



### RECOMMENDATIONS

- Developing countries need to analyse the implementation provisions of the TFA, as it will likely inform the future SDT template for trade agreements in the WTO (and provide ways of improving the template to make it more effective and practical).
- The Bali outcome has shown that it is time to re-evaluate the 'single undertaking' principle in both the WTO and the Doha Round's agenda and ambitions.
- It is clear that 'development' as viewed by developing countries in the Doha Round will only be partly successful. It would therefore be prudent to start a different conversation on how to achieve development outside of trade negotiations through such instruments as aid for trade.
- The broader WTO membership, beyond those engaged in negotiating mega-regional agreements, needs to start engaging in post-Doha mandate discussions, addressing the next round of issues interfacing with international trade.

# Can the Bali Package Resolve the Doha Impasse and Secure the Future of the WTO?

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### EXECUTIVE SUMMARY

Much of recent commentary on the World Trade Organization (WTO) has focused on the stalled Doha Development Round, the reasons for the impasse and proposals for its resolution. In the lead-up to the Bali Ministerial Conference, WTO Director-General Roberto Azevêdo made it clear that the future of the WTO depended on the outcome of the Bali Ministerial and hence the Bali Package. Accordingly, this policy briefing sets out the broad framework of the Bali Package and assesses whether it addresses the blockage in the Doha Round. It remains to be seen whether the Bali Package will push the Doha negotiations ahead – the primary determining factor is whether it will be enough to change the negotiating dynamics of the Doha Round, which remain fraught.

### INTRODUCTION

The WTO 9<sup>th</sup> Ministerial Conference, held in Bali, Indonesia in December 2013, was hailed as a potential Doha Round impasse breaker when a small package of trade agreements selected from the Doha bouquet (the Bali Package) was agreed upon. It was the first time since the establishment of the WTO in 1996 that all WTO members agreed on a trade agreement. This has mainly been attributed to Azevêdo's leadership and his efforts at forging an inclusive and transparent negotiation process. However, there was also anxiety over what a failure in Bali would mean for the future of the multilateral trading system, with the result that the conference's primary objective became to restore faith in the system. The jury is still out on whether the Bali success will provide the necessary stimulus to conclude the Doha Round, but it seems unlikely. This is especially the case when viewed within the context of other developments in the multilateral trading system, such as

the negotiation of mega-regional trade arrangements, which could redefine the global trading system.

### THE DOHA DEVELOPMENT ROUND

The Doha Round was designed with a distinct development bias and has an extensive agenda spanning nine negotiation areas.<sup>2</sup> This is one of Doha's main shortcomings, especially when combined with the 'single undertaking' principle, which bundles all the issues under negotiation into a single indivisible package where nothing is agreed until everything is agreed. Given the number of countries involved and the multiplicity of issues, agreement becomes difficult. This briefing will focus on three of the contributing factors to the Doha impasse: its designation as a 'development' round; the 'single undertaking' principle; and the lack of political leadership among WTO members.

In principle, all WTO members seem to be agreed on the importance of 'development' but not on how it can be achieved within the WTO, particularly through a negotiation round. At the core of the disagreement is developed countries' belief that market liberalisation is key to development, while many developing countries are cautious about liberalisation. This dynamic is aggravated by the belief that developing countries should receive special and differential treatment (SDT), particularly exemptions from WTO obligations, which some regard as necessary to stimulate development.

Until Bali, the 'single undertaking' principle prevented agreement on the low-hanging fruits of the Doha Round, particularly since it is intrinsically linked to the consensus principle. An altered geopolitical environment, caused by the rise of emerging economies and complicated by fundamental differences between developed and emerging economies on the balance of concessions, has made consensus difficult to achieve.

In terms of the lack of political leadership at the WTO, the US vacated its leadership position in the WTO a few years ago due to domestic political economy constraints, while the EU does not seem to have the capacity to take up the mantle. The same goes for large developing countries such as Brazil, India and China, which are still far from becoming system drivers at the WTO.

### THE BALI MINISTERIAL CONFERENCE

Select issues from the Doha Round agenda were negotiated in Bali and the final agreement dealt with agriculture, the least developed country (LDC) package and trade facilitation. On agriculture, the issues under negotiation included tariff rate quotas; stockholding for food security; and the elimination of export subsidies, particularly in the cotton sector. The LDC package covered rules of origin; a services waiver for services originating from LDCs; and duty- and quota-free market access for LDCs. Regarding trade facilitation, agreement was reached on simplifying the processes and cost of moving goods across national borders; and making the procedures and controls related to administering cross-border trade more efficient.

This trade facilitation agreement (TFA) is the most important outcome of the Bali Ministerial. There is now general consensus on trade facilitation as a concept and its benefits. Section II of the TFA, which deals with implementation issues, is key as it gives some insight into potential future trade agreements in the WTO. It provides for a staggered implementation process for developing countries and LDCs based on each country's national needs assessment, which will be used to determine its capacity and the level of assistance needed to implement its commitments. There are three implementation categories: category A commitments are for immediate implementation when the agreement enters into force (within one year for LDCs); category B commitments are for implementation after a transitional period; and category C commitments are for implementation on an indicated date after the transitional period, depending on the implementing country's acquiring technical assistance and building capacity.

The novelty of this agreement is that<sup>3</sup>

- countries determine their own transition and implementation periods, as well as the different categories under which their commitments fall, based on their own circumstances.
- the extent and timing of the implementation of some commitments will be directly linked to the provision of assistance from developed countries and other donor partners where the potential recipient lacks capacity to implement.

Implementation will not be required until commensurate capacity has been acquired.

- category C commitments require development partners to provide assistance arrangements before the recipients are required to provide implementation dates, thus ensuring that assistance is secured before the dates are given.
- if a country determines that it will not be able to implement its category B and C commitments after the transition date it should notify the Committee, giving new dates and reasons for the implementation difficulties. All countries are entitled to such extensions (not exceeding 18 months for developing countries or three years for LDCs). If the Committee does not grant a longer or subsequent extension it must establish an expert group of five independent trade facilitation professionals to examine the issues and make recommendations. During this period, the relevant country will not be subject to any dispute settlement proceedings.

This approach to SDT is a complete departure from the traditional 'one size fits all' approach, where transition and implementation dates are pre-determined in the agreement. Under the old system, implementation would be expected after the transition date has expired, regardless of whether the necessary implementation assistance had been rendered. True to the nature of SDT in the multilateral trading system, the TFA also provides for technical assistance and capacity building on a best endeavour<sup>4</sup> basis. It even goes a step further and directly links implementation to the provision of such assistance. This then becomes the binding aspect of SDT in the TFA, where developed countries cannot hold developing and least developed countries to account for implementing commitments without themselves first being held accountable for delivering on assistance promises and commitments.

Consequently, this agreement could change the narrative on SDT in the WTO and create both a precedent and a template for the provision of SDT in future trade agreements. It also holds potential implications for the negotiation of new issues in the WTO by realistically addressing implementation capacity concerns. As such, trade agreements could be negotiated by and benefit all without necessarily

having all countries implement the agreements at the same time.

However, it is also important to note that with the exception of the TFA, the Bali Package lacks depth. The LDC package is largely best-endeavour on the part of preference-granting countries, while the agriculture agreement does not attempt to address the issues preventing a broader agriculture deal in Doha and merely postpones negotiations on food stockholding to the 11<sup>th</sup> Ministerial Conference. As a result, India had blocked the adoption of the Protocol of Amendment incorporating the TFA into the WTO, which was meant to be adopted in July 2014, until its demands on food security in agriculture were met. This was only resolved in November 2014 when the US and India reached a political agreement on food stockpiling, paving the way for the TFA's implementation.

At a superficial level, Bali restores hope and contributes to rebuilding momentum of the Doha negotiations. Nevertheless, the Bali Package does not address the fundamental problems underlying the three big issues in Doha: agriculture, industrial goods and services. Bali has also not refocused the attention of the major trading powers on the WTO, notably the US, which is prioritising the Trans-Pacific Partnership (TPP) and the Transatlantic Trade and Investment Partnership (TTIP) instead.

The Bali Package has managed to dilute the structural constraint that is the 'single undertaking' principle, assuming that member states take the Bali approach going forward. It opens the door to the possibility of the Doha Round's agenda being negotiated on a piecemeal basis to allow for agreements being reached where possible. However, this might result in lowest common denominator agreements, where countries leave contentious issues unresolved. Nonetheless, it is an indication that the Doha agenda needs to be streamlined and made more realistic.

The success at Bali coincided with the height of the mega-regional<sup>5</sup> negotiations. These represent a new geo-political reality for the WTO that cannot be ignored.<sup>6</sup> There is some debate as to the real objective of these mega-regional arrangements but, as they involve some of the largest economies in the world, the biggest concern is not necessarily tariffs but the negotiation of new rules and disciplines on regulatory

issues that fall outside the purview of the WTO and encroach significantly on countries' domestic regulatory autonomy. State-owned enterprises, competition policy, investment, intellectual property, environment and labour, among others, are the much debated 'trade and ...' issues that developing countries mostly have been reluctant to negotiate at the WTO. However, they cannot avoid these negotiations forever, especially considering the complex nature of modern-day commerce, which demands complex trade agreements.<sup>7</sup> Baldwin attributes this complexity to the internationalisation of production networks and the development of global value chains, which have caused a paradigm shift in the nature of regulations needed for 'made everywhere and sold there' goods.<sup>8</sup>

The danger with negotiating these issues in mega-regional arrangements is that it takes away the centrality of the WTO in international trade governance, breaking it up and sharing it among the mega-regionals. For as long as developing countries resist negotiating new disciplines in the WTO, the centrality of the institution itself will diminish and regional trade agreements will become the new central point of trade governance, creating a compartmentalised trading world and effectively disadvantaging weaker economies. In this context, it is worth considering the TFA template for negotiating some of the issues that the principals are now negotiating outside of the WTO, particularly with reference to implementation issues.

## CONCLUSION

The Bali outcome was a success as far as revitalising the multilateral system and re-igniting interest in the Doha Round negotiations were concerned. However, it is not yet clear where WTO discussions are headed on Doha beyond the Bali Package. The implementation of the Bali Package could keep the momentum going on the Doha Round, but creativity and political will is needed to resolve the difficult issues of agriculture, industrial goods and services. If there were not a 'full harvest', what would this mean for the 'single

undertaking' principle and plurilateral agreements in the WTO going forward? Other questions that will have an impact on this revolve around leadership in the WTO: what it will take for the US to re-prioritise the WTO? China is busy negotiating the Regional Comprehensive Economic Partnership with other Asian countries: will this counter the US-led TPP and TTIP, and is the initiative designed to compete for control and influence? Is there room for China to assume leadership in the WTO, and what would this mean for the WTO's future?

## ENDNOTES

- 1 Memory Dube is a Senior Researcher in the Economic Diplomacy Programme at the South African Institute of International Affairs.
- 2 Agriculture, industrial goods, services, rules, trade facilitation, trade-related aspects of intellectual property rights, environmental goods and services, and development.
- 3 WTO (World Trade Organization), 'Agreement on Trade Facilitation', Section II, WTO Document WT/MIN(13)/36 WT/L/911, 11 December 2013.
- 4 Best-endeavour provisions are the same as pledges and are not legally enforceable; countries basically commit to act to the best of their ability.
- 5 This refers to 'multi-country, globally significant in terms of trade impact, and regulation-intensive or "WTO plus" agreements' the Transatlantic Trade and Investment Partnership, between the US and the EU, the Trans-Pacific Partnership between the US and a number of American and Asian states and, to a lesser extent, the Regional Cooperation in Asia and the Pacific. See Draper P *et al*, 'Mega-regional Trade Agreements: Strategic Implications for the African, Caribbean and Pacific Countries', Report submitted to the African Caribbean and Pacific (ACP) group of states' Multilateral Trading System Programme, January 2014.
- 6 *Ibid*.
- 7 Baldwin R, 'Multilateralising 21st-century regionalism', *VoxEU*, 20 January 2014.
- 8 *Ibid*.

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