

BRIEF ON

WORLD TRADE ORGANIZATION (WTO) 11TH MINISTERIAL CONFERENCE (MC) TO BE HELD IN BUENOS AIRES, ARGENTINA FROM 10TH – 13TH DECEMBER, 2017

Introduction

Kenya successfully hosted the 10th ministerial conference (MC 10) between 15th to 19th December 2015 in which 6 (six) outcomes were realized as a result of the negotiations. These outcomes are in a form of a package comprising of a series of 6 (six) ministerial decisions on agriculture, cotton and issues related to Least-Developed Countries (LDCs), and attempts to give a road map on the future work of the WTO.

It is worth to note that, the Doha agenda did not conclude in Nairobi and the deadlines to conclude the talks have been missed and still remain elusive. This is due to continued sharp differences in the areas of agriculture, where mainly domestic support and special safeguard mechanism (SSM) remain the main source of divergence.

After the Nairobi conference, negotiations have continued in the WTO Headquarters in Geneva and the 11th Ministerial Conference is scheduled to take place in Buenos Aires in Argentina which will be a culmination of the on-going talks in Geneva and some deliverables may be achieved.

Issues for discussions under MC11

Preparations for MC 11 are currently on going at the WTO secretariat, Geneva. Specific trade negotiations and other issues which have come up since MC 10 will be on the agenda during MC11 which include;-

- a) Status of implementation of Nairobi 10th Ministerial Conference decisions
- b) Doha development Agenda issues
 - Agriculture issues including Market Access, Domestic Support, Public Food Stock Holding, Special Safeguard Mechanism etc
 - Non - Agricultural market access
 - Trade in Services including Domestic Regulations
 - WTO Rules
 - Development Issues
- c) Other issues including E-commerce, Trade Facilitation in Services, Small and Medium Enterprises etc
- d) Below is a table showing Matrix of the MC11 substance:-

MATRIX OF THE MC11 SUBSTANCE

	SUBJECT/ISSUES	KENYA'S INTEREST	CURRENT STATE OF PLAY	REASONS	POSSIBLE SCENARIOS FOR MC11
1.	Agriculture;				
	Domestic Support	<p>Kenya should support this proposal as domestic support leads to loss of market access.</p> <p>Kenya has yet to notify.</p>	<p>Proposals for capping of OTDS-AMS, Blue Box & De minimis.</p> <p>Members were to notify of domestic support given through self-notification, and given timelines for reducing such support. However, these have not been honoured.</p>	<p>Some countries exceed their OTDS and AMS commitments.</p> <p>Current issue of box-shifting amongst Members.</p>	
	Market Access	Kenya's view is that this is best handled in RECs (Regional Economic Groups)	Proposals for Multilateral vs Regional FTA Approach	It's easy to negotiate market access within a region	
	Export Competition	<p>Kenya should support notifications of implementation timelines.</p> <p>There is a need to consult NCPB (National Cereals and Produce Board) on the trade</p>	<p>Implementation of the Nairobi Declaration (MC10) which featured a decision to eliminate export subsidies.</p> <p>Developed countries currently have missed their</p>		

		distorting effect and extent of its market intervention.	‘immediate elimination’ timeline as per the MC10 decision.		
Cotton		Kenya supports the C4 proposal.	Limit support to <i>de minimis</i> levels (5% for Developed & 10% for developing).	Kenya is cotton deficit due to the conversion of cotton estates to real estate projects	
Public Stockholding for Food Security		<p>There is a need to consult the Ministry of Agriculture and NCPB (National Cereals and Produce Board) on strategic food reserves, and market intervention in obtaining the said reserves. More information on maize; production, consumption, import and export also needed.</p> <p>Kenya should propose the extension of the application of the Peace Clause to this issue until a permanent solution is obtained.</p> <p>Kenya has also considered the possibility of a cap based on</p>	<p>Members are expected to agree on a permanent solution for public stock holding for food security by 2017.</p> <p>The Ministry of Agriculture (Livestock) proposes powdered milk and dried meat as stock-piles.</p> <p>The operationalization of the Peace Clause is coming to an end.</p>	Kenya stockpiles for national consumption and to mitigate the effects of distortions of weather patterns and national food shortages. However, there is a danger of exploitation of the box-shifting effect of the G33 proposal by Members to adversely affect Kenya’s domestic market.	

		<p>Members' GDP. However the modalities of such a measure would have to be determined after MC11.</p> <p>We do not have a final position on whether to support this proposal as it will depend on the Ministry of Agriculture and KIPPRA analysis.</p>	G33 - Transfer market price support for public stockholding to Green Box.		
	Special Safeguard Mechanism (SSM)	<p>Kenya supports both volume and price triggers, but prefers the volume trigger.</p> <p>Further discussion on the trigger levels is necessary during a retreat.</p>	<p>G33 – use of price-based and volume-based SSM.</p> <p>Developed countries, and developing countries with larger economies favour a higher trigger threshold.</p>	The volume trigger is easier to implement.	
2.	Non – Agricultural Market Access / Industrial Tariffs (NAMA)	<p>Kenya should identify its special and sensitive products prior to engaging in Sectoral Agreements.</p> <p>The list of sensitive products for the EAC needs to be shared with the negotiators and cluster group members to determine its relevance.</p>	<ul style="list-style-type: none"> • Swiss formula on tariff cuts on industrial products. • Sectoral Agreements on special and sensitive products. There is a list of sensitive products for the EAC countries. 	A regional forum is more effective for progression of negotiations, and exchange of concessions on NAMA.	

		<p>Kenya prefers a regional forum to negotiate this issue. However, there is a concern on the multilateralisation of agreements negotiated at this level.</p>	<ul style="list-style-type: none"> • Negotiations on NAMA modalities recorded in the modalities text that has been revised three times. • Discussions on the way forward for NAMA negotiations have witnessed the emergence of different positions among Members on the way forward. • Some Members want negotiations to continue on tariffs and Non-Tariff Barriers (NTBs) in parallel such and SPS and TBT. These developed text-based proposals and NTBs revolving around dispute resolution without resorting to the DSB – primarily good 		
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			<p>chair arbitration and mediation.</p> <ul style="list-style-type: none"> • Others do not see the WTO as the right forum to negotiate NAMA issues and therefore see regional trade agreements or FTAs as the appropriate forum. • We also have some Members who prefer the status quo and therefore keen on preserving their policy space. NAMA is one areas where building convergence to move forwards will not be easy and it might not be a candidate for MC11. 		
3	Services Negotiations				
		Market access in	1.Kenya should enjoin the ongoing TISA, which has	Some Members prefer multilateral approach while	It's important to participate in the

		services	24 members currently 2. Kenya favours Plurilateral approach	others believe that plurilateral approach pursued under TISA would deliver tangible results.	negotiation process. TiS accounts for 49% of Kenyan GDP. Kenya has got comparative advantage on TiS regionally.	
		Domestic regulation	Kenya supports the simplification through bilateral negotiations and MRAs Re-evaluate our investment incentives through Regional negotiations in TiS Kenya does not support the India proposal on immigration. The Directorate of Immigration needs to be consulted on this matter in relation to investment facilitation and Mode 4 of the GATS.	A number of proposals have been submitted. These proposals seek to ensure that licensing requirements and procedures; qualification requirements and procedure; and technical standards applicable in services sector do not constitute unnecessary restrictions to trade in service. The proposals also call for transparency in the process of revising or developing new regulations that affect trade in service.		

				Immigration issues should be relegated to Member discretion.	
4	WTO Rules	Fisheries subsidies,		<p>Discussions based on mandate for WTO fisheries subsidies negotiations and targets set out in the SDG 14.6, which commits governments to prohibiting certain forms of fisheries subsidies by 2020</p> <ul style="list-style-type: none"> • Prohibit subsidies to vessels engaged in IUU fishing, and subsidies that contribute to overfishing and overcapacity • Special and differential treatment for developing and least developed countries. 	<ul style="list-style-type: none"> • What sorts of fisheries subsidies should be prohibited? • What role, if any, Regional Fisheries Management Organizations (RFMOs) and/or

						<p>national fisheries management systems should have in any package of disciplines?</p> <ul style="list-style-type: none">• How to define subsistence, small-scale and artisanal fishing and
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						<p>what subsid y discipli nes should apply to these activiti es?; and</p> <ul style="list-style-type: none">• How an agreem ent on fisherie s subsidi es could address future develo pment needs
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						of developing and least developed members?
		Anti-dumping (AD), and subsidies and countervailing measures (ASCM)		The China proposal on AD and ASCM seek addresses the following aspects: <ul style="list-style-type: none"> a. Enhancing transparency and strengthening due process b. Preventing AD/CM measures from becoming "permanent" c. Preventing AD/CM measures from "overreaching" d. Special consideration and treatment of SMEs 		
5	Development Issues	Special and	Kenya supports these	The African Group has		

		<p>Differential Treatment (S&D)</p>	<p>proposals by S&D For how long do recently acceded countries and very recently acceded countries keep their accession rights? No applicable sunset clause to these rights. Review of accession rights needed.</p> <p>Proposals contained in paragraph 38 of the status report from Geneva and will be sent to members for further analysis.</p>	<p>identified 10 specific proposals which are in the process of being finalized and will be soon submitted for discussions. These proposals are in the following areas:</p> <ol style="list-style-type: none"> 1. Agreement on Trade-Related Investment Measures 2. Article XVIII. A and C of GATT 1994 3. Balance of Payment- Article XVIII of GATT 1994 – Section B 4. Agreement on the Application of Sanitary and Phytosanitary Measures 5. Agreement on Technical Barriers to Trade 6. Agreement on Subsidies and Countervailing Measures 7. Agreement on Customs Valuation 8. Enabling Clause and 		
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				<p>other non-reciprocal preference schemes</p> <p>9. Accession of Least Developed Countries (LDCS)</p>		
6	Trade and Environment		<p>Upholds quality of products and life. Kenya supports these talks on EGA Kenya feels that a definition of Environmental Goods is necessary</p>	<ul style="list-style-type: none"> • A group of 24 WTO Members have been negotiating for an Environmental Goods Agreement (EGA) and are of the view that plurilateral approach is the best route to achieve the desired results. • However, on issues concerning the relationship between MEAS and the WTO many Members are of the view that multilateral approach is the best way forward. 		
7	E-commerce		<p>Kenya to maintain the current practice of not imposing customs duties on electronic</p>	<ul style="list-style-type: none"> • Free flow of data – No requirement for localization of data • Protection of Intellectual 		

			<p>transmissions until an Agreement on E-Commerce is concluded and adopted.</p> <p>A regulatory framework should be instituted to provide guidance on the trade facilitation elements of E-Commerce. Members to consider proposals on E-commerce</p> <p>ICT Ministry to be consulted on the value of the electronic transmission. More information to be provided on Localization of Data and its risks. TRIPS council to look into matters of Intellectual Property rights.</p>	<p>Property Rights</p> <ul style="list-style-type: none"> • Open networks <p>Trade facilitation elements</p> <ul style="list-style-type: none"> • e-signature, electronic authentication, online payment solution, transparency, consumer protection • Permanent moratorium of not imposing customs duties on electronic transmissions 		
8	Investment		KENINVEST to shed	<ul style="list-style-type: none"> • Informal platform at the 		

	facilitation		<p>more light on the current Investment Policy that is still in draft form.</p> <p>KENIINVEST and The National Treasury to advise on whether Kenya supports Multilateral negotiations on investment.</p> <p>UNCTAD position on BITs (Bilateral Investment Treaties) to inform direction. KENINVEST to provide clarification on this.</p> <p>Let the Domestic Regulation apply to investment issues.</p>	<p>WTO on investment facilitation</p> <ul style="list-style-type: none"> • Discussions aimed at improving regulatory environment • Investment protection and investor-state disputes to be excluded 		
9	Micro, Small and Medium Enterprise (MSMEs)		<p>Train them and build their capacity especially on SPS measures through Aid for Trade initiatives</p>	<ul style="list-style-type: none"> • Informal dialogue to discuss issues affecting the participation of MSMEs in international 		

			<p>SME Parks and cheap finance for the SMEs.</p> <p>Members to consider proposals on MSMEs.</p>	trade.		
10.	Non Violation Situation Complaint		<p>Negotiation approach with the IPR owner</p> <p>KIPI to clarify the position on this issue.</p>	<ul style="list-style-type: none"> The Nairobi Declaration gave a moratorium of three years (2018) 		