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The WTO at a Crossroads: Destination, Doha. Pit Stop, Bali Opportunities for Reform of the World Trading System

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Highlights

Trade experts gathered at the European University Institute (EUI) to talk about the major challenges the World Trade Organization (WTO) is facing, more in particular in light of the upcoming Ministerial Conference in Bali (December 2013). Topics of discussion included the shift towards “plurilateral” agreements and what outcome to expect in Bali. Participants saw eye to eye on the fact that the Conference will be a decisive moment and a critical opportunity to ensure that the WTO stays relevant in the governance of the global trade regime. In other words, the pit stop at Bali is vital for the WTO to reach its destination: Doha.

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POLICY

BRIEF



Introduction

A wide array of trade experts gathered at the High Level Policy Seminar held at the EUI on 18 March 2013 to discuss the most pressing issues that continue to plague the WTO today. They did so under the scientific coordination of Bernard Hoekman and Petros C. Mavroidis. Two topics dominated the agenda: What outcome to expect from the upcoming Ninth WTO Ministerial Conference and the prospects for – and implications of – the possible negotiation of new plurilateral agreements under auspices of the WTO, in particular a Trade in Services Agreement (TISA).

The Bali Ministerial Conference Lamy: Do Not Bail on Bali

The WTO is at a crossroads in many respects: a new Director-General was elected this spring, Brazilian trade diplomat Roberto Azevedo. Although there are many pressing new issues and challenges confronting the WTO, the incoming Director-General will first need to confront ghosts from the past. After yet another year without any fruitful results, it would be an understatement to say that the Doha Development Agenda (DDA) negotiations are at an impasse. But rather than declaring the Doha Round “dead” for the n^{th} time, the question is if and how countries can move forward. There seem to be two options at present: to step back from Doha altogether or to take the realistic steps necessary for Doha’s re-birth and survival.

In December 2012 the outgoing Director-General of the WTO, Pascal Lamy, urged WTO Members to attain “credible results” with respect to addressing a sub-set of what is on the Doha Agenda so as to allow some progress to be made. He did so by proposing to

set workable and feasible deadlines in order to deliver results in three areas: trade facilitation, agriculture and measures to assist the least-developed countries benefit from trading opportunities). He stressed that ‘one more housekeeping Ministerial Conference in Bali would not suffice to keep the Doha house alive’. He reiterated his message in April 2013, saying that more than anything, a change in mindset is needed for Bali to succeed. The current work pace, in Lamy’s view, was inadequate to deliver a success in Bali.

Lamy framed his assessment in view of the pessimistic trade growth forecasts for 2013, noting that the world economy remains in a fragile situation. On a more positive note, however, he observed that for the first time since 2008 there was a political consensus that the Ministerial meeting in Bali should be about narrowing the gaps on the three areas noted above.

With respect to **Trade Facilitation**, the two issues for Bali seem to be first to assess the level of ambition WTO members are comfortable with in terms of strengthening trade facilitation-related GATT disciplines, and second, whether there is enough confidence that the necessary capacity building support will be made available to allow poorer countries to make commitments on new disciplines in this area. A recent OECD report indicated that trade facilitation performance could be radically improved around the world, and that countries that have an efficient customs service attract more investment and trade than countries that suffer from excessive bureaucracy and where there are frequently unduly long delays.³ Workers and consumers end up paying

³ OECD Trade Facilitation Indicators: Transforming border bottlenecks into global gateways, (http://www.oecd.org/tad/facilitation/OECD_Trade_Facilitation_Indicators_updated-flyer_May_2013.pdf)



the price. If governments improve their border management, they can radically reduce trade costs and boost trade flows, thereby reaping greater benefits from international trade. Key areas for improvement in many countries are the harmonisation and simplification of trade documents, streamlining border procedures, automating trade and customs processes, ensuring the availability of trade-related information, advance rulings on custom matters and, finally, simplifying transit formalities and ensuring transit cooperation.⁴ In comparison to the benefits that could be reaped, the costs for implementing such improvements are relatively low. However, a crucial dimension of improving border management and realising the potential gains from trade facilitation is better communication across the various regulatory agencies that are involved in border procedures (whether private or governmental). As stressed in a recent World Economic Forum report,⁵ such coordination is often lacking altogether.

Turning to **Agriculture**, despite an active and engaged negotiation process, key questions, such as the specific level of ambition with respect to disciplines on export subsidies and export restrictions remain unresolved. Finally, with regard to **special and differential treatment** for developing countries and measures to improve trade opportunities for the Least Developed Countries (LDCs), a key issue is whether progress can be made to expand so-called duty-free, quota-free market access programs and to review whether there is a way to allow for a regular review of the various provisions in the WTO that call for special and differential treatment of devel-

4 Ibid.

5 World Economic Forum Report, Enabling Trade Valuing Growth Opportunities (http://www3.weforum.org/docs/WEF_SCT_EnablingTrade_Report_2013.pdf)

oping countries In order to support progress in this area, the outgoing Director General, together with the LDC Group, has appointed a facilitator (Ambassador Smidt of Denmark). One of the most pressing matters is to agree on the extension of the transition period that was granted for LDCs to implement the WTO Agreement on Trade-related Intellectual Property Rights.

Different Mindset rather than Strategy

During the High-Level Policy Seminar, trade experts reiterated one message – the stakes are simply too high to allow Bali to fail. There was a general sense that multilateralism is in a crisis and that Bali will be a defining moment for the prospects of multilateral cooperation on trade. For the EU, for instance, the financial crisis has led to a greater recognition of the importance of expanding trade as one mechanism to increase competitiveness. This is one reason why we are seeing high-level political attention being given to the launch of initiatives such as the Transatlantic Trade and Investment Partnership (TTIP) negotiations with the US. Speakers emphasised that the real challenge at the Bali Ministerial Conference will be whether or not a multilateral WTO package, even if small, can be delivered.

Several participants argued that a different approach is needed to reignite the energy in WTO deliberations. There is a significant danger that the 2013 Ministerial Conference will simply be an opportunity for parties to continue to take a defensive stance. Instead, it was suggested that the dialogue would profit from bringing together stakeholders from a broader set of constituencies, such as Members of Parliament and representatives of the busi-



ness community to help identify the elements of a possible agreement. To sum up, the Ministerial Conference in Bali must be a stepping stone that provides an impetus for future negotiations by delivering a concrete result in the three areas discussed above. For Bali to deliver, a different frame of mind, rather than a different strategy, is essential.

A Plurilateral Agreement on Trade in Services?

The other major topic of debate during the High-Level Policy Seminar concerned the possibility of new plurilateral agreements in the WTO. The two topics are closely linked in that the absence of progress at the multilateral level has increasingly induced countries to pursue preferential trade agreements. The year 2013 saw the launch of the TTIP negotiations between the EU and the US and the pursuit of a Trade in Services Agreement among a subset of WTO members. Twenty-two WTO Members (the EU considered as one) are likely to receive the mandate from their national parliaments to start negotiations on trade in services sometime this year.

The countries that are pursuing the services talks account for almost two thirds of world services trade, and comprise a mix of developed and developing countries from different regions of the world. Notably absent, or better said, opposing the negotiation of a Trade in Services Agreement (TISA), are the major emerging market economies: Brasil, China, and India. However, the participants in the talks have indicated they are in favor of a WTO consistent agreement that can be “multilateralised” at a later stage, thereby leaving the door open to future

participation by WTO members who are not willing to join in at present.

The declared aim of the participants to the talks is to make the TISA a so-called plurilateral agreement under Annex 4 of the Agreement establishing the WTO. This is a provision that permits a group of WTO Members to agree among each other to go beyond their current WTO commitments, while ensuring that other WTO Members can stay out of the agreement. In order to make the TISA a plurilateral agreement in the WTO, both political and institutional obstacles need to be overcome. To be accepted, all WTO Members must agree to the inclusion of a new plurilateral agreement, including all Members who are not participants and will not join the agreement. As pointed out by Prof. Sauvé recently in a paper for the European Parliament, the TISA will be «an agreement for and by advanced industrialised nations». For this reason it is not clear that the TISA will obtain the approval of all non-participating WTO Members that is needed for its incorporation into the WTO framework as a plurilateral agreement. Given that such consensus is very unlikely, the TISA countries have indicated that the agreement most likely will be a “standard” preferential trade agreement of the type that is permitted under GATS Art.V. Such agreements do not require the consent of the parties who do not participate in them. Therefore, once concluded, the TISA will remain outside the WTO framework. However, the fact that the parties decided to meet on the shore of Lac Léman, physically close to the WTO headquarters, to negotiate the agreement seems to be a good sign. To ensure that any agreement does not become an exclusive club, the parties should open up their work both at the negotiation stage and after the deal



is reached to all WTO members interested and who may want to join the TISA at a later date. This will ensure there is full transparency as regards what is being done and help attenuate concerns of non-participants.

While negotiations have not formally started, the key features of a TISA have already been reported. The agreement will conform to the requirements of GATS Art.V (*Economic Integration*) in terms of sectoral coverage, and there will likely be a clause that allows for the accession of latecomers. A “positive list” approach will be taken in defining the sectoral coverage of market access commitments by participants. This will probably make the agreement less ambitious, but makes it more likely to be compatible with the GATS framework, which will facilitate eventual multilateralisation. However, there are also reports that a negative list approach may be used for the coverage of national treatment disciplines. If so, this will be very different from the GATS architecture – which builds upon a positive-list approach – and thus may present a major stumbling block towards the future multilateralisation of the agreement. On the other hand, one could argue that it is understandable that parties to the TISA might want an ambitious deal on national treatment.

An important challenge will be to define the procedures for the accession of latecomers. It is of paramount importance that a fair and transparent mechanism for the accession of third parties is agreed. In the long run, however, it is our personal belief that the WTO needs to revise its institutional framework if it is to play a central role in the decades to come. Since its entry into force in 1995, the rules of the game in international trade have been negotiated outside its mandate, at the preferential level. One of

the biggest challenges for the WTO is internalising what has been and continues to be negotiated outside its scope.

One solution could be represented by the model adopted by the European Union with the so-called “Enhanced Co-operation Agreements” (ECA), by which sub-unions on specific issues are allowed according to the principle “no veto – no exclusion” and where common agents (Commission, Council and Parliament) play a decisive role in all stages of the creation of the ECA (proposal, approval and decision on latecomers’ accession). There are valid concerns regarding the implications of introducing such a mechanism at the WTO level. There is a robust stream of literature that warns against the breaking up of the “substantially all trade” (“substantial sectoral coverage” in GATS parlance) requirement for the establishment of preferential trade agreements. However, an active involvement of the Secretariat in all the stages of the establishment of a sub-union of WTO members might prevent a perpetual two-track system. Hence, those members willing to go beyond current WTO obligations and concessions might have the possibility to do so while remaining within the ambit of the WTO, whereas those members not wishing to join in the first place might change their mind at a later stage and are guaranteed they will not be excluded if they want to join. Although ambitious, this is a solution that WTO Members could take into consideration.



Conclusion

In conclusion, while Doha might not be as alive as it should be, the debate on pressing issues and the present state of the WTO certainly is. The High-Level Policy Seminar served as an example of this. Participants were divided on many issues, yet a positive and constructive atmosphere prevailed throughout the deliberations. They agreed on one thing in particular: the WTO in many respects is at a crossroads and it is time for change. Instead of standing still at the stoplight and waiting passively for it to jump to green, Members need to be pro-active. Yes, the list of challenges seems endless: How to revive Doha and reach consensus on essential negotiation topics? How can obstacles in getting a deal on trade facilitation best be tackled? What is the future of the TISA and of plurilateral agreements more in generally in the WTO? What turn should the WTO vehicle take? Let's hope that the necessary pit stop at Bali will provide a clear answer.

This policy brief is published following the High-Level Policy Seminar "Policy Implications of Changes in the Global Trade Landscape" (18 March 2013), organised by the Global Governance Programme within the activities of the "International Trade Observatory" and "Global Economics" research strands.

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