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Prospects of the Bali Ministerial Conference

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Prospects of the Bali Ministerial



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Prospects of the Bali Ministerial Conference

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Abstract: This paper looks at the possibilities of a concluding “Bali package” on the issues that are currently engaging the WTO Members. It gives an account of the discussions currently taking place on each of the three areas and makes an assessment whether it is possible for the key countries to arrive at a consensus in time for the Ministers to give their endorsement in Bali.

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Introduction

In a couple of weeks, Members of the World Trade Organization (WTO) will congregate in Bali for the Ninth Ministerial Conference. This Conference will take place 12 years since the decision was taken to launch the Doha Round negotiations. The time that has elapsed since the WTO Members started the Doha Round negotiations 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 current impasse seems hardly surprising given the wide range of interests across the diverse groupings of countries that have articulated their views in the negotiations.¹ This complexity seems to have escaped the architects of the Doha Round: after all, they gave the member countries no more than four years to complete the deal, which included at least three major components, besides several specific issues of critical concern.

The first component was the so-called “implementation issues”², 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 liberalisation agenda across all sectors. The third brought in four new areas, viz. 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 realisation of public health imperatives.³ All the components of the negotiating mandate were expected to be addressed keeping in view the development concerns of the 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).⁴

The tone for the Doha Round negotiations were set even before the mandate was unveiled in 2001. Some of the major and the more contentious agreements like those in agriculture,

¹ 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).

² For details, see, WTO (2001), Implementation-Related Issues and Concerns, Decision of 14 November 2001, WT/MIN(01)/17, 20 November.

³ This concern was reflected in the adoption of the Doha Declaration on TRIPS Agreement and Public Health. For details see, WTO (2001), Declaration on the TRIPS Agreement and Public Health, Adopted on 14 November 2001, WT/MIN(01)/DEC/2, 20 November.

⁴ 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 Programme adopted in this Declaration”; WTO (2001), Ministerial Declaration, adopted on 14 November 2001, WT/MIN(01)/DEC/1, 20 November, paragraph 2.

services and intellectual property rights, had in-built review mechanisms,⁵ through which WTO members were engaged in negotiations even before the Doha Round had commenced. These negotiations brought out the hiatus between the developed and the developing country positions in quite a stark manner. In agriculture, developing countries have argued that the WTO Agreement on Agriculture must take into consideration the interests of the low income and resource poor producers by providing them higher level of protection, while developed countries have sought larger market access to promote the interests of the large conglomerates, in particular. In the area of services, where several developing countries, including India, have argued for higher degree of market opening, especially under Mode 4, which would allow job-seekers better access to international markets, developed countries have been rather lukewarm in their response. In the area of intellectual property rights, there were two key issues. The first was the conflict between the owners of patent and the users of products on which patent protection was extended. The most acute form in which this conflict appeared was in the pharmaceutical sector where the global conglomerates that own an overwhelming majority of patents have tried to secure supernormal rents at the cost of the patients. This tendency had imposed considerable burden on the poorer patients in the developing countries. The second conflict arose when developing countries sought to protect their biodiversity and traditional knowledge through the adoption of an effective discipline under the TRIPS Agreement.

An oft-ignored aspect of the Doha Round is that its architects had envisioned a balanced outcome by ensuring that negotiations in all the mandated areas conclude 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” could only be done when WTO Members have concluded agreements on all areas.⁶ The WTO-speak in this regard said it all: “nothing was agreed until everything was 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 suited their interests best (euphemistically called “cherry picking”) and to go slow (or even ignore) in areas in which they had to make concessions. Thus, countries could engage in inter-sectoral trade-offs and this was seen as a measure to ensure a balanced outcome.⁷

⁵ AIE, services negotiations

⁶ The concept of “single undertaking” was introduced in the lexicon of the multilateral trading system in the Uruguay Round negotiations (1986-93), see, GATT (1986), Ministerial Declaration on the Uruguay Round, Multilateral Trade Negotiations: The Uruguay Round, MIN.DEC, 20 September 1986, paragraph B (ii), page 2.

⁷ Ministers of WTO Member countries 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.

In terms of the negotiating dynamics, however, parallel movement in the negotiating areas has not quite been in evidence. In the first few years of the Doha Round negotiations, there was appreciable movement in the areas of agriculture and market access of non-agricultural products, while more recently, most of the essential elements of a possible agreement in the relatively new area of trade facilitation are being negotiated by the WTO membership. However, most other areas, including services and intellectual property rights, in which several developing countries have proactive agenda, have remained on the back burner.

The high 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 the Bali Ministerial Conference underlines the extent of erosion of expectations. The agenda engaging the WTO membership looks thin in relation to the overall negotiating mandate of the Round as they cover three areas, viz., trade facilitation, agriculture and a package for the least developed countries. Even within this narrow spectrum, the focus of the pre-Bali engagements have largely been on the first two issues.

This paper looks at the possibilities of a concluding “Bali package” on the issues that are currently engaging the WTO Members. It gives an account of the discussions currently taking place on each of the three areas and makes an assessment whether it is possible for the key countries to arrive at a consensus in time for the Ministers to give their endorsement in Bali.

A. Agriculture Issues

Agriculture has once again appeared as a major area of engagement for the WTO Members in the run-up to the Bali Ministerial. The issues currently under discussion have been raised by the two developing country formations, G-33 and G-20. While the former has raised issues that are focused on furthering the objectives of food security and rural livelihoods, which have formed the core demands of this group, the G-20 has argued for the introduction of measures that would enhance the effectiveness of the disciplines in the areas of export competition and tariff quota administration.

B. G-33 Proposal on Food Security

Towards the end of 2012, G-33 tabled a proposal for the inclusion of specific elements in the Draft Modalities, which, in their view, could address food security issues in their countries.⁸ The proposal was to introduce two sets of amendments in the “Green Box” (Annex 2 of AoA), which would allow developing countries realise their objectives of food security more effectively. These proposals were not new, having been included in the Draft Modalities tabled by the then Chairman on Agriculture in 2008.⁹ The intent of G-33 to get a decision in the Bali Ministerial “on one of the elements of the Doha Ministerial Declaration (DMD) which is of importance to developing countries, viz. food security”.¹⁰

The first of these amendments was aimed 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, paragraph 2 of Annex 2 of AoA was proposed to be amended by including payments by developing countries for farmer settlement, land reforms, rural development and rural livelihood security such as provision of infrastructural services, land rehabilitation, soil conservation and resource management, drought management and flood control, rural employment programmes, nutritional food security, issuance of property titles and settlement programmes.

A second set of amendments was proposed by G-33 to modify the existing provisions relating to public stockholding for food security purposes. The first of these said that developing countries should be allowed to acquire food stocks for supporting low-income or resource-poor producers and the cost of so doing will not be accounted for in their aggregate measure of support (AMS)¹¹. Secondly, when developing countries acquire foodstuffs from low-income or resource poor producers for programmes to fight hunger and rural poverty and for providing food to urban and rural poor at subsidised prices, the difference between the cost of acquiring the foodstuff and the “external reference price”¹² would not have to be included in the AMS. These textual amendments would therefore allow developing countries to both support poorer farmers and implement targeted food security programmes without being subjected to the subsidies' disciplines of the AoA.

⁸ 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, JOB/AG/22, 13 November.

⁹ WTO (2008), Revised Draft Modalities for Agriculture, TN/AG/W/4/Rev.4, 6 December.

¹⁰ 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, JOB/AG/22, 13 November, paragraph 3.

¹¹ Includes all subsidies that are deemed to distort production and trade. These include, input subsidies and price support measures. The AoA puts a cap on the AMS that can be provided.

¹² According to the AoA, the “fixed external reference price” was based on the years 1986 to 1988 and was to be “the average f.o.b. unit value for the basic agricultural product concerned in a net exporting country and the average c.i.f. unit value for the basic agricultural product concerned in a net importing country...” See, Agreement on Agriculture, Annexure 3, paragraph 9.

G-33 pressed for the above-mentioned amendments since the provisions of the Green Box in the AoA allowing the government stockholding programmes for food security purposes in developing countries included conditions, which, over time, have imposed severe limits on the ability of these countries to implement food security programmes. Foodstuffs are being acquired from farmers at administered prices that are moving upwards since they reflect the increasing cost of production, but ironically, these prices are being benchmarked against the fixed external reference prices, which are more than quarter of a century old, i.e. 1986-88. Ironically, when this methodology of calculating domestic support was evolving in the Uruguay Round, participating countries had opined that the fixed reference price will “be applied for a negotiated period” and that this “price may be subject to periodic reassessment”.¹³

The “fixed external reference price”, which was taken as the *de facto* internationally competitive price, therefore no longer remains the *numeraire*. Strangely, no member had raised this problem with the “external reference price”, either during the mandated review of the AoA that took place during 1999-2001 or as a part of the agriculture negotiations in the Doha Round. The developed countries have no interest in reviewing the base period, as they have moved most of their subsidies to non-product specific or the Green Box category. In its recent submission¹⁴, the G-33 has taken the first step towards altering this anomalous situation. The group proposed that for the purposes of calculating AMS in respect of provisions relating to public stockholding for food security purposes, the “external reference price” should be expressed or derived from either of the following options: (i) “a three-year average [FOB or CIF price] based on the preceding five-year period, excluding the highest or the lowest entry” or “Olympic average”, or (ii) previous-year’s average producer/farm-gate price in the 1-3 largest suppliers of a foodstuff in the country concerned.

The above-mentioned suggestion to amend the “external reference price” formed a part of a G-33 proposal to conclude an Understanding on "Governmental Stockholding Programmes for Food Security Purposes" as defined in Footnote 5 of Paragraph 3 of Annex 2 ("Green Box") of the Agreement on Agriculture (AoA) in the Bali Ministerial Conference. Further, the proposed “Understanding” was one of the three options that the group had put forth in order to find a solution for the problems that the developing countries could encounter while carrying out public stockholding for food security purposes. The two other options were in the form of “Decisions”. The first of these would have allowed inflation adjustment of AMS, taking note of the influence of excessive rates of inflation faced by developing countries, and the second was the inclusion of a “peace clause”, which would have allowed these countries

¹³ GATT (1990), Framework Agreement on Agriculture Reform Programme: Draft Text by the Chairman, Multilateral Trade Negotiations the Uruguay Round, MTN.GNG/NG5/W/170, 11 July, paragraph 5.

¹⁴ WTO (2013), G-33 Non Paper, Committee on Agriculture, Special Session, JOB/AG/25, 3 October, page 3.

to acquire foodstuffs to meet food requirements of urban and rural poor without having to face disputes. As regards the “peace clause”, the G-33 argued that this should remain in force “until a final mechanism is established to address the food security concern of the developing countries under Doha development agenda”.¹⁵

In the run-up to the Bali Ministerial, the focus of discussions on the G-33 “food security” proposal has been on the “peace clause” option. Chair of the Committee on Agriculture described this option as an “interim solution”,¹⁶ while indicating that members had identified several components that would be necessary for making this mechanism work. These include: (i) the nature of the “solution” (whether it is to be political or legally binding); (ii) its character (automatic, non-automatic or hybrid); (iii) its coverage; (iv) transparency and reporting; (v) safeguards that might be appropriate to minimize distorting effects; (vi) other terms and conditions; (vii) duration and review, and (viii) post-Bali work. Importantly, the emphasis of the discussions was shifting towards limiting of the coverage to traditional staple food crops and introduction of a set of notification and other transparency obligations.¹⁷ There is, thus, an obvious move to restrict the use of the proposed “food security” mechanism with a number of restrictive conditions.

Some of these conditions can involve considerable additional burden on the developing countries intending to use the mechanism, including those being proposed under the rubric of “Notification and Transparency”. Countries may be required to: (i) notify that they are exceeding or are at risk of exceeding their AMS limits as result of its public stockholding programmes for food security purposes; (ii) provide on an annual basis information for each public stockholding programme that they maintain for food security purposes; and (iii) hold consultations with other Members on the operation of their public stockholding programmes. Finally, the use of the proposed mechanism could be restricted to less than five years.

It is quite clear that the negotiating dynamics have threatened to reduce the G-33 proposal to a non-starter. The moves towards circumscribing the use of the proposed mechanism through the introduction of restrictive conditions have rendered it quite unattractive for the proponents.

It seems that the developing countries are yet again failing in their attempt to reduce the inherent imbalances in the AoA. The failure on the part of the developing countries shows up in three areas, which we shall allude to in the following.

¹⁵ WTO (2013), G-33 Non Paper, Committee on Agriculture, Special Session, JOB/AG/25, 3 October, page 6.

¹⁶ WTO (2013), Informal TNC Meeting at the Level of Head of Delegation, Trade Negotiations Committee, JOB/TNC/23, 15 October, page 4.

¹⁷ WTO (2013), Informal TNC Meeting at the Level of Head of Delegation, Trade Negotiations Committee, JOB/TNC/26, 26 October, Annex III, page 6.

1. The negotiating dynamics indicate that the G-33 have failed to garner support for the option, which included a change in period for the “external reference price”, i.e. from 1986-88 to a more recent period. As stated above, there are compelling reasons for making this amendment in the AoA, for this would have provided a reasonable basis for the measuring the extent of AMS granted by the WTO members.

There is a plausible reason why the United States and the European Union, in particular, did not support this suggestion. Both these members of the WTO have moved a long way off from using price-based support, and have been using direct transfers instead. In 2010, less than 8% of the total agricultural support provided by the United States was included in the price-based, while the share of this form of subsidies in European Union’s total farm support was less than 13% in 2009-10. Thus, the two largest providers of agricultural subsidies have shifted to using forms of farm support for which they make very little use of the “external reference price”. However, the converse is true for developing countries like India, for whom the “external reference price” is central, not only for providing producer support, but, more critically, for their domestic food aid programmes.

2. While the G-33 proposal on food security runs the risk of derailment/dilution, the US retains the freedom to continue with its domestic food aid programme¹⁸ even when the bases for implementing these programmes are questionable on two counts. The first is that the domestic food aid programme of the United States, established in the early 1930s, was conceived of as a surplus disposal programme and was managed by the Federal Surplus Relief Corporation (FSRC).¹⁹ More recently, an explicit link was made between the main food aid programme, the Supplemental Nutrition Assistance Programme (SNAP) and the farmers’ markets. The Food and Nutrition Act of 2008 proposed to “increase access to farmers markets by participating households through the electronic redemption of supplemental nutrition assistance program benefits at farmers’ markets”. By the end of FY 2008, 753 Farmers’ Markets were authorised to accept SNAP benefits nationwide. Perhaps not surprisingly, commentators have argued that the Food Stamp Program “is one of the Federal Government’s primary countercyclical assistance programs, providing assistance to

¹⁸ The importance of food aid in the US can be gauged from the fact that in 2010 it constituted almost 80 percent of total Green Box support and received almost \$20 billion of the stimulus package under the American Recovery and Reinvestment Act of 2009.

¹⁹ United States Secretary of Agriculture Henry A. Wallace later said of the creation of the FSRC: “Not many people realized how radical it was – this idea of having the Government buy from those who had too much, in order to give to those who had too little. So direct a method of resolving the paradox of want in the midst of plenty could never have got beyond the discussion stage before the crisis years of 1933” See Dennis Roth, *Food Stamps: 1932 –1977: From Provisional and Pilot Programs to Permanent Policy*, Economic Research Service, U.S. Dept. of Agriculture <http://www.nal.usda.gov/ric/ricpubs/foodstamps.htm>

more households during a recession and to fewer households during an economic expansion”.²⁰

The second problem is regarding the criterion of entitlement. The United States maintains a vaguely defined criterion of entitlement²¹ to the SNAP. By doing so, the United States has been able to synchronize SNAP entitlements with economic cycles; thus generating demand for agricultural production during slumps. This is against the spirit of Paragraph 4, Annex 2 of the AoA, which requires that eligibility to receive domestic food aid shall be subject to a “clearly-defined criteria related to nutritional objectives”.

3. An important element in the current discussions is on the duration of the “peace clause” proposed by the G-33. Although the group had suggested that the “peace clause” will hold as long as a long-term solution to the problem of public stockholding for food security purposes was not found, this suggestion was unlikely to go very far given the strong opposition from the farming groups in the United States.²²

It may be pointed out that the discussion regarding the “peace clause” is not new in the context of the WTO is not new. Article 13 of the AoA shielded the major subsidies granted by the United States and the European Union (both domestic support and export subsidies) against any dispute that other WTO members could initiate. This cover was provided for a period of nine years, not only in respect of the relevant provisions of the AoA, but also in respect of the relevant provisions of the Agreement on Subsidies and Countervailing Duties.

C. G-20 Proposals on Export Competition and Administration of Tariff Rate Quotas

One of the major decisions taken in the 6th 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”.²³ However, even as

²⁰ Hunger Prevention Act of 1988 (P.L. 100-435, 102 Stat. 1645-1677, Sept. 19, 1988) authorizes pilot projects to test the efficiency and effectiveness of EBT for implementing the food stamp program. This followed the use of EBT for the first time in 1984. For details see, USDA (2009), “Electronic Benefits Transfer (EBT) Status Report”, accessed from http://www.fns.usda.gov/fsp/EBT/ebt_status_report.htm.

²¹ The eligibility criterion for SNAP is defined in terms of households whose incomes are “determined to be a substantial limiting factor in permitting them to obtain a more nutritional diet”.

²² “U.S. Ag Groups Express Opposition to WTO Food Security Peace Clause”, Inside U.S. Trade, 1 November 2013 (accessed from: <http://insidetrade.com/Inside-US-Trade/Inside-U.S.-Trade-11/01/2013/us-ag-groups-express-opposition-to-wto-food-security-peace-clause/menu-id-710.html>).

²³ Ministerial Declaration, Adopted on 18 December 2005, WT/MIN(05)/DEC, 22 December 2005, paragraph 6.

recently as in 2010-11, the EU and its member states, which have been the largest user of export subsidies, had continued to use such subsidies.²⁴

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 include both export subsidies and export credits.²⁵

According to this proposal, by the end of 2013, developed country members shall reduce their export subsidy 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 2003-05 base-period.

As regards export credit, G-20 has proposed that the maximum repayment term for developed countries shall not be more than 540 days from the "starting point of credit"²⁶ and ending on the contractual date of the final payment.

The proposed Ministerial Declaration includes "special and differential treatment" (S&DT) for developing countries. In case of export subsidies, developing countries would continue to benefit from the provisions of Article 9.4 of AoA²⁷ for five years after the end of all forms of export subsidies. Further, the limit for repayments of export credit proposed for developed countries will be applicable to the developing countries three years after the former begin implementing it.

G-20 has submitted a more recent proposal that aims at improving the functioning of tariff quota mechanism.²⁸ The proposal has two elements: one, improving the transparency of tariff quota administration, and two, importing Members would have "to ensure that unfilled tariff quota access is not attributable to administrative procedures that are more constraining than an "absolute necessity" test would demand". In case of the latter element of its proposal, G-20 suggested ways in which the problem of unfilled quotas can be addressed in

²⁴ The outlay on export subsidies was about € 177 million, while the quantity of subsidised products was nearly 2 million tonnes. As compared to 2009-11, there was a halving of its outlay on export subsidies, but quantity of subsidised exports had declined by a modest amount: from 2.5 million tonnes to 2 million tonnes. For details, see WTO (2012), Notification: European Union - Export subsidies, Committee on Agriculture, G/AG/N/EU/6, 16 March, Geneva and WTO (2013a), Notification: European Union - Export subsidies, Committee on Agriculture, G/AG/N/EU/14, 13 June, Geneva.

²⁵ WTO (2013), Ministerial Decision on Export Competition: G-20 Non-Paper, Committee on Agriculture Special Session, JOB/AG/24, 21 April, Geneva.

²⁶ 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.

²⁷ 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 favourable than for domestic shipments.

²⁸ WTO (2013), Understanding on Tariff Rate Quota Administration Provisions of Agricultural Products, as Defined in Article 2 of the Agreement on Agriculture: G-20 Non-Paper, Committee on Agriculture, Special Session, JOB/AG/20, 5 October.

cases where “the fill rate has remained below 65 per cent for three consecutive years”²⁹ and the “fill rate has not increased, for each of the preceding three years”.³⁰ Further, Members who would be covered by this proposal will indicate the method of tariff quota administration³¹ that they would like to adopt, which they will then have to maintain for a minimum period of two years. The proposal has suggested that developing country will enjoy special and differential (S&D) treatment Members may choose an alternative tariff-quota administration method or maintain the current method in place.

The G-20 proposals have received only lukewarm responses from the members. In case of export competition, there is a consensus among Members on continued engagement, including annual discussions, on developments relating to the various elements of this discipline. However, on the critical issue of specific commitment by Members on the “use of all forms of export subsidies and all measures with equivalent effect”,³² no forward movement is visible. In the discussions on tariff quota administration, the Members have differed on the S&D provisions contained in the proposal.³³

D. Agreement on Trade facilitation

Although several of its elements form a part of the GATT, trade facilitation (TF) was unveiled as an integrated framework to address the customs related issues, including that of transit, at 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 programme in the Doha Ministerial Conference. While the other “Singapore Issues” were taken off the table in the

²⁹ WTO (2013), Understanding on Tariff Rate Quota Administration Provisions of Agricultural Products, as Defined in Article 2 of the Agreement on Agriculture: G-20 Non-Paper, Committee on Agriculture, Special Session, JOB/AG/20, 5 October, page 3.

³⁰ The proposal is to increase the fill-rate by annual increments of at least 8 percentage points when the fill rate is more than 40 per cent and by at least 12 percentage points when the fill rate equals or is less than 40 per cent.

³¹ Members can choose between a first-come, first-served only basis (at the border), or an automatic, unconditional license on demand system within the tariff quota.

³² WTO (2013), Informal TNC Meeting at the Level of Head of Delegation, Trade Negotiations Committee, JOB/TNC/23, 15 October, page 6.

³³ WTO (2013), Informal TNC Meeting at the Level of Head of Delegation, Trade Negotiations Committee, JOB/TNC/23, 15 October, page 7.

Doha Round for want of consensus,³⁴ TF was included in negotiations as a part of the “July package” in 2004.³⁵

Negotiations on TF 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 the 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 keeping with 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 scepticism 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 transactions costs. “Doing Business”, the annual survey of the World Bank, provides endorsement of this point.

Given the weight of evidence emerging in favour of the various elements of TF, including simplification and harmonisation of customs procedures and improvement of border infrastructure and management systems, there is no doubt that the introduction of these measures would not only increase developing countries’ capacity to trade, businesses in these countries will also be able to integrate into global supply chains. Better coordination amongst the customs authorities would increase operating efficiency of the agency, and this in turn will enable the system to generate more revenue through a transparent mechanism.

³⁴ 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.

³⁵ WTO (2004), Doha Work Programme: Decision Adopted by the General Council on 1 August 2004, WT/L/579, Annex D, Page D-1.

In a recent study conducted by the OECD Secretariat using data on “trade facilitation indicators” from 106 non-OECD countries, which include 95 WTO members and 11 WTO observers, has shown that the benefits accruing to developing countries as both importers and exporters can be substantial if appropriate reforms are undertaken.³⁶

The negotiations on TF have been dealing with a plethora of issues that could eventually form a part of the agreement. These include issues relating to transparency like publication and availability of information through publication, internet and enquiry points, operational issues like release and clearance of cargo, introduction of risk management and post clearance audit and disciplines on expedited shipments, and institutional issues like instituting single window for clearance of goods, elimination of pre-shipment and post-shipment inspections, and uniform forms and documentation requirements for clearance of goods. Besides the above-mentioned freedom of transit and customs cooperation are key elements of the discussions.

While the broad contours of an Agreement on TF seem clear, some contentious issues are engaging the WTO members. At the same time, however, differences persist, particularly on the extent 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 take the challenge posed by 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. Although the negotiating text reflects forward movement in overall terms, Section II pertaining to “Special and Differential Treatment Provisions for Developing Country Members and Least Developed Country Members” shows no evidence of convergence between members.³⁷ However, hope has been rekindled in recent days as members have reached an agreement on “Customs Cooperation”.³⁸ This is an important development for this issue is one from which the developing and the least developed countries could secure several direct and indirect benefits.

³⁶ 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).

³⁷ The 18th revision of the “Draft Consolidated Negotiating Text” dated 23 October shows that as compared to the immediately preceding Draft tabled in July 2013, the number of square brackets have been removed from Section I. Significant from the point of view of the negotiating dynamics is the fact that the number of square brackets in Section II have remained unchanged

³⁸ WTO (2013), Informal TNC Meeting at the Level of Head of Delegation: Chairman's Remarks, Trade Negotiations Committee, JOB/TNC/27, 12 November, page 1.

While there is no doubt that most of the lesser developed countries would benefit from an eventual deal on TF, but since the benefits would not accrue to them in the absence of the technical assistance and capacity building commitments from the developed countries, it seems unlikely that a globally acceptable outcome can be realised soon.

E. LDCs' Package

The 34-member group of least developed countries (LDCs) in the WTO has presented a package essentially involving four areas for inclusion in the outcome of the Bali Ministerial.³⁹ These include: (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. Of these, the LDCs have provided firm proposals in respect of 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 these countries to better integrate with 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 fulfil their commitment by a date to be decided in Bali. The LDCs have also sought additional market access opportunities from the developing country members. While several developing countries have already provided them DFQF market access for products, LDCs have insisted that such access should be for at least 97% of all products originating in their respective territories.

Alongside, the LDCs have argued for easing of the rules of origin that would enable them to take better advantage of the DFQF scheme. In their proposal, LDCs have argued that preference-granting Members must “design their preferential rules of origin with a view to providing effective market access for LDCs”. Further, LDC partners should “take into account the productive capacity of LDCs and the LDCs’ ability to meet rule of origin requirements”. The proposal for which the LDCs have sought support in the Bali Ministerial is “centred on an ‘across the board’ Rule of Origin based on a percentage criterion”.⁴⁰ The argument they advance in favour of an across the board criterion is to avoid the proliferation of product-specific rules of origin product by product. According to the LDCs, rules of origin negotiated

³⁹ WTO (2013), LDC Package for Bali: Communication by Nepal, on behalf of the LDC Group, TN/C/W/63, 31 May.

⁴⁰ WTO (2013), LDC Package for Bali: Communication by Nepal on behalf of the LDC Group, TN/C/W/63, 31 May, paragraph 1.26.

product by product and industry by industry open the way for organized industries and lobby groups to devise rules of origin that are diminishing transparency and trade liberalization.

To operationalise the preferential rules of origin, the LDCs have suggested a number of options to simplify the rules of origin. For instance, in the case of rules based on the change in tariff classification criterion or in specific processes, these countries have suggested that rules must require compliance with simple operations.⁴¹ Further, in the case of rules based on local content or value added, LDCs' view is that the "minimum content added in the LDCs must be realistic given the productive capacity available in the LDCs".⁴²

In the Eighth Ministerial Conference of the WTO in December 2011, trade ministers adopted the decision on "Service Waiver" in favour of LDCs. This decision allowed developed and developing country Members to provide preferential treatment to services and service suppliers of least developed country (LDCs) going beyond the notion of MFN treatment as provided in 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 even after a year and half since the decision was adopted, the "Service Waiver" still waits operationalization. They point out that in order to operationalise 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.

LDCs have therefore suggested a two-phase process for moving forward on the services waiver issue. The first is a Signalling Conference to be convened by the General Council in July 2014 "with a view to accelerating the process of securing meaningful preferences for LDC services and service suppliers and to fully operationalize the waiver".⁴³ The second is a set of four options that the WTO Members may consider to extend meaningful preferences for LDCs services and service suppliers. These include: (i) extend to all LDCs preferences

⁴¹ Among the examples given in this regard is that for "agro-processing products, substantial transformation shall be recognized when raw agricultural products are transformed into agro-processed products". See WTO (2013), LDC Package for Bali: Communication by Nepal on behalf of the LDC Group - Addendum, TN/C/W/63/Add.1, 12 September, paragraph 2.

⁴² LDCs have suggested that "may use foreign inputs up to a maximum of 75% of the ex-work price of their exports eligible for preferences (that is, the value of non-originating materials must not exceed 75% of the ex-work price of a product)". See WTO (2013), LDC Package for Bali: Communication by Nepal on behalf of the LDC Group - Addendum, TN/C/W/63/Add.1, 12 September, paragraph 3.

⁴³ WTO (2013), LDC Package for Bali: Communication by Nepal, on behalf of the LDC Group - Addendum, TN/C/W/63/Add.2, 11 October, paragraph 5.

covered by MFN exemptions listed under the Annex on Article II Exemptions of the General Agreement on Trade in Services (GATS); (ii) extend to all LDCs any relevant commitments undertaken in the context of preferential trade agreements to which they are a party; (iii) eliminate or reduce for LDC services and service suppliers remaining market access limitations in sectors scheduled under the GATS, including through the elimination of economic needs tests and other quantitative limitations; and (iv) lower, and ideally remove, other market access barriers, domestic regulatory and administrative barriers and other relevant measures that may impede current or potential LDC services exports.⁴⁴

LDCs issues have made progress, with Members reaching consensus on the preferential rules of origin as well as on the services waiver. Expectations are that the Members will eventually reach an agreement on the DFQF issues as well.⁴⁵

F. What can the Bali Ministerial Conference Deliver?

The current state of discussions in Geneva holds very little hope for meaningful outcomes at the Bali Ministerial Conference. While the prospects of an Agreement on Trade Facilitation still hangs on balance and a “LDCs Package” seems possible, effective solution to the problems relating to “Public stockholding for food security purposes” desired by the G-33 countries face formidable challenges going forward.

Among the Doha Round issues, agriculture is perhaps the most important vis-à-vis developmental concerns of the global south, given its centrality in securing livelihoods and food security. It is for this reason that negotiations in agriculture have held the keys to the negotiations on the Doha Development Agenda. Over the decade and more, developing countries have invested considerable negotiating capital to rebalance an inherently discriminatory Agreement on Agriculture (AoA) through amendments that reflect their development imperatives, in particular, those of food security and rural livelihoods. However, the efforts made by the developing countries have not yielded results in the face of the opposition from the developed countries to maintain the *status quo ante*. The negotiations on the food security issues in run-up to the Bali Ministerial Conference have followed the familiar trend.

⁴⁴ WTO (2013), LDC Package for Bali: Communication by Nepal, on behalf of the LDC Group - Addendum, TN/C/W/63/Add.2, 11 October, paragraph 6.

⁴⁵ WTO (2013), Informal TNC Meeting at the Level of Head of Delegation: Chairman's Remarks, Trade Negotiations Committee, JOB/TNC/27, 12 November, page 1.

The importance for the G-33 proposal on food security has far-reaching implications for governments in developing countries in various parts of the world to have to policy space to implement programmes for feeding the undernourished sections in their countries. This issue has assumed significance for India after the government decided to implement the National Food Security Act⁴⁶, which is intended to provide cheap food grains to nearly two-thirds of the country's population.

While development imperatives have been given a short shrift, the pre-Bali discussions on agriculture have also shown the resistance on the part of the developed countries to implement their commitments to fulfil their commitments. In the Hong Kong Ministerial Conference in 2005, these countries had taken a commitment to eliminate all forms of export subsidies and disciplines on all export measures with equivalent effect by the end of 2013. They had also agreed to introduce additional disciplines on the use of export credit. In recent months, developing countries belonging to G-20 reminded these countries of their commitments in view of the approaching deadline. However, little or no progress has been made on these issues, and therefore a decision by the Ministers in Bali does not seem to be on the anvil⁴⁷.

Thus far, the only positive outcomes are coming through the process wherein the LDCs' issues are being discussed. Bali will see an agreement on substantial work that would have to be done in the post-Bali phase to operationalise some of the issues upon which market access opportunities for the LDCs are critically dependent.

An Agreement on Trade Facilitation at Bali would have held some hope for the multilateral trade negotiations. WTO would have been able to important message that the organization can deliver results and that it provides a forum where serious business can be conducted. It is extremely important for the Members of the WTO to establish the credentials of the organization when it is standing at crossroads. Failure to do so would have ramifications that go well beyond the WTO: it will deal a body blow to the global economic governance structure, posing a serious risk to its future.

⁴⁶ Government of India (2013), The National Food Security Ordinance 2013, No. 7 of 2013, The Gazette of India, Extraordinary, Part II, July 5 (accessed from: <http://dfpd.nic.in/fcamin/homepage/NationalFoodSecurityOrdinance2013.pdf>).

⁴⁷ WTO (2013), Informal TNC Meeting at the Level of Head of Delegation: Chairman's Remarks, Trade Negotiations Committee, JOB/TNC/27, 12 November, page 2.

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