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The WTO in Bali What MC9 means for the Doha Development Agenda and why it matters?

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Abstract

The conclusion of the World Trade Organization's (WTO) ninth ministerial meeting—held in Bali 3-7 December 2013—is at one and the same time momentous, marginal, and business-as-usual. It is momentous because it marks the first multilateral agreement reached in the WTO since the organisation began operations on 1 January 1995; it is marginal because the deal reached will have only a limited impact on the global trading system; and it is business as usual because the Bali package will be of disproportionately greater value to the industrial states than to their developing and least developed counterparts. We examine what happened in Bali covering the principal issues at stake and the content of the outcome, what this means for the WTO and for the Doha Development Agenda (DDA), and why it all matters. We argue that while the Bali ministerial is significant and the agreements reached important, the conclusion of the meeting and the package agreed represents only a limited movement forward in addressing the fundamental problems and inequities of the WTO system.

Keywords

WTO, Doha Development Agenda, developing countries, trade, World Trade Organisation, Bali Package

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Introduction

WTO ministerial conferences have something of a reputation. They are either tension-laden affairs characterised by fall outs among member states often accompanied by street protests bringing together a broad range of civil society groups and grassroots activists, or else they are perfunctory affairs, branded 'house-keeping' exercises and consciously engineered to dissipate the more inflammatory aspects of multilateral trade politics.ⁱ This schizophrenia is evident in the difference between those more dramatic ministerial conferences hosted by individual member governments away from Geneva and the sanitised affairs held in the vicinity of the WTO's headquarters, Centre William Rappard.

At first sight, the WTO's ninth ministerial conference (MC9 in WTO parlance) stayed true to the away form. The meeting was preceded by furious negotiating that had, for the first time in five years, produced a near consensus on an 'early harvest'—a package of measures that reflect what common ground could be achieved in the Doha round (earning it the moniker 'Doha lite'). The pre-Bali process had, however, broken down at the last moment throwing the negotiations into temporary disarray. This, in turn, ensured that members gathered in Bali amid heightened tension, the threat of a boycott, some colourful but nonetheless limited and relatively obscure demonstrations, and perennial concerns about the WTO's future should a deal fail to be concluded.ⁱⁱ It appeared that the best chance in half a decade to move the moribund Doha round forward was slipping through members' proverbial fingers.

What followed was a predictable pattern of crisis politics wherein proclamations of the necessity of reaching a deal were put forward at the same time as warnings about the consequences of a failure for the WTO, the Doha round, the world economy, and the poorest.ⁱⁱⁱ India played a starring role, not only as a pivot in the negotiations but also in the limelight afforded to its Minister of Commerce and Industry Anand Sharma (as Sharma's predecessor Kamal Nath had enjoyed before him). The United States was, predictably, the other main player though the public visibility of its delegation and United States Trade Representative (USTR) Michael Froman was low. Yet, in a break with past ministerials—and despite five long days wherein hopes were raised, dashed, raised and almost dashed again—a deal was finally struck comprising 10 texts covering three broad areas (trade facilitation, agriculture, and special and differential treatment for least developed countries).

The conclusion of the Bali package marks the first time in almost 20 years that a multilateral trade deal has been successfully negotiated. This is a considerable feat given that the WTO has come to be associated more with the antagonism and fierce politics of the Doha round and not the co-operation and compromise required for an agreement. Yet, what makes the conclusion of the Bali package all the more remarkable is that it has been negotiated at a time when considerable energy had been exerted in mega-regional negotiations such as the Trans-Pacific Partnership (TPP) and the Transatlantic Trade and Investment Partnership (TTIP) as well as other plurilateral (that is, small group) and bilateral endeavours to the extent that many had believed the multilateral system moribund if not fundamentally broken. Moreover, after 12 years of negotiating a round that is widely seen as having had much of its development content emptied out, the agreement of a deal that speaks to the spirit if not the essence of the Doha Development Agenda (DDA) mandate is surprising indeed. It is, as such, a small step forward, but it is not a departure from the asymmetrical bargains that characterised previous trade rounds under the General Agreement on Tariffs and Trade (GATT—1947-1994) and the widely acknowledged imbalances of the preceding Uruguay round in particular.^{iv}

That said, the conclusion of a Bali package is far from a signal that the Doha round will continue to unfold in a comparable fashion or that the asymmetries of the past will finally be corrected. Indeed it may exacerbate them. Nor is it a wholesale departure from previous ways of operating albeit that chinks of light were in evidence. While it may be the case that WTO Director General (DG) Roberto Azevêdo's show of emotion during the closing ceremony reflected the letting out of a collective breath that had been held by the gathered delegates, observers, civil society representatives and commentators; and the announcement that a deal had been reached was greeted with much applause and delight, particularly from developing and Least Developed Country (LDC) representatives; negotiating legally binding outcomes and favourable market access for poor countries in key sectors (particularly in agriculture and services) will be an all-together more difficult task. Moreover, mega-regional and other trade arrangements continue apace; the Bali package is modest in what it comprises—reflecting what could be delivered rather than what ought to be negotiated; there is a long way yet still to go in the Doha round as well as in making the WTO fit-for-purpose; the significance of the package agreed will not be—in value terms—immediately obvious; and it will be some time before the implementation of the trade facilitation agreement yields meaningful benefits. More critically, the Bali package further entrenches structural imbalances in global trade. Developing countries were unable to secure any legally binding outcomes on the issues that are most important to them. Instead, they accepted another set of best endeavour promises in exchange for a legally binding agreement on trade facilitation. Moreover, the splits that emerged within developing country coalitions during MC9 may have eroded a measure of their collective bargaining power.

Bali is nonetheless an unexpected about-turn in the fortunes of the multilateral trading system and the first bargain to have been struck since the WTO was created. It warrants serious attention as a result. In this paper we examine what happened in Bali, why it matters and what its likely consequences will be for the multilateral trading system. We begin by exploring the road to Bali—setting out what was at stake and why it mattered—before moving on to consider what happened at the ministerial conference itself. Here we set out how and why events unfolded as they did as well as on the underlying politics and points of tension that arose. We then discuss what was 'on the table' during the meeting, noting how the negotiations proceeded and the manner in which they were ultimately resolved. Thereafter, we offer our concluding remarks, in which we consider the impact of the Bali outcome for the future of the Doha round and of the WTO. Throughout, our aim is to provide an analytical record of the WTO's ninth ministerial conference and a critical reflection on the significance of the meeting for the future of multilateral trade particularly with regard to the role of developing countries therein.

The Road to Bali

WTO ministerial conferences (see table 1) are almost never like Bali. While the WTO's tenure as the coordinating node for global trade started off well enough at its 1996 Singapore ministerial conference, suggestions that the organisation's mandate be expanded to include certain 'trade related' issues stoked tensions that had been papered over by the honeymoon phase following its creation. By the time of the 1998 Geneva ministerial conference European pressure for the launch of a new round was on the rise. Moreover, the appearance of 3,000 protestors and the upturning and setting on fire of several cars foreshadowed the civil dissatisfaction that was to come. By the time members met in Seattle in 1999 fractures among the members had become chasms. The labour standards issue had become divisive.^v

Pressure to launch a new round split the membership with many worrying that sufficient attention had not been directed at implementing the previous Uruguay round accords. And 30,000 protestors took to the streets eliciting a response from the US National Guard. Needless to say, Seattle failed to produce a mandate to launch what was then touted as the ‘millennium round’.^{vi}

Two years later members were able to reach an agreement in Doha launching the DDA. While this was not entirely straight forward, the tender political climate of the post-9/11 attacks helped mitigate opposition among the membership. Thereafter the tone of ministerial conferences appeared to be set. The 2003 Cancún ministerial ended in collapse. The 2005 Hong Kong conference concluded with a limited agreement that appeared to move the Doha round forward only for it to stutter to a halt in July 2006 before members finally declared it deadlocked two years later.^{vii}

Table 1—WTO Ministerial Conferences

Bali (MC9) 3-6 December 2013
Geneva (MC8) 15-17 December 2011
Geneva (MC7) 30 November - 2 December 2009
Hong Kong (MC6) 13-18 December 2005
Cancún (MC5) 10-14 September 2003
Doha (MC4) 9-13 November 2001
Seattle (MC3) 30 November – 3 December 1999
Geneva (MC2) 18-20 May 1998
Singapore (MC1) 9-13 December 1996

It was four years after Hong Kong that ministers next came together—twice as long as the WTO’s *Establishing Agreement* requires—and both of the following conferences (held in Geneva in 2009 and 2011) were contrived as simple administrative affairs rather than the negotiating forums that had proven to be so problematic in Seattle, Cancún and Hong Kong. Indeed, had the pre-Bali negotiations succeeded in Geneva, MC9 would also have been a ceremonial affair rubber stamping an early harvest package and Yemen’s accession as the WTO’s 160th member.

The run-up to the meeting in Bali was marked by energetic negotiating. With a great many proposals on the table and more than 600 brackets in the draft texts (reflecting areas yet to be agreed) members had engaged in agenda stacking so that issues could later be used as bargaining chips. Despite complaints from countries such as South Africa and Cuba, the United States insisted that the trade facilitation proposals on the table not be modified—a ‘proponent’ driven process that made negotiating positions appear intractable to observers. The Bolivarian Alliance for the Americas (ALBA) countries mobilised to demand a *quid pro quo* in exchange for agreeing to the text on trade facilitation. Divisions in the LDC group emerged over the extension of Duty-Free Quota-Free (DFQF) access to developing countries. Farther afield, a European Union proposal to liberalise gas and electricity markets (and, in so doing, free up the use of gas and electricity infrastructures) was strongly resisted by developing countries, particularly South Africa. Indian backtracking from the Group of 33’s (G33)^{viii} position on food security in

late November ultimately caused the breakdown in pre-Bali negotiations.^{ix} This, in turn, disrupted DG Azevêdo's attempt to ensure that MC9 would *not* be a negotiating session as members looked to salvage something from the meeting. Ahead of the conference Pakistan threatened not to send its delegation to Bali in response to India's position.^x And Oxfam chose not to send a contingent on the basis that 'there just was not enough on the table to merit the travel and expense'.^{xi}

These events aside, delegations from the WTO's member states had approached the meeting cautiously optimistic that a bargain might be struck. They had managed to whittle the brackets in the pre-Bali text down to 400 and then to just 53 before members convened in Bali.^{xii} More broadly, there was new hope at the prospect of a successful multilateral deal that would give a voice to developing countries, in large measure, because of the appointment of Roberto Azevêdo, a former Brazilian negotiator, as DG just three months before.^{xiii} Many members, much of the secretariat, and many trade observers also regarded the WTO as being badly in need of revitalisation to reverse its increasing marginalisation as a forum for conducting trade negotiations.^{xiv} Indeed, in the months leading to Bali a growing recognition had emerged that regional trade agreements are sub-optimal, particularly for development, giving weight to the sentiment that multilateralism is an ideal worth saving.^{xv}

The immediate politics of the Bali ministerial are only part of the story, however. They tell us only what took place and not why it happened. In the background a number of trade developments and broader economic challenges heightened the tensions leading up to the meeting and which shaped the positions of the participants. Most significant was the ongoing stasis of the DDA. The paralysis in the multilateral setting precipitated a shift toward pursuing trade openings in other formats. Within the WTO this meant the pursuit of plurilateral agreements in areas of interest to the most powerful players, notably in Information Technology and Government Procurement, with potentially deleterious effects on the interests of those excluded.^{xvi} Outside the WTO, the major trading nations engaged in large-scale bilateral and regional trade agreements, most notably the TPP and the TTIP.

Moreover, shifts in global economic geography toward (particularly) China, India and Brazil have exacerbated the core complaint of the United States (and to a lesser extent the European Union) that the world has changed so much since the DDA was launched that its mandate no longer makes sense.^{xvii} Meanwhile the developing world also has new concerns. Recent spikes in food prices and the civil unrest that has ensued as a result have shifted attention to food security as a pressing concern, and one which the WTO seems ill-equipped to address.^{xviii} The core conditions that had prevailed in food markets for decades—of falling or stable prices and plentiful supply—and which had underpinned the Uruguay round Agreement on Agriculture (AoA), have been rapidly overturned to what seems to be a new, persistent condition of higher prices and unmet demand. Such issues formed the backdrop to MC9.

The Dynamics of the Meeting

Prima facie, there was little different about the Bali meeting. The collapse of the pre-conference negotiations certainly signalled a return to ministerial conferences as negotiating forums—a return to form that might not be to the secretariat's liking but certainly sits well with the political theatre that country, media and nongovernmental delegates alike enjoy. But the patten thereafter appeared quite familiar. The opening ceremony underscored the need to reach agreement and the dangers for the multilateral system of letting a Bali package fall by the wayside. The steady flow of ministerial

declarations saw minister upon minister issue their support for an agreement with varying degrees of candidness about their position and that of others. Special interest groups—particularly among the business community—were actively engaged in ensuring their voices were heard by all who would listen. Press and NGO delegates held one another in suspicious regard, and the divisions between the two were manipulated by a WTO secretariat keen to ensure that divisions among members were not massaged by a non-governmental/media pincer movement (as had been the case in Cancún). What was not immediately obvious was the energy being exerted behind the scenes, by DG Azevêdo in particular, to ensure that an agreement was forthcoming.

Indeed, the initial hope that an early harvest package could be agreed during the conference quickly gave way to despondency as Indian Minister of Commerce and Industry Anand Sharma's morning press conference on 5 December appeared to prepare the ground for yet another failure to move the Doha round forward. Discussions facilitated by DG Azevêdo continued until 4am on 6 December without success. And as the remaining delegates woke to news of Nelson Mandela's death, a failure to reach an agreement appeared to be imminent. Bali's apparent failure was reinforced by the behind-the-scenes splits that emerged among developing countries (explored in detail below)—in the Africa group, between India on the one hand and Pakistan on the other, and in the Group of 33. A last minute drama led by Cuba (and involving the other members of the ALBA group) further ratcheted up the tension and sense of hopelessness at MC9.^{xix} In the early hours of 7 December the heads of the ALBA delegations announced that they were unhappy with the texts and threatened to block the deal despite telephone calls from Moscow and Beijing in the preceding hours. The delegations cited their displeasure at the manner in which the meeting had been conducted—wherein much of the negotiating had been bilateral between the principal protagonists and behind closed doors—and the removal of text from what was paragraph 12 of the pre-ministerial text on trade facilitation relating to the US-Cuban trade embargo. Yet, after a 24-hour extension of the conference, through the night negotiating and tireless consultations facilitated by DG Azevêdo, a bargain was finally struck which saw the conclusion of an agreement on trade facilitation, measures in agriculture, and a package of provisions for LDCs.

Despite the presence of crisis politics, three features of the MC9 negotiations mark stand as departures from the dynamics of past ministerials and require note as they were key to ensuring an agreement was reached in Bali.

1. While the Bali discussions largely comprised the kind of selective bilateral and small group meetings that have been the complaint of many,^{xx} DG Azevêdo and MC9 conference chair (Indonesian trade minister Gita Wirjawan) were at pains to ensure they conducted the discussion on the basis of a freely given mandate to do so, which they secured from the opening informal heads of delegation meeting on 3 December.
2. This attempt at greater transparency and inclusivity was complemented by Azevêdo's clear desire *not* to present members with a negotiating text that reflected his views—as had been the case during previous rounds as well as early in the DDA, and which had been heavily criticised for overly influencing the negotiations^{xxi}—but instead to ensure that the suggested amendments and modifications which made it into the final draft Bali texts presented to members on the evening of 6 December were those of the members.

3. Not only did Azevêdo put in extraordinary effort to include as many delegations as possible (he met with more than 45 separate delegations concerned with the pre-existing texts over the course of MC9) he was applauded by delegates during the 7 December informal meeting of the heads of delegation at which he presented the final draft texts—a rare occurrence in WTO meetings indeed.

Had MC9 failed it might not have proven to be the last throes of the WTO—its other functions (including dispute settlement, trade policy review and data collection among others) are sufficiently well established to ensure its perseverance in the face of continuing failures in the negotiating arms of its mandate—but failure would have underscored the need for a dramatic rethink of the way we govern global trade. It also would have signalled a failure to agree to a package of measures that has been touted, by industrial and developing countries alike, as being genuinely beneficial to the developing world (particularly to the least developed) and which—unlike much of the market access focus of the Doha round so far—actually spoke to the DDA's core mandate.

Key issues

So what was agreed to at the ministerial? The Bali package comprises 10 texts covering three broad areas—trade facilitation, agriculture, and special and differential treatment for least developed countries. We examine the content and politics of each of these in turn.

Trade Facilitation

Trade facilitation was originally proposed as an issue for negotiation by the European Union at the 1996 Singapore ministerial conference and was included in the work programme that launched the Doha round in 2001. The purpose of the negotiations is to review and clarify aspects of the WTO agreements that relate to the administration of trade as it crosses national borders with the intention of speeding up and clarifying customs procedures and promoting efficiency and transparency.^{xxii} It is understood to be a major reform of WTO agreements and to be desirable only on a multilateral—that is, all member—basis. Trade facilitation is the most substantial part of the Bali package because it contains legally binding obligations to undertake regulatory or 'good governance' reform. It is also the most problematic part because it perpetuates the pattern of asymmetrical bargains struck in previous rounds of WTO negotiations. Indeed, the politics that played out both before and during the Bali meeting reflect developing countries' frustration with the stark imbalances that are likely to be exacerbated by the trade facilitation agreement and by the Bali package as a whole.

Heading into MC9, the draft text on trade facilitation comprised two sections. Section I deals with the rules and technicalities of trading across borders, and it was by far the most problematic with more than 50 brackets reported in the text on the eve of MC9. Indeed, six areas of disagreement were evident relating to Section I in the areas of: (i) customs co-operation, (ii) expedited shipments, (iii) customs brokers, (iv) consular fees and other 'disproportionate' and 'excessive' formalities, (v) transit disciplines, and (vi) domestic legislation. Despite the number of brackets, the issues in these areas were felt to be readily solvable if an agreement could be found in other areas of the Bali package, particularly food security.

Section II reflected the agreement, in principle, that developing countries should not have to comply with the provisions of Section I unless they are provided with adequate special and differential treatment (SDT), technical and financial assistance, and capacity building to mitigate the costs of implementation. It also recognised that implementation could only come in three stages ranging from that which is immediately implementable, through measures that would require a period of transition, to that which could only be implemented following the receipt of technical and other assistance. Although it had been, according to DG Azevêdo, 'our largest iceberg until a couple of days ago',^{xxiii} Section II was widely agreed as settled and clear of brackets, ahead of MC9. Disagreements remained, however, over the mandatory nature of the legal language proposed, the extent to which flexibilities would be incorporated into the agreement, and the appropriate balance between Sections I and II and between the trade facilitation agreement and the rest of the Bali package. Tensions over these issues played out in dynamic ways in Bali and threatened to cleave the negotiations along north-south and south-south lines.

The United States, under pressure from distribution companies such as FedEx and UPS, remained the most steadfast and uncompromising advocate for a trade facilitation deal and promised a re-opening of at least some aspects of the DDA negotiations if an agreement could be reached in Bali. Indeed, the promise of a trade facilitation deal is widely held to be the only reason the United States stayed at the negotiating table. Meanwhile, splits among developing countries over the framing and flexibilities of the trade facilitation text and the use of US power and influence threatened to derail the MC9 negotiations at the 11th hour.

Estimates of the gains from a concluded WTO agreement on trade facilitation vary dramatically, ranging from US\$68 billion to US\$1 trillion^{xxiv} and proponents claim that developing countries stand the most to gain. For example, according to OECD Secretary General Angel Gurría: 'a comprehensive WTO reform package ... could increase worldwide income by over USD 40 billion. 65% of these gains will accrue to developing countries.'^{xxv} However, the bulk of the changes and the associated costs of reforming border and customs procedures will fall most heavily on developing countries, and particularly the least developed, because the agreement merely codifies and makes mandatory practices that OECD countries already apply.

In response to these challenges, the LDC group successfully argued that their trade facilitation commitments should be made on a 'best endeavour' basis unless the provision of technical assistance and capacity building for implementation was made mandatory.^{xxvi} Others still demanded that a deal on trade facilitation was conditional, not only on the provision of aid and technical assistance to developing countries, but also on the elimination of agricultural export subsidies. The European Union led the charge among the OECD to resist the elimination of export subsidies during both the preliminary negotiations and MC9 itself, despite the fact that this was mandated to occur by 2013 in the 2005 Hong Kong Ministerial Declaration.^{xxvii} OECD country intransience on the issue of export subsidies caused a rift among developing countries over whether it should become a deal breaker in Bali. Moreover, countries such as Rwanda were unconvinced about the need for more balance in the Bali package and broke ranks with their coalition partners lending support to the US position and exacerbating tensions in the African group.

These issues notwithstanding, by 6 December, it appeared as though these tensions had been assuaged and an overwhelming majority of poor countries were in support of the trade facilitation text. However,

more south-south cleavages emerged as the ALBA countries stated they would not support the text when they made the following statement:

What we now have before us is still unbalanced, and further paves the way towards an international order that is more unjust and less equitable ... If we were to accept what is being handed to us, we would be faced with the same problems that we have experienced in implementing the Uruguay Round Agreements.^{xxviii}

Advocating on behalf of countries such as Egypt and Uruguay that will face particular implementation challenges because of their anachronistic and cumbersome customs brokerage and consular systems, the ALBA countries insisted there be more flexibility in the implementation of the trade facilitation agreement and more balance in the overall Bali package. They eventually backed down, apparently satisfied with raising the point about persistent imbalances in the package in its statements to heads of delegations.^{xxix}

Even more explosive was Cuba's stand on the final day after agreement on all other issues had been reached. At issue was the 1960 US Trade Embargo of Cuba and the removal of bracketed text in the Free Transit of Goods section of the draft trade facilitation text that related thereto. The bracketed text prohibited members from applying discriminatory measures, such as an embargo, 'to goods in transit, or to vessels or other means of transport from other members'. The revised text presented to heads of delegations on 6 December stated that members 'shall not seek, take or maintain any voluntary restraints or any other similar measures on traffic in transit.' However, this would be 'without prejudice to existing and future national regulations, bilateral and multilateral arrangements related to regulating transport consistent with WTO rules.' The issue was finally resolved after a full night of negotiations among heads of delegations.^{xxx} Ultimately, the US relaxed its position and Cuba was appeased with the inclusion of a line in the Ministerial Declaration relating to the trade facilitation text stating, 'in this regard, we reaffirm that the non-discrimination principle of Article V of GATT 1994 remains valid.'^{xxxi}

That developing countries were able to secure mandatory technical and financial support for implementing the trade facilitation agreement is an important and positive change in how multilateral trade agreements affect regulatory processes in poor countries. However, the notion that trade facilitation is a 'win-win' deal has become a mantra repeated by those around the WTO negotiations in an effort to build pressure behind the first multilateral agreement for almost two decades. This narrative obscures the fact that the trade facilitation agreement is of greater value to industrial countries and that developing countries will shoulder disproportionate burdens and implementation costs as they bring their regulatory systems into line with the trade facilitation agreement (irrespective of the provisions of Section II). Exaggerated claims have also been made with regard to both the economic returns and job creation that are likely to result.^{xxxii} Trade facilitation will undoubtedly help to increase exports from and between developing countries, yet it will also open their markets in problematic ways, for example to subsidised agricultural imports that undermine local producers. These risks and imbalances are not redressed or even acknowledged in other areas of the Bali package where development gains are limited to best endeavour, non-legally binding, solutions. As such, the trade facilitation agreement represents business as usual at the WTO—an asymmetrical deal struck as crisis discourse rallied members to secure an 'early harvest', revive the DDA and save the credibility of the multilateral trading system.^{xxxiii}

Food Security

Food security remained the single most divisive and important issue in Bali. Disagreements over global imbalances in food subsidies and agriculture flexibilities available to developing countries threatened to derail negotiations, just as they had done in July 2008. Against the backdrop of soaring and increasingly volatile food prices, food security was cast by negotiators and the media alike as the focal point for a perennial and apparently irreconcilable fight between the United States and India and one which fractured the G33.^{xxxiv} A closer examination reveals much more complicated politics at play.

At issue is the practice of public stockholding by developing countries to secure food reserves, distribute subsidized food aid to the poorest, and guarantee minimum price supports for local farmers. The principal focus in Bali was on India's use of such policies, though Anand Sharma claimed to have a list of over 50 other countries with similar schemes.^{xxxv} India's public procurement programme, the National Food Security Bill—the 'Right to Food Act'^{xxxvi}—was signed into law in September 2013 and is widely considered to be a political strategy aimed at garnering support for the ruling Indian National Congress party in an election year.^{xxxvii} Under this programme, staple foodstuffs are purchased from poor farmers at a minimum price to be held in public stocks. They are then sold at highly subsidised prices to those qualifying for food support. WTO members have used such schemes for many years and consideration was made for them in the AoA. The problems that (on the surface at least) dominated Bali concern the details of the AoA in this regard.

The AoA limits all countries' use of agricultural subsidies, with those limits being based on the levels of subsidies that each member had in place in a reference period of 1986-1990.^{xxxviii} Developing countries generally had no subsidy schemes in place at that time and therefore their allowed level of support was bound at zero. However, subsidy schemes are permitted so long as their value does not rise above certain levels—known as *de minimis* limits—set at five per cent of the value of production for developed countries and ten per cent for developing countries.^{xxxix} Public stockholding schemes that rise above *de minimis* limits and contain minimum prices to be paid to farmers (rather than purchasing stocks at prevailing market prices) are considered to be trade distorting and must therefore be included in that state's calculation of its agricultural subsidies—their aggregate measures of support (AMS). The value of the subsidy is calculated as the difference between the price paid to farmers (the procurement price) and a defined reference price multiplied by the volume of eligible production.^{xl} The problem raised in Bali was the stipulation of the reference price set at prevailing world prices averaged across 1986-1988. During the negotiations, India and a handful of supporters took the position that the reference price must be reset to reflect the dramatically higher food prices of the last decade. This standoff was an offshoot of a broader mobilisation effort on behalf of import sensitive countries—the G33—to safeguard food security.

The G33 formed on the eve of the September 2003 Cancún Ministerial Meeting with the expressed aim to ensure that the issue of food security, rural livelihood and rural development become integral parts of WTO agricultural negotiations. It is unique among WTO coalitions in that it comprises 46 large and small import-sensitive developing countries. The G33's view is that the AoA does not provide sufficient latitude for developing countries to pursue the domestic policy measures necessary to secure national and regional food reserves and to manage price and income volatility for poor, rural households.^{xli} As a first step towards addressing the problem, the G33 rallied around the fact that many developing countries, unlike their developed country counterparts, are unable to use the Special Agricultural Safeguard (SSG)—the key defensive special and differential treatment mechanism in the AoA—to protect

themselves against dramatic price fluctuations and import surges because they had not “tariffed” (the process by which members agreed to convert non-tariff barriers into tariffs) during the Uruguay Round.^{xlii} The G33 was successful in having this imbalance included in the 2004 July Framework^{xliii} and members agreed at the 2005 Hong Kong ministerial conference that developing countries should have recourse to a comparable mechanism, coined the Special Safeguard Mechanism (SSM).^{xliv} However, much controversy over the operationalization and technical aspects of the mechanism persisted and ultimately contributed to the collapse of the 2008 mini-ministerial.^{xlv}

In the months before MC9, the G33 shifted focus from protecting poor farmers in import sensitive developing countries from shocks associated with more open markets to public stockholding which aims to: (a) ensure steady flow of food to vulnerable and poor populations; and (b) support local food production and provide stable income to farmers. In November 2012 the G33 tabled an informal proposal to address the issue.^{xlvi} They proposed that food stockholding programmes in developing countries be exempted from AMS calculations and other programmes (such as farmer settlement, land reform to promote rural development, and poverty alleviation) be classed as green box (that is, permitted) subsidies. An unofficial non-paper by a handful of G33 members in May 2013 went further to suggest that *de minimis* limits be raised and the external reference price, the volume of eligible production, and the level of administered prices for developing countries be adjusted to better reflect changing food security dynamics.^{xlvii} Three additional options for addressing the problem were tabled in September 2013, again by a sub-set of G33 members: (i) public stockholding could be assessed against a three-year rolling average of recent prices rather than the 1986-88 reference price; (ii) excessive inflation rates, above 4 per cent, could be taken into account when calculating the contribution of public stockholding to the AMS and; (iii) a Peace Clause which exempts public stockholding programmes from legal challenge at the WTO could be introduced ‘until a final mechanism is established to address the food security challenges of developing countries’.^{xlviii}

WTO members explicitly acknowledged that import sensitive, developing countries face unique food security challenges and that they should, in principle, have the discretion to introduce public stockholding programmes during periods of dramatic food price volatility. In this spirit, members agreed to an interim peace clause that would exempt public stockholding programmes for food security purposes that exceed *de minimis* levels from legal action at the WTO for four years. It was widely criticised for leaving developing countries open to dispute under the Agreement on Subsidies and Countervailing Measures, requiring transparency obligations of poor countries generally held to be too onerous and offering little for the poorest members because members are already required by the dispute settlement body to ‘exercise due restraint’ in initiating cases against LDCs.^{xlix} On the eve of the ministerial Anand Sharma announced that India had changed its position. It would not agree to the peace clause in Bali on the basis that a temporary solution was inadequate to address the food security challenges facing developing countries and to redress the historical injustices of previous multilateral agreements.

Brinkmanship ensued with Sharma taking centre stage. During his press conference on 5 December it appeared as though the Indian position was uncompromising as Sharma proclaimed that ‘no agreement’ on food security is better than a bad (i.e. interim) one. In response, many poor countries derided Sharma and the Indian position claiming that they put development gains at risk by threatening to veto the Bali package. China, Russia and Indonesia, in particular, engaged in hard bargaining in an effort to convince India to soften its position. Indonesian President Susilo Bambang Yudhoyono even called Indian Prime

Minister Manmohan Singh to persuade India to back down.ⁱ Meanwhile, the United States was reluctant to agree to a perpetual peace clause because it believed that doing so would erode the rules-based multilateral trading system.

It was Pakistan that emerged as India's most strident opponent. Although Pakistan also has public food stocks, it fears that Indian stockpiling will lead to dumping in regional and local markets and a crowding out of its producers and exporters. As a consequence, Pakistan seemed poised to block any proposals by India for a more permanent solution to the issue. The situation was finally resolved when the United States convinced Pakistan to compromise. Indeed, contrary to media reports that Pakistan capitulated to Indian arguments,ⁱⁱ Pakistan was convinced by US negotiators to 'turn down the volume'.ⁱⁱⁱ What resulted was a four-year peace clause that will remain in place until a permanent solution can be found.ⁱⁱⁱ Although clearly inadequate in the long term, this move signifies a small step-change in ministerial negotiations; collective will to revive multilateralism and secure a deal, however small and asymmetrical, triumphed over principled posturing and political retrenchment in Bali.

The LDC Package

The LDC agreement was the most finalised of the three areas being prepared for ministerial approval in Bali. In May 2013 the LDC group had submitted a document outlining the issues that they considered to be priority areas for agreement.^{iv} This had four elements that they considered to be 'possible deliverables': (i) delivering duty-free and quota-free market access; (ii) providing preferential rules of origin; (iii) an agreement on cotton; and (iv) operationalising the previously agreed LDC services waiver through which members are allowed to grant preferential treatment to service suppliers from LDCs.

In the frenzied negotiations that took place in the months preceding MC9, the LDC package consisted of these four areas and was the only section of the prospective Bali agreement not to contain bracketed text. The finalisation of the LDC package alongside the finalisation of Section II of the Trade Facilitation text led to the LDC group, the week before the ministerial commenced, 'calling wholeheartedly for a deal to be reached in Bali and for other Members to resolve any remaining issues which stand in the way'.^{iv}

While the four issues are significant and the LDCs themselves may have been satisfied with the package on offer, doubts remain over precisely how much positive impact the agreement will have on development. The services waiver was agreed at MC8 in 2011 but has yet to be operationalised. The Bali package calls for an expediting of this process and commits the Committee on Trade in Services to undertake a periodic review of efforts to do so. On cotton, the 'Cotton Four' (Benin, Burkina Faso, Chad, and Mali) had proposed that a Bali agreement should include four items, of which the most substantial were DFQF access for cotton exports from LDCs from 2015 along with the immediate elimination of export subsidies in the sector.^{vi} By the conclusion of MC9 these two proposals had been dropped from the LDC package, leaving only a call for greater linkages between cotton and the aid for trade agenda and the initiation of periodic reviews on implementation of the various cotton initiatives on the table.

The issue of DFQF was thrust to the fore of the DDA agenda at the 2005 Hong Kong ministerial conference when it was agreed that all members in a position to do so would provide LDCs with DFQF market access, though members for which this requirement was difficult could provide access for 97 per cent of products originating from LDCs by 2008, before progressively moving towards 100 per cent

coverage.^{lvii} At Bali, the agreement reaffirmed this aim and encouraged countries to do more to improve their DFQF coverage and set up an annual monitoring mechanism within the Committee on Trade and Development to assess these efforts. Finally, on Rules of Origin the agreement contains only non-binding requests for preference-giving members to adopt the more generous rules of origin practices that the LDC group had put forward and initiate work to create a more comprehensive and binding future agreement on the issue.

In sum, the LDC package contains a set of non-legally binding promises to fulfil commitments that were made almost a decade ago in Hong Kong. The best endeavour outcomes on preferential rules of origin, cotton, the waiver concerning preferential treatment to services, DFQF market access, and a monitoring mechanism on special and differential treatment simply do not go far enough towards redressing the imbalances in both the Bali package and in global trade more generally. Moreover, if WTO history is a guide, it remains unlikely that these measures will be implemented. Indeed, if serious effort is not directed towards development and implementation issues in the coming months, the LDC package will be words alone.

What Bali Means for the Future of the DDA and the WTO

At the conclusion of the Bali ministerial, DG Azevêdo declared, '[f]or the first time in our history, the WTO has truly delivered ... We have put the world back into the World Trade Organization.'^{lviii} MC9 certainly marks a fundamental departure from past ministerials. A general dose of crisis politics coupled with Azevêdo's industry produced a package encompassing trade facilitation, food security and LDC provisions which is both consistent with the spirit of the DDA and which promises to deliver welfare gains, however modest, to the world's poorest people. The widespread reaction to this outcome was, in equal measure, jubilation and scepticism. Both sentiments are understandable.

The gains notwithstanding, it is important to resist the euphoria that inevitably washes over the conclusion of a deal after almost two decades of fits and starts. However significant it is for reviving the credibility and negotiating capacity of the WTO, the Bali package is asymmetrical and the coalitions among poor countries have been fractured, perhaps irrevocably, which will make it more difficult for them to advance their collective agendas in future negotiations. Though poor countries will certainly benefit from all three parts of the package, the gains from trade facilitation will accrue overwhelmingly to the OECD countries. Meanwhile, the LDC package contains little of substantive value; in the absence of legally binding commitments LDCs will have to continue their fight to convince the industrial countries to fulfil their best endeavour promises made almost a decade ago. These imbalances are characteristic of trade negotiations since the GATT was first negotiated in 1947. In the afterglow of the Bali package, it is easy to forget that competitive bargaining among unequals is what underpins the multilateral trading system. This situation is unlikely ever to yield symmetrical outcomes.^{lix} In this vein, the success of Bali may have a more deleterious effect; and the small, positive gains for development contained in the package may actually detract attention away from the need to fundamentally reform the multilateral trading system such that it can deliver more equitable gains for all.

Moreover, the agreement in Bali represents only a fraction of the work programme of the DDA, and covers the least contentious issues. WTO members have agreed, at the behest of South Africa among others, to begin work on the post-Bali agenda by July 2014. What form that will take remains unknown.

Four scenarios are possible. The first and least desirable is that members let the momentum from Bali languish; they neglect to pick up the post-Bali agenda in July; and they continue the negotiation of mega-regionals apace. Indeed, it is unlikely that the European Union and the United States will turn serious attention to re-opening the DDA until the TPP and TTIP are concluded which makes this scenario seem most likely, at least until 2015.

Second, members may decide, in setting the post-Bali agenda, that the most critical stumbling blocs in the DDA can best be overcome through the negotiation of plurilateral initiatives such as the Trade in Services Agreement. In this case, deals brokered regionally and bilaterally would then be woven together as a package if the DDA is concluded. In such a scenario, the concluded DDA would be constituted by a host of plurilaterals and only a thin universal agreement, the requisite multilateral element. Both outcomes would be regrettable because regional trade agreements and plurilaterals effectively cut the developing world out from both the negotiation and benefits of the deal.

Third, members may pursue the negotiation of mini-packages on 'harvestable' issues similar to what was on the table in Bali. In such a scenario, small positive gains for development are possible, provided there is sufficient political will and leadership. Finally and least likely, members may negotiate a post-Bali work programme that fundamentally re-orientes the DDA such that it better reflects contemporary conditions in the global economy (such as food price instability and the after shocks of the global financial crisis) and prioritises the needs of the WTO's poorest members.

In all cases, it is likely that the United States will press for some members, especially China, to 'graduate' from special and differential treatment and the other functions of the WTO will be bolstered in order to augment the surge in credibility resulting from MC9 and further secure the relevance of the multilateral trading system. In particular, the dispute settlement body, trade policy review mechanism, knowledge development and the made in the world initiative are likely to be the primary frontiers.

In sum, the Bali ministerial is significant. Eighteen years is a long time for a negotiating forum to fail to negotiate any substantive deal and there was a real feeling among delegates and commentators that had MC9 come to nothing the WTO would have been irrevocably weakened. That a deal was made in Bali has revitalised the multilateral trade agenda and provided a degree of momentum behind the outstanding WTO issues that has been lacking since the July 2008 collapse. Moreover, there are elements of the deal that break new ground in integrating development issues more firmly into the trade agenda, such as the explicit linking of developing country implementation of the trade facilitation agreement to the provision of financial and technical assistance. However, such financial side-payments are cheap for the OECD countries and may even be free if resources can be brought in from other aid agencies such as the World Bank. More substantive concessions by the industrial world concerning their own policies—the elimination of export subsidies and providing DFQF market access to LDCs being prominent examples—continue to be resisted. It thus remains unlikely that the Bali ministerial will be the harbinger of greater effort by WTO members to prioritise or redress the continued asymmetries of the multilateral trade system.

Notes

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