

The WTO Bali Package. Does it mark the resurgence of trade multilateralism?

Noemi Gal-Or

In December 2013, the World Trade Organisation (WTO) concluded the Bali Package at its Ninth Ministerial Conference in Indonesia. Marking the first WTO agreement in eighteen years, the Bali Package has sparked hopes for the resurgence of trade multilateralism. The following analysis distinguishes the main lines of interpretation advanced to explain the Bali Package and draws out the likely implications of the deal for concerned stakeholders and in regards to the major issues on the contemporary world economic agenda. It provides signposts to follow when assessing the achievements of the Bali Declaration cognizant of the impact centripetal and centrifugal forces exert in either enhancing, or impinging on, a multilateral world economic system.

The WTO Bali Package

At its 10th anniversary at 2005, the WTO was perceived as poised to steer the global economy towards further growth. It had set sail with the Doha Development Agenda (DDA) hoisting the banner of a badly needed lift of the least developed countries (LDCs) out of their economic predicament and the associated ambitious plan of reconciling members' conflicting interests in matters agriculture and non-agriculture market access, development, and the "Singapore issues" (transparency in government procurement, trade facilitation, trade and investment, and trade and competition). Throughout the following decade, however, the Doha "Round" managed to achieve little more than turning around itself, a dog chasing its tail in a self-deceptive pursuit. Thus, by 2013, although

continuing to earn high praise for its dispute settlement service, the WTO's role as the chief avenue for trade development via treaty negotiation has been overtaken by bilateral, regional and plurilateral trade agreements and an ensuing global web of accords. This development stood in stark contrast to the WTO's aim to promote trade by way of multilateralism and foster coherence within a liberalising global trade regime.

Those rushing to lament the decline of the WTO should be reminded that in 2004 the so-called Sutherland Report was published by the WTO. Entitled "The Future of the WTO: Addressing Institutional Challenges in the New Millennium", this signature volume alerted against a presumptive and critical fallacy. It warned that "the process of globalization and the role played by the WTO [were] widely misunderstood" (p. 79), in fact, presaging what now appears to be misplaced expectations attached to the organization. Ten years ago, the WTO was undisputedly "the most dramatic advance in multilateralism since the 1940s", as the Sutherland Report put it (p. 79). By December 2013, it would come as no surprise that EU Trade Commissioner, Karel De Gucht, referred to the past decade as "the darkness of the multilateral era" (Asia Times, 13 December 2013), and al Jazeera alerted to the forthcoming Bali ministerial meeting as representing "a last ditch to salvage the global trading regime" (3 December 2013). At this backdrop, will the Bali Package emerge as the WTO saviour?

Although legally binding, the essence of the Bali Package stated in the Bali Ministerial Declaration (Revised Draft) of 7 December 2013, represents an

agreement yet to be finalised. The details will be worked out throughout 2014, the agreement projected to enter into force no earlier than 2016. It marks both the first WTO agreement in eighteen years as well as progress on the DDA front, reflected in the decisions and declarations adopted by the 159 members at the Ministerial Conference. It is also the first accomplishment of the new WTO Director-General, Roberto Azevêdo.

The highlights of the deal consist of

1. temporary protection for national food security programs in developing countries administered through the stockpiling of grain to assist the poor;
2. the setting up of a monitoring mechanism to review and strengthen special and differential treatment provisions for developing countries as well as specific measures assisting LDCs in their exports to developed economies; and
3. an agreement on a series of measures designed to accelerate the processing of goods through customs including enhancement of transparency by requiring members to publish their customs rules.

Concomitant with the Bali Package, as modest as it is, is the estimate that it will effect a 1 trillion dollars growth in global trade. Roberto Azevêdo, who considers the Bali Package to be signaling the reinvigoration of the multilateral trading system, recognizes, at the same time, that the organisation will continue to co-exist with, and complement, other regional and bilateral trading systems in a multipolar world.

Catering to the Interests of Different Stakeholders

If as Roberto Azevêdo recalled in early 2014, “the very future of the multilateral trading system [i.e., the WTO] hung in the balance”, then to the WTO, the Bali Package was the phoenix arising from the ashes. From this stance, even a modest accord might have sufficed to furnish the fuel necessary to bring the international organization back on track. As the Director-General has been underscoring, Bali stands exactly for that – the WTO had ultimately found a different approach to keep its wheels turning while at the same time maintaining, and adhering to, its original agenda.

In Bali, in a show of flexibility, differing and conflicting interests of member-states and regional groupings, which have been standing in the way of multilateralism, were partly accommodated. Most telling was India’s insistence on holding on to its food security measures, and its success in securing the United States’ tolerance for this protectionist measure for the duration of the next four years. The food security terms achieved, which apply to all developing countries equally, exemplify an issue pitching an

emerging economy against a developed one. While the developed countries complied, their consent has been reserved since the terms of the agreement left little wiggle room for developing countries as the reference figures derive from 1988 data which do not correspond to the current food insecurity circumstances.

The Bali ministerial saw regional blocs signaling their preference in favour of a multilateral promise of modest global economic progress over an unknown alternative. Latin America’s eventual acquiescence to the deal, which required overcoming Cuba’s insistence on condemning the US embargo, is one example; Panama’s accommodation of the European concerns, agreeing not to require additional mandatory use of customs brokers, is another one. The EU registered gains also in matters trade facilitation for which it has long been pushing (incidentally reminding the emerging economies, specifically Russia, of their international obligations regarding freedom of transit, e.g. Russian gas). The BRIC(S) club with the current Brazilian WTO Director-General as its “representative”, has managed to adhere to its Pretoria promise to cooperate in Bali in pursuing food security.

Although states are the only direct interlocutors at WTO ministerial meetings, non-state actors have no lesser vested interests in the output of the WTO. These include stakeholders from business, consumers, workers, etc., who participate in articulating, and lobbying for, the issues pressing on the world trade agenda.

Assessing Inequality and Multi-Polarity

Current pivotal economic subjects can be grouped under two overarching headings: Economic (in) equality and the politics of multi-polarity. Economic inequality among sovereign states (distinct from but not unrelated to economic inequality within states) is a lingering, chronic international malaise. To be sure, it is the gaps separating the rich from the poor, and the poor from the poorest, that have been the focus of the DDA, which the Bali ministerial was called upon to address. In this respect, the multi-layered membership of the WTO (single states, regional, and interest groupings) is seen to have produced an asymmetric deal: Once again, the developed countries have emerged as the winners while the developing countries and LDCs have managed to secure an incomplete bargain only, based on promises rather than tangible and immediate results. African states pursuing gains in agriculture, in competitiveness in the cotton industry, preferential treatment to service suppliers, and other preferential rules relating to rules of origin and access to developed countries’ markets noted that the few DDA issues that were finally achieved amount to mere “best-endeavour outcomes”. These include also the developed coun-

tries' promise to reciprocate – to reduce what appears like export subsidies, e.g. in the EU Community Agricultural Policy (CAP) and American agro-subsidies. Measured against the record of the developed countries, namely the latter's failure to keep their promises from the 2005 Hong Kong ministerial declaration, the Bali vows may sound hollow. But even if the Bali Package materializes, lowering of tariffs across the board will still fall short of improving the competitiveness of those countries which do not have much to offer anyway.

As mentioned above, food security has figured as a pivotal concern of emerging economies, developing countries, and LDCs. The compromise facilitating securing food for the poor and needy in the form of the Bali food security interim mechanism contains, however, many notification and safeguard requirements that may be diluting this tangible (compared to the other Bali promises) achievement. The EU's commitment to assist the developing countries in the implementation of the trade facilitation agreement by infusing 400 million euros over five years, and World Bank and OECD support earmarked to infrastructure and training, has not assuaged countries' underlying development concerns.

Developed countries have been keen on simplifying their access to the developing and LDCs markets, trumpeting trade facilitation through elimination of red tape in custom clearance. Most prominent among all Bali Package items is the trade facilitation agreement which represents a concrete step forward in this direction. While chiefly a developed countries' concern, the agreement will benefit also developing countries and LDCs as they become more welcoming to foreign investment. At the same time, it will simplify export formalities for their own small and medium size companies and will therefore be welcomed by many of these countries, especially the land-locked ones. Obviously, implementation of the agreement is crucial: Should it prove slow, then the same countries may find themselves confronting the unwelcome alternative of seeking recourse with the WTO dispute settlement body. As it stands now, a first step towards this objective had been achieved with the election on 31st of January of Philippine Ambassador Esteban B. Conejos Jr. as Chairperson of the Preparatory Committee on Trade Facilitation.

Concerns that the multipolar world architecture may undermine trade multilateralism and consequently destabilise the global trade system have burdened all those attending Bali. At least temporarily, the inter-connectedness of the global economy trumped policy single-mindedness, as governments realized that they were left with little choice but to breeze life back into the WTO and the multilateral trade regime by keeping the Doha Round alive. Bali shows that weakness on substance can be counter-balanced by resourcefulness regarding process. From the outset, expectations surrounding the ministerial meeting were vastly reserved. Devising a process whereby

consensus could be formed around a limited list of objectives proved a welcome change in strategy – at least in the very short term needed in order to develop the technical details of the Bali Package. Similarly, rearranging the mix of participants working in the various small negotiating groups marked a departure from previous “club” settings and mentality. Consequently, the dynamics of the process were determined by members' selective sensitivity to certain issues rather than their economic power; keeping the meetings open-ended – signifying a shift in relation to transparency and inclusion, two missing factors for which the WTO has consistently been criticized. From the brink of failure, modifying the negotiation process had thus succeeded in galvanizing the good will of “everyone” (in the words of the WTO Director-General). Indeed, multi-polarity succumbed to multilateralism, or did it?

The Resurgence of Trade Multilateralism?

Three general (though mixed) constructions can be delineated from the reactions to the Bali Package. One set of interpretations, based on reactions largely of the developing countries, centers on Bali's shortcomings with regard to equality and development issues. Another view, reflecting mostly the developed economies' perspective, draws the attention to Bali's achievement in reigning in multipolar forces that may disrupt multiculturalism. A third approach, mainly China's and perhaps Russia's, takes the Bali Package with equanimity.

WTO members which are pursuing mega-regional negotiations such as the Trans-Pacific Partnership and Trans-Atlantic Trade and Investment Partnership, as well as those involved in other constellations, for instance the BRIC(S), and the most powerful economies developing additional trade avenues (China or the United States), seem not to have been troubled by the slow pace of the multilateral process. The Bali Package appears to suit them all well as it would maintain the trade regime a bit above its current operative level thus securing a measure of certainty while freeing them to pursue additional agendas. Indeed, according to some experts, the Bali Package is a token, not more than needed to lend the WTO sufficient credibility to sustain its role as a global trade dispute settlement adjudicator.

Thus, while the WTO brings together the largest number of states, sub-set groupings have concurrently formed their own playing fields. The US-EU Trans-Atlantic Trade and Investment Partnership; the Trans-Pacific Partnership expected to become “the agreement of the 21st century”; and the Regional Comprehensive Economic Partnership (RCEP) negotiated by the members of the Association of Southeast Asian Nations (ASEAN) and their FTA partners (including China) – all represent heavy-

weight potential regional/plurilateral trade alliances unmatched in trade dimension and capacity. Negotiations towards a plurilateral Trade in Services Agreement (TISA) have engaged twenty four states (including the EU and Taiwan) with economies representing seventy percent of the world's trade in services, and which may choose to either integrate with or stay outside, of the WTO. And a plurilateral Anti-Counterfeiting Trade Agreement (ACTA) has so far been signed by nine (largely) developed countries as well as the EU and 22 member states (the European Parliament rejected its ratification though). Each of these agreements is distinct in subject matter, objectives (free trade or other), membership composition, political interests, etc. There is therefore a concern that coherence of the global trade regime be undermined. Where disputes arise in matters outside the purview of WTO panels, adjudicated by competing dispute resolution mechanisms established in plurilateral agreements, inconsistent jurisprudence might further this tendency. Thus, the proliferation of bilateral trade treaties, regional agreements, and plurilateral conventions could be sidelining not only multilateralism but also the development agenda's egalitarian aspect.

Although smaller economies have been taking part in these projects, the group of developing countries has been more fragmented than their developed counterpart. The Bali ministerial meeting saw the developing world divided into several main groupings – the large emerging markets of Brazil, India, China and South Africa, and the Russian petro-economy; those that trail them economically, for instance, Indonesia, the meeting's host; and lesser developing economies, and the LDCs. In this very uneven environment, smaller countries have often been marginalized in a negotiations process led by the major powers.

Outlook

There is no crystal ball to tell whether or not the Bali Package represents a rebounding of the WTO. Global multilateralism has never been the only game in town. After all, albeit not global, regional negotiations are indeed multilateral; plurilateral agreements – also not global – may in part be negotiated multilaterally; and as experts have recalled, the WTO itself had followed on the heels of the GATT's plurilateral arrangements. In fact, the Bali negotiation process itself did compromise traditional multilateralism in favour of some elements of plurilateralism. This is because the newly introduced approach to WTO negotiations broke away from the big rounds and

instead focused on limited issues addressed independently – this time as part of the, but not entire, Doha Round and its DDA. Even if resulting in amendments to the WTO Agreement (as some have chosen to label the change, and as the WTO sets out to effectively introduce by inserting a new Trade Facilitation Agreement into Annex 1A) rather than committing to a “single undertaking”, members will still have to ratify the trade facilitation agreement. And because some will procrastinate, the agreement will, in fact, be plurilateral to be subsequently “multilateralised”.

Regardless of process, membership, and objectives, the principles underlying the global trade regime, embedded and “standardised” in the WTO/GATT, have continued to serve as the bedrock for all the less-than-global trade liberalization alternatives. One should be reminded that by comparison to most of the other agreements (except the EU), the WTO is an organization. Being the second and successful attempt after the failed 1947-8 Havana conference which sought to establish the International Trade Organisation, it has become the banner of trade cooperation. Representing more than a set of “marriage of convenience” agreements, the WTO (embraced by all the powerful economies) has, at least partly, been driven by a post WWII rationale and ideology, therefore radiating a reassuring “aura of permanence” which is too important to let fail. In an interdependent world economy, it may therefore suffice for the Bali Package to provisionally be reinforcing the WTO, if only as a point of reference for other non-WTO agreements. Perhaps, what the intricate web of bilateral, regional, and plurilateral overlapping teaches us is that periodically, the predicaments of a globalized economy, might bring the various actors together, as in a pendular rhythm, to collaborate in the forum of the WTO for yet another “rescue” operation. Multilateral corrections may be required occasionally in order to stimulate a fluctuating and straying trade environment and return its actors back on track. As always, there will be losers and winners, yet thanks to the overlapping nature of the various trade arrangements perhaps to ever lesser detrimental effects.

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