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Outcome and Implications of the Nairobi Ministerial Conference

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I. Introduction

Marking the 20th anniversary of its establishment, the World Trade Organization (WTO) held its 10th Ministerial Conference (MC10) in Nairobi, Kenya in December 2015 amid heightened interest on whether the Doha Round would stay alive. The outcome of the bi-annual ministerial gathering can cautiously be evaluated as a ‘stopgap solution’ to this question, since the small package of deals struck at the ministerial prevented the collapse of the multilateral system as a whole, but fell short of reaffirming the continuation of the Doha Round. The package managed to include several agreements on agriculture and LDC (least developed country) issues, but there remain other important ‘pillar’ issues that have not even been tabled as negotiating agenda, such as

NAMA (non-agricultural market access) and services. The Nairobi Ministerial closed without delivering any concerted position on how to deal with the future of the WTO agenda and what approach to employ in tackling these issues. The Ministerial Declaration adopted at the Nairobi Ministerial Conference is evidence of the deep division in positions among the WTO members on how to achieve the WTO’s future agenda, manifested in explicit language that “Members have different views on how to address the negotiations” and that “new approaches are necessary to achieve meaningful outcomes in multilateral negotiations”.

II. Outcome of the Nairobi Ministerial Conference

Table 1. Contents of the Nairobi Ministerial Declaration

	Agenda items	Sub-items		Outcome
Part I	Background and evaluation of 20 years of the WTO			Draft decision ready before MC10
Part II	1. Agriculture	(1) Export Competition	(i) Export subsidies	Decision at MC10
			(ii) Export credits	
			(iii) State trading enterprises	
			(iv) Food aid	
		(2) Special Safeguard Mechanism		
		(3) Public Stockholding for Food Security Purposes		
	2. LDC Issues	(1) Duty-Free Quota-Free Market Access		Deleted from MC10 agenda
		(2) Preferential Rules of Origin		Decision at MC10
		(3) Preferential Treatment for Services/Service Suppliers		Decision at MC10
		(4) Cotton		Partial decision at MC10
	3. Development	Improvement of S&DT provisions		No decision reached
	4. Transparency	(1) Domestic service rules		No decision
		(2) RTA notification		No decision
		(3) Notification of fisheries subsidies		No decision
	5. Rules	Prohibited subsidies (fisheries subsidies)		No decision
Part III	Reaffirmation of Doha Development Agenda			Parallel recognition of different positions

1. Agriculture

The Nairobi Ministerial Declaration contains six Decisions on agriculture, cotton and issues related to LDCs. Among them, the WTO Ministerial Decision on agriculture covers three areas: export competition, special safeguard mechanism (SSM) for developing country members, and public stockholding for food security purposes. The WTO deal on export competition, first of all, requires export subsidies to be eliminated by developed country members immediately and by developing countries in three years (by 2018), while allowing these deadlines to be extended to five and seven years respectively for developing and least developed countries regarding subsidies for marketing and transportation costs for agricultural products. However, the deal contains an exception that allows developed countries to maintain export subsidies until 2020 for processed products, dairy products and swine meat, on condition that they eliminate export subsidies on products destined for LDCs. As for export credits, the final text imposes a maximum repayment term of 18

months, and requires export finance programs to be ‘self-financing’ (cover the long-term operating costs and losses of a program) without specifying the period. Special and differential treatment (SDT) provisions exist for developing country members, allowing for maximum repayment in phases, starting with 36 months for export credits that are implemented in the first year. LDCs and net food-importing developing countries (NFIDC) are allowed a 54-month maximum repayment period for acquisition of basic foodstuffs. The text also contains discipline on agricultural state trading enterprises (STE), obligating members to “ensure that agricultural state trading enterprises do not operate in a manner that circumvents any other disciplines contained in this Decision”, while a work program to explore other trade-distorting aspects of agricultural STEs was eliminated from the former draft text. Regarding international food aid, the obligation to monetize international food aid is allowed only in the case of a demonstrable need for the purpose of transport and delivery, or to redress food deficit requirements or insufficient agricultural production in LDCs and NFIDCs.

Despite efforts by G33 countries to incorporate the Special Safeguard Mechanism (SSM) as a new trade remedy measure that would allow developing countries to impose tariffs on agriculture products in the event of disruptive import surges, the Decision included only language that recognizes the right for developing country members to have recourse to SSM and future negotiations in dedicated sessions. Also, the final text on public stockholding for food security purposes settled on language that encourages future negotiations for a permanent solution, but in a more accelerated manner and distinct from the existing DDA (Doha Development Agenda) agriculture negotiations.

2. LDC Issues

There was not much heated debate on the issues of preferential rules of origin and preferential treatment for services and service suppliers as compared to other agenda items. The Decision text on preferential rules of origin reaffirms the guidelines adopted at the Bali Ministerial Conference, and basically allows for simplified or relaxed criteria for determining sufficient or substantial transformation, cumulation, and other procedural requirements. Developing country members are also subject to a services waiver (preferential treatment to LDCs to gain greater access to their services markets) which shall be extended until 2030, and special priority given to address regulatory barriers of interest to LDCs. However, the issue on providing ‘duty-free quota-free’ market access to LDCs was deleted from the Declaration text from the drafting stage.

3. Development, Transparency, and Rules

Despite a concerted call by the G90 African country group to seek improvements in the Special and Differential Treatment (S&DT)

provisions in the existing WTO agreements, strong opposition by the developed country groups blocked the inclusion of a revised proposal that would allow strengthened S&DT provisions for LDCs. Discussions on the need for increased transparency for domestic regulations related to services and subsidies failed to reach agreement on inclusion in the Declaration text. Negotiations on making regional trade agreements (RTA) and anti-dumping procedures more transparent were eventually expanded to rules negotiations, where there was much heated debate on the issue of prohibiting fisheries subsidies that contribute to overcapacity and overfishing. However, due to firm differences in positions despite efforts to gather support around joint proposals that were made respectively by EU/Australia and Peru/ACP (Africa, Caribbean, and Pacific) countries, new rules on the prohibition of fisheries subsidies were not included in the final Declaration text.

4. Future WTO Agenda

A key issue of the Nairobi Ministerial Conference was whether the WTO members would reaffirm the DDA. However, due to a deep division in positions among members, mainly along the developed and developing country groups, the Ministerial gathering was unable to come up with a compromised final text, and had to settle on a text that specified in parallel conflicting positions of the negotiating groups. While in one part of the Ministerial Declaration, it states that “many Members reaffirm the DDA, and the Declarations and Decisions adopted at the Doha and the Ministerial Conference held since then, and reaffirm their full commitment to conclude the DDA on that basis”, there is another part in the text that states, “Other Members do not reaffirm the Doha mandates, as they believe new approaches are necessary to achieve meaningful outcomes in multilateral negotiations”. Due to

this ambiguous language that supports neither termination nor continuation of the Doha Round, the 10th WTO Ministerial Conference managed to stopgap the collapse of the multilateral negotiating function of the WTO.

III. Evaluation and Implications

The 10th WTO Ministerial Conference may be credited for achieving agreement on several important issues on the agriculture agenda, especially export competition issues such as the elimination of export subsidies that distort agricultural trade. The agreement, however, may have been a strategic move to prevent the DDA from falling apart since the Ministerial was the first to be held in an African member country, making achievement on issues of interest to the developing and least-developed countries all the more significant. The heads of the host country and the WTO Secretariat must have realized that it would be a great risk for the Ministerial Conference if they pushed for an agreed solution on highly contentious issues, and accordingly settled at accepting both conflicting positions at the same time. Such strategy may not be quite surprising when considering that the U.S. general elections are up for this year, making substantive progress in the DDA difficult, while the DDA needed some kind of outcome to maintain its momentum. As a result, the Nairobi Ministerial Declaration and Decisions contain deliverables on issues that have been relatively easier to reach compromise while leaving the core issues untouched, in addition to a very ambiguous future work program for the WTO members to work on.

On the other hand, the outcome of the Nairobi Ministerial could also be evaluated as being rather ‘balanced’, since the major countries

were able to go back with claims that their national interests were appropriately reflected in the end. The final provisions on export competition reflect most of the U.S. interests, in limiting the phase-in period for eliminating export subsidies for developing countries and settling on the 18-month maximum repayment period for export credits which concurs with U.S. practice. The EU was also satisfied with bringing issues on export credit and international food aid into negotiations on export subsidies, while China’s initial concern on regulating STEs was addressed by including only declaratory language in the final text. India succeeded in including SSM in the Doha mandate, and reaffirming future negotiations over public stockholding for food security purposes. LDCs would also benefit from measures related to cotton, preferential rules of origin, and preferential treatment in the area of services.

The future of the Doha Development Round, however, still remains in the dark since there is no clear reaffirmation of the DDA in the aftermath of the Nairobi Ministerial. With the developed country groups quite opposed to continuing multilateral negotiations in the current format, it may not be realistic to predict that the DDA will sustain its form. The U.S. has reportedly called for a “new approach” to the multilateral trading system that breaks from the structure of the 2001 Doha round. Ignoring such demands may not be plausible, since it would make the DDA a mere gathering of developing country members without the support of major developed country groups. In the end, this would imply a new form of DDA, i.e. ‘DDA 2.0’, with the support of all WTO members and coverage of all “new issues” on the multilateral trade agenda that are addressed in a “new approach”.

For quite some time, there has been much attention paid to plurilateral trade agreements as

a feasible alternative approach for advancing the multilateral trade issues. For such plurilaterals to work with the intended effects of eventual multilateralisation, the benefits of liberalization committed by the signatories would have to be provided on an MFN (most favoured nation) basis to all WTO members, and this would require membership and the coverage of trade in the agreement to achieve a 90% 'critical mass'. A model case example is the recently concluded expanded Information Technology Agreement (ITA), which has a membership of 53 countries that account for approximately 90% of trade in IT products, and extends market access benefits to all WTO members, including the non-signatories to the agreement.

New issues that may be added to the DDA agenda include e-commerce, competition, and labor, which are issues that some major countries are highly interested in. Currently, there are concentrated efforts being made among several groups of countries to come up with plurilateral agreements on services and environmental goods, scheduled to be concluded within this year. Other mega-regional trade agreements are already busy laying the ground for implementing new rules for the 'new issues', such as fisheries subsidies, competition, and technical regulations only to name a few. In the end, the lack of progress in the DDA negotiations does not necessarily mean that new trade rules are not being negotiated. WTO member countries should be fully prepared and actively participate in the upcoming new era of trade negotiations. **KIEP**