

Policy Brief

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Bangladesh's Trade Interests in the WTO: MC13 and Beyond

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Highlights

- Bangladesh participated in the WTO-MC13 with triple identity: as an LDC, as a Graduating LDC (GLDC), and as a future (non-LDC) developing country.
- Excepting the decision on 'due restraint' in connection with taking graduated LDCs to Dispute Settlement Body (DSB), no concrete decision was taken favouring the GLDCs at MC13.
- Bangladesh will need to remain closely engaged in WTO discussions in Geneva so that some concrete decisions could be reached at the upcoming WTO-MC14 in Cameroon to be held sometime in 2026.
- Bangladesh will no doubt be graduating out of the LDC group sometime in foreseeable future. The smart thing to do will be to take adequate and appropriate concrete actions towards sustainable graduation.

Context and Backdrop

The 13th Ministerial Conference of the WTO (WTO-MC13) in Abu Dhabi, UAE (February 26–March 1, 2024) was, for understandable reasons, of heightened interest and importance to Bangladesh as a Graduating Least Developed Country (GLDC). As is known, Bangladesh is set to graduate out of the group of the LDCs in November 2026 and MC13 is, most likely, the penultimate Ministerial before the country leaves the group. Since there were a number of issues on the table of discussion and negotiation at MC13 which were related to particular concerns and interests of GLDCs such as Bangladesh, the conference had an added importance for the country.

Preparation and Strategy

To note, in participating in the negotiations at MC13, Bangladesh's stance and strategy regarding various issues had to take into cognisance the country's triple identity -- as an LDC, as a GLDC and as a future developing country (in view of the country's post-2026 status). Indeed, one needs to be reminded in this backdrop that a GLDC is still an LDC since graduating LDCs are not recognised as a distinct group in the WTO (the ones that are recognized are LDCs, non-LDC developing countries, developed countries and small,

vulnerable economies -- SVEs). Thus, Bangladesh's participation had to take into account solidarity of the group of the LDCs in the WTO and at the same time be informed by its interests as a future developing country.

It needs to be appreciated that much of the work that goes into global conferences such as the WTO-4 has to take place prior to the event itself. From this perspective, and in view of the WTO MC13, discussions held in Geneva during the period between MC12 and MC13 were of crucial importance. In this connection, the hard and dedicated work carried out by the Bangladesh Mission in Geneva, in close consultation with the Ministry of Commerce, the GoB, deserves recognition and appreciation. The sound preparatory work helped the Bangladesh team to firm up the country's position on key issues of interest in an informed way when the Trade Ministers from all WTO Member Countries met at MC13 to give final shape to the issues under discussion at the negotiating table.

In going to Abu Dhabi, it was evident that there was large divergence among WTO members as stance and approach concerning some of the major issues that came up for discussion at MC13. The fact that in the end members were able to thrash out an outcome document, albeit following intense and extended last-minute discussions was, by any measure, remarkable. For relatively weaker economies, a rule-based multilateral trading system best serves their interests and hence this was a welcome news for Bangladesh.

Bangladesh's Priorities

However, in doing so, the overall ambition level of the MC13 had to be toned down considerably (as is known, WTO Ministerial outcomes are consensus-based, and follows the 'nothing is agreed unless everything is agreed' principle as stipulated under the WTO's single undertaking mechanism of decision making). It will only be fair to say that while some concrete decisions catering to their demands were taken, the MC13 did not fully live up to the expectations of the GLDCs. The outcomes were not in sync with the spirit of the SDGs (particularly, SDG17 relating to Global Partnership) and the decadal LDC Summit held in Doha in March 2023 (LDC V), which had endorsed the Doha Program of Actions for the LDCs (2023–2032). On the other hand, it will also be fair to say that a large part of whatever concrete decisions that could be agreed upon at MC13 concerned issues of interests to the GLDCs.

In Abu Dhabi, Bangladesh pursued a number of issues which were informed by its interests as a GLDC. The important ones were the followings: (a) extension of preferential (duty-free, quota-free) market access beyond the graduation timeline for an agreed period; (b) extension of other international support measures (ISMs) by an additional period following graduation of the LDCs; (c) safeguarding Bangladesh's interests in the Fisheries Subsidies negotiations; and (d) securing LDC and GLDC interests in any likely WTO reforms. Bangladesh also had keen interest in some of the other agendas on the table: the Peace Clause concerning subsidies for public stockholding, end of the Moratorium on E-commerce, and Plurilateral Negotiations.

With regard to the extension of the ISMs for the GLDCs, there was already a positive decision taken by the General Council of the WTO at its meeting held on October 23, 2023. The decision was taken in view of the submission by Chad on behalf of the group of the LDCs in the WTO. The submission concerned extension of the preferential market access and other ISMs for the GLDCs, for a certain period following their graduation out of the group of the LDCs. In light of this, MC13 took the following decision: 'To encourage those Members that graduate or remove countries from unilateral tariff or duty-free and quota free (DFQF) preference programmes

reserved for least developed countries (LDCs) based on their being graduated from the UN list of LDCs, to provide a smooth and sustainable transition period or withdrawal of such preferences after the entry into force of a decision of the UN General Assembly to graduate a country from the LDC category.’

Challenges for GLDCs

While this decision was most welcome, a few caveats need to be kept in mind: Firstly, the decision is in the form of best endeavour (thus, not mandatory), leaving it to the preference-offering countries whether to agree to an extension of the DF-QF preferential market access to the GLDCs or not; secondly, there is no mention of any concrete timeline (although the original submission by the group of LDCs had asked for a 12 years extension which was subsequently toned down to six to nine years); and thirdly, only those countries that had in place preferential scheme for the LDCs were covered by the MC13 decision (this meant that countries such as the USA, which does not have a LDC-specific preferential scheme, remained outside the ambit of the Ministerial decision).

Nevertheless, the MC13 decision opens up an opportunity for the GLDCs to pursue the cause of extension of the DF-QF preferential treatment on a bilateral basis with WTO member countries which have LDC -- specific preferential market access schemes. As is known, the EU and the UK have already indicated (much before the MC13 decision) that they would extend their respective market access schemes for the LDCs for an additional three years (in view of the EU’s Everything But Arms -- EBA -- scheme for the LDCs, and the UK’s Developing Countries Trading Scheme - DCTS). The decision of the EU and the UK in this connection establishes a benchmark and provides a reference point for the GLDCs as they enter into discussions with partner countries in this connection. In such discussion, conditions of market access such as the rules of origin will need to be carefully considered.

With regard to the other ISMs (the so-called Annex 2 of the LDC submission endorsed at the aforesaid General Council), there was a decision with regard to only two -- Technical Assistance and Capacity Building support. MC13 took the following decision: ‘A Member that graduates from the LDC category shall continue to be eligible for LDC-specific technical assistance and capacity building provided under WTO’s Technical Assistance and Training Plan for a period of three years after the date on which the decision of the UN General Assembly to graduate that Member from the LDC category becomes effective.’

MC13 Outcomes and Implications for Bangladesh

The Ministerial Decision also mentions that GLDCs shall continue to benefit from special procedures set out in Article 24 (Due Restraint) which stipulates not taking any LDC to the Dispute Settlement Body (DSB) of the WTO, for three years. This also was an important deliverable of the MC13 as far as the GLDCs are concerned.

Ensuring Continued Benefits

With regard to other Special and Differential Treatment (S&DT) provisions, the MC13 Decision stipulates that ‘The Sub-Committee on LDCs, under the guidance of the General Council, shall continue its work on the remaining provisions listed in Annex 2 of the document WT/GC/W/807/Rev.2, including Annex VII of the Agreement on Subsidies and Countervailing Measures (ASCM), which are not addressed by the present

decision of the General Council Decision WT/L/1172, with a view to making recommendations, if any, by December 2024.'

To note, the remaining issues in Annex 2 include a number of important issues for the GLDCs. If no decision is taken to extend these for a time-bound period, at MC14, Bangladesh will no longer be able to enjoy those LDC-specific S&DTs once it graduates out of the LDC group. These include the provision of export credit subsidies (not allowed any more), flexibilities in TRIPS compliance (will need to comply with TRIPS-related disciplines applicable for developing countries even though the LDCs are allowed to enjoy those till July 2034), waiver under the Doha Decision on TRIPS and pharmaceutical (will need to comply although the LDCs are allowed to enjoy the flexibilities as regards compliance with patent and licensing requirement till December 2032) and notification (frequency of notifications concerning trade-related matters will rise compared to that for the LDCs), to name only a few.

In view of the above, Bangladesh will need to pursue the Annex 2 issues, in collaboration with LDCs and other GLDCs, in the discussions to be held in Geneva, in relevant bodies, during the run-up to the MC14 in Cameroon, to be held sometime in 2026.

Discussion on Fisheries Subsidies and 'Peace Clause' Implications

With regard to the issue of Fisheries Subsidies concerning overcapacity and overfishing, Bangladesh pursued the case for including certain flexibilities for the GLDCs, similar to the ones proposed for the LDCs. While the negotiating text in Abu Dhabi included some of these, these remained within brackets (which meant that no consensus on these could be reached in Geneva).

Also, Bangladesh had concerns with regard to the obligations that developing countries would be required to take, more specifically, in view of the threshold for enjoying such flexibilities (a threshold of less than 0.8 per cent of global marine catch was set for eligibility in this regard). Bangladesh's marine fish catch currently exceeds this threshold (if Hilsha fish is considered as part of marine catch).

In the end, however, no decision could be reached, particularly because of India's strong position concerning allowable subsidies for conducting artisanal fisheries and fishing in exclusive economic zones. On the contrary, the negotiating text provided various concessions to big fishing companies belonging to large subsidy-providing developed countries. This also remained a matter of contention. Bangladesh's interest regarding fisheries subsidies aligned with those of India and some of the other developing countries. In a sense, that no Ministerial decision could be reached in this regard was somewhat of a welcome news for Bangladesh if the old adage no deal is better than a bad deal is kept in mind. In the discussions to be followed in Geneva, Bangladesh, in collaboration with other LDCs and GLDCs, as also developing country WTO members such as India, will need to pursue the country's interests in a proactive manner (concerning, for example, flexibility from obligations, review of the aforesaid threshold, etc).

Yet another issue which was hotly debated at the MC13 was the Peace Clause and Public Stock Holdings. The Peace clause stipulated that subsidies paid in the process of government food procurement will not be included in the aggregate measure of support (AMS) allowed for agricultural commodities (there was an agreement not to take this issue to the WTO-DSB in case of any violation). India, particularly, had strong interest in the issue.

It was keen to make the Peace Clause permanent (the subsidies were to be considered as Green Subsidy, i.e. not to come under the AMS calculation). To note, Bangladesh's own agriculture subsidies is way below the AMS threshold (which was set at equivalent to 10 per cent of the agri-GDP). Broadly speaking, its interest was aligned with that of India in this regard since the Peace Clause would have enhanced the policy space for Bangladesh in managing the development of its agriculture sector. Some (mainly developed countries) WTO members argued that the Peace Clause should be part of the broader discussion in the WTO on Agriculture sector reforms, and should not be treated as a standalone subject. No agreement could be reached on this issue and it was kept for future negotiation.

E-commerce Duties and Plurilaterals

With regard to the moratorium on imposing customs duties on e-commerce, in place since 1998, India, South Africa and Indonesia were the key proponents of the proposal to end the moratorium. They argued that the moratorium only benefitted the developed countries since these were the major exporters of e-commerce services and that developing countries were losing significant customs duties by not being able to impose tariffs on imported e-commerce items.

To note, Bangladesh has both offensive and defensive interests in view of this. A recent CPD study had estimated that Bangladesh was losing revenue worth about US \$40 million annually because of the moratorium. However, Bangladesh also has offensive interests in this regard -- it is also an exporter of various e-commerce services. MC13 decision was that the moratorium would come to an end at MC14 or March 31, 2026, whichever is earlier. There will be more discussion on this issue in Geneva in the coming days. If an agreement could be reached to the effect that e-commerce exports from LDCs and GLDCs will be exempted from imposition of duties (perhaps in the form of a threshold for exports, for a time-bound period), then the end of the moratorium will most likely best serve the interests of Bangladesh and other GLDCs.

WTO Reforms

In terms of WTO reforms, the MC13 basically reaffirmed the commitment made at MC12 held in June 2022 in Geneva. The Ministers instructed the WTO General Council to continue the work that was already undertaken in this connection, and report the progress at MC14. Putting in place a well-functioning dispute settlement mechanism (the DSM is often called the jewel in the crown of the WTO) is indeed the key to making WTO functional and effective from the perspective of enforcing the rules, disciplines and obligations under the various WTO Agreements. To recall, the DSM is now virtually at a standstill because of the US opposition to appointment of judges to the Appellate Board of the DSB. However, no tangible progress could be made in this connection at MC13. The US and some other WTO member countries wanted the discussion on the issue of DSM to be part of the broader discussion on WTO reforms. Developing countries and LDCs such as Bangladesh are of the opinion that any discussion on the reforms of the WTO should keep at its core the development dimensions of the multilateral trading system.

Bangladesh's Future Stance

It is to be noted that the Plurilateral Initiatives have been on the rise in recent years. As is known, Plurilaterals are platforms where a large number of countries are discussing various issues outside of the formal mechanism of WTO negotiation and discussion. These cover a wide array of areas including Investment Facilitation for

Development (IFFD), Trade and Environmental Sustainability Structured Discussions (TESSD), Joint Initiative on E-Commerce and a number of other such discussions. Bangladesh (as also India) is not participating in any of these discussions (while China is in most).

However, it is felt that Bangladesh should reconsider its position in this backdrop. Firstly, many LDCs are taking part in these discussions (e.g. 25 LDCs are taking part in the IFFD discussions). Secondly, the entry into force of new disciplines on Services Domestic Regulation at MC13 indicates that Plurilaterals are gaining traction and there is a growing support for some of these discussions. An increasing number of countries are interested to bring these under the ambit of the WTO discussions and multi-lateralise what is agreed on a most-favoured nation (MFN) basis (meaning that agreed provisions will apply for all WTO members). And thirdly, participation will allow Bangladesh to remain engaged in rule-setting discussions in the course of which it would be able to embed provisions in the Plurilateral text from which LDCs and GLDCs, as also developing countries, could stand to gain.

The Road towards Smooth Graduation

As one of the leading members of the LDC group in the WTO, and as a major GLDC, Bangladesh has traditionally played an active role in advancing the interests of these countries in view of the discussions and negotiations in the WTO. In the coming days, in the run up to the WTO MC14, Bangladesh will need to continue to play this role and remain proactively engaged in the discussions to be held in Geneva. This has now emerged as even more important and urgent because of the need to secure Bangladesh's interests both as a GLDC and as a future developing country member in the WTO. Hence the justification of the point made at the very onset that Bangladesh will need to participate in the WTO discussions not only by taking into cognisance the concerns and interests of LDCs and GLDCs, but also those of the (non-LDC) developing country members.

Bangladesh will need to take advantage of what has been decided at MC13 concerning issues of interests to the GLDCs, and also what is already there in the various WTO Agreements favouring the graduated LDCs. The latter, for example, include extended period in case of accessing benefits from the Technology Bank for the LDCs (for an additional five years), Aid for Trade under the Enhanced Integrated Framework (EIF) for the LDCs (for an additional five years following LDC graduation), access to UN Capital Fund and LDC Climate Fund, Legal Support for graduated LDCs and others.

Also to note, of the 183 S&D provisions under major 16 WTO Agreements, only 25 are LDC-specific (LDCs are eligible to benefit from the other S&DTs as well); developing countries are eligible to enjoy those that are not specifically targeted to the LDCs (158 S&D provisions). Bangladesh should identify these S&DTs and take advantage of the flexibilities allowed under these provisions once it graduates out of the LDC group.

Concluding Remarks

Bangladesh is at present taking various initiatives towards smooth LDC graduation and to make graduation sustainable. A high-level Committee was constituted at the Prime Minister's Office to this effect. The seven sub-committees formed by this Committee prepared a number of recommendations towards Bangladesh's sustainable graduation. In view of the work of the aforesaid committee, it will be important to take due note of the MC13 decisions, both in terms of their implications, and also the potential benefits originating from those. Bangladesh's negotiators will need to firm up the country's strategy to safeguard and secure Bangladesh's



interests, taking into cognisance the country's current status as a GLDC, and its future as a developing country member of the WTO. In view of the emergent scenario, the idea of requesting deferment of the graduation timeline should not be discarded. However, this needs careful consideration since inclusion (to the LDC group) is voluntary, but graduation is mandatory depending on the track record in view of the graduation thresholds.

If a discussion on deferment is to be initiated, it will have to follow certain procedures. Also, it will be advisable that Bangladesh moves not singly, but with other graduating LDCs in the region such as Nepal and Lao PDR.

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