

Report and Summary Analysis of Outcomes at the WTO Ninth Ministerial Conference held in Bali, Indonesia 3 - 8 December 2013

18 December 2013

INTRODUCTION¹

The Ninth WTO Ministerial Conference concluded successfully with adoption of a total of sixteen decisions including a succinct Ministerial declaration, five decisions recorded under WTO's regular work, and ten decisions on elements for a Bali package from the Doha Development Agenda covering development and least developed country (LDC) issues, agriculture, and trade facilitation. The Bali package constituted texts in those areas, presented by the Director General to the General Council in Geneva on 26 November. Of the Bali package decisions, four are specific to LDCs (rules of origin, operationalization of the services waiver decisions in favor of LDCs, duty-free quota-free (DFQF) treatment, and cotton). The Bali Ministerial Declaration was not negotiated in Geneva or among Ministers in Bali. Perhaps due to its brevity and precision, Ministers reviewed and adopted the declaration as presented by the Director General. Ministers also adopted Yemen's Protocol of accession to the WTO.

The adoption of the Bali package decisions, included revisions to the food security and trade facilitation texts presented by the Director General in Bali. Since the Doha Declaration launch of the Doha Development Agenda (DDA) round negotiations in 2001, other than a few decisions taken largely benefiting LDCs, certain implementation-related decisions, and the decisions on elements of market access modalities in the 2005 Hong Kong Ministerial Declaration, this package represents the first installment in substantive outcome decisions taken by Ministers under the DDA. The Director General did not propose any changes to Ministers on the drafts presented to the General Council on development and LDC issues, TRQ administration and Export Competition.

The Bali Ministerial was originally scheduled for 3- 6 December. However, due to the need for continued consultations, the meeting extended to 7 December.² Two HoDs informals were held on 4 and 6 December, respectively, and additional round the clock consultations were held from the night of 4 December through 5 -7 December. The main issues addressed in these sessions were elements raised by certain Members on the food security text and within the draft trade facilitation drafts agreement.

The Director General presented the Bali package texts from Geneva to Ministers at the informal HoDs held on 4 December. At that meeting, a large number of Members, developed, developing and LDCs, supported efforts to conclude a Bali package and endorsed that the Director General come up with a revised set of texts with his suggestions for bridging the remaining differences. Other developing countries, including some ACP Member States, intervened during that meeting, calling for more balance between the food security proposal and trade facilitation, in particular where the

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² At the 26 November General Council meeting in Geneva, the Director General reporting as Chair of the Trade Negotiations Committee, felt that while almost there, negotiations in Geneva failed to reach consensus on a number of issues requiring political will to resolve. He was somber in his assessment, while at the same time maintaining the position that the Ministerial in Bali should not be a negotiating one. He felt that no amount of additional time in Geneva could bring forth the necessary consensus. Nevertheless, the LDC Group announced on 28 November resolution of additional flexibilities they sought for the trade facilitation Section II text and on 29 November a number of delegations across different economies and the coordinators of the ACP, LDC, and Africa Groups endorsed that the Director General continue efforts to finalize a package by 6 December, when the Ministerial in Bali was scheduled to close.

former was not linked to a permanent solution. Moreover, India complained about the “archaic” nature of the existing Agreement on Agriculture, which was an obstacle for food security programmes in that the reference period was in the 1980’s. India held a press conference on 5 December to explain its position and insist that it was not alone in support for the proposal. Some developing countries, indicated that they might be able to use the food security decision as well and called for resolving the remaining brackets in TF Section II and taking up a post-Bali work programme to ensure deliberation on the (DDA) and its relevant mandates agreed at the previous Ministerial Conferences.

All developing countries and LDCs, including the ACP Group and Africa Group Coordinators, called for a defined post-Bali work programme to take up remaining DDA issues. Part III of the Bali Ministerial Declaration accompanying all texts in the package does contain Ministerial instructions to the TNC to develop a post-Bali work programme within the next 12 months.

After round the clock consultations from 4-6 December, a decision on food security was agreed and aligned with the rest of the package of DDA related agreements presented to Ministers. Another series of round the clock consultations ensued before agreement was also reached in the early morning hours of 7 December in response to a proposal from, ACP member State, Cuba on non-discrimination in transit trade. On food security, India wanted clear agreement to link the interim solution with negotiations to convert the decision into a permanent one. Cuba wanted text in the trade facilitation Agreement that Members not apply discriminatory measures to goods in transit, or vessels or other means of transport, that any measures under exceptions in WTO Agreements do not constitute a disguised restriction on trade. The Director General did incorporate the last concept on disguised restriction on trade in his revised texts presented to Ministers on 6 December. Therefore, the further demurrer from Cuba largely addressed the concept of non-discrimination. The ACP Coordinator had discussed with the parties possibilities to reflect Cuba’s concerns in the Ministerial Declaration and complementarity with the GATT. In fact, Cuba’s text was very similar to existing GATT Article V.2. The solution ultimately was the insertion of a clause in paragraph 1.8 of the Bali Ministerial Declaration reaffirming that “the non-discrimination principle of Article V of the GATT 1994 remains valid.”

Ministers adopted a separate Ministerial Decision on the Trade Facilitation Agreement, which includes an annex containing the Agreement itself. The decision concludes the TF negotiations, “subject to legal review for rectifications of a purely formal character that do not affect the substance of the Agreement.” A Preparatory Committee is established by this decision under the auspices of the General Council to perform functions for the entry into force of the agreement, conduct the legal review, and draw up the Protocol to amend the Agreement into Annex 1A of the Agreement Establishing the WTO. See details below. This would be the second amendment of the WTO Agreements in WTO history since its establishment in 1995.³

The ACP proposal for Section II of the draft TF text, which formed the basis of negotiations in Geneva and the stabilized text presented for Bali, was adopted by Ministers along with the rest of the accords. Negotiations in Geneva on the limited number of brackets in Section I of the TF draft agreement were deemed by the Director General exhausted, requiring political impetus by Ministers. These brackets were essentially attributed to specific delegation proponents and those having raised concerns. The remaining few brackets in Section II were resolved consistent with the ACP, LDC, and Africa Group positions on most of those brackets, including deletion of the specific references to Busan, Paris and Accra accords, to which some ACP States were not parties. It was evident from the expeditious removal of brackets in Sections I and II that many of the proponents and opponents connected to those brackets were prepared to remove the brackets or drop whole texts within them, once the food security proposal was resolved.

³ The first being in 2005 on TRIPS and Public Health Declaration Paragraph 6 solution.

The following is a preliminary and summary analysis of the final adopted decisions and texts under the WTO regular work and DDA decisions in agriculture, development, including LDC issues, and trade facilitation. The following analysis of the DDA related decisions compares the final documents against the version of the documents presented to the General Council on 26 November 2013.

BALI MINISTERIAL DECLARATION [WT/MIN\(13\)/DEC](#)

The Bali Ministerial declaration is the first succinct and information oriented declaration agreed at WTO Ministerials. The first four paragraphs are factual and introductory. However, paragraph 1.4, specifically mentions advances made in the DDA as reflected in the decisions adopted at MC9. Ministers also agreed in this paragraph that these decisions are a “major step forward in the negotiations and attest to [their] strong resolve to complete the DDA.”

The rest of the Declaration is divided into three parts: 1) Regular Work under the General Council, 2) Doha Development Agenda, and 3) Post-Bali Work. Decisions under Part I include TRIPs non-violation and situation complaints, electronic commerce, small economies, Aid for Trade, and on technology transfer. The last three were submitted after the General Council meeting held on 26 November 2013. This part also welcomes decisions taken since MC8 on the TRIPs LDC transition period extension under 66.1 adopted in July 2013 and the Decision on Accession of LDCs adopted in July 2012 and completed accessions. The Decision taken at MC9 on Yemen's accession to the WTO was further acknowledged. Decisions listed in the Bali Declaration under Part II are at total of ten decisions: four decisions under the agriculture pillar (General services, Public Stockholding, TRQ administration, and export competition); a decision on Cotton; four decisions under Development (Monitoring Mechanism) and LDC issues (rules of origin, operationalization of the services waiver decisions in favor of LDCs, DFQF) and one decision on the trade facilitation agreement annexed to the decision.

The most substantive section, aside from the additional stipulation in paragraph 1.8 under trade facilitation for Cuba and supporters, is Part III on Post-Bali work. Paragraph 1.9 of this part, reaffirms commitment to the DDA as well as the regular WTO work. It also espouses the WTO's functions in negotiations, monitoring of the implementation of trade rules, dispute settlement, and support to development. Paragraph 1.10 highlights that the decisions taken on the Bali Package are a “stepping stone” toward concluding the DDA. Paragraphs 1.11 – 1.13 set forth the instructions of Ministers to the TNC to prepare a clearly defined work program within the next 12 months and stipulates that the issues in the Bali package “where legally binding outcomes could not be achieved will be prioritized.” In addition, Ministers instructed that Members “[w]ork on issues in the package that have not been fully addressed at this Conference will resume in the relevant Committees or Negotiating Groups of the WTO.” Interestingly, paragraph 1.12 provides that the work programme be developed consistent with the MC8 guidance.

In light of this MC9 mandate, to avoid taking a reactionary or defensive stance, the ACP Group may wish to consider areas they would like to proactively put forward in defining the work programme and a proposal, if appropriate in order to advance their affirmative interests for the next tranche of issues for harvesting. The ACP Group may also wish to consider a proposal defining the work programme for Post-Bali.

PART I — DECISIONS ON REGULAR WORK UNDER THE GENERAL COUNCIL

- **TRIPS Non-violation and Situation Complaints — Ministerial Decision — [WT/MIN\(13\)/31 — WT/L/906⁴](#)**

The Ministerial Conference adopted a Decision instructing the Trade and Intellectual Property Rights (TRIPS) Council to continue examining of the scope and modalities for the application of non-violation and situation (NVSCs) complaints as provided under Article 1b) and c) of the of Article XXIII of the GATT 1994 to the TRIPS context and to make recommendations by the Next Ministerial Conference in 2015. It was agreed that for the time being, Members would not initiate such complaints under the TRIPS Agreement. This decision provides two additional years to find solutions to define the scope and modalities for NVCs in the TRIPS context. This decision reduces the risk of litigation against non-LDC ACP countries in situations where there is not a direct violation of a TRIPS provision but there could be a nullification of a benefit acquired as a consequence of the TRIPS Agreement. LDCs are not concerned by NVCs at this stage as the period for implementing the TRIPS Agreement by them was extended in July 2013 until mid- 2021.

A separate ACP note provide by the ACP Call Down Support team entitled “the application of non-violation and situation complaints in the TRIPS context, and implications for ACP countries” provides several options for ACP countries to narrowly define the potential scope and modalities for the application NVSCs in the case of the TRIPS Agreement. ACP countries could reassess options proposed in this note within the next two years in order to seek a more permanent solution to application, limited application or non-application of these legal actions in the TRIPS Context.

- **Work Programme on Electronic Commerce and Moratorium — Ministerial Decision — [WT/MIN\(13\)/32 — WT/L/907](#)**

The Ministers adopted a new Decision on the Electronic Commerce (e-commerce) work Programme at Bali. The decision indicates that Members must continue their positive efforts on the work programme on e-commerce based on relevant WTO mandates and existing guidelines. It also recalls the importance of adhering to the WTO basic principles in E-commerce discussions including non-discrimination, predictability and transparency.

The Decision makes a call to continue the examination of trade related aspects on electronic connectivity, access to information and communication technologies and public sites, growth in mobile telephony, electronically delivered software, cloud computing, protection of confidential data privacy and consumer protection. More importantly, the Decision puts an emphasis on the need to take forward emerging issues such as the application of e-commerce to enhance development opportunities (especially for LDCs), access to electronic commerce by micro, small and medium enterprises, including small producers and suppliers. This latter aspect has a positive connotation that needs to be further developed in the work programme. Further, exploring the multilateral or preferential liberalisation of relevant services sectors of interest for developing countries in e-commerce (e.g. back offices, data entry, and e-medicine), as well as the introduction of regulatory incentives and targeted technical assistance may create a more enabling environment for ACP SMEs engaged in e-businesses, especially for ACPs that are also Small Island Development States (SIDS).

According to the Decision, Members will maintain the practice of not imposing customs duties on electronic transmissions, until the next Ministerial conference in 2015. A moratorium on the imposition of duties to e-transactions provides legal certainty for those already trading electronically.

⁴ David Vivas Eugui, Key Expert – ACP Call Down Support WTO Advisers.

It also indicates that the General Council will hold periodic reviews, assess progress and can make recommendations related to this matter to the next Ministerial Conference.

As on the issue of NVCs exploring options for finding in parallel a more permanent solution could be an option for the next Ministerial Conference. Both the e-commerce moratorium and that of NVSCs have been linked in recent Ministerials and rolled-over until the next Ministerial.

- **Work Programme on Small Economies — Ministerial Decision — [WT/MIN\(13\)/33 — WT/L/908](#)**⁵

Members reiterated their commitment of the Work Programme on Small Economies. The decision instructed the Dedicated Session to consider the proposals tabled to date and additional proposals that Members wish to submit and to make recommendations to the General Council. The decision particularly made reference to the areas under item (k) of paragraph 2 of the Work Programme. This puts the responsibility of identifying the trade-related issues that have an impact on the on Small Economies, the constraints that they face and how trade liberalization affects them. ACP countries should, as stated in the decision work with the WTO Secretariat in the provision of the relevant information and factual analysis that would form the basis of the discussion in the CTD Dedicated Session.

- **Aid for Trade — Ministerial Decision — [WT/MIN\(13\)/34 — WT/L/909](#)**

Members welcomed the work that had been done on Aid for Trade and expressed their support for the continuing need of Aid for Trade for developing countries, in particular LDCs. The decision also stated that the new Aid for Trade work programme in the WTO is to be framed by the post-2015 global development agenda. This is a shift from the Hong Kong Ministerial declaration on Aid for Trade and will have implications for the 2006 Aid for Trade Task Force recommendations on Aid for Trade operationalisation. The decision at Bali has presented an opportunity for the future of Aid for Trade to be more streamlined and more focused on addressing the high cost of trading in LDCs. The issue is how to reconcile the 2006 recommendations with the post-2015 development agenda. It is recommended that ACP countries steer the Aid for Trade agenda towards helping LDCs trade by building their productive capacity, reducing the cost of trading and increasing trade infrastructure. This would align the 2006 recommendations with the post-2015 agenda, which is inclusive economic growth, and further improve the integration of ACP countries into the multilateral trading system.

- **Trade and Transfer of Technology — Ministerial Decision — [WT/MIN\(13\)/35 — WT/L/910](#)**⁶

Ministers adopted a Decision on Trade and Transfer of Technology. The Decision recognises the work carried out in examining the relationship between trade and transfer of technology (ToT) as well as on possible recommendations be taken by Working Group on Trade and Transfer of Technology (WG). Ministers have requested the WG to continue its work in order to fully achieve its mandate under the Doha Ministerial Declaration. The continuation of the work in a post-Bali context needs to be defined in a two-track process. The first track should deepen analysis on the relation between trade and ToT and focus on the prioritisation and consolidation of recommendations already made in the WG in order to be able to present a set of feasible and effective recommendations for the next Ministerial Conference. The second track should explore, as agreed in the WG, on the potential impact of Bilateral Investment Treaties (BITs), Regional Trade Agreements (RTAs) and Non-Equity Modes (NEMs) on Transfer of Technology. Key lessons from the forthcoming workshop on the impact

⁵ David Vivas Eugui, Key Expert and Alicia D. Greenidge, Team Leader/Key Expert – ACP Call Down Support WTO Advisers.

⁶ David Vivas Eugui, Key Expert – ACP Call Down Support WTO Advisers.

BITs, RTAs and NEMs on transfer of technology in March 2014 should be extracted and added to a final draft list of recommendations. In this regard, ACP countries could request the WTO Secretariat to prepare a review and list consolidated recommendations for consideration by Ministers during the first quarter of 2015 based on the work carried out by the WG over the last 13 years.

PART II — DECISIONS UNDER DOHA DEVELOPMENT AGENDA - Bali Package Decisions

1. Development and LDC Decisions⁷

- **Preferential Rules of Origin for Least-Developed Countries — Ministerial Decision — [WT/MIN\(13\)/42 — WT/L/917](#)**

Bearing in mind Annex F of the Hong Kong Ministerial Declaration, and that trade preferences in respect of rules of origin, which are the basis of any preferential trade agreement, are essential in stimulating diversification and facilitating market access, the decision has provided guidelines to achieve this purpose, under three sub-headings.

The first sub-heading is in reference to the elements for preferential rules of origin. The decision indicates that the preferential rules of origin should be transparent, simple and objective as possible. The decision also took note of the limited production capacity in LDCs, and how that should be considered in determining the value addition thresholds – by keeping it as low as possible. This sub-heading also deals with the rules based on the change of tariff classification, the rules for specific manufacturing or processing operation and how to consider cumulation of value addition by LDCs in the application of preferential rules of origin.

The second sub-heading is in relation to documentary requirements, which the decision states should be simple and transparent. The third sub-heading is in respect of transparency guidelines, as a way to make the rules better understood, and to promote an exchange of experiences as well as to mainstream best practices.

- **Operationalization of the Waiver Concerning Preferential Treatment to Services and Service Suppliers of Least-Developed Countries — Ministerial Decision — [WT/MIN\(13\)/43 — WT/L/918](#)**⁸

The Bali Decision on the operationalization of the MC8 Services Waiver Decision in favor of preferential treatment for LDC services and services suppliers, reaffirmed the 15-year service waiver decision agreed at MC8. Since the adoption of the waiver, a year has passed and no preferential treatment has yet been provided to LDCs under the decision. The decision taken in Bali at MC9 would assist in operationalizing and facilitating the implementation of the 2011 LDC services waiver to stimulate the granting of preferential treatment to services and services suppliers of LDCs.

The decision called for the convening of a high-level meeting six months after the submission of an LDC request to allow Members to provide preferential treatment in services and service providers of LDCs. Recognizing that some LDCs may require assistance to build capacity in the services sector, the decision took note of the need for enhanced technical assistance and including through programmes such as Aid for Trade and the Enhanced Integrated Framework as well as assistance provided by other international institutions. Given the complexity of services trade analysis and difficulties in the collection of services trade data, LDCs will require specialized expert assistance in

⁷ Kofi Addo, Key Expert – Development Issues/RTAs, ACP Call Down Support WTO Advisers.

⁸ Alicia D. Greenidge, Team Leader/Key Expert – ACP Call Down Support WTO Advisers.

the services sector including the manner in which their suppliers can benefit from market access commitments whether afforded under WTO rules, other trade regimes or new commitments that address the particular circumstances of LDCs.

The new decision refers to preferential treatment from developed Members and developing Members in a position to provide such treatment. Currently, some Members are contemplating extending preferential treatment to LDCs that is currently provided by those Members to other countries under reciprocal free trade agreements (FTAs) and perhaps lapsing application of MFN exemptions inscribed in their WTO services schedules in favor of LDC service suppliers. LDCs may wish to consider how to benefit from the treatment provided under those arrangements and the extent of applicability to LDC circumstances. One benefit is that LDCs will not be required to provide reciprocal treatment in exchange for that kind of preferential access. Nevertheless, LDCs will also need to consider how their suppliers will actually utilize the preferential treatment. For example, examine the potential access under those FTAs and MFN exemptions can afford and match against the services trade potential in the individual LDCs. LDCs should bear in mind that the waiver mechanism operates similar to the Enabling Clause for goods, however, unlike the Enabling Clause, it is time limited for fifteen years from 2011. Therefore, LDCs should expeditiously examine the potential benefits of a waiver and the sectors most important to increase access for their suppliers and to develop their services sectors including those with the most investment and developmental value addition in their economies, both in terms of consumers and trade.

- **Duty-Free and Quota-Free Market Access for Least-Developed Countries — Ministerial Decision — [WT/MIN\(13\)/44 — WT/L/919](#)**

At the Bali Ministerial, Members reaffirmed their commitment to duty free, quota free (DFQF) market access for LDCs with reference to Annex F of the Hong Kong Ministerial Declaration of 2005. DFQF is intended to facilitate the integration of LDCs into the global trading system, as a means of promoting economic growth and sustainable development. The decision called on developed countries to extend duty-free and quota-free market access for at least 97% of products originating from LDCs, as defined at the tariff line level. Developing countries that are in a position to do so are also called upon in the decision to provide duty-free and quota-free markets for LDCs products. The decision on DFQF has positive correlation with the preferential rules of origin, since duty-free market access and simple rules of origin leads to export growth and diversification. The work that the decision has assigned to the Secretariat in the preparation of a report on DFQF market access of Members based on their notifications is very relevant to the implementation of the DFQF.

- **Monitoring Mechanism on Special and Differential Treatment — Ministerial Decision — [WT/MIN\(13\)/45 — WT/L/920](#)**

The Ministerial Decision establishes the functions a Monitoring Mechanism to review Special and Differential Treatment provisions of existing WTO agreements. In 2002, the General Council agreed to establish a Monitoring Mechanism, but its functions were yet to be negotiated and operationalized. Ministers, at the Hong Kong Ministerial in 2005 and at MC8 instructed that the functions of the Mechanism be negotiated and agreed. After more than ten years, the decision taken at Bali finally meets that charge. The Decision provides that the Mechanism, operating in Dedicated Sessions of the Committee on Trade and Development, shall act as a focal point within the WTO with respect to all S&D provisions, and has the mandate to review all aspects of S&D implementation. The purpose of such review is to facilitate the integration of developing and least developed countries into the multilateral trading system. It is foreseen that the recommendations of the Mechanism will advise the work of the relevant body, but such recommendation(s) will define or limit the final

determination of any of the relevant bodies. The decision also states that a review of the Mechanism shall be undertaken after three years.

2. Agriculture Decisions and Cotton Decision⁹

- **General Services — Ministerial Decision — [WT/MIN\(13\)/37 — WT/L/912](#)**

This Decision involves amendment to Annex 2 of the Agreement on Agriculture on the basis of the following elements: To add to new sub paragraph (h) to the existing Paragraph 2 of Annex 2 of the Agreement on Agriculture with a view to include in the Green Box certain policies and services designed to promote rural development and poverty alleviation adopted in developing countries.

All the programs added (land rehabilitation, soil conservation and resources management, drought management and flood control, rural employment programmes, issuance of property titles and farmer settlement programmes) to the existing list of the General Services of the Green Box are relevant to the development of agriculture in ACP States. Nevertheless, most of the ACP will lack financial resources to fund such programmes.

- **Public Stockholding for Food Security Purposes — Ministerial Decision — [WT/MIN\(13\)/38 — WT/L/913](#)**

This Decision puts in place an "interim mechanism" in the form of a "peace clause" and charges Members to negotiate a permanent solution for adoption by the 11th Ministerial Conference. The interim mechanism will allow beneficiary countries to exceed their AMS level for food security purposes. Members will refrain from challenging measures notified by developing Members (supports provided to traditional staple food crops – defined in footnote 2 of the decision as “primary agricultural products that are predominant staples in the traditional diet of a developing Member.”) existing as of the date of the Decision. However, a footnote 3 is contained stipulating that [t]his Decision does not preclude developing Members from introducing programmes of public stockholding for food security purposes in accordance with the relevant provisions of the Agreement on Agriculture.”

Application of this mechanism is conditional on key notification and transparency, anti-circumvention and safeguard requirements, consultations and monitoring by the Committee on Agriculture, requirements.

Ministers also charged Members to establish a work programme with the purpose of bringing forth recommendations for a permanent solution. The Decision states that the work programme shall take into account Member existing and future submissions. A report on progress of the work programme is required at the 10th Ministerial Conference.

❖ General comment:

Taking into account that near 2/3rds of ACP States are net food importing countries (NFIDCs), this Decision will provide a short term positive impact on ACP consumers as it will mitigate the rise in world prices and prevent high volatility of those prices due to the availability of large stocks in countries like India that represent a large share of the world population.

⁹ Joseph Rocher, Key Expert-Agriculture, ACP Call Down Support WTO Advisers.

This Decision revised in Bali may represent a real opportunity for ACP States as there is a general trend amongst ACP countries to develop Public Stockholding Programmes. Nevertheless, the Decision may also negatively impact ACP producers of the targeted crops, as the availability of large stocks may also impact on international prices and international overall production.

❖ *ACP Group "eligibility" under the revised Decision:*

The preamble (§. 2) indicates that the Decision targets "...support provided for traditional staple food crops in pursuance of public stockholding programmes for food security purposes existing as of the date of this Decision." Consequently this Decision represents a concrete opportunity only for ACP countries that have public stockholding programmes already in place (e.g., Kenya, Zambia, etc.).

However, in light of footnote 3 of the Decision, some negotiators express a different interpretation of the Decision as a whole. According to them, it will be allowed, on the basis of this Decision, to introduce new programmes, but, in that case, the Peace Clause would be applicable during four years only (until the 11th Ministerial Conference). This interpretation has led to the opening of discussions between experts that are not yet closed.

Otherwise, the definition of the Public Stockholding Programmes could probably be interpreted taking into account the specific situation of the different countries. The ACP Group would be well advised to explore this issue as there is a general trend amongst ACP countries to develop Public Stockholding Programmes as it is the case in the ECOWAS region, for example.

Main changes in Bali:

- Removal of the § 10 of RD/TNC/1 "*This Decision will remain in force until the 11th Ministerial¹⁰ Conference, at which time we will decide on next steps in view of the General Council's further report to that Conference on the operation of this Decision and of the Work Programme decided in paragraph 7.*"

Replacement by:

- § 1 (Preamble) "*Members agree to put in place an interim mechanism as set out below, and to negotiate on an agreement for a permanent solution¹, for the issue of public stockholding for food security purposes for adoption by the 11th Ministerial Conference.*"
- § 2(preamble): "*In the interim, until a permanent solution is found...*"
- And by § 8 (Work Program): "*Members agree to establish a work programme to be undertaken in the Committee on Agriculture to pursue this issue with the aim of making recommendations for a permanent solution. This work programme shall take into account Members' existing and future submissions.*"
- ***About the Work Programme and issues related to the review of the method of calculation of the AMS (reference prices 1986/1988).***

In the Decision, there is no mention that the work programme will include the revision of the method for calculating the AMS with updating the reference period (86/88). One might think that the developed countries that have already expressed great reluctance to accept this Decision wanted to minimize their commitments on other related issues.

¹⁰ Underlined by the Agriculture Expert.

- ***About possible specific S&D Treatment the Members lacking financial resources could be provided for within the "permanent solution".***

The footnote 1 of the preamble "*The permanent solution will be applicable to all developing Members*" has been added in the preamble of the final text of the Decision.

This excludes the possibility, within the post-Bali work programme on the "*permanent solution*", of looking for trade policy instruments (variables border taxes, for example) that would be more suitable and specifically applicable to countries that lack financial resources to improve their food security. Developed countries would oppose a mechanism that could be provided for countries without resources and also covering the most advanced developing countries.

In case the ACP Group would like to contribute to the work programme, the ACP Group may also seek solutions for countries that lack funding, it must ensure that the work involved in finding a "*permanent solution*" (as stated in this Decision) applies only to Public Stockholding, leaving open the possibility of other specific work program on "food Security and instruments specifically tailored to countries that lack financial resources."

- **Understanding on Tariff Rate Quota (TRQ) Administration Provisions of Agricultural Products, as Defined in Article 2 of the Agreement on Agriculture — Ministerial Decision — [WT/MIN\(13\)/39 — WT/L/914](#)**

There were no changes in Bali to the draft that was submitted to the General Council on 26 November. The Decision, now adopted by Ministers, stipulates that where the quota fill rate in countries applying TRQs is less than 65 per cent or where there has been no notification for two consecutive years, there should be automatic licensing in favor of all countries to use the TRQs that would be available the third year according to the "first come, first serve" principle. The Decision provides significant modification of § 6 of Art 1 of the Agreement on Import Licensing Procedures which stated that "*Where it is strictly necessary to approach more than one administrative body, applicants need to approach shall not more than three administrative bodies*. According to the Decision in any case, "*applicants shall apply to one administrative body only*". For ACP countries, that will reduce procedures and may therefore reduce the costs of exports.

The best export opportunities for ACP States as a result of this decision appear to be for export of groundnuts, cotton, tobacco, and may be preparations for animal feed towards developed countries that apply TRQs on these products. For groundnuts, the main ACP exporters (and consequently the main potential beneficiaries of this Decision) are: South Africa, Malawi, Uganda, Senegal, Mozambique, Tanzania and Gambia. For cotton, the main ACP exporters are Chad, Zimbabwe, Burkina Faso, Ivory Coast, Sudan, Benin and Cameroun. For tobacco, the main ACP exporters are Malawi, Tanzania, Mozambique and Zimbabwe. For preparation of animal feed, the main ACP exporter is Nigeria, Seychelles being the second but a small exporter. In any case, all ACP States can all benefit from this Decision. The only condition is to be able to to sell their products at competitive prices while complying with sanitary and phytosanitary standards of importing countries. As regards the ACP countries which apply TRQs (Barbados, Dominican Republic, South Africa), they will benefit from the Decision even if they do not update their notifications. As regards the ACP countries which apply TRQs (Barbados, Dominican Republic, South Africa), nothing in the Decision, indicates that these countries cannot benefit from this Decision if they have not notified TRQs used in the past.

- **Export Competition — Ministerial Declaration — [WT/MIN\(13\)/40 — WT/L/915](#)**

This Decision also was not changed in Bali. The Decision refers to the 2013 deadline for eliminating all forms of export subsidies originally agreed at the Hong Kong Ministerial Conference in 2005, which is highly symbolic for many members.

The reference to the 2005 Hong Kong Ministerial Declaration is reaffirmed. Nevertheless, there is no mention of precise commitments in terms of quantities and specific deadlines.

For ACP countries, the reduction of export subsidies will have a double impact: it will increase world prices and therefore disadvantage consumers of ACP that are net importers (NFDCs), but at the same time, it will benefit the ACP producers insofar prices will be more profitable.

- **Cotton — Draft Ministerial Decision — [WT/MIN\(13\)/W/13](#)**

According to the Decision *"the Decision adopted by the General Council on 1 August 2004 and the 2005 Hong Kong Ministerial Declaration, remain a useful basis for our future work"* and *"the work on cotton that has been done in the Committee on Agriculture in Special Session in connection with the revised draft agriculture modalities contained in document TN/AG/W/4/Rev.4 dated 6 December 2008, will provide a reference point for further work"*

This Decision will improve transparency in terms of used policy instruments: To this end, it has been agreed *"to hold a dedicated discussion on a biannual basis in the context of the Committee on Agriculture in Special Session to examine relevant trade-related developments across the three pillars of Market Access, Domestic Support and Export Competition in relation to cotton"*..

Concerning LDCs, *"The dedicated discussions shall in particular consider all forms of export subsidies for cotton and all export measures with equivalent effect, domestic support for cotton and tariff measures and non-tariff measures applied to cotton exports from LDCs in markets of interest to them"*.

The greatest merit of this Decision is to keep the cotton issue on the negotiating agenda as the *"Director General is"* invited *"to continue to provide periodic reports on the development assistance aspects of cotton, and to report on the progress that has been made in implementing the trade-related components of the 2005 Hong Kong Ministerial Declaration, at each WTO Ministerial Conference"*.

3. Trade Facilitation Decisions¹¹

Agreement on Trade Facilitation — Ministerial Decision — [WT/MIN\(13\)/36,WT/L/911](#) and Paragraph 1.8 of the Bali Ministerial Declaration.

This section provides a preliminary summary assessment of ACP Group gains in the decisions taken at Bali on the Trade Facilitation Agreement. A more in depth note examining Section I and Section II of the new Agreement, including an analysis of the extent of binding or best endeavor nature of the final provisions, will follow in January 2014.

Three elements comprise the Trade Facilitation component adopted by Ministers in Bali:

- 1) Part II, Paragraph 1.8 of the Bali Ministerial Declaration.

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- 2) A Ministerial Decision on Trade Facilitation.
- 3) The Trade Facilitation Agreement (Annex to the Trade Facilitation Decision).

Element 1, the introduction of the Bali Declaration welcoming the adoption of the texts, includes an insert in paragraph 1.8 made on 7 December to assuage the concerns raised by ACP State, Cuba. The insertion provides:

"In this regard, we reaffirm that the non-discrimination principle of Article V of GATT 1994 remains valid."

It may be noteworthy to state that ACP members and Coordinator, during the last leg of consultations into the night, took cognizance of the fact that Article V.2 of the GATT is similar to the original bracketed paragraph sought by Cuba in the draft Agreement text tabled at the General Council on 26 November.

Element two is the **Ministerial Decision on Trade Facilitation** with an annex of the Agreement text. The Decision concludes the trade facilitation negotiations. It also establishes a Preparatory Committee to conduct the following functions: 1) technical legal review of the draft agreement, with no changes to the substance 2) receive Category A notifications, which are due by 31 July 2014, and 3) prepare a Protocol of Amendment to insert the Agreement into Annex 1A of the Agreement Establishing the WTO ("WTO Agreement"). The Decision provides that the General Council shall meet no later than 31 July 2014 to annex Category A notifications, adopt the Protocol and open the Protocol for acceptance, which will be open until 31 July 2015. Considering that the ACP Group proposal was the basis of the final adoption of Section II, the ACP Group may wish to play an integral role in the legal review of the draft agreement to ensure that ACP interests are preserved. An examination of Section I, Article by Article, by individual Member States will also be required to assess the nature and scope of the final provisions against needs assessments. An updated analysis of the binding and best endeavors scope of the provisions will be provided to the ACP Group during the next session in 2014. ACP States may also wish to consider preparation for Category A annexes as early as possible. LDCs will have more time, one year after entry into force of the Agreement, to notify Category A provisions.

The Decision provides that the Agreement will enter into force in accordance with Article X.3 of the WTO Agreement. According to Article X.3, entry into force is after acceptance by two-thirds of the WTO Membership "and thereafter for each other Member upon acceptance by it." Developed Members are to implement all provisions upon entry into force.¹² Only developing country and LDC Members are stipulated, in the Final provisions of the TF Agreement, permitted to implement the Agreement in accordance with Section II of the TF Agreement.

Element three, is the **Trade Facilitation Agreement** itself, annexed to the Decision. The Agreement is divided into two Sections. Section I contains the disciplines and Section II governs rules for developing and LDC implementation of the disciplines and donor Member provision of assistance. A Final Provisions section is also included without article enumeration.

The Final Provisions section at the end of the Agreement elaborates further details about implementation of the Agreement with cross-references to Section II. The ACP Group should be aware that the Final Provisions contain retroactive application of the Agreement if a Member accepts the Protocol after the entry into force date, consistent with the language in Section II that marks

¹² See WT/MIN(13)/36 • WT/L/911, Final Provisions, p. 28, paragraph 3.

transition periods from entry into force of the Agreement. This means that if a an ACP State, whether developing or LDC, accepts the Protocol after entry into force (which would be after the acceptance by two-thirds of the WTO Membership), the timelines under Category B and C will still count from entry into force, not from the date the Member accepts. Therefore, it is important for ACP States to ensure expeditious process of acceptance of the Protocol within the period before 15 July 2015 in order to benefit from the full periods established in the Agreement. The Final Provisions section also contains a clause reflecting the concerns of some ACP States during the negotiations that nothing in the Agreement disturbs rights and obligations under the GATT 1994, Technical Barriers to Trade, and the Sanitary and Phytosanitary Measures Agreements.

Section I

Section I of the Agreement contains thirteen Articles. Articles 1 to 12 are substantive disciplines, while Article 13 sets forth the institutional arrangements. Section I comprises a mix of binding, qualified binding, binding best endeavors, best endeavors, and permissive standards applied across the disciplines. “Binding” is characterized as a “shall” without any qualification; qualified binding may be characterized as, for example, a “shall, consistent with domestic laws and regulations”; binding best endeavors may be characterized as a “shall, to the extent practicable/possible/ as appropriate”; and permissive, as a “may.” However, under Article 7.3.2, for example, there is a “may” with only two options, should a Member include conditions for release. This gives the impression that options other than the two provided are not available.

Each individual ACP State should examine their needs assessments against the final Section I provisions in terms of their binding and best endeavor nature, external assistance if needed, and where the individual Member State will categorize implementation of the provisions in accordance with Section II. Relevant stakeholders and agencies responsible for implementation of the Agreement should be involved in the process. Deeper analysis of each Article will be required by each member State because the needs assessments could have been based on earlier drafts of the text. This is especially important since the obligations are taken by each ACP Member of the WTO and not as the ACP Group.

Section II

Regarding Section II, the ACP Section II proposal tabled this year, especially with regard to Category C notifications, was the basis for convergence and consensus building in the last few months of negotiations, particularly those negotiations conducted by the Section II Friend of the Chair (Hong Kong China) and the Director General in Geneva and finally adopted in Bali. The formula upon which consensus was built across developing countries, and refined in the G90 process, was designed by the ACP Group of States, where no other alternatives arose to break the several years of deadlock in the negotiations on Section II. The three tiers of implementation through Categories A, B and C were found in earlier proposals and versions of the draft consolidated text. The ACP Group built upon that structure to respond to concerns of its Members and a number of developing countries and LDCs, which had not been addressed over the years of negotiations. These modifications are explained below.

The ACP Group, the Africa Group, and the LDC Group also secured definitions in the Agreement for the three categories of implementation afforded to developing and LDC Members. Throughout the approximately eight years of negotiations, there was opposition from other Members to the proposed inclusion of definitions. To simplify, the definitions are: Category A - those provisions not requiring a transition period and will be implemented upon entry into force of the Agreement, Category B- those provisions designated for implementation after a transition period, and Category C

- those provisions that will be implemented upon acquisition of capacity through assistance and a transition period. The ACP Group, Africa Group and LDC Group also secured the concept of financial assistance as part of what may be provided.

The three groups, in G90, format also secured three cardinal principles guiding the entirety of Section II:

1. **Self-designation** of where the provisions will be placed in terms of the categories of implementation;
2. **Self-selection of the implementation dates** for each of the Section I provisions binding on them; and
3. **Implementation is not required if capacity is still lacking** with respect to Category C-

These principles enshrine the unprecedented departure from the way special differential treatment and assistance to implement commitments is elaborated in WTO agreements. It is a landmark win for all developing country and LDC Members. Developed country Members have committed in the Agreement not to utilize Section II. The ACP proposal responded to developing country and LDC desire to separate out Categories B and C so that the treatment for each would be distinct and staged. Other proposals combined them.

Category B is relatively straight forward in that it is reminiscent of the existing transition periods under WTO Agreements. However, the novel principle of self-designation of provisions falling under Category B and the principle of self-section of the implementation dates applies.

Once the Agreement enters into force, the timelines found in Section II will commence. Developing countries are required to notify Category B and C designations and “indicative” implementation dates upon entry into force. LDCs do not notify provision designations for the two categories until one year after entry into force and indicatives for Category B is not obligatory. LDCs notify indicative dates for Category C, for transparency purposes only four years after entry into force of the agreement. Definitive or final selections for Categories B and C, by both developing and LDC Members does not take place until a specified period after the relevant procedures have been fulfilled. See Tables below.

The **pre-definitive date notification process for Category C** entails distinct notification steps leading up to the point of notifying definitive implementation dates. When definitive dates are notified, a developing and LDC Member commitment under the agreement, with respect to Section I disciplines, begins. While appearing on the surface to be detailed, the Category C notification process introduced by the ACP Group is actually designed to build in the binding commitment from donors that was lacking in earlier draft texts and build in additional time for developing and LDC Members to ensure that assistance would be anchored on the ground before notifying their definitive implementation dates. This process, targeted to a partnership approach, was first resisted by many potential donor Member countries.

The following summarizes the gains for the ACP Group found in the ACP proposals that emerged from full vetting and elaboration at ACP Group technical level, to ambassadorial level approval, now in the final text adopted by Ministers in Bali. This acceptance of the ACP approach was bridged through coalition building with the Africa Group and LDC Group, and negotiated with other developing countries and developed Members by the ACP TF focal point and at Ambassadorial level by the ACP Coordinator in Geneva. The acceptance represents the wide convergence that emerged after several months of negotiations until round the clock negotiating sessions in Geneva, finalized in Bali. The proposal captured the core interests and concerns of developing countries and LDCs, that

enabled them to support Section I disciplines once those were stabilized. In his report to the General Council on 26 November, before departing for Bali, the Director General, in his capacity as Chair of the Trade Negotiations Committee (TNC), announced that Section II was "our largest iceberg until a couple of days ago."¹³ For all developing countries and LDCs, any success on Section I required a balance within Section I, but was also conditioned on agreement on Section II reflecting the core principles and interest they had espoused. LDCs continued to negotiate further flexibilities on the LDC sections, which were agreed on 28 November.¹⁴ The final texts for LDCs in Section II, principally retain those provisions ACP LDCs advanced in the ACP proposal.

Summary of selected ACP Group additions to Section II secured in Bali

1. **Binding notification of assistance arrangements with Donor Members before notification of definitive implementation dates by developing and LDC Members.** ACP States had questioned whether they could agree to dates to notify their selection of definitive implementation dates if in turn there was no obligation on donor Members to seek out countries and enter arrangements or enhance existing ones for the purpose of building capacity to implement provisions the developing or LDC Member notified under Category C. Many developing countries wanted a trust fund, which still could have discriminated against different countries. Others sought a hard binding commitment in the text that donor Members shall provide assistance, because it was expected that Section I would be only "shall" bindings. Developed countries and some developing countries in a position to provide assistance opposed both approaches.

Developed country Members reminded ACP negotiators that there was no support in TF modalities, Annex D of the July Framework General Council Decision for binding assistance because Annex D only contains best efforts on provision assistance. In addition, it was becoming clear that Section I would end up a mix of binding and best endeavors commitments. The ACP negotiators highlighted that Annex D contains a binding defense for developing countries and LDCs that if assistance is not forthcoming and capacity is still lacking, implementation is not required. This defense is carried over into the TF Agreement.

Surmounting the limitations in Annex D on the question of provision of binding assistance, the ACP negotiators introduced **a binding commitment from donor Members through a process.** Assistance arrangements are required to be notified by the donor Members and the beneficiary Member, in the TF Committee by a date certain before developing countries and LDCs are obligated to notify definitive implementation dates.

2. **Time for assistance to anchor before notifying definitive implementation dates.** Through the ACP proposal, developing and LDC Members would not be required to immediately notify definitive dates by a deadline or merely because assistance arrangements were secured and notified. ACP States wanted to be confident that assistance arrangements would be concluded and in place, or mobilized on the ground in country, to enable an assessment of the assistance against the final dates that they were expected to choose for implementation of the provisions.

The ACP proposal responded to that concern. Before definitive dates would be notified, a period of up to 18 months from the notification of assistance arrangements would be

¹³ http://www.wto.org/english/news_e/news13_e/gc_rpt_26nov13_e.htm

¹⁴ http://www.wto.org/english/news_e/news13_e/dgra_28nov13_e.htm

required to run before definitive implementation dates are to be notified.¹⁵ This period is to build confidence that the assistance did in fact reach the country, not just that an assistance arrangement was signed, then developing and LDC Members must in turn notify final implementation dates.

From entry into force of the Agreement, definitive dates are only notified by developing countries after two and a half year. LDCs have more flexibility in that the notification of definitive dates is not made until five and a half years from entry into force. See tables below.

No other proposals from developing, LDCs or developed Member tabled in the course of negotiations contained an obligation in the agreement on donor Members to notify assistance arrangements as a precondition for notification of definitive dates nor did the proposals include a period of time for the assistance to anchor before definitive dates would be notified.¹⁶

3. **The ability to request additional time to notify definitive dates if after 18 months a donor is lacking or there are difficulties with the assistance.** In addition to the foregoing, the ACP proposal, now adopted in the Agreement, provides developing and LDC Members the option to request more time to notify definitive dates if a problem arises at the end of the 18 months where a donor is lacking or there was difficulty with the assistance. The original version in earlier draft TF texts did not have the date to notify assistance arrangements by donors, the 18 month cooling off period, and only provided the option to request an extension to notify definitive dates where a donor was lacking.
4. **Annex D principle whereby developing and LDC Members would not be required to implement if capacity has not be acquired.** The ACP group negotiators also enshrined the principle that if capacity is not acquired, implementation will not be required. Together with the Africa Group and LDC Group, the ACP Group secured this principle in negotiation of the text after protracted resistance from developed Members. Facing opposition to the notion of unilateral self-assessment of lack of capacity, the groups successfully secured the ability for review by a third party group of experts that will include nationals from developing and developed countries. This would avoid instead a unilateral opposition to a Member's self-assessment.

Developing and LDC Members will also benefit from additional flexibilities **post -definitive date notification** of definitive dates. LDCs enjoy additional flexibilities under these provisions. On these, with the exception of the modifications to the safeguard mechanism, the additional flexibilities were conceptually accepted by all Members, before the ACP proposal was tabled. These are:

¹⁵ The commitment to notify definitive implementation dates, which was coveted by developed Members, is triggered from the date the assistance arrangements are notified.

¹⁶ Therefore, the final text covers the concern of ACP States that the assistance arrangements are specific to enable implementation of Category C commitments and not diverted from other assistance priorities. Language proffered with regard to introducing obligations on developing and LDC Members to include TF in their national development priorities before assistance arrangements would be notified was opposed by developing countries and LDCs and is now not found in the text (see Section II, paragraph 4.2.c and 4.2.d). Though ACP States recognized that it is important for assistance delivered to be adapted to their national context and development needs and not an imposition based on foreign contexts. Therefore, the beneficiary and donor Member partner will ensure in the framework of the conclusion or elaboration of their bilateral assistance arrangements pursuant to the TF Agreement, that the required information and follow through on the domestic side will be arranged to ensure that the beneficiary Member will receive and implement the desired assistance.

1. **Early Warning Mechanism.** An early warning mechanism (EWM) (Section II, Paragraph 5) to extend implementation dates if needed where a country anticipates sufficiently in advance of the arrival of the implementation date that the date will not be met. EWM includes an automatic extension if the time needed is under a certain period (See table below).
2. **Safeguard Mechanism.** A safeguard mechanism that can be invoked where an extension is not granted under EWM procedures or those procedures are not available because the invocation period has lapsed (Section II, Paragraph 6). This feature underwent intensive and difficult negotiations after the ACP Group and Africa Group worked together and presented a joint proposal to the WTO Membership. The original ACP proposal was developed after extensive debate and input from both developing and LDC ACP Members. The paragraph preserves a Member's self assessment of any subsequent lapse in capacity to implement any provision, after all of the other procedures through EWM have been exhausted. The assessment will not subject to any unilateral objection to the assessment. Instead, the assessment will be submitted to a third party, ad hoc expert review before deliberation by the TF Committee.¹⁷ LDCs will be able to invoke this procedure at any point in time. Moreover, the text includes that if an LDC case is involved, LDCs will be represented in the ad hoc expert group and the stay of any compulsion to invoke the Dispute Settlement Understanding will be for longer duration.
3. **Shift of notifications from B to C if assistance is required.** If ACP States notify provisions under Category B to be implemented by a date chosen by them, but later finds that some or any of the provisions will require assistance, the Agreement allows for shifting that provision to Category A. The country would need to inform the TF Committee of any assistance required and if more time is needed as a result of the shift, a process to do so is set forth in the Agreement. The provision of course allows for shifting from Category C to B if a country finds that a Category C measure notified does not require assistance and can be implemented after a transition period alone. LDCs are presumed to require assistance if they shift provisions from B to C and are allotted an automatic new implementation date of not more than four years. Any time beyond the four years would require approval of the Committee. In both developing and LDC cases, request of an extension of time in accordance with the EWM is also available, but limited to the restrictions on use of EWM.
4. **Grace Period.** Category A notifications benefit from a grace period on dispute settlement of two years for developing countries and six years for LDCs. LDCs also have an 8 year grace period for Categories B and C.

¹⁷ The provision is also linked to the guiding principle secured by ACP and Africa Group negotiators, that if capacity is lacking, implementation is not required, drawn from the Annex D mandate and now enshrined in the agreement under Paragraph 1.2.

The following tables summarize timelines for notifications under Categories B and C.¹⁸

Category B	Developing Countries	LDCs
Notification of Section I provisions designated for implementation under Category B	Upon Entry into force.	<u>1 year</u> after entry into force.
Notification of Indicative Dates	Upon Entry into force.	<u>1 year</u> after entry into force, <u>but not obligatory</u> .
Notification of Definitive Dates	<u>1 year</u> after entry into force.	<u>3 years</u> after entry into force
Notification under Early Warning Mechanism to extend implementation after notification of definitive dates	No later than <u>120 days</u> before the expiry of the particular definitive implementation date that was notified.	No later than <u>90 days</u> before the expiry of the particular definitive implementation date that was notified.
Safeguard for implementation of Category B and C (if needed) (Paragraph 6) – Notification	After EWM is available or an EWM extension request is not granted.	After EWM is available or an EWM extension request is not granted.
Notification of Shift from B to C (if needed)	No time limitation, but is presumed to be before the expiry of the implementation date. Must present a case for assistance to the Committee as well as period for implementation. EWM may be utilized in accordance with the restrictions for automaticity and extension of time as well.	No time limitation, but is presumed to be before the expiry of the implementation date. Assistance presumed. Implementation period of no more than four years automatic. Must request approval if beyond <u>four years</u> extension period. EWM is also accessible.
Grace Period concerning non-application of the Dispute Settlement Understanding	Not available for Category B. Automatic <u>2 years</u> and only available for Category A.	Available for Category B. Automatic <u>8 years</u> .

Category C	Developing Countries	LDCs
Notification of Section I provisions designated for implementation under Category C	Upon entry into force.	<u>1 year</u> after entry into force.
Notification of assistance needs	Upon entry into force.	<u>2 years</u> after entry into force
Notification of indicative dates	Upon entry into force.	<u>Up to 4 years</u> after entry into force.
Notification of assistance arrangements	<u>Up to 1 year</u> after entry into force.	<u>Up to 4 years</u> after entry into force.
Notification of definitive dates and progress	<u>Up to 2 ½ years</u> after entry into force.	<u>Up to 5 ½ years</u> after entry into force.
Notification of additional time to notify definitive dates (if needed) (Paragraph 4.3)	<u>Up to 2 ½ years</u> after entry into force.	<u>Up to 5 ½ years</u> after entry into force.
Notification to invoke Early Warning Mechanism to extend implementation after notification of definitive dates (if needed) (Paragraph 5)	No later than <u>120 days</u> before the expiry of the particular definitive implementation date that was notified. Automatic extension if the period requested does not exceed 18 months.	No later than <u>90 days</u> before the expiry of the particular definitive implementation date that was notified. Automatic extension if the period requested does not exceed three years.
Safeguard for implementation of Category B and C (if needed) (Paragraph 6) – Notification	After EWM is available or an EWM extension request is not granted.	After EWM is available or an EWM extension request is not granted.

¹⁸ Recall that all timelines begin from entry into force of the Agreement, even if acceptance of the Protocol came after entry into force of the Agreement by two-thirds acceptance of the Membership. It should be recalled that developed and developing Member Category A commitments are implemented upon entry into force of the Agreement. LDCs may notify Category A provisions up to one year after entry into force, when implementation of those provisions is expected as well.

Notification of Shift from C to B (if needed)	No time frames. Though it is not clear that there is any incentive for a developing country or LDC Member would want to shift from C to B.	No time frames.
Grace Period concerning non-application of the Dispute Settlement Understanding	Not available for Category C. Automatic <u>2 years</u> only available for Category A.	Available for Category C. <u>Automatic 8 years</u> .