

Chapter **II.10**

Expected Outcomes from the Bali Ministerial Conference: The view from Myanmar

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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.⁵¹

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

⁵¹ 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,⁵² 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

⁵² 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,⁵³ 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.⁵⁴ 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

⁵³ 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.

⁵⁴ 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?⁵⁵ 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

⁵⁵ 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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