

POLICY BRIEF

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13th WTO Ministerial Conference: What Stakes for Bangladesh?

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Abstract: This policy brief sheds light on some of the critical issues dominating the agenda of the World Trade Organization's 13th Ministerial Conference (MC13), slated for 26-29 February 2024 in Abu Dhabi, UAE, particularly through the lens of Bangladesh's strategic interests as it approaches graduation from Least Developed Country (LDC) status. Set against a backdrop of diminishing global trade growth and rising geopolitical tensions, the significance of this ministerial in sculpting the future of multilateral trade policies and agreements cannot be overstated. The brief captures critical negotiation areas, including the e-commerce moratorium, fisheries subsidies, agriculture and food security, WTO reform, and post-graduation support measures for LDCs, elucidating their potential impact on Bangladesh. It underscores the debate over the e-commerce moratorium, with developing nations concerned about foregone revenue and developed countries in favour of its extension, stressing Bangladesh's challenge in balancing digital economic expansion and consumer welfare against fiscal considerations. The discussion on fisheries subsidies addresses concerns over overfishing and marine sustainability, highlighting Bangladesh's vested interest in retaining the policy space of supporting the sector. A notable proposal under negotiation seeks to prohibit subsidies for any developing country whose global fish catch share exceeds 0.8%. In agriculture, the focus is on food security and public stockholding (PSH) policies, where Bangladesh's concern is minimal given its Aggregate Measurement of Support (AMS) for agriculture stays below the 10% de minimis limit, though it has other stakes in the discussions. The necessity for WTO reform and a functional dispute settlement system emerges as a contentious issue, yet crucial for Bangladesh in advocating for a functioning appellate body to protect the interests of capacity-constrained developing countries. With respect to post-graduation support measures for LDCs, while the WTO General Council has adopted a decision, emphasis remains on obtaining binding commitments for extended transition periods for duty-free market access and the TRIPS waiver, ensuring that graduating LDCs continue to benefit from essential trade concessions as they adapt to their new economic status.

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13th WTO Ministerial Conference: What Stakes for Bangladesh?

I. Background

The WTO's highest decision-making body, the Ministerial Conference, meets biennially with all members present. Decisions on multilateral trade agreements are made here. The 13th ministerial conference (MC13) is scheduled for 26-29 February 2024 in Abu Dhabi, the United Arab Emirates (UAE). With MC13 approaching, there is keen anticipation for its outcomes. Given the nature of these gatherings, although many critical matters will be brought to the table, only a few might see conclusive decisions during the Conference. This event is important as it can shape the future of global trade talks and policies. Bangladesh's scheduled graduation from LDC status (in November 2026) means the upcoming WTO Ministerial should be regarded as an opportunity to engage with other WTO members with the objective of negotiating terms that could safeguard its interests and ensure a smooth transition especially by securing extended trade benefits and support measures beyond its LDC phase. Like the previous MCs, it is expected that WTO members will discuss the challenges faced by LDCs and other vulnerable countries.

The MC13 is set to take place amidst a declining trend in the global trading system, highlighted by an expected decrease in world merchandise trade volume growth from 2.7 per cent in 2022 to 0.8 per cent in 2023, according to the latest Global Trade Outlook and Statistics published by the WTO.¹ The increasing imposition of unilateral trade barriers by member states threatens the achievements gained through globalisation, risking the global trading order. Escalating geopolitical tensions between major economies, notably the USA and China, exacerbate these challenges by politicising global trade through targeted interventions. Consequently, the success of MC13 is imperative for upholding the liberal trading order.

At the conference, LDCs will aim to address issues from the 12th Ministerial Conference (MC12) held in Geneva in 2022, such as advocating for extended trade benefits for graduating LDCs. Despite these efforts at MC12, positive outcomes were limited. The conference acknowledged the challenges faced by graduating LDCs, including the loss of trade-related support measures (ISMs), but the outcome document lacked specific steps or measures for continued access to these benefits. Instead, it offered a general statement on potential WTO support for a smooth transition post-graduation.²

The policy brief sheds light on the likely issues to be discussed at MC13, with a specific focus on Bangladesh's interests and concerns related to these issues. It proposes the stance that Bangladesh should adopt on each agenda item. This brief is structured as follows: after this background, Section

¹ https://www.wto.org/english/res_e/booksp_e/gtos_updt_oct23_e.pdf

² Rahman, M. (2023). *Securing Interests of Bangladesh and Other Graduating LDCs in view of WTO-MC12*. Centre for Policy Dialogue (CPD).

II outlines the likely issues of the Ministerial along with the recommended positions for Bangladesh. The policy brief ends with a brief conclusion.

II. Issues at MC13 and Bangladesh's Interests

WTO members will have differing priority issues for MC13. In the preparatory meetings for MC13, the majority of WTO members advocated for progress on key trade issues. This includes securing an agreement on the second wave of fisheries subsidies negotiations, as well as embarking on broader reforms to the WTO, including its now largely dysfunctional dispute settlement system. In the domain of agriculture, many countries are calling for a permanent solution to the public stockholding (PSH) programme used for food security purposes and developing discipline on export restrictions. Other likely issues that might come to the table are the e-commerce moratorium, the development agenda for the LDCs, and the TRIPS waiver for diagnostics and therapeutics as discussed at MC12.

(1) The E-Commerce Moratorium

The e-commerce moratorium, which has been regularly extended by WTO members since 1998, prohibits the imposition of customs duties on electronic transmissions.³ Developed countries, including the USA, the UK and the EU, support continuing this current moratorium on customs duties on electronic transmissions. On the other hand, developing countries such as India, South Africa and Indonesia repeatedly express concern about the impact of the moratorium on forgone customs duties on electronic transmissions. They argue that the moratorium provides global tech firms with an unfair tax advantage over local competitors in developing countries. The ongoing disagreement risks leading to unilateral tariffs on digital goods and services, potentially affecting the digital economy's growth.

In Bangladesh, the government is focused on enhancing its digital landscape to evolve into "Smart Bangladesh." The nation has seen remarkable growth in its digital economy, driven by increased internet access and the widespread adoption of digital technologies, applications, and tools. With an internet penetration rate of 38.9% as of January 2023, alongside improvements in logistics communication and the popularity of online banking and mobile financial services (MFS), the e-commerce sector in Bangladesh has significantly expanded over the last decade. This growth was further accelerated by the Covid-19 pandemic, mirroring a global trend.

While physical goods are transported traditionally, some products suitable for digitisation are increasingly delivered electronically. The WTO's e-commerce moratorium addresses these digitally deliverable products and services. In developing nations like Bangladesh, this includes a wide array of products such as audio-visual content, information and telecommunications services, technology services, and software, with computer software being a predominant online sales product. This highlights Bangladesh's substantial interest in negotiations pertaining to the e-commerce

³ Barrionuevo, P. (2023, July 20). The E-commerce Moratorium: the tax debate on digital trade. Retrieved from Telefónica: <https://www.telefonica.com/en/communication-room/blog/moratorium-of-e-commerce-the-tax-debate-on-e-commerce/>

moratorium, reflecting its growing digital economy and the potential impacts of such international agreements.

However, two contrasting dynamics are at play in Bangladesh on the issue of the e-commerce moratorium. On one hand, according to a study conducted by the Centre for Policy Dialogue (CPD), the total tariff income loss owing to the 1998 moratorium is estimated to be \$62.4 million in 2021.⁴ On the other hand, the E-commerce Association of Bangladesh supports the moratorium due to its impact on the export of electronically transmitted products and earning remittances. The country's software industry is a growing sector, with estimated annual IT export revenues worth \$1.3 billion.⁵ Furthermore, the moratorium can enhance consumer welfare by reducing prices for digitally deliverable products and services. Against this backdrop, Bangladesh is therefore faced with a nuanced situation, benefiting from and losing due to the moratorium, suggesting a balanced approach at MC13 might be beneficial.

One strategic option for Bangladesh, given its interests and concerns as a graduating LDC is to deftly manoeuvre and align with countries advocating for the extension of the moratorium. In exchange, Bangladesh could seek a favourable LDC graduating package, which can include an extension of the transition period retaining LDC-related and duty-free market access and TRIPS waiver.

(2) Fisheries Subsidies

While MC12 focused on prohibiting subsidies related to illegal, unreported, and unregulated (IUU) fishing, MC13 will concentrate on overcapacity and overfishing (OCOF). At MC12, an agreement on fisheries subsidies was reached but has yet to become operational. For MC13, the chair of the Doha fisheries subsidies negotiations introduced draft documentation on 16 January 2024, addressing the regulation of subsidies that lead to OCOF. The proposal involves a two-tiered hybrid strategy, assessing the annual combined value of each member's fisheries subsidies. Developing countries argue that this favours major subsidisers like the EU, the US, China, Japan, and Korea, allowing them to maintain significant subsidies. These subsidisers could provide prohibited subsidies if they meet stringent notification requirements, ensuring fish populations remain at sustainable levels.

Regarding fisheries agreements, India aims to advocate for robust disciplines on industrial fishing while safeguarding the interests of developing nations. There remains fear among developing countries about how compliant the big subsidisers will be if they are allowed to do so. This has led to fundamental differences between the group of major subsidisers and the group of developing countries. For the LDC graduating countries, there is a proposal to allow subsidies after graduation within the Exclusive Economic Zone (EEZ). However, the number of years for the exemption has not been determined yet. Regarding the special and differential treatment (S&DT) for developing countries, the draft proposed that prohibition on subsidies will not apply to any developing country

⁴ The total tariff income loss owing to the 1998 moratorium is estimated to have increased from about \$20.73 million in 2017 to about \$62.4 million in 2021 according to a study carried out by the authors for a CPD study. Retrieved from the internet as on 01.02.2024, <https://cpd.org.bd/the-emerging-digital-economy/>

⁵ <https://www.thedailystar.net/business/economy/news/it-exports-shoot-52pc-jul-apr-3078631>

whose share of the total global fish catch does not exceed 0.8%.⁶ Developing countries whose share exceeds the threshold will get a transitional phase that is yet to be decided. Against the backdrop, it remains to be seen whether any agreement on subsidies to OCOF can be reached at MC13.

Globally, Bangladesh is a leading country in fishing from open waters, holding the third position.⁷ Fishing is a major source of animal protein, fulfilling two-thirds of the country's demand and supporting around 20 million jobs, including roles for 1.4 million women. Contributing 2.43% to the GDP, the sector's production stands at approximately 4.75 million metric tons.⁸ The Bay of Bengal, rich in marine biodiversity, hosts hundreds of species of fish, shrimp, crabs, lobsters, and corals. In 2020-21, marine catch from this area constituted 15% of Bangladesh's total fish production. However, the small, poorly equipped boats limit fishermen's capacity to harvest from deeper waters.⁹ Investing in better-equipped vessels could unlock the potential of deep-sea species, enhancing food security and job creation in coastal areas. As Bangladesh approaches LDC graduation, securing favourable terms in the ongoing fisheries negotiations at MC13 is crucial to sustain and grow this vital sector. Spanning approximately 119,000 square kilometres in the Bay of Bengal, Bangladesh's expansive marine zone harbours the potential to greatly reduce poverty.¹⁰ Proper management and utilisation of these marine resources could offer substantial benefits, including food security and job opportunities for the economically disadvantaged communities along the coastline.

The classification of Hilsa fish presents uncertainty. Although Hilsa's natural environment is marine, it migrates to rivers for spawning, which is the prime time for its capture. It has been noted that Bangladesh categorises its Hilsa catch as marine when reporting to the FAO. Should this classification hold, Bangladesh's contribution to global marine capture is marked at 1 percent. Given WTO stipulations exempting developing nations with less than 0.8% of the global catch from subsidy prohibitions, it is imperative for Bangladesh to seek clarification from the FAO regarding Hilsa's categorisation. The Department of Fisheries' 2021-22 Annual Report documents that Hilsa comprises 45.6% of Bangladesh's total marine harvest. Excluding Hilsa from marine catch statistics could significantly lower Bangladesh's proportion of the global catch to below 0.8%. Conversely, including Hilsa would increase Bangladesh's proportion above 0.8%, impacting its capacity to offer capacity-building support post-LDC graduation as outlined in the proposed regulations. Therefore, the transition period designated for LDC graduation must be sufficiently pragmatic to allow these countries to embark on capacity-building by investing in skill enhancement, technological progress, and infrastructural development, thereby reducing subsidy dependence and optimally utilising marine resources. Bangladesh is positioned to advocate for major subsidisers to commit to the 'polluter pays' principle, highlighting the minimal contribution of LDCs to climate change challenges impacting fishing sustainability (Rahman, 2023). Given that developed nations have a greater

⁶ https://www.wto.org/english/news_e/news23_e/fish_21dec23_e.htm

⁷ <http://tinyurl.com/5v2mht6x>

⁸ <http://tinyurl.com/42pua24s>

⁹ <http://tinyurl.com/5v2mht6x>

¹⁰ <https://www.tbsnews.net/economy/bangladesh-starts-trial-tuna-fishing-bay-february-758762>

responsibility towards climate change effects on fishing, any agreement imposing disproportionate risks on LDC fishermen's livelihoods would be deemed inequitable.

(3) Agriculture and Food Security

A considerable part of the discussions at MC13 is expected to centre around agricultural issues, similar to what occurred at MC12. According to a summary note issued by the WTO's Director-General on the Senior Officials Meeting (SOM) held on 23-24 October of last year, key agricultural issues expected to be the focus of MC13 include addressing concerns related to public stockholding (PSH) for food security, domestic support, market access, special safeguard mechanism (SSM), cotton, export restrictions, and export competition.¹¹ However, it appears that the meeting will primarily revolve around PSH, which involves subsidised purchases of food stocks by the government. The G-33 group of developing countries has proposed placing the PSH programme under 'the green box', considering its contribution to the livelihoods of poor and subsistence farmers. India wants the current temporary flexibility on the issue to be expanded for all developing countries and all types of staple foods permanently, due to its crucial role in ensuring food security and improving farmers' livelihoods. The country has even threatened to block any MC13 outcome without an agreement on this matter (Rockwell, 2023).¹² However, the majority of members of the Cairns Group, an interest group of 19 agricultural exporting countries, oppose any stand-alone decision on the issue.

They consider the disciplining of trade-distorting domestic support as a key priority for MC13. It is worth noting that, according to the Agreement on Agriculture (AoA) of the WTO, the de minimis limit for Aggregate Measurement of Support (AMS) in agricultural products is 10 per cent for developing countries and 5 per cent for developed countries. India has exceeded the de minimis limit of AMS since 2001.¹³ Besides, at the agriculture negotiations meeting held on 16-17 January in the WTO, several members brought up the vulnerabilities of LDCs and Net Food-Importing Countries (NFIDC), calling for immediate measures to help these countries resolve food security problems.¹⁴ Many developing countries also advocated for the inclusion of SSM to counter import surges and price declines. Brazil stressed the importance of a holistic approach, opposing any cherry-picking results or any low-hanging fruit. It thinks that the problem of food insecurity cannot be solved in the absence of robust agricultural trade. Having said all of this, there is a small chance of achieving substantial results in agriculture at MC13 due to the differing views of member states. However, the upcoming meeting can serve as the steppingstone to any successful agricultural package at MC14.

The preceding discussion brings the question of Bangladesh's stance on these matters. To begin with, despite being a net importer of food and agricultural products, Bangladesh is yet to be included

¹¹ <http://tinyurl.com/myjvbjy6>

¹² Rockwell, K. (2023, December 14). WTO Members Prepare for Disappointment At February Ministerial Meeting. Retrieved from Wilson Center: <https://www.wilsoncenter.org/article/wto-members-prepare-disappointment-february-ministerial-meeting>

¹³ <http://tinyurl.com/3nevh3h6>

¹⁴ https://www.wto.org/english/news_e/news24_e/agng_17jan24_e.htm

in the category of Net Food Importing Countries (NFIDC).¹⁵ Its status as an LDC allows it to provide export subsidies for non-agricultural products. Currently, the government offers up to a 15% export subsidy on various agricultural products.¹⁶ Bangladesh is going to apply for inclusion in the NFIDC list to continue being able to provide certain subsidies to agricultural export related activities until 2030.¹⁷

Regarding PSH, the concern is not as significant for Bangladesh as it is for India, considering Bangladesh's Aggregate Measurement of Support (AMS) for agriculture remains under the 10% de minimis threshold.¹⁸ In contrast to India, Bangladesh's AMS for rice and wheat in FY21 was 1.89% and 4.65%, respectively, as per the notification submitted to the WTO by the government of Bangladesh.¹⁹

Bangladesh has concerns regarding export restrictions without prior notification. Prior notification, as mandated by Article 12 of the Agreement on Agriculture, is crucial for Bangladesh. While other agricultural issues may currently hold less relevance for Bangladesh, it should not remain passive in these discussions. Given its evolving status as a developing nation, Bangladesh should actively engage in and, where appropriate, support the collective interests of developing countries in agricultural negotiations.

(4) Reform of the WTO and its Dispute Settlement System

MC13 is referred to as a 'reform ministerial' aimed at shaping the future of the WTO and its ability to uphold multilateralism. Following MC12's mandate, reform discussions are focused on enhancing WTO functions, applying S&D provisions more effectively, and ensuring the dispute settlement system functions efficiently. Significant efforts have been made to improve the operations of various WTO bodies, with some measures already implemented. The necessity to address imbalances in current WTO Agreements has been underscored, especially to ensure developing countries and LDCs have sufficient policy space. At an informal WTO General Council meeting, the Africa Group proposed a 'Development Perspective on Institutional Reforms', advocating for inclusivity, transparency, and

¹⁵ According to the WTO regulations, a country can be considered as a net food-importing country if its imports of agricultural and food products surpass its exports in three out of five consecutive years.

¹⁶ <https://www.bb.org.bd/mediaroom/circulars/fepd/jan302024fepd02.pdf>

¹⁷ According to the Nairobi Ministerial Decisions, adopted at the 11th Ministerial Conference of the WTO, held in December 2015, LDCs and net food-importing developing countries (NFIDCs) can, until 2030, subsidize export-related certain activities, including marketing, handling, and upgrading, as well as internal and international transportation. Also, LDCs and NFIDCs can enjoy 36-54 months repayment terms for imports benefiting from export financing support compared to 18 months for developing countries. Bangladesh is currently not included in the list of the WTO's NFIDCs. As per information provided by the commerce ministry to the WTO, Bangladesh imported various edible food products amounting to approximately \$10.60 billion in the FY22 to address heightened demand during a global shortage. Conversely, Bangladesh only exported edible food items of \$796 million in the same fiscal year. <https://thefinancialexpress.com.bd/trade/banks-asked-to-submit-accurate-data-on-time>

¹⁸ According to recent calculations, Bangladesh's current aggregate measurement of support (AMS) is 1.33 per cent. Retrieved from the net as on 02.02.2024, <https://www.rapidbd.org/wp-content/uploads/2023/10/LDC-Policy-Brief.pdf>

¹⁹ <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=t:/G/AG/NBGD11R1.docx&Open=True>

the maintenance of consensus decision-making and special and differential treatments.²⁰ They highlighted the importance of setting minimum standards of conduct within WTO bodies. The overarching goal of WTO reform is to make it a dynamic and relevant institution that addresses contemporary and future challenges effectively.

The discussions on reforming the dispute settlement system (DSS) are proceeding through an informal process led by a facilitator, not within the formal Dispute Settlement Body. This approach has drawn significant criticism from numerous developing countries due to perceived shortcomings in transparency and inclusiveness. A recent draft ministerial decision on the DSS, presented by the facilitator, omits the appeal or review mechanism, opting against reinstating the two-stage dispute resolution process.²¹ The concerns among developing countries stem from the perception that the draft on dispute settlement reform, facilitated informally, might disproportionately benefit major developed nations. The reform's current direction appears to cater to the United States' preference for continuing informal discussions, raising doubts about achieving a consensus on DSS reform at MC13. The divide between developed and developing nations over both the process and substance of the reform proposal significantly diminishes the prospects for agreement.

Maintaining a functional appellate body within the WTO aligns with Bangladesh's interests, particularly for ensuring that LDCs and nations transitioning from LDC status have their grievances addressed. Historically, a fully operational Dispute Settlement System (DSS) has allowed for equitable resolution of trade disputes, enabling smaller economies to stand on equal footing with more powerful countries. Strengthening the DSS is crucial for preserving fairness and impartiality in global trade, ensuring all member states, regardless of their economic or political influence, have access to a reliable mechanism for resolving disputes.

(5) Support measures to LDCs after graduation to ensure smooth and sustainable transition

Bangladesh along with other LDC members of the WTO has been pursuing an extended transition period for the S&DTs. A comprehensive submission was tabled by WTO LDC Group (WT/GC/W/807/Rev.2) on 06 December 2022. The submission contained a comprehensive set of smooth transition measures covering unilateral DFQF schemes and extension of LDC-specific special provisions in the WTO and technical assistance and capacity building to support members when they leave the LDC category. The WTO General Council adopted a decision (WT/L/1172) on 23 October 2023 that encourages DFQF preference-granting Members to provide a smooth and sustainable transition period (without assigning an agreed period for DFQF extension) for withdrawal of such preferences after graduation. This is the first WTO decision on LDC graduation. However, discussions on the extension of other LDC specific S&DT provisions after graduation is still on-going. There is an expectation that a decision will be taken in MC13 on those provisions and Bangladesh needs to pursue for a decision in MC13. Most important issues of this submission from Bangladesh's perspective are extension of TRIPS waiver, inclusion of graduated LDCs in Annex VII of the Agreement

²⁰ <https://www.twn.my/title2/wto.info/2023/ti231101.htm>

²¹ <https://twn.my/title2/wto.info/2024/ti240101.htm>

of Subsidies and Countervailing measures and Special procedures in Dispute settlement involving LDCs.²²

It is worth noting that the General Council's decision, based on the 'best endeavour' principle, is not legally binding. At MC12, a significant achievement would be if WTO members could agree on binding principles or commitments that include an extended transition period for duty-free market access and TRIPS waivers for graduating LDCs. Such steps would represent a substantial advancement in supporting these countries through their transition, ensuring they continue to benefit from critical trade concessions as they adjust to their new status.

III. Conclusion

The rise of multipolarity in the global economy and heightened US-China tensions pose severe challenges for multilateralism. These dynamics, coupled with the Doha Round impasse, illustrate the growing difficulty of achieving breakthroughs in multilateral trade talks. This complex international landscape hinders the consensus-building process essential for advancing global trade agreements, reflecting a shift towards bilateralism and regionalism as countries navigate the evolving geopolitical context. It is likely that many issues will remain unresolved at MC13. Divergent views among various member states on a multitude of issues have made reaching a consensus challenging. Given this backdrop, Bangladesh must play a proactive role, using the MC13 platform and making its contribution to revive multilateralism, which is crucial for capacity constrained developing countries like Bangladesh.

By actively engaging and aligning with the broader LDC group and supportive members, Bangladesh can leverage its position to advocate for outcomes that bolster economic resilience and growth for LDCs, including those in transition. Bangladesh should employ a pragmatic approach during conference discussions on each agenda item. In terms of WTO reform, despite the negotiations being dominated by larger, economically powerful nations, Bangladesh must advocate for a fair and effective dispute settlement system, essential for safeguarding the interests of smaller, vulnerable, and capacity-constrained developing nations.

²² Under the WTO's Subsidies and Countervailing Measures (SCM) Agreement, LDCs are exempt from the prohibition on export subsidies for non-agricultural products. Developing countries enjoy similar exemptions until their Gross National Income (GNI) per capita reaches \$1,000 in constant 1990 dollars. However, clarity is lacking on whether graduating LDCs with a GNI per capita below \$1,000 are automatically eligible for these exemptions. Article 27.2 of the WTO agreement, mentioning Annex VII which includes 21 countries but not Bangladesh, introduces ambiguity that requires resolution.

The logo for RAPiD features the word "RAPiD" in a bold, sans-serif font. The letter "i" is lowercase and has a small circle above it. A dotted line starts from the top left of the "R" and extends towards the top right of the "D".

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