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Trade: WTO's MC13 Outcome Document far from closure

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Geneva, 30 Jan (D. Ravi Kanth) – With less than one month left for the World Trade Organization's 13th ministerial conference (MC13) in Abu Dhabi, the crucial "Outcome Document" that includes all the major decisions, declarations, and work programs in different areas, seems to be mired in divergent views on a range of issues and is far from closure, said people familiar with the discussions.

The chair of the WTO's General Council, Ambassador Athaliah Lesiba Molokomme of Botswana, issued the latest draft text on 25 January that is replete with square brackets on many issues starting from how the WTO should conduct its business as it marks its 30th anniversary.

The 38-page draft text, seen by the SUNS, remains a work in progress at this juncture.

So far, there is no clarity yet on the most controversial issues concerning the Joint Statement Initiatives (JSIs) on investment facilitation, digital trade, and domestic regulation in services, said people familiar with the draft text.

More importantly, paragraph 16 of the text is left for "specific decisions/declarations/decide or guide on WTO Regular work."

The proposed decisions in paragraph 16 include: (1) E-Commerce Work Programme and Moratorium; (2) TRIPS Non-Violation and Situation Complaints; (3) Work Program on Small Economies; (4) SPS (sanitary and phytosanitary measures); (5) LDC Graduation – Annex 2; (6) LDC issues (preferential rules of origin for LDCs, LDC Services Waiver and DFQF Market Access); (7) Trade and Environment; (8) TRIPS Waiver Extension; (9) Emergency Response to Food Insecurity; and (10) Work based on Paragraphs 23 and 24 of the MC12 Declaration on the WTO Response to the COVID-19 Pandemic and Preparedness for Future Pandemics.

The Outcome Document is to be divided into two parts, with Part I focusing on the state of the multilateral trading system with the WTO at its core.

The second part would include the decisions and declarations to be adopted by trade ministers at MC13.

To begin with, in paragraph 2, the draft text states: "Our thirteenth session takes place as we mark the 30th anniversary since the establishment of the WTO. On this occasion, we reaffirm the principles and objectives enshrined in Marrakesh Agreement and underline the critical importance of the rules-based, non-discriminatory, open, fair, inclusive, equitable and transparent multilateral trading system with the WTO at its core."

Yet, divergences persist in the following paragraph in square brackets: "[We reaffirm the value of [our consistent practice of] taking decisions through a transparent, inclusive, [flexible,] [constructive,] [responsible] consensus-based, Member-driven process]."

In Paragraph 3, the draft text states, "We acknowledge that during these 30 years, WTO Members have sought to fulfil the objectives reflected in the Preamble to the Marrakesh Agreement consistent with Members' respective needs and concerns at different levels of economic development. Important progress has been made. We resolve to further strengthen the multilateral trading system to provide meaningful impetus to address global challenges [from the trade perspective (China)/insofar as they relate to the WTO relevant mandate[s]]."

On the MC12 decision on reform of the WTO to improve all its functions in paragraph 5, the draft text states:

"We reaffirm our commitment made at our Twelfth Session to work towards necessary reform of the WTO to improve all its functions [while reaffirming the foundational principles of the WTO]

(India) and acknowledge the progress made in this regard.

We note and value the work done to date to improve the daily functioning of WTO Councils, Committees and Negotiating Groups with a view to enhancing the WTO's efficiency, effectiveness, and facilitation of Members' participation in WTO work. We instruct the General Council and its subsidiary bodies to continue to conduct this work and report progress as appropriate to the next Ministerial Conference.

[We encourage all WTO Bodies to continue the Member-driven process and routinely review their practices and ways of working] (United Kingdom) with a view to enhancing their efficiency, transparency (Pakistan) and effectiveness [to better deliver/to continue to deliver (Singapore) on their respective mandates] (India), and facilitation of Members' participation in WTO work. [For proposals on reform by doing (Switzerland) that require adoption, the relevant WTO Bodies shall/are encouraged, where appropriate to (Canada) consider implementation on a trial basis, as appropriate, for reform proposals to ensure reform continues (Canada).] (Bangladesh) We instruct the General Council and its subsidiary bodies to continue to conduct this work [through a member-driven, open, transparent, inclusive process] (Indonesia) that ensures reform continues (Canada) and report progress [in relevant committees and bodies' annual reports] (United States) as appropriate to the next Ministerial Conference.”

STRENGTHENING THE MTS

On the issue of strengthening the multilateral trading system (MTS), with the WTO at its core, there is no consensus yet in paragraph seven of the draft text.

Thus, the whole paragraph and the alternative remain in square brackets implying lack of consensus on the critical phrases.

It states: [We resolve to preserve and strengthen the ability of the multilateral trading system, with the WTO at its core, to respond to [contemporary] trade challenges, take advantage of available opportunities, and ensure the WTO's proper functioning.] [We acknowledge that Members have engaged in [informal discussions] on some of these issues.] [We recognize the need for all Members to deepen dialogue in a more focused manner to improve understanding of the [implications of each of these issues*/inter-relationship between each of these issues* and the WTO (Egypt)/implications of such issues* (Russian Federation)] [for trade, development and the WTO while continuing efforts to seek conclusion of ongoing negotiations.] [We instruct the General Council to continue the dialogue on these issues [through informal meetings and other appropriate discussions] and report progress at the next Ministerial Conference.] (United Kingdom)

Alternative to Paragraph 7:

[We resolve to preserve and strengthen the multilateral trading system, with the WTO at its core, and in accordance with its existing principles, rules and mandates, while acknowledging present trade challenges. We recognize the need to deepen dialogue in a more focused and consensus-based manner to improve understanding on the inter-relationship between trade and other issues of common interest that may arise among Members.] (African Group – Egypt)

[We agree to establish a temporary Working Party to organize regular dedicated deliberations /conversations (Brazil) on trade and industrial policy/subsidies (China)/on measures to support industrial development (United States). The Working Party will provide a forum for Members to share and discuss factual analysis [and could examine], inter alia, (a) the challenges faced by developing Members (in particular LDCs)/Members (Chinese Taipei)/Members (in particular developing and LDC Members) (Thailand) to industrialize and diversify their economies; (b) the different types of policy tools or measures being used by Members and their impact on global trade [and] investment, environment and development (China); (c) how to ensure effective/enhance transparency; and (d) whether WTO rules need to be further [strengthened or] developed. [The Working Party shall be conducted in an objective and neutral manner.] (China). The Working Party will provide a factual report on these discussions no later than the next Ministerial Conference and may also, as appropriate, propose [initiatives, concrete actions, or] recommendations for future work.] (Canada)

[We recognise the importance of an inclusive and equitable multilateral trading system that supports development, including for least developed countries, and ensures/contributes to ensuring (Canada) the gains of trade benefit all Members (India). We recognise work already

underway and welcome further work by Members to hold thematic discussions on different aspects of the inclusiveness agenda. The General Council should provide a report, including any recommendations, to Ministers at the Fourteenth Ministerial Conference.] (Australia)

[We underscore the importance of open, inclusive, resilient, sustainable, diversified and reliable global supply chains. We welcome efforts building on existing work in WTO bodies to enhance cooperation in this regard.] (China)

[We agree to organize regular dedicated conversations on global food security through sustainable agriculture. These conversations will provide an opportunity for sharing and discussing science- and evidence-based analysis and experiences, inter alia, (i) policies and measures to enhance sustainable intensification and productivity growth, food security, agricultural resilience, and encourage climate-friendly agricultural practices; (ii) policies that result in over-production, overuse or misallocation of resources, market distortions, or other negative impacts, environmental or otherwise; (iii) policies that facilitate trade of agricultural products, including those produced with more sustainable methods and from small and family farmers. In connection with these discussions and as appropriate, Members may propose initiatives, concrete actions, or recommendations, including whether WTO rules need to be further strengthened or developed for future work.] (Brazil)

CENTRALITY OF DEVELOPMENT DIMENSION

On the issue of according the highest priority to the development dimension, Indonesia, South Africa on behalf of the African Group, Pakistan, Egypt, and Switzerland proposed language in square brackets in paragraph 8.

The proposed language in paragraph 8 is as follows:

“We reiterate the centrality of the development dimension in the work[s] (Indonesia) of the WTO. We recognize that the full integration of developing country Members and LDC Members in the multilateral trading system [and ensuring that the gains of trade benefit them] (African Group – South Africa) is important for their economic development [and for global trade expansion] and [therefore] (African Group – South Africa) [recall the Preamble to the Marrakesh Agreement/recommit] (African Group – South Africa) to make positive efforts towards this end [in accordance with the Preamble of the Marrakesh Agreement. In this regard, we resolve to address the constraints inherent in certain WTO agreements that limit the policy space to drive industrialization, economic diversification and structural transformation programmes in developing countries and LDCs, and their ability to respond to interconnected domestic and global crises, including but not limited to, climatic and natural disasters, financial and economic crises, debt burden, health emergencies and food-security related crises. The General Council shall meet in special session and work based on submissions by developing countries and LDCs to assess the existing difficulties, identify ways needed to resolve them taking into account the development experiences of some developing country Members (Chinese Taipei) and take decisions for appropriate action and shall provide a report, including any recommendation, to the Ministers in the 14th Ministerial Conference]. (African Group – South Africa)

We reaffirm the [provisions/principles] (Switzerland) of special and differential treatment for developing country Members and LDCs as an integral part of [the] WTO [and its] agreements. [3]*

[We note the progress in negotiations on existing special and differential treatment provisions and underline the urgency of continuing work in the CTD SS and other relevant bodies of the WTO to improve the application of special and differential treatment as agreed under existing mandates, and to report on the progress to the General Council and subsequently to MC14.] (African Group – South Africa)

[We recognize the need for better coordination of development work through the Committee on Trade and Development (CTD), the focal point for consideration and coordination of work on development in the WTO.] (African Group – South Africa)

[We reiterate the centrality of the development dimension in the works of the WTO. We reaffirm our commitment to fully integrate developing country Members and LDC Members in the multilateral trading system for ensuring that the gains of trade benefit them to achieve the objectives outlined in the Marrakesh Agreement. We take note of the discussion and

negotiations across the WTO Bodies on S&DT provisions, technology transfer, providing policy space for industrialisation, crisis response, intellectual property, digital trade, cost of remittances, trade facilitation, pandemic response among others to meet the development needs of developing countries including LDCs. We commit ourselves to comprehensive discussions and negotiations in the relevant WTO bodies aimed at reviewing the relevant provisions of the WTO agreements for achieving sustainable development as per the specific needs of developing countries and LDCs. We recognize the needs of developing and least-developed countries for enhanced support, cooperation, technical assistance and capacity building in this area, and agree that special and differential treatment for developing countries shall be an integral part of all elements of this work. We underscore the urgency for continuing work in all the relevant bodies of the WTO, particularly CTD SS, to enhance the impact of S&DT under the existing mandates. We instruct the relevant WTO Bodies to regularly report on the progress to the General Council and subsequently to MC14.] (Pakistan)

[We recognize the work already undertaken in the discussions and negotiations across the WTO agreements, and in the relevant WTO bodies, on technology transfer, including the large number of negotiating proposals submitted by members in the context of industrial development, intellectual property, trade facilitation, agricultural resilience, pandemic response, climate change, trade and environment, electronic commerce, and digital trade amongst others. Building on the work carried out to date, we commit ourselves to comprehensive discussions and negotiations in the relevant WTO bodies aimed at reviewing the relevant provisions on technology transfer across the WTO agreements, and where necessary, clarify, with a view to achieving the relevant United Nations Sustainable Development Goals and Doha Programme of Action targets as they relate to technology transfer, including access to environmentally sound technologies. We recognize the needs of developing and least-developed countries for enhanced support, cooperation and access to technology including technical assistance and capacity building in this area, and agree that special and differential treatment for developing countries shall be an integral part of all elements of this work. To this end, we shall work in cooperation with other relevant intergovernmental organisations, including, to provide data on technology access and flows.] (Egypt)”

While paragraph 9 focused on the special needs of the Least Developed Countries (LDCs), paragraph 10 deals with assisting the LDCs graduating from the LDC category.

Paragraph 11 deals with Aid for Trade, while in paragraphs 12 and 13, the draft text highlights the Sustainable Development Goals.

The draft text deals with the accession of Comoros and Timor-Leste in paragraph 15.

OTHER ISSUES

The draft text suggests that there is little convergence on other issues that remain in square brackets, including language on:

- * Trade and Gender (language proposed by Chile);
- * Role of MSMEs for advancing economic growth and sustainable development, proposed by Barbados;
- * Role and importance of trade in services proposed by CARICOM Group;
- * The special situation of Article XII countries that acceded to the WTO;
- * Commitment to the Work Program on Small and Vulnerable Economies based on Ecuador’s proposed language;
- * Sharing of experiences from the implementation of the Trade Facilitation Agreement based on language proposed by the LLDC Group – presented by Kazakhstan;
- * Work done in WTO councils and committees on WTO’s response to COVID-19 pandemic;
- * India proposed language on “cross-border remittance towards development and financial inclusion”;
- * India circulated a paragraph for examining “the relationship between the TRIPS Agreement and the Convention on Biological Diversity (CBD).”

In short, the ongoing discussions on the MC13 Outcome Document have many hurdles to cross due to sharp divergences on the key issues. While it may not be difficult to overcome the differences on many of the above issues, the litmus test is going to be on the most controversial non-mandated issues like the JSIs, said people familiar with the discussions. +

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