

# THE ROAD TO BALI:

## ERIA Perspectives on the WTO Ministerial and Asian Integration

Editors: Yoshifumi Fukunaga, John Riady, Pierre Sauvé

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## Foreword

I am delighted to launch this new e-book, *“The Road to Bali: ERIA Perspectives on the WTO Ministerial and Asian Integration”*. This is the first product from the collaboration of the Economic Research Institute for ASEAN and East Asia (ERIA), UPH (Universitas Pelita Harapan), and the World Trade Institute (WTI).

In December this year, the World Trade Organization (WTO) will host its Ninth Ministerial Conference (MC9) in Bali, Indonesia. Looking back on the WTO's young history, the very first ministerial conference also took place in this region, in Singapore in 1996. Over the past 17 years, we have witnessed significant changes. The WTO's Doha Development Agenda negotiations were launched in 2001 but its conclusion has faced huge and recurring challenges. In the meantime, preferential trade agreements (PTAs), particularly bilateral ones, have offered a faster track for trade liberalization and market integration. Many new issues and policy agendas have been taken up in preferential deals. Beyond bilateral PTAs, the world has also recently witnessed the rise of mega-PTAs: such as the Regional Comprehensive Economic Partnership (RCEP), the Trans Pacific Partnership (TPP), the Pacific Alliance, and the Trans-Atlantic Trade and Investment Partnership (TTIP).

Although not generally considered a mega-FTA, the ASEAN Economic Community has provided a far broader and deeper economic integration path for the 10 ASEAN member states than usual PTAs. At the same time, the proliferating web of PTAs has become the source of a number of systemic problems, creating a veritable spaghetti or noodle bowl of overlapping trade disciplines and market opening commitments. Differing sets of rules are maintained in many areas, particularly rules of origin (ROO), trade-related intellectual property rights, and investment protection. Such developments have likely both generated and diverted trade and investment flows. On the other hand, preferential agreements have yielded few meaningful advances on thorny issues such as subsidy and related trade remedy regimes or agricultural trade.

Despite the surge of preferentialism, the WTO's engagement has remained limited. The dispute settlement body has monitored some PTAs, but only a few. The WTO's Committee on Regional Trade Agreement has provided an important venue for peer review of PTAs, but not all agreements have been thoroughly discussed.

Bali has long been an epicenter of Asian regionalism. In 2003, ASEAN Leaders agreed on their goal of establishing the ASEAN Community (originally targeted in 2020, now accelerated to 2015). In 2011, ASEAN Leaders proposed a new mega-regional PTA construct – the RCEP, which brings together the ASEAN+6 members (Australia, China, India, Japan, Korea and New Zealand). Heads of states have also recently discussed the possibility of concluding the TPP negotiations on the margins of the latest APEC Leaders Meeting held in Bali. It is critical for trade ministers gathered for MC9 in Bali to ponder the WTO's continued relevance in a world of heightened preferentialism and to do so in a creative way.

This e-book offers insights from East Asian scholars to help WTO Members make a success of the forthcoming Bali Ministerial and set the membership on a needed post-Bali reform path. The e-book features contributions from a number of ERIA's regional institute network (RIN) members, complemented by a paper from a legal scholar from UPH which enriches the economists' discussion with a legal perspective on the manifold challenges WTO Members confront. The e-book also features an introductory chapter penned by the publication's co-editors, ERIA's Yoshifumi Fukunaga, UPH's John Riady and the WTI's Pierre Sauvé, summarizing key messages and advancing a set of recommendations flowing from the analyses on offer.

Special thanks are hereby extended to Prof. Fukunari Kimura (ERIA) and Mr. Nathaniel Santoso (UPH) for their support throughout the e-book's preparation as well as to the WTI's Susan Kaplan for her excellent editorial assistance. I am also

keen to acknowledge the precious support from the Swiss State Secretariat of Economic Affairs (SECO) for affording the three institutes the means to initiate their unique cooperation and policy dialogue.

Last but not least, I would like to thank the authors of this book's various chapters for enriching us with their deep insights and forward-looking proposals on how the WTO can best continue to underpin global prosperity and the Asian lessons WTO Members can usefully draw on in charting new directions for the multilateral trading system.

Hidetoshi Nishimura  
Executive Director, ERIA  
Jakarta, November 2013

## I. Introduction and Overview

Yoshifumi Fukunaga, John Riady and Pierre Sauvé

### 1. Background and context of the e-book

The World Trade Organization (WTO) will stage its ninth Ministerial Conference (MC9) in Bali, Indonesia, on 3-6 December 2013. The meeting comes at a critical juncture for the multilateral trade body, long mired in the Doha Round stalemate. Beyond offering a critical first test at consensus-building and institutional renewal, the Bali Ministerial affords a unique opportunity to gauge contrasting perceptions across ASEAN and East Asian countries of the continued relevance of the WTO to trade and economic governance within the region and beyond.

Resulting from the collaborative efforts of the Economic Research Institute for ASEAN and East Asia (ERIA), the Universitas Pelita Harapan (UPH) and the World Trade Institute (WTI) at the University of Bern, this policy research initiative has sought to encourage comparative scholarship from ERIA's Regional Institution Network (RIN) members<sup>1</sup> on some of the key questions arising from the forthcoming WTO Ministerial gathering:

- What do ERIA's RIN members expect the Bali MC9 to produce by way of tangible outcomes? Are certain negotiating agenda items ripe for early harvesting?
- How can WTO Members use the Bali MC9 to impart renewed vigor to *multilateral* cooperation (including not only rule-making and market opening but also multilateral surveillance and dispute settlement) in the trade field?
- What priorities should ASEAN and East Asian countries pursue at the Bali Ministerial?
- How relevant does the WTO remain to the process of deepening economic integration in ASEAN and East Asia, and to the trade governance priorities of ERIA member governments more broadly?

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<sup>1</sup> One more contribution was made by Simon Lacey from Universitas Pelita Harapan.

- How and in what areas can multilateral advances in Bali best serve and complement ASEAN's march toward the realization of the ASEAN Economic Community by 2015?
- Can the forthcoming launch of negotiations on a Regional Comprehensive Economic Partnership (RCEP) among ASEAN+6 countries facilitate the process of multilateralizing regional advances?
- Can ongoing negotiations towards a Trans-Pacific Partnership facilitate the process of extending regional advances on a multilateral basis?

## **2. The continued relevance of the WTO**

The contributions in this e-book confirm beyond any reasonable doubt that the WTO retains central salience as an anchor of global trade governance. Despite the challenges and repeated roadblocks encountered in the conduct of the Doha Development Agenda (DDA) negotiations as well as the recent surge in preferential economic integration initiatives throughout the region (and indeed much of the world), the great majority of contributors concur that the WTO continues to play an irreplaceable role in the governance of international trade. This was vividly expressed by Chinese RIN Member Prof. Zhang Yunling:

“[I]t is vital to keep the multilateral trading system working and effective since no the other institution can serve the needs of both the developed and developing economies.” (Chapter II.1)

The above viewpoint was reinforced by New Zealand RIN Member Prof. Gary Hawke, whose contribution recalls how the WTO needs to retain its role as a central coordinating institution in global commercial relations. It is by now a widely accepted reality that while preferential trade agreements can usefully pursue a trade liberalization and regulatory cooperation agenda, they cannot solve some of the most intractable challenges in contemporary trade relations. This is notably the case of ever morphing non-tariff barriers, trade remedies, agricultural trade, export support subsidies, etc. Moreover, the prevalence of weak (or weakly enforced) disciplines



across numerous preferential agreements carries genuine risks for global trade. As former UNCTAD and WTO head Dr. Supachai Panitchpakdi pointed out:

“[Too many bilateral deals] could rock the foundations of non-discrimination and transparency upon which the multilateral system is built. These core principles not only help level the playing field between developed and developing countries, but also make the international trading environment a more predictable and less complex place to do business.”<sup>2</sup>

Several contributors concur that care must be taken, notably through a strengthening of multilateral disciplines and monitoring, to ensure that the continued proliferation of preferential market opening and rule-making initiatives – the so-called “spaghetti or noodle bowl” challenge remains squarely on the radar screen of multilateral diplomacy and that every operational means be explored and pursued for extending regional advances on a multilateral basis.

The various contributions to this e-book strongly suggest that the multilateral trading system is widely seen as being at a critical crossroads, such that the Bali Ministerial will be a centrally important moment in the multilateral trade body’s young life. The Ministerial meeting affords Member countries and WTO’s new management team a unique opportunity to hit the “reset” button and yield a tangible, momentum-inducing, harvest to multilateral diplomacy.

While the probable harvest on offer is often derided as “Doha-lite” and is indeed assuredly significantly less ambitious than the DDA’s initially lofty (and likely unrealistic) aims, imparting forward momentum in Bali even on a scaled down agenda would likely carry enormous symbolic value at a time when most forms of multilateral diplomacy, including beyond the trade field, face daunting prospects.

As it happens, and as many contributions to this e-book usefully recall, the harvest that is within reach of being reaped in Bali is hardly devoid of commercial significance.

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<sup>2</sup> As quoted by Dr. Erlinda Medalla from PIDS, the Philippines’ RIN Member, in Chapter II.7.

Every effort must thus be deployed to both promote convergence on a concrete set of deliverables in Bali whilst also setting in motion a process of forward thinking able to steer the DDA towards its ultimate conclusion and set the WTO on a future reform path.

### **3. The Bali Deliverables**

#### **3.1 Towards a WTO Trade Facilitation (TF) Agreement**

Most scholars in this e-book agree that a WTO agreement on trade facilitation would generate large benefits for East Asia and the world economy. Such a view reflects the highly successful experience and ongoing efforts at implementing various TF initiatives in the region (see **Box 1** below). Arguably more than any other region of the world, countries and firms in ASEAN and East Asia have in recent decades established strong cross-border production networks in which intermediate goods and services cross borders multiple times over short time spans. The manifold trade facilitation initiatives that have been undertaken throughout the region have greatly enhanced the efficiency of production networks and brought significant benefits to economic agents and member countries by reducing transport costs, promoting seamless logistics, adding density to trade routes, and facilitating linkages between goods and service producing sectors.

Beneficiaries of stepped-up TF include not only middle-income countries like Malaysia, Indonesia or Thailand but also the region's lesser developed economies, such as Cambodia and Lao PDR. Thanks to strengthened TF, Cambodia and Lao PDR have experienced significant inflows of foreign direct investment, allowing local producers to insert themselves in regional value chains and expand the remit of pro-poor employment in the formal sector. Both countries have in recent years registered higher growth rates than the ASEAN-6 members, suggesting that the TF-induced expansion of production networks has been an important source of inclusive growth, helping the region address the challenge of development gaps. There is every

reason to believe that a WTO-anchored TF agenda could set a similar process in motion globally, such that TF should also be seen as a core element of the DDA's pro-poor agenda.

### **Box 1. Trade facilitation initiatives in ASEAN**

In their collective march towards the establishment of an ASEAN Economic Community by 2015,<sup>3</sup> most ASEAN countries have established national single windows (NSWs), a key first step towards creating an ASEAN-wide Single Window (i.e. a network of 10 NSWs). Seven ASEAN Member States have already operationalized their NSWs, with Cambodia, Lao PDR and Myanmar having initiated the requisite regulatory reforms (e.g., simplifying customs documents) to implement their NSWs. The ASEAN Trade Repository (linking National Trade Repositories) now under construction aims to ensure the transparency of trade-related regulations. ASEAN countries have furthermore signed several regional agreements and protocols to facilitate the flow of goods-in-transit and harmonized the integration area's tariff nomenclature at the 8-digit level (AHTN).<sup>4</sup> The region's Master Plan on ASEAN Connectivity adopted in 2010 lists a significant number of initiatives on physical connectivity (hard infrastructure), institutional connectivity (soft infrastructure), as well as people-to-people connectivity (movement of people).<sup>5</sup> ASEAN's concept of institutional connectivity overlaps with the WTO's approach to trade facilitation. At the sub-regional level within ASEAN, the Cross-Border Transport Agreement (CBTA) pursued within the Greater Mekong Sub-Region initiative is durably enhancing cross-border procedures, for instance through single-stop inspections.<sup>6</sup> The latter initiative has subsequently been adopted by other sub-

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<sup>3</sup> For a fuller discussion of steps towards the creation of the ASEAN Economic Community, see ERIA (2012). See also ASEAN (2008; 2012).

<sup>4</sup> In addition to them, ASEAN has undertaken a series of efforts to simplify rules of origin in AFTA and ATIGA. In 2008, new rules of origin were adopted which allowed business to choose between regional value content or change in tariff classification rule. This rule was later adopted in the three ASEAN+1 FTAs (ASEAN-Australia-New Zealand, ASEAN-Japan, and ASEAN-Korea). ASEAN has gone further by setting-up self-certification programs by 2015.

<sup>5</sup> The three connectivity concepts have been adopted and expanded to APEC in 2013.

<sup>6</sup> See Chapter II.1 (Zhang Yunling) for more detail.

regional initiatives within ASEAN.<sup>7</sup>

East Asia has also seen a number of important trade facilitation initiatives. ASEAN Members have entered into several so-called “ASEAN+1” preferential trade agreements (PTAs) with Australia, China, India, Japan, Korea and New Zealand. All of the ASEAN+1 PTAs feature a broad set of trade facilitation provisions covering customs procedures and cooperation; technical regulations, standards and sanitary and phytosanitary measures; non-tariff barriers, especially administrative fees and charges; transparency of laws, regulations and administrative rules; and the use of ICT and e-commerce.<sup>8</sup> Beyond the ASEAN region, APEC’s supply chain connectivity initiative adopted in 2010 has set a numerical target of a 10% improvement in supply chain performance measured in terms of time, costs and uncertainty by 2015. The Trans-Pacific Partnership negotiations currently underway also feature detailed trade facilitation provisions in a dedicated chapter.

One recent ERIA study has shown that, through the above regional and national efforts, ASEAN countries have successfully improved their trade facilitation and logistics performance, even as they strive to reach global best practice standards.<sup>9</sup> The above study suggests that trade within ASEAN has derived large benefits from recent region-wide efforts on trade facilitation.<sup>10</sup>

Remarkably, all of the above efforts, initiated as they were by a diverse group of developing and least developed countries, are strongly indicative of ASEAN’s deep understanding and belief in the economic and commercial value of sustained investments in trade facilitation. ASEAN’s policy dialogue and ASEAN+1 trading partners, as well as international organizations such as the Asian Development Bank

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<sup>7</sup> Those initiatives are known as the Brunei-Indonesia-Malaysia-Philippines East Asia Growth Area (BIMP-EAGA) and Indonesia-Malaysia-Thailand Growth Triangle (IMT-GT).

<sup>8</sup> Wong and Pellan (2012).

<sup>9</sup> ERIA (2013).

<sup>10</sup> *Ibid.* Based on gravity model estimations, the study shows that a 1% improvement in trade facilitation and logistics regulatory index could lead to a 2.5-2.7% increase in intra-ASEAN trade.

and the World Bank, have offered strong support to TF efforts at the national, sub-regional and regional level. Such trade-related technical assistance and economic cooperation initiatives, while not legally binding in nature, are nonetheless key responses to ASEAN's collective determination to improve the region's trade facilitation performance.

One important aspect of trade facilitation is its almost inherently non-discriminatory character. Steps taken to facilitate trade (e.g., simplified customs procedures) stand to benefit exporters and importers all at once. The faster movement of goods across borders and the improved predictability and transparency of trade transactions further underpin the operation and efficiency of sophisticated production networks. ASEAN's and East Asia's successful advances in TF will be disseminated to the other parts of developing world. As ASEAN countries correctly recognize, trade facilitation is far from being a developed country agenda. Quite the contrary, it is developing countries that stand to be the main beneficiaries of a global TF deal at the WTO, as their participation in regional and global supply chains would be significantly enhanced. This, of course, will require technical assistance from bilateral, regional and multilateral donors, as has been the case for ASEAN countries. Any WTO deal on TF must thus feature a complementary set of novel aid-for-trade provisions that are adequately funded.

For ASEAN and East Asia countries, a WTO TF agreement implies a strengthening of the region's TF architecture. Several features of the existing ASEAN TF landscape were embedded in the July 2013 WTO TF text. This includes issues such as single windows and enhanced transparency provisions. A WTO agreement can usefully complete the ASEAN TF regime by codifying best global practices, for instance on advance rulings. All of the above TF components are in line with ASEAN's and East Asia's objective of enhanced trade facilitation and connectivity.

### **3.2 Agreeing on a package for least developed countries**

A second point of emerging consensus among this e-book's contributing scholars is that Bali must deliver a credible package on the most pressing needs of the WTO's weakest members – the least developed countries (LDCs).

These matters are familiar to ASEAN, whose membership includes three LDCs – Cambodia, Lao PDR and Myanmar. Viet Nam was formerly an LDC but two decades of trade-centric reforms have played a major role in the country's graduation to middle-income status. There is increasing evidence that even the poorest countries within ASEAN have been able to steadily increase their participation in – and benefits from – production networks in the region. This has involved the implementation of several supporting measures beyond trade facilitation initiatives. A first crucial component has been the significant reduction and elimination of tariffs through AFTA and the ASEAN+1 PTAs. Second, the adoption of liberal rules of origin allowing for regional cumulation has exerted a decisive trade-facilitating influence on regional integration patterns. First introduced in AFTA, such rules were later adopted in ASEAN+1 PTAs. Yet, it bears recalling that even in the narrower confines of ASEAN and East Asia, the quest for duty-free/quota-free (DFQF) treatment foreseen for LDCs at the WTO's 2005 Ministerial Conference in Hong Kong have yet to be fully realized. Tariffs are indeed maintained on certain products (though accounting for less than 10% of tariff lines, in the case of ASEAN+1 FTAs, at the HS 6-digit level), and stricter rules of origin continue to apply to a range of sensitive products which are often of priority interest to the region's LDCs.

The difficulties ASEAN Member States have encountered on this front offer a cautionary tale ahead of the Bali gathering, suggesting continued tensions in the run-up to the Ministerial on an issue of considerable symbolic value in a development round.

Like many other deep integration compacts, ASEAN members have achieved much deeper liberalization in the realm of trade and investment in services than is the case under the WTO's General Agreement on Trade in Services (GATS), though the benefits of market opening in services for LDC exporting firms have yet to materialize in a significant manner (nor have the latter countries undertaken significant liberalization themselves). While all three of ASEAN's LDCs have been successfully participating – and contributing (albeit on the basis of novel, variable geometry, provisions) – in regional economic integration in services, the situation elsewhere is far from satisfactory. As Philippine RIN Member Dr. Erlinda Medalla pointed out in her *e-book* contribution, LDCs are typically constrained by acute shortcomings in negotiating capacity. Furthermore, most LDCs are shackled by domestic markets whose size and income level fail to attract negotiating attention from developed and developing countries alike. This results in a process of marginalization and weak involvement in preferential trade negotiations. For Cambodia, Lao PDR and Myanmar, it is the ASEAN (and ASEAN+1 PTAs) that have provided a critical conduit for engaging the region and the world economy. For those LDCs left out from any regional economic integration process, the multilateral trading system embodied by the WTO offers the sole route to expanded market access opportunities in goods and services alike.

The LDC package proposed by LDC Group<sup>11</sup> calls for: (i) implementation of the duty-free/quota-free (DFQF) market access Decision taken by WTO Members at the Hong Kong Ministerial Conference in 2005, (ii) a tightening of multilateral disciplines on preferential rules of origin, (iii) operationalization of the LDC services waiver, and (iv) addressing trade distorting subsidies on cotton.

All four elements above are expected to benefit LDCs, albeit to a different degree.<sup>12</sup>

Perhaps the most intractable issue before Ministers on the LDC front - DFQF - would

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<sup>11</sup> WTO (2013), LDC Package for Bali: Communication by Nepal, on behalf of the LDC Group, Trade Negotiations Committee, TN/C/W/63, 31 May.

<sup>12</sup> See Chapters II.11 (Dr. Biswajit Dhar) and II.12 (Dr. Zakariah Rashid).

clearly benefit LDCs. The challenge remains as it has since Hong Kong to reach agreement on those products representing 97% of tariff lines that are to benefit from DFQF treatment, an issue on which differing views prevail even among LDCs. There are significant overlaps between the priority product lists of ASEAN and their African LDC counterparts, an issue to which the quest for greater flexibility in preferential rules of origin is closely linked.

The benefits to be derived from the services waiver, the contours of which were agreed at the WTO's last Ministerial gathering, appear less straightforward both to identify and produce. While an approach based on relative reciprocity could help LDCs develop their own service sectors, significant export gains continue to be held back in many LDCs as a result of limitations in export (supply) capacity and the concentration of LDC negotiating interests on the mode of supplying services (Mode 4 trade) and categories of service providers (low and medium-skilled workers) that continue to rank among the most problematic to address in a trade policy setting. Still, some (limited) movement on this front, including once more through targeted forms of technical assistance, will be necessary for Bali to be seen as a step forward on the LDC front.

Meanwhile, a deal on cotton continues to be challenging both because of strong forces of protectionist capture in some developed country markets and the concentration of potential gains in a relatively small sub-set of WTO Members, the so-called "cotton-4" countries in West Africa.

Despite the above challenges, the acuteness of which should not be underestimated, agreeing to an LDC package is likely to be a central element defining success in Bali. Moreover, it bears noting that ultimate value of a Bali deliverable on LDCs lies not only in the direct and immediate economic benefits on offer but more systemically in its ability to offer tangible proof of the benefits to be derived from greater LDC



engagement in multilateral trade diplomacy and the international community's recognition of the genuine obstacles that continue to impair such engagement.

Considering the fact that two of the four major proposals advanced by the LDC Group relate to the implementation and operationalization of pre-agreed commitments (DFQF and the services waiver), and bearing in mind the irreplaceable value of the WTO for LDCs, the Bali Ministerial Conference must deliver credible advances. Failure on this defining element of the DDA could well cripple advances on most other negotiating fronts, a risk WTO Members would be well advised to avoid.

### **3.3 Agriculture and food security**

Agriculture is generally perceived as a further key component of the Bali deliverables. Yet, interestingly, ERIA RIN members have paid relatively lesser attention to this agenda item, particularly when compared to a possible TF Agreement and the LDC package. This is somewhat paradoxical given the fact that agricultural trade, probably more than any other negotiating issue, lies behind the Doha deadlock.

It is also paradoxical when one considers that agriculture dominates the landscape of ASEAN economies, accounting for a large share of output and absorbing an even larger share of the ASEAN workforce. While agro-based products have been identified as one of the priority integration sectors (PISs) within ASEAN, agricultural products (especially rice and sugar) are listed on the Sensitive List and Highly Sensitive List of ATIGA (ASEAN Trade in Goods Agreement) in many countries.

ASEAN has a long record of cooperation in the area of food security. As far back as 1979, Member States signed the Agreement on the ASEAN Food Security Reserve. ASEAN cooperation in this area has intensified noticeably in the wake of the sharp increase in international food prices in 2007/2008, leading to region-wide agreement on two important fronts: (a) ASEAN Integrated Food Security Framework, and (b)

Strategic Plan of Action on Food Security in the ASEAN Region (SPA-FS). The SPA-FS focuses on enhancing food production, promoting greater availability and enhanced accessibility to agriculture inputs, and operationalizing regional food emergency relief arrangements.

The issue of subsidy disciplines is not addressed by these programs since the matter is anchored in the rules of the WTO Agreement on Agriculture and thus a regional forum does not appear tailor-made for such a purpose.

Another important regional initiative is the ASEAN Plus Three Emergency Rice Reserve (APTERR) to which China, Japan and Korea participate alongside ASEAN Member States. Rice occupies a special place in these cooperation mechanisms because, as ERIA (2012) noted, the ASEAN region all at once hosts important importers (e.g., Indonesia, Philippines, and Malaysia) and exporters (Thailand and Viet Nam) as well as potential world suppliers (Cambodia, Myanmar) of rice.

The critical importance of food security to the Bali Ministerial was eloquently taken up in the contributions of Dr. Vo Tri Thanh (Chapter II.7) and Dr. Biswajit Dhar (Chapter II.11). Both contributions recall the differing views the issue elicits among the WTO membership. The notion of allowing targeted subsidy support for the purpose of ensuring food security proposed by the G-33 group has complex implications for the ASEAN and East Asia region.<sup>13</sup> Some countries in the region have already introduced such subsidies (e.g., India). On the other hand, poorer countries with limited fiscal capacity harbor genuine concerns over the potentially negative distortive effects of such support measures. Food importing countries can doubtless benefit from the ensuing cheaper prices of imported food but domestic producers may also suffer from such subsidies when potentially large public stockpiles indirectly induce exports to third countries.

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<sup>13</sup> Five countries (China, India, Indonesia, Lao PDR and the Philippines) are members to the G-33 group.

India's demand for linking the agriculture-food security nexus to other issues up for decision in Bali, especially TF, represents a genuine risk hanging over the entire MC9. In recalling the need to break this key logjam, Prof. Jin Kyo Suh, the RIN Member from South Korea, has argued that the adoption of a peace clause could represent a feasible and realistic approach. His contribution further recalled how the G-20 proposal on improving tariff-quota transparency procedures would also likely form part of the Bali deliverables on agricultural trade.

As Japan RIN Member Mr. Daisuke Hiratsuka argued in his e-book contribution, and as the ASEAN experience itself has shown, agricultural trade can play a crucial role in poverty alleviation and in narrowing development gaps. Regional efforts, although important within ASEAN, cannot however offer definitive solutions to all negotiating issues at play in the Bali discussions. Accordingly, it is up to the WTO membership to start delivering better and more balanced disciplines on agricultural trade.

### **3.4 Information Technology Agreement**

The WTO's 1996 Information Technology Agreement (ITA) is widely recognized as one of the multilateral trade body's early and lasting success stories. Following a critical mass-based approach within a plurilateral construct, the benefits of which were subsequently extended to all WTO Members on a most-favored-nation (MFN) treatment basis, the Agreement saw major IT-manufacturing countries commit to a process of complete tariff elimination on an MFN basis. Most countries in East Asia are ITA signatories and have benefited handsomely from the arrangement and the opportunity it affords for inserting regional firms into global value chains in the industry.<sup>14</sup> Today, an estimated 86% of smart-phones and 100% of digital cameras are produced in the region. The East Asian region is now the center of EEE (electrical electronic equipment) product manufacturing of the world, and the value

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<sup>14</sup> Among ASEAN Member States, Brunei, Cambodia, Lao PDR and Myanmar are not members to the ITA.

chains created extend much beyond the region with strong ties to Central and Eastern Europe as well as North America [Ando and Kimura, 2013].

ASEAN, in its regional economic integration efforts, also places high value on ICT products and has made them a priority integration sector (PIS). The PIS initiative covers not just trade-in-goods but also extends to liberalization of trade in related services and investment. The e-ASEAN Framework (signed in 2000) also addresses issues relating to ICT infrastructure, e-commerce, facilitation of trade in ICT products and services, capacity building and e-Society, as well as e-Government.

ASEAN Member States have further deepened cooperation within the ASEAN ICT Master Plan 2015 (AIM2015). As such, trade and investment in ICT products (goods and services) represents a centrally important element of ASEAN initiatives in this area but the vision ASEAN Member States share extends far beyond trade through various endeavors to promote the production, diffusion and application of high technology industries throughout the region.

Signed in 1996, the ITA currently lags behind the phenomenal innovations that have taken place in the ICT sector in recent years. New products need to be added to the Agreement's scope of coverage, its membership should expand to take in new important industry players and determined efforts need to be directed towards tackling the complex mosaic of non-tariff measures affecting producers and consumers of IT-related goods and services.

Given the global intensity of competitive forces in the sector, any revised ITA ("ITA2") would bring large benefits to manufacturers in the region and beyond and more importantly enhance global productivity levels by accelerating the diffusion and adoption of new technologies.

Again somewhat oddly given the central salience of the ICT sector to the region's cross-border trade and investment dynamism, only a few scholars in this e-book project touched upon ITA2. This is perhaps not so much because they are opposed to the idea of an ITA2. Rather, it might well highlight how many contributors view the ITA as representing a new model of trade governance allowing for greater doses of variable geometry within the WTO system as a whole, an issue of more systemic reform unlikely to be at the center of Bali discussions among ministers.

#### **4. Implications of East Asian integration for the WTO**

Several contributions in this e-book recall how the WTO can usefully tap into and attempt to replicate on a global basis many of the useful steps taken by countries in East Asia in responding to the manifold challenges of deep integration and trade governance reforms. First, the process of East Asian integration, and especially the quest to establish an ASEAN Economic Community (AEC) by 2015, has compelled governments throughout the region to seriously address the many barriers impeding the smooth functioning of production networks rather than focusing too narrowly on barriers to trade.

As was discussed above, trade facilitation is a clear case in point. ASEAN's definition of trade facilitation extends much beyond customs procedures (Wong and Pellan, 2012), as it embraces in a holistic manner several key components of related services liberalization (through GATS+ commitments). Indeed, it considers TF as very much a supply chain in itself. In tackling the services dimension of the TF agenda, ASEAN Member States have innovatively abandoned the "request and offer" approach of trade negotiations and instead pursued concerted efforts of market opening via a formula-based approach, as noted in the contribution by Singapore RIN Member Hank Lim.

Here again, production network facilitative services such as logistics have been treated as priority integration sectors commanding greater and earlier liberalization efforts, as befits key input industries. Governments from the region have also started to address a number of related regulatory issues through the 2007 AEC Blueprint, most notably through cooperation in the fields of intellectual property protection and competition policy. ASEAN+1 PTAs follow a similar path.

In turn, the Regional Comprehensive Economic Partnership (RCEP) initiative linking ASEAN Members states to its six key regional partners (Australia, China, India, Japan, New Zealand and South Korea) represents a unique initiative aimed at establishing a harmonized regional PTA linking all ASEAN+1 PTAs. Although ASEAN Member States already have PTAs with all of their +1 partners, the RCEP aims at elevating the quality of the region's existing PTA ecosystem (rather than falling into the least-common-denominator trap) and more importantly at harmonizing the existing ASEAN+1 FTAs.<sup>15</sup> RCEP would be an open accession PTA as agreed by the compact's sixteen Economic Ministers in 2012, and thus may expand the benefits of the integration it sustains beyond the region. If RCEP is successfully concluded without lowering its current level of ambition, it may provide a new way of consolidating, improving and expanding on existing PTAs. Just like the TPP, which also aims at addressing a "21<sup>st</sup> century trade agenda", the RCEP will do much to multilateralize regional advances and pave the way through policy experimentation for novel rule-making and market-opening steps at the global level. The WTO has thus much to gain from ongoing attempts at deep integration in East Asia.<sup>16</sup>

At the same time, there is no denying that genuine risks may derive from the constitution of mega-regional deals like the TPP and RCEP. Such risks include the scope for potentially incompatible rules among them. Equally important are the

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<sup>15</sup> Fukunaga and Isono (2013).

<sup>16</sup> While the TPP is also an open accession PTA, Prof. Gary Hawke has nonetheless raised a number of concerns over the design of the TPP's accession clause. See Chapter II.6 (Prof. Gary Hawke).

systemic risks that mega-regionals imply in regard to incentives for continued engagement in multilateral trade diplomacy.

There is currently no truly credible mechanism to ensure (and enforce) the compatibility of PTAs with multilateral rules. APEC members have started to call for greater transparency of ongoing negotiations but its own geographical remit cannot naturally extend to the newly launched Trans-Atlantic Trade and Investment Partnership (TTIP). The WTO is without doubt the natural go-to place to minimize the risks potentially arising from mega-regional incompatibilities. As New Zealand RIN Member Prof. Gary Hawke correctly pointed out:

“A central role of the WTO would be to ensure that the rules agreed by these mega-agreements are not incompatible, and continually simplifying them where possible into a single set of rules.” (Chapter II.6)

Also, Dr. Erlinda Medalla from the Philippines correctly stressed:

“Production networks and the supply chain extend beyond the region. Their dynamism cannot be sustained without orderly global trade, best managed under the WTO framework.” (Chapter II.10)

## **5. Looking ahead**

Almost all the contributors to this e-book share strong concerns over the systemic implications of a failed Bali meeting. For example, Korean RIN Member Dr. Jin Kyo Suh noted:

“The inability of Members to secure a credible package will not only mean failure in Bali but spell the end of the Doha negotiations and seriously jeopardize the multilateral system as a whole.” (Chapter II.2)

Contributors agree that the failure of the Bali Ministerial would translate into a seriously weakened WTO and prompt recourse to more mega-regional deals,

bringing with them non-negligible risks of serious fragmentation along regional and preferential lines.

*A contrario*, should the Bali MC9 be concluded successfully, the WTO would regain much needed momentum as a negotiating forum and global trade legislature. Yet even such an outcome cannot guarantee a bright future for the world trade body absent its embracing of a forward-looking reform agenda. Accordingly, many contributors concur that the Bali Meeting should also mark the launch of a longer-term journey of governance reforms able to impart the necessary flexibility required for the WTO to remain relevant and attuned to a world of ever heightened diversity of collective preferences and development levels.

The WTO will long continue to provide a critically important global public good: the legal infrastructure through which the global governance of trade relations is made possible. Yet, like any living organism, the WTO needs to adapt to a fast changing environment for it to continue to bear fruits more effectively, more efficiently and more promptly. Simply put, the WTO must practice what it preaches: to adjust to – and embrace – the tectonic structural changes buffeting global commerce today, with new actors and technologies ushering in a new geography of trade.

This e-book features several novel ideas calling for a new operating system in the WTO. One such idea is to promote greater recourse to plurilateral negotiations involving coalitions of like-minded countries who share a common wish to move forward, either in a closed manner or on an MFN basis once critical mass thresholds are met.<sup>17</sup> As noted earlier, the 1996 ITA has provided a tested model of the latter approach. Another model of plurilateral governance, one that limits reciprocal benefits solely to those undertaking its obligations, is the WTO's Government Procurement Agreement. Meanwhile, the ongoing Trade in Services Agreement

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<sup>17</sup> Nakatomi [2013] also emphasize the possibility of plurilateral deals in the WTO.



(TiSA), initially conceived along ITA lines but conducted outside the institutional remit of the WTO in the manner of a GATS Article V PTA in services, offers a third model of variable geometry approach.

A second major governance challenge confronting WTO Members concerns the critically important question of how decisions are made in the trade body. This chiefly concerns the vexatious questions of how consensus is reached and whether negotiations should proceed on the basis of a single undertaking approach – where nothing is agreed until all is agreed. The sheer size of the WTO membership and the diverse collective preferences such size naturally entails is increasingly seen as one of the many reasons for the DDA’s deadlocked situation.

In his e-book contribution, New Zealand RIN Member Prof. Gary Hawke recalls that the real challenge lies in the evolving nature of the world’s economic integration agenda: “[the single undertaking] cannot be accommodated in a rolling agenda of collaboration in which new issues arise and are incorporated.” (Chapter II.6) Two related issues in governance reform concern, first, the basis on which decisions are to be taken by Members: consensus vs. majority voting and, as Chinese RIN Member Prof. Zhang Yunling noted, how best to ensure that a more equitable sharing of leadership arises in global trade governance, one that is able to assign a progressively larger role to emerging economies.

While it is almost certain that Ministers in Bali will not delve deeply – if at all – into the thorny issues of WTO governance reforms, most contributors of this e-book feel that such discussions are very much needed, such that strong signals on the desirability of tackling them by the time of the next Ministerial gathering should be sent already in Bali. Indeed, the e-book contributors almost unanimously call for a far-reaching change in mindsets. New Zealand RIN Member Prof. Gary Hawke says it well when

arguing that “[the WTO] should also begin to adapt to the contemporary world by seeing its field of responsibility as ‘economic integration’ rather than ‘trade’.”

The above sentiment is echoed in Japanese RIN member Mr. Daisuke Hiratsuka’s call to situate trade policy discussions against the backdrop of the new geography of global commerce that production fragmentation and trade in intermediate goods and services is making possible (Chapter II.4). His contribution stresses the analytical importance of the “trade-in-value-added” (TiVA) concept. Taking a TiVA lense, imports and services become “essential ingredients” of competitive exports. This in effect turns the conventional mercantilist view of trade upside down. In the new reality of production networks and value chains, he recalled how “[e]ven a small economy can invite a few production processes to start industrialization by improving connectivity.” That is exactly what is happening in the ASEAN and East Asia region.

Responding to such new trade horizons, which Professor Richard Baldwin (2011) has famously called the “second unbundling”, WTO members must embrace production network enhancing policies to reduce “services link costs” (Kimura and Ando, 2005). Such an approach is one that, not surprisingly, assigns a key integrating role to trade facilitation, trade in services and cross-border investment. Seen through this enlarged, interconnected, lens, other issues such as intellectual property protection, product standards, and competition policy all become considerably more salient, not so much in the conventional sense of international negotiations but as key domestic policy measures that need to be aligned in such a way as to increase the scope for meaningful insertion in production networks.

Finally, and doubtless also unlikely on the plates of Ministers in Bali but critically in need of their future attention, is how the WTO retains relevance in regard to the increasing panoply of PTAs, particularly the recent trend towards mega-regional

constructs.<sup>18</sup> While the WTO lays down the fundamental legal requirements that PTAs have to meet in order to be deemed WTO compatible (i.e., Article XXIV of GATT and Article V of GATS), there have been very few instances in which the legality of PTAs has been questioned before the WTO's dispute settlement mechanism. Although the Committee of Regional Trade Agreements (CRTA) does afford opportunities for all WTO members to discuss and learn about newly notified PTAs, not all agreements are fully reviewed, particularly those negotiated between developing countries. While the Trade Policy Review Mechanism (TPRM) assesses the PTAs of WTO Members and thus enhances the transparency surrounding the process of preferential market opening and rule-making, it cannot meaningfully analyze advances on "new issues" (e.g., investment) that fall outside the WTO's current substantive remit. Accordingly, the WTO's capacity to discipline potentially harmful or distortive forms of preference granting remains significantly constrained. It is doubtless for this reason that several contributors to this e-book argued in favor of strengthened multilateral surveillance and disciplines targeting PTAs. As Myanmar's Drs. Sandar Oo and Zin Zin Naing noted: "[the TPRM is] underexploited and its role should be extended to help the WTO better address new and essential issues of the international economic order such as the uncontrolled proliferation of PTAs [...]" (Chapter II.10).

In their Australian RIN contribution, Malcolm Bosworth, Greg Cutbush and Jenny Corbett go further by emphasizing the importance of the TPR process to enhancing the transparency of trade rules more broadly rather than focusing solely or primarily on PTAs) (Chapter II.14).

Despite their proliferating nature, regional integration initiatives often remain opaque for non-members. Drawing on its analytical capacity and the legitimacy that flows from its global membership, the WTO is here again uniquely placed to supply such

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<sup>18</sup> See for example Chapter II.7 (Dr. Erlinda Medalla)

good governance-enhancing benefits. Yet to do so, its own disciplinary remit may need to be expanded and keep up with the many new issues taken up by preferential trade and investment agreements. That Ministers in Bali seem likely to eschew such a debate in no way lessens the need for continued institutional and legislative adaptation if the WTO is to retain its role as the world's undisputed anchor of global trade governance.

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## **II. Contributions by ERIA Research Institute Network (RIN) Members**

### **II.1 Challenges to the WTO and a Trade Facilitation Agreement**

Zhang Yunling, Chinese Academy of Social Sciences (CASS)<sup>19</sup>

#### **1. Introduction**

The World Trade Organization (WTO), like the General Agreement on Tariffs and Trade (GATT) before it have both played a crucial role in creating an open and rules-based world market since the Second World War. Such a market environment facilitates economic integration and the long-term growth of the global economy. However, as more and more economies have joined the multilateral trading system, its structure has changed, and the interests of its Members have also diversified. When the Doha Development Round was launched in 2001, Members of WTO committed themselves to working hard on this new agenda. But the negotiating process has become very complex due to the diversity of interests of WTO Members. Originally, the deadline for conclusion of the Round was 2005, but little progress has been made so far. Pessimism about the successful conclusion of the negotiations seems to prevail. The reasons for such pessimism include a lack of political will to revive the negotiations, the difficulty in finding a balance across a range of complex issues, and the emerging trend towards preferential trade arrangements, among others. The Doha Round is a 'development round' aiming at creating a better global environment for global economic integration and reducing development gaps. Negotiations on eliminating or reducing heavy agricultural subsidies on agriculture offered in the developed economies show no progress. The failure of these negotiations has angered the developing countries since they consider such subsidies as reflecting the protectionist policy of the developed countries.<sup>20</sup> On the other hand, the developed countries, especially the United States (US) and the European Union (EU), have strongly urged the emerging economies, especially

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<sup>19</sup> Zhang Yunling, Professor, Director of International Studies, Chinese Academy of Social Sciences. E-mail: [zhangyl58@163.com](mailto:zhangyl58@163.com)

<sup>20</sup> Leaders of 25 world farming organizations signed a letter to Pascal Lamy, then Director General of WTO criticizing the protectionist attitude of the US and EU. <http://viacampesina.org/en/index.php/actions-and-events-mainmenu-26/10-years-of-wto-is-enough-mainmenu>

China and India, to take a more pro-active stance on liberalization. Currently, it appears very difficult to provide sufficient impetus to the leaders of WTO Members to make a success of the Doha Round. Without active leadership, it is impossible to achieve a breakthrough, although there is increasing concern that the failure of the round will create a risk to the WTO system and to the world economy more broadly.

While the multilateral process has stagnated, preferential arrangements have proliferated. The major interests and efforts of the US, the EU, Japan and other developed economies such as Australia and Canada have shifted towards negotiating the Trans-Pacific Partnership (TPP), the Transatlantic Trade and Investment Partnership (TTIP), the Canada-EU Trade Agreement and the EU-Japan Economic Partnership Agreement (EPA). These so-called 'mega regional arrangements' are intended to increase trade and investment among the parties themselves and to lay down the new rules for a future new global agenda. Meanwhile, the East Asian economies have also been busy initiating new preferential arrangements. In addition to bilateral agreements, a mega-regional free trade agreement (FTA), namely the Regional Comprehensive Economic Partnership (RCEP) encompassing 16 members in East Asia was launched in 2012.<sup>21</sup> Although PTAs have a role to play in deepening regional liberalization and cooperation and help create a regional trade and economic development environment, at the same time they turn attention away from the main efforts at multilateral negotiations and more seriously damage the credibility of the WTO while putting at risk the very future of the multilateral system.

As the conclusion of the Doha Round becomes ever more difficult to achieve, efforts at negotiating the plurilateral agreements have been given more emphasis. It is widely considered that concluding more plurilateral agreements based on "coalitions of the willing" among WTO Members is a way to deal with a host of new trade-related

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<sup>21</sup> ASEAN 10 plus China, Japan, Republic of Korea, India, Australia and New Zealand.

issues within the framework of the existing world trade system. Plurilateral agreements that include only a fraction of WTO Members are, however, considered as no more than a second-best option.<sup>22</sup> The Information Technology Agreement (ITA) is considered a good example in this respect, since it achieved duty free access on 97% of world trade in information technology products.<sup>23</sup> The ITA operates on a 'critical mass basis and this applied to all on a non-discriminatory basis.'<sup>24</sup>

At the same time, calls for reforming the WTO system have also been increasing. Views on WTO reform are varied, including the need to adjust current practices to ensure a more equitable sharing of responsibility for the leadership, with a greater role for emerging economies.<sup>25</sup> Other proposals would turn the WTO into a more modest, flexible, and equitable organization; rather than focusing on further liberalization, the WTO rather focus on building its institutional capabilities in order to serve as the global governance structure for world trade.<sup>26</sup>

However, it is vital to keep the multilateral trading system working and effective since no the other institution can serve the needs of both the developed and developing economies. As a single undertaking, agreement under the WTO Doha Round seems to be difficult to achieve, a trade facilitation agreement should be sought by the end of the year. Such an agreement could produce significant gains for all WTO Members and impart needed dynamism to the global economy.

## **2. A trade facilitation agreement**

Trade facilitation (TF) forms an integral part of the Doha Round and the negotiation

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<sup>22</sup> James Bacchus proposed to negotiate the Anti-counterfeiting Trade Agreement going beyond TRIPS, A sustainable energy agreement aiming at eliminating the barriers to trade and investment in the green energy area, TPP opening to all WTO Members. See *A way forward for WTO*, in Ricardo Meléndez-Ortiz (ed.), *Global challenges and the future of WTO*, pp.7–8, [www.ictsd.org](http://www.ictsd.org)

<sup>23</sup> The expanding agenda for ITA, i.e. ITA2, is under discussion.

<sup>24</sup> The GPA is only applied to the Members.

<sup>25</sup> *A way forward for WTO*, in Ricardo Meléndez-Ortiz (ed.), *Global challenges and the future of WTO*, p.9, [www.ictsd.org](http://www.ictsd.org)

<sup>26</sup> Kevin P. Gallagher, *Challenging opportunities for the Multilateral Trade Regime*, in Ricardo Meléndez-Ortiz (ed.), *Global challenges and the future of WTO*, p.16, [www.ictsd.org](http://www.ictsd.org)



was launched in 2004. Various definitions of trade facilitation have been used. TF not only includes at-the-border issues but also beyond-the-border issues, dealing for instance with the business environment, the quality of infrastructure, transparency, and domestic regulations.<sup>27</sup> According to both the WTO and the OECD, trade facilitation involves the simplification and harmonization of procedures including ‘the activities, practices and formalities involved in collecting, communicating and processing data and other information required for the movement of goods in international trade.’<sup>28</sup> For measurement of trade facilitation, there are four major indicators: port efficiency, customs environment, regulatory environment and e-commerce.<sup>29</sup> The negotiations on trade facilitation are aimed to facilitate trade transactions and reduce the business costs by eliminating non-tariff barriers (NTBs) which hinder trade transactions, enhancing technical assistance, supporting capacity building and also developing provisions for effective cooperation between customs and any other appropriate authorities. TF action plans should clearly define the objectives and framework for implementation so as to encourage the broadest participation by Members. It is important for all economies to take timely policy actions to facilitate progress. In the spirit of developed and developing economies complementing each other, it is essential to support the engagement of all key stakeholders, in particular, the establishment of partnerships between government, business, academic and training institutions. The importance of well-targeted assistance to help developing economies make progress towards greater openness and transparency cannot be underestimated. This in turn will help developing members improve their capability to implement their trade facilitation commitments.

Customs procedures lie at the core of trade facilitation measures, since effective trade facilitation depends upon effective customs measures to simplify import, export

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<sup>27</sup> Alberto Portugal-Perez and John S. Wilson, *Export Performance and Trade Facilitation Reform: Hard and Soft Infrastructure*, *World Development*, Vol. 40, No. 7, p. 1295, 2012.

<sup>28</sup> Christopher Findlay (ed.), *ASEAN+1 FTAs and Global Value Chains in East Asia*, ERIA Research Project Report 2010 No.29, p.55.

<sup>29</sup> John S. Wilson, Catherine L. Mann & Tsunehiro Otsuki, *Trade facilitation and Economic Development: a new approach to quantifying the impact*, *The World Bank Economic Review* Vol. 17, No.3, p. 368, 2003.

and transit procedures for trade operators and to make information about those procedures readily available to trade operators and their agents. Trade logistics, i.e. effective leverage of the hard infrastructure and streamlined border formalities, requires the parallel development of the logistics value chain.

Considering the diversity of WTO Members, the TF negotiations must take fully into account the principle of special and differential treatment for developing and least-developed countries. In fact, many developing WTO Members raised concerns about the impact of trade facilitation negotiations since they are worried that they do not possess sufficient capacity to implement such commitments and that the needed technical assistance would not materialize. Thus, developing countries have repeatedly stressed the importance of special and differential treatment and technical assistance provisions for a successful outcome to the negotiations. As former WTO Deputy Director General Alejandro Jara pointed out recently, to achieve balance is the key to agreement in the talks on trade facilitation.<sup>30</sup>

Studies have shown that the reduction in trade transaction costs through trade facilitation can bring significant gains, and that the TF talks could produce greater benefits than tariff reductions.<sup>31</sup> In fact, trade facilitation plays a crucial role in reducing costs and promoting regulatory reforms as the character of international trade is increasingly becoming one of trade in intermediate products and value chains. The expansion of regional and global value chains means that most products are assembled with inputs from many countries and products cross borders frequently during various stages of assembly. Trade in intermediate goods has become the most dynamic and dominant sector of international trade. Reducing supply-chain barriers can thus generate considerable benefits. . Reforms relating to trade facilitation, such as the simplification and harmonization of customs procedures,

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<sup>30</sup> The balance means the legal obligations of the implementation and capacity building and assistance to the developing countries. See Balance key to Bali trade talks, Jakarta Post, 6 May 2013.

<sup>31</sup> Christopher Findlay (ed.), ASEAN+1 FTAs and Global Value Chains in East Asia, ERIA Research Project Report 2010 No. 29, p. 57.

the improvement of border infrastructure and management systems would enhance the capacity to trade and would assist traders to compete with or better integrate into global supply chains. Thus, trade facilitation measures will significantly reduce the cost of supply-chain activities.

The cost of non-tariff barriers to trade is much greater than that of tariff barriers. Thus, trade facilitation measures become a broad policy-based subject, encompassing a range of administrative, financial, transportation, security, business-model and e-commerce concerns, and with implications for trade's potential for economic development. Across-the-border or behind-the-border barriers to trade facilitation come in many forms, covering aspects of the institutional and regulatory framework. Among the most important barriers to trade and investment are: excessive regulation, inconsistent standards, undisclosed information related to trade and investment rules, policy uncertainty, weak legal systems, poor protection of property rights and ineffective contract enforcement, regulatory barriers to market entry, corruption, policies that suppress competition and allow anti-competitive behavior, poorly functioning financial markets and poor infrastructure.

Removing such barriers requires capacity building, especially the capacity of trade facilitation, and improvements in infrastructure, human resources and TF-related institutions. Lowering NTMs requires the political will of the governments concerned. Despite widespread consensus on desirability of a TF agreement and some significant progress in the negotiations, more efforts are needed to clinch a deal in Bali in December, as important gaps between developed and developing Members continue to prevail.

### **3. APEC and Asia's experience**

APEC has made important strides to facilitate trade by identifying obstacles that hinder trade and by implementing activities and actions to address these obstacles.

As a non-rules-based institution founded on the principle of voluntary co-operation and compliance, APEC's role is to encourage its members to commit collectively to reducing barriers to trade and investment. It provides an environment for member economies to consider innovative ways to address similar problems. In 2001, APEC members committed to achieve a reduction in trade transaction costs of 5 per cent across the APEC region between 2002 and 2006. They drew up a menu of actions and measures to reduce transaction costs and simplify administrative and procedural requirements over a specified period of time. Actions were taken in the priority areas of customs procedures, standards and conformity assessment, business mobility and electronic commerce. By 2006, the 5 per cent reduction target was achieved. Starting in 2007, another trade facilitation action plan was initiated for a reduction of trade transaction costs by a further 5 per cent over the 2007–2010 period based on new actions and measures added to the elements of the previous plan. To monitor compliance, key performance indicators (KPIs) were introduced.

ASEAN has also registered forward movement on trade facilitation. In 2009, ASEAN adopted a Trade in Goods Agreement that made significant progress on trade liberalization and trade facilitation, especially on eliminating TF-impeding NTMs. The chapter on trade facilitation sets out actions and measures to be implemented in areas such as custom procedures, trade regulations and procedures, standards, conformity assessments, SPS measures and the ASEAN single window.<sup>32</sup> ASEAN adopted an ASEAN harmonized tariff nomenclature (AHTN) and product-specific mutual recognition arrangements on conformity assessment so that product-related standards and regulations no longer hold the potential of technical barriers to trade. In order to help the newer ASEAN member countries, a series of trade-facilitation-related technical assistance training and advisory programs have also been organized and conducted.

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<sup>32</sup> Marn-Heong Wong and Marie Isabelle Pellan, Trade facilitation: the way forward for ASEAN and its FTA partners, ERIA Policy Brief, No. 2012-04, p. 3.

Recent PTAs in East Asia have also made efforts on trade facilitation since they all include trade and investment facilitation measures. Table 1 below shows that the ASEAN FTA (AFTA) and five ASEAN+1 FTAs include substantive provisions relating to trade facilitation.

**Table 1. Trade facilitation provisions in ASEAN and ASEAN+1 FTAs**

	ASEAN	ASEAN-Australia & New Zealand	ASEAN-China	ASEAN-India	ASEAN-Japan	ASEAN-Korea
Trade facilitation coverage	※	※	※	※	※	※
Customs procedure and cooperation	※	※	※	※	※	※
Technical regulation, standards, SPS	※	※		※	※	※
NTBs, especially administrative fees and charges	※	※	※	※	※	※
Transparency of laws, regulations and administrative rulings	※	※	※		※	※
Use of ITC and E-commerce	※	※	※		※	※

※ Indicates the presence of provisions.

*Source:* Marn-Heong Wong and Marie-Isabelle Pellan, Trade facilitation: the way forward for ASEAN and its FTA partners, ERIA Policy Brief, No. 2012-04, p. 3.

Trade facilitation in the Great Mekong Sub-region (GMS) has achieved remarkable progress. The measures taken on TF cover wider areas than other arrangements, including the development of physical transport and trade infrastructure, efficient clearance procedures at border crossings, improved trade administration systems and institutions, and the active and extensive application of information technology to promote transparency and efficiency in trade transactions. The most important trade facilitation initiative in the GMS program is the Framework Agreement on Facilitating Cross-Border Transport of Goods and People (CBTA), which covers all the relevant aspects of cross-border transport facilitation, including single-stop inspection, cross-border movement of persons, transit traffic regimes (such as exemptions from

physical customs inspection, bond deposit, escort, and phyto-sanitary and veterinary inspection, and requirements that road vehicles have to meet for expedited border crossings, exchange of commercial traffic rights, infrastructure, including road and bridge design standards, road signs and signals etc. For customs procedures, GMS countries committed to simplifying customs laws, regulations and procedures by aligning them with international standards and developing harmonized procedures, forms and formats among all GMS partners. For inspection and quarantine measures, the aim is to enhance the compliance of GMS countries with the WTO's TBT and SPS Agreements, technical regulations, and standards in line with their current or future WTO commitments, and to improve cooperation and exchange of information among enquiry points or the national notification authority. For trade logistics, measures include reviewing, simplifying and harmonizing GMS cross-border transport regulations by accelerating the finalization of the Cross-Border Transport Agreement (CBTA) and carrying out its initial implementation at the pilot border-crossing points along GMS economic corridors, improving and developing facilities to support the development of an efficient and integrated GMS trade logistics network, as well as upgrading and building capacity within the logistics/freight forwarding industry through human resource development. As for the mobility of business people, the measures include streamlining and simplifying the formalities for visa application, deferral and temporary stay for GMS citizens conducting business activities in the sub-region and considering and developing a GMS business visa scheme allowing multiple entry for GMS citizens in the sub-region and improving the transparency of relevant laws and regulations for business travellers.<sup>33</sup>

Although PTAs have made some progress in the area of trade facilitation, the WTO's role at the multilateral level remains essential since the global market needs an integrated and non-discriminatory global trading system.

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<sup>33</sup> Susan Stone and Anna Strutt, "Transport infrastructure and trade facilitation in the Greater Mekong Sub-region", in Douglas H. Brooks & Susan F. Stone (eds), *Trade Facilitation and Regional Cooperation in Asia*, ADB Institute and Edward Elgar, 2010, p. 170.

## **II.2 The WTO Ministerial and Asian Integration: A Korean Perspective**

Jin Kyo Suh, Korea Institute for International Economic Policy (KIEP)<sup>34</sup>

### **1. Introduction**

The 9<sup>th</sup> WTO Ministerial Conference (MC9) will be held in Bali, Indonesia in December 2013. Unlike the other ministerial meetings held since the 2005 Hong Kong Ministerial Conference, the Bali Ministerial Conference will be a litmus test for the future of the Doha Development Agenda (DDA) negotiations and that of the WTO itself.

If WTO Members want to succeed in reaching a compromise in Bali, a so-called a 'Bali package', which is vital to avoid a collapse of the DDA negotiations, will be necessary to infuse new life into the dying DDA negotiations thus enabling the talks to get back on track post-Bali. If this does not happen, however, it is only a matter of time until the Doha Round shrivels up. The US will strive for the completion of the ongoing negotiations towards a Trans-Pacific Partnership Agreement (TPP) and the Transatlantic Trade and Investment Partnership Agreement (TTIP) with the EU. The Trade in Services Agreement (TISA) talks and negotiations on a revamped and enlarged Information Technology Agreement (ITA) are even more appealing to the US.

For these reasons, WTO Members have worked hard in recent months to generate a package of deliverables for the success of the Bali Ministerial meeting. The following section advances a number of thoughts to key questions relating to the Bali Ministerial meeting and the role that ERIA members can play in the run-up to Bali. This is followed in section 3 by some concluding remarks.

### **2. Short answers to seven questions**

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**2.1. What do ERIA's Research Institute Network (RIN) members expect from the Bali Ministerial meeting by way of tangible outcomes? Are certain negotiating agenda items ripe for early harvesting?**

At this juncture, it would appear that the prospects for the Bali ministerial conference are somewhat somber. It is time for WTO Members to engage more directly in negotiating solutions and to move closer to the middle ground in finalizing a Bali package. However, many key WTO Members still stick to their old position and ask other Members to move closer to where they are. There is only a very short working time left during which to reach a feasible and doable compromise. It thus not currently appear realistic to expect the Bali ministerial meeting to be successfully concluded unless there are big changes in the negotiating attitude of major countries, particularly in the political will of the US, India, and China.

However, the window of opportunity for success in Bali is still very much open. WTO Members are now seeking to forge a deal in Bali on the following three core areas: trade facilitation, issues related to agriculture, and areas of special interest to developing countries.

**2.1.1 *Trade facilitation***

Trade facilitation has been viewed by many as a cornerstone of a Bali package, which in turn is considered vital to jump-starting the stalled Doha Round of trade talks. Thus, an agreement on trade facilitation should be the centerpiece of a proposed deliverables package which WTO Members are hoping to conclude in Bali. If the WTO membership is collectively unable to reach a deal on something as beneficial as trade facilitation, it is very hard to see how it can come to an agreement on anything else.



Therefore, WTO Members should focus on reducing and eliminating as many square brackets in the trade facilitation text as possible ahead of Bali. Although there were still more than 500 brackets in the text by the end of the summer, quick progress is within reach on at least half of them. Many of the remaining brackets could be removed following a handful of decisions relating to the level of ambition and the question of whether commitments should be binding or implemented on a best endeavors basis.

### **2.1.2      *Agricultural issues***

An eventual deal in Bali will not just depend on trade facilitation. Several issues related to agriculture and special provisions for LDCs are likely to be included, and finding the right balance to make a package acceptable to all is likely to be a challenge for WTO Members.

The fate of the G-33 proposal on food security in agricultural issues is closely linked to progress of a trade facilitation deal. This proposal would allow government stockholding and purchases from low-income farmers at subsidized prices to be excluded from WTO subsidy spending limits. The US, the EU and others argue that it is not possible to agree to such fundamental changes in the WTO agricultural subsidy rules in the short time remaining before Bali, and have proposed instead to establish a work program to address the G-33's concerns.

The G-33 food stockholding proposal has now become a gateway issue for the Bali meeting. India has expressed support for a trade facilitation deal which would generally benefit Members, on the condition of a proper consideration of the food stockholding proposal. The US, together with other developed country members, however, has cautioned against any fundamental rebalancing in the existing agricultural subsidy disciplines. Since there is not much time left to address any amendments, members should focus instead on a post-Bali work program which

includes the G-33 proposal.

A peace clause could be an effective and feasible alternative means by which to reflect the interests of both the US and India. Although a peace clause is an interim solution, India and Indonesia could avoid arguments between WTO Members over domestic subsidies on agriculture. At the same time, it does not require any changes to current disciplines on domestic support in the Uruguay Round Agreement on Agriculture (URAA) and could thus serve the interests of developed countries.

On the other hand, the G-20 proposal on agricultural TRQ (tariff rate quota) administration will be part of the Bali package. There has so far been no significant opposition to the G-20 proposal on improving tariff-quota transparency procedures.

However, the US and the EU both have clearly expressed their opposition to the G-20 farm export competition proposal on the grounds that it would upset the balance of the DDA's agricultural package.

Therefore, one can reasonably expect both the G-33 proposal on food security for low-income farmers in developing countries and the G-20 proposal on agricultural TRQ administration to be included in the Bali package.

### **2.1.3 Addressing the special interests of LDCs**

The least-developed country (LDC) group has put forward a proposal on duty-free and quota-free (DFQF) treatment on imports from LDCs. They have also called for a Bali decision on simplified and flexible preferential rules of origin to enhance LDC exports under the DFQF system, and the convening of a signaling conference in order to operationalize a 2001 waiver granting preferential treatment

to LDC services and service suppliers. It is reported that a further proposal on cotton can be expected from the Cotton 4 countries.

Although DFQF is key to the interests of LDCs, it is a very sensitive issue for the US, which is under pressure from its domestic textile producers not to cede additional market access to major LDC textile exporters. As it has throughout the DDA, the US continues to oppose the proposed DFQF market access initiative for the LDC package. Furthermore, the US insists that any future DFQF commitments would have to be made not only by rich countries, but also major by emerging economies, such as Brazil, China, and India. It would appear unlikely that developed countries unilaterally open their markets without some sort of reciprocity from the highly competitive emerging economies.

There seems at this stage little likelihood of forward movement on DFQF or on agricultural export support measures in Bali. However, such LDC interests of LDCs could usefully be included in a post-Bali work program. A similar outcome appears likely on the cotton issue.

The Doha Round being a development round, it is not realistic to expect a compromise without genuine advances on issues of priority LDC interest. There are, as it happens, several potential items for the LDC pillar of the Bali package. These include: the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) waiver as well as the services waiver for LDCs. Fortunately, WTO members have already agreed to extend the TRIPs waiver for a further eight years – until 2021 – for its poorest members. The services waiver for LDCs is ripe for a meaningful outcome in Bali and responds to a strong push by the LDC grouping. Tangible deliverables on Aid for trade could usefully complete the Bali package for LDCs.

**2.2. How can WTO Members use the Bali Ministerial meeting to impart renewed vigor to *multilateral* cooperation (including not only rule-making but also monitoring and dispute settlement functions) in the trade field?**

The Bali ministerial meeting in December cannot be a mere 'housekeeping' exercise like the last ministerial in 2011. The inability of Members to secure a credible package will not only mean failure in Bali but spell the end of the Doha negotiations and seriously jeopardize the multilateral system as a whole. Thus, the Bali ministerial meeting will not be able to impart renewed vigor to multilateral cooperation in the trade field without a successful outcome of Bali itself.

Accordingly, WTO Members need to apply pressure on major members, and particularly the US, India, and China to commit more resolutely to an intensive and serious engagement in the Bali Ministerial conference.

On the other hand, WTO Members need to agree a standstill in Bali. The global economic recession, which was triggered by the global financial crisis and has dragged in the wake of the euro-zone's fiscal turmoil, is projected to continue for longer than expected. As the world economy languishes and growth in emerging countries decelerates, protectionist pressures are mounting in many quarters. A commitment to eschew such backsliding and stand still would send a strong signal in Bali. Growing concerns are indeed being expressed that the more recent wave of trade restrictions is no longer a temporary response to the crisis, but is rather becoming a means for countries to reclaim policy space with a view to providing industry support measures while shielding them from external competition. Not only have traditional trade remedy measures such as anti-dumping and safeguard measures grown but other import restrictions, such as measures in the form of technology standards, government procurement or customs clearance, are also on the rise. In order to respond effectively to the

increasing number of trade restrictions, it is important for WTO Members to draw up preventive action plans. In particular, the Bali ministerial declaration should emphasize a substantial reduction in trade-restrictive measures accompanied by strong enforcement and surveillance, including under the trade policy review mechanism.

### **2.3. What priorities should ASEAN and East Asian countries pursue at the Bali Ministerial?**

It is vital for ASEAN and East Asian countries to recognize that the Bali package is just an interim agreement, not the final outcome of the DDA negotiations. A number of ASEAN countries belong to both the G-33 and the G-20. East Asian countries group together countries that are both developed and developing. Indonesia, for instance, is not only a key member of the G-33 alliance, but also one of the major players in ASEAN. Taking all these facts into account, ASEAN and East Asian countries are well placed to serve as mediators between developing and developed country Members in the DDA talks.

Accordingly, ASEAN and East Asian countries should give priority to reaching a compromise on a balanced set of deliverables in Bali. For example, Indonesia could persuade India to move towards the middle ground in finalizing a Bali package on the food security issue. A compromise on the issues of trade facilitation and food security between the US and India would likely unblock negotiations and pave the way for a successful conclusion of the Bali ministerial meeting. On the other hand, it is important to adjust the level of ambition of Members on every key issue, precisely because Bali is not the DDA's final destination.

#### **2.4. How relevant does the WTO remain to the process of deepening economic integration in ASEAN and East Asia, and to the trade governance priorities of ERIA member governments more broadly?**

With the WTO's DDA negotiations languishing, the world has witnessed a proliferation of preferential trade agreements (PTAs) all over the world in the past two decades. More recently, efforts towards regional economic integration have intensified, particularly in East Asia, by some ongoing negotiations on PTAs involving several countries, such as the TPP, the regional comprehensive economic partnership (RCEP), and the China–Japan–Korea (CJK) FTA negotiations. While such regional economic integration efforts are somewhat decoupled from the WTO, they are not irrelevant to the WTO and to the Doha Round.

The multilateral trading system retains considerable relevance to the process of deepening economic integration in ASEAN and East Asia by virtue of its non-discriminatory and comprehensive moorings. In pursuing regional economic integration, therefore, ASEAN and East Asian countries must keep these principles in mind and embed them as much as can be in the trade governance of ERIA member governments.

The benefits of multilateralism and the limitations of regional deals are well known. Any meaningful advance of the WTO's DDA negotiations in Bali will have a positive influence on regional economic integration in East Asia by providing useful guidelines on future directions for trade and investment liberalization and rule-making in the region.

**2.5. How and in what areas can multilateral advances in Bali best serve and complement ASEAN's march towards the realization of the ASEAN Economic Community by 2015?**

As already mentioned above, trade facilitation, services and DFQF for LDCs will help ASEAN's efforts to form the ASEAN Economic Community. One of the outstanding issues for ASEAN in forming the ASEAN economic community is how to resolve issues that stem from the development gap among its member countries. A successful outcome in Bali would mean that the WTO would provide a potential solution to the development gap issue for ASEAN countries. If the Bali Ministerial Conference can deliver a credible outcome on issues dear to LDCs, it will help ASEAN to find a way to narrow the development gap among its members and to accelerate the pace of negotiations on the ASEAN Economic Community.

**2.6. Can soon-to-begin RCEP negotiations facilitate the process of multilateralizing regional advances?**

The process of multilateralizing regionalism is obviously related to the promotion of the non-discriminatory extension of preferential trade agreements (PTAs) to other countries that do not participate in such talks. Issues taken up in a novel manner in PTAs should help to facilitate the process of multilateralizing preferential agreements.

With 10 ASEAN members plus 6 countries in its membership, successful RCEP negotiations will shed light on multilateralism and help advance the WTO Doha Round negotiations. RCEP can serve as a test bed for multilateral trade negotiations since it has countries that vary in terms of the development levels, including major WTO players such as China and India as well as developed countries such as Japan and Australia, and some LDCs such as Lao PDR,

Cambodia, and Myanmar. Considering the representativeness of RCEP's membership, RCEP negotiations can be relatively easily reflected in the WTO negotiations.

Nonetheless, there are many challenges ahead for the RCEP negotiations. One of the most significant challenges is the lack of political leadership in RCEP negotiations. ASEAN on face of it is supposed to be a leader in this initiative. It is unclear however which members of ASEAN will drive the negotiations. Although China, Japan, and Korea are potential candidates for positions as a leader or mediator, they all remain silent at this point. Consequently, the facilitation effect of RCEP negotiations in the process of multilateralizing regionalism is still blurry.

### **2.7. Can ongoing negotiations towards a TPP facilitate the process of multilateralizing regional advances?**

By the same token as discussed in the previous question and answer, the TPP will work similarly to the RCEP in facilitating the process of multilateralizing regional deals. Unlike RCEP, however, TPP involves members outside Asia. In particular, TPP is driven primarily by the US with the ambitious goal of achieving a WTO-plus agreement, emphasizing new rules and regulations and deeper market opening commitments. The negotiations are more or less concentrated on rule-setting and promoting the coherence of regulations including the adoption of region-wide rules of origin, intellectual property rights, and many other behind-the-border issues.

If the TPP can produce a high quality outcome with high standards – touted by the desire of the US craft a “21<sup>st</sup> century comprehensive trade agreement” – the impact of the agreement on the WTO and the multilateral trading system will likely be significant. A WTO+ TPP agreement will work as a potential stimulus for the WTO negotiations by putting more pressure on other Members to follow suit.



Since details of the TPP negotiations are not publicly available, however, the facilitating effect of the negotiation on the process of multilateralizing regionalism will be limited until the TPP agreement is finalized and opens its negotiation texts. As is well known, the transparency of PTAs is an important element in the process of multilateralizing regionalism.

If both the RCEP and TPP negotiations are concluded separately, the remaining question will be how to converge or harmonize them so that the benefits from those deals can be maximized for participants. Another issue is how to extend the agreements to other countries that have not been a part of the two PTAs, so that more countries can benefit from them. In this respect, APEC's vision of a Free Trade Area of the Asia Pacific (FTAAP) may play an important role in merging RCEP and the TPP.

### **3. Concluding remarks**

WTO Members have fallen behind in their efforts to forge a deal on a package of deliverables for the December 2013 Ministerial Conference in Bali. Delegations still hold on to their earlier positions rather than engaging meaningfully in negotiations on the issues to be addressed in Bali. Thus, at this juncture, without accelerating the work on all fronts, shifting to a higher gear and showing greater determination, WTO Members seem unlikely to arrive in Bali with a relevant package of deliverables in hand.

Such an impasse is largely due to the lack of engagement among Members on three pillars – agriculture, the LDC package and trade facilitation. Political will is needed to end the impasse. In particular, major countries should demonstrate some political will and take the lead in promoting policy convergence in Bali.

Everybody knows that failure in Bali is not an option. Failure to agree on a balanced package of concrete deliverables in Bali will make it extremely difficult to find a way forward for the Doha Round. Indeed, failure to secure a package in Bali will likely further erode the credibility of the WTO as a forum for negotiations and possibly spell the end of the moribund Doha Round of trade talks. Thus, the deliverables package must be designed to rebuild confidence in the WTO and serve as a stepping stone to an eventual Doha Round deal.

In this respect, WTO Members must recognize that the time has come for all of its influential Members to show flexibility and respect for each other's proposals. The key to bringing convergence to all three potential items is 'honest' engagement by all Members to ensure that the outcome delivers what is intended without undermining overall disciplines.

## **II.3 Singaporean Perspectives on the WTO Ministerial and Asian Integration** Hank Lim, Singapore Institute of International Affairs (SIIA) and Chair of ERIA Academic Advisory Council

### **1. Introduction**

World trade governance is at a crossroads. For more than 60 years, the GATT/WTO advanced through two processes, liberalization and rule-making. In the past, the liberalization of world trade has been followed by a regular updating of trade rules to reflect the new realities of the world trading system. This twin process appears to have come to a halt as the Doha Development Round (DDR), launched in December 2001, is still not finished and appears unlikely to become so anytime soon.

Since the start of the 21<sup>st</sup> century, the WTO has achieved little success in negotiations on opening global markets. For the past 12 years, WTO Members have tried various negotiating modes and resorted to many different levels of engagement, including significant high-level participation. Yet many issues remain unresolved. The Doha Development Agenda is often cited as the most urgent task of the WTO at present. Underlying the immediate task of completing the DDR, the WTO is faced with major and unprecedented structural changes in the global trade landscape. Firstly, emerging economies and regions have become major growth poles. Secondly, the mode and process of trade have been changing and evolving. The recent work done on measuring trade in value added, by the WTO, the OECD and others, shows that global value chains are increasingly determining production location and trade and investment flows. Thirdly, another challenge for the WTO is the increase in the number of preferential agreements - bilateral and regional - that WTO Members are a party to. Lastly, global trade has become more complex as environmental, food and energy security issues have become intertwined with traditional trade issues.

### **2. Addressing key challenges**

#### **2.1 What should be the main agenda of the Bali Ministerial Conference if it**

### **is to produce tangible outcomes?**

It is often argued that one of the main objectives of the 9<sup>th</sup> WTO Ministerial Conference is to conclude the long-delayed Doha Development Round (DDR). Having considered that there is as yet no general consensus on the issues of market access for agricultural products, services, and the linkage of trade and development, the odds are very much against a successful completion of the DDR any time soon. There is also a policy focus on putting together an 'early harvest' package to be agreed at the 9<sup>th</sup> Ministerial Conference (MC9) in Bali. It has been agreed that a balanced early harvest package would cover trade facilitation, including capacity-building components, together with development components in agriculture and a least-developed countries (LDCs) package. A successful outcome of the early harvest package will necessitate an intensive process of negotiations on its various elements in Geneva.

At a minimum, the outcome of MC9 should be a strong reaffirmation and a concrete follow-up of the WTO principle of simplicity and predictability that comes with a single set of global trading rules that have benefited all countries and stakeholders for more than 60 years. Such an outcome, by maintaining confidence in an open, rule-based, fair and balanced trading system, would be in the shared interests of countries that have assigned to trade a central role as an engine of global economic growth.

The DDR impasse is attributable to the process as much as the outcome. Due to rapid and major changes in the global economic situation and the global trade structure, plurilateral, regional and bilateral free trade agreements (PTAs) have become major components of the trading system's landscape. Conceptually, the WTO-anchored multilateral trading system should remain the overarching framework to guide preferential trade agreements based on the basic principles of the WTO. Alternatively, the PTAs should serve as WTO building blocks rather

than representing potential stumbling blocks. The regional economic integration (REI) process could serve as the mechanism for achieving the eventual outcome of a transparent, high-quality, and comprehensive trade regime, on the assumption that REI is based on and consistent with core WTO principles

## **2.2 How can WTO Members use the Bali Conference to impart vigor to multilateral cooperation?**

It is the intrinsic responsibility of WTO Members, despite the recent proliferation of PTAs, to respect certain principles and governance edicts embedded in the WTO. For example, global value chains will function more efficiently under the multilateral trading system with one set of rules, standards and market access commitments. This can be contrasted to the more inefficient and higher costs of doing business based on multiple rules, standards and schedules of tariff reduction under PTAs. A recent survey conducted by the WTO indicated that a large majority of businesses believed that the WTO was vital for doing business. In addition, feedback from various sources has clearly demonstrated that the role of the rules-based trading system, the WTO's unique dispute settlement procedures, and the monitoring of WTO commitments through peer review is important evidence of the continued relevance of the WTO. The current WTO system is deemed fair and equitable by the private sector, which is the driving force of trade as an engine of growth. Therefore, the Bali Ministerial needs to secure strong support from the private sector, consumers and other international organizations to impart vigor and strengthen international and domestic constituencies in support of multilateral cooperation.

In order to reap the full benefits of trade, the multilateral trading system has to be inclusive. This entails involving the LDCs so that they can also benefit from greater market access opportunities. For trade to support structural transformation, an appropriate international and domestic enabling environment

must be established to provide a level playing field enabling LDCs to overcome their many structural challenges. In other words, WTO Members have to re-affirm and supply operational forms of special and differential treatment for developing countries, for example, through aid for trade and the effective implementation of the existing Enhanced Integrated Framework (EIF) for LDCs. Special and differential treatment should be based on providing a longer period for LDCs to adjust, rather than lowering the standards aspired to by various WTO agreements.

### **2.3 What priorities should ASEAN and East Asian countries pursue at the Bali Ministerial?**

For the past sixty years, ASEAN and East Asia have hugely benefited from an open and multilateral trading system. The economic prosperity and dynamism of the region owes much to the WTO system. It is, therefore, incumbent on ASEAN and East Asian countries to strengthen the process and applicability of the WTO system by aligning and harmonizing their many PTAs to make them consistent with WTO rules and obligations.

Specifically, as an open and dynamic region, it is advantageous to promote comprehensive, transparent, simple, rules-based and high-quality PTAs. For example, the ASEAN Economic Community's (AEC) Regional Comprehensive Economic Partnership (RCEP), and the Trans-Pacific Partnership (TPP) should strictly adhere to and be guided by the basic WTO principles. From an economic perspective, preferentialism is almost certainly sub-optimal, but from a political economy or practical viewpoint it offers a more feasible and convenient way of achieving desired integration outcomes.

ASEAN and East Asian countries should strive for the adoption of regional dispute settlement procedures, as well as for transparent and predictable rules-based trade and investment regimes consistent with WTO rules. In moving

forward on trade in services, ASEAN is striving to conclude a WTO-plus agreement. Many of the 29 chapters under negotiation in the TPP are new and are outside of the WTO's disciplinary purview, such as 'behind-the-borders' horizontal issues of competition policy, new aspects of intellectual property rights (IPRs), small and medium-sized enterprises (SMEs), and global value chains. These offer useful initial platforms for further, subsequent, discussions at the multilateral level.

ASEAN and East Asian countries should strive to build a solid consensus among their members for strengthening WTO principles and rules by negotiating on trade in goods and services, investment and behind-the-border horizontal rules and regulations that would facilitate global value chain production, trade and investment. Even though PTAs are proliferating, WTO principles remain valid and would facilitate the negotiations and conclusions of the AEC, RCEP and TPP. It often appears as though the WTO and preferential initiatives are at odds with each other and going in opposite directions. In fact, it is both feasible and desirable that the WTO and PTAs be complementary and mutually reinforcing. PTAs can serve as useful experimental platforms to eventually ratchet up existing WTO agreements (or adopt new ones) to cover more sectors and involve more WTO Members based on an open accession principle as embedded in RCEP and the TPP.

#### **2.4 How relevant is the WTO to the process of deepening economic integration in ASEAN and East Asia and the trade governance priorities of EAS member countries?**

The process of deepening economic integration involves a lot of behind-the-border issues such as competition policy, IPRs, standards and conformity assessment, harmonization and standardization of trade policies and domestic adjustment measures. The issue of relative benefits and costs is crucial to

participating members engaged in deepening economic integration. The rules-based, predictable and transparent (uniformity of rules to stakeholders) system of the WTO is better adjusted and more effective in distributing the relative benefits and costs of deeper integration as there is wider policy space for Members to negotiate than there often is under PTAs.

ASEAN and East Asia is a region of great diversity in terms development levels, modes of governance and the sophistication of public administrations. Therefore, by strengthening the WTO principles of transparency and harmonized trade governance, the AEC and RCEP processes would be facilitated and reinforced. In a situation of diversity and global economic uncertainties, a reinforced multilateral trading system can significantly contribute towards more global growth through a more efficient allocation of resources, division of labor and production networks. In fact, with the existence of a robust multilateral trading system, PTAs would be facilitated as the former provide guidelines, safeguards and a dispute settlement mechanism. The WTO system is a 'first-best' solution for engendering global growth, increasing employment, providing trade facilitation and achieving development goals.

## **2.5 How do the TPP, RCEP and the realization of the ASEAN Economic Community facilitate the process of multilateralizing regional advances?**

The WTO is based on the most-favored nation (MFN) and national treatment principles embedded in the multilateral trading system. These principles are the 'first-order-conditions' for advancing and maintaining a rules-based, fair, and transparent global trading system. Paradoxically, this system is being gradually abandoned and eroded. If the multilateral trading system is robust and supported by its members, particularly by the world's major economic powers, the proliferation of PTAs would not pose a threat to the WTO. Rather, such agreements can serve as important building blocks of the multilateral system.



Therefore, it is vital to initiate and structure PTAs based on the principles of the WTO and, if necessary, through the WTO's variable geometry and other innovative approaches.

The variable geometry approach relates to suggestions to pursue sectoral agreements. Examples include an agreement on environmental goods and services and the Information Technology Agreement 2 (ITA2). Another approach would be to pursue a plurilateral agreement on services outside the Doha mandate. The objective is to continue the process of opening up trade in a gradual, step by step, manner within a subset of like-minded Members. The vital issue is how these different approaches can be taken while at the same time respecting the principles of transparency and inclusiveness that are embedded in the WTO.

Sectoral agreements among a subset of members are feasible if these members account for a critical mass of trade in the sector and if the benefits of the negotiations are extended to all WTO Members on an MFN basis. The ITA and the proposed Agreement on environmental goods and services are designed to be applied on an MFN basis. Both the ITA and the EGS (environmental goods services) were brokered within APEC and then taken to the WTO for multilateral adoption. These approaches are good examples of the complementarity that can and should be nurtured between regional and multilateral processes. In the same manner, many chapters being negotiated in the TPP, RCEP and the AEC can be extended on an MFN basis if they meet the criteria applied in the ITA and proposed agreement on EGS. Specifically, objectives relating to trade facilitation, to narrowing development gaps, as well as formula-based approaches to services negotiations in the AEC process could all lead to WTO-plus agreements. Many chapters being negotiated under the TPP are WTO-plus in design, and new issues outside the purview of the WTO can gradually be integrated into the WTO

process.

In the second category, on a non-MFN basis, are formal plurilateral agreements under the auspices of the WTO. One example is the Government Procurement Agreement (GPA), which was approved by all Members in Marrakesh and was recently upgraded and expanded in Geneva. Such non-MFN agreements may be negotiated within or even outside the WTO if they do not impinge on existing WTO rights and obligations. A plurilateral agreement on services that is currently being negotiated by a group of countries interested in deeper liberalization in services trade offers another example. Its application to other (non-participating) WTO Members has not yet been determined. If the negotiations are successful, the agreement could be structured as an Article V-compatible PTA agreement under the GATS.

Indeed, high-level and non-discriminatory agreements in the TPP, in some chapters of the RCEP, and in the AEC, can serve as initial platforms to devise agreed negotiating modalities to widen the scope and application of new agreements on an MFN basis to all WTO Members. With increasing faith and confidence in the virtues and benefits of the multilateral trading system the process would, in turn, facilitate and expedite the ongoing process of PTA talks. In an increasingly polarized, uncertain and fluctuating global economy, there is a clear and convincing imperative for a workable and functioning WTO. Without its overarching global framework, regional integration through PTAs may engender instability and uncertainty in the global economy. Ultimately, the role of trade as an engine of growth could be greatly diminished.

It is one of the great paradoxes of our time that we live in an interdependent world, but one that is administered and ruled by a governance system often driven by geo-political and geo-economic considerations. Such a fragmented

system is intrinsically non-transparent, arbitrary and unpredictable.

The ASEAN Economic Community (AEC) is based on the AEC Blueprint and its various pillars to achieve its objectives by 2015. The second AEC pillar relates to the creation of a competitive region and the fourth pillar concerns connectivity to the global market. The AEC concerns the regional economic integration of 10 Southeast Asian Member States, but it subscribes strongly to the idea of an open region. The strengthening of the WTO would facilitate the realization of the AEC and subsequently of RCEP. In turn, ASEAN-initiated PTAs would become one of the building blocks of the multilateral trading system.

The 9<sup>th</sup> WTO Ministerial Conference provides a strategic opportunity with potentially far-reaching implications for global growth over the next 20 years. With Roberto Azevedo of Brazil as the new WTO Director-General and holding the Ministerial in Bali, the birthplace of the ASEAN Economic Community and RCEP, all WTO stakeholders harbor high expectations that an important benchmark could be reached. Such a spark of confidence would instill faith in and impart dynamism to the WTO at this critical juncture of its young history.

### **3. Conclusions**

At the 9<sup>th</sup> WTO Ministerial Conference, Trade Ministers must agree on innovative and workable mechanisms by which to reach a consensus on moving forward with the DDR and beyond. The traditional approach to negotiations has not been successful in concluding the DDR, as the WTO's increasingly diverse membership has not been able to reach a consensus on a number of important issues. The central contention is not so much on the objectives of the DDR per se but on the process and approach to negotiations and the trade-offs needed to reach a consensus. Trade Ministers should seriously consider a confidence-restoring 'early harvest' package, and explore avenues where WTO-anchored

variable geometry and other innovative approaches may be pursued beyond Bali. Forward movement at MC9 would go a long way towards restoring trust and confidence in the validity and applicability of a transparent, fair, rules-based and non-discriminatory multilateral trading system. It is particularly incumbent on East Asia and the Asia Pacific region, as the most dynamic economic region in the world, to take a pro-active, leading, role in restoring confidence in the WTO. In so doing, PTAs, at least initially those pursued in the region, must set visible and important examples by clearly upholding WTO principle and rules. The re-affirmation of such a commitment requires an important agreement on the negotiating approach towards the DDR and beyond at MC9. Failure to reach a concrete milestone to move the WTO forward would further erode and undermine the principles that have served the world economy so well for more than 60 years.

## **II.4 ERIA Perspectives on the WTO Ministerial and Asian Integration: a View from Japan**

Daisuke Hiratsuka, Institute of Developing Economies (IDE-JETRO)

### **1. The new reality of global trade**

One of the prominent features of global trade is the rapid growth of intermediate trade. Roughly speaking, two things have shaped the current growth in global trade. *First*, firms are globalizing. Firms generally prefer multi-plant production to a single production plant. There are several reasons for this, two of which appear worth of emphasis in the context of global supply chains. One is the desire of firms to locate their production facilities near to their markets, which decreases the production risk for the firm and the transportation costs incurred by a customer, as well as enabling it to respond more quickly to complaints about a defective product. The other is the wish to escape from congestion, such as increases in wage rates and land prices, and traffic jams, by seeking a more reasonable production location. Indeed, Japanese automobile makers have a total of 169 plants overseas: 97 are located in Asia, 19 in Europe and 19 in North America.

*Second*, firms are specializing. Global competition has forced firms to achieve economies of scale by specializing in a few production processes, and outsourcing others according to location advantages. Keeping 'headquarter services' such as R&D, design, marketing, financing, and selection of first tier-suppliers in their home countries, multinational enterprises have located assembly facilities where labor is abundant. Due to specialization and outsourcing, production fragmentation has progressed not only at the final production stage, but also in other sequential production stages. Jones and Kierzkowski (1990) argue that if the service link costs of linking separated production blocks within a country and across countries fall, this will encourage production fragmentation.

The combined result of firms globalizing and outsourcing has shaped a new reality of

global trade characterized by the emergence of global supply chains, operated by a final assembler and multi-tiered suppliers, based on either intra-firm or arm's length trade. In particular, due to specialization and outsourcing, a large number of arm's length suppliers participate in global supply chains. Furthermore, global competition has provided great opportunities to indigenous suppliers to participate indirectly in global supply chains. Therefore, the labor and capital of many countries are directly and indirectly employed in producing final export products. Now, global trade is not only a trade issue but also an issue of location of firms and industry.

## **2. A misleading conventional view**

Conventional customs based trade data cannot adequately account for today's global trade conducted by assemblers and multi-tier suppliers, and in which the labor and capital of many countries are engaged.

First, the same product can be both an input and a final good. However, customs data cannot classify a particular product used as an input or a final good. An example of such a good is car tires: they are purchased both by firms, as an input into car production, and by final consumers who fit tires to their cars.

Second, and more importantly, in global supply chains, customs data counts the value of the same product each time it crosses a border for further processing. As a result, the value of a final export product increases, which has led to the misunderstanding in an importing country that jobs are lost by an exporting country. The new trade reality is that labor and capital of many countries are employed either as inputs of goods or inputs of services, although the tasks of labor vary from economy to economy according to the stage of industrialization: the tasks of the US include 'headquarter services'; R&D, design, marketing (financing, global production planning, including allocation of production by economy and region, and selection of first-tier suppliers), while one of China's tasks is final assembly., One of ASEAN's

tasks is providing inputs, while that of Japan is to provide materials.

Discussions based on conventional customs based trade data might mislead trade and industrial policy-makers. We need a new measurement to allow us to see a real picture of global trade and to discuss trade and industrial policies in the context of global supply chains.

### **3. Policy implications of TiVA for developing economies**

Trade in value-added (TiVA) data, which can be obtained by the application of the Leontief inverse matrix to international input–output (I–O) tables, make it possible to calculate the direct and indirect value-added generated by country’s exports.

The Institute of Developing Economies–Japan External Trade Organization (IDE–JETRO) and WTO (2011) estimated TiVA by using the Asian International Input–Output Tables developed by IDE-JETRO. The above study by observed a fundamental change ‘from trade in goods to trade in tasks’ that has been taking place in the structure of international trade. This fundamental change suggests that the conventional way of thinking about imports and exports, based on customs data is increasingly outmoded.

The second release of the OECD–WTO TiVA data in May 2013 covers 57 economies, including China, Chinese Taipei, India, Indonesia, Malaysia, the Philippines, Singapore, Thailand, and Vietnam. Noteworthy findings on Europe and Asia include the following:

- Imports are inputs of exports. The foreign content of exports in Europe and Asia increased from 1995 to 2009. Thirty-three percent of all Chinese exports in 2009 embedded foreign content, up significantly from 12% in 1995. The figures for

Singapore, Malaysia, and Thailand in 2009 were 50%, 38%, and 35% respectively.

- Many economies are engaged directly or indirectly in producing a final exported product.
- Services are inputs of exports. The service sector contributes over 50% of total exports of the US, France, Germany, and Italy, and nearly one-third of China's exports, are provided by both domestic and foreign service providers.

The above facts suggest that, in order to build a resilient economy or an export platform, imports and services are essential ingredients. What then are the policy implications of TiVA for developing economies? In the earlier age of international production, a large economy was an advantage for industrialization. But in these days of global supply chains and production fragmentation, it is a different story. Even a small economy can invite a few production processes to start industrialization by improving connectivity. Multinational enterprises are continually assessing the location advantage of each city and economy. Indeed, in 2003, there was no modern manufacturer in Lao PDR or Cambodia. But now there are many. Nikon operates in Laos, and Minebea, a world market leader in the manufacturing of ball bearings, does so in Cambodia. Both ASEAN Member countries are today industrializing rapidly.

#### **4. Theories of firm location in globalization**

Considering how the globalizing and outsourcing strategies of firms is shaping current global trade patterns via global supply chains, a critical matter for trade increasingly concerns the issue of firm location. Not surprisingly, the theory of firm location in the age of globalization has been undergoing rapid change.

Krugman (1991) argued that, in order to realize economies of scale while minimizing transportation costs, manufacturing firms tended to locate in regions with large



markets. Therefore a country can be differentiated into an industrialized core region and an agricultural periphery region. This theoretical argument on the geographical concentration of manufacturing based on the interaction of economies of scale with transportation costs concludes that in a high transportation cost economy, a small share of manufacturing tends to result in the presence of weak economies of scale. *A contrario*, with low transportation costs, a higher manufacturing share and strong economies of scale arise, such that circular causation sets in, and manufacturing will concentrate in whichever region gets a head start.

The concentration of manufacturing, however, will tend to cause congestion, as mentioned above, and such congestion will increase not only production but also transportation costs. What will happen next as a consequence of the increase in total costs of firms? Congestion in a country's industrialized core will generate dispersion forces to move manufacturing elsewhere. But where?

Krugman and Venables (1995) provided an answer to this question by arguing that if transportation costs between two countries fall enough to offset the disadvantage of being further away from the market and suppliers, manufacturing will move out of a core industrialized region to another location. The international dispersion of manufacturing is more likely than dispersion from a core region to a peripheral region within the same country, because differences in wage rates between countries are larger than those within a country. Firms thus tend to explore new locations in foreign countries.

The term 'service link costs' used by Jones and Kierzkowski (1990) is equivalent to the term 'transportation costs' used by Krugman (1991) and Krugman and Venables (1995), although the former focuses on trade, while the latter pertains to geographical location.

To sum up, policies to decrease transportation costs, or 'service link costs', within a country lead to industrialization with concentration of manufacturing in a core city and thereby encourage production fragmentation. The above developments on a new reality of global trade and the location of firms provide insights that could be useful with respect to the Bali Ministerial meeting.

The Bali Ministerial meeting should share a common understanding that current global trade proceeds along global supply chains in which a large number of countries are directly and indirectly engaged in producing final products. In other words, the labor and capital of many countries are employed, although tasks are different according to the location advantage and/or development stage of host countries. WTO Members can use the Bali Ministerial meeting to discuss issues beyond trade policy so that developing countries can better attract global production and insert themselves more meaningfully into global supply chains.

Trade facilitation measures should be pursued by ASEAN and East Asia at the Bali Ministerial meeting. In order to reduce transportation costs, or 'service link costs', trade facilitation measures are the most effective. In particular, if a single-window system of export and import custom clearance procedures is launched at each border, this would improve the connectivity of periphery regions, accelerate economic activities, and eventually reduce development gaps not only between but also within countries.

Agreement on the expansion of the Information technology agreement (ITA) should also be reached at the Bali Ministerial meeting. This would contribute to further develop global supply chains and strengthen 'Asia's World Factory'.

In order to build a resilient economy and a strong export platform, connectivity between countries is critical. The WTO can contribute to changing the mindset from a

'conventional view' to a 'new reality of trade', that imports and services are necessary inputs for exports. The agglomeration of industry in China is a property of Asia that allows the region to increase its presence in world production: Asia accounts for more than 50% of the world's automobile production, 62% of liquid display screens, 86% of smartphones and 100% of digital cameras.

In global supply chains, services are vital inputs for exports. One of the major pillars of the ASEAN Economic Community is the liberalization of trade in services, but it is not as ambitious as compared to the AEC's tariff elimination program under which tariffs will be eliminated (i.e. 0%) for almost all products. The liberalization of trade in services beyond 2015 will be necessary to realize the ASEAN Economic Community. Multilateral advances in the liberalization of services trade in the WTO will inspire further service liberalization by ASEAN.

Currently, the AEC has achieved a high-level PTA among the ASEAN-6 members and the new members will reach a similar level by 2015. However, in pursuing economies of scale, the relevant markets of Asian firms is expanding from China and several ASEAN countries to the whole of East Asia, including Cambodia, Lao PDR, Myanmar, and India. RCEP will be a new trade arrangement to facilitate such expansion and foster the emergence of leading regional and global firms. For this, RCEP should be a high-level PTA with cumulative rules of origin and common concession tariff schemes for goods and services liberalization, in particular, for Mode 3 (commercial presence). Therefore, the earlier RCEP is completed, the earlier and bigger the benefits to member economies.

The on-going TPP negotiations have led to a discussion on global trade governance. Two mega PTAs (TPP and RCEP) are on-going alongside the US-EU TTIP. New international trade rules and market opening commitments have been developing outside the WTO. Several Asian countries are negotiating RCEP and the TPP. If

these two mega-PTAs feature divergent trade and investment disciplines, this would increase transaction costs and generate a confusing situation in business arising from overlapping and competing rules of the game. The harmonization of trade rules and negotiations among mega-PTAs will be a necessary step towards advancing such multinational trade arrangements. However, if such harmonization were to proceed as between the TPP and TTIP, it would likely be rejected by developing countries as an attempt on the part of the US and the EU to impose their standards on the rest of the world. RCEP will play a very important role in providing a template for a PTA involving a large number of economies at different stages of development.

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## **II.5 Towards the WTO's Bali Ministerial Meeting: a View from Phnom Penh** Vannarith Chheang, Cambodian Institute for Cooperation and Peace (CICP)

### **1. Expectations**

The upcoming WTO Ministerial Meeting in Bali, Indonesia, will be a milestone event and an important step towards the strengthening of the functions and practices of the global multilateral trading system and its increasing linkages with regional economic integration in East Asia. It is expected to deliver concrete results with practical and clear action plans based on the political will of WTO Members. It is time to seriously reform the WTO. It needs to better respond to the dynamic changes in international trade and strengthen the nexus between trade liberalization, poverty reduction and sustainable development.

Early harvest is an initiative to reap low-hanging fruits first before agreeing on other more complicated issues. The WTO should identify certain areas for early harvest, such as concrete measures to link trade with poverty reduction, further promote pro-poor trade initiatives and their implementation, closely link trade with job creation and social protection systems, and integrate trade with an inclusive and green growth agenda.

ASEAN and the WTO have intermittent but mutually beneficial relationships. The successful reform of the WTO will greatly benefit regional arrangements and integration. In return, successful and inclusive regional integration will contribute to promoting the global trading system. However, there are still challenges that need to be addressed. In the wake of the global economic crisis, trade protectionism through non-tariff barriers (NTBs) is on the rise in certain countries and there is a lack of political will to deepen the linkages between trade openness and investment and services liberalization.

## **2. WTO reform**

As a member-driven organization, the WTO is consensus based. The expansion of its membership reflects the relevance of this institution in promoting development and peace through trade facilitation and openness. Cambodia was the first least-developed economy to join the WTO. It has shared some experiences and lessons learned with other least developed economies.

Surveillance and dispute settlement are the core functions of the WTO. They have contributed to enforcing rules of international trade under the organization. However, the WTO needs to provide more and better technical support to the least-developed and developing countries.

The negotiating function of the WTO has not progressed well due to the stalling of the Doha round, which was launched in 2001. Progress is mainly constrained by a lack of political will. The road ahead remains uncertain depending on whether the WTO Members can reach consensus on various trade- and services-related issues, particularly on non-tariff trade barriers and agricultural products.

The WTO needs to improve the functioning of its governance system with collective and consensual coalition or a coalition of the willing on certain complicated issues.

Preferential trade arrangements complement the slow progress of global trade negotiations. These arrangements are easier to negotiate and can more easily generate advances on new areas such as trade facilitation, with higher standards and levels of commitments.

## **3. ASEAN priorities in Bali**

Trade openness and liberalization is the key driving force in economic development in East Asia. As the economic center of gravity shifts towards East Asia, it has greater

stakes and more responsibility for promoting the free-trade-based common rules and standards of the WTO. It is believed that through the promotion of preferential trade arrangements and negotiations, East Asia contributes to implementing and strengthening the rules and regulations of the WTO and, more importantly, facilitates common positions on certain complicated global trade issues, such as trade in services and agricultural products. In addition, economies in the region also challenge the global trading system to keep reforming in order to respond more promptly and effectively to the new dynamics of the international trade–investment–services nexus.

As regional production networks are closely interlinked with global supply chains, realizing the East Asian Community will require not only stronger internal integration but also strengthened ties between the region and the rest of the world. It is therefore necessary for the countries of the region to operationalize the roadmap for linking regional economic community building with the global trading system.

The Doha Round needs to be re-energized with new momentum and commitment. Trade in agriculture plays a crucial role in poverty reduction and in narrowing development gaps. Non-tariff barriers (NTBs) need to be collectively addressed otherwise they adversely impact on the development of international trade and investment. Small and medium-sized enterprises (SMEs) are the key to economic development and poverty reduction in the region. ASEAN and East Asian countries need to follow a common approach to linking the multilateral trading system with regional production networks, mainly supported by SMEs.

Inclusive and green growth should be the ultimate goal of international trade. ASEAN, as a regional grouping, should take the lead in facilitating dialogue and building consensus within the wider Asia-Pacific region to promote pro-poor trade and green growth. A widening development gap is threatening peace and stability in the region.



It is therefore necessary to link trade with development in the region through the provision of technical support and market openness to pro-poor industries and sectors such as the agricultural sector and SMEs.

#### **4. The WTO: still relevant for ASEAN and East Asia?**

The WTO has played a significant role in facilitating trade liberalization and increasing the capacity of its member states to adapt to trade rules and norms. The member states of ASEAN have benefited significantly from their membership in the WTO. The ASEAN Free Trade Agreement (AFTA) and other regional economic integration schemes use WTO rules as basic guiding principles.

Due to the increasing need for trade and investment liberalization, ASEAN and East Asian countries have moved beyond the WTO by introducing a more open and preferential regional trading arrangement among themselves. However, ASEAN and East Asian integration is inclusive and has played an important role in promoting the norms and rules of the global trading system.

#### **5. Bali and the road to the ASEAN Economic Community**

Regional economic integration is part of global economic cooperation and norms. Adherence to the rules-based global system of trade and investment is required more than ever in a world of PTA proliferation. Sustaining open and inclusive regionalism forms an integral part of the ASEAN community building process. By closely linking a single regional production network and a single market within global supply chains of production, services, and investment, ASEAN can maximize its economic potential and realize its inclusive regional economic integration aims.

The upcoming multilateral trade discussions and negotiations in Bali should focus on reforming the WTO, especially in the field of linking trade with investment and services; with regional and global production networks; with exchange rate

governance; as well as linking trade with poverty reduction and green growth. It is necessary to find new ways and means to revive the Doha Round negotiations. This requires bold leadership with strong political commitment to push for an inclusive negotiation based on trust, mutual benefits, and transparent and fair rules.

Linking trade with a reduction of development gaps in the region is fundamental to maintain peace, stability, and sustainable development. Trade and development need to go hand in hand with economic and social inclusion in order to be sustainable.

## **6. Multilateralizing regional advances: RCEP and TPP**

The deadlock in the WTO's Doha Round negotiations has led some countries to look for alternative trade arrangements at the bilateral and regional levels. The Asia-Pacific region, regarded as the most dynamic region in the world, has developed different layers of regional economic integration frameworks, such as the Regional Comprehensive Economic Partnership (RCEP) proposed by ASEAN and the Trans-Pacific Partnership (TPP) proposed by the United States.

However, it is necessary to ensure that such PTAs do not become protectionist blocs. Such arrangements need to remain open, inclusive and outward-oriented. RCEP and TPP can complement each other in promoting regional economic integration and production networks although differences in standards and compliance levels may be expected to flow from them. It is expected that the realization of RCEP and TPP will help to boost trade and investment in the region and to tackle the issues of rules of origin and non-tariff barriers (NTBs). The positive steps and developments taking place in trade and investment liberalization in East Asia and the Asia-Pacific will put pressure on the WTO to quickly reform and become more responsive to the demands for more trade openness and liberalization.

## **7. How can regional trade arrangements complement the WTO?**

Preferential trade arrangements need to be inclusive and open so that they complement the WTO. By producing a high-standard trading environment, the Asia-Pacific region will inspire other regions to follow suit. The inter-regional economic cooperation mechanisms, such as those between East Asia and Europe or East Asia and Latin America, can play an important role in linking different regional economies. Such trans-regionalism contributes to global trade and investment cooperation and integration. Moreover, regional trade negotiations can help to build consensus at the global level.

The regional institutions need to have a section within their secretariats mandated to deal with WTO affairs. For instance, within the ASEAN Secretariat, a new section on ASEAN–WTO coordination should be created to ensure that WTO rules and regulations are observed and to facilitate discussions on WTO reforms at both the regional and multilateral levels.

## **II.6 ERIA Perspectives on the WTO Ministerial and Asian Integration**

Gary Hawke, Senior Fellow, New Zealand Institute of Economic Research and Member of ERIA Academic Advisory Council

### **1. Multilateralizing regional organizations**

Little can be expected from the WTO Ministerial in Bali in December 2013. However, global economic governance will be no less important in the future than it was in the past. The WTO should retain its position as the central coordinating institution. It should also retain important functions, including dispute resolution. Some minor agreements in Bali would be useful for maintaining the WTO as an institution. But 'business as usual' cannot be sustained, and at Bali, the WTO should begin the process of converting itself into an institution that ensures the compatibility of a number of regional network institutions. It should also begin to adapt to the contemporary world by seeing its field of responsibility as 'economic integration' rather than 'trade'.

The world has changed. Politicians everywhere still think of 'trade' as putting things in boxes and sending them to customers who live in other countries, thereby gaining domestic jobs from wider market access. But the world is now one in which international production networks combine the resources of producers in several economies to serve customers who may be widely dispersed. Production networks depend on just-in-time manufacturing to common standards and consumer welfare depends on competition, mobilization of resources in relatively undeveloped economies, and innovation, which is spread among producers along a chain from initial innovator to final consumer. The issue is not 'trade liberalization' but integration. The task is not to cope with add-ons to the core business of market access for trade in goods, but to deal with an integrated package of goods, services, investment, and the whole range of regulatory issues which affect the ease of doing business across international boundaries.

We expect the WTO to manage the multilateral system directly in a way which deals with integration so-defined. The needs of economic integration as enunciated above require collaborative efforts by governments. Such efforts taking place simultaneously among 200 or so economies are hard to conceive, even with skilled negotiators rather than simplistic commentators. The participation of more parties makes any negotiation more difficult and this is sometimes offered as a reason why the WTO is unable to move beyond what was agreed in the Uruguay Round. There is undoubtedly some weight in this argument, but it is not complete. First, CGE modeling generates an equally persuasive argument that in general the more parties there are to a trade agreement, the greater the aggregate gains available. Secondly, GATT and WTO bargaining was never a debate among an increasing number of equals. The fundamental dynamic of GATT was bargaining among the 'Quad', Canada, the EU, Japan and the US, modified by adjustment to cater for undeniably important impacts on other economies. At the very least, we should amend the starting argument, that the WTO is paralyzed simply by increased membership, to the assertion that changes in the relative significance of specific economies have prevented the emergence in the WTO of a modified Quad. But more important is how economic integration has focused attention on the fact that what was previously seen as a matter of domestic regulation is now central to the management of international business. Economic diplomacy deals above all with knowledge and trust shared by participating governments. This is more likely to exist among smaller groups than among the whole membership of the WTO. The WTO will remain important as the guardian of the multilateral system, and in particular of the dispute resolution system, but it is likely to be a coordinator of a set of networks rather than a centralized hierarchy.

Collaborative efforts among governments will probably be known as 'negotiations' – the word is used in the 'Guiding Principles and Objectives' agreed among ASEAN and its trading partners and endorsed by ASEAN leaders when RCEP was launched,

and it is standard terminology in the context of the TPP, TTIP and other proposed agreements. Because 'trade' will continue to be used as shorthand for economic integration diplomacy – the misplaced concreteness with which 'trade' has been used in much political and media commentary has become absurdly misleading but the word is too common to be displaced – we can be sure that 'trade negotiations' will be part of the vocabulary used to discuss those collaborative efforts. However, they need not resemble what became standard practices in WTO Rounds or in PTA 'studies' and 'negotiations'. ('Studies' have become the early stages of 'negotiations' in which governments retain the option of withdrawing without investing political capital in the achievement of a successful outcome.) In particular, conventional language with a known relationship to legal precedents need not be used, and as there does not need to be a single document recording everything that is agreed, there may be no 'single undertaking'. This change should not be made lightly. Agreement that nothing is agreed until all is agreed was central to the institution of 'GATT rounds. The single undertaking was formalized in the Uruguay Round in response to dissatisfaction with the decision of many members of GATT to remain aloof from various codes which had been negotiated in previous rounds, to prevent opting out from agreements on new agenda items, and to dignify the transition from GATT to the WTO. However, its essentials go back to the origins of GATT and the idea that a comprehensive package allowed trade-offs among components and facilitated consensus. It has also been important in maintaining a genuine multilateral system which accords equal treatment to all participating economies. However, the MFN system was always qualified – by the Article 24 provision for PTAs, by the political adjustments for the 'agricultural waiver' to suit US interests, acceptance of the EEC to serve the geo-strategic interests of the US and its allies, acceptance of 'special and differential treatment' for developing countries, and through the use of variable transitional periods in PTAs. Modern PTA developments, and now the move to economic integration clubs, are merely the latest modifications, and the crucial issue is preserving what remains relevant in a conventional understanding of

multilateralism.

A 'single undertaking' remains attractive, not least to participants who give high importance to a component which other participants find especially difficult, notably agriculture. However, it cannot be accommodated in a rolling agenda of collaboration in which new issues arise and are incorporated. In a continuous process, there is no place for a 'single' conclusion. Negotiators have to find new ways to ensure that their particular concerns do not slip off the international agenda. This is one of several ways in which 'trade negotiators' will have to adapt to major changes in their task. And we have to expect that the continuation of 'trade negotiations' will disguise from many commentators how much the agenda of economic diplomacy has changed. (And overcome the nostalgia for the familiar, which leads to comments such as 'you cannot negotiate trade facilitation' or 'I don't know how to negotiate for supply chain operation.' To which the appropriate reply is, 'the modern international economy requires lifetime learning everywhere'.) While we might well criticize the content of many 'trade negotiations' it is unwise to overlook the continued potential contribution to desirable economic integration of such interactions.

Some kind of club management will emerge. In the Asia and Asia Pacific regions, the leading candidates are TPP and RCEP. An ideal TPP would lead to a Free Trade Area of the Asia-Pacific. Another proposed mega-agreement is the Trans-Atlantic Trade and Investment Partnership or TTIP, and so two major players in future world economic governance could have the US at their center. The US initiative to seek closer engagement with ASEAN, announced in late 2012, may be an alternative path to the same end. The 'Expanded Economic Engagement with ASEAN' places emphasis on facilitation and collaboration on appropriate regulatory regimes, but it also suggests a focus on investment and standards that could easily distract ASEAN as a whole to the kind of wrangling already happening in the TPP discussions. The

balance of positive and negative effects is far from obvious.<sup>35</sup> Alternatively, RCEP could make Asia one central player, along with NAFTA, the EU, and whatever evolves in Latin America and Africa. A central role of the WTO would be to ensure that the rules agreed by these mega-agreements are not incompatible, and continually simplifying them where possible into a single set of rules. The objective remains a multilateral trading system but its meaning should be updated to reflect the modern world.

## **2. Facilitation, liberalization and integration**

The WTO would certainly benefit from some more immediate gains, but they are not easy to determine. It may be possible to extend the agreement on market access for information technology goods proposed under the ITA2 negotiating process. This is worth doing, perhaps more for the symbolism of success than for any major gains in consumer welfare. Entrenching a boundary between 'information technology' and goods and services in general creates an arbitrary definition which will later have to be removed. Furthermore, the usual theory of the second best warns us that liberalizing market access for a subset of commodities is not necessarily welfare enhancing. Nevertheless, the demonstration effect of enhanced cooperation across boundaries makes the dangers worth risking.

More is to be gained by exploring whether there are not better ways to deal with services than by trying to extend the traditional approach of trading concessions that has been used for trade in goods. While international trade in services can be done directly through cross-border supply, as with some business services; through movement across borders to engage in consumption, as with education and health services; or through movement of natural persons across borders to perform a service, as with some engineering operations, a commercial presence in the destination market is often necessary, and commercial presence usually requires

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<sup>35</sup> Cf. Andrew Elek 'US commits to ASEAN integration' *East Asia Forum* (25 November 2012).



supporting investment. There is a direct link between trade in services and an increasing flow of international investment. It is well known that conventional statistical measurement of trade in services is underestimated because of conventions that record some transactions as investments rather than trade flows. Statistical mis-measurement is an inconvenience; international trade in services is a potential source of enhanced productivity in both source and destination economies. We know that gains are possible – since marginal equivalences across borders have not been realized. We also know that the traditional practice of ‘requests and offers’ in WTO negotiations have not been fruitful and that no alternative procedures have yet been adopted. For example, it might be worth changing the burden of proof and require parties to reduce barriers to international service flows identified by possible trading partners unless a convincing rationale for the barrier can be generated. Obviously that would require a great deal of experience in developing the idea of ‘convincing’ but it is no more than a development of the accepted idea of transparency, and the idea of a ‘bound’ tariff rate was just as experimental in the 1950s.

The close connection between services and investment highlights the need for the WTO to begin more intimate dialogue with global financial institutions. For international production networks, services trade is not a minor supplement to trade in goods but is essential to business operations, and because services trade cannot be separated from international investment flows, trade and investment have to be considered together. The conventional separation of real and financial integration is deeply entrenched in international economic governance through the WTO on the one hand and the World Bank and IMF on the other, but it is incompatible with how the global economy has changed. Quick or easy fix are not readily available but the WTO should begin familiarizing all its Members with what is at stake. Asian members could usefully discuss the learning processes associated with AMRO, and ASEAN members could usefully discuss their individual experiences of how financial

regulators learn to consider regional interests rather than only the application of entirely domestic rules. These may seem to be small steps, but they will help the WTO to begin what will necessarily be a lengthy process. It will exemplify the process of 'learning together' which is needed for progress in global economic governance, something very different from conventional discussion of capital controls and exchange rate regimes divorced from the needs of international business.

A similar refocusing is required if the WTO is to make a real contribution to reducing development gaps. There may be some gains available through market access for the exports of the least-developed countries or other aspects of 'special and differential' treatment but the effects of what can be agreed are unlikely to be large. More is likely to be gained by facilitating the spread of production networks to utilize the relatively low-cost labor which is available in those economies.

This will require unilateral attention to the conditions under which foreign and multinational business can operate, but it also requires appropriate management of intellectual property and standards. These are the frameworks for innovation, not just introducing processes and products which are new to the global economy as a whole, but also introducing ways of doing business which are new in least-developed economies and which are the means by which incomes grow. However, participation in production networks requires access to standards and intellectual property.

Standards have long been part of the agenda of technical barriers to trade since standards purportedly adopted for consumer safety or to provide for interconnectivity among products (between for example fire hydrants and fire-hoses) could be used to preclude competition between imports and domestic products. But standards have become much more important because of the need for interoperability among members of international production networks. In turn, standards can be private property and thus an important part of intellectual property (IP) rules. Public policy

conceives IP as finding the optimal balance between encouraging invention and disseminating knowledge so as to promote the efficient use of resources. But there can well be conflicts between economies where patents are held and economies which seek to innovate.

The demands for adjustment are enormous. One of the three competing 3-G standards is protected by more than 2000 patent families comprising more than 6000 patents from 50 companies and consortia. A smart phone involves hundreds of standards coming from dozens of standard-setting organizations – camera, video, web browser, PDA, Wi-Fi etc. Eight thousand patents for smart phones are held by 41 companies.<sup>36</sup> Patents are merely part of the issue; they are much used in some industries such as pharmaceuticals whereas other industries rely on continual innovation for firms to remain ahead of the competition.<sup>37</sup> For some industries, not only the print media, but also films, software developers and internet service providers, it is copyright which is crucial and whereas economists tend to think of ‘intellectual property regimes’, IPR lawyers have a long tradition of separate rules for copyright and patents.

The economic issue is the same, balancing incentives offered to creators of new knowledge with the public interest in disseminating knowledge of how to make the most effective use of resources in generating consumer welfare. The ideal or even a ‘high-quality’ IPR provision is not the one which provides the longest period of protection to the existing property holder, but the one which strikes the best balance between incentives to innovators and facilitation for knowledge-users.

We read American complaints about stolen intellectual property but the biggest

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<sup>36</sup> Dieter Ernst *Indigenous Innovation and Globalization: The Challenge for China's Standardization Strategy* (UC Institute on Global Conflict and Cooperation and East-West Center, June 2011), p. 44.

<sup>37</sup> Bronwyn H. Hall, Christian Helmers, and Thomas Juster ‘The Importance (or Not) of Patents to UK Firms’ *NBER Working Paper* No. w19089 (May 2013).

engine of change in the Chinese intellectual property regime is the challenge to legitimate Chinese businesses as they respond to attacks from illegal producers.<sup>38</sup> The process is one which has occurred many times before,<sup>39</sup> but it can also be facilitated by international agreements. They must deal with the desired balance and not merely with the enforcement of unduly lengthy protection for property holders. International agreements include commitments by firms and the governments of advanced economies to ensure 'Fair, Reasonable and Non Discriminatory' access to standards and patents and the elucidation and application of such clauses is important. There have been legal cases in the US about corresponding provisions in US law in which judges have assessed their own valuation of royalties which may induce companies to be more accommodating<sup>40</sup> and the US has also experienced the problems of writing rules which are operational but do not encourage opportunistic behavior.<sup>41</sup>

The above problems are inherently more difficult to solve in an international setting. What we should look for in Bali is for the WTO to initiate a process by which it joins with the World Intellectual Property Organization (WIPO), in the search for optimal international IPR rules.

'Technology transfer' is still widely understood as it was in the 1960s, to refer to vehicles for official aid. It now relates to the terms of participation in international supply chains. In any case, the term is antiquated: the better conception is 'technology sourcing: strategies of technology-using companies and countries that involve search, absorption, learning, diffusion, as well as innovations – especially incremental innovations – that convert ideas, inventions, and discoveries into new

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<sup>38</sup> Ernst, p.82.

<sup>39</sup> David Clayton 'Trade-offs and rip-offs: Imitation-led industrialization and the evolution of trademark law in Hong Kong', *Australian Economic History Review* 51(2) (July 2011), pp. 178–98. The same story can be told in terms of US economic history.

<sup>40</sup> 'Free exchange: Standard procedure', *Economist* 407 (8835) (11 May 2013).

<sup>41</sup> Edward Wyatt 'Obama Orders Regulators to Root Out "Patent Trolls"', *New York Times* (4 June 2013); editorial 'Fighting "Patent Trolls"', *New York Times* (5 June 2013).

products, services, processes, and business models.<sup>42</sup>

We cannot avoid the tension between standards and innovation. Standards can freeze technology. That can be an incidental by-product of the search for ‘fitness for purpose’ and interoperability. Or it can be the deliberate result of firms seeking competitive advantage by manipulating access to intellectual property. An international regime for managing Intellectual Property and Standards is an essential component for economic integration. But it is no easy task. Any idea of a uniform international intellectual property regime has to be complex. For most economies, economic development is a matter of catching up with the frontier. In poor countries, a weak IPR regime is optimal to encourage dissemination, utilization of knowledge from abroad should be preferred to incentives for innovation. Advanced economies will naturally prefer stronger IPR regimes. That can be derived as an abstract argument, or it could be deduced from the economic history of many countries, including the US, which was not known for its ready adoption of European copyright agreements in the nineteenth century. American practice then – and well into the twentieth century – is a useful antidote to USTR advocacy now. It is not surprising that patents and intellectual property issues are among the issues proving to be contentious in the TPP negotiations,<sup>43</sup> but they will be even more problematic when considered in conjunction with China’s participation in moving from TPP to FTAAP.<sup>44</sup>

As well as genuinely addressing development gaps in this way, the WTO at Bali could seek progress on trade facilitation. The aim should be simply to supplant the current narrow WTO conception of ‘facilitation’ in terms of customs procedures with the wider concept of extending ‘ease of doing business’ which is explicit in APEC and

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<sup>42</sup> Dieter Ernst and Barry Naughton ‘Global Technology Sourcing in China’s Integrated Circuit Design Industry: A Conceptual Frame-work and Preliminary Findings’, *East-West Center Working Papers Economics Series No. 131* (August 2012).

<sup>43</sup> Claude Barfield ‘The TPP: A model for 21st century trade agreements?’ *East Asia Forum* 25 July 2011.

<sup>44</sup> A similar argument can be developed relating intellectual property rules and attractiveness to FDI. Cf. Hodaka Morita ‘FDI and Technology Spillovers Under Vertical Product Differentiation’, *APEC Economies Newsletter* Vol.15 No. 08 (September 2011).

at least implicit in both the TPP and RCEP. Streamlining customs procedures is only part of the wider 'logistics improvements' which has been extensively documented in ERIA research and which connects readily with ASEAN ideas of 'connectivity' and hence the pursuit of inclusive growth through narrowing development gaps. The WTO could well benefit from all this Asian experience, perhaps beginning by seeking a dialogue with the World Customs Organization in parallel with that with WIPO.

### **3. Undertakings, single and otherwise**

The ideal institution for facilitating economic integration in the modern global economy would have a wide mandate. Its central focus would be promoting positive interactions that reconcile important social and cultural customs with the removal of barriers to international commerce. It would seek to promote competition wherever this could be expected to enhance consumer welfare. It would look especially towards reducing impediments to the operation of international production networks. It would seek to resolve disputes and issues that arise in managing intellectual property rights, including accessibility and dissemination of standards. It would deal with impediments to flows of services and therefore of investment which facilitate cross-border business. And its mandate would extend to the movement of people, especially those with skills which are needed by international production networks in specific places, but also as skill-acquisition in employment grows in significance relative to basic education, to movement of people able to acquire new skills. The institution would understand that its task is not simply to implement well-understood rules but to evolve new rules as issues not foreseen are encountered. It would be an institution suited to a world of networks rather than of established organizations and hierarchies, and a world of relational contracting rather than black-letter law. The ideal is some distance away.

My emphasis has been on persuading WTO Members in Bali to establish paths towards securing the long-term future of the multilateral trading system. That means

embracing the concept of economic integration rather than being satisfied with trade negotiations aiming at market access. It means embracing plurilateral agreements while ensuring that regions remain active participants in world economic governance.

A particular challenge is preserving the possibility of new adherents joining the major plurilateral agreements. This amounts to no more than maintaining the most elementary component of the widely accepted ideal of 'open regionalism'.

Especially worrying is the likely provision in TPP for widening its membership. US leadership really matters here. While several parties to the TPP negotiation support it only as a step towards a Free Trade Area of the Asia Pacific and so look forward to membership by the North Asian economies of China, Japan and South Korea, some observers of US political processes see Chinese and even Japanese membership as unlikely or problematic. (This is distinct from the point that several noneconomic commentators, in the US and elsewhere, see TPP as an instrument for the containment of China. While there are certainly proponents of such a position, it is not supported by the Administration.) But US processes require Congressional endorsement of economic agreements, and if the TPP ends up being a set of related bilateral agreements (a bowl of noodles *within* a bowl of noodles), for which the US has thus far revealed a preference, China will have to negotiate bilaterally with the US in order to join a broader TPP – no matter what the wishes of other members; and any agreement would require separate approval by the United States Congress. That is rightly viewed by China as a set - up.<sup>45</sup>

It is somewhat ironic given the political situation in Washington, that to get the TPP to

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<sup>45</sup> Shiro Armstrong 'China's Participation in TPP' *APEC Economies Newsletter* Vol.16 No. 05 (July 2012). Sourabh Gupta has also commented, 'Once/if TPP is signed and implemented, inviting new members (China) will require a change in existing law ... which means a vote in Congress to change the law ... which will not happen because in White House–Congress consultations, the former will not be given formal or informal authority to negotiate in the first place.) And to suggest that it could, or should, will be seen as unrealistic, and ultimately therefore, unserious.' (I am grateful for permission to quote this extract from private correspondence.)

the starting line as a potential positive step towards economic integration in the modern world, a major change in US legal procedures (and probably in US law) is required.

RCEP is less advanced than the TPP. The modalities which will be used are not yet apparent. The agreed objectives, which were negotiated by all ASEAN members with the existing ASEAN FTA partners, include provisions for delayed entry by an ASEAN PTA partner that did not participate at the outset. 'The RCEP agreement will also have an open accession clause to enable the participation of any ASEAN PTA partner that did not participate in the RCEP negotiations and any other external economic partners after the completion of the RCEP negotiations'. The term 'any other economic partners' is ambiguous, but the emphasis on ASEAN centrality elsewhere in the document probably means that accession will require a PTA with ASEAN. The experience of Hong Kong's proposed accession to the China-ASEAN FTA points in the same direction.

In practice, accession of any but a very small economy to an existing agreement requires some consultation on how the terms of the agreement apply in the particular circumstances of the acceding economy. (The US did not even consider using the open accession clause of P4 before initiating negotiations to join P4 and make it into the TPP.) There is therefore the possibility of political gamesmanship in any accession, and RCEP too needs some further consideration of its accession provision. There is, however, a useful precedent in the evolution of the ASEAN Economic Community.

The ASEAN Economic Community is scheduled to be complete in 2015. In this context, 'complete' is not a precise term, but we need appropriate monitoring to know what tasks remain to be done and which of these are most important. Governments and their officials do not readily acknowledge that targets will not be met. Officials like



to count what is simple and can be presented in a good light.

To their credit, the governments and officials of ASEAN sought honest assessment rather than comfort in distorted data. ERIA was commissioned to conduct a Mid-Term Review of the ASEAN Economic Community. It constructed a Scorecard which is not a checklist of declared objectives but a genuine scrutiny of what was intended, a careful review of whether declared intentions have been implemented, and an assessment of whether the expected economic outcomes are being realized.

The resulting review provides a generally positive assessment of how the ASEAN Economic Community will be in place in 2015. There will be gaps, and governments have been given guidance on what they should set as their priorities.

This exercise has several interesting implications. It shows that reaching a desired end does not depend on an external agency able to impose sanctions. Learning from European experience requires effort, and notions that ASEAN is copying the EU are simplistic. Nobody can look at European experience in recent years and think that making obligations subject to supranational monitoring guarantees implementation. What is important is not declarations and signed agreements, but commitment to shared objectives and frequent discussion of how barriers to implementation can be overcome, including through cooperation. The 'ASEAN Way' has a great future.

Secondly, engagement of an independent but 'inside' agent like ERIA can help to reconcile technocratic expertise with democratic control. ASEAN governments retain control and answer directly to their electorates. 'Track 1.5' ERIA benefits from official information and respects confidentiality, but informs governments, officials and the public about where expectations are not being realized and what can best be done about it.

There are many areas of economic diplomacy where a similar mechanism could be useful. An especially important one relates to accession clauses in plurilateral agreements. Make the process of entry as technocratic as possible by engaging a track 1.5 institution like ERIA to assess whether an applicant is indeed reforming its own institutions and processes in a sensible way so as to satisfy the collective's ambitions. There will still be plenty of room for political debate, but it will be constrained.

One of the tasks for the WTO as it seeks to ensure that plurilateral agreements are open to new members is to endorse a process such as the one ASEAN used for the mid-Term Review and to compile a list of institutions which could be entrusted with a technocratic assessment (the OECD might well serve a similar purpose for European and trans-Atlantic agreements, ERIA for Asian ones, etc.)

#### **4. Conclusion**

At Bali, WTO members should take whatever gains in liberalization are available, but they are likely to be small.<sup>46</sup> It is more important to establish a positive start on longer-run strategies for preserving the multilateral trading system by positioning the WTO as its guardian at the center of a network of plurilateral clubs which can experiment with the regulatory changes needed for economic integration in a world of production networks, with special emphasis on services and investment, shared global governance with financial institutions and organizations like WIPO and WCO, standards and IP regimes, and open accession clauses.

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<sup>46</sup> Claude Barfield 'A Realist's View of the Global Trading System', *Real Clear Markets* (1 May 2013).

## **II.7 A Small Country Perspective from ASEAN**

Erlinda M. Medalla, Philippine Institute for Development Studies (PIDS)

### **1. The WTO and PTAs: the Philippine perspective**

There is deepening pessimism, if not downright despondency, about the prospects for achieving progress in the Doha Round of the World Trading Organization (WTO) and consequently, a growing concern about the future of the world trading system. Accordingly, a lot has been written about the current state of the WTO, what could lie ahead, and what possible actions could be taken. The ninth WTO Ministerial meeting will be held in Bali in December 2013 to once again try to find effective ways forward. This short chapter aims to contribute to the discussion leading to the Bali meeting, from the perspective of an ASEAN country like the Philippines.

With the protracted stalemate in concluding the Doha Round, different forms of alliances and agreements have emerged. Among the most documented is the proliferation of preferential trade agreements (PTAs) during the past two decades. Debates abound about whether these are likely to become building blocks or stumbling blocks for multilateralism, and certainly, there could be both centrifugal and centripetal forces which could work either way in determining the final outcome.

Like many other countries, the Philippines was characterized in the past by a heavily protectionist trade regime. Starting in the 1980s, it embarked on unilateral trade liberalization reforms, even before joining the WTO. It has been a firm supporter of the WTO principles, and continues to place primary importance on multilateralism. It is a latecomer to PTAs, and even now, is only active in pursuing preferential arrangements as part of ASEAN, except for its lone bilateral agreement with Japan.

From the perspective of a developing country like the Philippines, the direct challenge it faces is how to deal with the changing global trading system, a stalled WTO Doha Round and evolving regionalism. Given its own domestic constraints, it

needs to sort out what trade policy options are available and which of these would be most suitable and complementary to its own development goals.

The Philippines is a developing country with limited resources for engaging in negotiations. Its first priority is to improve its domestic conditions, upgrade its capability and ease domestic constraints, actions which are also necessary to enable the country to maximize the benefits from PTAs. At the same time, with the slow progress in the WTO and the negotiations that are already ongoing, it realizes that it needs to contend with possible negative impacts of being left out of certain PTAs and missing out on opportunities from positive investment and the trade creation effects of joining the latter agreements. Hence, while the WTO remains the basic framework of its trade policy, the current stance is to be open to possible PTAs while at the same time being cautious and selective with regard to its partners.

The prospective PTAs with significant potential benefits, complemented with elements of cooperation and technical assistance, would be its priority. At the top of the list would be the ASEAN initiative to establish a Regional Comprehensive Economic Partnership Agreement (RCEP) with the other six East Asian Dialogue partners. It will be forging an agreement with already existing FTA partners, and could eliminate the messy noodle bowl effect of these ASEAN+1 FTAs. Even where it needs to commit more, RCEP also takes into consideration the different levels of development of participating countries, thereby offering appropriate forms of flexibility. Finally, it adheres to WTO principles, especially with its open accession principle that allows participation of any of the ASEAN dialogue partners.

To sum up, the Philippines still looks to the WTO to provide the basic global trading framework and the WTO remains the primary trade forum for the country. In addition, the Philippines already has the necessary bureaucracy, capacity and experience to deal with the WTO. Nonetheless, it recognizes the advantages of regionalism.

## **2. Multilateralism and regionalism: ASEAN and East Asian perspectives**

In East Asia, regional economic integration, which was mainly market-driven at the start, has adopted a more formal process of regionalism (Medalla and Balboa, 2011).<sup>47</sup> While the formation of PTAs is likely to continue, the good news, especially in East Asia, is that there is a conscious effort being made to minimize the risks in such arrangements. The ‘new age’ regionalism, at least in terms of the concept and the policy process, has adopted some features to mitigate some of these risks. For example, despite the loose WTO (and GATS) provisions governing PTAs, these agreements are generally explicit about being WTO consistent. This being adopted among the basic principles of the PTAs (however seemingly contradictory in nature) is no small matter. In addition, many small countries entering into such agreements are aware of the risks and see PTAs more as a testing ground and a mechanism for capacity building to face eventual global competition. Hence, there is scope for a mutually reinforcing interface between multilateralism and regionalism.

Nonetheless, while ‘new age’ regionalism thus far appears to be a viable option, and possible support to waning multilateralism, any further erosion of the multilateral trading system could dissolve their complementary interface. In addition, there is some doubt about the eventual form of the mega-blocs currently under negotiation – particularly the Trans-Pacific Partnership (TPP) involving the US and the other Asia-Pacific countries, the US-EU Transatlantic Trade and Investment partnership (TTIP) – and how they will affect the global economic and political landscape. The US-led TPP and the US-EU compact could become what Joseph Stiglitz refers to as ‘free-trade charades’ whose goal is a ‘managed trade regime – managed, that is, to serve the special interests that have long dominated trade policy in the West.’ Yet, participation of developing countries in the TPP need not be tepid. And regionalism is not exclusive to the West.

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<sup>47</sup> Medalla, E.M., and J.D. Balboa (2011), ‘Regional Economic Integration in East Asia: Progress and Pathways’, PIDS Discussion Paper Series No.2011-23. Manila: PIDS.

Hence, to promote the complementarity between regionalism and multilateralism, PTAs need to be structured as building blocks and the WTO must keep moving forward. PTAs should uphold the aim of WTO consistency and represent substantive improvements. The objective is to guard against the possibility of creating an 'inward-looking, self-contained fortress.' RCEP has the potential to become a model PTA that would complement multilateralism. Its guiding principles include consistency and support for WTO and open accession. Its goal is to become a high-quality PTA, with some flexibility for developing and least-developed countries, cooperation, and provision of technical assistance and capacity building.

### **3. Ways forward?**

Many factors have led to standstill in the Doha Round. The most immediate cause is the continuing deadlock in the area of agricultural subsidies and the 'new issues' of investment, IPRs, and government procurement. However, the root of the problem is structural in nature: the number of countries involved in the negotiations is too large, making it difficult to arrive at a consensus, and the number of issues is too big to be tackled under a 'single undertaking,' which exacerbates the difficulty still further. Given the numerous attempts to address these issues in previous Ministerial meetings, what could be done differently in the Bali Ministerial meeting to move the process forward?

One possible way forward is to follow a set of recommendations similar to the suggestions made by the recent Expert Roundtable on RCEP organized by ERIA on approaches to the negotiations of RCEP and its implementation. One recommendation in particular, which could address the difficulty of a 'single undertaking' covering many issues, is to approach negotiations as an 'evolutionary process'. This means rather than strictly adopting a 'single undertaking,' negotiations will produce 'a set of linked agreements that are reached over differing timetables'.

Operationally, this could be achieved using a layered approach. The layers are not necessarily sequential, although they could be configured such that the first layer would include significant objectives that are feasible in the shortest time. This would offer a concrete and substantial way forward, enough for a meaningful down-payment. There could be a second layer of issues whose implementation would require more time, and a third layer to tackle the most difficult areas.

A good down-payment in the first layer that comes to mind is the conclusion of the Trade Facilitation Agreement. This is a clear area where everybody wins, developed and developing countries alike, although some technical assistance and capacity building for developing countries would be needed to ensure that benefits are realized. This is also one agreement where a lot has already been done and which appears 'ripe for early harvest.'

Another possible option is the 'plurilateral' approach, whereby areas for negotiation are broken up, and any Member is free to join. However, in contrast with the usual plurilateral agreements, reciprocity is provided only temporarily and the MFN clause should be applied, whether immediately, or at a predetermined date in the future. This will reduce the risk usually associated with PTAs while still providing some incentive for members to join. Hence, benefits would be felt by all and could later encourage other members to join as a result of the demonstration effect of the agreement. These approaches are especially relevant, useful and important from the perspective of developing countries.

Finally, in addition to finding ways to move the WTO agenda forward, improvements and clarifications, even of existing WTO rules and disciplines, are needed. These include the WTO rules governing PTAs: GATT Article XXIV and the Enabling Clause and GATS Article V. 'Systemic issues' remain about how to define 'substantial sectoral coverage' and 'absence or elimination of substantially all discrimination'.

Another improvement needed is in the dispute settlement mechanism, particularly in terms of improving access for developing countries.

As then WTO Director-General Dr Supachai said when he addressed the Third LDC Trade Ministers' Meeting in Dakar, Senegal: 'If governments and their constituents lose faith in the ability of the DDA to deliver results we shall, no doubt, see a growing imbalance between multilateral and bilateral deal making. This could rock the foundations of non-discrimination and transparency upon which the multilateral system is built. These core principles not only help level the playing field between developed and developing countries, but also make the international trading environment a more predictable and less complex place to do business. I am convinced that the world's poorest and most vulnerable countries would be the biggest losers from a focus on bilateral deals at the expense of multilateralism.'

ASEAN and East Asian regionalism is an illustration of how regionalism can complement and support the multilateral trading system. While there is increasing intraregional trade, interregional trade remains crucial and substantial. Production networks and the supply chain extend beyond the region. Their dynamism cannot be sustained without orderly global trade, best managed under the WTO framework. The relationship is a two-way one. A strong ASEAN community and a more integrated East Asian region could provide stability not only in the region, but across the globe. In addition, the outward orientation of the region would serve the rest of the world well.

In the final analysis, forward movement should be characterized by more active participation of developing countries and key stakeholders, e. g. business, labor, environmental groups, similar to how things are done in APEC. The way forward requires inclusive participation and the goal of working towards inclusive and sustainable growth.



## **II.8 Reflections on the Role of WTO in a New Context**

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### **1. Introduction**

Together with world economic growth, trade and investment have emerged as key channels for improving prosperity and people's living standards. Various international institutions, most notably the World Trade Organization (WTO), have been established to facilitate trade and investment beyond the national level. Yet the development gaps between WTO Members, particularly between developed and developing economies, persist partly due to the unequal distribution of trade- and investment-related benefits induced by various distorting measures.

With a view to narrowing the gaps by making trade and investment more liberalized, but at the same time beneficial to developing economies, the Doha Development Round was launched in Doha, Qatar in 2001. The focus of the Doha Round was new negotiations, although a significant portion of the agenda also concerns the implementation of current agreements within the WTO framework. However, the negotiations have not advanced as expected. Despite progress on the Singapore issues and agriculture, and in narrowing the differences between Members' approaches, certain gaps remain hardly bridgeable and, after years of languishing, may threaten the conclusion of the Doha Round itself.

This chapter reviews the current context and some ideas that may have a bearing on the current WTO regime. The remainder of the paper is structured as follows. Section 2 examines the current context and perspectives of the WTO regime. Section 3 then reviews some new thoughts on global trade governance. Finally, Section 4 briefly notes some priority issues for the top of the next WTO Ministerial Meeting agenda.

### **2. WTO: Current context and perspectives**

Drawing from past achievements with trade liberalization, the conclusion of the Doha

Round is expected to bring about significant benefits to Member economies. Such benefits range from direct ones, such as improved market access and decreased vulnerability to unfavorable changes in foreign trade and investment regimes, to more indirect ones gained from domestic reforms and trade facilitation. It is worth noting that PTAs, although important, are by themselves not a replacement for multilateral agreements. They just seek to enhance trade and related opportunities between much smaller groups of economies. Nevertheless, PTAs typically fail to enforce disciplines, particularly on anti-dumping, agricultural subsidies, and rules of origin. This can only be done at the multilateral level. More seriously, different PTAs with different levels of commitments may distort the allocation of resources to the economies involved. As such, members have turned to the Doha Round for a more coordinated framework for trade liberalization.

ASEAN and East Asia remain, and should continue to be, open to the whole world. Meanwhile, countries within the region have deepened economic integration. ASEAN has set a target for building up the ASEAN Economic Community by 2015, and its Members are taking concrete steps towards meeting this target. Moreover, countries in ASEAN and East Asia also enjoy close cooperation and connectivity which go well beyond that foreseen under traditional PTAs. Replicating such efforts at the multilateral level is hardly possible at this stage, but it should be a target for all parties in Doha Round to aspire to.

Notwithstanding the original hopes of its progress, the Doha Development Round now seems to be heading for failure. Various meetings of Trade Ministers have failed to bring about significant progress. Talks on liberalizing agricultural trade are still stalled. Special and differential treatment proposals for developing economies have been deemed inadequate. Meanwhile, the negotiations under the Doha Development Round have so far failed to make way for a rebalancing of the power of major developed countries (such as the US and the EU) and that of the newly emerging

markets (especially Brazil, Russia, India, China and South Africa) in the global trading system. Disagreements on these issues, with the underlying concern about uncertainty of a win-win situation following further multilateral trade and investment liberalization, are impeding the progress of the Doha Development Round.

As a result of this stagnation, Member economies are searching for alternatives, albeit less so multilaterally, for moving the liberalization agenda forward. Preferential trade agreements (PTAs) are proliferating, with participation of various economies irrespective of their development levels. The proposed Trans-Pacific Partnership (TPP) agreement has attracted a wide membership. Other recent notable efforts include the negotiation of a US-EU PTA (TTIP), the Regional Comprehensive Economic Partnership (RCEP), and the trilateral China-Japan-Korea PTA (CJK FTA). This is not to mention a number of other smaller PTAs, which contribute to exacerbating the so-called spaghetti-bowl syndrome. The increase in PTAs – an exception provided for under the WTO regime – seemingly undermines Member economies' deference to WTO as the lead forum for global trade liberalization.

Nevertheless, the WTO, as the multilateral trading regime with the widest scope, maintains its relevance even in light of the current contextual changes. The regime serves as the best available foundation for promoting and deepening efforts towards trade liberalization, while still allowing for efforts to promote trade PTAs. Even with the increasing number of PTAs and plurilateral initiatives designed in an attempt to get around the stalled Doha Round, commitments made by WTO Member economies under such agreements *must* still be WTO-consistent. As such, even in an indirect sense, the WTO preserves the momentum for moving forward towards deeper economic integration.

Also, given its multilateralism, the regime allows less distortion of the trade and welfare of member economies. This is demonstrated by the large literature on the ex

*ante* and/or *ex post* welfare-improving effects of WTO accession for various recently acceding Members. Accordingly, the questions now are whether the scope of WTO commitments can be expanded, and whether the depth of such commitments can be rationalized consistently with Members' development context, rather than whether the WTO process can be reversed.

Moreover, in spite of certain claims that it is limited in power and enforceability, the WTO's dispute settlement mechanism is still regarded as instrumental in encouraging more rules-based trade practices of Member economies. In turn, this will improve the overall transparency of the global trading regime. The increase in the number of trade disputes reported in recent years apparently does not show that the current trade practices are mutually respected, but it does imply that member economies are turning towards a more commonly agreed multilateral mechanism for dispute settlement.

Finally, as its name implies, the Doha Development Round incorporates greater cooperation for development. Specifically, provisions by more developed Members to developing ones constitute an important topic for discussion. These provisions have been quite a remarkable characteristic of PTAs in East Asia (Vo and Nguyen 2010), but raising their incidence at the global level faces difficulties not only in terms of lack of consensus on their necessity, but also in terms of the extent of their applicability. In this respect, the WTO still provides the leading global platform on aid for trade. Accordingly, the provisions on development cooperation, if adopted, will ensure that aid for trade will provide the largest possible improvement of welfare, particularly to developing Member economies.

Nonetheless, the WTO regime in general, and the Doha Development Round in particular, are facing the strongest ever criticism. There are various dimensions to these criticisms. On the one hand, the challenges lie in the attempts of WTO

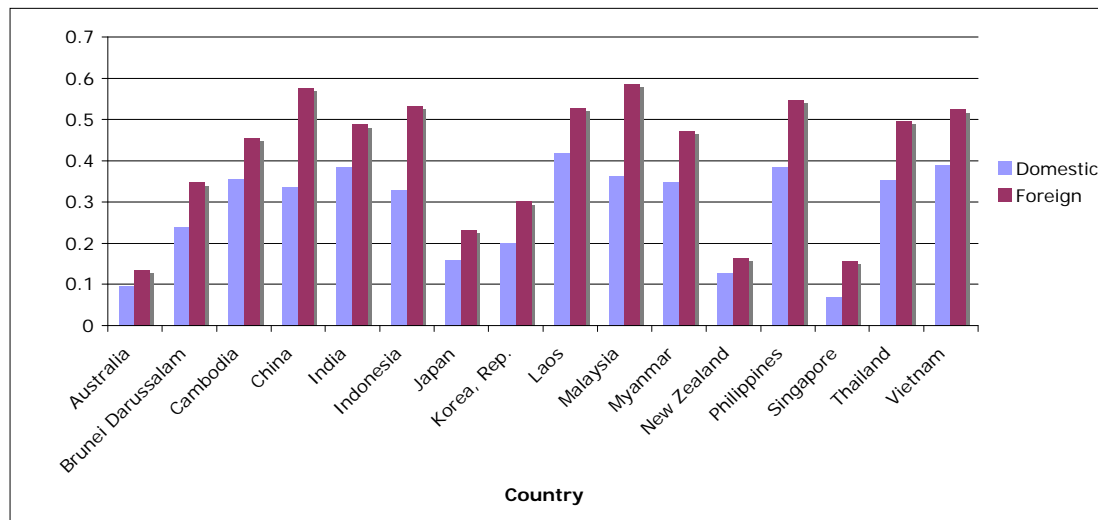
Members to adopt the commonly agreed single undertaking for trade and investment liberalization. Given that most of the small and/or developing Member economies are rule-takers, this seems to result from failure of major trading partners to propose, develop and bring into negotiation such a package. On the other hand, the WTO is increasingly referred to as a talking club. Member economies are raising more issues related to their development needs and what they expect from other trading partners. Meanwhile, the same Member economies have been reluctant to discuss and/or make needed concessions on the liberalization front. This problematic Doha-Round-impeding reluctance is even prevalent among the advanced Member economies, if not more so. These issues are real and solvable, but they require more concrete actions than talk in order to realize the objectives of the Doha Round. Otherwise, the fear is that the stalled Doha Round negotiations could undermine the transparency of the WTO as the single global trading regime.

### **3. New thoughts on global trade**

Although actual progress in terms of improving global trade governance and promoting multilateral trade liberalization under the Doha Round has been limited, new thoughts on global trade are still being expressed. *First*, more scholars are documenting how improving supply chain connectivity is a means to facilitate global trade. Following periods of reducing and/or eliminating tariff and non-tariff barriers against imports as *per* the old generation of PTAs, impediments to the international flow of goods, services, labor and knowledge now lie mainly in various forms of domestic policies that exhibit regulatory attempts to segment markets. In fact, these impediments are popular in those various developing and newly emerging markets that follow a mercantilist approach to promoting exports and restricting imports (see **Figure 1**). Basically, the regulatory impediments either purposely or unintentionally impose additional compliance costs on traders and enterprises that may well shift their minimum efficient scale. More importantly, these impediments cannot be managed at the border. The costs can be larger in the economies which lack strong

regulatory coordination across government agencies, which may in turn lead to different standards and regulations that affect trade.

**Figure 1: Logistics restrictiveness indices, selected economies**



Source: Hollweg and Wong (2009).

The scope for reducing supply chain barriers is greater than that available for abolishing or reducing prevailing tariffs. In the recent report by the World Economic Forum, in collaboration with Bain & Co. and the World Bank, it was found that reducing supply chain barriers could have an impact – up to six times larger than that of removing all remaining import tariffs – in terms of increasing global GDP. Meanwhile, with a projected improvement in both border administration procedures and transport and communications infrastructure services,<sup>48</sup> global GDP may rise by 4.7 per cent, as compared with a 0.7 per cent increase in global GDP following complete worldwide tariff elimination.

The impacts of non-tariff measures on trade are acknowledged by governments, though they tend to adopt measures against imports and intentionally persuade partners to facilitate their exports. With insufficient mutual confidence, this may lead

<sup>48</sup> All countries raising their performance in these two areas halfway to global best practice as observed in Singapore.

to a situation in which no one would want to proceed unilaterally towards trade liberalization. Moreover, as argued by Hoekman (2013), the current approaches jointly pursued by governments are suboptimal because they focus on specific policy instruments independently. Small and developing economies that are followers in the process, would therefore want to wait to see the offers/actions of major advanced economies in the process. Meanwhile, major advanced economies act for their own sake and generally refrain from transparently making their concessions or proposals for trade liberalization.

An alternative approach would be to have the participating governments thinking about moving towards supply chain connectivity. Thanks to trade expansion at the global level and the promotion of foreign direct investment at the regional and domestic levels in recent decades, the production process of final products is increasingly divided into more and more segments and production networks. As such, one can hardly imagine a product that is completely produced in any single country. Governments also need to alter their perspectives. Encouraged by thought of forming an important link in a supply chain, governments should take more action to facilitate trade and investment activities. In turn, this may require a change in approach, which should no longer be product- or industry-targeted. Underlying this process is the willingness of governments to incorporate the participation of the business communities at all stages of policy formulation.

*Second*, the view on agricultural trade liberalization is now increasingly linked to food security. In fact, demand for agricultural products in various regions, especially staple foods, has increased rapidly while the availability of arable land and/or cultivation areas has not expanded significantly. The consequent shortage has to be met either through improved productivity of agricultural production, which has almost reached its limits, or via imports from other regions that have a surplus of agricultural products. Perceptions on agricultural subsidies thus become more complicated, as they involve

consideration of food security for local populations (not to mention job security for farmers). Undue dependency on imported products can be risky due to the possibility of adverse climate shocks in exporting countries, and the extent of risk may be subject to political tensions between trading partners.

De Schutter (2009) lists the key challenges in agricultural trade that cannot be resolved within the current Doha Round negotiations. The fundamental issue in his view is that the negotiations fail to incorporate people's right to food. This issue could have several consequences such as: (i) vulnerabilities to weakening balance of agricultural trade, resulting in a loss of foreign exchange reserves, and to increasing import prices of agricultural products; (ii) reliance on imports of agricultural products leading to greater bargaining power of agricultural traders, which are mostly transnational corporations; *and* (iii) supply chains over long geographical distances and unsustainable modes of production. Taking these considerations into account, it may require more than the Doha Round to meet the need for jointly promoting agricultural trade liberalization and ensuring food security.

*Third*, recent literature also puts greater emphasis on sustainable development issues which need to be integrated into the future trade agenda. On the one hand, the lessons from the global financial crisis show that focusing too much on promoting exports and achieving a trade surplus may result in prolonged global macroeconomic imbalances which, after reaching a certain cumulative level, may hinder the economic growth of participating economies. Moreover, the adverse impacts of any regional or international crisis may be transmitted more rapidly to member economies which, as demonstrated by the experience of the recent financial crisis, failed to acquire sufficient resilience. In fact, the crisis even increased incentives for economies to revert back to protectionism, thereby undermining the credibility of their own recent liberalization efforts.



From the perspective of many developing economies, the recent crisis offers an opportunity to rethink development paradigms. The target paradigm should retain the core components of economic growth, underlying institutions (specifically the right interactions between the state–market–integration), and policies for the efficient allocation of resources (particularly capital). Market-based institutions, and further trade and investment liberalization continue to be of relevance, but are insufficient by themselves. Instead, they should be complemented by efforts to establish efficient markets of all types, and to develop a system of efficient ‘hard’ and ‘soft’ infrastructure to facilitate and encourage cross-border economic activities. This opens up space for newer forms of development cooperation between developing and developed economies.

*Finally*, some ideas about an alternative regime for global trade also need to be elaborated. Given the current contextual changes as well as the issues and challenges underlying the stalling of the Doha Round, most of the literature contends that the current WTO regime is failing to work at its best. Baldwin (2013) suggests that a new WTO regime that can address the fragmentation and/or exclusion of various major trading partners from mega-PTAs – such as the TPP, RCEP, or the US-EU TTIP – is necessary. This regime should attain similar multilateralism to the current one, but wider scope for participation may also entail more practical challenges and difficulties. There is likelihood that such a variable geometry regime may never be put in place. Another possible solution involves the adoption of a plurilateral approach by a group of like-minded countries or economies to address common negotiating issues. This approach is examined by Nakatomi (2013), who notes that the key to success lies in including a critical mass of major WTO Members as signatories. Although the plurilateral approach may not work as a replacement for the WTO it may under certain conditions help to address the trade-related needs of developing economies.

#### **4. Key issues for the WTO Ministerial Meeting**

Given the insufficient, albeit hard earned, progress made in the previous Ministerial meetings, one can hardly expect breakthroughs in the forthcoming WTO Ministerial Meeting that can push the Doha Round towards conclusion. Nevertheless, the Meeting can lay the foundations for smoother subsequent negotiations by agreeing in principle to certain changes. Several specific issues for negotiations in the forthcoming Meeting are listed below.

*First*, the framework for agricultural trade liberalization should be amended. It should be brought into line with food security as a public good for concerned economies. Specifically, as argued by De Schutter (2009), this framework should address the issue of people's right to food. Merely retaining the current permitted support to agriculture, even with some special and differential treatment (SDT) for less developed economies, will not be sufficient.

*Second*, similar to agricultural trade liberalization, negotiations on industrial goods (i.e. non-agricultural market access) should also make a critical breakthrough towards ensuring that developing economies get a fairer share of access to developed country markets. Given that the developing economies vary in terms of their own development level as well in terms of their experience with industrial production and exporting, the design of an appropriate liberalization roadmap as well as provision of SDT for sub-groups of developing economies may be necessary.

*Third*, services liberalization should be given higher priority on the negotiation agenda. This may not happen without a concrete mutual understanding of the scope and implications of services liberalization. An ambitious plan for services liberalization is still desirable, but may not be feasible at this stage. As such, focusing on liberalization of the logistics sector alongside trade facilitation may pave the way forward.

*Fourth*, environmental issues should also be a subject for negotiation. While Members can agree on the long-term need for protection of the environment, specific commitments and associated support mechanisms can facilitate the production of environment-friendly goods and services, very few Members see this as being different from negotiations on traditional non-tariff measures. Requiring transfer of standard-compliant technology from more advanced members should be compulsory, although this can be conditioned on the absorptive capacity of receiving economies as well.

*Fifth*, WTO Members need to rethink whether a single undertaking approach is still appropriate, or whether they should endeavor to address as many commonly agreed priorities as they can. A single undertaking is more transparent and less distorted, but it can take forever to make material progress. Meanwhile, given the past delays in the negotiating process, achieving any priority now could be pivotal to the success of post-Bali negotiating advances.

It should also be borne in mind that the above-described attempts may proceed alongside other plurilateral approaches to trade liberalization. From the experience of the Asia Pacific region as a dynamic subset of the global trading system, any intermediate progress towards the final objective – i.e. trade liberalization for the region as a whole – would be considered essential. A decade ago, one would not have expected a PTA for the Asia Pacific region (i.e. the FTAAP) to materialize. This vision now seems more likely thanks to efforts to negotiate and conclude various intermediate PTAs such as ASEAN+1 FTAs, RCEP, CJK FTA, and the TPP. These achievements came almost as a surprise given the great diversity of regional economies and development levels. In this regard, the capacity to coordinate and harmonize integration tracks is essential and, from regional experience, small groups of countries can in turn play a key role.

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## **II.9 East Asian Regionalism and the Multilateral Trading System**

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### **1. Introduction**

In the midst of the rapid growth of regionalism, the multilateral trading system (MTS) remains important in ensuring a favorable environment for global trade. In fact, the increasing number of bilateral and regional trade agreements has raised various issues that could be effectively addressed at the multilateral level. With more than 400 preferential agreements around the world, mostly of a bilateral nature, it is almost impossible to make ensure that all these agreements are compatible with each other and with WTO rules. The diversity of the trade concessions and rules has limited the benefits of liberalization being realized, not to mention the trade diversion effects implicit in preferential treatment.

Regionalism in East Asia is not spared such concerns. Several initiatives have been proposed to deal with the above challenges, but at the moment no significant program is in place. While the WTO seems quite distant from the recent development of regional integration in East Asia, countries in the region could and should utilize it to avoid the problems escalating.

This chapter briefly looks at the issues related to regionalism in East Asia and examines the role of the multilateral trading system. The key message of this chapter is that countries in the region should support multilateral initiatives. This would not only help progress the multilateral liberalization process, but also reduce the problems and challenges stemming from integration in the region.

### **2. East Asia and the rise of regionalism**

East Asia is actually a latecomer to regionalism. During the 1990s only one free trade agreement (FTA) was in place, formed by several countries in South East Asia under the ASEAN Free Trade Area (AFTA). Later the AFTA would extend to include all

countries in the sub-region. Other countries in East Asia remained devoted to the WTO although they have also become involved in so-called open regionalism arrangements based on voluntary undertakings taken under the auspices of the Asia Pacific Economic Cooperation (APEC) Process.

There are several reasons why regionalism did not appeal to a lot of interests in the region, including historical, political and economic issues, but mainly because the economies did not really see the importance of an intraregional market. Economic development in the region owed much to each country pursuing its own export-oriented strategy. Countries in the region found that the markets for their products were mostly located outside the region, where access was based on the most-favored nation (MFN) principle or non-reciprocal preferential arrangements.<sup>49</sup> The development of 'Factory Asia' since the 1980s increased the significance of intra-regional trade, especially among countries in South East Asia, becoming important production bases for foreign multinationals.

But the first response was not regionalism. Instead, countries in the region pursued unilateral liberalization by reducing their applied MFN tariffs in order to facilitate the necessary imports of intermediate products. These efforts were driven partly by the desire of East Asian countries to attract foreign direct investment (Baldwin 2006).

While unilateral liberalization has served the region well in facilitating the development of production networks and the industrialization of many countries, there is no assurance that governments would embrace an open trade regime all the time. During the Asian financial crisis of 1997, the governments of those countries affected by the crisis raised their tariffs in order to protect domestic production sectors. The widening gap between the MFN applied rate and the WTO bound rate –

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<sup>49</sup> Some new industrializing countries in the region, such as South Korea and Taiwan, made intensive use of the Generalized Scheme of Preferences (GSP) to support market access of their products in the early stages of their development. Later, other countries in the region also relied on such schemes to enter developed countries' markets.

as a result of unilateral liberalization of applied tariffs, together with slow progress in multilateral trade negotiations to lower bound tariffs – allows countries to increase trade barriers.

This and several other developments prompted East Asian countries to proceed with more legally binding and reciprocal commitments typically embedded in a PTA.<sup>50</sup> ASEAN countries reduced the number of excluded products in their existing AFTA scheme, leading towards faster and broader coverage of preferential liberalization. Bilateral PTAs, especially between individual ASEAN members with other countries in the region, started to emerge. ASEAN as an entity also pursued trade agreements with its trading partners in the region. By 2010, this group of South East Asian countries had managed to form five trade agreements with six important countries: China, Japan, South Korea, Australia and New Zealand, and India.

Not only has regionalism become prevalent, PTAs in the region also include various measures beyond the traditional elimination of trade barriers, such as investment provisions, competition policy and protection of intellectual property rights. These are common features in the new generation of trade agreements that address a range of behind-the-border issues related to the internationalization of production.

### **3. Issues and challenges of regionalism in East Asia**

The emergence of regionalism has raised concerns over preferential concessions and other related aspects of PTAs. Some issues relate to practical aspects of regionalism. Currently there are 17 bilateral PTAs among countries in East Asia. While ASEAN as a group has formed five trade agreements with six trading partners in the region, several individual members have also concluded bilateral agreements with those other countries (**Figure 2**). Some individual members, such as Singapore, even have bilateral PTAs with all six partners.

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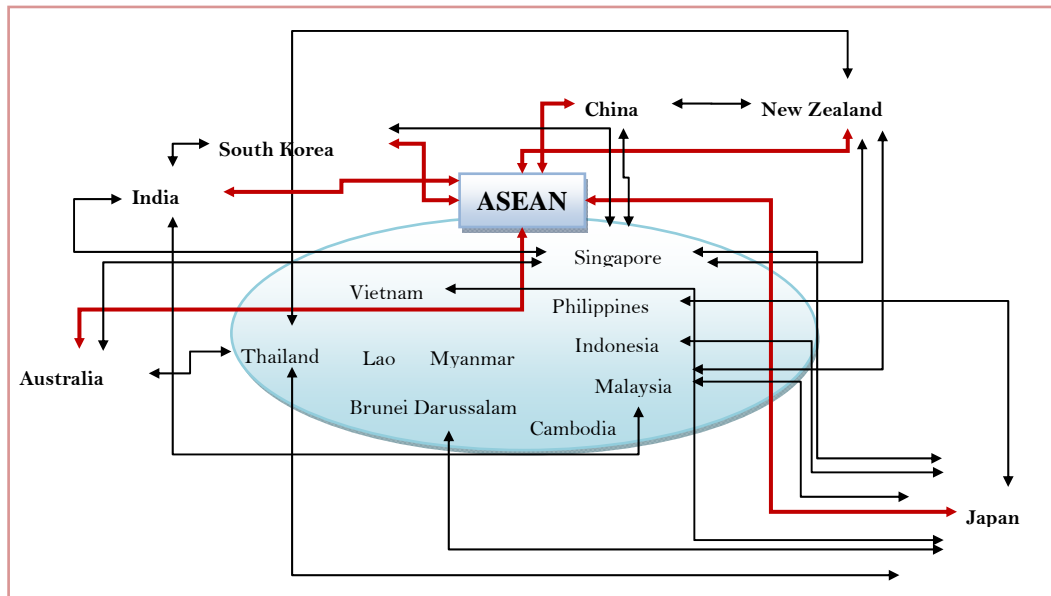
<sup>50</sup> Many observers also argue that the crisis created the need for countries in the region to work more closely together as they can no longer depend on the EU and US markets; therefore regionalism in East Asia has flourished (see for example Baldwin (2006) or Pomfret (2010)).

This overlapping arrangement of bilateral and regional PTAs has been the source of many difficulties in realizing the potential benefits of trade liberalization. One frequent feature of trade agreements in the region is a low utilization rate of tariff preferences. Several firm surveys conducted to document the use of preferential treatment under East Asian PTAs found that firms in the region did not use PTAs optimally (see for example Kawai and Wignaraja 2011).

Various reasons can explain this observation, ranging from a lack of information to the difficulties in complying with requirements. All of them boil down to the fact that preferential treatment requires certain rules to ensure that preferential tariffs only apply to products from trading partners. Those rules of origin (ROO) have to be satisfied before the benefits can be obtained. This procedure normally incurs costs either to acquire necessary documents, to collect and make use of relevant information or to comply with relevant rules. It becomes more tedious and costly when overlapping agreements, as depicted in **Figure 2** below, use different types of ROO, especially when the regional supply chain requires intermediate goods to cross borders several times in the process of production.



**Figure 2. Bilateral and Regional FTAs in East Asia**



Source: Author

A less obviously adverse effect of preferential treatment is that it likely does not make the members better off. The reason is that the preferential removal of tariffs may lead to trade diversion, where the source of some imports changes from the most efficient supplier to the country receiving preferential treatment. Empirical studies on East Asian PTAs reveal that trade diversion cannot be ignored, although a positive effect of trade creation also takes place (see for example Urata and Okabe 2010).

#### **4. The merits of the multilateral trading system**

Aware of the above challenges, East Asian countries have tried to come up with an arrangement that would minimize the unfavorable impacts of preferential liberalization. Steps to increase the utilization of preferential facilities, as well as to simplify rules and procedures, are among the goals of greater integration in the region. Harmonizing liberalization coverage and ROO among overlapping trade agreements in the region would simplify and facilitate integration further. The launch of the Regional Comprehensive Economic Partnership (RCEP), an ASEAN-led

initiative for an East Asia region-wide trade agreement, is an attempt to harmonize regionalism in the region.

However, this is much easier said than done. Tariff elimination schedules under five ASEAN+1 FTAs are currently so diverse that the countries concerned maintain 55 different tariff elimination schemes with different implementation timetables. Each ASEAN member also schedules a different list of product exclusions with different trading partners. There are numerous types of ROO applied in those PTAs and the same products are often subject to different ROOs under related PTAs. It will be very difficult task and require considerable effort to make RCEP function effectively in addressing the above-mentioned challenges.

Multilateral liberalization, on the other hand, is relatively free from most of the problems and challenges of preferential regional integration. From a practical point of view, such liberalization follows easier procedural requirements: since it applies to virtually all countries, the need for ROO can be minimized. The benefits from multilateral liberalization can be further realized as the business sector would not need to pay attention to how to make use of greater market access in the destination market, but could rather focus on producing more competitive products. The biggest benefits of multilateralism, however, arise because the process is more likely to include the most efficient suppliers of any given product and therefore the possible trade diversion resulting from any preferential liberalization would be minimized.

Furthermore, the WTO system offers a more effective monitoring and compliance mechanism, including functional dispute settlement. Since this arrangement involves a large number of countries with a wide variety of trade interests, there is a greater chance of finding members that might be hurt by the harmful acts of other members. The smaller number of members in bilateral or regional PTAs reduces such incentives, especially where the bargaining powers of PTA members are not equally

distributed. Together with an efficient dispute settlement mechanism, the WTO system ensures better monitoring of the global trading system and better respect for its rules. Penalty and compensation mechanisms may also work better under the WTO since it may impose more substantial consequences than when applied narrowly among members of a PTA.

Although many PTAs in East Asia provide a dispute settlement mechanism in order to ensure that commitments are properly implemented, the mechanism has yet to be put to the test. When Thailand and the Philippines, two members of the long-standing AFTA, had a dispute over unfair taxation of tobacco from the Philippines, the two countries decided to go to the WTO instead of handling their dispute under the ASEAN mechanism.

All the above considerations highlight the benefits of the multilateral trading system and demonstrate that it is unlikely to be replaced by bilateral and regional agreements. The question is how, amidst the ongoing preferential wave, the MTS under the WTO can be made attractive to all of its members.

## **5. The Multilateral Trading System: What Should East Asian Countries Do?**

There are three main ways to restore the WTO to its former important position among its Members. The first is to reposition the membership's attitudes towards new global trading issues and the second is to achieve a breakthrough in completing the current negotiation round. The third relates to the initiatives to 'multilateralize' regionalism. East Asian countries can contribute significantly to attempts to revive the multilateral trade process.

### **5.1 *Redefining the WTO's role***

WTO Members should be brave in redefining their position in global trading activities. One of the reasons why PTAs are so attractive is that they cover many areas that

have not been discussed multilaterally. The current global trading environment has moved away from traditional trade in goods liberalization to behind the border commitments. To win back the hearts of its Members, the WTO process must also begin to tackle such areas, perhaps even encompassing what has been discussed under PTAs. East Asian countries have enough capacity to support such 'new issues' being introduced into the multilateral process; many PTAs in the region have commitments in those areas anyway. In addition, these countries can exercise considerable leverage to make it more appealing. Having China or Indonesia joining plurilateral discussions on an agreement on investment or competition policy would increase the likelihood of other countries accepting such a move.

One area where the WTO should play a more important role is in the elimination and better disciplining the use of non-tariff measures (NTMs). While NTMs have been subject to multilateral disciplines for some time, there is currently no comprehensive initiative to reduce the prevalence of such barriers. The approach is simply that countries can use NTMs so long as they do not replace bound tariffs with NTMs. Other than the non-discrimination principle, there is little by way of stringent disciplines attached to the use of non-tariff measures. Since the last financial crisis, the use of such measures has been on the rise, and the excessive use of NTMs has increased overall levels of protectionism (Evenett 2012).

East Asian countries again have a considerable incentive to push the WTO to address NTMs. Appropriate and non-excessive use of these measures is essential for further economic integration in the region. However, addressing such issues by themselves is not an easy task, due to a lack of sufficient information and political will in many countries in the region. Tackling such issues at the multilateral level would provide more power to address them.

## **5.2 *Completing the Doha Round***

Completion of the Doha Round is necessary to keep the MTS alive and moving forward. Concluding the negotiations would help WTO Members realize the benefits from all areas that have been discussed in the draft text, including bound tariff reductions, disciplines on subsidies and liberalization of trade in services. This would also provide buffers against protectionism that can easily return during periods of crisis.

The difficulty in completing the Doha Round is understandable as its goals are ambitious: to reach consensus on nine different areas of negotiations, ranging from market access to environmental goods and development under the single undertaking principle, although some important areas have been left out. It is even more difficult considering that there are some 160+ Members involved in the negotiations. The deadlock has mostly come from lack of agreement on market access and domestic support issues in agriculture. Considering the gap between applied and bound tariffs in many developing countries, even substantial cuts would not lead to significantly greater market access for more advanced countries, whose bound rates are typically aligned to the applied rates. The situation is exacerbated by problems concerning domestic support and market access of agricultural products.

Since East Asian countries have formed many preferential trade agreements among themselves as well as with countries outside the region, extending greater market access to other countries might not lead to significant economic consequences. It all depends on the political willingness to proceed with multilateral liberalization. These countries should use their existing regional forums, such as ASEAN and the East Asia Summit, to come up with real commitments to move forward in completing the WTO's Doha Round, e.g. committing to reducing bound rates below or at least to the same level as current MFN rates, as well as commitments to reduce domestic support levels.

As previously discussed, the central contribution of the MTS is to provide insurance against protectionism. While PTAs are meant to embed such disciplines, it is more economical and effective to do this at the multilateral level. With the ever-growing interconnection of virtually all East Asian economies, it is therefore in their best interests to maintain the WTO trading system and deepen their multilateral commitments.

### **5.3 *Multilateralizing regionalism in East Asia***

With an increasing number of PTAs there is also a growing need for such agreements to be harmonized with each other. The WTO should position itself to exert more influence over the formation of PTAs. At the moment, there is an obligation for countries that sign preferential agreements to notify and report them to the WTO. But despite this obligation, the WTO has little or no influence on the contents of the PTAs themselves. Although according to GATT Article XXIV and GATS Article V, the WTO can impose a certain number of conditions on PTAs, such control is difficult to effect in practice and can be easily circumvented.

Making PTAs WTO-friendlier is an initiative to which countries in the region can contribute to significantly. There are two aspects that can be dealt with directly and would produce concrete results. The first is simplification of tariff elimination coverage and schedules of reduction among overlapping and related agreements in East Asia. Each country engaged in RCEP should come up with a single product exclusion list for all PTA partners. The schedule of elimination should also be aligned so that it reduces confusion during the transition period. The second is to come up with business-friendly ROO. Countries need to reduce the number of rules currently in place while at the same time offering more flexibility to fulfill the requirements by applying rules of accumulation.

The next stage is to make regional arrangements less trade-diverting. One way this can be done is to reduce local or regional content requirements. This can be achieved by applying less stringent ROOs to enable goods from outside the region also to enjoy lower trade barriers. Another important aspect is to extend, as far as possible, lower trade barriers to non-members of PTAs. Empirical studies have found that preferential liberalization is often followed by a reduction in applied MFN tariffs (see for example Lendle 2007 for the case of ASEAN).

Alternatively, countries might consider achieving a more harmonious external tariff structure. While the region is not, and will not be, a customs union, a more uniform tariff structure towards non-members would make the region more open to the rest of the world while at the same time accelerating integration even further.

## **6. Conclusion**

Both from a practical and a philosophical point of view, the multilateral trading system, with its liberalization and non-discrimination properties, offers more benefits than regionalism. But preferential agreements have a longer history and are often more appealing for participating countries as such agreements provide something tangible to the governments involved. Therefore the question is not which of the two to choose, but rather how to make preferential agreements less discriminatory and more supportive of the multilateral negotiating process. Since countries in East Asia have embraced regionalism intensively, their active involvement in this initiative can provide considerable leverage to the process.

There are three ways in which East Asian countries can contribute to promoting the multilateral trading system. The first is to make sure that the Doha Round is completed successfully. This is not so much a matter of economic consequence, as existing PTAs in the region have promoted openness of the economy. Rather it is about the political willingness of countries to pursue multilateral liberalization. The

second is by supporting the reform of the WTO by promoting wider coverage of negotiations and disciplines. The third is to transform PTAs in the region into arrangements that are less trade-diverting and more flexible for non-member countries. Such an agenda would not only support a more progressive global trading environment but also address many problems and challenges currently faced by countries in the region.



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## **II.10 Expected Outcomes from the Bali Ministerial Conference: The View from Myanmar**

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### **1. Introduction**

The World Trade Organization (WTO) was established to facilitate trade and investment within the international economy. Yet marked development gaps between WTO Members still persist partly due to the unequal distribution of trade- and investment-related benefits induced by trade-distorting measures. The focus of the Doha Development Round is to narrow these gaps through more trade and investment in developing economies. Tangible progress was made on the issue of trade facilitation and some aspects of agricultural trade. However, negotiations aimed at narrowing the differences among Members have not progressed sufficiently. Developing countries are still threatened by issues such as anti-dumping, agricultural subsidies, and onerous rules of origin, among others.

The upcoming WTO Ministerial conference in Bali is being viewed as a chance to move some of the less controversial elements of the Doha talks forward, although WTO Members have been cautious about placing too much emphasis publicly on the Bali preparation process. The core of any Bali outcome is expected to include trade facilitation, some agricultural components, and items of special interest to developing and least-developed country (LDC) members.

### **2. Why has the WTO not succeeded to date?**

Since its inception in 1995, the World Trade Organization (WTO) has been successful in establishing the rule of law in the international trading system. Its dispute settlement mechanism (DSM) has produced more than 100 panel rulings and the Appellate Body (AB), and the rules established through those decisions contribute to the stability and predictability of international trade relationships among WTO Members. However, the WTO has not been very successful in international

negotiations. In 1999, the Ministerial Conference in Seattle failed, and then the 2003 Conference in Cancun also failed. Although the Hong King Ministerial Conference of 2005 did not suffer the same fate, its outcome was still minimalist. Since then, negotiations among WTO Members have persistently resulted in stalemate. Many commentators now view the Doha Round as 'dead'. To no one's surprise, the Eighth Ministerial Conference which took place in December 2011 ended without any breakthrough on any of the contentious issues faced by the organization.

Reasons for this rather poor performance are many but, among them, the 'single undertaking' and the consensus rule combined with a change in power relationships within the WTO are noteworthy. The "single undertaking" principle practiced by the WTO does not permit the conclusion and implementation of partial agreements. All negotiations must, therefore, end in a single final agreement covering all negotiated components. In such a situation, an agreement on a particular area, for example, an agreement on agriculture is already highly complex and also very difficult at the political level.<sup>51</sup>

The WTO is at a disadvantage because all of its decisions have to be taken by consensus, which has paralyzed the negotiating process. On the one hand, it is indisputable that consensus is by its very nature democratic and has an integral role to play as every Member can, theoretically, oppose any proposition that comes up for discussion. On the other hand, the strategic aspect of consensus is very significant, especially during major trade negotiations. Thus, the need for explicit consensus also hampers the WTO's efficacy, as one single Member can paralyze the decision-making mechanism. It is particularly difficult to apply the rule of consensus to negotiations involving 160-plus members. It is a fact that since the Seattle Ministerial Conference the pace of multilateral negotiations orchestrated by the WTO has

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<sup>51</sup> Matthew Kennedy, 'Two Single Undertakings – Can the WTO Implement the Results of a Round?' 14 *Journal of International Economic Law* 77 (2011), at 77.

slowed down considerably. The situation encourages some members to resort to preferentialism and this approach appears to call into question the future of the multilateral trading system.

If the Doha Round fails, there is a danger that some members may move away from multilateral negotiations altogether. Leaving the multilateral framework and fuelling bilateralism (especially through ambitious preferential trade agreements (PTAs), such as the Trans-Pacific Partnership Agreement) could pose the threat of resurrecting old mechanisms based on the balance of power and of exacerbating inequalities between large trading powers and developing countries. In turn, this could jeopardize the principle of the rule of law in international relations, which is crucial for the constitutionalization of the international community. In this regard, unless some innovative negotiation methodologies are adopted, WTO negotiations will continue to stagnate and the influence of the WTO on global economic governance will continue to wane.

### **3. The role of the WTO in sustaining Asia's development process and regional integration**

The Bali Ministerial Conference offers a timely moment to reflect on the reform challenges that lie ahead for the WTO system and to address a number of priority challenges. These include:

- (1) The Trade Policy Review Mechanism (TPRM), which is an existing WTO body, incorporated in Annex 3 of the Marrakesh Agreement,<sup>52</sup> has proven its effectiveness. The TPRM is, however, underexploited and its role should be extended to help the WTO better address new and essential issues of the

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<sup>52</sup> Annex 3 of the Marrakesh Agreement, Trade Policy Review Mechanism ('TPRM')

The purpose of the Trade Policy Review Mechanism ('TPRM') is to contribute to improved adherence by all Members to rules, disciplines and commitments made under the Multilateral Trade Agreements and, where applicable, the Plurilateral Trade Agreements, and hence to the smoother functioning of the multilateral trading system, by achieving greater transparency in, and understanding of, the trade policies and practices of Members.

international economic order such as the uncontrolled proliferation of PTAs, recent efforts to regulate greenhouse gas (GHG) emissions, and other environmental policies which have an impact on trade.

- (2) Since 2008, a financial crisis has been weakening the world economy, and some trading nations, such as the USA, India, and Argentina,<sup>53</sup> have resorted to protectionist trade measures. In order to warn against protectionism, Pascal Lamy, the former Director-General of WTO, made use of the TPRM to gather data on the trade-restrictive measures taken by some WTO Members, and took this issue to the G20, urging them to deal with the rising trend of protectionism.<sup>54</sup> G20 countries agreed that this trend was dangerous and, if no countermeasures were applied, it would be harmful to the liberal trade order, so they decided to impose a 'standstill' on those protectionist measures, i.e. not to increase such measures in the future. On 20 April 2009, the G20 Global Plan requested WTO to report periodically on the results of the monitoring of trade-restrictive measures to the G20. The July 2009 report of the WTO's TPRM warned that the WTO membership had not done enough to combat protectionist measures. Thus, the discussion on removal of protectionist measures should be one important agenda item at the Bali Ministerial Conference, highlighting that the WTO should embark on a new and concrete project and promote the role of its TPRM.

Nowadays, WTO Members often conclude preferential trade agreements instead of multilateral agreements within the WTO framework. Since the failure of the fourth WTO Ministerial Conference in Seattle in 1999, the number of PTAs has increased steadily. PTAs really began to come into their own in the

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<sup>53</sup> In early 2009, the USA announced a "Buy America" policy. Some other countries followed suit. India decided to increase tariffs on steel products and bean oil products. The Philippines' introduction of an export licensing system for iron ores and China's export controls on bauxite and zinc are also good examples.

<sup>54</sup> [http://www.wto.org/English/news\\_e/sppl\\_e.htm](http://www.wto.org/English/news_e/sppl_e.htm)

1990s. Prior to that, there were virtually no such agreements until 1970 and fewer than 50 in 1990. This suggests that a greater reduction in trade barriers (both tariff and non-tariff) was achieved in the earlier rounds of the GATT, which precluded the need for countries to resort to PTAs. Once this initial thrust via the multilateral route was saturated, however, countries turned to other avenues for expanding their trading opportunities. The proliferation of PTAs causes two problems to the WTO and to the world trading system. One is that PTAs may undermine the very basis of the multilateral trading order. How can we keep PTAs within the remit of Article XXIV of the GATT and Article V of the GATS?<sup>55</sup> The other problem is that PTAs are bilateral, regional or plurilateral agreements and their rules, whether on rules of origin or trade remedies, often differ from one PTA to another. This situation can exert a significant impact on the international trading system. Because of the differing nature of trade policies in across PTAs, firms face increasing transaction costs, as they have to follow different policies in the same issue area. That is why the WTO should coordinate the activities of harmonizing such trade policies.

- (3) Another aspect the WTO should take into account is that of trade and the environment where the diversity of trade rules regarding the environment affects the international competitiveness of trading nations and may lead to trade disputes. It is important to find ways to avoid such conflicts. There are currently no undertakings with regard to environmental protection in the WTO. We would thus classify an environmental obligation as a so-called “WTO-X” issue, i.e. one not governed by existing disciplines. The UN Conference on Climate Change convened in Copenhagen in 2009 (COP 15), in Cancun in 2010 (COP 16) and in Durban in 2011 (COP 17) to discuss the environmental measures that would be the successor of the Kyoto Protocol. The WTO should develop a comprehensive agenda to tackle the trade impact of measures taken

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<sup>55</sup> See Nicholas Lockhart and Andrew Mitchell, ‘Legal Requirements for FTAs under the WTO’.

to mitigate environmental and climate change mitigation, such as the development of environmental standards; the enforcement of national environmental laws; the establishment of sanctions for violation of environmental laws; and notification and publication of related laws and regulations.

A joint study by the WTO and IDE-JETRO in 2011 highlighted a degree of complementarity among Asian industries, which is a cause as well as a consequence of deepened economic interdependency between them. The Expanded Economic Engagement Initiative, the so-called E3, also recognizes the growing importance and potential of South East Asia, and is meant to give Asia opportunities to engage economically with the world. This highlights logistics services as key components in the operation of supply chains. The same priority should be given to trade facilitation, including the tariff structures, particularly for industrial products. The forthcoming WTO Ministerial can lay the foundations for negotiations, to be followed by agreements on changes in principle.

#### **4. ASEAN perspectives on the WTO**

The expected contribution of the Ministerial Conference in Bali is should serve and complement ASEAN's march towards the realization of the ASEAN Economic Community by 2015. The possible contribution should be to the harmonization of rules of origin (ROO) among ASEAN member states. The TPRM can play an important role in such harmonizing activities. At present, there are no agreed disciplines on preferential ROOs in the WTO, but each PTA has its own rules. If the number of PTAs keeps increasing, there will be yet more ROOs which could be a serious issue of trade conflict and needless transaction costs. To address this kind of challenge, the TPRB collects information in collaboration with the WTO's Committee on Regional Trade Agreements, compares different policies and explores common

policies among them. As a result, the TPRB can point out differences in the ROOs incorporated in different PTAs and make recommendations to ASEAN members participating in such PTAs in order to harmonize their policies and minimize the differences as far as possible. It is to be hoped that, apart from regular reviews of trade policies of member countries and recommendations for their improvement, the role of the TPRB can be expanded along such lines. This also would help the WTO prepare for the eventual multilateralization of ASEAN+1 FTAs.

Furthermore, several economists in Asia have argued for the consolidation of multiple existing PTAs into a single Asia-wide PTA, like the Regional Comprehensive Economic Partnership (RCEP). A broad-based, region-wide PTA formed by 16 East Asian countries could help mitigate the harmful noodle bowl effects described above. It could simplify schedules for tariff reductions, exclusion lists, and the myriad rules, regulations and standards. Shujiro Urata examined the patterns of commitments in trade liberalization in goods in ASEAN's PTAs with major regional economies and pointed out that the RCEP may be difficult to conclude because of differences in patterns of tariff elimination and definitions of ROOs adopted in such agreements.

One practical way forward for trade liberalization under RCEP would be to take a gradual approach towards tariff elimination and a similar approach to ROO harmonization. It is possible however that a region-wide agreement in Asia could arise from a series of linked agreements covering various issues and participants. RCEP and TPP are key processes in creating a larger Asia-Pacific PTA. The two processes are not mutually exclusive and will probably prove to be complementary in the long run. A harmonious Asia-Pacific region would likely require the convergence of RCEP and TPP. This would be a win-win outcome for the Asia-Pacific community. In light of this situation, the WTO could play an active role in exploring coordinated international regulatory measures.



It is expected that talks at the ninth Bali Ministerial meeting will place emphasis on measures to facilitate trade, including the liberalization of agricultural and services trade so that the WTO can open up new trading opportunities for every Member. Progress on trade facilitation has been made with customs reform although corruption remains a serious problem. The ASEAN Single Window is well behind schedule and the aimed-for streamlining of product standards has made limited progress. On the other hand, PTAs are used to enhance trade and related opportunities between much smaller groups of economies. PTAs fail to enforce disciplines, particularly in anti-dumping, agricultural subsidies, and ROOs. The issue of the alleged benefits of PTAs remains controversial. Different PTAs with different levels of commitments may distort the allocation of resources for the economies involved in a particular type of PTA.

The Doha Round should place more emphasis on all-inclusive trade liberalization. Special and differential treatment for developing economies was perceived as inadequate. There is still some room for liberalization of agricultural trade. The emphasis on agricultural trade liberalization is closely associated with the issue of food security. Demand for agricultural products in various regions, especially staple foods, is no longer dependent upon the expansion of cultivation but on agricultural productivity which has almost reached its limits. With the increasing importance of agricultural trade, the issue of agricultural subsidies becomes more complicated. Some risks due to adverse climate and uncertainty are unavoidable in agriculture and the extent of riskiness may affect relations among trading partners. The current Doha Round negotiations cannot be resolved unless the agricultural fails incorporate people's right to food. Failure to make headway on this issue could have several consequences, such as increased reliance on imports of agricultural products leading to the greater bargaining power of agricultural traders in transnational corporations, and reliance on long supply chains over great geographical distances and using unsustainable modes of production. It is expected that there will be discussions in the

Ministerial meeting on how the Doha Round can fulfill the need for jointly promoting agricultural trade liberalization and ensuring food security.

Careful examination is needed of whether PTAs are beneficial to the exporters of primary products. Recent notable efforts on the negotiation of a US-EU PTA, the Regional Comprehensive Economic Partnership (RCEP), and the trilateral China-Japan-Korea FTA (CJK FTA) can be seen as default options for global trade liberalization. All members of ASEAN and East Asia should contribute more to the international economy as a whole. This calls for deepened economic integration. ASEAN is making concrete steps towards completing the ASEAN Economic Community (AEC) by 2015. Countries in ASEAN and East Asia are expecting to enjoy closer cooperation and connectivity through the AEC. Although historically, the use of PTAs in Asia has been relatively low, ASEAN has dramatically increased its involvement in PTAs over the past decade. While the development of supply chains in Asia has been driven by businesses, PTAs are trying to boost the momentum of ASEAN businesses through more trade and investment. In fact, PTAs have become the key driver of regional integration through reducing the costs of trading and improving the quantity and quality of the doing business infrastructure, the quality of logistics and of governance institutions, as well as the overall competitiveness of the regional economies. As tariffs are generally no longer a significant barrier, these agreements have increasingly focused on non-tariff trade facilitation measures, both at and behind borders. There has been a wide variation in the practice of governments with regard to rules of origin. It has become more important that a degree of harmonization is achieved in the practices of members in implementing requirements, such as the criterion for a change of tariff classification or the ad-valorem percentage criterion. Especially in the case of Myanmar, harmonization is required in implementing commercial policies notably in areas such as safeguard measures and anti-dumping policy. This will also help to determine whether imported products shall receive most-favored-nation (MFN) or preferential treatment.

Myanmar can expect limited engagement in bilateral PTAs, as most of its trading partners are from ASEAN and neighboring countries. Although well-designed PTAs can provide demonstrable benefits to member economies, Myanmar can currently benefit only from the liberalization of agricultural trade. For ASEAN countries overall, revision is required of the price support disciplines and trade-distorting agricultural subsidies for public stocks and domestic food aid donated to the domestic poverty-alleviation schemes. Progress on agricultural trade is expected to take the form of a problem-solving stage towards affording Asian developing countries more flexibility in food security policies as there are large populations in some parts of south-east Asia which are vulnerable to food shortages during frequent natural disasters.

Services liberalization should be given higher priority on the negotiation agenda. In fact, the World Economic Forum recently pointed out the beneficial impacts of reducing supply-chain barriers. Better supply-chain connectivity may not be achieved without concrete mutual understandings of the scope and implications of services liberalization. An ambitious plan for services liberalization is needed. Focusing on liberalization of the logistics sector alongside trade facilitation may pave the way forward. While actual progress has been limited, in terms of improving global trade governance and promoting multilateral trade liberalization under the Doha Round, improving supply-chain connectivity is suggested as a means to facilitate global trade. In fact, impediments to the international flow of goods and services together with the limited mobility of labor and knowledge have become major concerns of domestic policies. It is observed that the regulatory impediments either purposely or unintentionally impose additional compliance costs. Lack of strong regulatory coordination across government agencies may in turn lead to different impacts of standards and regulations on the trade liberalization process in different countries.

Regarding services liberalization at the WTO, negotiations on the movement of

natural persons, including the movement of professionals with some mutual recognition agreements (MRAs) require more discussion. With some MRAs have been concluded among ASEAN countries, Mode 4 liberalization is confined to the movement of professionals. Liberalization of commercial presence is a crucial item for discussion in the forthcoming negotiations. Due to the uncertainty about the impact of service liberalization, the fear of the loss of regulatory control colors such negotiations. It seems that a general disinclination to liberalize services under Mode 3 and Mode 4 led to modifications in subsequent services negotiations, which resulted in the liberalization of limitations to Mode 1 (cross-border supply) and Mode 2 (consumption abroad) transactions. There is progressive liberalization regarding Mode 3 and Mode 4 but, ASEAN still has some room for movement of companies and professionals among member countries.

Trade expansion at the global level, and promotion of foreign direct investment at the regional and domestic levels, in recent decades, have contributed to opening more market segments and final products. The production process, with an increasing degree of international specialization, has been developed in a small group of countries. In fact, few countries completely produce a product domestically anymore. The proper role of policy is to facilitate trade and investment activities. In turn, this may require a change in approach. Services liberalization can help foster sound competition and make the business environment more enabling in terms of overall economic activities.

Since investment liberalization has also played a big role in the expansion of trade in intermediate goods in Asia, ASEAN actively encourages inward foreign direct investment. However, the maintenance of large temporary exclusion and sensitive product lists are seen as one of the main problems leading to implementation delays. An appropriate liberalization framework for the group of small developing economies is also necessary. Small developing economies are usually followers in the process

set by the regime (rule-takers), while major advanced economies act pursue their own interests and set their own agendas. WTO Members need to focus more resolutely on commonly agreed priorities in a transparent manner.

## **5. Conclusion**

The WTO can play a role through the TPRM in shaping the international trade order in a way that is different from traditional approaches, such as trade negotiations in the WTO ministerial conferences where new binding agreements are negotiated and signed and any disputes that arise will be settled by the Dispute Settlement Body. The trade negotiations in which WTO Members have encountered recurring difficulties may be revitalized if appropriate changes are made to the organization's decision-making process. Recent innovations and successful developments open up a new horizon for future WTO activities. This suggests that the WTO can act as a moderator or coordinator of activities of G20 countries as well as of other international organizations.

It is also time to consider another role for the WTO in formulating and promoting international trade. This approach can be termed as one of 'soft law' rather than 'hard law'. In our view, maintaining the supremacy of the WTO in the international trading system requires a new methodology, which should be non-formalistic and non-binding and could be expected to immediately produce new multilateral trade rules. The best strategy for the WTO is to build a constructive relationship with PTAs so that both processes reinforce each other and maximize the benefits of open trade to the international community. In order to accomplish this, communication and coordination between the WTO and PTAs are essential. In this regard, TPRM seems to fit the bill.

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## **II.11 The Road to 9<sup>th</sup> WTO Ministerial Conference: Issues and Challenges** Biswajit Dhar, Research and Information System for Developing Countries (RIS), India

### **1. Introduction**

Members of the World Trade Organization (WTO) will shortly meet and congregate in Bali for the ninth Ministerial Conference. This meeting will take place 12 years after the decision was taken to launch the Doha Round negotiations. The time that has elapsed since the commencement of the Doha Round is an eloquent testimony to the fact that the current Round has been the most vexatious of all the negotiating rounds that the multilateral trading system has witnessed since it was established in 1948. The present impasse seems hardly surprising given the wide range of interests across the diverse groups of countries that have articulated their views in the negotiations.<sup>56</sup> This complexity seems to have escaped the architects of the Doha Round, for they initially gave the Member countries no more than four years to complete the deal, which included at least three major components, in addition to several specific issues of critical concern.

The first component was the so-called 'implementation issues',<sup>57</sup> arising from the problems in implementing Uruguay Round commitments, which were mainly highlighted by the developing countries. The second component included the agenda for furthering the trade liberalization agenda across all sectors, while the third was the proposal to include four new areas, namely investment, competition policy, government procurement and trade facilitation (the 'Singapore issues') within the ambit of the WTO. Among the specific issues, the most significant was the threat posed by the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) to the realization of public health imperatives.<sup>58</sup> All the components of the

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<sup>56</sup> A recent count shows that there are 27 groups in the WTO, most of which were formed during the Doha Round. For details, see 'Groups in the WTO', Updated 2 March 2013, (accessed from: [http://www.wto.org/english/tratop\\_e/dda\\_e/negotiating\\_groups\\_e.pdf](http://www.wto.org/english/tratop_e/dda_e/negotiating_groups_e.pdf)).

<sup>57</sup> For details, see, WTO (2001), Implementation-Related Issues and Concerns, Decision of 14 November 2001, WT/MIN(01)/17, 20 November.

<sup>58</sup> This concern was reflected in the adoption of the Doha Declaration on the TRIPS Agreement and Public Health.

negotiating mandate were expected to be addressed keeping in view the development concerns of developing countries. Reflecting this expectation was the fact that the negotiating mandate for the Doha Round came to be better known as the 'Doha Development Agenda' (DDA).<sup>59</sup>

An often-ignored aspect of the Doha Round is that its architects envisioned a balanced outcome by ensuring that negotiations in all mandated areas would be concluded simultaneously. This was reflected in their agreement that the outcome would be in the nature of a 'single undertaking', which really meant that the 'Doha Deal' can only be done when WTO Members had concluded agreements in all areas. The WTO-speak in this regard said it all: 'nothing is agreed until everything is agreed'. In practical terms this approach was extremely significant since it sought to curb the tendencies of the more dominant countries to conclude agreements in areas that best suited their interests (euphemistically called 'cherry picking') and to go slow in (or even ignore) areas in which they had to make concessions. Thus, countries could engage in inter-sectoral trade-offs, and this was seen as a big step towards ensuring a balanced outcome.<sup>60</sup>

The lofty ambitions set for the Doha Round have eroded rapidly, particularly since the breakdown of the negotiations in July 2008. The narrow focus of the issues being discussed in the run-up to Bali underlines the extent of the erosion that the negotiating mandate has suffered. The agenda that is engaging the membership looks thin in relation to the overall negotiating mandate of the Doha Round, as it will

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For details see, Declaration on the TRIPS Agreement and Public Health, Adopted on 14 November 2001, WT/MIN(01)/DEC/2, 20 November.

<sup>59</sup> The Doha Ministerial Declaration alluded to the development dimension, while stating the following: 'The majority of WTO Members are developing countries. We seek to place their needs and interests at the heart of the Work Program adopted in this Declaration'; WTO (2001), Ministerial Declaration, adopted on 14 November 2001, WT/MIN(01)/DEC/1, 20 November, paragraph 2.

<sup>60</sup> Ministers of WTO Members agreed that '... the conduct, conclusion and entry into force of the outcome of the negotiations shall be treated as parts of a single undertaking. However, agreements reached at an early stage may be implemented on a provisional or a definitive basis. Early agreements shall be taken into account in assessing the overall balance of the negotiations'. WTO (2001), Ministerial Declaration, adopted on 14 November 2001, WT/MIN(01)/DEC/1, 20 November, paragraph 47.



likely be confined to three areas, namely, agriculture, trade facilitation and a package for the least-developed countries (LDCs). Furthermore, with regard to agriculture, two groups of developing countries have rekindled interest by focusing on specific issues with a view to reaching some agreement in the Bali Ministerial.

As they prepare for the Bali Ministerial, WTO Members are faced with two sets of challenges. First, it is difficult to conceive of a Ministerial Conference that would have such a limited agenda. The challenge is to include other issues in the agenda without risking a failed outcome.

While preparing for Bali, what should really concern the WTO membership is the future of the organization, in particular how to make it relevant for its membership. In our view, this issue has at least two dimensions. The first is to make the organization respond to the needs of the new drivers of trade in the 21<sup>st</sup> century. One way of doing so would be to consider the support it can lend to the present-day drivers of trade and investment, i.e. the production networks that are increasingly crossing multiple national boundaries. The second is to reflect on making the organization more efficient in terms of the critical decisions it is able to take.

This chapter reflects on the dimensions referred to above. First, the chapter considers the issues that are currently figuring in the discussions and the possibilities of arriving at negotiated outcomes at the Ministerial. The second section briefly takes up the issue of how best to make the WTO more relevant, keeping in view the trade and development imperatives.

## **2. The current focus areas**

A few weeks ahead of the Bali Ministerial, WTO Members are engaged in discussions on three areas- trade facilitation, agriculture and a package for the LDCs. Since its inclusion in the negotiating mandate in 2004, trade facilitation has appeared

the most likely area on which WTO Members could reach an agreement. Over the past couple of years, text-based negotiations on the issue have made considerable progress, though some concerns remain, particularly relating to special and differential treatment (S&DT) provisions for developing countries.

Dynamics in the agriculture negotiations have been quite the opposite. Differences between the major protagonists have effectively stalled the negotiations since 2008. In the run-up to Bali, agriculture has been identified as a priority area by two groups of developing countries. While the G-33 is seeking amendments to the domestic support provisions in the Agreement on Agriculture (AoA), aimed at promoting food security, the G-20 has proposed strengthening the export competition pillar.

Finally, the LDCs are seeking decisions in several specific areas that would enable them to take fuller advantage of the duty-free-quota-free arrangement agreed to in the Hong Kong Ministerial in 2005. This proposal also seeks to address the problem being faced by the Cotton-4 countries (Benin, Burkina Faso, Chad and Mali) arising from the subsidies granted by the advanced countries to their producers.

## **2.1 Trade facilitation**

Although several of its elements form a part of the GATT, trade facilitation (TF) was unveiled as an integrated framework to address a range of customs-related issues, including that of transit, at the first WTO Ministerial Conference in Singapore in 1996. The issue thus became one of the 'Singapore Issues', along with investment, competition and government procurement. After much discussion, the issue was included in the WTO work program in the Doha Ministerial Conference. While the other 'Singapore Issues' were taken off the table in the Doha Round for want of consensus,<sup>61</sup> TF was included in negotiations as a part of the 'July package' in

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<sup>61</sup> In respect of each of the 'Singapore Issues', the Doha Ministerial Declaration had stated 'that the negotiations will take place after the Fifth Session of the Ministerial Conference on the basis of a decision to be taken, *by explicit consensus*, at that Session on modalities of negotiations'. See WTO (2001), Ministerial Declaration: Adopted on 14 November 2001, Ministerial Conference, Fourth Session, WT/MIN(01)/DEC/1, paragraphs 20–27.

2004.<sup>62</sup>

TF negotiations are mandated to produce an appropriate set of rules both from a technical point of view and from the perspective of the development imperatives of developing countries. In more precise terms, the negotiations 'aim to clarify and improve relevant aspects of Articles V, VIII and X of the GATT 1994 with a view to further expediting the movement, release and clearance of goods, including goods in transit'. The negotiations are also aimed at enhancing 'technical assistance and support for capacity building' and to develop 'provisions for effective cooperation between customs or any other appropriate authorities on trade facilitation and customs compliance issues'. The negotiations are expected to 'take fully into account the principle of special and differential treatment for developing and least-developed countries' and in this spirit the mandate clarifies that the countries in question are not expected 'to undertake investments in infrastructure projects beyond their means'.

Developing countries were initially opposed to the expansion of the remit of the WTO by including TF in the Doha agenda if adequate efforts were not made to address issues arising from the implementation of the Uruguay Round commitments. They questioned the developmental impact of TF, besides arguing that they did not have the resources to implement the commitments that the proposed agreement would impose on them.

However, despite the initial skepticism, there seems to be an emerging consensus that developing countries would benefit from a WTO Agreement on TF. A widely accepted view is that in developing countries customs procedures and the supporting infrastructure are generally not very efficient, and that this results in higher transaction costs. 'Doing Business', the annual survey of the World Bank endorses this point.

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<sup>62</sup> WTO (2004), Doha Work Program: Decision Adopted by the General Council on 1 August 2004, WT/L/579, Annex D, Page D-1.

Given the weight of evidence emerging in favor of the various elements of TF, including simplification and harmonization of customs procedures and improvement of border infrastructure and management systems, introduction of these measures would not only increase developing countries' capacity to trade, but business interests in these countries will also be able to integrate into global supply chains. Better coordination amongst the customs authorities would increase operating efficiency, and this in turn would enable the system to generate more revenue through a transparent mechanism. A recent study conducted by the OECD Secretariat using data on 'trade facilitation indicators' from 106 non-OECD countries, which included 95 WTO Members and 11 WTO observers, showed that the benefits accruing to developing countries, as both importers and exporters, can be substantial if appropriate reforms are undertaken.<sup>63</sup>

The negotiations on TF have been dealing with a plethora of issues that could eventually form part of the agreement. These include issues relating to transparency, release and clearance of cargo, introduction of risk management, post-clearance audits, instituting a single window for the clearance of goods, elimination of pre-shipment and post-shipment inspections, and uniform forms and documentation requirements for the clearance of goods. Besides the above-mentioned aspects, freedom of transit and customs cooperation are further key elements of discussion.

While the broad contours of an Agreement on TF seem clear, some contentious issues are engaging the WTO Members. In recent months, the Draft Consolidated Negotiating Text<sup>64</sup> has moved forward by 'eliminating a further batch of square brackets'<sup>65</sup>. At the same time, however, differences persist, particularly on the extent

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<sup>63</sup> OECD (2012), Trade Facilitation Indicators: The potential impact of trade facilitation on developing countries' trade, Working Party of the Trade Committee, TAD/TC/WP(2012)24 (accessed from: [http://www.oecd.org/dac/aft/TradeFacilitationIndicators\\_ImpactDevelopingCountries.pdf](http://www.oecd.org/dac/aft/TradeFacilitationIndicators_ImpactDevelopingCountries.pdf)).

<sup>64</sup> For the most recent version, see WTO (2013), Draft Consolidated Negotiating Text, Trade Negotiations Committee, TN/C/W/63, 31 May.

<sup>65</sup> "Members approaching last petrol station before Bali - Lamy", Trade Negotiations Committee Informal Meeting,

of flexibilities that are to be included in the agreement, which are of primary interest to the developing countries. Moreover, these countries have been insisting on the inclusion of effective provisions on special and differential treatment, including firm commitments on capacity building and technical assistance, which will enable them to rise to the implementation challenges deriving from the proposed agreement.

Despite the progress made in the TF negotiations, there are obstacles in moving the negotiating process on TF towards an eventual agreement. Major developing countries like India and Brazil are not likely to favor a 'stand-alone' outcome as TF is an integral part of the Doha package, which is to result in a 'balanced package'. In other words, these countries will be reluctant to agree on a deal on TF without agreement on some of the key areas in the Doha negotiating mandate. Again, while there is no doubt that most of the less developed countries would benefit from an eventual deal on TF, it is also evident that the benefits would accrue to them only if adequate doses of technical assistance and capacity building programs are extended. It thus appears likely that an eventual agreement on TF critically depends on the progress that is made in other areas in the weeks ahead.

## **2.2 Agriculture**

In the run-up to the Bali Ministerial, both the G-33 and the G-20 have identified areas in which they are looking for changes to the AoA. The former group has pushed for early agreement to address food security issues, while the latter is seeking clear directions for introducing new disciplines in the export competition pillar of the AoA, which includes the issues of export subsidies, export credits and international food aid.

### ***G-33 proposal on food security***

Towards the end of 2012, the G-33 tabled a proposal for the inclusion of specific

elements in the Draft Modalities addressing the problem of food security.<sup>66</sup> Since food prices reached record levels in 2007–2008, food security has become a major concern in many countries in the Asian region. In the aftermath of the crisis, ASEAN Member States adopted the Strategic Plan of Action on Food Security in the ASEAN Region (SPA-FS) as part of the ASEAN Integrated Food Security Framework.<sup>67</sup> Among other things, the SPA-FS focuses on enhancing food production, promoting availability and accessibility to agriculture inputs, and operationalizing regional food emergency relief arrangements. In recent years, India has also taken measures to improve food production, which have resulted in production reaching record levels. At the same time, the Government of India has taken measures to help food to reach the poorest people through the Food Security Act.<sup>68</sup>

The G-33 proposal seeks to ensure that the above-mentioned initiatives of the governments are implemented successfully through three amendments in the ‘Green Box’ (Annex 2 of AoA). These proposals are not new, having been included in the Draft Modalities introduced by the then Chair of the Committee on Agriculture in 2008. By tabling the proposals now, the G-33 is aiming at a decision in the Bali Ministerial comprising the elements they have proposed.

The first of the proposed amendments aims at allowing developing countries to make payments on specific activities to promote rural development and poverty alleviation without being subjected to any disciplines introduced by the AoA. Thus, an amendment of paragraph 2 of Annex 2 of the AoA was proposed to include payments by developing countries for farmer settlement, land reforms, rural development and rural livelihood security, such as provision of infrastructural services, land

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<sup>66</sup> WTO (2012), G-33 Proposal on Some Elements of TN/AG/W/4/Rev.4 for Early Agreement to Address Food Security Issues, Committee on Agriculture, Special Session, 13 November.

<sup>67</sup> ASEAN Integrated Food Security (AIFS) Framework and Strategic Plan of Action on Food Security in the ASEAN Region (SPA-FS): 2009-2013 (accessed from: <http://aseanfoodsecurity.asean.org/wp-content/uploads/2011/08/aifs.pdf>).

<sup>68</sup> Government of India (2013), The National Food Security Ordinance 2013, No. 7 of 2013, The Gazette of India, Extraordinary, Part II, 5 July (accessed from: <http://dfpd.nic.in/fcamin/homepage/NationalFoodSecurityOrdinance2013.pdf>).

rehabilitation, soil conservation and resource management, drought management and flood control, rural employment programs, nutritional food security, issuance of property titles and settlement programs.

Secondly, the G-33 proposed that the existing provisions relating to public stockholding for food security purposes should be amended so that developing countries can spend on acquisition of stocks of foodstuffs for supporting low-income or resource-poor producers and the cost of so doing will not be accounted for in their subsidies' bills. Two textual amendments that these countries have proposed would therefore allow developing countries to implement food security programs 'with the objective of fighting hunger and rural poverty' by procuring foodstuffs from the poorer farmers at administered prices without being subjected to the AoA disciplines.

### ***G-20 proposal on export competition***

One of the major decisions taken at the 6<sup>th</sup> Ministerial Conference, held in Hong Kong in 2006, was that there would be 'parallel elimination of all forms of export subsidies and disciplines on all export measures with equivalent effect ... by the end of 2013'.<sup>69</sup> However, even as recently as 2010–2011, the EU and its Member States, which have been the largest users of export subsidies, continued to use such support measures.<sup>70</sup>

In view of the non-implementation of the commitment made by members, the G-20 has proposed that a Ministerial Decision be adopted on export competition, which would include both export subsidies and export credits.<sup>71</sup> According to this proposal, by the end of 2013, developed country members shall reduce their export subsidy

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<sup>69</sup> WTO (2005), Ministerial Declaration, Adopted on 18 December 2005, WT/MIN(05)/DEC, 22 December 2005, paragraph 6.

<sup>70</sup> The outlay on export subsidies was about € 177 million, while the quantity of subsidized products was nearly 2 million tons. As compared to 2009–2011, there was a halving of its outlay on export subsidies, but the quantity of subsidized exports had declined by a modest amount: from 2.5 million to 2 million tons. For details, see G/AG/N/EU/14, 13 June 2013 and G/AG/N/EU/6, 15 March 2012, Table ES.1

<sup>71</sup> WTO (2013), Ministerial Decision on Export Competition: G-20 Non-Paper, Committee on Agriculture Special Session, JOB/AG/24, 21 April.

commitments both in terms of outlay and quantity commitments as follows: (i) budgetary outlays shall be reduced by 50%, and (ii) export quantity commitments shall be reduced to the actual average of quantity levels in the 2003–2005 base period.

As regards export credits, the G-20 proposed that the maximum repayment term for developed countries should not be more than 540 days from the ‘starting point of credit’<sup>72</sup> and ending on the contractual date of the final payment. The proposed Ministerial Declaration includes S&DT for developing countries. With regard to export subsidies, developing countries would continue to benefit from the provisions of Article 9.4 of the AoA<sup>73</sup> for five years after the end of all forms of export subsidies. Further, the limit for repayments of export credits proposed for developed countries would be applicable to the developing countries three years after the former begin implementing it.

The G-33 proposal on food security has emerged as a critical component in the run-up to the Bali Ministerial. Influential members of the G-33, including India, have argued that agreement in other areas, particularly trade facilitation, will hinge on the stand WTO Members take on their proposal. The United States has provided a contrary view, suggesting a work program to address concerns relating to food security.<sup>74</sup>

### **2.3 The LDC package**

The 34-member group of LDCs in the WTO has presented a package arguing for the

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<sup>72</sup> The ‘starting point of a credit’ shall be no later than the weighted mean date or actual date of the arrival of the goods in the recipient country for a contract under which shipments are made in any consecutive six-month period.

<sup>73</sup> These include provision of subsidies to reduce the costs of marketing exports of agricultural products and internal transport and freight charges on export shipments, provided or mandated by governments, on terms more favorable than for domestic shipments.

<sup>74</sup> U.S. Blames Other WTO Members For Blocking Bali Deal Over Ag Demands, World Trade Online, 29 May 2013 (accessed from: <http://insidetrade.com/201305292435870/WTO-Daily-News/Daily-News/us-blames-other-wto-members-for-blocking-bali-deal-over-ag-demands/menu-id-948.html>).



inclusion of four areas in the outcome of the Bali Ministerial.<sup>75</sup> These are: (i) implementation of the duty-free and quota-free (DFQF) market access Decision taken by Members at the Hong Kong Ministerial Conference in 2005, (ii) preferential rules of origin, (iii) operationalization of the LDC Services waiver, and (iv) cotton. The LDCs have provided firm proposals on the first three areas for adoption in the Bali Ministerial.

In their submission, LDCs have stated that the DFQF Decision must be implemented fully so as to enable them to better integrate within the global economy. They have therefore argued that the developed countries, which had agreed that 97% of their imports from the LDCs would be DFQF, must fulfill their commitment by a date to be decided in Bali. The LDCs have also sought additional market access opportunities from developing country members. While several developing countries have already provided them DFQF market access for products, LDCs have insisted that such access should be available for at least 97% of all products originating in their respective territories.

Alongside this proposal, the LDCs have argued for an easing of rules of origin, which would enable them to take better advantage of the DFQF scheme. The proposal for which the LDCs have sought support in the Bali Ministerial is ‘centered on an “across the board” Rule of Origin based on a percentage criterion’.<sup>76</sup> They have advanced this argument in order to avoid the proliferation of product-specific rules of origin. According to the LDCs, rules of origin negotiated product by product, and industry by industry, open the way for organized industries and lobby groups to devise rules of origin that diminish transparency and trade liberalization.

At the Eighth Ministerial Conference of the WTO in December 2011, trade ministers

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<sup>75</sup> WTO (2013), LDC Package for Bali: Communication by Nepal, on behalf of the LDC Group, Trade Negotiations Committee, TN/C/W/63, 31 May.

<sup>76</sup> WTO (2013), LDC Package for Bali: Communication by Nepal, on behalf of the LDC Group, TN/C/W/63, 31 May, paragraph 1.26.

adopted a decision on a 'Service Waiver' in favor of LDCs. This decision allowed developed and developing country Members to provide preferential treatment to the services and service suppliers of LDCs going beyond the notion of MFN treatment as provided for under Article II of the General Agreement on Trade in Services (GATS). The Waiver, which was agreed for an initial period of 15 years from the date of adoption, was intended to release WTO Members from their legal obligation to provide non-discriminatory treatment to all trading partners when granting trade preferences to LDCs.

LDCs have submitted that a year and half since the decision was adopted, the 'Service Waiver' still awaits operationalization. They point out that in order to operationalize the Waiver, LDCs' trading partners will have to design and effectively implement new trade preference schemes covering services. Their view is that the extent to which the Waiver will actually lead to development results will not only depend on the provision of commercially meaningful preferences but also on the LDCs' ability to overcome their supply-side constraints to effectively benefit from those preferences.

#### **2.4 A proactive agenda for the WTO**

Over the past two decades, Global Production Networks (GPNs) have emerged as a strong integrating force in the global economy. Not only have GPNs played a determining role in bringing economies closer together by stimulating the flows of goods and capital across countries, they have contributed to knowledge diffusion and have provided opportunities for local capabilities to emerge in countries that are part of such networks. This dimension has received relatively less attention in the literature on GPNs, which has discussed this new organizational form largely from the point of view of trade integration.

GPNs have been seen both as products of the process of liberalization of trade and

financial flows and as the catalysts for ensuring a greater degree of openness in the global economy. Proponents of this thinking have argued that unshackling of the economies has triggered changes in the *modus operandi* of transnational corporations, converting them from ‘tariff-hopping’ investors to ‘global network flagships’ that have integrated their dispersed supply, knowledge and customer bases into the GPNs. Fragmentation of production caused by the ‘network flagships’ is assisted by the existence of a plethora of specialized network suppliers usually spread over a large geographical area.<sup>77</sup>

The logic of the GPNs demands a high degree of competence all along the supply chain. The suppliers to the network flagship, which is usually the point of assembly of the final product, are not only required to meet the exacting quality standards and the price of the intermediates they are responsible for, they also have to comply with rigid ‘just-in-time’ delivery schedules. But in order to ensure that the suppliers’ performances meet expectations, the network flagships need to transfer technical and managerial knowledge to them. There is therefore a need to upgrade the suppliers’ technical and managerial skills on a continuous basis. The increasing speed of product obsolescence seen in a large number of industries, in particular those producing products that use information and communications technology, puts pressure on the network flagships to upgrade the technologies of their suppliers.<sup>78</sup>

Network flagships transfer knowledge across borders using a range of mechanisms. In the first place, the transfer of knowledge may be mediated through market mechanisms, using licensing contracts and outright purchase of both technology and plant equipment among others, that may or may not involve FDI. Secondly, the network flagships may transfer technologies through the supply chain and, in doing

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<sup>77</sup> Ernst, Dieter and Linsu Kim (2002), Global production networks, knowledge diffusion, and local capability formation, *Research Policy*, vol. 31, pp. 1417–1429.

<sup>78</sup> Bernhardt, Thomas and William Milberg (2011), *Economic and Social Upgrading in Global Value Chains: Analysis of Horticulture, Apparel, Tourism and Mobile Telephones*, New School for Social Research The New School – Department of Economics, Capturing the Gains Working Paper No. 2011/06 (accessed from: <http://www.capturingthegains.org/pdf/ctg-wp-2010-03.pdf>).

so, exercise control over the manner in which knowledge is disseminated to and used by the supplier. The control over the supply chain can be seen by the manner in which the operations of original equipment manufacturers, or the so-called 'Tier 1' suppliers, are managed by the network flagships.

Irrespective of the nature of GPNs, i.e. whether they are producer-driven or buyer-driven, network flagships are able to influence the production process of their suppliers by actively transferring knowledge in the form of blueprints and technical specifications. The objective is to ensure that suppliers meet the technical standards required in the final products. Branded marketers like Nike and Reebok, managing their 'buyer-driven' networks, maintain close control over their suppliers by setting standards, sourcing raw materials, distributing them and, finally, importing the finished products. GPNs are also able to encourage firms participating in the networks to access knowledge through indirect mechanisms, for instance, through the import of sophisticated equipment to improve their production capabilities.

With the maturing of the production networks, the pattern of knowledge acquisition has also been undergoing changes. This has led to the phenomenon where firms in GPNs engage in innovative activities that have allowed them to move up the value chain and thereby given innovating firms greater scope to operate independently. The existence of successful GPNs, however, presupposes the existence of local suppliers who have the capabilities to absorb the knowledge disseminated by the networks. Furthermore, to remain in the GPN, local suppliers must constantly upgrade their absorptive capacity. Participation in GPNs cannot therefore be ensured unless local suppliers are able to develop their technological capabilities and prepare themselves for inclusion in these networks.

The proliferation of GPNs poses a significant challenge to the multilateral trading system because its basic construct centers on the existence of localized production

within nation states. Production-sharing across national borders of the kind that has been spawned by GPNs requires new instruments and institutions that are supportive of such networks. This raises the need to focus on three behind-the-border areas, namely, trade facilitation measures, investment policy, and non-tariff barriers for the adoption possible globally accepted frameworks or agreements.

From the point of view of GPNs, justification for including trade facilitation in this group of issues is considerable. Enterprises participating in GPNs are required to meet tight delivery schedules. Transparent rules and adequate infrastructure at the border are the necessary wherewithal to help them realize their objectives. Reforms of existing facilities offered in different jurisdictions with a view to harmonizing them to the extent possible, given the resource constraints faced by developing countries in particular, are therefore desirable. In fact, negotiations on trade facilitation in the WTO are aimed at moving in this direction.

The multilateral agreement on investment became a non-starter after the OECD-backed proposal for such an agreement met resistance not only from the developing countries, but also from within the group of developed countries. Notwithstanding this development, there has been an unrelenting movement towards adoption of a *de facto* investment agreement at the global level through the proliferation of bilateral investment treaties and preferential trade agreements featuring embedded investment chapters. However, in recent years, evidence has been emerging on the nature of constraints that these agreements impose on host countries. Not surprisingly, there has been a steep increase in the number of disputes involving foreign investors and their host states. This development could be detrimental to the GPNs, since they are dependent on the cross-boundary movement of enterprises. There is therefore a need to better understand the contentious elements of existing investment agreements, which could then trigger a move towards a more equitable global investment regime.

Non-tariff barriers (NTBs) have been the insurmountable barrier that the multilateral trading system has had to cope with since its establishment. In recent years, technical barriers have emerged as the fountainhead of NTBs. This was confirmed in the course of the ongoing negotiations on non-agricultural market access. The proliferation of technical barriers and standards demands global action to tame them.

### **3. The road ahead**

There is no doubt that the Bali Ministerial Conference is the most critical meeting that the WTO will convene in its less than two decades of existence. Ministers will not only be faced with the need to break the Doha Round logjam, they must also take decisions that will make the organization able to respond to the needs of the 21<sup>st</sup> century.

The immediate challenge is to steer the preparatory process in a direction that would allow the Ministers to take forward-looking initiatives. For this to happen, the agenda for Ministers must be significantly larger than the sum total of issues that are engaging the negotiators in Geneva. The key point of interest would be the ability of the new Director-General to expand the list of issues through the building of mutual trust.

There is of course an inherent risk in expanding the number of items on the discussion table. Proposals for introducing new items would also bring with them the divisive nature of politics that has plagued the Doha Round all these years. One such example is President Obama's proposal to launch plurilateral negotiations on environmental goods.<sup>79</sup>

It will be interesting to see if the Bali Ministerial addresses the most challenging issue

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<sup>79</sup> The White House (2013), The President's Climate Action Plan, June 2013, pp. 19–20 (accessed from: [http://insidetrade.com/iwpfile.html?file=jun2013%2Fwto2013\\_1996a.pdf](http://insidetrade.com/iwpfile.html?file=jun2013%2Fwto2013_1996a.pdf)).

facing the WTO, which is its inability to take decisions. In fact, former Director-General Pascal Lamy had quipped, in his earlier role as the Chief Negotiator of the European Union, that the WTO was a medieval organization in urgent need of reform.<sup>80</sup> However, despite being mindful of the need for reforms in the decision-making structures of the WTO, Lamy was unable to effect any change since the issue of institutional reforms has remained on the sidelines of WTO discussions. Trade Ministers could provide much-needed political support to initiate the process of discussions on institutional reforms that the WTO clearly needs.

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<sup>80</sup> 'Brussels urges shakeup of "medieval" WTO', The Guardian, Tuesday 16 September 2003 (accessed from: <http://www.guardian.co.uk/business/2003/sep/16/europeanunion.wto>)

## **II.12 A Malaysian Perspective on the WTO Ministerial and Asian Integration**

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The World Trade Organization (WTO) remains centrally relevant within the scheme of international trade in today's global scenario. It is important to safeguard and monitor global rules. The simplicity of the single framework that the WTO offers for global trade, standards and rules cannot be sufficiently emphasized. In this context, the Ninth WTO Ministerial Conference in Bali has a special role to play. Members will need to harness stronger political to ensure the necessary deliverables required so that the Doha Development Agenda can be completed after the Bali meeting.

One of the pressing needs of the Bali Ministerial is to generate renewed momentum for a longer-term vision of the WTO. As the WTO's long-term prospects are under pressure because of the proliferation of preferential trade agreements (PTAs). There is a danger that this could lead to the dilution of the strength of the WTO. The main concern is that these trends point to a possible lack of interest in the multilateral trade agenda. The favored approach to the integration of economies lies in forging bilateral and regional agreements, with the Trans-Pacific Partnership agreement being one such example. Although there is nothing innately wrong with PTAs, these agreements should not come at the expense of the multilateral trading system. Indeed, they should be complementary to the multilateral system and, certainly not be a risk to the robustness of the WTO.

The last Ministerial meeting held in Geneva in 2011 did not bring about much cheer to members, since ministers were largely in agreement that the Doha Round of trade talks had reached an impasse. The Bali Ministerial, thus, offers the opportunity for the Doha talks to be taken forward. There are various impediments to success in Bali. First, there are many technical topics that have been raised in previous meetings and on which no clear agreement has emerged. There is a need for closure on these issues. Second, there are several outstanding issues, such as trade



facilitation, some issues in agriculture and other items of interest to developing economies, which need to be addressed. These issues require political will. Third, any success at Bali, even if it is achieved, will not be the end of the road, but will only be a stepping stone towards the later conclusion of the Doha Round.

As far as ASEAN is concerned, the Ninth Ministerial conference is important because it offers a genuine opportunity to put the Doha Round back on track. Forward movement in Bali would help foster a fairer global trading environment and re-energize the negotiation process, ultimately strengthening the multilateral trading system.

As an ASEAN member country, Malaysia would like the Bali meeting to raise the level of engagement and restore a higher level of ambition to the WTO talks. This is necessary to advance the multilateral trade agenda. In order to achieve this, WTO Members should pursue realistic objectives, being cautious in their treatment of other Members' 'red lines'. It should be remembered that ASEAN is in danger of being distracted by its many preferential arrangements, not least the Regional Comprehensive Economic Program (RCEP). While RCEP is not damaging in itself, it could become the focus of attention if sufficient progress were not achieved in the Bali meeting. ASEAN member countries are keen to see greater evidence of a stronger commitment to the Doha Round at Bali.

There are several areas on which some advances can be made at the Ninth Ministerial Meeting. One is trade facilitation. Trade facilitation is a necessary instrument to encourage the trading process since it simplifies export and import transactions, for example through the creation of trade-friendly customs rules and procedures. This is an area that is likely to be less contentious and it is widely believed that enough momentum has been created here to bring about an early harvest at Bali. The reason for the strong hope that is placed on trade facilitation, and

the support that can be expected for this issue from ASEAN members, is that it is in the interest of ASEAN to achieve better trade facilitation. This will, among other things, facilitate trade within ASEAN itself.

Another important priority for Malaysia, as for other developing economies in ASEAN, is meaningful and improved market access for their exports. Most developing economies in ASEAN export a narrow range of products and these products often face high duties in export markets. It is true that most developed countries offer full or high duty free and quota free (DFQF) access to products coming from least developed countries. In fact, the 2005 Hong Kong Ministerial Conference agreed to grant at least 97 per cent DFQF access to LDC exports.

However, there is some disagreement between Asian and African countries over the implementation of DFQF. Nevertheless, this need not be an insurmountable obstacle to the implementation of DFQF access because there will be few overlapping tariff lines between countries in Africa and ASEAN. A meaningful and mutually satisfactory solution to this problem has to be found in Bali, such that additional commercial market access is given to all LDCs. For their part, the ASEAN countries concerned will have to hold discussions on DFQF access with their trading partners.

Related to the question of DFQF is that of preferential rules of origin. There has not been much progress on this issue at the WTO; nevertheless, it will have some impact on ASEAN member countries. Those developing member countries that are targeting the developed countries for their exports will find it useful if some progress is achieved in this area in a manner that is favorable to ASEAN countries, especially the less developed among them.

A fair and favorable discussion on preferential rules of origin that takes into account the needs of ASEAN countries will do much to re-ignite enthusiasm among members

on the benefits of multilateral cooperation. A revision of the rules of origin by developed countries will have a very positive effect on the export patterns of LDCs. Any agreed rules of origin will have to be simple and transparent. They will also have to facilitate market access and take into account the realities of global value chains.

At the 2011 Ministerial Conference there was a discussion on a waiver from most-favored nation (MFN) obligations under the General Agreement on Trade in Services (GATS). The point of this waiver would be to provide preferential market access to service suppliers from LDCs. This obviously has an impact on ASEAN member states for two reasons. First, it would enable a few ASEAN members to develop their services sector. Second, it will help service sectors to export to developed countries. The waiver will have the outcome of developing the growth of the services industries and securing them a bigger share of the global market.

The services waiver is a topic that must be taken up at the 2013 Ministerial Meeting. It is likely to enjoy the support of ASEAN member states and help to gain their confidence. This is because, granting preferential market access to the services and service providers from LDCs, will enable ASEAN countries to develop their services sector and make greater contributions to the GDP of these countries. Also it will strengthen the participation of ASEAN in the multilateral trading system.

On the downside, extending a services waiver may not be as promising as it sounds. First, the areas for which the waiver is granted in the services schedule may not be of much interest. The waiver may not apply to activities undertaken by low-skilled workers, which is where most LDCs have a comparative advantage. Second, developed countries may not be readily able to encourage their citizens to consume services in which ASEAN member states have a niche, for example in tourism. Nevertheless, the initiative will give renewed confidence to ASEAN countries and other LDCs in the multilateral trading system. The steps that will have to accompany

this initiative will be the process of identifying relevant sectors and modes of supply of priority export interest to LDCs.

It can be expected that trade facilitation will be a key topic for negotiation in Bali. This appears to be a matter of much interest to many WTO Members, whether they be developed or developing economies. ASEAN is in the process of examining trade facilitation and addressing shortcomings in this area because its member states are themselves working on trade facilitation within the context of their own regional compact and their other bilateral agreements with members from East Asia, Australia, New Zealand and India.

ASEAN member states have been taking various steps to improve their trade facilitation processes and procedures. There are many aspects of customs procedures that ASEAN members have worked upon and improved. Most of the members have also initiated national single window policies. In addition, there have been many efforts to improve efficiency and openness in the transport and logistics sector, with the easing of regulatory burdens and the creation of more business-friendly approaches. Generally, there has been a de-regulatory trend in the sector, which should enhance trade facilitation.

A move to conclude a Trade Facilitation Agreement in Bali is afoot. This is a fertile area for ASEAN to take advantage of, both because there is interest among its member states and also because there is interest among other WTO Members. While the on-going negotiations in WTO are about the practical aspects of the topic, such as measures to simplify processes and procedures, there is still room for LDCs to highlight their own concerns. And this is where ASEAN will want to take a stand because its primary interest would be to make a claim for technical assistance and capacity-building.

It should be noted that ASEAN member states are heading towards a Regional Comprehensive Economic Partnership (RCEP). RCEP was announced in 2011, during the 19<sup>th</sup> ASEAN Summit, and is expected to be concluded by 2015. The importance of RCEP lies in its objectives. First, RCEP is meant to bring about a mutually beneficial economic partnership agreement among ASEAN member states together with ASEAN's key PTA partners. Second, RCEP will deepen economic integration in the region and, thereby, boost growth and development. RCEP will cover the usual topics of a modern PTA, that is, trade in goods, trade in services, investment, economic and technical cooperation, intellectual property, competition policy, dispute settlement, and other issues. Thus it is expected to be comprehensive.

However, the problem with RCEP is its expected flexible nature, as RCEP will offer numerous flexibility caveats that ensure that no member has to adopt trade policies with which it disagrees. Further, the RCEP process appears committed to allowing participating governments to protect sensitive industries from exposure to enhanced competition. The greatest obstacle to RCEP, however, will come from the different stages of development of ASEAN member countries and the differential treatment that they will expect. Also, some of the member states may be unable to push reforms to the extent expected, particularly Myanmar, Lao PDR and Cambodia.

Nevertheless, ASEAN member states are moving towards liberalizing their economies. Many initiatives are being taken in this direction, and efforts such as the liberalization of tariffs, trade facilitation and opening up of agricultural trade and services markets is on-going, with the objective of meeting the goals of the ASEAN Economic Community (AEC). The AEC has committed itself to an integrated ASEAN, and this cannot be achieved without liberalization of trade in goods and services, IPR regimes, dispute settlement and competition policy. The process is likely to be slow, but it should facilitate the process of multilateralizing regional advances.

On the other hand, the Trans-Pacific Partnership is likely to contain a more stringent set of rules and it will have higher standards than those set by the WTO. The TPP will be stronger on other issues, too, such as IPR, competition policy, government procurement and trade in services. But it must be remembered that not all ASEAN member states are involved in the TPP negotiations. Of the ASEAN members, only Brunei, Malaysia, Singapore and Vietnam are currently involved in both the TPP and RCEP. It should also be noted that some of the members negotiating the TPP that is, Australia, New Zealand, Chile and Singapore, were part of the P4 grouping. The latter Agreement grew out of a US proposal in 1998 for negotiations with this group of countries and the US has prior PTAs with all of them except New Zealand. In a sense, the TPP is enlarging its membership by including additional members. This is consistent with incremental multilateralization.

However, in geographical or regional terms, the TPP's membership is more diffuse. If the TPP's intention is to simplify and multilateralize regionalism, then this may not be the perfect vehicle for accomplishing it. Further, on the matter of rules of origin, the US has very different principles, since it differentiates duty free entry on the basis of product classifications, whereas in ASEAN it is generally done on the basis of the value that is added by the originating country. Thus, if the TPP follows the US template, as it is likely to, this could create more confusion in the region. This goes against the principle of multilateralizing regionalism. In this respect, the TPP may be less effective in multilateralizing regional advances.

In conclusion, there are good grounds for the WTO to work with ASEAN to strengthen multilateralism. Of course, the first best option is to revive the Doha Round and to make an attempt to sort out the disagreements that have hindered its progress. In the interim period, it would be strategic for the WTO to work with ASEAN and other PTAs with a view to multilateralizing regional advances. It is not advisable for the WTO to take a back seat and simply be a witness to the movement of

initiatives to forge regional integration. There is no doubt that regional integration is here to stay. Therefore, the WTO should take note of ongoing negotiations on agreements such as RCEP and take advantage of the situation to achieve broader goals.

## **II.13 ERIA Perspectives on the WTO, Ministerial and Asian Integration: Lao PDR's Perspectives**

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### **1. Introduction**

The WTO was born out of negotiations among its Members to facilitate trade flows between member countries and try to solve the trade problems they face with each other. It is based on principles which state that the trading system should be without discrimination, freer, predictable, more competitive and more beneficial for less developed countries.

Over the past decade, WTO rules, its dispute settlement mechanism and the work of its secretariat have become central to the management and smooth functioning of global trade. Major WTO agreements have been implemented relatively successfully. Many Members have benefited significantly from implementing the WTO's principles and agreements.

However, global trading relations have often involved conflicting interests, challenges and obstacles which require further negotiations among member countries. In addition, the changing international economic environment creates significant challenges for the WTO. The most obvious challenge is that of the current round of multilateral trade negotiations aimed to further liberalize trade and reform the WTO. The discussion is focused on reducing important trade barriers in sectors, such as agriculture, industrial goods and services. Importantly, the Doha Round is particularly focused on providing increased market access to goods and services from developing countries.

However, all these issues remain to be debated and concluded appropriately. In addition, countries have increasingly turned to PTAs, such as the ASEAN Economic Community (AEC) to be established by 2015, as well as the Regional Comprehensive



Economic Partnership (RCEP) involving 16 countries in East Asia and aimed at helping countries gain significant new trade access to each other's markets and to explore new trade-related issues which are currently not addressed within the WTO. As more PTAs are being concluded, the central role of the WTO in liberalizing trade has been called into question. Moreover, the WTO has played a very limited role in helping members address emerging global issues related to trade and sustainable development, such as food security, energy, climate change, and regional and global trade imbalances.

Hence, the Ninth WTO Ministerial Conference to be held in Bali in December 2013 should continue to discuss the WTO reform agenda and adapt its trade liberalization framework to newly emerging issues and develop concrete road maps and action plans for a better functioning, mutually beneficial global trading system.

The Bali Ministerial meeting should address a number of issues on a priority basis. These include:

(i) a progress report on the implementation of the Doha Round should be presented that will identify the success, failures, challenges, and lessons learnt from the implementation of the Doha Round, and make recommendations for possible improvement in the future.

(ii) multilateral trade liberalization and reforming the WTO's decision-making framework should be reviewed in accordance with existing WTO principles and agreements. A clear vision of WTO reform over the medium-term (5 years) and longer-term (10 years) should be considered. Particular attention should be paid to the issues of increased market access for goods and services from developing countries.

(iii) new ideas on the future of global trade should be discussed by Ministers as well as by members in country groups, such as ASEAN and the EU, and by regional and global think tanks such as ERIA to express their common views and interests. Such new ideas may address areas such as sustainable development, narrowing development gaps among member countries, infrastructure connectivity, climate change, pro-poor trade, food security, renewable energy and capacity-building.

(iv) an early harvest package of negotiating advances in favor of least developed economies should be agreed.

At the Bali Ministerial meeting, WTO Members should take responsibility for raising and discussing key issues relating to the implementation of the Doha Round and the functioning of existing WTO principles and agreements and advance recommendations and proposals for better implementation moving forward. WTO Members should review and evaluate their commitments in building stronger commercial relations with their trading partners. Importantly, they also have to monitor progress made in implementing WTO agreements and discuss proposals aimed at enhancing the organization's unique dispute settlement system. Simply put, WTO Members should propose and discuss the common challenges, threats and opportunities they face in the trade sphere, and negotiate mutually beneficial outcomes in accordance with core WTO principles.

## **2. Proposed priorities of ASEAN and East Asian countries**

At the Bali Ministerial Meeting, the priorities of ASEAN and East Asian countries should be:

- (i) *The role of AEC and RCEP in the WTO:* ASEAN and East Asian countries are currently in the process of building the AEC by 2015 based on the AEC blueprint and, at the same time, are negotiating the RCEP. This may

play a significant role in shaping the framework of global trade liberalization and WTO reform.

- (ii) *Deepening economic integration in East Asia:* East Asia has been, and remain, a key driver of global economic growth. East Asia already enjoys tremendous advantages and potential in terms of population, strategic location, purchasing power, natural resources, and opportunities for economic development, among others. ASEAN and East Asian economic integration is currently focusing on trade facilitation and liberalization. However, efforts need to be made in particular to develop and improve infrastructure connectivity and logistics to facilitate trade flows and develop the production network into one integrated production base and one single market for the AEC and RCEP.
  
- (iii) *Narrowing development gaps:* Due to the different development levels of Members, less developed countries still need help from the more advanced Members. This should be one of the priority topics for Bali through a renewed commitment at capacity strengthening.
  
- (iv) *Sustainable development:* The cluster of issues emanating from debates over the relationship between trade and the environment need to command greater interest in Bali and beyond. This includes issues as diverse as food security, renewable energy, as well as the trade effects of climate change mitigation.

It is important that the WTO remains associated to the process of deepening economic integration in ASEAN and East Asia because the WTO plays a particularly significant role in the promotion of freer international trade. The crucial role of the WTO is to provide a common institutional framework and basic principles for the implementation of its agreements. The system's overriding purpose is to help trade

flow freely. Importantly, WTO Members have experienced both success and failure, both of which ASEAN and East Asian countries have confronted. So ASEAN and East Asia can both share significant benefits and draw useful lessons from the WTO institutional framework and experiences while developing a reasonable and successful PTA in ASEAN and East Asia.

The trade governance priorities of ERIA member governments should include: (i) strengthening the regulatory framework for trade and services liberalization; (ii) tackling trade-related investment measures; (iii) designing trade facilitating rules of origin; (iv) addressing trade- and investment-inhibiting technical barriers to trade; (v) curtailing the use of safeguards, subsidies and countervailing measures; and (vi) providing for increased market access opportunities for developing country exporters of both goods and services.

At the Bali Ministerial Meeting, ASEAN ministers may present the AEC blueprint and the report on progress towards establishing the AEC by 2015 (the regional grouping's score card and midterm review of the AEC blueprint project) to share their views on the progress of regional economic integration into an FTA by 2015. The presentation may focus on the main purposes and principles of the AEC blueprint, which is to establish one production base and one single market by promoting the free flow of goods, services and capital. This is a model of regional economic integration and trade liberalization which can contribute significantly to global trade liberalization as well as to the WTO reform agenda.

A stocktaking of the two mega regionals proceeding in Asia - RCEP and the TPP - should also be presented and discussed among WTO Members at the Bali Ministerial. The experiences and insights gained can contribute to - and facilitate the process of - multilateralizing regional advances.

## **II.14 Can the World Trade Organization Be Saved? Only if Australia and Other Members Stop Trashing It**

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### **1. Introduction**

The World Trade Organization (WTO) and the multilateral trading system that it administers are in deep trouble. The collapse of the Doha Round in particular highlights the extent of its decline. After 10 years Doha has failed - the first Round to do so absolutely. The WTO is verging on becoming irrelevant and a relic of past decades when it usefully contributed to global liberalization and a multilateral non-discriminatory rules-based world trading system. Furthermore, over the past decade, almost from the time the Uruguay Round was concluded, the WTO has been trashed by all Member governments. The WTO has always prided itself on being a 'member-driven' organization, and this partly explained its past success. But in recent years Members have driven the WTO in only one direction: into the ground.

The pity is that Members, and many influential trade economists who should know better, continue to ignore the WTO's parlous situation, and the harm to the global economy its self-destruction entails. They either think that the WTO is secure and will self-correct or do not think that having the WTO as an effective trade institution matters, or both. Nothing could be further from the truth.

The serious challenges facing the WTO and the urgent need for action have been well documented. Yet nothing has been done. The WTO is being allowed to wither on the vine and die as a promoter of global liberalization. Indeed, Members continue to trash it in practice by rejecting its fundamental principles and the very economic rationale for its existence.

Some say that the WTO will survive because of its multilateral dispute settlement role (its dispute settlement mechanism – DSM). While this is an important leg of the WTO,

along with the other two legs of rule-making and trade liberalization via multilateral trade negotiations, the problem is that each of these roles is intertwined. Like any three-legged stool, if any one leg collapses the stool falls over. The deliberate attack by Members on the liberalization leg of the WTO also extends to the DSM leg, the only impartial and binding mechanism for adjudicating and enforcing WTO contractual obligations. One might wonder whether a body unable to deliver further liberalization would remain vital (Wolfe, 2013). Moreover, if PTA-based DSMs are established in place of multilateral ones, then adjudication of disputes will reflect power asymmetries, benefiting the stronger trade partners (Bhagwati, 2012).<sup>81</sup>

The Bali Ministerial provides a long overdue opportunity to focus on the WTO's ills. The Ministerial must go well beyond just trying to rescue the Doha Round (DR) by adopting some 'lowest common denominator' agreements. Despite the over-optimistic and incredible estimates being touted of the economic benefits of concluding some of these lesser outcomes, often by those peddling vested interests, the DR negotiations fall well below the economic benchmarks needed for it to be seen as worthwhile.<sup>82</sup>

Indeed, if this is the best the DR can achieve, it should perhaps be put out of its misery so that Members can move on and focus on the fundamental systemic issues threatening the WTO's very survival. Given the hyperbole of Members and of many directly involved in the negotiations, there is no doubt that any rescue of the DR would be sold as a mighty outcome. There would then be a risk that the fundamental cracks in the WTO would be papered over and any Members' will for major reform dissipated. Reform will be avoided while the DR remains on the books. The failure of

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<sup>81</sup> Moreover, third countries will have little scope for input into PTA-based DSMs, though their interests may very well be affected by how adjudication is structured.

<sup>82</sup> The highly inflated benefits often associated with the DR as it currently stands results from many reasons. These include under-estimation of the foregone benefits associated with the many exceptions and escape clauses to liberalization negotiated as part of the DR, and failing to take full account of the fact that negotiating WTO commitments and agreements will have no significant impact unless these result in actual liberalization and related reforms.

the DR must be tackled head on and all Members must accept their fair share of the blame for the WTO's growing impotency.

A severe warning is warranted: without major changes the failed Doha Round could well be the last multilateral round of trade negotiations, at least for a long time. It is difficult to conceive that any country would be brave enough to embark on another Round. And even if they did, the likelihood that it could last for more than 10 years is itself symptomatic of deep problems.

In this chapter, we name the WTO's key shortcomings and identify some fundamental requirements for the restoration of the WTO's role in managing the global trading system. We say the way forward lies principally in the return of the primacy of the MFN and unilateral trade liberalization frameworks supported by a sincere commitment by Members to domestic transparency of existing and proposed trade initiatives.

## **2. Interpreting the WTO crisis**

The WTO's problems have been well recognized by some and, for a decade at least, there has been no shortage of reviews and assessments of what needs to be done to reverse its declining influence. But WTO reform is no closer than it was a decade ago. There are two main areas where Members are attacking the WTO and the multilateral trading system.

### **2.1 *WTO agreements, disciplines and governance***

This area covers the effectiveness and economic naivety of the WTO agreements and its governance, i.e. whether its consensus approach to decision making can work in future given the WTO's enormous growth in membership, agreements and disciplines.

The multilateral trade agenda expanded exponentially in the Uruguay Round and repeated calls are made for the WTO to take on additional disciplines, e.g. the Singapore issues (temporarily shelved), environmental and now exchange rate issues. The list of demands being placed on the WTO agenda appears never ending. Indeed, this has expanded too much with many issues added or requested that certainly should not be within the WTO's purview, for instance TRIPS. This and many other issues frequently raised, e.g. competition policy and labor standards, have no clear role in a trade agreement, let alone within the WTO. Many new areas are now a noose around the WTO's neck. Moreover, the WTO's rapid membership expansion, mainly developing countries and LDCs, while necessary for it to be a genuine multilateral body, has changed its complexion. The WTO now operates like a 'UN organization' where reaching consensus has become much more difficult. Put bluntly, the DR has been bogged down by involving many more Members and many more issues. Political jockeying and grandstanding has intensified so much that the economic underpinnings of the WTO and trade liberalization have been lost, thereby preventing economically sensible trade opening outcomes from being negotiated.

Governments, aided by trade negotiators and lawyers, have promoted a forest of multilateral agreements with escape clauses, exceptions and intentional ambiguity that have undermined their effectiveness and economic relevance. 'Setting trade policy by trade litigation' is now at the forefront. To reach consensus among the increased membership covering wide-ranging interests, WTO agreements are becoming watered down, ambiguous, cumbersome to apply, and difficult to interpret. Instead of aiding transparency and predictability, many of these revised and new disciplines and agreements are so vague and nebulous that they do the opposite and detract from these highly desirable features. Thus, a catch-22 situation is developing whereby the greater reliance on dispute settlement needed to help interpret the rules carries the risk of WTO litigation and jurisprudence determining Members' trade policies. This loss of economic relevance undermines the WTO, as countries



increasingly resort to legal loopholes and ambiguity in the WTO to defend economically bad trade policies, foolishly believing that WTO legal measures must be economically sensible. WTO agreements are economic agreements underpinned by legal obligations. If the agreements are economically flawed or interpreted too narrowly through a legal prism at the expense of good economics, then the outcomes will also be bad economically.

The WTO must remain focused on providing opportunities for Members to prosper. But it cannot guarantee this outcome for all players – it is foolish and potentially costly to the global economy to try, especially when there are so many other economic and non-economic factors beyond the WTO that determine economic growth and prosperity. The WTO is being asked by Members to do far too many things, which is only setting it up to fail and become irrelevant. The WTO cannot achieve all it is being asked to do. The underlying rationale of a WTO is to oversee trade liberalization to enhance trade and result in prosperity. This directly contradicts the growth of anti-globalization sentiments and criticisms of free trade emanating from Members. This major obstacle both for the WTO and for open trade policies has largely stemmed from governments' own poor selling at home of the economic merits of self-liberalization and of a more globally-integrated world economy. Members must resist or counter these ill-informed views at home through greater transparency and public scrutiny of protectionist policies if the WTO is to remain effective. The WTO must get back to basics and focus on its core capacities of trade liberalization. Re-focusing it into areas where it can be useful is urgently required.

The steady erosion of the WTO's centrality will sooner or later bring the world to a tipping point – 'a point beyond which expectations become unmoored and nations feel justified in ignoring WTO norms since everybody else does' (Baldwin & Carpenter, 2009). This tipping point, if not already reached, is rapidly approaching.

Of course the demise of the WTO and its core values will damage all economies, but disproportionately. The hegemonic Members may be able to go it alone and perhaps prosper in a discriminatory trading regime. However, for all other WTO Members this is not an option, and the WTO provides the best protection against powerful trading partners using their strength at the expense of non-hegemonic Members. 'The great political virtue of multilateralism, far exceeding in importance its economic virtues, is that it makes it economically possible for most countries, even if small, poor and weak, to live in freedom and with a chance of prosperity without having to come to special terms with some Great Power' (Viner, 1947).

Fixing the WTO's increasing ineffectiveness and irrelevance will not be easy, especially given that Members will need to negotiate reforms by consensus. There are significant obstacles to these being successfully tackled in the foreseeable future, even if embarked on urgently.

## **2.2 Government attitudes mocking the WTO**

The second area contributing to the WTO's steady demise is the Members' stampede away from the fundamental principles of multilateralism. The same countries that instigated the GATT and the WTO now seem to have lost faith in it as an effective international institution fostering multilateral trade liberalization. The main principle discarded is the WTO cornerstone of unconditional most-favored nation or MFN treatment i.e. non-discrimination between trading partners that is the GATT Article 1. The practical application of MFN has always had weaknesses, especially given GATT Article XXIV, and now GATS Article V, that have allowed widespread exceptions to MFN via preferential trade agreements (PTAs) negotiated by members. Nevertheless, in the past, strong resistance by some influential countries (e.g. Australia, Japan and New Zealand) helped control the growth of PTAs despite some 'hegemonic' Members, especially the EU, repeatedly putting negotiating PTAs above MFN when setting their own trade policies.

The turning point was reached when the US openly began to support PTAs and started negotiating them willy-nilly like the EU. The US's trade policy of so-called 'competitive liberalization' based on endless negotiation of PTAs, like the EU's policies, has severely hampered MFN and along with it multilateralism. However, all other members have to share the blame as they too jettisoned MFN, despite paying repeated lip service, and have rushed to negotiate crisscrossing and inefficient PTAs that have proliferated. This is creating a cumbersome and discriminatory world global system. Little wonder then that the WTO has become badly damaged.

The major single factor explaining the loss of the WTO's influence and credibility has been the way Members have contradicted the MFN principle. Non-discrimination is the very rationale for the WTO's existence, and undermining this trashes the WTO. By negotiating discriminatory PTAs, Members have enshrined discrimination in the global trading system (Bhagwati, 2012). Despite the rhetoric of Members, these actions have directly weakened the WTO and usurped its role. And, despite what they say, this seems exactly what they are trying to do by pursuing PTAs.

Jagdish Bhagwati has correctly called PTAs a 'pox' on the global trading system that acts like 'termites in the basement' to progressively and relentlessly destroy the foundations of the WTO; we are now seeing this happening (Bhagwati, 2008).<sup>83</sup> The WTO's foundations are crumbling and there is an urgent need to call in the pest exterminators before it is too late!

These transgressions have multiplied over the past decade.

(i) *Proliferation of PTAs a stain on the WTO*

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<sup>83</sup>To Bhagwati's credit he has always staunchly defended the WTO and the importance of the MFN principle, and consistently been highly critical of the proliferation of PTAs. It is a shame that his grave warnings have not been heeded.

This proliferation of PTAs, often deceptively sold by Members under the guise of free trade agreements, is well documented. For example, the proliferation of PTAs over the past 10–15 years was identified by the Warwick Commission as a particular problem five years ago (Report of the First Warwick Commission, 2007). It stated ‘...this has raised pressing questions about the quality of trade relations today and their likely future directions in what few would regard as a stable equilibrium ...that where feasible, the energy behind such initiatives should be channeled towards reinforcing accepted multilateral principles.’ It noted that the very rapid growth of PTAs unnecessarily raised trade costs and had worrying implications for the stability, fairness, opportunities and coherence of the world trade regime.

The Warwick Commission recommended that efforts to clarify and improve disciplines and procedures in relation to WTO provisions on PTAs be intensified. It also recommended that major industrialized Members express their commitment to multilateralism and willingness to provide leadership to maintain and strengthen international trade arrangements for the benefit of all, by refraining from entering into PTAs among themselves, as should large developing countries with significant shares in world trade.

The Sutherland Report also raised PTAs as a critical problem for the WTO (Sutherland Report, 2004). It stated that the erosion of MFN within the WTO from the ‘spaghetti bowl’ of customs unions, regional and bilateral free trade areas, preferences and an endless assortment of miscellaneous trade deals so that MFN is no longer the rule, but the exception, matters profoundly to the future of the WTO.

But despite these dire warnings the problem has only compounded. Members’ usual justification for embarking on PTAs - that the WTO has bogged down so much and is too cumbersome to deal with - has simply become an excuse for them to bypass the WTO and to do discriminatory deals to erode MFN. The puzzling question is whether

this is intentional or unintentional; certainly it seems intentional on the part of the hegemonic members (i.e. the EU and the US).

Of course, the pursuit of PTAs as an alternative to the WTO lacks logic. The more Members engage in PTAs, the further the global trading system moves away from the goal of non-discrimination. The worse the problem becomes and the more the WTO implodes.

While being a latecomer to PTA negotiations, Asia has been making up quickly for lost time (Drysdale, 2013). As of September 2012, there were 103 FTAs with at least one Asian country; most were bilateral. Another 26 PTAs existed, 64 were under negotiation, and 60 more proposed. Most of the global PTA action now involves an Asian country.

Alarming the EU and the US have begun negotiating a Trans-Atlantic Trade and Investment Partnership (TTIP).<sup>84</sup> Also, within the Asia-Pacific region, two major agreements are being negotiated in competition with each other, the Trans-Pacific Partnership (TPP) agreement, led by the US and excluding China, and the Regional Economic Cooperation Agreement (RECP), led by the ASEAN economies and China, but excluding the US. Some Members e.g. Australia are negotiating membership in both.

Commitment to the ideals of free trade is evidently weak on both sides of the Atlantic, such that the TTIP may on balance divert trade rather than create it. And above all, it could be an obstacle to a truly global free trade order. However, the biggest victim of TTIP may not be any individual country, but the dream of global free trade. Instead of focusing efforts on reviving multilateralism, the global trade order becomes more complicated with every new PTA, and though they promote trade between partners,

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<sup>84</sup> President Obama has reportedly set the deadline for the completion of the TTIP agreement by wanting it signed before leaving office in January 2017.

they can also inhibit trade with outside parties. Thus the TTIP may well make any future global trade deal less likely. PTAs such as the TTIP are not the best way to promote this ideal. The result of such initiatives may well be a step in the opposite direction (Hartwich, 2013). Negotiating the TPP and the RECP will be further nails in the WTO's coffin, while the TTIP will surely be its funeral.

(ii) *Special and differential treatment a curse on the WTO*

Special and differential treatment (S&D) for developing and especially for least-developed countries is seen as an essential feature of the GATT/WTO. During the Uruguay Round its coverage and form was expanded substantially to become a critical focus of developing country members in the DR. Yet economists have long recognized that Members using the S&D treatment available in the WTO to avoid making substantive liberalizing commitments are 'shooting themselves in the foot'. For all Members, the lion's share of the economic gains from trade openness comes from self-liberalization, not from other members' liberalizing. In spite of this, developing countries have generally decided to follow the politics and not the economics by preferring to use S&D to resist reforms. This has not only weakened the WTO but also harmed the developing members' negotiating positions by letting developed members 'off the hook' and not making them accountable to offer genuinely significant trade liberalization. It would serve developing members well if in future they could negotiate the removal of S&D in the WTO as a grand bargain in exchange for developed members providing significant liberalization.

When only a few developing countries in the WTO were pushing S&D as an exception to MFN the damage to the WTO was limited. However, some three-quarters of WTO Members are now developing countries. Thus, S&D treatment and associated politics now dominate the WTO, and this is seriously undermining MFN and the WTO. Developing members are more interested than ever in ensuring that they avoid economically sensible self-liberalization by hiding behind strengthened

S&D treatment, trying to make developed members open markets without doing so themselves. At the same time, developed members have lost sight of the economic benefits accruing from self-liberalization, adopting instead a stance whereby they grant S&D to developing members and implicitly use this to justify 'watering down' their liberalization.

Selling the DR as a 'development round' to get it started has, as was predictable, backfired badly because it encouraged an attitude that its objective was global redistribution to developing members rather than growth. Hence, transfers and redistribution have become the focus of developing members at the expense of promoting global economic efficiency to benefit all members, rich or poor, even if unevenly. Efforts to ensure the economic benefits are spread evenly between all members are likely to be destructive and reduce benefits to many members to the lowest common denominator rather than raising the benefits to those members receiving only a few. Such outcomes are in effect Pareto suboptimal in a global sense in that some Members would benefit more from multilateral and self-liberalization without making some others worse off. Paying too much attention to distribution and equity is undermining liberalization. The WTO should not become a development institution overseeing transfers to developing countries. This, combined with the stampede to PTAs by Members, has replaced MFN and MFN thinking within the WTO with a preoccupation about discrimination and preferentialism.

*(iii) Synergies lost between unilateralism and multilateralism*

One of the foundations of the WTO's past contribution to global liberalization has been its ability to build on synergies between unilateralism by Members and their WTO commitments. Members embarking on unilateral liberalization, on which all genuine trade reforms ultimately depend, could bind such changes via WTO MFN commitments, thereby protecting against policy backsliding and enhancing the transparency and predictability of the trading system.

Now that the WTO has lost its MFN focus and PTAs have proliferated, this synergy no longer exists. There is a disconnect between unilateral MFN liberalization and discriminatory or non-MFN liberalization. With the era of multilateral trade rounds and system-wide rules behind us, PTAs have become the only game in town, and as a result the templates established by the hegemonic powers in unequal trade treaties with economically weaker countries will increasingly carry the day (Bhagwati, 2012). Such templates now extend beyond conventional trade issues to vast numbers of areas unrelated to trade, including labor standards, environmental rules, policies on investment expropriation, and the ability to impose capital-account controls in financial crises (Bhagwati, 2012).

After multilateral liberalization, the next best alternative for individual countries is always unilateral MFN reforms. The more countries that carry out such reforms the closer is global MFN liberalization.

The universal commitment that existed in many countries to unilaterally liberalize has evaporated. This has, not coincidentally, coincided with the growth of PTAs. PTAs have fed mercantilism by popularizing the incorrect economic policy objective of seeking market access abroad in return for their own liberalization. Members now see MFN reforms as undermining the opportunity for negotiating PTAs. Take for example the case of many developing Members that argue against multilateral MFN liberalization for fear of preference erosion within PTAs and/or under unilateral preference schemes provided by developed Members e.g. Generalized System of Preferences (GSP) arrangements. However, this is bad economic thinking. Trade preferences are well known to be 'bad aid, bad trade' since they end up supporting inefficient industries in developing Members. The same applies to exports from developed Members to preferential markets – if such sales need 'preference assistance' then they are unlikely to be efficient industries in the global sense and will



distort the resource allocation in the country concerned at the expense of economic efficiency.

In the case of Australia, the country's once strong commitment to unilateralism has all but died since the early 2000s. This death has coincided, not surprisingly, with the country's redirection of trade policy to negotiating PTAs. In other words, at a time when Australia's pursuit of PTAs has been greatest, its trade reform efforts have been lowest. Government policy is now to refrain from further unilateral tariff reductions and to lower tariffs only as part of PTAs. Moreover, issues have been included in Australian PTAs that have been used as negotiating coinage without first being assessed as to whether they have been in Australia's unilateral interests e.g. changes to Australian intellectual property provisions and including investor–state dispute settlement provisions. This really amounts to making policy on the run.

Most global and country-specific trade liberalization has come not from negotiated liberalization (whether it be multilateral or preferential) but from non-negotiated or unilateral liberalization. Indeed, some 75% has come from unilateral reforms. In large part this is explained by the fact that what are negotiated in formal talks are bindings or commitments, and not actual barriers.<sup>85</sup> Thus, for example, in the WTO where ceiling bindings in tariffs have prevailed with bound levels at rates well above actual levels, negotiated reductions in bound rates over time have done little to lower actual levels. In contrast, unilateral reductions reduce actual levels. Empirical results show that, for any Member, by far the bulk of economic gains that would accrue from

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<sup>85</sup> Of course in PTAs actual tariff levels are negotiated. However, because they are applied discriminatorily, it does not follow that they are genuinely liberalizing in the economic sense. Indeed, they could be de-liberalizing and worsen a country's national welfare if, for example, the PTA results on balance trade diversion instead of trade creation. Moreover, whether PTAs are on balance genuinely liberalizing is also clouded by many other factors, such as the extent to which preferences are provided on goods where trading partners are actually competitive; the restrictiveness of rules of origin; and the margins of preference provided. Indeed, there is plenty of empirical evidence to suggest that tariff preferences available in PTAs are not used heavily utilized by trading partners, either because of commercial reasons, such that the costs and procedures required to obtain a certificate of origin to avail the preferential rate is not worthwhile given the margin of preference, or because the rules of origin have been set so restrictively so as to prevent the foreign exporter from being able to meet them and use the lower tariff rate.

multilateral liberalization can be realized from unilaterally liberalizing. Thus, sensible trade-related unilateral reforms, which any country has full control over, will deliver most of the economic gains from trade-related liberalization. The clear policy message is that all Members should focus on self-liberalization, and treat any gains from multilateral liberalization as a long-term bonus. Of course, if all countries follow suit, unilateralism will transform into multilateral liberalization and so the full benefits will accrue to the global economy and to individual countries.

Central to good trade reforms and a well-functioning WTO is for all Members to endorse the primacy of unilateral liberalization, and to understand that most benefits come from self-liberalization and improving one's own economic efficiency rather than from any greater market access abroad. Hence, using one's own liberalization as leverage or as a bargaining coin to 'force' other members to open their markets can backfire and become a recipe for reform paralysis.

While unilateralism can drive multilateralism, the reverse is wishful thinking. No matter what Members agree to in Geneva, the outcomes will not be implemented unless it is in the Members' political and economic interests to do so. WTO agreements are becoming more ambiguous and full of escape clauses and wiggle room for Members to legally back out of commitments. More to the point, countries seem to be more intent to use such loopholes to adopt protectionist policies, selling at home the false message that any measure is worthwhile having if it can be legally justified in the WTO. Nothing could be further from the truth. Unfortunately WTO legal consistency these days has become an excuse for countries to avoid making good economic trade reforms at home. The widespread use of S&D treatment by developing countries in a quest for gains that might come from liberalization by other countries participating in multilateral initiatives is a classic case of this delusional thinking.

However, domestically, the trade department that is responsible in each case for a Member's WTO negotiations has no mandate to propose unilateral trade reforms and hence often obstructs them. Thus, there is a disconnect between the trade department that sets 'WTO policy' in Geneva and the departments at home that are responsible for setting trade-related policy measures. Frequently, therefore, trade departments obstruct unilateral reforms, and a prerequisite for unilateralism may be to reduce the influence of trade departments over setting trade policies. For example, the large trade-opening reforms that Australia adopted in the 1980s and 1990s first required the trade department's influence over domestic trade policy to be reduced and for the Australian Treasury, the department responsible for economic policy, to take the lead. This is because the trade department argued strongly against unilateral reforms, incorrectly believing that Australia should only open its trade policies within multilateral negotiations so that it could get some market opening abroad in return.

Jan Tumlir, a former Chief Economist of the GATT Secretariat, elegantly described the misconception pervading the GATT/WTO and all other negotiations-based approaches to trade liberalization long ago. He pointed out that while people accepted the argument that when every country protects its economy, all countries suffer, they failed to draw the correct conclusion i.e. that 'liberal (free) trade is the best policy for all countries' to follow irrespective of what others do and instead concluded that 'liberal (free) trade is the best policy only if all countries practice it'. This combined with the one-time 'fruitful lie' that the gains from trade come primarily from the exports you sell rather than the imports you buy, have been the false premises on which the complex edifices of international trade agreements have been built. This fruitful lie no longer works because Members have 'come to believe their own mercantilist propaganda, and have embraced the misconception that their countries' interests are served only if they can get the other guy to make concessions bigger than their own' (Crook 2006).

This same misconception and the desire by governments to use trade policy to achieve foreign policy objectives underlie the proliferation of discriminatory PTAs. Members should stop preaching the economic merits of PTAs and using hand-picked but flawed commissioned studies claiming substantial economic gains to justify PTAs that are being negotiated for foreign policy reasons. The international norm of combining trade and foreign affairs within the same ministry or department facilitates such policy trade-offs, when in fact trade policy should be primarily concerned about promoting economic efficiency.<sup>86</sup>

While democratic governments are free to enter into PTAs for whatever reasons, they should not sell them on flawed economic benefits and modeling but on their non-economic or foreign policy gains. Governments have oversold the economic merits of PTAs, which are usually counterproductive and normally negotiated non-transparently, with details not being released for much needed public debate and scrutiny until it is too late and the PTA has been concluded (Australian Productivity Commission, 2010).

Moreover, the refrain repeated by governments and many economists, that PTAs will be subsequently multilateralized so that all will turn out well, is a ruse. There is not one example to date of this happening. The move to mega-PTAs now occurring will make this likelihood even slimmer; it is far more likely that the world will slide into a handful of large discriminatory blocs which will institutionalize discrimination and undermine global prosperity. What PTAs are about is simply regionalizing multilateralism at the expense of global prosperity, the WTO and the global trading system, to everyone's peril.

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<sup>86</sup> Another flawed combination is putting trade and industry within the same ministry. This often leads to internal inconsistencies since good trade policy is a neutral one that does not favour any one sector or activity over another. However, often industry policy is directed at trying to assist manufacturing policy relative to other activities, mistakenly thinking that what is in the interests of a larger industry sector must be in the national interest e.g. the flawed 'infant-industry argument' often used to justify industry assistance.

*(iv) Confusion between integration and trade liberalization*

Governments, like many economists, are also blurring the distinction between integration and trade liberalization, which is contributing to false premises. The term integration is being flung around by all as if it in itself is the ultimate objective. But it is not. The ultimate objective of the WTO and trade liberalization is to improve economic prosperity. This means economic integration is a tool to enable efficient global supply chains to be developed internationally so that the benefits of economic efficiency from trade liberalization can be realized. These are the economic benefits from globalization. For this to happen requires a non-discriminatory global economy built on MFN trade liberalization. This, through efficient trade, global integration results; it is trade that integrates and this is a by-product of trade liberalization and greater global non-discriminatory trade.

Instead, however, many governments and others see integration mainly in geographical terms and/or at least see economic integration through regional rather than global lenses. Hence, regionalism is being promoted above globalism, and discrimination and PTAs are becoming common. This is economically undesirable. It promotes regional discriminatory PTAs and regional integration at the expense of non-discriminatory global integration. Thus regional supply chains are displacing more efficient global supply chains and leading to global inefficiency. MFN liberalization does not discriminate, and regional integration and supply will develop efficiently if they are more economic than global integration and supply chains. This does not mean that regional integration is not important, but that discriminatory trade policy and the WTO should not be used to encourage it over global integration. Doing so is totally inconsistent with the WTO's fundamental MFN principle.

### **3. Fixing the mess**

Some may say that it is already too late, and the failure of the DR perhaps supports this view. However, this is too pessimistic, although the fix will not be easy. But the

global economic gains of resurrecting the WTO will be substantial and need to be fought for.

Ironically, the WTO rot appears to have set in as much from Members overplaying their reliance on a multilateral versus unilateral approach to liberalization as from them downplaying the costs of discriminatory arrangements. Thus, we would contend, the Doha impasse has become an excuse for poor decisions by nations on both the domestic and international fronts.

The basic problem for the WTO has been the massive change in Members' attitudes towards what the institution should do and a willingness to trash its basic MFN principle rather than to treasure it. The WTO will not be revived unless these attitudes are reversed. Doing so should be the current priority. While the WTO agenda and agreements have also become increasingly flawed, fixing them will be a very long-term project. Moreover, this will first require a change in Members' attitudes; otherwise such changes are likely to reflect current bad attitudes and further entrench them. It must be remembered that Members do not have to use the economic weaknesses in WTO agreements as legal excuses for bad economic trade policy; Members can instead focus on the economic merits of the rules.<sup>87</sup> However, Members now seem to place greater reliance on such escape clauses in line with their changed attitudes to trade liberalization and the role of the WTO.

Reversing the above attitudes will at the very least require fundamental changes to how WTO Members approach the WTO. Greater domestic and international transparency in Members is imperative. What is clear is that many of the solutions being suggested by Members and others for reviving the WTO would actually hasten

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<sup>87</sup> For example, it is well recognized by economists that the underlying rationale for Members using trade remedies, e.g. anti-dumping action, is flawed. Such measures to stop so-called 'dumping' of exports are clearly anti-competitive and protectionist. Yet the WTO allows such countries to legally apply anti-dumping measures provided the provisions of the relevant agreements are met. However, Members are not required to have anti-dumping legislation or to adopt such measures. However, because it is a legal protectionist loophole within the WTO anti-dumping action has proliferated to become the measure by choice to restrict competitive imports. Members fail to recognize the vital distinction between what is WTO legal and what is good economic policy with regard to anti-dumping action and other trade remedies.

its death, being based on the flawed attitudes outlined above. The following warnings and suggestions should be taken on board.

### ***3.1 The Single Undertaking negotiated in the UR should not become a scapegoat***

The 'Single Undertaking' agreed in the UR to remove the 'à la carte' menu from which Members were free to choose which agreements (or Codes) to take on and which not to was once heralded as a major outcome. And it was, since it necessitated all members to sign on to everything, such that it prevented Members from opting out of certain agreements. This is basic to having a genuine multilateral institution. Of course the depth and coverage of commitments being negotiated still vary substantially across Members, but all were required to participate in the negotiations and at least to commit to basic obligations.

Prior to the UR, the GATT was stalling partly for lack of a Single Undertaking, hence the concerted push during the UR to introduce it. Strangely, however, some, including many of those who applauded its achievement at the time, are now calling for its abandonment, and mistakenly believe that it is now part of the problem. Undoubtedly, the Single Undertaking, just like having many more Members, makes consensus-based negotiations much more difficult. However, it also greatly increases the potential multilateral gains and the WTO's effectiveness. All Members must therefore try harder for it to work, and to make complementary changes to the institution as needed to enable it to work as a genuine multilateral body. Removing the Single Undertaking and returning to a situation that clearly did not work is misguided.

More thought needs to be given before such a superficial fix is hastily adopted. Hard won efforts to introduce a Single Undertaking, surely necessary if the WTO is to be a genuine multilateral system, should not be discarded on a whim. The single undertaking is not the problem, but indeed is something worth hanging on to and

fighting for to ensure that the WTO remains a global player with all Members signing on to all disciplines. This should remain the basis of negotiating new disciplines within rounds of negotiations, which is the appropriate time for new disciplines to be introduced.

However, given the already overfull WTO agenda which covers areas that should not really be there and has seriously diverted the focus of the WTO away from trade liberalization, there should be no attempt to introduce additional disciplines until success with existing issues is achieved.

### ***3.2 Reject suggestions that the Single Undertaking should be removed to allow for more liberalized commitments to be negotiated plurilaterally among WTO Members***

Again the objections to singularity are based on a misconception. There is nothing within the WTO, including the Single Undertaking, that prevents WTO Members from negotiating among a subset to adopt more liberal commitments. This was the case, for example, for the International Technology Agreement (ITA), which was negotiated within the WTO among a small subset of Members.

Membership and coverage of the ITA has since progressively expanded. Plurilateral agreements should not, however, become the operational norm of the WTO – these are sharply at odds with the concept of multilateralism and every attempt should be made to abide by the Single Undertaking.

### ***3.3 Expose the so-called ‘free-rider’ problem for what it is – economic nonsense***

WTO Members that fear the so-called ‘free-rider’ problem are either economically ignorant and/or playing politics within the WTO at the expense of multilateralism and the WTO’s economic role. Proponents of the free-rider view are mercantilists in



saying that trade access at home is a gift that should not be given to a trading partner without something being received in return. They imply that foreign parties are parasites unless they grant access to those offering to open their markets. This overplays the value of foreign concessions and underplays the domestic benefits of liberalization. In fact liberalization is beneficial for both sides. Trade is not a zero sum game. Rather it is a positive sum game and that is the intellectual basis for multilateralism and the WTO's rationale.

The proposition that market opening measures should only be available to exports from countries that reciprocate by providing acceptable market opening measures flies in the face of the foundation stone of multilateralism, namely non-discrimination between trading partners.

In fact, there is no free-rider problem and WTO Members need to acknowledge this is the case. It is well known economically that a country benefits most from self-liberalization on an MFN basis, irrespective of whether or not other countries liberalize. Correcting perceptions about this matter lies at the heart of restoring the WTO's role.

#### **3.4 Return MFN/non-discrimination to WTO's top priority**

The major single factor explaining the loss of WTO influence and credibility has been the considerable damage Members have done to the MFN principle. Promoting non-discrimination is the rationale for the WTO's existence, and if this is undermined or trashed, then so is the WTO.

As indicated, all Members have been guilty of trashing MFN. Despite paying lip service to its importance, their actions speak otherwise, as they accelerate negotiations on preferential trade arrangements which enshrine discrimination in the global trading system. Despite the rhetoric by governments, these actions directly

weaken the WTO and usurp its role. And, despite what governments say, this is exactly what at least some Members are trying to do by pursuing PTAs bilaterally and regionally.

Restoring the WTO's foundations relies on Members supporting the WTO's MFN principles, not only with words but with actions. PTAs are no substitute for multilateralism and take the global system further away from, and not closer to, where we want to end up; that is with an open non-discriminatory global trading system whereby global integration is not undermined by regional integration based on discrimination. Integration must be efficient to ensure efficient supply chains are developed. This cannot happen in a world limited by regional horizons.

Calls to get governments back to multilateralism are unlikely to be heeded if that is not what governments, or more precisely their constituents, want. A greater understanding of the economic inadequacies of PTAs and the comparative strengths of multilateral liberalization is likely to be required. This can only start within countries through governments actively promoting the correct economic message, that PTAs are flawed and will worsen rather than improve the global situation.

### **3.5 *Non-MFN plurilateral WTO agreements must be avoided***

It follows that if plurilateral agreements are to be negotiated in the WTO among certain members in an effort to promote trade openness, they must be non-preferential and negotiated on an unconditional MFN basis. The WTO is not strengthened, as many would seem to contend, by having non-MFN agreements negotiated within its purview and/or for it to administer. It already has one such major agreement, an overhang from the GATT days, the Government Procurement Agreement (GPA). This preferential (plurilateral) agreement is non-MFN, in that only a subset of WTO Members is included. And those who expressed the view that a non-MFN agreement was acceptable since it could be transformed later into an

unconditional MFN agreement within the WTO Membership, have not seen this happen.

The same mistakes made in the GPA look like being repeated in efforts by some, led by the US and strongly supported by Australia, to negotiate a plurilateral Trade in Services Agreement (TISA). Already, it seems pretty clear that this will not be an MFN endeavor, and benefits will not be extended to WTO Members who do not join that specific agreement. This would be a backward step that would weaken the WTO – it does not need another non-MFN agreement to administer. Worse still, the shortcomings of the proposed TISA are bound to become sources of lengthy disagreement between the initial promoters of the agreement and prospective participants. Negotiations could become interminable. Predictably, arguments about TISA's structure will delay its finalization and may ultimately lead to its demise. Meanwhile, initial and prospective participants will have gained a ready excuse for undertaking no liberalization at home. Until the agreement is settled, governments will have an international pretext for delaying any moves to free up their service industries. Unilateral reforms will be put on hold. Thus, as in the past, we could see a WTO mechanism become an obstacle to world trade liberalization rather than the reverse.

#### **4. Enhanced transparency holds the key to changing government attitudes**

Greater and more effective transparency lies at the heart of deeper global liberalization and the survival of the WTO as an effective and relevant institution. After all, the fundamental benchmark for good transparency and micro-economic reform is MFN. Better transparency leads to governments adopting better policies (Stoeckel and Fisher, 2008). Transparency is often not defined correctly, especially in the WTO context. Transparency involves the publicly accepted scrutiny of the economy-wide benefits and costs of policies. Transparency identifies the national interest; informs and educates the government and the public; exposes narrow

vested interests, weakening their influence; and helps build coalitions for reform. By establishing criteria for 'good' policy, transparency leads to a more predictable policy environment and reduces investor and trader uncertainty.

Decisions on opening world markets are made in the domestic policy arenas of individual countries, under pressure from protected domestic producers seeking to avoid the required adjustment. When governments succumb to these pressures, as they have in the DR, they not only forego the unilateral gains (in domestic efficiency) available from reducing their own barriers but also diminish the capacity of the WTO to deliver the additional gains (improved market access) available from liberalizing in a multilateral context (Lowy Institute, 2009).

#### **4.1 *Transparency within the WTO***

There is only so much international transparency can achieve. Governments can easily ignore findings from external organizations, and international transparency is not linked to the domestic transparency process. International transparency tends to be comparative across countries. But such comparisons matter little; the main issue is whether a country can be made better off by unilaterally reducing trade barriers which is the choice each country has, not whether it can influence the behavior of others (Stoeckel and Fisher, 2008).

The Trade Policy Review Mechanism was a bold and worthwhile Uruguay Round initiative to raise global transparency within the WTO in the hope that it would also contribute to domestic transparency. However, it has fallen well short of its objectives. The reasons are numerous, including Members' attitudes that limit the TPRM's effectiveness in practice as Members under review adopt a double standard to transparency i.e. they interpret greater transparency to refer to other Members' trade policies but not to their own policies. This flawed view fails to appreciate the individual value to all Members of having an independent and fully transparent review

of their own trade-related policies. It treats greater self-transparency as a 'poor' outcome rather than a virtue; if sensible economic reform is to be implemented the problem of existing policies must be exposed domestically. It was hoped that periodic TPRM reviews would help change Members' attitudes but this has not occurred.

The TPRM meets the fewest criteria for good transparency (Stoeckel and Fisher, 2008). TPRs contain no economic analysis, especially economy-wide analysis. The independent Secretariat report contains substantial input from trade departments of the Member under review which has the incentive to defend its policies. The TPRM has had no substantial impact on better trade policies, largely due to it not evaluating the effects of the Member's trade policies on its national interest (Stoeckel and Fisher, 2008).

The TPRM has to be re-invigorated to be more effective. It suffers from deficiencies and has become a routine institutional review that is tired and stale. Hence, while still worthwhile, it needs to be refreshed.

#### ***4.2 Domestic transparency the main ingredient for promoting unilateralism and an effective WTO***

Regardless of international transparency, advancing better trade policies requires shifting the emphasis to domestic processes; this will always be more influential in shifting the political economy of reform than external scrutiny (Stoeckel and Fisher, 2008). The Australian Productivity Commission is the outstanding example internationally of good domestic policy transparency and comes closest to applying all the key elements of good transparency.

Since protectionism results from government decisions at home, for domestic reasons, any response to protectionism must begin at home and bring into public view the domestic consequences of those decisions. Domestic transparency arrangements provide public advice about the economy-wide costs of domestic

protection. The resulting increase in public awareness of those costs is needed to counter the powerful influence that protected domestic interests exercise over national trade policies (Lowy Institute, 2009).

The TPRM recognizes in principle the importance of domestic transparency. But Members have generally failed to implement it; indeed many Members would seem to have gone backwards.

Perhaps the G-20 could play a role in addressing the WTO's deep problems and promoting greater transparency within their own economies. However, given that the G-20 contains many of the main WTO recalcitrants, the prospects of progress via this route should not be overrated.

## **5. Conclusion**

The WTO is imploding, largely because Members are trashing its core principles. The WTO can be saved but it will need a major change in Members' attitudes to it, including most crucially a return to MFN. The proliferation of PTAs directly undermines the WTO and all Members have been complicit in this. It is not too late, but the time for action is now. Members can no longer preach the virtues of MFN and the WTO while doing the very opposite in practice. Promoting greater transparency, in the WTO and more importantly at home, is a key ingredient needed to change Members' attitudes in favor of trade-related liberalization and non-discrimination. And of course the best way to limit the adverse effects of PTAs is to engage in MFN liberalization, either multilaterally or preferably unilaterally.

It is vital that Members do not 'save' the WTO by introducing changes that, while perhaps more in tune with Members' existing bad attitudes, destroy the very foundations of the WTO. Under this approach, the question would quickly become

not 'can the WTO be saved' but 'is the WTO worth saving?' For now it definitely is, but if the current rot continues than this may not always be the case.

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## **II.15 Life after Doha: Reflections in the Run up to MC9**

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### **1. Remembering the Doha Ministerial Conference (MC 4)**

The Doha Ministerial Conference was the culmination of almost two years of planning and was a carefully conceived and meticulously scripted event that still contained its fair share of surprises. Perhaps the most surprising thing at all is that many trade negotiators and the WTO's Director General allowed themselves to be blinded by the fact that initiating a round that would ultimately fail could be as disastrous as failing to initiate a round at all, and that of these two scenarios, the latter is arguably easier for the organization to recover from. This section starts by discussing the run up to Doha - especially Seattle - and concludes by discussing some of the inherent inconsistencies in the Doha Ministerial Declaration that have played such an important role in damning the DDA (Doha Development Agenda) to become a rather unfortunate real-life incarnation of Samuel Beckett's unforgettable play *Waiting for Godot*.

#### **1.1. Seattle, September 11 and launching the Doha Development Agenda**

There were probably two overriding factors that, more than anything else, led to the launch of the Doha Development Agenda in December 2001, neither of which would really have resulted in anything if it were not for the personality of the WTO Director General Mike Moore and his willingness to act (for better or worse) on the strength of his own convictions. These two factors were 1) the shock of the really spectacular failure of the Seattle Ministerial Conference in 1999 and the belief by many, including the WTO Director General, that the best way to put Seattle behind the organization was to launch a new Round; and 2) the September 11 attacks on the United States which compelled many to the (erroneous) conclusion that the best way to show international solidarity in the wake of this terrible tragedy was to launch another round of multilateral trade negotiations.<sup>88</sup>

For anyone who needs reminding about just how dramatic the collapse of the WTO Ministerial Meeting in Seattle (MC 3) was, the easiest thing is probably to search for

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<sup>88</sup> It is Mike Moore who is generally credited – as the Ministerial talks in Doha reached an impasse on whether or not to launch a new round – with addressing delegates and forcefully asking the rhetorical question of whether he needed to remind anyone present as to what had taken place in New York just a few weeks before the Doha meeting. Another account tells of the Director General intervening during a crucial impasse, confronting Members with words to the effect that the multilateral trading system and the WTO would not be able to survive yet another failure of a Ministerial Conference to launch a Round, see Paul Blustein, *Misadventures of the Most Favoured Nations*, Public Affairs Publishers, New York 2009, at p. 126.

footage of the debacle on YouTube. Otherwise, a 2007 French film production starring a whole range of well-known Hollywood celebs captures the mood quite nicely.<sup>89</sup> While commentators disagree about the importance or impact that the street protestors had on the actual WTO meeting, the consensus seems to be that developing country representatives certainly felt empowered by the mood that took hold in Seattle, and decided that politically, they could afford to let the concerted efforts by many developed country Members to launch a new round go down in flames.<sup>90</sup> In any event, the months after the failure of Seattle saw a large degree of soul searching by the organization's Director General, who became convinced that not only did the WTO need to launch a new round as soon as possible, but that the organization should be "re-branded" with a new-found focus on development (and the role that trade can play in promoting economic growth).<sup>91</sup>

The economic impact of the devastating attacks on the World Trade Centre in New York on September 11 went beyond those sectors most directly affected, such as insurance, civil aviation, and tourism, and led to a more widely-felt loss of overall consumer confidence, particularly in the United States, but also to a very real extent globally. This was confirmed by a survey done by the IMF immediately after the attacks and published in December 2001.<sup>92</sup> The sense of doom and gloom hanging over world leaders after 9/11 was perhaps best summarized by Singapore Prime Minister at the time, Goh Chok Tong, who at an October summit meeting in preparation for the Doha talks noted that the September 11 attacks had "probably tipped the world into a global recession".<sup>93</sup>

It was also in the period between the September 11 attacks and the November Ministerial Conference that the narrative started to take hold, that the best way to mitigate the effects of this downturn would be to launch a new round of trade negotiations. One example of this was the testimony provided by Alan Greenspan before the Senate Committee on Banking, Housing, and Urban Affairs on 20

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<sup>89</sup> *Battle in Seattle*, [http://www.imdb.com/title/tt0850253/?ref\\_=fn\\_al\\_tt\\_5](http://www.imdb.com/title/tt0850253/?ref_=fn_al_tt_5) (visited on 19 July 2013); some of the well-known names that appear in the film include André Benjamin, Woody Harrelson, Ray Liotta, Channing Tatum and Charlize Theron.

<sup>90</sup> Gary Horlick and several others, writing in the *Journal of International Economic Law* a few months after Seattle, note that a lot more was actually achieved substantively at the Ministerial Meeting than much of the coverage that documented the meeting's failure to launch a round seem to admit; see Gary Horlick et al, *Reactions to Seattle*, in: *Journal of International Economic Law*, 3(1) March 2000, pp. 167 *et seq.*

<sup>91</sup> See the account told in Blustein, *op cit.*, at p. 82.

<sup>92</sup> IMF's *World Economic Outlook: The Global Economy After September 11*, at: <http://www.imf.org/external/pubs/ft/weo/2001/03/> (visited on 25 July 2013).

<sup>93</sup> Cited by BBC News, "Fight terror with trade, summit told", 13 October, 2001, at: <http://news.bbc.co.uk/2/hi/asia-pacific/1597016.stm> (visited on 25 July 2013).

September, who stated, "A successful round would not only significantly enhance world economic growth but also answer terrorism with a firm reaffirmation of our commitment to open and free societies".<sup>94</sup> But the economic press also took up this call, such as the Financial Times, who in an article entitled "A Round to Steady the Nerves", extolled the "symbolic and psychological" value that launching a new round of trade talks would have.<sup>95</sup>

### **1.2. Implementation issues and the flaws of the grand bargain**

It should not be forgotten that developing countries on the whole were less than enthusiastic about the prospect of a new round, particularly one that would incorporate yet another set of "new issues", of which they were generally suspicious, if not actually hostile towards, such as trade and the environment, and linkages between trade and labor. However it was specifically with regard to the so-called Singapore Issues, particularly trade and competition, trade and investment and government procurement that developing countries seemed to harbor the greatest enmity.<sup>96</sup> In fact, many developing countries wished to keep the Organization focused on so-called implementation issues, meaning the challenges Members were still facing in implementing the many new obligations entered into when they signed the Results of the Uruguay Round of Multilateral Trade Negotiations.<sup>97</sup>

Developing countries as a whole also wished to address what they perceived to be the glaring asymmetries that had become apparent in the so-called "Grand Bargain" of the Uruguay Round, namely liberalization of trade in textiles and agricultural

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<sup>94</sup> See Testimony of Chairman Alan Greenspan: The condition of the financial markets, Before the Committee on Banking, Housing, and Urban Affairs, U.S. Senate, September 20, 2001, at: <http://www.federalreserve.gov/boarddocs/testimony/2001/20010920/default.htm> (visited on 25 July 2013).

<sup>95</sup> Cited in Blustein, op cit., Notes to Chapter 1, at p. 302, note 3.

<sup>96</sup> The Singapore Issues were a set of four areas, two "old" and two "new", that developed countries, particularly the EU and to a lesser extent the US, wished to include in talks if a new round was successfully launched. These four issues were 1) trade and investment; and 2) trade in competition as noted above (the "new" issues), as well as 3) transparency in government procurement and 4) trade facilitation. These last two issues are labeled with the moniker "old" because WTO rules already included provisions governing these two areas, even if, for government procurement, these rules (under the Government Procurement Agreement or GPA) had not been part of the Uruguay Round single undertaking and thus not been adopted by the entire WTO membership. The other "old" issue of trade facilitation (i.e. anything that affects goods as they physically cross borders) had already been addressed by various GATT articles as early as 1947 (for example in Art. V on freedom of transit, Art. VII on customs valuation, or Art. VIII on fees and formalities levied in connection with importing and exporting), but also the results of the Uruguay Round contain no less than four separate agreements dedicated to different trade facilitation issues (namely agreements on customs valuation, pre-shipment inspection, rules of origin and import licensing). For more on the Singapore Issues, see Simon J. Evenett et al, *The Singapore Issues and the World Trading System: The Road to Cancun and Beyond*, June 2003, at: <https://www.alexandria.unisg.ch/export/DL/22682.pdf> (visited on 25 July 2013).

<sup>97</sup> See Asoke Mukerji, *Developing Countries and the WTO, Issues of Implementation*, in: *Journal of World Trade*, 34(6): 33–74, 2000.

products in exchange for rules on trade and services and trade-related intellectual property rights (TRIPS).

It was only after the dust of the Uruguay Round had settled that it became apparent to many that the WTO Agreement on Agriculture resulted in little new market access, while leaving the complex web of subsidies for (mostly) developed country agricultural producers largely in place. Moreover, the WTO Agreement on Textiles also left the global system of quotas - the Multifibre Arrangement - that had been in place since 1974 and that was so resented by developing countries, largely intact for another ten years. Compare this to the liberalization commitments made under the WTO's General Agreement on Trade and Services (GATS) and the TRIPS Agreement, most of which came into force on 1 January 1995 (the day the WTO opened for business), and it is easy to see why developing countries were feeling somewhat jilted.<sup>98</sup>

In any event, most developing country Members felt that implementation issues and the asymmetries in liberalization outcomes resulting from the Uruguay Round were both matters that could and should be addressed outside of the dynamics of a negotiating round *per se*.

### **1.3. The Doha Ministerial Declaration**

At ten pages, the Ministerial Declaration is a relatively short document that lists the areas in which negotiations are to take place, and attempts to elucidate some of the possible outcomes that may or even should ensue from these negotiations, particularly greater trade liberalization and a world trading system that produces more development-friendly outcomes. This second element is, on its face, the most important. What is most striking upon a first reading of the Ministerial Declaration is the sheer number of times the words "developing" or "development" appear. The relevant numbers are 24 and 39 times respectively, so that, taken together, these two terms appear some 63 times, or, just over 6 times per page on average. This is arguably little more than a real-life example of Sir Humphrey's famous law of inverse relevance, namely "[t]he less you intend to do about something, the more you have to

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<sup>98</sup> Although this narrative does not do justice to the fact that the GATS is a very flexible agreement that allowed many, in fact most developing country Members to largely opt out of sensitive and difficult liberalization commitments during the Uruguay Round, and also ignores the fact that LDCs were given transition period to implement their obligations under TRIPS, this nevertheless is an accurate reflection of how many developing countries (rightly or wrongly) viewed the results of the Uruguay Round.

keep talking about it."<sup>99</sup> Over time it has become brazenly obvious that this was sadly the case. In fact this was evident as early as the next meeting of the WTO Ministerial Conference in Cancun in September 2003 (MC5). This is because the WTO was never, is not, and will probably never be a development organization (that is arguably the job of the World Bank or the United Nations Development Program), and those that believed or advocated otherwise, misconstrued the organization's historical pedigree and indeed its institutional purpose and driving imperative. This is discussed in more detail below.

Suffice to say here that even a casual reader of the Doha Declaration will recognize that many, if not all of the so-called "commitments" - if one can even call them that - towards helping developing countries are steeped in aspirational and markedly "woolly" language that "commits" Members, at most, to little more than "best endeavors", if that. One example is in para. 2 of the Doha Ministerial Declaration: "We seek to place their [developing countries'] needs and interests at the heart of the Work Program adopted in this Declaration". Any developing country representatives present in the room should at least have insisted that the words "seek to" be replaced with either the word "will" or "shall". Another example is paragraph 42 on Least-Developed Countries, which contains a string of "commitments" purportedly intended to promote the interests of LDCs, but which in reality promise little more than "considering" how to do more to help LDCs. Contrast this language with that used to describe potential negotiating outcomes in other areas, primarily of interest to developed countries (like the desire to see negotiations start on trade and investment in para. 20) and the woolly and aspirational language is gone. In this paragraph the Ministerial Declaration states "we agree that negotiations will take place after the Fifth Session of the Ministerial Conference on the basis of a decision to be taken, by explicit consensus, at that Session on modalities of negotiations". Anyone reading that paragraph at the time of Doha (and thus without the benefit of hindsight), could be excused for thinking that negotiations on trade and investment were a matter of "when" and not "if".

To summarize, the WTO Ministerial Declaration that emerged from the Doha talks, although a seemingly ambitious document in terms of envisaging a pivot towards the needs of developing country members, really just confirmed that the WTO was all about business as usual, and that Members would do their best to look like they were

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<sup>99</sup> Jonathan Lynn and Antony Jay, *Yes Minister : Volume 1 :The Diaries of a Cabinet Minister by the Rt Hon. James Hacker MP*, BBC Publishing, 1983, at p. 21

taking the concerns of developing countries seriously while in reality doing what they were really sent to the organization to do, namely extract the most and best market access concessions for their own countries while giving the least number of market access commitments in exchange therefore. This is what the WTO, and its predecessor the GATT were designed to do, and this is what the GATT and now the WTO have had a great deal of success in doing. As Aaditya Mattoo and Arvind Subramanian pointed out in a 2008 paper on a totally unrelated issue "[t]he genius of the [GATT] was to recognize that the politics of trade policy is unavoidably mercantilist and then to harness this very mercantilism to avoid protectionist outcomes".<sup>100</sup> Given the huge gap in terms what the document that launched the Doha Work Program and that also established the negotiation agenda promised and aspired to on the one hand, and the underlying political-economy realities that it was steeped in on the other, is it any wonder that we are currently at such a seemingly insurmountable impasse? This is even less surprising when one considers the many significant changes that have transformed the global economy since the launch of the round.

## **2. Getting to the current impasse**

It has admittedly been a long road from the Doha Ministerial Conference in November 2001 to where we are now - at the time of writing - almost 12 years later and with still no end in sight. To put the extraordinary length of time the current round has lasted into context, it should be recalled that even the Uruguay Round only dragged on for some eight years (September 1986 until December 1993), and it was based on an agenda that was much more radical - in terms of bringing new issues under multilateral disciplines - and much more controversial - in terms of finally subjecting agricultural trade to actionable trade rules - than one could arguably contend is the case for the DDA. This section discusses how the Round got to where it is now, focusing first on Cancun and the July 2004 Package, followed by the Hong Kong Ministerial, the 2008 meeting in Geneva, and the final, and ultimately unsuccessful push to conclude the round, first by the end of 2010, then by the end of 2011.

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<sup>100</sup> Aaditya Mattoo and Arvind Subramanian, "Currency Undervaluation and Sovereign Wealth Funds: A New Role for the World Trade Organization", Peterson Institute for International Economics, January 2008, at: <http://www.iie.com/publications/interstitial.cfm?ResearchID=871> (visited on 25 July 2005).

## **2.1. The collapse at Cancun (MC 5), and the Round's subsequent rescue in July 2004**

Two words (actually three) seem to sum up the Ministerial Conference that took place in Cancun Mexico from 10-14 September 2003, namely "cotton" and "explicit consensus". The first issue overshadowed the meeting from the outset and seemed to be the spark that ignited a mood of militancy among developing country representatives. The explicit consensus language ended up giving these representatives the mechanism by which they could dig in their heels and ultimately bring the meeting to an ignominious collapse.

The cotton issue had slowly but steadily been brewing at the WTO for well over a year before it sparked the collapse of the Cancun Ministerial. As early as January 2001, Mali had explicitly tabled a request in the Special Session of the Committee on Agriculture (established under the so-called inbuilt agenda) for subsidies on this commodity to be drastically reduced.<sup>101</sup> However the issue really began to pick up some traction with the release of a damning report by Oxfam in September 2002 entitled "Cultivating Poverty: The impact of US cotton subsidies on Africa"<sup>102</sup>, and with the initiation of a dispute under the WTO's Dispute Settlement Understanding by Brazil against US cotton subsidies in February 2003.<sup>103</sup> Throughout the course of 2003, the temperature continued to rise on the issue of how damaging US cotton subsidies had been for African cotton farmers, so it is somewhat mystifying why US trade negotiators, particularly USTR Robert Zoellick were caught so off-guard in Cancun when this issue threatened for a while to take center stage and became a *cause célèbre* around which many developing countries could rally.<sup>104</sup> Knowing the political sensitivity, particularly the positions of key members of Congress on this issue, there was little Zoellick could concede in Cancun, which put the US delegation in the unenviable position of fighting a rear-guard action in defense of a collection of subsidies that were manifestly indefensible given their obvious and demonstrated impact on cotton growers in the affected African countries. This caused the US delegation to look insensitive and made the DDA's stated goal of improving development outcomes for the world's poor seem like a cruel and cynical joke. It is no

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<sup>101</sup> See Malian Proposals for the Future Negotiations on Agriculture (G/AG/NG/W/99), 11 January 2001.

<sup>102</sup> <http://www.oxfamamerica.org/publications/cultivating-poverty> (visited on 26 July 2013).

<sup>103</sup> DS267; For a useful comparison of the two tracks that were taken on the issue of cotton (negotiation versus litigation), see: Philipp Stucki, *Lessons Learned from the Negotiations and Litigations on Cotton*, 2008, at: [http://www.ideascentre.ch/documents/2.28\\_AnnexactionplanWTICottonFINAL.pdf](http://www.ideascentre.ch/documents/2.28_AnnexactionplanWTICottonFINAL.pdf) (visited on 26 July 2013).

<sup>104</sup> For an interesting expose on how the issue emerged and how it was handled in Cancun and thereafter see the film documentary *The Cotton War*, by TVEAPfilms available for download and viewing at: <http://www.youtube.com/watch?v=l673CWNdGLc> (visited on 26 July 2013).

wonder developing countries took the combative stance that they did on what seemed to be the most important issue to developed countries at the talks, namely the Singapore Issues.<sup>105</sup>

The "explicit consensus" language that hung over the Singapore Issues was the result of intransigence on the part of India as the last holdout at the Doha meeting to agree to negotiations on the Singapore Issues, so that the Indian representative in Doha (Maran) could reportedly only be prevailed upon to accept this concession if the decision to start negotiations on these issues was to be taken by "explicit consensus" at the Fifth Ministerial Conference (i.e. the one after Doha).<sup>106</sup> Although nothing in the WTO's charter (the Marrakesh Agreement) suggests that such a thing as explicit consensus exists, over the months leading up to the Cancun meeting, Geneva-based representatives, and then at the Cancun meeting itself, trade ministers from developing countries had actively worked to cultivate the narrative that a decision allowing negotiations on the Singapore Issues to start would only be taken if the entire membership was in agreement (which is what the WTO's principle of consensus means anyway). This was presumably a tactical move intended to preempt any attempt to isolate a small group or even a single Member in its opposition to start these negotiations, since under the normal *modus operandi* of the WTO it is considered very poor form for one Member in particular to dig in its heels and impede progress when everybody else has agreed to move forward. The explicit consensus language obviated the need for a single Member to feel embarrassed about being obstructionist and to allow itself to be strong-armed into going along. As it turns out, India was not alone in its opposition to the Singapore Issues, since the representative for Malaysia (Rafidah Aziz) also took a strong stand at Cancun.<sup>107</sup> Thus it was that, after the tempers of developing country delegates had been inflamed over cotton and the impasse over agriculture, many of them chose to vent their anger on the Singapore Issues.

The Cancun Ministerial ultimately collapsed when the Mexican Foreign Minister Luis Ernesto Derbez (in his capacity as chairman of the conference), seeing the lack of progress on the Singapore Issues gaveled the meeting to an unexpected and some

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<sup>105</sup> This is particularly true for the EU and Japan, who were perceived as being some of the most intransigent members in the agriculture talks, which developing countries cared about very passionately.

<sup>106</sup> See the account told in Blustein, *op cit.*, at the bottom of p. 128.

<sup>107</sup> See Bridges Daily Update, 14 September 2003, at: <http://ictsd.org/i/wto/wto-mc5-cancun-2003/bridges-daily-updates-mc5/161118/> (visited on 26 July 2013).



would say premature end in a green room meeting on 14 September, after 4 days of conflict-ridden and ultimately fruitless talks.

Many blamed the US for its unwillingness to come up with any kind of compromise on cotton besides telling the Cotton 4 to diversify their economies. Others blamed the EU for waiting until the last day to concede on the Singapore Issues, while yet others blamed the militancy of developing countries. Some even saw Derbez's sudden desire to end the meeting over the intractable stance of developing countries vis-à-vis the Singapore issues as a way to do so without allowing the talks to continue and thereby risk the prospect of the US becoming isolated on the cotton issue. Either way, it wasn't until the following summer (2004), that the negotiations got back on track, largely thanks to US and EU leadership. The Cancun talks, if they had provided anything positive (discounting the accession of the first two LDCs to the WTO, Nepal and Cambodia), it was the opportunity for developing countries to vent their wrath, and to subsequently return to the negotiating table in Geneva with a chance for cooler heads to prevail.

The July 2004 meeting, which put the Doha Round decidedly back on track - if only temporarily - arguably owed its success more than perhaps any other factor to the ambitions and tenacity of USTR Bob Zoellick, who - working closely with the EU chief trade negotiator at the time Pascal Lamy - managed to achieve a level of productive and constructive progress in the early months of 2004 concerning these two countries' positions on agriculture, that it infected the broader WTO membership and allowed for a sense of momentum to take hold. Thus it was that by the end of July 2004, WTO Members had coalesced around a framework document - the July package - that contained a little bit of something for everyone.<sup>108</sup> Consensus on the key agriculture text was reportedly achieved thanks largely to the New Zealand ambassador Tim Grosser, who, in his role as the chair of the Special Session on Agriculture, essentially seized the reins from a hapless Superchai Panitchpakdi after a series of indecisive green room meetings with the main protagonists simply repeating their well-known positions.<sup>109</sup>

Ultimately, the July package<sup>110</sup> rekindled some hope among developing country members, that their concerns had not simply been forgotten in the scramble to make

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<sup>108</sup> See [http://www.wto.org/english/tratop\\_e/dda\\_e/draft\\_text\\_gc\\_dg\\_31july04\\_e.htm](http://www.wto.org/english/tratop_e/dda_e/draft_text_gc_dg_31july04_e.htm).

<sup>109</sup> This is at least how Blustein recounts it, see Blustein, *op cit.*, at the bottom of p. 92.

<sup>110</sup> Doha Work Programme, Decision Adopted by the General Council on 1 August 2004 (WT/L/579).

the round about little more than better market access for agricultural and non-agricultural products, especially by big developed countries and efficient emerging market exporters. Thus, the text on agriculture that emerged from the July 2004 meeting in Geneva specifically provided that developing countries "must be able to pursue agricultural policies that are supportive of their development goals, poverty reduction strategies, food security and livelihood concerns".<sup>111</sup> This commitment was given more operationally effective character in the July package by including language, in the section on market access, subject to which developing countries would be permitted to list a certain number of tariff lines as sensitive products, and to exclude these products to a large degree from any liberalization.<sup>112</sup> In addition, and also under market access, developing countries were to be given a special safeguard mechanism by which they would be allowed to raise tariffs on a number of pre-selected products above bound rates in the event of an import surge.<sup>113</sup>

On cotton, the July package stated that as a negotiating issue, it would be addressed "ambitiously, expeditiously, and specifically" in the broader framework of the agriculture negotiations, that at least allowed some to hope (as it turns out very forlornly) that a resolution on this issue might come sooner rather than later and might not be held hostage to the Single Undertaking. Finally, the July package put in writing a commitment originally championed by Pascal Lamy that LDCs would be released from any obligation to make reduction commitments, thereby giving them what some participants took to calling "a round for free".<sup>114</sup>

To sum up, the mood of the WTO Members at the end of the July 2004 negotiations was in stark contrast to the despondency that had prevailed at the end of the Cancun collapse. In press statements after the July 2004 meeting, Pascal Lamy was quoted as saying that the WTO was now "well and running", while developing country representatives such as Kamal Nath of India went on record stating "I think it was recognized here that the developing countries cannot be taken for granted", and Argentina's chief trade negotiator in Geneva for the meeting (Martin Redrado) qualifying the progress made as "a tremendous advance".<sup>115</sup>

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<sup>111</sup> Ibid, Annex A, para. 2. It was believed that this language would give cover for excluding politically sensitive agricultural commodities in the production of which economically vulnerable farmers were engaged, from the ambitious tariff cuts that countries like the US, Australia and other Cairns Group countries were seeking.

<sup>112</sup> Ibid, Annex A, para. 41.

<sup>113</sup> Ibid, Annex A, para. 42.

<sup>114</sup> Ibid, Annex A, para. 43.

<sup>115</sup> All of these quotes taken from a Washington Post article dated 1 August 2004 entitled "Accord Reached On Global Trade; Talks Aim to Cut Farm Aid, Tariffs".

## **2.2. Hong Kong (MC 6), aid for trade and pork-barrel commercial diplomacy**

It was quite early on during the Hong Kong Ministerial Conference (13–18 December 2005) that the jockeying over a flurry of proposals on aid for trade started to pick up serious momentum, beginning with a proposal circulated by Japan.<sup>116</sup> The thousands of developing country representatives in Hong Kong rapidly became enthused with a new-found sense of purpose and excitement thanks to the Japanese proposal (and the others that would ensue soon after, starting with the EU, followed by the US<sup>117</sup>), as it became clear to everyone that there was money to be made, and lots of it. One could have been excused for thinking that that the meeting had now been allowed to degenerate to the level of pork-barrel politics, and that from now on, many developing country demands for genuine reform of the trading system, by cutting the highest tariffs and eliminating the most damaging forms of trade-distorting domestic support, would likely be considerably blunted (bought off) in exchange for cash infusions from rich countries unwilling to show the necessary leadership to change the *status quo*.<sup>118</sup>

It is probably fair to say that, although there was a relatively strong sense of anti-climactic let-down, the Hong Kong meeting brought neither the sense of total despair which followed the collapse in Cancun, nor the euphoria that seemed to have gripped delegates after the July 2004 meeting in Geneva. One important and largely overlooked concession was the EU's offer to eliminate all export subsidies by 2013. One participant at the Hong Kong meeting, a veteran of several trade rounds going back to the Tokyo Round, noted that if the EU had made an offer like that back in the 1970s or 1980s, many would have considered it significant enough to conclude negotiations and seal the deal right then and there.<sup>119</sup> Unfortunately this was not the sentiment in Hong Kong, and so wrangling continued, particularly between the US and the EU. Also worth noting is that expectations had been severely drummed down in the run up to the meeting, with several negotiators and Pascal Lamy - now appointed as WTO Director General - voicing their opinions that it might be necessary to hold a follow-up meeting to the Hong Kong Ministerial as early as March 2006 in Geneva, just so that some real progress could be achieved away from

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<sup>116</sup> Bridges Daily Update on the Sixth WTO Ministerial Conference, at: <http://ictsd.org/i/wto/wto-mc6-hong-kong-2005/bridges-daily-updates-mc6/159002/> (visited on 30 July 2013).

<sup>117</sup> See article in the Financial Times dated 14 December 2005 entitled "Little progress at WTO talks despite US aid offer".

<sup>118</sup> This view was also shared by John Hilary of War on Want who went on record as saying "rich countries are trying to buy off opposition to their trade policies by means of a cynical bribe.", quoted in Bridges Daily Update on the Sixth WTO Ministerial Conference, at: <http://ictsd.org/i/wto/wto-mc6-hong-kong-2005/bridges-daily-updates-mc6/159002/> (visited on 30 July 2013).

<sup>119</sup> This sentiment was expressed by Gary Horlick.

the limelight, political point-scoring and posturing that inevitably accompanied high-level Ministerial Conference meetings.<sup>120</sup>

### **2.3. Geneva 2008 – much ado about special safeguard measures**

If at least a dull shimmer of hope had imbued the conclusion of MC6 in Hong Kong, by the summer of 2008, the WTO was back to deadlock and despondency with even Pascal Lamy's optimism seeming to have faded as talks collapsed at the end of a marathon 9-day negotiating session dubbed another mini-ministerial (21 -29 July 2008).<sup>121</sup> Lamy had convened the meeting for the purpose of preparing the formal establishment of modalities in agriculture and NAMA.<sup>122</sup> It was ultimately the Director General who after 5 days of talks that had seen only modest convergence, seized the initiative and took the rather desperate measure of himself drawing up a framework for compromise on many of the issues that had eluded consensus up to that point, such as the magnitude of cuts in domestic support by developed countries, the scope of tariff cuts and thus market access commitments for both agricultural and industrial goods. Lamy's compromise text received mixed reviews but it was essentially viewed as a basis for continuing talks.<sup>123</sup>

Ultimately, the July 2008 talks failed, ostensibly over an issue that caused quite a bit of surprise among many commentators, namely a special safeguard measure (SSM) for developing countries that would allow them to temporarily raise tariffs above bound rates in the event of an import surge.<sup>124</sup> Article 5 of the WTO Agreement on Agriculture (AoA) already contains a clause that affords the right for some Members to invoke this measure (referred to as an "SSG"), provided they reserved the right to do so during the Uruguay Round.<sup>125</sup> Since the conclusion of the Uruguay Round, some countries have been forced to rue their failure to invoke the special safeguard on a number of agricultural tariff lines, thus limiting them in principle, to the regular WTO safeguard action (under the GATT Article XX escape clause) as the only legal option for fending off injurious import surges. This was indeed the oversight that was behind the Korea Dairy dispute with the EU from 1997-1999, when Korea - unable to

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<sup>120</sup> See BBC News Article dated 22 November 2005 entitled "WTO 'won't agree deal in China", available at: <http://news.bbc.co.uk/2/hi/business/4461730.stm> (visited on 30 July 2013).

<sup>121</sup> See Blustein at p. 275 who refers to Lamy "chocking up".

<sup>122</sup> Bridges Daily Update on the Sixth WTO Ministerial Conference, at: <http://ictsd.org/i/wto/wto-mini-mc-geneva-2008/englishupdates/13365/> (visited on 30 July 2013).

<sup>123</sup> See Blustein at p. 264.

<sup>124</sup> Bridges Daily Update on the Sixth WTO Ministerial Conference, at: <http://ictsd.org/i/wto/geneva2008/englishupdates/15315/> (visited on 30 July 2013).

<sup>125</sup> See Yong-Shik Lee, *Safeguard Measures in World Trade: The Legal Analysis*, Kluwer Law International, 2007, at p. 153.

invoke the special safeguard under Article 5 of the Agreement on Agriculture - imposed additional duties on imports of skimmed milk powder after its market experienced massive import surges in this product which constituted a significant threat to its own dairy industry (or so it claimed).<sup>126</sup> Korea lost that dispute, just like other countries would subsequently lose similar disputes involving their use of safeguards under the WTO escape clause.<sup>127</sup> Perhaps it was the fact that it had ultimately proven unexpectedly difficult to legally impose safeguard measures under WTO rules that had led developing countries to the conclusion that what they needed was the kind of air-tight policy space that a special safeguard measure very similar to the one set forth in Article 5 AoA afforded. Either way, with the benefit of hindsight, after a considerable increase in protectionism during and after the financial crisis and the ensuing global recession, in which countries demonstrated previously unmatched levels of inventiveness in using and abusing existing trade rules to keep out imports to shelter import-competing domestic industries (discussed immediately below), it seems surprising that it was something as mundane as a special safeguard measure that caused the collapse of the July 2008 meeting in Geneva.<sup>128</sup>

#### **2.4. The global economic crisis and subsequent developments for the DDA**

Some very traumatic events have rocked and in many ways transformed the global economy since the collapse of the July 2008 mini ministerial meeting in Geneva. Easily the most important of these would have to be the onset of the global financial crisis, which was already starting to take hold before the July 2008 meeting, but which got going in full swing with the collapse of Lehman Brothers on 15 September 2008. The crisis had a crippling effect on international trade, both because of the collapse in demand as well as because the credit crunch had a chilling effect on trade finance.<sup>129</sup> The crisis also led to an increase in pressure on governments

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<sup>126</sup> See *Korea – Definitive Safeguard Measure on Imports of Certain Dairy Products*, Report of the Panel, (WT/DS98/R) at para. 4.54.

<sup>127</sup> It is generally recognized that the difficulty in imposing safeguard measures under GATT Art. XX and the Uruguay Round Agreement on Safeguards is due more than anything to the causation and non-attribution requirements set out in Art. 4.2 (b) of the Safeguards Agreement, see: Douglas A. Irwin, *Causing problems? The WTO review of causation and injury attribution in US Section 201 cases*, in *World Trade Review*, Vol. 2(3), 2003, pp. 297–325, at: <http://www.dartmouth.edu/~dirwin/docs/causal.pdf>, (visited on 30 July 2013).

<sup>128</sup> Meaning it is surprising that what was allowed to bring the talks to an abrupt end was that a country such as India felt that it absolutely and unequivocally needed the extra policy space that a special safeguard would have afforded it; See J. Michael Finger, *A Special Safeguard Mechanism for Agricultural Imports: what experience with other GATT/WTO safeguards tells us about what might work*, in: *World Trade Review*, Vol. 9 (2), 2010, pp. 289–318, Cambridge University Press.

<sup>129</sup> See article in *MoneyWeek* dated 24 October 2008, entitled "Is international trade grinding to a halt?" at: <http://moneyweek.com/is-international-trade-grinding-to-a-halt-13909/> (visited on 31 July 2013); Some economists question the role played by the contraction in trade finance, see e.g. Andrei A Levchenko *et al*, *The Collapse of International Trade during the 2008–09 Crisis: In Search of the Smoking Gun*, in "IMF Economic

across both the developed and developing world to flout trade rules in various forms in order to prop up domestic economic interests.<sup>130</sup> In developed countries, most measures were part of stimulus packages containing bailout plans with massive cash injections for domestic industries, particularly the auto industry, but also clean technology, transport infrastructure and various others.<sup>131</sup> There was also a corresponding rise in contingency protection measures in developed country markets such as the US and the EU, as import-competing industries turned to their governments for import relief.<sup>132</sup>

In developing countries, as job losses mounted and economic hardship began to be felt, governments also came under pressure to provide import relief from domestic producers of import-competing products, either by using traditional means such as raising applied to tariff levels to bound rates, the application of contingency protection measures or by resorting to other protectionist impediments, such as technical barriers to trade, sanitary and phytosanitary measures, import licenses and other similar instruments.<sup>133</sup> In some developing countries there was also another imperative behind efforts to restrain imports, namely the need to provide relief to deteriorating balance of payments situations, and relieve pressure on already stretched budget deficits.

As the global economic crisis seemed to abate, it was replaced with dogged unemployment and stagnating consumer demand in the US, and the onset of an austerity-induced slowdown in several European countries. Developing markets managed to recover somewhat better, with India, China and Brazil just three of the

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Review" (2010) 58, pp. 214–253, at: <http://www.palgrave-journals.com/imfer/journal/v58/n2/abs/imfer201011a.html> (visited on 31 July 2013).

<sup>130</sup> This trend has been documented and analyzed by a number of institutions and individuals, albeit perhaps none with as much focus as Simon Evenett and his Global Trade Alert (<http://www.globaltradealert.org>). For a concise and easily digestible overview of the impact the crisis had on trade policy in a number of countries, see Simon J. Evenett and Martin Wermelinger, *Chapter 1, A snapshot of contemporary protectionism: how important are the murkier forms of trade discrimination*, in: Mia Mikic with Martin Wermelinger (eds), *Rising Non-Tariff Protectionism and Crisis Recovery*, Economic and Social Commission for Asia and the Pacific, 2010, at: <http://www.unescap.org/tid/publication/tipub2587.pdf> (visited on 31 July 2013); See also Crina Vijū and William A. Kerr, *Protectionism and Global Recession: Has the Link Been Broken?*; in: *Journal of World Trade* Vol 45 (3), 2011, pp. 605–628, Kluwer Law International BV.

<sup>131</sup> For an in-depth account of the US auto bailout, see: Steven Rattner, *Overhaul: An Insider's Account of the Obama Administration's Emergency Rescue of the Auto Industry*, Houghton Mifflin Harcourt, September 2010; For a detailed treatment of the 2009 US Stimulus Bill, see Michael Grunwald, *The New New Deal: The Hidden Story of Change in the Obama Era*, Simon & Schuster, August 2012.

<sup>132</sup> Chad P. Bown, *Assessing the G20 use of antidumping, safeguards and countervailing duties during the 2008-2009 crisis*, in Simon J. Evenett (ed.), *Unequal Compliance: the 6th GTA Report*, London, Centre for Economic Policy Research, pp. 39-47.

<sup>133</sup> H.L. Kee, et al, *Is Protectionism on the Rise? Assessing National Trade Policies during the Crisis of 2008*, *World Bank Policy Research Working Paper 5274*, at: <http://go.worldbank.org/Q2MKLTEIN0> (visited on 31 July 2009).

large emerging markets that were soon posting healthy growth figures. In any event, although summit meetings during and after the crisis had regularly seen leaders produce declarations unequivocally calling for a swift conclusion to the Doha Round in order to revive the global economy, these statements were not translated into action by ambassadors or trade ministers in Geneva or elsewhere. In fact, quite the opposite, since it would seem that in terms of domestic political calculus, times of economic hardship, high unemployment and austerity are the worst possible moments in which to conclude sweeping trade deals, the distributional effects of which must then be "sold" to a skeptical and struggling electorate.<sup>134</sup>

Since the breakdown of the 2008 talks, we have had two further Ministerial Conferences, both in Geneva (MC 7 from 30 November to 2 December 2009, and MC 8 from 15 to 17 December 2011). It's hard to say whether it was Pascal Lamy's tireless optimism and unfaltering ambition or just the fact that Article VI.1 of the Marrakesh Agreement mandates these meetings every two years that were the driving dynamic behind these get-togethers. In any event, they both followed a very similar course, which is to say they were both essentially reduced to little more than simple stocktaking exercises, with the DG and Members as a whole keen to avoid even the whiff of another high-stakes collapse. Much of the negotiating on the truly troublesome issues of agriculture and NAMA continued, primarily in Geneva but in the months between Ministerial Conference meetings. Thus we have seen the focus shift to more technical issues, such as scheduling approaches in the agriculture talks, and non-tariff barriers in the NAMA negotiations.<sup>135</sup> The agricultural talks took a new tack in 2012 as the onus moved in response to a submission made on food security by developing countries.<sup>136</sup> By the middle of 2012, Pascal Lamy joined other WTO Members (particularly the US) that had indicated a strong preference for the Organization to abandon the Single Undertaking and start making progress on any area where positive outcomes might still be achievable, by negotiating in plurilateral groups or "clusters".<sup>137</sup>

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<sup>134</sup> See James Bachus, *The Bicycle Club: Affirming the American Interest in the Future of the WTO* (2003) 37 *Journal of World Trade*, Vol. 37 (3), 2007, pp. 429–441, draft available at:

<http://www.worldtradelaw.net/articles/bacchusbicycle.pdf>, see p. 9. In particular

<sup>135</sup> See Bridges Weekly Trade News Digest • Volume 13 • Number 16 • 6th May 2009, at: <http://ictsd.org/i/news/bridgesweekly/46289/> (visited on 31 July 2013).

<sup>136</sup> See Bridges Weekly Trade News Digest • Volume 16 • Number 39 • 14th November 2012, at: <http://ictsd.org/i/news/bridgesweekly/149960/> (visited on 31 July 2013).

<sup>137</sup> This was indeed something that had started being advocated as early as 2011, where some members, seeing the progress made using this approach for an updated Government Procurement Agreement, also concluded it would be the best way forward in other areas, including in particular services; See Bridges Weekly Trade News Digest • Volume 16 • Number 29 • 25th July 2012, at: <http://ictsd.org/i/news/bridgesweekly/139026/> (visited on 31 July 2013).

There has also been some progress in other areas, seemingly far removed from the squabbles on subsidy and tariff cuts that characterized the agriculture and NAMA negotiations for so many years. This would include most notably trade facilitation<sup>138</sup>, which, if anything, promises to be the real deliverable as we head towards Bali. More limited progress has been made recently in talks on services, where again it seems as if the Single Undertaking has been relegated to the history books (where it perhaps belongs in an organization of 155 countries and separate customs territories). Reform of the Dispute Settlement Understanding has also seen limited progress and could possibly be another bunch of low-hanging fruit that the WTO might be able to harvest at the Bali meeting.<sup>139</sup> As we get closer to the December meeting and with the "last petrol stop on the road to Bali" having been passed in July<sup>140</sup> (with reportedly adequate progress<sup>141</sup>), the focus will need to narrow on a few core issues where forward momentum can be maintained. The next section turns away from the histrionics of the Doha Round with the inevitable speculation about what may or may not be achieved at Bali, and asks what to do with the WTO.

### 3. What to do with the WTO?

Since the collapse in July 2008, there has been a fair amount of navel gazing by the WTO itself<sup>142</sup>, as well as helpful advice by outside commentators on how to get the Organization beyond its current funk.<sup>143</sup> Not wishing to really add to this debate, this chapter limits itself to making three points, the first being that WTO Members do not necessarily need to be engaged in a perpetual negotiating round for the Organization to survive (consolidation trumps negotiation - at least for a while). This section discusses the fickleness of attempts to turn the WTO into just another economic development organization (which is totally at odds with its institutional psychology). Finally it discusses a few things that the WTO has managed and is managing to do

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<sup>138</sup> See Bridges Weekly Trade News Digest • Volume 16 • Number 29 • 25th July 2012, at: <http://ictsd.org/i/news/bridgesweekly/67633/> (visited on 31 July 2013).

<sup>139</sup> See Bridges Weekly Trade News Digest • Volume 16 • Number 29 • 25th July 2012, at: <http://ictsd.org/i/news/bridgesweekly/99586/> (visited on 31 July 2013).

<sup>140</sup> This was how Pascal Lamy put it, quoted in *Bridges Weekly Trade News Digest* vol. 17 (20) 6 June 2013, at: <http://ictsd.org/i/news/bridgesweekly/165342/> (visited on 31 July 2013).

<sup>141</sup> See "Lamy: 'Clearer' Road to Bali Ministerial, Though Work Remains", in *Bridges Weekly Trade News Digest* vol. 17 (27) 25 June 2013, at: <http://ictsd.org/i/news/bridgesweekly/173294/> (visited on 31 July 2013).

<sup>142</sup> See e.g. Panel on Defining the Future of Trade convened by WTO Director-General Pascal Lamy, *The Future of Trade: The Challenges of Convergence*, World Trade Organization, April 2013, at: [http://www.wto.org/english/thewto\\_e/dg\\_e/dft\\_panel\\_e/future\\_of\\_trade\\_report\\_e.pdf](http://www.wto.org/english/thewto_e/dg_e/dft_panel_e/future_of_trade_report_e.pdf) (visited on 31 July 2013).

<sup>143</sup> See e.g. Richard Baldwin and Simon Evenett (eds.), *Next Steps: Getting Past the Doha Round Crisis*, Centre for Economic Policy Research (CEPR), 2011, at: <http://www.iadb.org/intal/intalcdi/PE/2011/08348.pdf> (visited on 31 July 2013).



very well, and which the Organization should be encouraged and supported in doing further.

### **3.1. Debunking the bicycle theory**

It seems to be a well-rehearsed aphorism these days that the process of trade liberalization is like a bicycle, which, if it ever stops moving forward, will fall over. Fred Bergsten is generally credited with first coining this phrase in the 1970s<sup>144</sup>, and USTR Zoellick also invoked it in an op-ed he wrote for the New York Times a few weeks before the 2001 Doha meeting.<sup>145</sup> Blustein, in his detailed chronicle of the WTO covering the period from Seattle to July 2008 also makes a compelling case for the need for the legislative function of the WTO, i.e. its negotiating bodies (like the Trade Negotiations Committee or TNC) to constantly update the WTO agreements so that the Organizations' rules accurately reflect and govern the issues and tensions confronting the world trading system.<sup>146</sup> It is almost certainly wrong to assume that because the Doha Round has stalled, worldwide efforts to liberalize international trade have stalled with it. To be sure, efforts at achieving greater market opening and a reduction in trade barriers on a multilateral basis are currently on ice, but the march of trade and investment liberalization is moving on in different forms and *fora*. After all, what is the spaghetti bowl of preferential trading arrangements that has swept up so many WTO Members if not an unprecedented surge of energy towards the reduction of trade barriers (albeit on a discriminatory and thus admittedly "third-best" policy option basis<sup>147</sup>)? Many economists and trade policy commentators view the pivot towards preferentialism as an alarming move in the wrong direction.<sup>148</sup> Others<sup>149</sup> prefer to take a longer view, since, after all, was not the 1948 GATT first preceded by a slew of bilateral preferential trade agreements entered into by Cordell Hull under the Reciprocal Trade Agreements Act of 1938?<sup>150</sup> Taken together, the current two

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<sup>144</sup> See Fred Bergsten, *Toward a New International Economic Order*, Lexington Books, 1975, as quoted in Bachus (2003).

<sup>145</sup> See "The Record Shows It's the Open Traders Who Get Ahead" by Robert B. Zoellick, New York Times, 8 November 2001, at: [http://www.nytimes.com/2001/11/08/opinion/08iht-edrobert\\_ed3\\_.html](http://www.nytimes.com/2001/11/08/opinion/08iht-edrobert_ed3_.html) (visited on 1 August 2013).

<sup>146</sup> See Blustein's musings in Chapter 14 of *Misadventures of the Most Favored Nations*, op cit.

<sup>147</sup> The statement in brackets assumes that the "first best" policy option for liberalization is the unilateral lowering or elimination of trade barriers (desirable economically but not always achievable politically); the "second best" policy option is multilateral liberalization under the WTO or a similar framework; and that thus any liberalization undertaken in the form of preferential trading arrangements is little more than a "third best" policy option.

<sup>148</sup> Jagdish Bhagwati and Anne O. Krueger, *The Dangerous Drift to Preferential Trade Agreements*, American Enterprise Institute, 1995.

<sup>149</sup> Richard Baldwin and Patrick Low, *Multilateralizing Regionalism*, Cambridge University Press, 2009.

<sup>150</sup> Kenneth W. Dam, *Cordell Hull, The Reciprocal Trade Agreement Act, and the WTO*, Brookings, 2004, at: <http://www.brookings.edu/research/papers/2004/10/10globaleconomics-dam> (visited on 1 August 2013); for a

preferential trading arrangements being negotiated under the auspices of the Trans-pacific Partnership (TPP) and the Transatlantic Trade and Investment Partnership (TTIP) will cover close to 80 per cent of global GDP<sup>151</sup>. The discriminatory side effects of not being part of these agreements will be felt by only a small number of countries, which won't include most of the world's poorest nations, since these countries already benefit from duty free (and largely quota free) access to their main export markets under a variety of frameworks such as Everything But Arms (EBA), the African Growth and Opportunity Act (AGOA), the Generalised System of Preferences (GSP), and preferential access agreements like the EU's extensive network of Economic Partnership Agreements (EPAs)..

Even looking beyond the myriad of preferential trading arrangements, it is now possible to detect signs of forward-moving trade liberalization at the WTO, even in the absence of movement under the Doha Work Program. This was the case most recently of an expanded agreement on government procurement (eluded to above), and is now looking increasingly likely for trade in services. In fact, there are a number of areas where some sort of agreement is looking more than probable outside the constraints posed by the Single Undertaking, such as trade facilitation, a South-South agreement on duty free and quota free access for LDCs, even reform of the Dispute Settlement Understanding. Members, it seems, have increasingly come to see the Single Undertaking as a debilitating straight jacket that must be thrown off if anything is to be achieved in Geneva.

As a piece of political-economy orthodoxy, the bicycle theory contends that where the process of trade liberalization ceases moving forward, the global trading system inevitably succumbs to a rise in protectionism and a tendency for those countries that had traditionally shown leadership in trade negotiations, to become increasingly inward-looking. Although we have seen a rise in protectionism over the last few years since the economic crisis, this was invariably part of a broader, knee-jerk reaction by policymakers and trade ministry officials to the domestic micro- and macroeconomic

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more historically authentic source, see: Richard N. Gardner, *Sterling Dollar Diplomacy*, Oxford at the Clarendon Press, 1956.

<sup>151</sup> The TTIP and the TPP are reported as each covering approximately 40 percent and 60 percent of global GDP, see: The Washington Post article dated 8 July 2009 entitled "Talks over a huge U.S.-Europe trade deal start this week. Here's what you need to know" at:

<http://www.washingtonpost.com/blogs/wonkblog/wp/2013/07/08/talks-over-a-huge-u-s-europe-trade-deal-start-this-week-heres-what-you-need-to-know/> (visited on 1 August 2013); see also USTR press release dated 25 September 2008 entitled "Trans-Pacific Partners and United States Launch FTA Negotiations", at:

<http://www.ustr.gov/trans-pacific-partners-and-united-states-launch-fta-negotiations> (visited on 1 August 2013).

impacts of the crisis, rather than a symptom of the failure to achieve positive outcomes under the Doha process.

### **3.2. The WTO is not a development organization**

A little over a year after the collapse of the Cancun ministerial meeting in September 2003, when many people's faith in the development-centricity of the Doha Round was starting to fray considerably, a very interesting paper was published by Joseph Stiglitz and Andrew Charlton, entitled "The Development Round of Trade Negotiations In The Aftermath of Cancun".<sup>152</sup> Although this report contains a number of erroneous assumptions and naïve assertions<sup>153</sup>, its value was and remains the fact that it highlights, in easily understandable terms, what the Doha Work Program would look like if developing countries' interest were truly at the heart of the agenda. By the same token, the paper succeeded in pointing out just how far from such an agenda the emphasis of the Doha round had strayed. Thus it is, they argue, that if Doha were genuinely about the interests of developing countries, then its primary focus would be on reducing trade barriers to exports of labor-intensive goods (particularly textiles and processed foods) as well as agricultural commodities. In the area of services, a development round would logically have to prioritize the movement of workers in lower-skilled vocations such as maritime and construction, and provide easier access to labor markets in developed countries for developing-country workers in professions of obvious export interest to them, such as computer programmers, nurses, etc.<sup>154</sup> Surely by the time of the cotton fiasco at Cancun and the emptiness of the commitments on this issue that emerged from the July 2004 package, it should have been obvious to everyone that the Doha Round was as little about genuinely addressing the needs of developing countries as previous rounds had been.<sup>155</sup>

This is admittedly not an indictment of the Organization itself, but rather those who continue to misunderstand the true nature of the WTO and the treaty framework that

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<sup>152</sup> Joseph E. Stiglitz and Andrew Charlton, *The Development Round of Trade Negotiations In The Aftermath of Cancun*, Commonwealth Secretariat, 2004, available at: [http://www.policyinnovations.org/ideas/policy\\_library/data/01132](http://www.policyinnovations.org/ideas/policy_library/data/01132) (visited on 2 August 2013).

<sup>153</sup> For example, the paper asserts that the need to put the interests of developing countries' at the center of the negotiating agenda was the result of "a renewed spirit of collective responsibility for the challenges faced by poor countries, and also as a response to the perceived inequities generated by previous rounds of trade negotiations" (p. 2). As Blustein (op. cit.) has convincingly laid out, the focus on development was both an attempt by Mike Moore to "rebrand" the Organization in the aftermath of Seattle, and a (somewhat cynical) negotiating tactic in order to get reluctant developing countries to abandon their insistence on focusing on implementation issues and agree to the launch of a new round at Doha.

<sup>154</sup> See Stiglitz and Charlton (op. cit.) at p. 3.

<sup>155</sup> See for example, Timothy E. Josling, Stefan Tangermann and T.k. Warley, *Agriculture in the GATT*, MacMillan Press, 1996.

preceded it, the General Agreement on Trade and Tariffs. It is true that both the preamble to the GATT and the Marrakesh Agreement establishing the World Trade Organization explicitly and deliberately mention that one of the objectives pursued by these initiatives was and continues to be "raising standards of living, ensuring full employment and a large and steadily growing volume of real income and effective demand".<sup>156</sup> It is equally true that the preamble to the Marrakesh Agreement goes even further by stating "there is a need for positive efforts designed to ensure that developing countries and especially the least developed among them, secure a share in the growth of international trade commensurate with the needs of their economic development".<sup>157</sup> Nevertheless, this should in no way be misconstrued by anyone as meaning that the WTO is intrinsically geared towards achieving development outcomes. After all, the preamble to the Marrakesh Agreement also speaks of "allowing for the optimal use of the world's resources in accordance with the objective of sustainable development, seeking both to protect and preserve the environment"<sup>158</sup>, but nobody in their right minds would ever contend that the WTO is an environmental organization.<sup>159</sup> Economic growth was always one of the intended benefits (perhaps even the principle objective) of both the GATT and the WTO, and it was always to be achieved first and foremost by lowering trade barriers and eliminating discrimination in general (and not primarily for the benefit of developing countries). Whether or not this process serves the interests of developing countries was always going to be contingent on developing countries themselves and how well they understood and effectively managed to co-opt the organization's processes and dynamics to suit their own ends.<sup>160</sup> This last assertion might sound somewhat callous and probably ignores to a certain extent the distribution of power underlying how the WTO conducts its business, but the haphazard fashion in which many developing countries approach their membership of the WTO in many ways makes them their own worst enemies.

Nobody should mistake the fact that international economic policy and trade negotiations are a contact sport. The WTO is little more than the referee. Those countries that allocate sufficient political capital, personnel, technical expertise and

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<sup>156</sup> Second recital of the Preamble to the GATT.

<sup>157</sup> Third recital of the Preamble to the Marrakesh Agreement.

<sup>158</sup> First recital of the Preamble to the Marrakesh Agreement.

<sup>159</sup> In fact many would (incorrectly) contend just the opposite.

<sup>160</sup> Some would even argue that the kind of policy constraints imposed by WTO rules are even inimical to the process of development; see for example, Ha-Joon Chang, *Kicking Away the Ladder: Development Strategy in Historical Perspective*, Anthem Press, 2002; or more recently, Joe Studwell, *How Asia Works: Success and Failure in the World's Most Dynamic Region*, Grove Press, 2013.

monetary resources to playing this game seriously will do better than those countries that do not. To be sure, many developing countries and LDCs in particular are not in a position - due to considerable resource constraints - to pay proper attention to what is going on at the WTO, but this is not due to some failure on the part of the WTO as an organization. Rather this is just the nature of the world we live in, where some people and countries are endowed with more and others have less. We do not bemoan the fact that no LDC has ever won the World Cup, we just accept that this is probably due to the fact that other countries - including large developing countries - are just much better resourced and thus better able to consistently field strong teams.<sup>161</sup> Do we blame FIFA for this "injustice"? Of course not. Despite their resource constraints, and the myriad of more pressing policy priorities that developing countries and LDCs face, there are arguably many ways for them to be more effective at the WTO than they have been before and during the Doha Round.

The haphazard way in which the Cotton 4 approached this issue is a glaring example: If they had pursued a dual track of litigation AND negotiation, they would arguably at least be hundreds of millions of dollars richer by now, rather than just disgruntled.<sup>162</sup>

This said, it is important not to conclude that the WTO is an organization that cannot achieve development outcomes, since it can and does. But it should be borne in mind that development is only likely to become the WTO's primary focus once developing countries start writing the work programs for future negotiating rounds, rather than letting developed countries do this for them (which is what happened at Doha). Whether developed countries will let developing countries do this is another matter entirely, and will of course depend on what developing countries are prepared to give developed countries in return for this. After all, the WTO is nothing if not a tit-for-tat organization, a *negotiating forum*, a place where countries *exchange* concessions.

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<sup>161</sup> The FIFA World Cup has only ever been won by the following eight national teams: Brazil, Italy, Germany, Argentina, Uruguay, France, Spain, England; LDCs appear to qualify quite infrequently, but have started to do so more commonly over the last 2 decades; see: David Arscott, *The World Cup, A Very Peculiar History*, Salariya, 2012.

<sup>162</sup> Brazil doggedly litigated against the US cotton subsidies and refused to simply let the US off the hook, so that in the end, the US ended up agreeing to pay USD 147.3 million to Brazilian cotton farmers, a most unusual remedy for the WTO; see: Randy Schnepf, *Brazil's WTO Case Against the U. S. Cotton Program*, Congressional Research Service, 2010, at: [www.fas.org/sgp/crs/row/RL32571.pdf](http://www.fas.org/sgp/crs/row/RL32571.pdf) (visited on 2 August 2013).

### **3.3. Things the WTO does well**

It should be relatively clear to most observers that as the former Director General Mike Moore liked to repeat, the dispute settlement system is undoubtedly the jewel in the Organization's crown. Compared to the gridlock that the GATT system of dispute settlement succumbed to when the US tried (unsuccessfully) to use it in the 1980s to pry open European agricultural markets that had been closed by the Common Agricultural Policy, the WTO's dispute settlement system is a remarkable piece of international treaty making and has served its purpose surprisingly well. Only a limited number of disgruntled elements would probably argue that the dispute settlement system needs a radical shakeup beyond a bit of tinkering at the margins, as is currently going on in the negotiations on dispute settlement reform. Although there have been a limited number of cases that have shown what the limits of the dispute settlement system are in forcing countries to make changes that are politically difficult for them, overall, it is probably safe to say that the consensus is certainly leaning in favor of preserving and strengthening the dispute settlement function of the WTO.

Another thing that the WTO has proven exceedingly useful for is monitoring how Members are doing in terms of implementing their commitments. This happens under various instruments, the most prominent of which would have to be the Trade Policy Review Mechanism, which subjects all WTO Members to a periodic review of their trade regimes and their compliance with WTO rules. Another more recent innovation in this area has been the trade monitoring reports, one of which is performed by the Secretariat alone and covers "trade-related developments covering the whole WTO membership and observers", the other of which the WTO does in collaboration with the OECD and UNCTAD, and which focuses on "trade and investment measures taken by G-20 economies".<sup>163</sup> Finally, the various committee meetings that take place under the specific mandates set forth in different WTO agreements are also a very useful forum for Members to monitor and discuss trade related issues. One example of this (among many) is the Committee on Technical Barriers to Trade, which meets regularly by virtue of Art. 13 of the TBT Agreement. At these meetings, representatives from WTO Members can raise trade-related concerns of activities by other Members who have enacted or plan to enact technical regulations, standards or conformity assessment procedures that threaten to have a trade impact on exports of interest to them. Thus it was that at the meeting of the TBT Committee that took

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<sup>163</sup> See: [http://www.wto.org/english/tratop\\_e/tpr\\_e/trade\\_monitoring\\_e.htm](http://www.wto.org/english/tratop_e/tpr_e/trade_monitoring_e.htm) (visited on 2 August 2013).

place on 27-28 November 2012, Members discussed thirty-six different new and recurring trade concerns, including a proposal to introduce plain packaging for tobacco products in New Zealand, and import permit regulations for horticultural products from the Ministries of Agriculture and Trade in Indonesia.<sup>164</sup> Thus monitoring is undoubtedly an important function of the WTO that nobody would wish to see abolished.

Another area where there is arguably a large degree of consensus among economists, trade lawyers and policy makers is that a number of issues exist where negotiations only really make sense when done at the multilateral level and thus at the WTO, the most important of which would have to be subsidies. After all, there is no reason to negotiate reductions in subsidies vis-à-vis a single trading partner and to make difficult political-economy cuts to such programs when they will ultimately do little more than improve the market access of another subsidizing country not party to the same reduction commitments. The same is arguably true for rules on intellectual property rights, prudential regulations, currency manipulation, trade-related environmental measures and a myriad other economic policy areas that are susceptible to international arbitrage as economic actors seek out jurisdictions with the lowest possible compliance costs. On issues such as these, we need an international organization that can act as a forum for negotiations that deliver enforceable outcomes, and we are in fact lucky to already have one in the form of the WTO (at least for some of these issues).

Finally, the thing that the WTO does well is balancing out (to an admittedly limited albeit very real extent) the power asymmetries that naturally arise when big, economically powerful and well-organized countries come to the same negotiating table as small, economically weaker and less well-organized countries. Think of the miss-match in economic strength and trade policy expertise that is at play when a developing country like the Philippines negotiates an economic partnership agreement with Japan, or Columbia negotiates an FTA with the United States. It is arguably power imbalances such as these that allow the EU to get away with concluding preferential trading arrangements with many smaller trading partners that explicitly carve out important areas like contingency protection from the dispute settlement provisions of these agreements. The "victory" that developing countries scored over the EU at Cancun, ultimately forcing Pascal Lamy to abandon any of the

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<sup>164</sup> See Committee on Technical Barriers to Trade, Minutes of the Meeting of 27-28 November 2012 (G/TBT/M/58).

Singapore Issues except the one that developing countries were favorable to would be unthinkable in a more limited setting where one or a handful of developing countries face off against the EU as the sole hegemon in the room. The ability of the WTO to create a more level playing field (an admittedly tired and over-used cliché) for developed and developing countries has been analyzed and documented in a number of articles including a very insightful one by Cristina Davis in 2005, that compares the differences in outcomes between Vietnamese catfish exporters (when Vietnam was not yet in the WTO) and Peruvian exporters of sardines when faced with trade barriers in rich-country export markets.<sup>165</sup> The WTO undoubtedly still has its uses in this respect and we cannot afford to do without it.

## **Conclusion**

As WTO Members shuffle hesitantly towards Bali, prospects remain unsure as to whether this will finally be the Ministerial Conference that draws a line in the sand and thrusts a stake into the heart of the Doha Round, thus terminating it for good, or whether we are in for more drama-laden histrionics and the frustration of yet another collapse, or whether this meeting will be used to consolidate the progress made up to now and put the Organization back on a path towards achieving some modest albeit positive outcomes. The truth is that nobody really knows what will transpire at Bali, and the language coming out of Geneva, particularly the statements of the US Ambassador Michael Punke, give one little enough reason for optimism.<sup>166</sup>

To be sure, the new Director General Roberto Azavedo and his team can impart fresh new momentum and steer the Bali meeting and ultimately the Doha Round to a positive outcome. It will be interesting to observe how the new DG and his team use the limited time they have in office before the Bali meeting commences, but it will undoubtedly be a mixture of managing expectations while trying to edge Members towards consensus. In many ways this is slightly reminiscent of the Tokyo Round, which also largely took place through troubled economic times and which failed to achieve outcomes in a few important areas, such as agriculture and safeguards.

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<sup>165</sup> Christina I. Davis, Do WTO rules create a level playing field? Lessons from the experience of Peru and Vietnam, in: John S. Odell (ed.), *Negotiating Trade, Developing Countries in the WTO and NAFTA*, Cambridge University Press, 2006, pp. 219 - 256.

<sup>166</sup> See Statement by U.S. Ambassador to the WTO Michael Punke at a Meeting of the Trade Negotiations Committee at the World Trade Organization dated 11 April 2013 at: <http://www.ustr.gov/about-us/press-office/speeches/transcripts/2013/april/amb-punke-statement-wto-tnc>; this statement was followed a couple of months later with one only slightly more optimistic, see Statement by Ambassador Michael Punke at a Meeting of the World Trade Organization's Trade Negotiations Committee dated 22 July 2013, at: <http://www.ustr.gov/about-us/press-office/speeches/transcripts/2013/july/amb-punke-WTO-tnc> (visited on 3 August 2013).



Nevertheless, GATT Contracting Parties and the GATT Director General Olivier Long were able to snatch victory from the jaws of defeat and conclude the round with some notable successes.<sup>167</sup> It is more than remotely likely that history will repeat itself here, and that Bali may just provide the impetus needed to finally put all of us out of our Doha-related misery.

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<sup>167</sup> See, Gilbert R. Winham, *International Trade and the Tokyo Round Negotiation*, Princeton University Press, 1986.

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## **About the sponsoring institutions**

### **ERIA**

The Economic Research Institute for ASEAN and East Asia (ERIA) was established at the 3rd East Asia Summit (EAS) in November 2007, with agreement by all the leaders at the 3rd EAS. ERIA's aim is to contribute intellectually to regional efforts at East Asian economic integration in wide-ranging policy areas. ERIA works closely with both the ASEAN Secretariat and 16 research institutes to undertake and disseminate policy research and provide analytical policy recommendations to Leaders and Ministers at their regional meetings. Capacity building aimed at strengthening policy research capacities, especially in the less developed countries, is another important issue for ERIA. ERIA conducts its research under three pillars: 'Deepening Economic Integration', 'Narrowing Development Gaps', and 'Sustainable Development'. Research covers a wide range of policy areas, such as trade and investment, globalization, and SME promotion, human resource and infrastructure development, as well as energy and environment issues. ERIA organizes seminars and symposia with the aim of nurturing a sense of community in the region, seeking inputs from stakeholders, as well as disseminating ERIA-related research findings. Under the broad mandates from East Asia Summits, ASEAN Summits and related Ministerial Meetings, ERIA has been providing policy recommendations on various occasions to stimulate economic growth, deepen regional integration and strengthen partnerships in East Asia. For more information, see <http://www.eria.org/>.

## **UPH**

Established in 1994, Universitas Pelita Harapan (UPH) has quickly become one of Indonesia's leading institutions of higher learning and the country's top-ranked private university. While consistently underlining the vision of 'knowledge, faith and character', UPH, in cooperation with overseas partner universities, has developed a very rich curriculum in many areas of study, ensuring that its graduates are respected globally and appreciated by modern business and industries. UPH has expanded strategic partnerships with prestigious overseas universities, which include the National University of Singapore, Queensland University of Technology and Murdoch University in Australia, Biola University in the United States, Ilmenau University of Technology in Germany, Xiamen University in China, as well as, most recently, the World Trade Institute at the University of Bern, in Switzerland, with whom it has developed a highly innovative new Masters programme in International Trade, Investment and Competition (MTIC) through funding from the Swiss State Secretariat for Economic Affairs (SECO). UPH has also entered into partnerships with leading multinational and national companies, such as Microsoft, Intel, Toshiba, Matahari, Multipolar, and Lippo Karawaci. Such cooperation aims at ensuring that the University's learning concepts, curriculum and infrastructure are always up to date and enriched by state-of-the-art technology and business practices. UPH is committed to providing excellent holistic education and learning, supported by world-class facilities, technology, and infrastructure. UPH graduates have been well received by other universities and major corporations both in Indonesia and in other countries. UPH is currently establishing a Global Campus, with international programmes and e-learning systems supported by a Digital Smart-Campus. For more information, see <http://www.uph.edu/>.

## **WTI**

The World Trade Institute (WTI) is a centre of excellence of the University of Bern, Switzerland. Established in 1999, it is one of the world's leading academic institutions dedicated to the regulation of international trade. The WTI transcends boundaries by fusing law, economics and international relations in interdisciplinary research, training, advisory work and technical assistance in Switzerland and abroad. The WTI was the first, and is the most experienced institution in the world offering a specialized postgraduate degree in the law and economics of international trade regulation, through its flagship Master of International Law and Economics (MILE) program. The WTI also hosts a multidisciplinary Doctoral School of Economic Globalization and Integration. Students benefit from the Institute's global faculty, consisting of leading scholars and practitioners drawn from the ranks of the world's most prominent universities, policy research institutions, law firms and international organizations. The WTI aims to equip students with the practical skills and knowledge to meet the ever evolving challenges of global governance. The WTI pursues different lines of activity in the fields of research, training, and advisory services. Tailor-made courses

and consulting for professionals from Ministries, organizations and private industry are based on cutting edge policy research. The WTI cooperates closely with the University of Bern's Department of Economic Law, with which it shares its premises. As host institution of the Swiss National Centre of Competence in Research on Trade Regulation, the WTI is also at the core of a global research network connecting our students to researchers, practitioners and our own alumni in the field. Its purpose is to develop innovative policy recommendations, which reflect a better balance between economic and other regulatory objectives. For more information, see [www.wti.org](http://www.wti.org).



## **THE ROAD TO BALI:**

### **ERIA Perspectives on the WTO Ministerial and Asian Integration**

The World Trade Organization's (WTO) forthcoming Ninth Ministerial Conference in Bali comes at a critical juncture for the multilateral trade body, long mired in the Doha Round stalemate. Beyond offering a critical first test at consensus-building and institutional renewal, the Bali Ministerial affords a unique opportunity to gauge contrasting perceptions across ASEAN and East Asian countries of the continued relevance of the WTO to trade and economic governance within the region and beyond.

Resulting from the collaborative efforts of the Economic Research Institute for ASEAN and East Asia (ERIA), the Universitas Pelita Harapan (UPH) and the World Trade Institute at the University of Bern (WTI), this policy research initiative offers comparative scholarship on some of the key questions arising from the forthcoming WTO Ministerial gathering from an East Asian perspective. Specifically, it explores what scholars in the region expect the Bali Ministerial to produce by way of tangible outcomes and whether the Ministerial will restore the momentum needed to bring the Doha Round to a successful conclusion. Contributors also investigate how relevant the WTO remains to the multiple processes of deepening economic integration in ASEAN and East Asia (e.g. AEC, TPP, RCEP) and, importantly, what lessons in rule-design and market opening WTO Members could usefully draw from the ongoing march towards the establishment of an ASEAN Economic Community.

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