



Trade Hot Topics

The Bali Package – A Breath of Fresh Air to the Doha Round

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Introduction

As the dust settles on the Ninth WTO Ministerial Conference held in Bali, Indonesia, in December 2013, trade diplomats and analysts are busy assessing the implications of the first substantive harvest delivered by the World Trade Organization since its creation 18 years ago and the launch of the Doha Round in 2001. Notwithstanding numerous failed attempts at reaching comprehensive agreements, the package agreed at Bali is widely regarded as a first major step in the direction of concluding the Doha Round. While still modest compared to the initial negotiations mandate, the package is of systemic significance and will undoubtedly assist in rebuilding confidence in the multilateral trading system. It reinvigorates the negotiating function of the WTO and provides a useful basis on which members can elaborate the development credentials of the multilateral trading system. The package can be assessed from distinct vantage points, including the specific trade related results as well as the institutional and the systemic implications.

This issue of *Commonwealth Trade Hot Topics* provides a brief overview of the outcome reached at Bali during the 9th WTO Ministerial Conference.

Main elements of the 'Bali Package'

Trade facilitation

The single most significant component of the Bali Package is the Trade Facilitation Agreement (TFA). The TFA, which is to be incorporated into the WTO covered agreements as an Annex 1(a) agreement, aims at enhancing trade efficiency through the streamlining of protocols on the treatment of goods and traders along the logistics supply chain. Towards that end, WTO members agreed higher levels of transparency and predictability, including disciplines on fees and formalities that will beneficially impact traders. The economic gains from successful implementation of trade facilitation measures have been estimated to be quite significant (increased trade flows, reduction in trade costs, etc). Furthermore, beyond enhancing the flow of goods across borders, the TFA promotes border agency co-ordination, institutional strengthening and reforms in governance that limit the scope for corruption and graft.

On a substantive level the TFA portends a step forward for trade logistics globally and importantly, a massive advance in governance for countries which have long eschewed calls for transparency and predictability in trade regime governance. Beyond

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governance, the TFA will increase the velocity of trade and iron out the wrinkles along the trade logistics supply chain.

One of the innovations of the TFA is that the agreement is divided between substantive obligations contained in section I, and special and differential treatment and support provisions (available to developing and least developed countries) catalogued in section II. The agreement also provides unprecedented discretion to developing countries with respect to the sequencing and timing of implementation. Section II also reflects a commitment by developed countries to provide support that may take the form of technical, financial, or any other mutually agreed form of assistance. Furthermore, developed countries are mandated to notify the membership on all steps taken to support developing and least developed countries implement the agreement.

The TFA is a critical achievement for developing and least developed countries that can now rely on development assistance specifically directed at enhancing trade efficiency and by extension, international competitiveness. Hence the TFA not only sets a welcomed precedent as it relates to the linking of multilateral commitments to the provision of capacity-building support, the TFA can serve as a tool to enhance the competitiveness of developing countries. It is now up to member states to put in place the necessary mechanisms, including the appropriate enabling legislation to implement the agreement.

Agriculture

On agriculture, WTO members agreed outcomes on three elements of the existing draft Agriculture text. Over the years agriculture negotiations have proven a major stumbling block in the way of forging consensus on all elements of the mandate embraced at Doha. The agriculture outcomes will produce reforms to current multilateral disciplines on: Export Competition (export subsidies); Tariff Rate Quota Administration; and Public Stockholding for Food Security.

The Ministerial Declaration on Export Competition (export subsidies) reaffirms the need for members to continue the reform process as set out in Article 20 of the Agreement on Agriculture and relating to export subsidies and measures with an equivalent effect. While the Bali declaration noted the positive steps taken by members in this regard, the declaration acknowledged that much work remains

undone and recommitted members to the elimination of export subsidies. Concretely, members agreed to prioritise export competition as part of the post-Bali work programme and to submit to enhanced transparency and monitoring in relation to export subsidies and measures with equivalent effect. Although the commitment taken by members at the Hong Kong Ministerial Conference in 2005 to eliminate export subsidies has not been achieved, the Bali declaration provides for a 'virtual' standstill on the expansion of export subsidies programmes. Critically the decision on Export Competition also provides for enhanced monitoring and surveillance: unquestionably steps in the direction agreed by the membership at the Fifth WTO Ministerial Conference in 2003.

Yet another element of the agriculture harvest is the Understanding on Tariff Rate Quota (TRQ) Administration. Given the trade distorting effects of quotas, contracting parties to the Uruguay Round agreed to their elimination. While quotas have been eliminated, tariff rate quotas persist, on a limited range of agricultural products as an intermediate step in the transition to a tariff only regime. TRQs assist in regulating market access and protecting domestic production. Hence, exporters of a particular product subject to a tariff rate quota, into a country that maintains TRQs, will be subject to lower tariffs if the particular export falls within the quota already predetermined and notified by the importing country.

While the Bali 'Understanding' on TRQ Administration does not deliver further progress towards the elimination of TRQs, it does however demystify the functioning of TRQs. The Understanding *inter alia* mandates: the simplification and streamlining of the application process for accessing tariff rate quotas; the strengthening of transparency measures through enhanced publication requirements; and the rationalisation of licensing, including the establishment of a [quota] reallocation mechanism. The Bali decision provides new disciplines for TRQs through new transparency and administrative measures that aim at reducing TRQ under-fill, thus reducing the market distortions usually associated with tariff rate quotas.

The final element of the agriculture harvest is the Ministerial Declaration on Public Stockholding for Food Security. The declaration effectively allows developing country members, subject to agreed procedures, to deviate from obligations to enforce limits on domestic support in relation to agriculture.

Members agreed at Bali that if prescribed conditions are met, to refrain from challenging support granted by developing country members that have duly notified the WTO that they have exceeded, or are at risk of exceeding their commitments. The Monitoring and Anti-Circumvention/Safeguard provisions of the understanding, along with an agreement to establish a work programme, provided sufficient comfort to concerned parties for an agreement on this critical matter to be reached.

While these elements represent a major step forward in the agriculture negotiations, a significant technical and political effort will be required to deliver on all three pillars of the Doha agriculture mandate.

Development and LDC issues

As a complement to the Doha related outcomes agreed at the Ninth Ministerial Conference, members agreed a number of Ministerial Declarations on a variety of Development and LDC issues. These decisions include the 'Operationalisation of the Waiver Concerning Preferential Treatment to Services and Services Suppliers of Least Developed Countries'. In substance, this decision seeks to assist least developed countries (LDCs) benefit from new market access opportunities to be made available through commitments taken by WTO members to accord special treatment to services and services suppliers from LDCs. The decision mandates the Council for Trade in Services to assist LDCs in beneficially utilising the commitments already taken in this regard. Substantively, the Council is mandated to convene a high-level meeting to assist developed countries and (self-identified) developing countries respond to market access requests received from LDCs.

Another hard fought decision relates to the Duty Free Quota Free (DFQF) market access for the LDCs. It was *inter alia* decided that developed-country members that do not yet provide DFQF market access for at least 97 per cent of products originating from LDCs, shall seek to improve their existing DFQF coverage for such products, so as to provide increasingly greater market access to LDCs, prior to the next Ministerial. Similarly, the Ministerial Decision on Cotton reaffirmed the Hong Kong Ministerial Decision and further agreed to enhance transparency and monitoring in relation to trade related aspects of cotton – it was 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. The decision further called for bilateral discussions across the three pillars of market access, domestic support and export competition in relation to cotton.

Members also agreed the adoption of a Monitoring Mechanism on Special and Differential Treatment that would act as a focal point within the WTO to analyse and review the implementation of special and differential treatment provisions (S&D). Finally as it relates to development, members adopted a decision on Preferential Rules of Origin for LDCs. This decision on simplified Rules of Origin (RoO) complements the enhanced market access to be granted to LDCs through Duty Free Quota Free.

Institutional implications and systemic consequences

The success of the Ninth WTO Ministerial can be measured in terms of the substance of the negotiating outcomes and also crucially with respect to the impact the Bali Package will have on the relevance of the multilateral trading system. After successive failures of WTO members to reach a negotiated outcome, many developed countries and emerging market economies took the view that the multilateral process may not provide the best opportunity to enhance trade flows and expand market access opportunities. This conclusion triggered interest in bilateral and plurilateral processes which would effectively allow members to exchange concessions on a substantial range of disciplines.

Over the past five years new systemically important regional trade agreements (RTAs) have been launched. The USA and European Union launched the Trans-Atlantic Trade and Investment Partnership (TTIP); negotiations on the Trans-Pacific Partnership Agreement (TPP) between Australia, Brunei Darussalam, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, the USA and Vietnam have intensified; and negotiations commenced on a plurilateral Agreement on the Trade in Services Agreement (TISA). Given the sheer size of the trade involved in these negotiations, WTO members, particularly developing and least developed countries, registered the impact that these agreements can have on trade flows and international rule making. It

is widely recognised that new rules created through what many have described as mega-RTAs can have knock-on implications for trade governance. Moreover, significant divergences from existing WTO practice can create an environment for 'forum shopping' and diminish the systemic importance of the multilateral system.

With this in mind, the Bali outcome is reflective of the determination of the membership and particularly developing and least developed countries, to preserve the relevance of the multilateral system given the virulent emergence of new and larger RTAs. Furthermore, it could be argued that the emergence of mega-RTAs provided renewed impetus to developing countries to reconsider their position and constructively engage in the Bali process, particularly given the limited options available to WTO members not party to mega-RTAs to engage in international rule making.

Conclusion

The WTO scored a measurable victory at Bali. Members were able to renew the relevance of the multilateral system; a system that has played an unsung role in the expansion of trade and economic activity and in preserving global peace since 1947. The

outcome of Bali also demonstrated that a system focused on trade liberalisation can respond to the specific concerns of its membership without unduly undermining its mandate. The Ministerial Declaration on Public Stockholding for Food Security is the clearest indication of this newfound pragmatism. Members also demonstrated pragmatism in constructively interpreting a major constitutional element of the Doha Mandate relating to the 'single-undertaking'; the agreement among members that all elements of the Doha Mandate would be harvested together. It is now left to members to implement the remaining elements of the Doha Mandate and to that end, shape a credible post-Bali agenda. The success of Bali may trigger a refocus on market access, particularly with respect to 'Industrial' goods (Non-Agricultural Market Access); elements of the Agriculture text; and Services market access. Some members have also floated the prospect of reinserting the Singapore issues of investment and competition policy into the mix in addition to progressing negotiations on Dispute Settlement reform. Many important lessons can be learned from the process which led to success in Bali. It would be useful for the membership to reflect on these lessons and set a pragmatic post-Bali agenda to build on the first success of the WTO in its 20-year history.