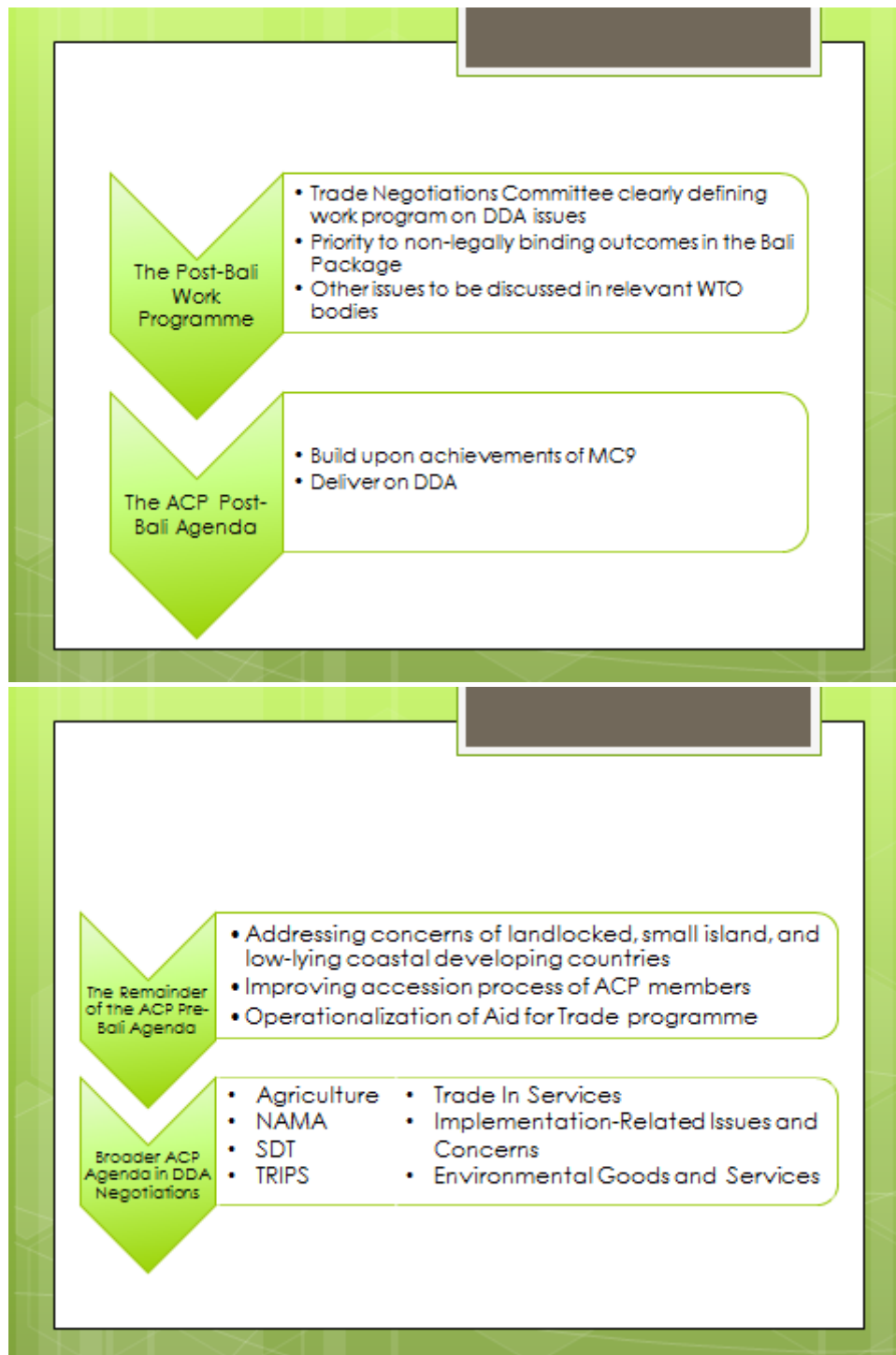
<sup>9</sup> These include six LDCs (Comoros, Equatorial Guinea, Ethiopia, Liberia, Sao Tome and Principe, and Sudan) and two non-LDCs (Bahamas and Seychelles).

countries (and even individual Members in some cases) in various draft modalities. This practical approach allowed movement instead of being dogmatic about single undertaking. This is a key departure from earlier practice and should be used in the post-Bali work on DDA.

Figure 1 on the next page attempts to present the above points in a logical, diagrammatic form. First part of the diagram juxtaposes the directions by Ministers at Bali regarding the post-Bali work programme with the principles laid down by ACP Ministers in their Declaration of 11 October 2013. The second part then enumerates the issues in the ACP Ministerial Declaration that was not addressed at Bali, followed by a list of DDA issues that should be of particular interest to ACP countries.



**Figure 1: Post-Bali Work Programme and ACP Agenda**



**V. Post-Bali Prospects for Increased Commitment of WTO Members to the DDA**

The success at Bali has generated hopes for a greater engagement by WTO Members, particularly the major developed and developing countries, in the WTO in general, and in the DDA negotiations in particular. The lack of sustained and constructive efforts and engagement by major players in the DDA, particularly since July 2008, can be regarded as one major – though not the only - reason for the lack of any progress in the negotiations. Outcome at Bali has the potential to change this and bring the WTO membership including the major players back to the table. However, this potential can be realized if the following five conditions are met.

1. Full and timely implementation of the Decisions and Declarations made in Bali: This point cannot be over-emphasised. Bali outcomes have built a fragile trust and faith which will be lost if the declarations and decisions are not implemented within the agreed timeframe. These decisions represent potential for future agreements, but need to first be actually implemented to sustain credibility to enable future involvement of WTO Members in the negotiations.
2. Addressing the remaining DDA issues: It should be acknowledged that Bali outcomes mostly consist of less sensitive DDA issues which could be one reason for the success at Bali. However, the remaining DDA issues, no matter how “sensitive” for particular WTO Members need to be taken up in the post-Bali period. This will include agriculture, non-agricultural market access, services, implementation-related issues and concerns, etc. However, it should also be acknowledged that not each and every DDA issue is equally important and / or relevant. A lot has happened in the last twelve years to allow for a rationalization of DDA while keeping development at its centre. This will not be an easy task given the past lack of trust among WTO Members and various political sensitivities. But a conversation has to start. ACP Group, based on its constructive role for Bali, may take the lead in the process by initiating such conversations. Initiative by the ACP Group will also ensure that “development” is the guiding principle for any rationalization of DDA.
3. Balancing the needs of all WTO Members: WTO is a Member-driven organization with 160 Members and works on the basis of consensus. Moreover, the global economic geography has fundamentally changed in the last decade or so, making it impossible for a few major developed countries to steer the negotiations and outcomes in the WTO. All WTO Members – developed, emerging, developing, and least-developed – have their interests, concerns and priorities. Hence, the DDA negotiations need to be balanced and ensure that the gains and pains of outcomes are shared by all.
4. Compliance by developed countries with their capacity building assistance commitments: Bali outcomes reiterate, and in some cases take forward (e.g. under the TFA) the commitments by developed countries to provide the required CB

assistance to developing and least-developed countries to facilitate implementation of agreed outcomes, ensure active and sustained participation in the negotiations, and take advantage of the trading opportunities. Strictly speaking these commitments are not legally binding. But compliance by developed countries will strengthen the fragile trust achieved at Bali as well as assist developing and least-developed countries in their active and constructive participation in the DDA.

5. Continuing delivery in smaller but balanced packages: Given the depth and breadth of DDA, and the interests and aspiration of 160 WTO Members, it will remain a Herculean task to conclude the entire agenda in one grand package within a limited time. Hence the “Bali approach” of crafting smaller but balanced packages of outcomes may be preferred to deliver on DDA. This is further elaborated in the next section.

#### **VI. Bali (Small-Package) Approach Applicability to Remaining DDA Negotiations**

While the capacity of the content of the Bali Package to rekindle the interest of WTO Membership in advancing the DDA will depend on satisfying certain conditions as mentioned above, the ‘form’ of the Bali Approach (small package) might be part of the solution to find a way to conclude DDA. Admittedly, this is neither new nor easy. Paragraph 47 of Doha Ministerial Declaration provides the legal means to reach agreements on a smaller number of issues for implementation on a provisional or definitive basis, provided that such early agreements are taken into account in assessing the overall balance of the negotiations.<sup>10</sup> Accordingly, the WTO Membership tried to negotiate smaller packages for adoption at the 7<sup>th</sup> and 8<sup>th</sup> MCs held in Geneva in 2009 and 2011 respectively, but did not succeed. Therefore, the success at Bali was not due to only a “smaller package” but also to the perception of balance among the elements in the small package as well as tireless technical and political work. These conditions will have to be met if the small package approach is to be adopted successfully for the remainder of DDA.

It should also be clear that while a conclusion to the DDA is essential for the continued relevance and strength of the MTS, ‘overloading’ the existing Doha agenda in order to satisfy the demands of some major players would be a mistake and counterproductive.

Keeping in mind the various reasons for the long stalemate of the DDA, a possible way to conclude would be to choose a sub-set of issues based on the balance of interests of various groups of countries in the WTO and with development at the centre and hold swift negotiations on them with a view to reaching early agreement. This process should be repeated till the conclusion of negotiations on all elements in a rationalized DDA. The

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<sup>10</sup> Available at [http://www.wto.org/english/thewto\\_e/minist\\_e/min01\\_e/mindecl\\_e.htm](http://www.wto.org/english/thewto_e/minist_e/min01_e/mindecl_e.htm).

delivery in such small but balanced packages will continue to build the trust and engagement of WTO Members, allowing them to also engage in constructive consultations on post-DDA issues. In essence, multilateral negotiations can still deliver success, albeit at low levels of ambition, and the present euphoria of achievement should not be allowed to dissipate.

Figure 2 below presents this process in a diagram.

**Figure 2: Small Package Approach to DDA**



**VII. *Extracting Strategic Value in Post-Bali Period of ACP Contribution to MC9 Success***

ACP Group had played a constructive role in the process leading to Bali outcome. This is universally acknowledged, particularly in the context of progress on TFA. It can be argued that, given the give-and-take nature of WTO negotiations, ACP Group may now be in a position to extract some strategic value. However, it may not be realistic to expect substantive and substantial concessions in other negotiating areas.

It should be noted that balancing of substantive concessions among parties in the WTO negotiations takes place within defined and mutually understood settings, often within a particular timeframe. Hence, the concessions of substance to ACP Group for its positive role towards Bali outcome should already be in the Bali Package. This would include both the agreements reached at Bali as well as the decisions and pointers regarding future DDA negotiations and the WTO regular work programme. The ACP group should therefore demand that the Bali Declaration and Decisions be implemented fully and faithfully, including timely implementation by developed countries even in areas which are not couched in legally-binding language.

ACP Group may look for a strategic value elsewhere than substantive concessions in the future negotiations. Based on its large and diverse membership, it can play a catalytic role in reaching balanced outcomes in the WTO negotiations. Success at Bali is a clear proof of that. It should now aim to consolidate this position. This will allow the ACP Group to remain a key player in the DDA/WTO negotiations and hence in a position to advance its substantive interests. This will also be a positive factor to keep development at the centre of DDA negotiations and outcomes.

#### ***VIII. Replication of the Trade Facilitation Agreement (TFA) Structure in other DDA Disciplines***

The TFA structure has several new and unique features. It strikes a balance between substantive and procedural standards on the one hand and the SDT for developing countries and LDCs needed to enable the implementation of these standards on the other. Two unique elements of particular interest to developing and least-developed countries in this regard are:

- Technical assistance and capacity building is linked to implementation. Developing countries and LDCs have secured a form of indirectly binding assistance from developed countries, for it is made necessary for their own implementation of the TFA provisions. This can be regarded as a form of two-way insurance mechanism, i.e. CB assistance by one party and compliance by the other are linked towards implementation of the Agreement.
- Categories of commitments are not pre-assigned: Developing and least-developed countries have the right to choose which commitments to implement when, i.e. at the time of entering into force of the TFA (category A); after a transition period (category B); and after a transition period and the provision of the required CB assistance (category C).

These are indeed positive developments and hence developing countries would like to use as template in other DDA disciplines. However, such replication in other DDA disciplines is not automatic or straight forward due to the particular nature of the TFA.

There are at least three elements related to the nature of TF and its WTO negotiations that allowed integration of these unique features in TFA. One, TF was brought onto the WTO agenda at the demand of developed countries and despite initial opposition by developing countries. Hence the *demandeurs* were under a sort of obligation to “pay a price” to developing and least-developed countries in return for the latter’s acceptance of this agreement under the WTO. This is then a good example of *quid pro quo*. Two, the implementation of TFA provisions requires domestic action and is resource-intensive and costly e.g. those related to regulatory reform, institutional strengthening, coordination, training, infrastructure development, and sensitizing and public awareness. Three, estimating the required resources and implementation costs is relatively easy in the area of TF.

Therefore, it will be easy to replicate the TF structure in other DDA disciplines if at least one or more of the above elements are present.

However, there are two broader principles at the heart of SDT in the TFA which ACP Group can strive to replicate in other DDA disciplines. These are: the right to self-select the obligations; and implementation of obligations as a function of capacity. Acceptance of these broad principles will allow for tailored and targeted SDT in other DDA disciplines which may not be exactly the same as in TFA but would still serve the same purpose.

### **IX. Impact of Bali on RTAs**

While the relationship of the MTS and the RTAs<sup>11</sup> has been a subject of great interest and divergent opinions, the more recent negotiations for the so-called mega-regionals, such as TPP and TTIP, and plurilaterals such as the TISA seem to have strengthened the argument of those who believe the MTS and RTAs to be substitutes rather than complementary in an increasingly interconnected global economy. According to this argument, the failure of the MTS to timely conclude the DDA is the main reason for the proliferation of RTAs in general, and for the launch of negotiations for TPP, TTIP and TISA, in particular. In this context, a

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<sup>11</sup> The term RTA has been used to describe all trade agreements among a sub-set of WTO Members outside the WTO.

question does arise as to whether the success of the MTS at Bali will dilute or spur the advance of RTAs.

This question can be examined from several angles. An obvious starting point would be to look at it in the context of the relationship between MTS and RTAs as evidenced empirically in the last quarter of a century or so. A quick examination of number of RTAs entering into force during various five-year periods starting from 1990 (based on RTAs data base available on WTO web site) reveals an interesting picture. One can clearly see the increase in the period 2006-12, i.e. the period when Doha Round lurched from one missed deadline to another. However, equally instructive are the number of RTAs entering into force in the earlier periods. For example, the number of RTAs that entered into force in the periods immediately preceding and following the establishment of WTO is almost the same, i.e. 27 in the period 1990-95 and 26 in 1996-99. It seems as if the unprecedented strengthening of the MTS through the establishment of WTO in 1995 had no impact on RTAs. Similarly, the increase in RTAs in the first five years of this century coincided with the launch of Doha Round. This pattern of growth gives credence to the view that MTS and RTAs are more supplementary than substitutes to each other. Hence, the increase in RTAs may not be interpreted as solely by the failure of the MTS to conclude a Round but also, more generally, as a response to greater globalization of production and value chains and facilitated by technological developments.

This means that multilateralism can be in coexistence with regionalism, both ‘moving’ but not at the expense of each other. However, the “pace of movement” of one may be affected by the “pace of movement” of the other. In this more nuanced view, if one is stalemated (as DDA was), the pressure increases on the other. However, even when the stalemate in one is broken (as Bali seems to have done for DDA) the other may continue to move, albeit perhaps at a slower pace.

What should also be taken into consideration are the specifics of different RTAs. Whether some RTAs will ever conclude and enter into force very much depends on their specific characteristics. From this perspective, Bali outcome may not have any impact on the progress or otherwise of particular RTAs. For example, while the US and the EU seek to conclude the TTIP, it should be noted that these regions currently follow different regulatory systems in several areas, e.g. health, environmental and quality standards, data privacy etc. It will not be easy to reconcile these differences.

Similarly, composition of individual RTAs will also play a role in determining its impact on MTS and *vice versa*. Since the key emerging economies like Brazil, China and India are not in TPP, TTIP and TISA, the current parties to those negotiations will have an incentive to remain engaged in the MTS to access the markets of these emerging economies. From this perspective, success at Bali may encourage them to increase their engagement in DDA.

In the short run, the Bali Ministerial Conference seems to have reignited faith in the MTS. Thus, taking recourse to regionalism on a more intensive basis seems unlikely in the immediate post-Bali period. In the long run, however, the existence of RTAs is unlikely to be compromised by the decisions taken at Bali. They will continue to be driven by the demands of an increasingly interconnected global economy as well as the specific dynamics and composition of each RTA.

***As stated at the start of this reflection piece, Bali is not the end of the process but rather a beginning that has the potential to lead to the successful conclusion of DDA and reinvigorate the MTS. Realising this potential will require active, constructive and sustained engagement of all WTO Members. ACP Group, due to its large and diverse membership and the positive role that it played for the success at Bali, can and should be a key player in post-Bali negotiations. This Group can be the catalyst for further progress in the DDA/WTO while keeping development at the centre of future outcomes.***



# ANNEX: Implementation Aspects & Timeline of the WTO TFA

