



Prospects of the Bali Ministerial



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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.

1. 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 22 and G 20. While the former has raised

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