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Bali High or Bali Low: Is a Piecemeal Approach the Way Forward for the WTO?

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There had been no discernable progress in the WTO's Doha Round for more than two years. Major trading nations have been actively seeking progress on trade liberalization in other venues such as preferential trade agreements. The WTO seemed to many to be slipping into irrelevance as a force for trade liberalization. Part of the difficulty was that successful conclusions of rounds require all of the round's agenda items to be dealt with as a *single undertaking*. Faced with another failure to conclude the round as a single undertaking, a new tactic was tried at the WTO Ministerial in Bali in December 2013. A subset of agenda items where agreement could be reached was announced at the Ministerial. It was presented as a major accomplishment for the WTO. This paper examines the Bali agreement to determine if it brings sufficient progress to garner the WTO the renewed prestige that it seeks.

Keywords: Bali Agreement, credibility, Doha Round, liberalization, single undertaking

With these measures on trade facilitation, agriculture and development, we have achieved something very significant.

People all around the world will benefit from the package you have delivered here today: the businesses community; the unemployed and the underemployed; the poor; those who rely on food security schemes; developing country farmers; developing country cotton growers; and the least-developed economies as a whole.

But beyond that: we have reinforced our ability to support growth and development; we have strengthened this organization; and we have bolstered the cause of multilateralism itself.

WTO Director-General Roberto Azevêdo
December 7, 2013¹

What we have done here in Bali is truly extraordinary. We have negotiated a package that will bring food security to billions of the world's poorest. We have delivered an Agreement on Trade Facilitation that will inject up to a trillion dollars into the world economy. And we have agreed a ground-breaking suite of initiatives to help Least Developed Countries benefit more from the multilateral trading system.

Gita Wirjawan
Chair of the Ninth Ministerial Conference
December 7, 2013²

Puffery: flattering publicity: extravagant commendation esp. for promotional purposes.

Webster's International Dictionary³

After a great deal of last-minute wrangling, and hours past the official deadline by which the Ninth WTO Ministerial was to end, a deal that has been dubbed *historic* by some was reached in Bali. *Drama* surrounding the conclusion of a trade agreement is not unexpected, as last-minute brinkmanship is a well-established tactic in negotiations. It is also a good way to raise the profile of negotiations in the press and social media. The deal may well be *historic*, not for what it entails – despite the *Estey Centre Journal of International Law and Trade Policy*

considerable puffery that has surrounded its announcement – but rather because it represents a significant change to the institutional approach to negotiations. It is a risky change for the WTO and may either revitalize the institution as a place for important trade negotiations to be undertaken, as hoped by those who fostered the change, or move it further down the path to irrelevance. This new path for the WTO would see trade liberalization delivered piecemeal rather than in the *single undertaking* of a round of negotiations. The Bali deal is the first delivery of piecemeal liberalization; it is probably too bad that it did not deliver more, but to create unrealizable expectations by overblowing the economic impact of what was achieved may well lead to less commitment to the institution's role as a facilitator of trade negotiations.

In all previous multilateral trade negotiation initiatives since the General Agreement on Tariffs and Trade (GATT) began operation in the late 1940s, a new round of negotiations would be proposed and discussed by the member states, an agenda hammered out and accepted and then negotiations undertaken until the entire package of agenda items had been dealt with. Once the agenda was accepted, the negotiations were considered a *single undertaking*. The idea was that the *single undertaking* would allow trade-offs across sectors so it would be possible to grant a concession on, for example, farm subsidies in order to obtain a concession on antidumping procedures. Topics that member states did not feel they could deal with were excluded during the process of establishing the agenda items for the round. Thus, for example, the sensitive topic of rules for agricultural trade was largely kept off the agenda until the Uruguay Round. Once the agenda was set, there was an expectation that a compromise would arise from the negotiations.⁴ The end of a round bought real progress on liberalization, with implementation phased in over time. Eventually, the member states would reach agreement that to have a new round was desirable and the process would start again. The process worked well through the eight successful GATT rounds and led to considerable liberalization of trade (Josling, 2007; Gaisford and Kerr, 2001). Not all of the institutional arrangements made in 1947 were robust in terms of the evolving world of international commerce and the changing number and composition of the organization's member states, and a new institutional arrangement – the World Trade Organization – was negotiated during the Uruguay Round. Much of the GATT-1947, however, remained.

Under the auspices of the new WTO, a new round – the Doha Round – was agreed in 2001. The process of agreeing a new round was similar to that of previous GATT rounds. There were difficult negotiations over the agenda with, for example, the Agreement on Trade Related Aspects of Intellectual Property (TRIPS) not being put

on the agenda, and antidumping under the *Rules* negotiations being insisted on by developing countries and conceded only grudgingly by the United States. The pre-ordained negotiations on agricultural trade were rolled into the Doha Round agenda. The process of reaching agreement on an agenda was difficult because developing countries wanted a development orientation to the agenda. The failed 1999 Ministerial in Seattle reflected these difficulties. Eventually, agreement on the agenda was reached and the Doha Development Round was launched at the 2001 Ministerial in Doha. The process of establishing the Doha Round agenda was the first time developing countries were able to influence the multilateral system in a significant way (Kerr, 2002).

The Doha Development Round began like previous rounds, with the major agenda items (e.g., agriculture, rules, industrial tariffs) being segmented for initial negotiations, and negotiations proceeded apace. No one expected that agreement would come easily or that the optimistic deadlines would be met. The Uruguay Round had taken from 1986 to 1994. At some point, however, something changed. Months where no visible progress was discernable extended into years, with negotiations sometimes officially suspended. The activity in Geneva, however, never ceased entirely. Why there ceased to be significant progress is not clear, although there are many theories and partial explanations. There was, however, one significant change in the wider world of trade policy which may have a key explanatory role. From the outset of the GATT in 1947 through to the Uruguay Round the United States was a major supporter of the GATT. This support was manifested by endowing the GATT negotiations with exclusivity in terms of other countries being able to improve their access to the U.S. market; the United States did not negotiate preferential trade agreements with countries. If countries wanted better access to the U.S. market they had to work at obtaining a GATT agreement.⁵

Late in the Clinton administration, exclusivity for the GATT was abandoned for a three-tracked approach encompassing bilateral, regional and multilateral negotiations. This new direction was taken up enthusiastically by the administration of President George W. Bush. The result was that it created alternative avenues for countries to garner improved access to the world's largest market. Further, if successful bilateral or regional agreements could be negotiated, then better access would be obtained than could be secured by competitors still having to use the WTO or later in the queue to negotiate with the United States (Kerr and Hobbs, 2006). The United States has completed negotiations with major trading partners such as South Korea, and is in negotiations with the European Union, and with Japan through the Trans-Pacific Partnership (TPP). The United States has a number of other regional and bilateral

negotiations completed or underway. These developments have created two feedback mechanisms to the WTO. First, those countries early in the queue to negotiate bilaterally (or regionally) with the United States have less need of a successful conclusion to the Doha Round. Second, for those that have secured a deal with the United States, a Doha conclusion would erode the benefits obtained in their agreements with the United States relative to their competitors that do not have preferential arrangements. As a result of the latter, countries may wish to act as spoilers in the Doha Round negotiations. Thus it becomes much more difficult to achieve the *single undertaking* deal. Pascal Lamy, the WTO Director General until the summer of 2013, kept to the tradition of a *single undertaking* but, despite his best efforts and considerable reputation, was not able to bring the round to a conclusion. Of course, Mr. Lamy was a WTO *outsider* who it was hoped would be able to carry the day. In contrast, his replacement, Mr. Roberto Azevêdo, has a long history with the GATT/WTO and international trade more generally and can be considered an *insider*.

The reasons Mr. Azevêdo decided to break with tradition and abandon the *single undertaking* are not clear. One suspects that it was simply that, upon sober reflection, there was no possibility of completing the Doha Round as a *single undertaking* – or at least completing it in the foreseeable future. Another Ministerial where nothing was accomplished would have further lowered the reputation of the organization, which is increasingly perceived as irrelevant by the broader business and civil society communities (Kerr, 2008).⁶ Some countries that are major players in the WTO have been aggressively seeking alternatives to the WTO to achieve the benefits of trade liberalization – both the United States (in negotiations or having recently concluded them with a number of important trading countries, including South Korea, as well as Japan, Vietnam and Malaysia in the Trans Pacific Partnership) and the EU (through negotiations with Canada, India and South Korea) no longer seemed particularly engaged with the Doha Round. In the summer of 2013 they began their own bilateral negotiations under the Trans-Atlantic Trade and Investment Partnership (TTIP). Something new had to be tried in Bali.

Mr. Azevêdo signalled this early in his term. In his opening message on the WTO website he placed some blame for the lack of progress in the Doha Round on the recent recession, or crisis, and stated,

The economic strains of recent years have undoubtedly contributed to the difficulties we have experienced as a negotiating forum. The Doha Round, launched in 2001, has been at an impasse since the onset of the crisis. The resulting stalemate has been a great source of frustration to trade negotiators and has led some governments to explore other avenues for opening trade and developing new rules.

But this year things have changed. WTO members have identified some important areas of the Doha Round where agreement is within reach. This is only a small part of the overall Doha package, but agreement on these issues will provide an opportunity to help unblock other areas of the negotiations. It will also provide negotiators the much-needed confidence that we can still achieve multilaterally negotiated results if the political will is there. (R. Azevêdo, 2013).

A piecemeal approach to multilateral trade liberalization is, however, itself a risky strategy. What is delivered in individual piecemeal packages must be of sufficient magnitude to convince stakeholders that the WTO is an important venue for trade negotiations. If the *piece* is not able to achieve this, the organization will be further damaged. Opening up the possibility for piecemeal progress, however, may allow member states to put off more difficult areas for negotiations until the future. The difficult areas are also likely to be where the most important potential gains from liberalization are to be found. As the difficult areas of negotiation are put off, it will make future progress even less likely. This is clearly what happened at Bali – the major areas for liberalization, and hence their benefits, are not part of the package. New lower tariff schedules, hard disciplines on agricultural subsidies, reform of antidumping criteria, etc. are not part of the Bali deal.

A closer look at the Bali package sheds light on its likely effect on liberalization. The centrepiece of the Bali package is the Agreement on Trade Facilitation. It is a very detailed and complex document that commits member states to provide transparent information and improved access to customs officials as well as proscribing procedures in certain areas associated with border clearance. The agreement will require a much larger commitment of resources from developing countries – even with important special and differential treatment provisions being included – than from developed countries. Developed countries will have many of the required procedures in place already. In this way, it is similar to the Agreement on Trade Related Aspects of Intellectual Property (TRIPS) in that it requires asymmetric commitments when developing and developed countries are compared. Gaisford and Richardson (2000) make a compelling argument that asymmetric commitments are the reason developing countries have not embraced their TRIPS commitments and have often failed to provide resources to implement them effectively. It may be that the Agreement on Trade Facilitation will suffer from a similar lack of commitment. In any case, it will take years before the full effects of the Agreement on Trade Facilitation become clear. In the official WTO release regarding the Agreement on Trade Facilitation it is claimed that

The benefits to the world economy are calculated to be between \$400 billion and \$1 trillion by reducing costs of trade by between 10% and 15%,
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increasing trade flows and revenue collection, creating a stable business environment and attracting foreign investment. (WTO News Item, Dec. 7, 2013)

Benefits of this magnitude may well be possible – it is hard to refute such projections – but they would seem to be very optimistic. They can be verified only after a considerable period of implementation and serious economic investigation. The *soft* nature of the commitments⁷ made should lead to very conservative claims as to the benefits expected to arise. In general, the claims were met with little enthusiasm by the knowledgeable trade policy community.

The provision that produced all the drama and last-minute brinkmanship at the Bali Ministerial is actually a step backward in terms of liberalization. At the insistence of India, which understood very well the desire to have a deal at the Bali Ministerial, subsidies for the purchase of stocks to be accumulated for food security purposes cannot be challenged if total existing maximum subsidy commitments are exceeded. In essence, this allows price support subsidies to be used without limit, which, in turn, provides an incentive for producers to increase output – a coupled subsidy – leading to reduced opportunities to export to India.⁸

In the case of the administration of the quota portion of imports under tariff rate quota (TRQ) schemes, there have been concerns with chronic under-filling of some quotas. The Bali agreement commits countries to ensuring transparency and timely allocation of quota quantities. Given that TRQs are applied to only a narrow selection of agricultural tariff lines in a few countries – approximately 1400 TRQs in all – and only a relatively small subset of these are chronically under-filled (Skully, 2007), the changes agreed in the Bali agreement will have only an indiscernible impact on global trade.

The *General Services* provision in agriculture expands the list of services that are exempt from disciplines on subsidies to include land reform and food security. While desired by some developing countries, the provision runs counter to further liberalization by allowing more exemptions from disciplines on subsidies. In any case, this area is very specialized and can be expected to have limited effect on global trade.

The inclusion of the provision on export competition in a package that was to show progress toward more trade liberalization is a mystery – it is an explicit admission of failure and includes a statement of regret at not being able to reach the objective previously agreed at the 2005 Ministerial. Export subsidies in all their various forms remain, despite previous agreement that they should be gone by 2013.⁹ The Ministerial Decision on Cotton in the Bali package is also an admission of failure to reach the objectives established at the 2005 Ministerial. Again, there are commitments only to keep working on the cotton issue.

The last four elements of the Bali package are classified by the WTO as issues to do with development and least-developed countries. They are largely concerned with strengthening the *Special and Differential Treatment* aspects of WTO agreements.

The Ministerial Decision on Preferential Rules of Origin for Least-Developed Countries commits countries to *do better* on developing simplified rules of origin being applied on goods from least-developed countries, a process that was agreed at the Hong Kong Ministerial of 2005. It notes that least-developed countries have suggested that they be allowed up to 75 percent foreign-origin inputs in their exported manufactures, and that those products still be considered a product of their country by importers. There is, however, no obligation for importing countries to follow this suggestion when establishing the rules-of-origin thresholds that will apply to imports from least-developed countries. This provision may help the exports of some least-developed countries, but a commitment to *do better* is no guarantee that those implementing rules of origin will actually do better. After all, there was a commitment in 2005 to simplify the rules of origin that appears to be lagging – and, hence, is part of the Bali package.

In a similar vein the Ministerial Decision on Operationalization of the Waiver Concerning Preferential Treatment to Services and Service Suppliers of Least-Developed Countries is an attempt to nudge member states into implementing a provision agreed at the 2011 Ministerial in Geneva. It is noted in the WTO document that no member state has used the waiver since it became available in the wake of the 2011 Ministerial (WTO News Item, 2013). The Bali package contains some concrete commitments to engage in activities which will encourage member states to, at the very least, remember that they have made the commitment. It may help some least-developed countries' service sectors with attaining better market access if the waiver is actually used, but given the generally low level of service capacity in least-developed countries, it is going to affect only a tiny portion of global trade in services.

The Ministerial Decision on Duty-Free and Quota-Free (DFQF) Market Access for Least-Developed Countries also offers recommitments to goals established in the 2005 Ministerial. It confirms the target of DFQF access for goods of least-developed countries of 97 percent. It urges developed countries that have not reached the goal to strive for its attainment. It also suggests that developing countries seek to give additional DFQF access to least-developed countries. The commitments are, however, all *soft*.

The final commitment of the Development and Least-Developed Country tranche of the Bali package commits to the establishment of a mechanism to monitor the extent to which the *Special and Differential Treatment* provisions – now widely

scattered throughout the WTO – are being observed and implemented. Again, this commitment may help least-developed countries obtain the benefits they should receive from what has already been agreed. In fact, there seems to be a consistent theme in this part of the Bali package that least-developed countries are not receiving the benefits they expect from membership in the WTO. In any case, however, there is no new trade liberalizing initiative.

Except for the Agreement on Trade Facilitation, where the impact cannot yet be known, the Bali package is singularly unimpressive. If this is typical of what the piecemeal approach can deliver, it will be a long time until the Doha agenda can be completed – much less thinking about dealing with all the new trade issues that have arisen since 2001. Of course, the real test will be what happens when the next iterative package is agreed, likely in the 2015 Ministerial. If that package provides commitments on some of the major Doha agenda items then there may be a future in the piecemeal approach to further liberalization.

This major change in the WTO's approach to negotiations – the abandonment of the *single undertaking* – was largely missed in the Bali reporting. The move to a piecemeal approach to trade negotiations could have a much bigger impact on the future of international trade than what was delivered in the Bali package.

The Bali package is likely to be very limited in its overall impact. That is fine if it actually breaks the *log jam* that is preventing a Doha Round *single undertaking* from being achieved. Spinning it as something that it is not, however, risks the reputation of the organization in ways that could severely damage it. One is reminded of Hans Christian Andersen's fairy tale about the "Emperor's New Suit",¹⁰ where the emperor has been hoodwinked into wearing a nonexistent set of clothes that only smart people can see, and no one, including the emperor, will admit they are not smart enough to see them. When the emperor eventually ventures out in public in his invisible suit, the inevitable happens.

"But he has nothing on at all", said a little child at last. "Good heavens! Listen to the voice of an innocent child," said the father, and one whispered to the other what the child had said. "But he has nothing on at all," cried at last the whole of the people. (Andersen, 1837)

One wonders how effective the emperor's administration was after that event.

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Endnotes

1. See WTO News Item, Dec. 7, 2013.
2. See WTO News Item, Dec. 7, 2013.
3. See Webster's Third New International Dictionary, 1993.
4. In the Uruguay Round it was not possible to realize a full solution to the integration of agricultural trade into the general GATT rules, even after considerable compromises had been agreed. As a means to bring closure to the round, it was agreed that negotiations would start again after five years whether or not agreement had been reached to have a new full round of negotiations (Kerr, 2000).
5. The United States did have a small, politically symbolic trade agreement with Israel. The 1988 Canada-US Trade Agreement (CUSTA) and the subsequent North American Free Trade Agreements (NAFTA) represent considerable anomalies. It has been suggested that the United States wanted to use the CUSTA/NAFTA as a working model for aspects of the WTO such as the dispute settlement system and, thus, made an exception to its policy on exclusivity of the GATT (Clement et al., 1999).
6. Another indication of the WTO being increasingly seen as lacking relevance might be that the anti-WTO protests surrounding the Bali Meeting were merely pale shadows of the protests that have dogged previous Ministerial gatherings.
7. As compared to *hard* commitments such as new lower tariff schedules or reductions in *de minimis* exemptions for subsidies.
8. Or to any other developing country with a similar policy.
9. The 2005 agreement on the elimination of export subsidies was contingent on a successful conclusion to the Doha Round as a *single undertaking*, which, of course, did not come to pass.
10. See Andersen, 1837.