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REFLECTIONS ON THE POST-BALI AGENDA OF MULTILATERAL TRADE NEGOTIATIONS

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Executive summary

The Inter-Parliamentary Union and the European Parliament are committed to playing their part in full to ensure that as much progress as possible can be achieved at the ninth Ministerial conference taking place in Bali in December 2013 (MC9). Although the agenda for Bali has been pared down since the DDA was launched in November 2001, the importance of striking a deal is more relevant now than ever given the changes which have taken place since then in terms of global trade. A number of questions are now being mooted - what happens afterwards, is the single undertaking still alive, in what order should the remaining items be discussed. Moreover, given that more than 10 years have elapsed since the DDA, the question of whether the negotiating perimeter of the round should be adjusted is pertinent and was raised by the former WTO Director General Pascal Lamy, but that topic is not for this paper.

In terms of global trade policy, the future of the multilateral system is at stake and a shift to more bilateral, regional and plurilateral agreement is already taking place, and while such agreements may be permissible under WTO rules, they may be detrimental in particular to developing countries. There are however also some positive developments on the plurilateral front - notably progress on the Government Procurement Agreement (GPA) and ongoing work on the plurilateral agreement on trade in services known as TiSA (trade in services agreement) - as well as some less welcome developments - such as the decision to suspend negotiations to expand the Information Technology Agreement (ITA), which covers 97% of global trade in IT products. The expansion would have brought more products - such as electronic devices - and countries within its scope as well as crucially a set of principles on non-tariff barriers (NTBs). It is nonetheless preferable to have plurilaterals that come under the WTO umbrella such as the GPA rather than those that fall outside it such as the TiSA, although the ultimate objective is, of course, to multilateralise it.

We are currently at a critical juncture and can either pursue new routes or the status quo. Nonetheless, the cost of doing nothing may just be too high. Let us therefore choose a route that leads to a stronger multilateral system based on the principle of balanced and fair trade for all actors. A system based on an efficiently operating WTO which decision-making processes should be swift and flexible enough, for example, to allow for progress in rule making in key new trade sectors that are at the present time of interest to all, or only some, member countries.

The key focus in the immediate future should be on finalising the Bali agenda, whilst acknowledging that Bali is not an end in itself but rather a stage, albeit a vital one, in a process. The whole system is interlinked and a conclusion of the Bali agenda will give much needed impetus to the "post-Bali agenda". This includes the issue of non-tariff barriers or measures (NTBs/NTMs), services, reform of the Dispute Settlement Understanding and the Singapore issues, on which this paper offers some reflections.

1. The Bali agenda

The main deliverables expected at the MC9 in Bali are trade facilitation, agriculture and special and differential treatment/Least Developed Country (LDC) issues. These issues do not operate in a vacuum and are part of a bigger picture. However, economically and politically the significance of reaching a deal on them cannot be underestimated. Conversely, failure to reach agreement on these issues would have serious repercussions on the future of the global trading system. Every avenue which leads to conclusion of the Bali agenda must therefore be explored. The purpose of this paper is not to speculate on the outcome but rather to look beyond Bali with a view to identifying other challenges with some thoughts as to how they might be addressed.

2. Non-tariff barriers and their impact on SMEs

Tariffs on goods have been considerably reduced in the last few decades especially on non-agricultural products. The WTO played an important role in this respect. For example the Uruguay Round led to a reduction of tariffs on non-agricultural products in developed countries from 6.3% to 3.8%. However, it is worth noting that tariffs have been lowered even more significantly between WTO members through bilateral and regional free trade agreements. Nonetheless, substantial restrictions to trade still remain and have even been increasing in some regions, in particular in the form of NTBs. These can be applied at the border and notably include quantitative restrictions and licensing schemes on both, imports and exports. Behind the border restrictions include in particular health, technical, social and environmental regulations and standards as well as restrictions made effective through state-trading operations.

An Agreement on trade facilitation would play an important role in the elimination of certain NTBs, especially if it is focused on simplifying and increasing transparency in customs procedures, promoting the sharing of best practices between customs authorities of major trading partners, and providing technical assistance in the area of customs to LDCs to enable their authorities operate efficiently. However, it is not only customs rules and procedures but also technical measures and to a lesser extent internal taxes and charges and competition-related restrictions on market access which constitute major obstacles to trade for businesses (OECD, 2006). In general behind-the-border measures appear to be even more burdensome than the more traditional at-the-border measures such as quantitative import restrictions. It should be noted that efforts towards convergence of regulatory standards should be strengthened as well as reducing/removing NTBs only when there are unnecessary and not justified by concerns related to health, social and environmental protection.

NTBs affect all trade operators but especially exporting small and medium sized enterprises (SMEs) which are particularly vulnerable in the current globalised trade world. This is because SMEs' resources and profit margins are limited and, therefore, do not allow them to deal with NTBs effectively. It is clear, for instance, that it is extremely costly for

SMEs to regularly adjust their production processes in order to comply with the changing technical requirements established in importing countries. In addition, it is also difficult for SMEs to influence trade policy and to get their voice heard at governmental level unless they are well organised in powerful SME-networks. In this period of economic and financial crisis, reducing NTBs in foreign markets is essential for ensuring the profitability of SMEs and, consequently supporting the level of employment and growth they guarantee. Evidence shows that the SMEs whose activities have least been affected by the crisis, are those that have a strong export component.

For these reasons efforts have to be intensified among WTO members in order to conclude the non-agricultural market access (NAMA) negotiations, one of the main pillars of the DDA, whose aim is the reduction of both tariff and non-tariff barriers on non-agricultural products, as soon as possible. All WTO members will benefit from this outcome, including developing countries whose markets are becoming more and more internationalised.

3. Services

The economic significance of services has increased substantially since the GATS entered into force in 1995. Trade in services represents approximately one fifth of world trade and more than two thirds of world GDP and accounts for a significant share of employment. Growth has been particularly strong in middle income countries and is vital in order to ensure that global value chains can operate effectively. The corresponding multilateral legal framework has not changed in almost 20 years and many of the commitments entered into by WTO members also date back to 1995. Whilst any deal should ideally be based on GATS and should involve the entire WTO membership, the reality is that the multilateral approach on services does not offer much ground for optimism coupled with the fact that services are too important economically to stay off the agenda. On the one hand, it is regrettable that since 2008 progress has been very limited in this area. On the other hand, it is quite understandable that efforts are now focusing on the plurilateral approach by the "Really Good Friends of Services" and negotiations on TiSA.

In order to keep the door open as regards the multilateral approach, the structure of any such agreement must allow for it to eventually be integrated into the WTO architecture. In other words the goal should be to multilateralise the agreement at a later stage. The European Parliament in its resolution of July 2013 on TiSA concluded that its design should be based on the GATS architecture. Moreover the agreement must be ambitious and cover a substantial share of all trade in services, across all service sectors and all modes of delivery. It is important that the negotiations should be conducted in accordance with WTO rules on transparency and that the full membership of the WTO is kept informed on the progress of negotiations in a timely manner.

3.1. E-commerce

Greater attention should be focused on the field of electronic commerce (e-commerce), particularly given the importance of this sector to SMEs for whom the ability to trade effectively online can open up new markets and also reduce transaction costs. This issue is one which has a particular resonance for developing countries for whom e-commerce can be a vital channel for business in being able to take advantage of international trading opportunities. Initiatives such as the recent workshop by the WTO on development aspects of e-commerce- particularly in relation to SMEs- are very important in terms of giving visibility to the issues and identifying the challenges that remain.

The recent call by the EU to promote initiatives in the field of e-commerce is a step in the right direction as is its call for the renewal of the tariff moratorium on e-commerce, which prevents WTO members from imposing customs duties on electronic transmissions, at the Bali conference in December. However, greater efforts are still needed in areas of, for example, the improvement of global conditions for e-commerce, particularly in the light of increasing trends towards internet sales and related concerns as regards increased counterfeiting of goods sold over the internet as well as the need to ensure better consumer safety in all e-commerce transactions, especially when they involve sensitive products such as medicines.

4. Review of the WTO Dispute Settlement Understanding

Talks on the review of the WTO Dispute Settlement Understanding (DSU), the WTO Agreement governing the settlement of WTO disputes, started in 1997. Although WTO dispute settlement is prolific, solid and works well, WTO members clearly acknowledged that the Agreement needed to be updated and twelve areas where reform was necessary were identified. It appears that negotiations are quite advanced although at the time of writing there is no certainty on whether they will be concluded by the MC9 in Bali.

The length of the talks, however, highlights the sensitivity and complexity of the matter for WTO members. Of particular relevance are the proposals on transparency and amicus curiae briefs. The former concerns the possibility of opening panel and Appellate Body hearings to the public, which could contribute to creating greater public confidence in the dispute settlement process, while protecting strictly confidential information. As regards the latter, amicus curiae briefs refers to the information provided voluntarily to the court in the form of a legal brief by someone who is not a party to a dispute but nonetheless has an interest in the matter. Article 13.1 DSU states, inter alia, that the panel has the right to seek information from any individual or body on the issue under its consideration. On this basis, although an ad hoc procedure for submission of amicus briefs is not foreseen, this possibility has been kept open under the WTO dispute settlement system. It is clear, however, that such submissions need to be properly regulated and the reform should go in that direction. The possibility for interested parties to express their views and provide information to a WTO panel or Appellate Body contributes to making the system more open as well as closer to businesses and civil society. It should therefore be supported.

If the DSU review is not concluded by the MC9 in Bali it should clearly be one of the items of the post-Bali agenda.

5. Singapore Issues

The so-called "Singapore issues" include trade facilitation, investment, competition and public procurement. These topics were originally included in the DDA. However, due to the lack of consensus negotiations concentrated only on trade facilitation while the other three issues were dropped from the agenda. This was regrettable due to the important impact those three topics have on trade. Taking each of them in turn:

- (a) There is a strong link between trade and investment in particular in the form of foreign direct investment (FDI). FDI plays a major role in the internationalization of business and, in this respect, represents a great opportunity for SMEs which want to operate in foreign markets. However, while there are over 2,200 bilateral investment treaties, there is no multilateral agreement disciplining FDI although a few provisions covering FDI are included in the GATS (services mode 3) and the Agreement on Trade Related Investment Measures (TRIMs);

- (b) Similarly, competition rules have an impact on trade flows. The GATT and GATS already contain rules on monopolies and exclusive service suppliers. An international agreement on competition policy could, for instance, govern the establishment of cartels in various industries, which are costly in particular for developing countries.
- (c) As for government procurement, an area in which a WTO plurilateral agreement already exists i.e. the GPA, the idea would be to multilateralise at least some of its provisions, in particular those elements, which foster transparency of procurement procedures;

Although the main focus of the post-Bali agenda should remain the DDA, once this has been concluded discussions on investment, competition and public procurement should be resumed duly taking into account developing countries' concerns. To this end it is clear that a compromise between the diverging positions of developed and developing country members should be found.

6. Conclusions

Certain issues are growing in prominence and whilst it may be regrettable that they are not part of the Bali agenda, work will and must continue on them. This includes but is not limited to: the question of tariff and non-tariff barriers and the extent to which they can be further reduced; services and how to go beyond the GATS whilst being as inclusive as possible; e-commerce and how to harness the benefits it offers particularly for SMEs and developing countries; the DSU and how to update it whilst safeguarding its essential features; the Singapore issues and reconciling the different interests of WTO members as regards investment, competition and public procurement. As mentioned at the outset, the Bali agenda is a vital part of the picture but it is also part of a larger landscape. There are medium and longer term goals that need to be achieved in order to ensure that trade contributes to growth, development and prosperity for the benefit of all.