IBON PRIMER ON
THE WTO 'BALI PACKAGE'

IBON International

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CHAPTER I

Introduction to the World Trade Organization

1. What were the events in history that led to the WTO?

The World Trade Organization (WTO) was established in 1995, as a successor to the General Agreement on Tariffs and Trade (GATT) established in the wake of the Second World War. While the WTO is deemed as one of the "youngest" of the international organizations, the multilateral trading system that was originally set up under GATT is well over 50 years old.

The trading system was developed through a series of trade negotiations, or rounds, held under GATT. Member countries take part in the rounds through their official delegations typically headed by a top economic minister. Tariff reductions were the focus of the first few rounds; later on, negotiations touched on other areas such as anti-dumping and non-tariff measures. The eighth round—the 1986-1994 Uruguay Round, so called because its first meeting was held in Uruguay—led to the WTO's creation.

To understand how the WTO emerged from GATT also entails an understanding of how GATT came into being. Three international organizations were conceptualized during the Bretton Woods Conference in 1944, near the end of World War II:

- the International Monetary Fund (IMF) to deal with balance of payments problems;

- the World Bank (International Bank for Reconstruction and Development) to deal with the problems of reconstruction and development; and
- International Trade Organization (ITO) to deal with problems of international trade.

The IMF and IBRD (now the World Bank) were set up in 1945 but there were serious controversies about the third. Therefore the US, UK and a few other countries set up the GATT in 1947 as an interim organization for trade. The setting up of the ITO with the support of the US administration was recommended a few years later, but did not come about due to the refusal of US Congress to ratify it. As such, the GATT was continued. All three Bretton Woods institutions were dominated by the US, while the GATT was heavily biased in favor of the developed countries and was called informally as the "rich men's club."

Developing countries strongly protested GATT's bias for developed countries, while calling for the establishment of an ITO. However, anticipating strong US resistance to proposals for an ITO, the UN recommended setting up the United Nations Conference on Trade and Development (UNCTAD, established in 1964) as part of the UN Secretariat, thus bypassing the risk of US veto. At the same time, developing countries established the G-77 (Group of 77 developing countries), a coalition that later expanded to include most developing countries. The grouping was opposed by US and other developed countries which, in turn, comprise the Group of 7 (G-7, or G-8 in meetings that include Russia).

The G-77's strong lobby and pressure allowed UNCTAD to gain more reputation as a more appealing alternative to the GATT. But with continued strong support from the US, the GATT remained powerful. While G-77 pressure might have yielded some valuable concessions to developing countries, trade negotiations and amendments carried out in GATT continue to be tilted towards the interests of developed countries. The G-77 maintained its united pressure for a few years, but the US exploited the differences between its different sections, i.e. exporters, importers, oil producing, newly industrialized countries, etc., to break up the coalition's unity. The emergence of the US as a single superpower after the breakup of the USSR greatly increased its clout, with prompting and strong support from transnational corporations (TNCs). The US insisted that GATT should no longer be confined only to tariffs and trade in goods but should also be

History and functions of the World Trade Organization

The WTO is an international non-profit association dealing with global rules of trade between nations

WTO functions

Control trade agreements between member states

Organize and ensure trade talks between member states

Monitor the trade policies of member states, resolve trade disputes between them

Terms of accession

Candidates must adjust their legislation and the practice of their foreign economic regulation to the Uruguay Round agreements

Established on January 1, 1995, as the legal successor of the General Agreement on Tariffs and Trade (GATT), which commenced in 1947

Members: 154 states + the EU (as of July 2012)

Russia negotiated its accession to the WTO for 18 years and ratified the accession protocol on July 21, 2012. It will become a full member of the WTO 30 days after ratification

■ WTO members ■ Observer countries

WTO accession procedure

PHASE 1

Special Working Parties analyze the details of the economic mechanism and trade and political system of the applicant country

PHASE 2

Consultations and talks, primarily on commercially significant concessions on market entry, which the acceding country is ready to provide to the WTO member countries

PHASE 3

Formalization of official documents

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extended to services, investment, and intellectual property rights, and that there should be a World Trade Organization to oversee all four.

2. What are the principal WTO agreements?

Agreement on Agriculture (AoA). The AoA, negotiated during the Uruguay Round, entered into force with the establishment of the WTO in 1995. The Agreement is made up of three “pillars”: market access, export competition, and domestic support. All WTO members, except least developed countries (LDCs), were required to make commitments in all these areas in order to liberalize agricultural trade.

The AoA contains several types of imbalances that favor developed countries and work against developing countries. It allows developed countries to increase their domestic subsidies (instead of reducing them), substantially continue with their export subsidies, and provide special protection to their farmers in times of increased imports and diminished domestic prices. The developing countries, on the other hand, cannot use domestic subsidies beyond a minimal level (except for very limited purposes), export subsidies, and the special protection measures for their farmers. In effect, developed countries are allowed to continue and even to worsen their distortion of agriculture trade, while developing countries cannot (except in a limited way).[1]

General Agreement on Trade in Services (GATS). GATS was first established in 1994 as one of the "Uruguay Round" agreements to be enforced by the WTO. The WTO called the GATS the world's first multilateral investment agreement because its rules cover every conceivable way a service might be delivered, including granting foreign corporations the right to buy or establish new companies within the territory of another country. GATS is known as a "bottom-up" agreement, and its negotiators like to portray it as a very flexible agreement, because most of its requirements only cover service sectors that countries agree to open up for competition by foreign corporations.[2] In reality, however, such assurances to member-states carry little long-term weight, given that the principal GATS aim is to make services tradable and the non-negotiable end result is still "progressive liberalization." Currently, a proposed International Services Agreement (ISA, also often termed as the Plurilateral International Services Agreement or Trade in Services Agreement) is being negotiated outside of the WTO, which seeks to liberalize services in essentially all modes and sectors in participating countries. (Refer to Chapter V for a more detailed discussion of ISA).

Trade-Related Investment Measures (TRIMS). The TRIMS Agreement was aggressively pushed by the US and other industrialized countries during the Uruguay Round. The agreement aimed to ease up host country restrictions and requirements on foreign direct investments (FDI) to the benefit of their TNCs. Proposals are afoot to broaden the scope of TRIMS by incorporating investment regimes as a whole. Developed countries are also seeking to revive negotiations on a Multilateral Investment Agreement (MIA), despite big opposition from civil society groups and governments of developing countries, which see the agreement as a threat to national

sovereignty and democracy and argue that it would lead to a "race to the bottom" in environmental and labor standards. The MIA seeks to give full rights for foreign investors to invest and establish themselves in all sectors in any WTO member country, and ensure favorable treatment for foreign investments at least on the same level as accorded to the domestic investments**.**

Intellectual property rules (TRIPS). The Trade-Related Intellectual Property Rights Agreement, also known as TRIPS, essentially acts as a global IPR (intellectual property rights) protection system crafted at the GATT Uruguay Round following strong pressure from the richest countries. It is also the first agreement that allowed an international body to legally regulate plant variety protection, industrial property (including patents on life forms) and copyrights under a broad umbrella of IPR. This has resulted in legal monopolies on plant varieties, seeds, medicines and other biotech products through the auspices of the WTO, which supposedly promotes competition but evidently works to protect a few industries of a few countries.[3]

3. What were the issues in implementing the WTO and its new rules?

Before and during the WTO Ministerial Conference in 2001 in Doha, Qatar, developing countries pushed for a review of the WTO agreements in the Uruguay Round before commencing new negotiations in other areas. The Uruguay Round had introduced new areas into the multilateral trading system, vastly expanding its scope. Yet developed countries continually intensified pressures to incorporate more new agenda points into WTO negotiations, to their advantage.

This was resisted by many developing countries, on the grounds that: (i) they were not ready for negotiations on yet a new set of issues as they were already unable to grapple with the problems generated by the Uruguay Round; (ii) the proposed issues were not in their interests but instead could seriously harm their economies should they become the subject of new WTO rules; and (iii) the issues were not directly related to trade and did not belong to the WTO.[4]

At the end of the Uruguay Round[5] (which led to the WTO's formation), the developing countries felt that the WTO rules were unfairly tilted in favor of the developed countries. They wanted to review and reform these rules to make the WTO more "development-friendly" as well as to get the developed countries to cut down their heavy protection in agriculture. The developing countries' rationale was that many of the existing WTO agreements are biased against their interests, which must be rectified to attain a more balanced multilateral trading system.

Among the developing countries' main arguments was that the TRIPS Agreement puts onerous burdens on them (raising the cost of consumer products such as medicines, and hindering innovation and technology upgrading); the TRIMs Agreement prohibits investment measures such as local content policy that are useful development tools; and the Agriculture Agreement allows the developed countries to maintain their high protection in this sector (through high domestic support and tariffs) while requiring the developing countries to liberalize their food imports, at the expense of food security and farmers' livelihoods.

However, the developed countries, which had succeeded in bringing non-trade issues like intellectual property and services into the trading system, were not interested in the proposed reform. Although the Doha Round was supposed to promote developing countries' interests, most development aspects had been eliminated or marginalized in the past decade. Instead, developed countries wanted to push the WTO into taking on even more treaties and rules on new issues such as investment, competition and government procurement, as well as continuous opening up of markets in developing countries especially in industrial products and services.

For instance, two direct "development issues" were successfully incorporated by developing countries in the Doha Work Programme, namely:

- "implementation issues," composed of more than a hundred proposals by developing countries on how to resolve problems arising from the implementation of the Uruguay Round agreements; and
- "special and differential treatment" (SDT) for developing countries, composed of numerous proposals by developing countries on strengthening existing SDT provisions in various

WTO agreements and introducing new SDT provisions where necessary.

Developing countries have been pushing for these two issues to obtain legally binding outcomes and that these be an integral part of the overall outcome of the Doha negotiations. However, there has been very little progress on these two issues even after more than a decade. They have been accorded low priority, and have been excluded from the list of issues that were said to be of immediate importance to resolve.[6] Market access issues, on the other hand, are continuously accorded vital importance as reflected in the order of scheduling and prioritizing vis-à-vis development issues.

Stalemate in the Doha Round

With the bleak conclusion of the Doha Development Agenda (DDA), developed countries and international financial institutions led by the IMF and the World Bank have used the global financial, economic, and food crises to pressure developing countries to return to the negotiating table. The US, in particular, after the collapse of the WTO 2008 talks in Geneva, warned other countries about the supposed perils of not concluding the DDA sooner, saying that "in the face of a global food price crisis, we simply could not agree to a result that would raise more barriers to world food trade" even as it stood firm on its current offers.[7] The UN and the UNCTAD were singing the same tune as the U.S. when they released statements expressing disappointment with the collapse of the talks and saying that the solution to all the crises that the world faces relies on international predictability and stability, which could only be achieved by having multilateral regulation similar to the WTO trade rules.[8] The IMF and World Bank warned further that a total collapse of the global trade talks could give rise to a new wave of protectionism.

According to the WTO, global trade had increased only by 2% in 2012 (down from 5.2% in 2011), the second weakest performance since 1981. Only in 2009, when manufacturing production and exports collapsed during the deepest global slump since World War II, has world trade been as weak as it was last year.[9] In 2013, the WTO had to reduce its forecast for global trade growth from 4.5% to 3.3%. The threat of protectionism is said to be greater now than at any time since the start of the crisis, which is why reviving the Doha Round of negotiations is fundamental if this situation is to be arrested. Former WTO Director General Pascal Lamy urged progress on the stalled

Doha Round as a safeguard against protectionist pressures. This serves yet again as a new neoliberal offensive to further the trade liberalization agenda of the WTO.

Through its nearly two decades of existence, the WTO has set the rules for global trade in favor of corporate profit and power, wreaking havoc on workers, farmers, the environment, and threatening sovereignty especially of developing countries around the world. Civil society organizations and social movements across the globe along with many developing countries have been demanding changes in the WTO to address concerns such as fixing unfair global agricultural rules, and addressing the concerns of the LDCs, to name a few. But instead of dealing with these demands for change, developed countries (and their neoliberal allies in some developing countries) are working instead to expand the WTO, both through a bad deal in the Doha Round, and through launching negotiations on a new set of issues beyond the Doha mandate.

4. What is the Bali Package?

Ministers from the largest and most powerful countries met in the sidelines of the World Economic Forum in Davos, Switzerland in January 2013, and came up with a proposed "deal" for the upcoming 9th Ministerial of the WTO in Bali, Indonesia on 3-6 December 2013. They also agreed on a set of issues for the "post-Bali agenda," to be negotiated also in 2013 with a view towards showing "major progress" by the Ministerial and concluding talks in 2014.

The Bali proposal consists of three issues. The first concerns some suggested changes to the agricultural rules, which could be a positive step towards "fixing" existing damaging WTO rules. The second would be to address some of the issues of the LDCs, which could also be a positive step. The third, and primary, aspect of the Bali proposal would be to consolidate a new agreement on Trade Facilitation, which would undermine whatever perceived benefits from the first two to such an extent as to render the deal "net negative" for development.

5. What are the proposed issues in the post-Bali Agenda?

Negotiations have in fact begun on three different issues within the WTO, identified as part of the post-Bali agenda.[10] At the World Economic Forum in January 2013, developed countries participating in these negotiations agreed that they would work to show "considerable progress" on these issues by the time of the Bali Ministerial, with a view towards completing them in 2014. These issues include a proposed International Services Agreement; a proposed expansion of the Information Technology Agreement; and a proposed agreement on Environmental Goods and Services (EGS).

Developed countries first suggested these issues at the Trade Ministers' Meeting of the G20 in the spring of 2012. At the time, broader civil society groups following the negotiations and advocating for reforms in the multilateral trading system argued that the WTO negotiations should not be on the agenda at the G20.

CSOs argue that the proposals put forward by the G20 thus far, such as that of the "new trade narrative" on global value chains (GVCs), show a clear attempt to use the forum to "multi-lateralize" an agenda at the WTO heavily favoring the interests of developed countries (particularly of powerful corporations based in developed countries) rather than the interests of sustainable and inclusive development. The GVC narrative was nevertheless used to justify the launching of new negotiations in these three areas. This essentially "re-packages" the same market access demands in services and goods, which have long been the basic goal of the US, the EU, and other developed countries in the Doha Round.

A summary of the 'Bali Package'

The package of proposals being negotiated towards Bali is obviously imbalanced against developing countries. While some developed countries argue that the global trade system needs "some outcome" from Bali in order to show "progress," it is clearly not "progress" if the changes made to existing WTO agreements constitute an expansion of the failed model, rather than fundamental changes to existing unfair and asymmetric rules.

In addition, there are some contextual challenges that will make a fair package in Bali even more difficult to achieve. First, the WTO membership has appointed in early May Roberto Carvalho de Azevêdo of Brazil as the

new WTO Director General. He assumed office in September, mere months before the Ministerial and face immense pressure to come up with some "progress" to show the negotiating and leadership skills of the new Director General. In addition, the host government, Indonesia, appears to be focused more on ensuring a "successful" outcome of the conference, rather than the impact of the negotiations on the Indonesian people, let alone on developing countries in general. The Indonesian government wants a "successful" Ministerial since it is slated to hold presidential elections in 2014. Hosting high profile international events can help bolster the presidency of incumbent President Yudhoyono.

Approving the proposed "Bali package" would lead to an even bigger danger—that the rest of the so-called "development agenda" within the Doha Round will be permanently shelved, in favor of a new series of negotiations on market access issues of interest to the developed countries. Developed countries have always been working to abandon any hopes of a development-focused outcome. With some sort of agreement in Bali, they will likely declare all development issues "taken care of." They can claim that the Doha Round has been "hurdled" to allow more liberalization in services and goods, and then re-introduce the Singapore issues that were "parked" while the Doha Round was still underway.[11] This means reviving negotiations on the key issues of investment, competition policy, government procurement, including the once proposed Multilateral Agreement on Investment.

NOTES

1 Lal Das, Bhagirath. (1998). The WTO Agreements: Deficiencies, Imbalances, and Required Changes. Third World Network.
2 The WTO General Agreement on Trade in Services. http://www.ifg.org/documents/WTOHongKong/GX%20GATSTalkingPoints.pdf
3 Action Aid. (2001). TRIPS on Trial: The Impact of WTO's Patent Regime on the World's Farmers, the Poor and Developing Countries.
4 Khor, Martin. (2007). The WTO's Doha Negotiations and Impasse: A Development Perspective. Third World Network, http://www.twnside.org.sg/title2/t&d/tnd32.pdf
5 The Uruguay Round was the 8th round of multilateral trade negotiations conducted within the framework of the General Agreement on Tariffs and Trade (GATT). The Round transformed the GATT into the World Trade Organization (WTO).
6 Khor. The WTO's Doha Negotiations and Impasse.
7 Statement of US Trade Representative Susan Schwab. (July 2008).
8 UN News Center. (July 2008). "Collapse of Doha round of global trade talks disappointing, says Ban."

9 WTO warns against protectionism as it cuts 2013 global trade forecast to 3.3%. Accessed June 2013 at http://www.guardian.co.uk/world/2013/apr/10/wto-protectionism-global-trade-forecast

10 The Post-Bali Agenda section was mostly derived from the Roadmap to the WTO Negotiations in 2013, a briefer prepared by Deborah James in March 2013 for the Our World Is Not For Sale (OWINFS) network.

11 In the 1st WTO Ministerial in Singapore (1996), developed countries pushed for the adoption of four new issues: investments, government procurement, competition policy, and trade facilitation. These four issues are collectively known as the Singapore Issues.

CHAPTER II

Agriculture and LDC Issues

Agriculture and issues raised mainly by Least Developed Countries (LDCs) are two sets of proposal forwarded by developing countries in the negotiations for the Bali Package.

1. How did AoA destroy the domestic agriculture of developing countries?

Agriculture plays a key role in both rural and national economic development, especially for developing nations, because it provides food sufficiency and generates jobs for millions of people. Unlike developed nations where agriculture is generally a commercial venture, majority of developing countries are primarily subsistence agrarian economies wherein a large part of the populace depends on agriculture for food and livelihood. In such agrarian economies, small-scale tillers often rely on farming production methods that may be just enough for local consumption but cannot reach the high volumes and low per-unit costs required to compete in the export market. Thus, the protection of the agriculture sector is much more important for developing nations than gaining market access to developed countries.

Today, millions of small and subsistence farmers and their families in developing countries who produce the bulk of the world's food supply face bankruptcy because of developed nations' export dumping facilitated by the WTO's Agreement on Agriculture (AoA) and by other free trade agreements (FTAs). The AoA further eroded the already weak domestic support given to agriculture by developing-country governments through disciplines that

compel member countries to remove protective mechanisms such as tariffs and subsidies.

Although government support for domestic producers is allowed under the AoA, the amount of government support for farming is pegged at levels during their entry to the WTO because of the principles of standstill (no new allotments) and roll back (repeal of contradicting measures). This works in favor of developed countries, which have modernized agriculture and high levels of farm subsidy in contrast to developing countries with backward agriculture and lack of subsidies for agricultural development.

Furthermore, developed countries were able to keep and even increase most of their trade-distorting subsidies by shifting them to the AoA's Green Box, which supposedly contains subsidies that are "non-trade distorting or minimally trade-distorting." Such subsidies have been maintained or actually soared. From USD 61 billion in 1995 when the WTO was established, US subsidies increased to USD 130 billion in 2010. The EU's domestic support on the other hand was generally maintained. From EUR 90 billion in 1995, it went down to EUR 75 billion in 2002, increased to EUR 90 billion in 2006 and EUR 79 billion in 2009. In total, OECD countries' agriculture subsidies soared from USD 350 billion in 1996 to USD 406 billion in 2011.[1]

Subsidies by developed countries allow their producers to sell their products below actual production costs, to the detriment of small-holder and subsistence farmers in developing countries, which consequently suffer lost agricultural income of USD 24 billion annually. Those in Asia lose USD 6.6 billion, while Sub-Saharan African countries lose around USD 2 billion in annual income from agriculture.[2]

With progressively decreasing support from their governments, farmers in developing countries are pushed deeper into poverty. The AoA, coupled with other laws liberalizing the economies of developing countries, facilitates the increasing concentration of land in the hands of few elites that include local landlords and corporations. This results in marginalized small farmers, increased numbers of landless peasants, and intrusion into the ancestral territories of indigenous peoples.

2. What is the G33 proposal on agriculture for the Bali Package?

The destruction of local agriculture due to trade liberalization is worsened by volatility in global food prices caused by financial speculation in commodity markets and the impacts of climate change. Faced by this situation, developing countries grouped under the G33 put forward several proposals on agriculture to support food security, farmers' livelihoods, and rural development, and to increase domestic food production. The G33 proposal is currently known as public stockholding for domestic food security and domestic food aid, and includes the following demands:

- Food programs to support "low-income or resource-poor producers" should not be included in the Aggregate Measure of Support (AMS);
- Ceilings on subsidies for farm support programs for rural development and rural livelihood should be exempted from reduction commitments by classifying them under Green Box support; and
- Food security, land reform, drought management, and flood control programs should also be exempted from subsidy reduction commitments.

Government support is crucial in helping farmers increase their food production in developing countries, just as it has always been the policy of most developed countries to provide extensive support services for domestic food production in the form of export credit, research, marketing, crop protection program, among others. The G33 proposal would allow for developing countries to increase the amount of support they are permitted within WTO rules to provide for agricultural production. Under this proposal, developing countries will be allowed to create food subsidy programs similar to the famous "Bolsa Familia" in Brazil that has been much lauded for reducing hunger among the poor by exempting food subsidies from WTO limits.

Although the G33 proposal could boost agricultural production in developing countries and allow more efforts towards ensuring food security for the poor, these proposals fall short of a true transformation of international agricultural rules that will allow developing countries to pursue the path towards food sovereignty. This is because the proposal merely asks

for the exemption of some sections of agriculture from subsidy limits and do not change the very foundations of AoA that allows developed countries to flood the markets of developing countries with their agriculture exports while they set up measures to protect their own producers. Furthermore, developing countries are also expected to "pay for" the G33 proposal by having to agree to other demands by developed countries, in this case the issue of Trade Facilitation.

Meager as the proposal is, the US, EU, and other developed countries are not giving their support because the G33 proposal is seen as a form of protectionist measures which could lower developed countries' potential exports.

3. What are the LDC issues?

The LDC group in the WTO membership is comprised of Haiti, 33 countries from Africa, and 14 from Asia. The widespread poverty, lack of jobs, and destruction of local economies caused by unbridled trade liberalization fuelled the reaction of LDCs to demand reforms in the WTO agreements. Members, especially the developed countries, were forced to recognize the negative impacts of trade liberalization on the weaker economies of LDCs. Past WTO negotiations have reiterated that policy changes are needed to enable LDCs to participate in the global trade system in ways that could allow them to capture the benefits of trade for their development. LDCs developed proposals in response to this need. In advance of the 2011 Ministerial, countries nearly unanimously agreed on a package of issues of interest to the LDCs. These include:

Duty-Free Quota-Free (DFQF) market access for LDC exports.

DFQF means LDCs can export their products to developed countries without importing corporations having to pay taxes. LDCs are still fighting for a truly 100% coverage of DFQF market access, which should have been implemented by 2008 as agreed to at the Hong Kong Ministerial in 2005. This has yet to be implemented because of the inclusion of an escape clause: "Members facing difficulties at this time to provide market access…shall provide duty-free and quota-free market access for at least 97% of products

Table 1. Existing trade preference schemes for LDCs

Country (Year)	Brief description of scheme
Canada (2003)	DFQF excluding over-quota tariff items for dairy, poultry and egg products
China (2010)	Zero-tariff treatment to 4,788 tariff lines (60%) to be extended eventually to 97%
EU (2001)	The EBA initiative provides DFQF access for all products from LDCs (except arms and ammunition)
India (2008)	Duty-free access on 85% of tariff lines at the HS 6-digit level
Japan (2007)	DFQF market access on 8,859 tariff lines (or 98% at the tariff level), covering over 99% in terms of imports value
Korea (2000)	DFQF access extended to 95% of total tariff lines in 2010
US LDBC (1976)	3,451 products admitted duty-free under GSP, an additional 1,430 products for least-developed beneficiary developing countries (LDBDC)
US AGOA (2000)	1,835 products from qualifying African countries available for duty-free treatment in the US market

Source: Ancharaz, V. & Laird, S. (2013). Duty-free, quota-free market access: What's in it for African LDCs? Retrieved from http://ictsd.org/i/competitiveness/169459/#sthash.v9m7w86R.dpuf

originating from LDCs defined at the tariff line level" while taking steps to progressively achieve 100% DFQF.[3]

However, available data show that LDCs would gain little from the 97% DFQF since the 3% of excluded tariff lines could potentially cover between 90% and 98% of all LDC exports. Although developed countries such as Canada, Japan and the EU provide duty-free coverage to over 98% of tariff lines and feature few excluded products, the WTO estimates that, on the whole, US trade preference schemes admit on average only 82.4% of imports duty-free, with a lot of products excluded.[4]

Simplified rules of origin that will allow LDCs to increase their exports.

Rules of origin (RoO) are the criteria used to determine the national source of a product. RoO are important because duties and restrictions in international trade depend upon the national source of imports. Determining the national origin of products is not complicated if they were produced only in one country. However, with the rise of TNCs and the production of goods

in multiple stages using parts produced in different places around the world, determining the national origin of products have become complicated.[5] This raises concerns about the ease with which goods processed partly or fully in a third country can receive duty-free access under a bilateral agreement by being re-exported with just enough processing to satisfy RoO requirements.[6]

Similar to granting DFQF to LDC members during the Hong Kong Ministerial in 2005, member-countries agreed that RoO should be simplified to facilitate the LDCs exports but up until now, this has not yet been operationalised.

Major reduction in subsidies of the US to its cotton industry.

Cotton subsidies, particularly those made by the US, have taken on a high profile because cotton is a ciritical crop for the world's poorest countries which includes the so-called "Cotton 4": Benin, Burkina Faso, Chad and Mali.[7] Opponents of the US cotton subsidy program reveal that these subsidies are in fact trade distorting, because they result in at least a 10% reduction in global cotton prices.

US cotton subsidies amounting to USD 32.9 billion from 1995 to 2012 devastated millions of cotton farmers in West Africa because they cannot compete with the low prices of subsidized cotton. Because of the prominent role cotton plays in the economies of "Cotton 4" countries, a small decline in cotton prices can make an enormous difference in the ability of their farmers to pay for health care, education, and food.[8]

Progress on negotiations concerning cotton is formally part of the LDC proposal rather than in agriculture. LDC proposals on cotton both cover trade and development assistance. For trade, LDCs are calling for major reduction of subsidies of developed countries, particularly the US, to their cotton industries. The freezing of subsidies to their current levels is also proposed as an interim measure.

LDCs services waiver.

The LDCs services waiver aims to allow WTO members to provide better treatment to services and service providers from LDCs, without having to grant the same treatment to other WTO members.

In general, the WTO's services agreement specifies that each member shall provide non-discriminatory treatment to services and service suppliers of other WTO members (GATS Article II: Most-Favored-Nation Treatment). The draft decision on a service waiver, however, makes an exception to this principle. The waiver, once adopted at the Ministerial Conference, would allow WTO members to deviate from their most-favored nation (MFN) obligation, allowing them to give preferential market access in favor of LDCs.[9]

While the rest of the world agreed that the poorest countries should not pay the price for the stalemate between the middle income and the rich countries, the US refused to allow these LDC concessions unless middle-income countries do the same. Thus, the modest plan was shelved due to US opposition, although the simplified rules of origin and the services waiver were agreed at the 2011 Ministerial.

LDC TRIPS waiver.

The waiver on the implementation of TRIPS—one of the main issues of interest to LDCs—was decided in advance of the Ministerial. According to WTO rules, the LDCs are supposed to be granted a waiver on the implementation of TRIPS rules automatically, if they submit a duly motivated request. The current waiver on implementation was set to expire in June 2013, and so the LDCs submitted such a duly motivated request in November 2012. In the March 2013 TRIPS Council meeting, the US and many other developed countries opposed the extension of the waiver, in spite of support from Nepal, Cambodia, Solomon Islands, Morocco, Jamaica, Brazil, India, China, Cuba, Bolivia, South Africa, Rwanda, Angola, Tanzania, Zambia, Bangladesh, Saudi Arabia, Argentina, Mexico and Sri Lanka, as well as the UNCTAD, the UNDP, and UNAIDS.

In June 2013, the TRIPS Council took a decision to allow LDCs to delay implementation of the TRIPS Agreement until July 2021. The outcome is the result of many sessions of lengthy pressure-packed closed-door negotiations between developed countries (the US, EU, Japan, Australia, Canada, New Zealand, Switzerland) and a handful of LDCs. The LDC Group request was fully supported by developing countries and many civil society groups around the world, but was fervently opposed by the developed countries led by the US and EU.[10]

The TRIPS Council has also removed the condition introduced in the earlier 2005 decision that LDCs cannot roll back the level of TRIPS implementation already undertaken in their national legislation. The no-rollback condition would essentially deny the policy space given to LDCs in the TRIPS Agreement to refrain from implementing the Agreement during the transition period. Prior to the June TRIPS Council meeting, the LDC Group had strongly insisted that any reference to a no-rollback binding commitment should not be included in the new decision, as developed country members continuously lobbied for the no-rollback commitment to be retained.[11]

The TRIPS Agreement is mainly supported by the US and developed countries to universalize standards of intellectual property rights (IPR) protection to counter the decline in their world market position since the 1980s. US technological firms had been losing their profits and failing to recoup their investment spent on research and development (R&D), in the face of other countries imitating and profiting from US innovations and with the growing industrial capacities of Japan and the so-called Asian tigers. Thus, with strong US backing and despite developing country opposition since the start, the TRIPS agreement went into force and started to require all 144 WTO member states to incorporate a common IPR framework into domestic legislation.[12]

The pharmaceutical industry, currently dominated by firms from the US, Japan, Switzerland, Canada, Germany and the United Kingdom, also aggressively supported the establishment of the TRIPS regime, which makes it easier for them to protect their new products and processes in all WTO member states through domestic legislation providing them with patent protection.

TRIPS has become a very contentious issue for LDCs and developing countries, particularly its impact on access to medicines for poor people in the developing world. Concerns had been growing that patent rules might restrict access to affordable medicines for populations in developing countries in their efforts to control diseases of public health importance, including HIV, tuberculosis and malaria.

For example, only after the introduction of the Indian Patent Act 1970 was the Indian domestic pharmaceutical industry able to produce drugs at low prices, thus compelling the TNCs to bring down their own drug prices.

Medicines in India have not been subject to patents until the year 2005, thus enabling local companies to legally produce their own versions of drugs patented in other countries. Because of the Indian Patent Act, drug prices in India are the lowest in the world.[13] However, since India's accession to the WTO in 1995, amendments to the Patent Act were necessitated by its obligations under TRIPS, thereby allowing product patents in drugs and chemicals. India's poor and marginalized people will be pushed further to the brink, as the cost of newly invented drugs rise beyond the reach of the average Indian.[14]

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CHAPTER III

Trade Facilitation

1. What is trade facilitation?

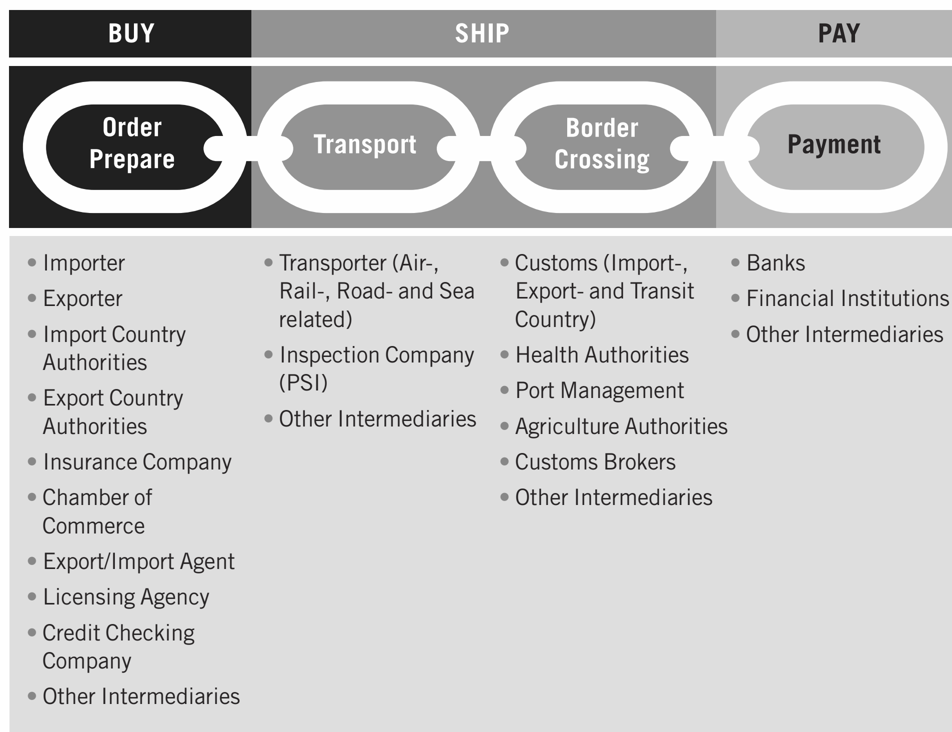
At the heart of the Bali Package is trade facilitation. In simple terms, trade facilitation is about actions and processes to make buying, selling, and shipping of goods and services across country borders faster and easier. In the WTO negotiations, trade facilitation refers to a broad range of reforms (in policies, operating procedures, physical infrastructure) to reduce the complexity and costs of procedures involved in international trade: from placing the order, to moving goods and services from the seller (exporter) to the buyer (importer) and to making the payments.[1] (See Figure 1)

Trade facilitation has four basic principles/aims:

- **Harmonization** of applicable laws and regulations;
- **Simplification** of administrative and commercial formalities, procedures and documents;
- **Standardization** and integration of information and requirements, and the use of technologies so as to exchange this information efficiently; and
- **Transparency**, which implies making information on border requirements and procedures available and easily accessible to all interested parties.[2]

The various processes related to trade facilitation happen at national, regional and international levels. At the national level, the aim is to improve trade facilitation structures and procedures within a country. Standardization of norms at the regional and international level will generate a favorable

Figure 1. Breakdown of procedures and services needed for a typical international trade sanction



Source: SWEPRO. (n.d.). General aspects of trade facilitation. Retrieved from http://www.kommers.se/SWEPRO/In-English/What-is-trade-facilitation/

condition for trade as countries get involved in international transactions and goods cross national borders. This is where the international multilateral bodies such as the United Nations and WTO become involved.

Trade facilitation was introduced as part of the Singapore Issues during the 1996 WTO Ministerial in Singapore, before the Doha Development Round in 2001. Along with government procurement, investments and competition, trade facilitation was forwarded by the European Union and backed by Japan, Canada and other developed nations.

Since these issues were so contrary to developing countries' needs in the WTO, these were strongly opposed by developing countries and civil society organizations alike. Developing countries rejected the proposal of starting negotiations on these new issues because they would not want to be forced to take on new obligations when they are still in the process of understanding and coping with the obligations set by the previous Uruguay

Round. However, the Singapore Issues made it into the negotiations through the undemocratic and non-transparent decision-making process in the WTO wherein only select member countries are invited inside the Green Room to decide on important issues.

The failure to arrive at a consensus on the treatment of the Singapore Issues contributed to the collapse of the Cancun Ministerial in 2003. This led to a compromise in another Green Room meeting wherein government procurement, investments, and competition were dropped from the Doha Round agenda. But trade facilitation remained and an agreement to start the negotiations was made. Even though government procurement, investments and competition were "dropped" from the Doha Round agenda, these issues were not totally taken out of the WTO as working/study groups were set up to continue the conversation.

Promoters argue that with trade facilitation reforms, developing countries will be able to save costs and cut time lost because of long transaction procedures. This will supposedly increase the volume of trade that in turn will contribute to economic development.

According to a study by the United Nations Conference on Trade and Development, (UNCTAD), a typical trade transaction passes through 27 to 30 parties, which include brokers, banks, carriers, sureties, and freight forwarders. Transactions require at least 40 documents and over 200 types of data of which 60-70 per cent are repeatedly asked at least once while 15 per cent are retyped 30 times. Long transaction time and duplicative procedures cost an enormous amount of time and money wasted.[3]

The World Bank stated that Singapore, Hong Kong, South Korea, and Denmark rank the highest in terms of ease of trading across borders while Uzbekistan, Tajikistan, Kazakhstan, and the Central African Republic ranked the lowest; nine Sub-Saharan African countries were also among the bottom 10%. It takes an average of 101 days and costs an average USD 8,525 to import a container of goods in Chad. In contrast, the same process costs only USD 439 and takes four days to complete in Singapore. The notable difference in the cost and length of time before the trade transaction is completed is because, unlike in developed countries, the necessary infrastructure and systems to reduce transaction procedures are not yet in place for developing countries.

Aside from inefficient border procedures, governments also face problems like smuggling, national security, fraud, and corruption at border controls—all of which add to the "hidden costs" of trading. In Nigeria for example, corruption and poor security at customs are estimated to increase the cost of imports by approximately 45%.[4]

Promoters of trade facilitation claim that huge benefits will be reaped from the removal of these trade barriers because the efficiency brought by trade facilitation will result into increase in the volume of trade and therefore, more revenue. According to the Organization for Economic Cooperation and Development (OECD), a 1% reduction in global trade costs would increase worldwide income by more than 40 million USD, of which 65% will go to developing countries.[5] Customs reforms in Cameroon, for example, increased revenues by 12% while in Mozambique, revenue increased by 50% despite the big tariff cuts.[6] Former WTO Director-General Pascal Lamy, defending the TF agreement, claimed that "for every dollar spent on improving customs regimes in developing countries, there's a return of up to USD 70 in economic benefits spread throughout the economy."

2. What is covered by trade facilitation in the WTO negotiations?

WTO negotiations on trade facilitation (TF) aim to clarify and improve relevant aspects of Articles V, VIII and X of the GATT (General Agreement on Tariffs and Trade) 1994 with a view to further speed up the movement, release and clearance of goods in trade transactions.[7] (See Box 1)

TF puts special emphasis on easing the border crossing of goods and services by removing procedural barriers existing in the involved agencies and processes such as government regulations and controls, business efficiency, transportation, information and communication technologies, and payment systems.[8] This may involve countries adopting measures such as publishing their import and export procedures; reducing the number of forms that importers and exporters are required to complete; allowing forms to be submitted online; streamlining customs procedures; training border officials; and tackling corruption at border crossings.[9]

Box 1. Key trade facilitation obligations under GATT Articles V, VIII, X

Article V. Freedom of Transit.

- Each Member shall grant freedom of transit—for goods(including baggage), vessels and other means of transport crossing its territory–via the routes most convenient for international transit—with no distinction based on (i) flag of vessel, (ii) origin, (iii) departure, (iv) entry, (v)exit, (vi) destination, or (vii) ownership of goods, vessels or other means of transport (except in cases of failure to comply with applicable customs laws and regulations)
- Prohibition to (a) Make such traffic in transit subject to any unnecessary delays or restrictions; (b) Impose customs duties, transit duties or other charges imposed with respect of transit (except (i) charges for transportation, or (ii) those commensurate with administrative expenses entailed by transit, or (iii) with the cost of services rendered)
- All charges and regulations imposed on traffic in transit shall be reasonable, having regard to the conditions of the traffic
- Most Favored Nation (MFN) treatment for traffic in transit with respect to all (i) charges, (ii) regulations, and (iii) formalities

Article VIII. Fees and Formalities

- All fees and charges imposed on or in connection with importation or exportation (other than import/export duties and taxes within the purview of Article III) must: be limited in amount to the approximate cost of services rendered; not represent an indirect protection to domestic products; and not represent a taxation of imports or exports for fiscal purposes.
- No imposition of substantial penalties for minor breaches of customs regulations or procedural requirements; In particular, no penalty for omission or mistake in customs documentation that is easily rectifiable and made without fraudulent intent or gross negligence beyond the necessary to serve as a warning.
- Recognition of the need for reducing the number and diversity of fees and charges. Minimizing the incidence and complexity of import and export formalities and for decreasing and simplifying import and export documentation requirements.

Article X. Transparency

- Requirement to promptly publish all trade regulations in such a manner as to enable governments and traders to become acquainted with them.
- No enforcement of a measure of general application prior to its official publication.
- Uniform, impartial and reasonable administration of trade regulations.
- Maintain or institute, as soon as practicable, tribunals or procedures for the prompt review and correction of administrative action relating to customs matters. Tribunals/procedures must be independent from enforcement agencies.

To help member countries implement TF obligations, previous talks included provisions on enhancing technical assistance and support for capacity building and developing effective cooperation between customs or any other appropriate authorities on TF and customs compliance issues. Previous talks have also taken into account the principle of special and differential treatment for developing countries and LDCs, which would not be obliged to undertake investments in infrastructure projects beyond their means.[10]

Several indicators have been identified by multilateral bodies to be able to assess the TF capacity of countries and identify areas needing improvement. In a World Bank study on TF reforms, indicators were grouped into hard and soft infrastructure.

Hard infrastructure involves:

- Physical infrastructure, which includes the level of development and quality of ports, airports, roads, and rail infrastructure.
- The use of information and communications technology (ICT) to improve efficiency and productivity as well as to reduce transaction costs.

Soft infrastructure includes:

- Border customs and domestic transport efficiency in terms of the time, cost, and number of documents necessary for export and import procedures.
- Business and regulatory environment in terms of the level of development of regulations and transparency. It is built on indicators of irregular payments, favoritism, government transparency, and measures to combat corruption.[11]

TF reforms, as developed countries say, will supposedly make international trade easier, more efficient, less costly and therefore, more profitable. But the obvious question must be asked: More profitable for whom?

3. How will the TF proposals affect poor people especially in developing countries?

Developed countries argue that TF would highly benefit developing countries by “cutting red tape” that stifle economic development. However, the contents of the negotiations towards the Bali ministerial in December 2013 say otherwise. Current TF proposals will only benefit developed countries and will further undermine the genuine sustainable development of poor countries and the vulnerable sections of their populations.

India, Argentina, Bolivia, Egypt, and other developing countries have voiced opposition to the TF negotiations. Nevertheless, the US, Japan, Australia, EU, and other developed countries portray the TF negotiations as a “win-win” formula. Developing countries are being aggressively lobbied to make them accept that TF will actually benefit them more than developed countries—a curious argument since a deal on TF is precisely the developed countries’ main demand in exchange for measly policy changes on the LDC issues, and an even weaker set of reforms on agriculture.

TF will intensify the flood of imports into developing countries.

TF proponents claim that most benefits of enhanced trade will go to developing countries because the projected increase in trade will supposedly mean increased exports earnings. In truth, however, developed countries want to secure the TF agreement because it will increase their own exports. By reducing procedures and costs of international trade transaction, TF will consolidate and enhance the gains already achieved by developed countries in reducing and removing tariffs and non-tariff trade barriers made in previous WTO agreements.

For developing countries on the other hand, TF will greatly increase imports from industrialized countries, which any increases in exports may neither match nor exceed. Precisely because of their less developed economies, their production capacity is not enough to increase their exports enough to meet international market demand. Their backward economies have been tied down in a state of maldevelopment, which in the first place was caused by historical colonialism aggravated by IMF-WB structural adjustment programs and subsequent trade liberalization agreements under the WTO.

Trade facilitation will worsen the impacts of past agreements that opened the flood gates of imports that impoverished farmers, worsened food insecurity, and wiped out many local industries in developing countries. The Agreement on Agriculture (AoA) for example wreaked havoc on the local agriculture and food security of many developing countries in Asia by dumping cheap imported corn, rice, onions, and garlic (which are locally grown) into local markets. Local manufacturing industries that could not compete with imported industrial products suffered similar fates. TNCs were allowed to own and control vital public utilities such as water, energy, and transportation through privatization and deregulation, resulting in exorbitant prices and reduced accessibility of these services to poor consumers.

A World Bank and APEC study in 2002 on the impacts of TF on APEC countries found out that an improvement in port logistics would increase imports of goods by USD 2.7 billion in Peru; USD 10.8 billion in Indonesia; and USD 5.8 billion in Thailand, while developing countries would gain far less in new export earnings. A study by the Third Word Network (TWN) shows that the establishment of new port facilities (under a Trade Facilitation programme in APEC countries) would result in new imports to exceed new exports by USD 9 billion for Indonesia, USD 3.6 billion for Thailand, USD 68 billion for China and USD 16 billion for the Philippines. On the other hand, the US would gain (new exports exceeding imports) by USD 52 billion while Australia and Canada would gain by USD 3 billion each.[12]

TF will make developing countries more vulnerable to foreign control through reduced revenues.

The current negotiating text in the TF talks proposes to remove *ad valorem* fees and charges, and limit fees and charges to the approximate cost of services rendered in facilitating the import or export of goods. This means cheaper and flatter rates of transaction costs, enabling TNCs to gain more from increased exports and deeper reach into the markets of developing countries. WTO members are also required to periodically review their fees and charges, with a view to further reducing their number and diversity, where practicable.

The OECD has quoted several studies saying that countries that implemented TF measures such as port facilities and customs environment

increased government revenue. However, the waiver of *ad valorem* fees cuts down the potential gain from such increased government revenue.

Reducing customs fees and charges will not only decrease the revenue of developing country governments, but will also weaken their ability to protect domestic industries. Many developing countries rely on customs fees and charges as important sources of income and as protective barriers for their local economies from foreign competition.

The further weakened capacity of developing countries in protecting their local economies will further undermine their people's job security and food sovereignty, as developed countries and their TNCs are given freer rein to dump their products abroad.

No commitments from developed countries on technical and financial assistance to developing countries to implement TF.

While developed countries intently push for binding obligations in the implementation of TF reforms, they remain cold towards provisions for special and differential treatment (SDT). In the current negotiating text, for example, SDT provisions are written in a non-binding language. Moreover, the role of developed countries in providing technical capacity and financial assistance to developing countries is not defined. As former Indian ambassador to the GATT Bhagirath Lal Das had warned, developing countries face grave dangers if the proposals are incorporated in the form of binding commitments, especially as wide differences in social and working environments and administrative, financial and human resources between the developed countries and developing countries are ignored.[13]

TF works lopsidedly in favor of developed countries since they have already modernized their port facilities and procedures. Meanwhile, developing countries will be obligated to implement new procedures and spend for costly infrastructure (e.g. new airports, roads, training of customs officials, new software systems), since the WTO compels members to enforce agreements. Bigger chunks of national budgets may be rechanneled to enforce TF measures instead of being allocated to social services, thus further limiting public access to such social services.

Developed countries point to official development assistance (ODA) as a possible source of finance to support the TF needs of developing countries.

Box 2. Costs of Trade Facilitation

The costs of implementing the trade facilitation measures include:

- **Regulatory costs:** Many of the provisions necessitate legislative changes on various fronts and costs will include enacting new legislation, amending of existing laws, other resources required for legislative and regulatory work
- **Institutional costs:** These include costs for the establishment of new units such as the post-clearance team, a risk management team, a central enquiry point; human resources to recruit new expert staff or redeploy existing staff
- **Training costs**, including relocation costs, planning costs
- **Equipment and Infrastructure costs** which are often the most costly elements.

CSOs, on the other hand, are calling for aid transparency and effectiveness since a large per cent of ODA is tied. "Aid for trade" schemes, while claiming to improve the trade capacities and increase the trade benefits of developing countries, have been known to be used by donor countries to promote their export interests, divert financial assistance from more pressing development needs, and create more debt for recipient countries.

The corporate-driven TF agenda will encourage increased privatization of public utilities and enhance corporate control over services.

Since developed countries have not committed to technical and financial assistance for capacity building in TF, developing country governments may decide to award TF infrastructure contracts to foreign companies in the hope of reducing the cost of implementing trade facilitation obligations. The entry of foreign TNCs in building TF infrastructure and training services may come through direct privatization or through any of the various modalities of public-private partnerships (PPP). These will facilitate increased foreign control over the construction and operation of highways, railways, shipping ports, airports, other public infrastructure, and even related services such as water, power, and telecommunications. This will further edge out local contractors, worsen job losses, cut down wages, and erode labor rights.

In particular, big service TNCs dealing in customs operations and ports security such as the Société Générale de Surveillance (SGS) and shipping transportation such as Maersk, stand to gain from such a TF deal.

Many countries employ the services of SGS to take care of the inspection and verification of the quantity, weight and quality of traded goods. SGS is also engaged in environmental impact assessments, testing services for minerals, oil, gas and chemicals, and also conducts social auditing. It has over 1,500 offices and laboratories spread over the globe. The SGS has been accused of corruption and releasing inaccurate reports in exchange for contracts in Pakistan. It has also been instrumental for the World Bank in privatizing customs and other government functions.[14]

Maersk, one of the world's biggest shipping companies, is involved in oil and gas, has offices in 125 countries, and enjoys near-monopoly control of shipping in some countries. In Nigeria, for example, Maersk controls almost 60 per cent of the country's export and import containers. While it boasts of employing more than 30,000 globally, it is also hounded by labor disputes. In Ghana, the Tema District Council of Labor Union slammed the local Maersk management for withdrawing its employees' salaries and benefits. In El Salvador, Maersk truck drivers were paid very low wages and provided neither health insurance nor Social Security pension. Maersk was also involved in union busting when it labelled unionized workers as terrorists and fired at least 100 drivers.[15] In 2010, the Maritime Workers Union of Nigeria shut down the operations of Maersk because of alleged unfair labor practices and casualization of labor.[16]

TF will worsen corporate intrusion into domestic policy-making in developing countries.

Implementing TF measures would require new legislation and policy reform at the national level, which would effectively make developing countries more vulnerable to efforts by developed countries and TNCs in shaping not just domestic customs procedures but also broader economic policy-making. Including TNCs in multi-stakeholder processes related to new legislation and policy-making will provide them more leverage in governance at the national level.

In multilateral institutions such as the WTO, corporate lobbies from the US such as Coca Cola, WalMart, McDonalds, Cargill, and Monsanto, and services TNCs from the EU such as Suez, Lloyds Foreign, and British Telecoms have been known to directly access negotiators and use their resources to put forward their agenda.[17]

TNCs use their immense economic power to influence national policies towards a more profitable investment environment for them at the expense of people's rights and welfare. In their bid to attract more foreign investments, national governments implement labor flexibilization, low wages, business incentives, and lower environmental protection requirements, in addition to allowing big business a bigger say in policy-making. In India, for example, the US-India Agricultural Knowledge Initiative (AKI) provides an instant lobbying platform to the likes of Monsanto, WalMart, and Archer Daniel Midland who are part of AKI's board as official US representatives to directly influence Indian policy makers and access India's agricultural research infrastructure and the country's wide biodiversity.[18]

4. How is TF linked to the hype over Global Value Chains?

The push for trade facilitation is highly linked to the importance attached to global value chains (GVCs) as "good instruments" for development and growth. (For further discussion of Global Value Chains, see Chapter VI). Globalization compels companies to rethink their geographic positioning and restructure their operations accordingly, by outsourcing and offshoring selected links in the entire chain, whether it is design, manufacturing, assembly, marketing, end-user support services, or even the management of their payroll and legal obligations. Firms try to maximize their profits by locating and outsourcing their operations to various countries, such as those in Asia, where labor is fairly cheap and government regulations less stringent.

This type of production, organized as "global value chains," requires goods and services to be traded and delivered swiftly and efficiently, exactly when and where they are needed. Trade facilitation reforms are mainly intended to help TNCs increase profits by decreasing operational costs and increasing merchandise volumes related to trade in goods and services.

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CHAPTER IV

Post-Bali Agenda: Expanded ITA

1. What is the Information Technology Agreement?

The Information Technology Agreement (ITA), signed at the WTO Singapore ministerial in 1996, is a plurilateral agreement on trade in a broad range of information technology (IT) products such as computers, semiconductors, telecommunications equipment, data storage and electronics equipment, and the like. With 29 countries[1] representing 83% of world trade in IT products as its initial signatories, the ITA aimed at achieving maximum freedom of global IT trade by cutting all kinds of tariff.

ITA is exclusively a tariff-cutting mechanism. The declaration provides space for discussion on Non-Tariff Barriers (NTBs) but does not seek binding commitment on NTBs. Right after the ITA was signed, some member countries started discussions on expanding its product coverage (termed ITA-II), although no major agreement has yet been reached.

The ITA-II aims at reducing non-tariff barriers, expanding the product coverage, and seeking to include new members, particularly certain large IT-producing countries like Brazil, Mexico, South Africa, and Argentina (which are not ITA signatories). It is also argued that "a successful expansion of ITA product coverage, concluded in the near-term, would provide a much-needed boost to the global economy, and reinforce the importance of the multilateral trading system."

Currently a "core group" of countries are engaged in negotiations to prepare a consolidated list of products. Members in this core group include the United States, Japan, the European Union, China, Australia,

Switzerland, Norway, New Zealand, Singapore, South Korea, Taiwan, Malaysia, Thailand, the Philippines, Hong Kong, Costa Rica, Israel, Croatia and Bahrain. This process will continue in the coming months and a revised consolidated list of products proposed for inclusion in ITA expansion would be circulated in mid-December 2013.

2. Has the ITA been successful?

The Singapore Ministerial Declaration painted the ITA's mandate in positively glowing terms. Fifteen years after, countries that call for ITA's expansion argue that it has been "tremendously successful in facilitating increased global trade and investment, encouraging information and communications technology (ICT) adoption, and reducing the cost of ICT inputs."

Indeed, according to the WTO, world exports of IT products have almost tripled in value since 1996 and reached an estimated USD 1.4 trillion in 2010, accounting for 9.5% of world merchandise trade. Developing countries have increased their share in this trade area since 1996, accounting for some 64% of exports and 51% of imports in 2010. Further, the WTO claims that considerably higher IT investments in "some emerging economies" (mentioning China, India, and ASEAN countries) allowed these countries "to develop their capacity for manufacturing IT products and become important players in global production networks." It cited India's access to affordable IT equipment as instrumental in turning the country into "a powerhouse in consulting services, software development and other services."

However, claims of ITA's success have been severely criticized by some ITA members themselves. The government of India argued that after 15 years, the ITA has decimated its IT sector's hardware industry and severely restricted the sector's employment generation capacity. In the May 2012 Committee meeting, the Indian representative requested that his country's name be removed from the sentence which stated that India had benefited from the ITA in terms of increasing employment, IT spending and investment.[2] In the same meeting, Indonesia stated that the benefits of the ITA had not been distributed equally, as statistics clearly showed. Egypt added that although some developing countries had gradually gained

market share since ITA, "developed countries still accounted for more than 67 per cent of world ITA exports."[3]

3. What is the impact of the ITA on developing countries?

The ITA is being heralded by the WTO as tremendously successful in facilitating increased global trade and investment and encouraging IT adoption, thereby contributing to raising the standards of living through the positive contribution that IT makes to global economic growth and welfare. However, claims of ITA success have been dealt with severe criticisms by developing country signatories to the agreement. India, Indonesia, El Salvador, Egypt, among others, have called for the review of the agreement, citing that the benefits from the ITA have not been equally distributed among participants. The gains have accrued largely to developed countries, with developing countries confronted with losses detrimental to their development.

This situation is exemplified by India:

Loss of domestic growth potential. India is already quite competitive in the provision of IT services. In addition, India could give an advantage to its producers and develop its domestic IT manufacturing industry if it kept its emerging market for IT products relatively closed. It would enable the domestic industry to grow and subsequently it would provide for higher re-investment of profits and gradually, one could aspire, more and better jobs. As mentioned already, India lost domestic growth potential by participating in the ITA.[4]

Loss of policy space. The IT sector is an important manufacturing sector with the potential to generate employment. With ITA–II calling for elimination of tariffs on large number of IT products, the developing countries and LDCs would not be able to control imports and protect domestic industries with the view to generate employment.

Global diffusion of technology – a myth. One of the important arguments is that IT sector has a reduced level of competition as only few players dominate the electronic market. Present oligopoly market scenario is a barrier for new entrants in manufacturing as well as for frugal innovation.

Technology is being closely held with increasing intellectual property rights (IPR) cost. At the same time, international protection of IPRs becomes stricter and acquires strong institutional machinery of enforcement. Controlling prices and other oligopoly practices are reducing and limiting the access of large number of people to IT products in developing countries and in LDCs.

Design and value-addition. Patents on important technologies in the IT sector account for the largest part of value added. They are predominantly held in developed countries participating in the ITA. Also, patenting is ever-growing as it has increased disproportionally compared to other domestic industry sectors in both developed and developing countries that are top-trading ITA Participants. Although several global IT producers have invested in R&D and in manufacturing in India and other developing countries, these countries enjoyed very limited technology transfer, and consequently observed only marginal increases in their value added and in employment. Committing to a full opening of their markets to new products would make it harder for domestic companies to use their internal market-access advantage. Also they would have lower incentive and resources to design and patent locally.

Increased import content in raw materials. In case of India, the ITA has opened the floodgates of imports into the domestic markets. Subsequently large number of domestic manufacturers turned into assemblers and traders in IT products. Further, increasing imports also reduces the indigenous content and increases imported content in the raw materials, leading to low value addition and lower employment creation. In India's exports of electronics hardware, the imported raw material content in 1991 was merely less than 27%. With the implementation of ITA, the imported raw material content increased to 45.1% in 1999 and to 57.8 per cent in 2002; by 2008 it went up to 80 per cent.[5]

International production networks. The present ITA–I market access scenario shows that only developed countries and technology leaders, which are heading international production networks, benefited from the ITA. On the other hand, the ITA severely restricted the growth prospects of domestic IT industry in developing countries that had not yet established an IT production base, especially those with considerable markets like India and Indonesia.

Non-tariff barriers. Despite 74 countries having brought tariffs to zero under ITA–I, significant amount of NTBs remain unaddressed, especially in the form of national standards and regulation. The issue of NTBs exposed inherent weaknesses in the WTO system and the lopsided negotiation process dominated by few players, even in the plurilateral talks. While there has been much interest in tariff elimination in ITA–I and in ITA–II, there has been no corresponding interest among the leading ITA members, especially the industrialized ones, to address NTBs. Even after 15 years no concrete efforts have been taken. For example, developing countries have specific needs in terms of IT products as they are operating on a low technological base. They would always look to develop with low-cost and labor-intensive mass products. However, when high national standards are set by developed countries, it creates barriers for developing countries to produce for these markets.

A study by the Indian Institute of Foreign Trade (IIFT) argues that developed countries effectively used NTBs to deny market access to the developing countries during the period of liberalization. "Of the total of 456 technical barriers to trade (TBT) notifications from 1995 to 2000 by all the WTO members, the developed member had 356 TBT notifications, which was 78 percent of the total notifications. In terms of the product coverage around 3881 products were covered by the 456 TBT notifications, of which 3800 were protected by national measures."[6] On the other hand, for developing countries with low technology base it is even difficult to identify and putting in place quality standards and controls.

Delinking tariffs and NTBs negotiations. It is important to note that in the ITA–I, negotiations on NTBs and negotiations on eliminating tariffs are disassociated because tariffs in developed countries are already low, so they are a non-issue for them. Introducing new products in the ITA would likely add little to the economies of developing countries, if the agreement does not address NTBs in the developed world. The current NTB status effectively restricts developing countries' export to developed countries.

Loss of government revenue. On ITA products India had an average base duty as high as 66.4% in March 1998. Gradually by 2005 tariffs were brought to zero. Owing to such tariff reduction, the Indian government lost revenue which could have been used for spending on various other important developmental activities. For some of the LDCs tariffs compose an important source of revenue for the national budget. Moreover, the LDCs

have absolutely no interest in joining the ITA because they already enjoy preferential access at least to major markets.

Security issues. As some products proposed in ITA-II are utilized by armed forces and security and intelligence, some developing countries raised security concerns. Note that the US government has before rejected to procure equipment and computers to be used by its armed forces on grounds of security concerns as the products originated abroad.[7]

4. What is ITA–II?

According to the WTO, “The ITA is solely a tariff cutting mechanism. While the Declaration provides for the review of non-tariff barriers (NTBs), there are no binding commitments concerning NTBs. There are three basic principles that one must abide by to become an ITA participant: 1) all products listed in the Declaration must be covered; 2) all must be reduced to a zero tariff level; and 3) all other duties and charges (ODCs) must be bound at zero. There are no exceptions to product coverage; however for sensitive items, it is possible to have an extended implementation period. The commitments undertaken under the ITA in the WTO are on a most favored nation (MFN) basis, and therefore benefits accrue to all other WTO Members.”

The current ITA includes 217 tariff lines, including products ranging from computers, telephones, microphones, audio and video recorders, cameras, broadcasting equipment, transistors, semiconductors, electrical conductors or measurement equipment, and all of their component parts, including cables, wires, elements, switches, tape, lasers, meters, cleaning equipment, and any of the above related to semiconductor wafers.

The proposed ITA–II is said to likely have around 357 tariff lines. In terms of market share in this sector, China has 35%, the EU has 35%, and the US has gone down to only 10%. Developing countries have noted that the new list of products will include most of the goods targeted by the US in the “sectoral” negotiations on Non-Agricultural Market Access or NAMA, which were strongly opposed by the “NAMA 11” group, as well as global trade unions working together through the International Trade Union Confederation (ITUC) and Our World Is Not For Sale (OWINFS).

Proponents always cite Costa Rica as an example of a developing country that has benefitted from the ITA. However, it is important to note that India's technology sector was decimated after it signed the first ITA. Increased imports of ITA products turned manufacturers into assemblers and reduced the indigenous content in India's export of the ITA sector. A study by Indian Institute of Foreign Trade (IIFT) noted that ITA-I has critically affected employment generation capacity and increased casualization of the workforce in the sector in India.[8]

Given this experience, the ITA – II talks should be of great concern to trade unions and others concerned about jobs and industrial policy development. Countries should not continue or join talks towards ITA – II without undertaking comprehensive assessments of potential impacts on employment, among other issues.

NOTES

1 Original members of the ITA include Australia, Canada, Chinese Taipei, the European Communities, Hong Kong, Iceland, Indonesia, Japan, South Korea, Liechtenstein, Norway, Singapore, Switzerland, Turkey, and the United States. Subsequently added members include Albania, Bahrain, Bulgaria, China, Costa Rica, Croatia, Cyprus, the Czech Republic, the Dominican Republic, Egypt, El Salvador, Estonia, Georgia, Guatemala, Honduras, Hungary, India, Israel, Jordan, Kyrgyzstan, Latvia, Lithuania, Macao, Malaysia, Malta, Mauritius, Moldova, Morocco, New Zealand, Nicaragua, Oman, Panama, Peru, the Philippines, Saudi Arabia, Slovakia, Slovenia, Thailand, Ukraine, the United Arab Emirates, Vietnam. Russia is expected to submit its schedule as part of its accession agreement. Thus proponents were successful in getting many small countries to agree to ITA – I: a full 73 counties are signatories, including China and Russia. Brazil, South Africa, and Argentina are not signatories.

2 Committee of Participants on the Expansion of Trade in Information Technology Products. MINUTES OF THE MEETING OF 15 MAY 2012, (G/IT/M/55).

3 Manicandan, G. Information Technology Agreement (ITA): ITA-I and ITA-II – A Brief Note of Concerns, prepared for the Global Strategy meeting of the Our World Is Not For Sale (OWINFS) network in Tunis in March 2013.

4 With regard to ITA-I liberalization, imports in to India dominated by China. India argues that increasing monopoly on IT products by a single country does not help global diffusion of technology. According to an IIFT study, the grave situation for India could be understood from the fact that in the 164 ITA-1 products the exports of India grew by 115 times in comparison to 2075 times of Chinese imports.

5 Ibid.

6 Kallumal, Murali. Process of Trade Liberalization under the Information Technology Agreement (ITA): The Indian Experience. Centre for WTO Studies, Indian Institute of Foreign Trade (IIFT). Working Paper.

7 The contents of the section on ITA are drawn mainly from G. Manicandan's paper "Information Technology Agreement (ITA) ITA-I and ITA-II – A brief note on concerns". The document was prepared for the Global Strategy meeting of Our World Is Not For Sale (OWINFS), March 24-25, Tunis.

8 Now India has developed a national manufacturing program, and has assessed that much of its future growth will come through electronics: consumer electronics – cameras, monitors, etc., so they may be the only country that was a signatory to ITA-I that is not interested in becoming part of ITA-II.

CHAPTER V

Post-Bali Agenda: Trade in Services Agreement

1. What is the TISA?

The Trade in Services Agreement (TISA) is a proposed post-Bali agreement that aims to improve and expand trade liberalization in services. The TISA was initiated by the United States and Australia and is currently being negotiated in Geneva, Switzerland. The present participants in the TISA negotiations, called the Really Good Friends of Services (RGFS), include Australia, Canada, Chile, Chinese Taipei (Taiwan), Colombia, Costa Rica, European Union, Hong Kong, Iceland, Israel, Japan, Liechtenstein, Mexico, New Zealand, Norway, Pakistan, Panama, Paraguay, Peru, Republic of Korea, Switzerland, Turkey, and the United States.[1]

Services are currently the largest and most dynamic component of both developed and developing countries' economies. For the OECD countries, services represent from 60 to 70% of GDP and for developing countries they still account for over half of national output, on average, with great differences from country to country.[2] The services sector is the world's largest employer, and produces 70% of global gross domestic product (GDP).[3] The General Agreement on Trade in Services (GATS) is the most recent services agreement established by the WTO in 1995. With the new developments in technological services, changing business practices and deeper global integration, GATS limitations on areas such as market access, government procurement of services, and non-discrimination are preventing the full liberalization and deregulation of services.

In 2012, the RGFS launched secret unofficial talks towards drafting a treaty that would further liberalize trade and investment in services, and expand "regulatory disciplines" on all services sectors, including many public services. The "disciplines," or treaty rules, would provide all foreign providers access to domestic markets at "no less favorable" conditions as domestic suppliers and would restrict governments' ability to regulate services. This would essentially change the regulation of many public and privatized or commercial services from serving the public interest to serving the profit interests of private, foreign corporations.

Negotiations have started, with an aim to have "major progress" by the time of the WTO Ministerial in December 2013, and then to finalize a very ambitious agreement on far-reaching services liberalization and "disciplining" government activity the following year. The TISA negotiations largely follow the corporate agenda of using "trade" agreements to make privatization non-reversible, and to promote mergers and acquisitions and deregulation, in order to ensure greater corporate control and profit-making of national economies and the global economy. The proposed agreement is the direct result of systematic pressure by TNCs in banking, energy, transport, (tele-) communications, construction, retail, engineering, water distribution, accountancy, marketing, publicity, insurance, entertainment, museums, education, health, funeral services, and other services sectors, working through lobby groups like the US Coalition of Service Industries (USCSI) and the European Services Forum (ESF). Besides extensively listing services for liberalization, the RGFS also wants to adopt disciplines on how the services sectors can be governed, restricting governments' and parliaments' right to regulate and practice oversight. The RGFS has already had extensive exchanges about these disciplines, which would go far beyond the existing GATS.

2. What is the basic structure of the proposed TISA?

Many aspects of the proposed TISA are yet to be determined, but developed country negotiators seem to have already reached fundamental agreements on several core aspects, which include:

- Participants will have to liberalize services in "essentially all modes and sectors," and countries will be pressured to exclude

only a very few services from their commitments—greatly expanding the coverage from the current GATS.

- All foreign services providers and their products will receive “National Treatment” except for those services specified in an exemption list (a serious deviation from the GATS structure).
- The proposed agreement is intended to become “multilateralized” after its intended completion, meaning that other countries will be pressured to join after the framework is set by the most extreme liberalizers.
- The US seems to have “enforceability” as a major demand for the TISA, which most likely points to its desire to include the “Investor to State Dispute Settlement” mechanism.
- New, far-reaching disciplines on regulations would likely include a “standstill” clause that would mean that no new so-called trade-restrictive regulation in a services sector could be introduced. In addition, a “ratchet” provision would mean that any future autonomous elimination of regulatory measures that could be considered discriminatory would be automatically become part of the TISA agreement.

3. What types of services will be included in the proposed TISA?

The GATS agreement lists a broad range of activities as tradable commodities, making every aspect of human activity the subject of closed-door commercial negotiations.

However, the difference between GATS and the proposed TISA is that the former allowed countries to choose the services they wanted to liberalize, and thus commit to the deregulatory disciplines and rules of the agreement, although the negotiations procedure of making requests and offers still put pressure on countries to liberalize as much as possible. In contrast, during the TISA negotiations, the participating countries will have to liberalize services in “essentially all modes and sectors” which, according to some Really Good Friends means 90% of all services.

A number of developed countries have already tabled proposals for the following sectors:

- Canada on temporary immigration, also called the natural movement of persons, or Mode 4 in GATS (see Box 1 for an explanation of GATS modes);
- Australia, Japan and Hong Kong on domestic regulation;
- EU on Government Procurement in Services;
- Australia on professional services;
- Switzerland on export subsidies;
- EU on postal services;
- Norway on maritime services; and
- Japan on telecommunications.

4. If signed, how will TISA affect developing countries?

Violation of democracy. The RGFS meet behind closed doors to shape the agreement. TISA negotiations are so secretive that no negotiating text is being released for scrutiny. Sectors that will be directly affected by liberalization, represented by parliamentarians, trade unions, and CSOs, are not invited to negotiations.

Corporate takeover of social services. The proposed TISA is a result of systematic advocacy by TNCs in banking, energy, insurance, telecommunications, transportation, water, and other services sectors, working through lobby groups like the USCSI and the ESF.[4] Increased foreign investments in the services sector do not automatically lead to improved response to public needs. Putting essential services such as education, health care, insurance, water, energy, public transportation, and sanitation among others into the hands of profit-driven corporations will undermine the accessibility of these services, especially to poor and marginalized communities.

Increased vulnerability to financial downturns. The liberalization of the financial sector, which was highly encouraged in 1990s, contributed to the 1997 Asian financial crisis and also to the more massive global financial crisis that broke out in 2008 and brought down many economies into recession. Millions suffered from unemployment as well as from the austerity measures that cut wages, benefits, and social spending on health and education while big banks and TNCs were bailed out using public money. Further liberalizing the financial services will also increase the

Box 1. What is GATS Mode 4?

The General Agreement on Trade in Services (GATS) was negotiated in the Uruguay Round as part of the WTO agreements and came into force in 1995. It emerged in response to the huge growth in the services economy. The services sector is the fastest growing part of the global economy and accounts for 60% of global output, 30% of employment, and nearly 20% of global trade. GATS is the natural counterpart to the long-standing GATT (also under the WTO) covering trade in goods.

The GATS covers all internationally traded services except those provided to the public in the exercise of governmental authority and, in the air transport sector, traffic rights and all services directly related to the exercise of traffic rights. The GATS defines four ways in which a service can be traded, known as "modes of supply":

MODE 1 – services supplied from one country to another (e.g. international telephone calls), officially known as "cross-border supply";

MODE 2 – consumers from one country making use of a service in another country (e.g. tourism), officially known as "consumption abroad";

MODE 3 – a company from one country setting up subsidiaries or branches to provide services in another country (e.g. a bank from one country setting up operations in another country), officially known as "commercial presence"; and

MODE 4 – individuals travelling from their own country to supply services in another (e.g. an actress or construction worker), officially known as "movement of natural persons".

Definitions

- GATS Mode 4 only covers people moving temporarily, although there is no definition of temporary. In effect, the length of stay allowed by GATS Mode 4 is identified by the offers and agreements made in countries' negotiating positions and varies from a few months to a few years (renewable) depending on the type of work (and usually level of skill). Business visitors can usually stay for up to 3 months, while intra-corporate transfers are usually for 2-5 years.
- It can cover the self-employed moving to offer a service or those employed by others on whose behalf they travel to offer a service. There is some dispute over whether foreigners employed by local firms also fall under Mode 4.
- Mode 4 does not cover people seeking access to a labor market in general (they must have a specific sectoral role) or those looking for citizenship, asylum or permanent residence.

Definition of Mode 4 – Article 1.2 (d)

"The supply of a service…by a service supplier of one Member, through presence of natural persons of a Member in the territory of another Member"

vulnerability of countries, especially LDCs, to possibly worse financial and economic crises.

Exposure of migrants to abuses. The TISA proposal to further liberalize Temporary Movement of Natural Person (TMNP) will increase the vulnerability of migrant workers. Treating migrant labor as merely specialized and tradable commodities does not bode well for migrant workers' human and labor rights, especially in the case of medium and less skilled workers from developing countries.

NOTES

1 Coalition of Services Industries. (n.d.). The Trade In Services Agreement (TISA). Retrieved from https://servicescoalition.org/negotiations/trade-in-servicesagreement
2 Vincenti, D. (2012). EU and 'good friends' weigh international services pact. Retrieved from http:// www.euractiv.com/specialreport-free-trade-growth/really-good-friends-mullinterna-news-515258
3 Coalition of Services Industires.(n.d.). The Trade in Services Agreement. Retrieved from https://servicescoalition.org/negotiations/trade-in-services-agreement
4 OWINFS. (2013, September 16). International Civil Society Sends Letter to Governments Opposing Proposed "Trade in Services Agreement (TISA)". Retrieved from http://www.ourworldisnotforsale.org/en/article/international-civil-society-sends-letter-governments-opposing-proposed-trade-services-agreem

CHAPTER VI

Post-Bali Agenda: EGS and GVCs

1. What is the proposed agreement on Environmental Goods and Services (EGS)?

At the Fourth WTO Ministerial Conference in Doha in November 2001, WTO members agreed to negotiations on "the reduction or, as appropriate, elimination of tariff and non-tariff barriers to environmental goods and services."[1] The Doha Ministerial Declaration (DMD) states that negotiations on trade liberalization in environmental goods and services (EGS) should enhance the mutual supportiveness of trade and the environment, suggesting a potential for "win-win" outcomes—because trade flows in environmental goods would increase while at the same time the environmental impacts would be decreased.

The inclusion of EGS as part of the negotiating mandate is often attributed to the political dynamics of bargaining during the course of the Doha Ministerial Conference. Some experts have attributed its inclusion, as with the trade and environment mandate as a whole, to a *quid pro quo* demanded by the European Union (EU) in return for a commitment to phase out export subsidies in agriculture. Trade sources also consider the United States as playing a key role in influencing the EU's push for inclusion of EGS within the Para 31 (iii) mandate.[2]

A major point of contention in the negotiations is on the definition of environmental goods. The reduction of barriers to trade in environmental goods has been promoted mainly by developed countries, such as EU

members, Japan, Norway, Switzerland, and other countries that are part of the group called "Friends of Environmental Goods." They advocate a "list approach" to liberalization of environmental goods, which means they propose a list of goods that used the ones developed by APEC and OECD as a starting basis. The goods identified in the list will be subjected to normal WTO market access involving permanent most-favored nation (MFN) liberalization of bound tariffs.[3]

Many developing country members in the WTO have voiced opposition to the "list approach" in that it fails to address their concerns. They raised questions on the environmental credentials of products included in the list. Some members including India, Brazil, and Argentina advocate the single-use definition and prefer more specific definitions of environmental goods. On the other hand, the "Friends of Environmental Goods" consider single end-use as an excessively narrow criterion to use for filtering and evaluating potential environmental goods. Instead, they suggest that products be retained if it can be shown that they are predominantly used for environmental purposes. They do not see any problem with multiple-use products as long as they have some "environmental benefit."

The proposed lists of environmental goods are selective in their coverage and centered on environmental equipment, chemicals (OECD list), scientific instruments (APEC list) and a few energy-efficient consumer products (Japan's list) and technologies (Qatar's proposal). In general, developing countries are net importers of these products and their applied tariffs are higher than those in the developed countries.[4]

Many developing countries have expressed concerns that most goods listed to date are not of export interest to them. By bringing down tariffs on these goods, they risk losing tariff revenue. While they would gain access to less expensive environmental goods, such imports may also compete with their own potential infant industries.[5]

Cuba opposes tariff-reduction commitments that are incompatible with sustainable development policies and propose that developing countries decide on the proportion of goods to be liberalized and their own levels of reduction. Cuba, along with some developing countries, also view India's proposed "project approach" as best suited to making special and differential treatment viable instead of the "list approach" by allowing Members to

Box 1. India's proposal of a 'Project Approach' instead of a 'List Approach'

As a response to the challenges related to the "list approach," an alternative "project approach" was proposed by India, whereby environmental goods and services, deemed important for an approved project, would be liberalized on a time-bound basis. The key features of the approach in terms of selection of products are:

- Wide array of goods and services (including dual and multiple-use ones) to be liberalized for specific projects geared to fulfilling an environmental objective;
- Environmental projects approved by a "designated national authority" (DNA), based on criteria to be developed by the Committee on Trade and Environment (CTE);
- Domestic implementation of these criteria would be subject to WTO dispute settlement.

In terms of treatment:

- Liberalization is to be bound temporally for the duration of the project on a Most-Favored Nation (MFN) basis

According to India, the key merits of the project approach are:

- Avoiding negative impacts of unrestricted market access to "dual" and "multiple- use" products and diversion for non-environmental uses;
- Safeguarding policy space while addressing domestic and global environmental objectives in a developmentally supportive way;
- Addressing environmental goods and services, tariffs, and non-tariff barriers (NTBs) in an integrated manner;
- Determining multilateral criteria by the CTE for project-eligibility to ensure transparency.

Source: ICTSD Programme on Trade and Environment, Trade in Environmental Goods and Services and Sustainable Development, December 2007

tailor liberalization based on domestic environmental and environmental priorities.

In an April 2007 proposal, a group of developed countries in the WTO proposed a list of 166 6-digit Harmonized System (HS) tariff lines as a possible "convergence list" for environmental goods. These 166 tariff lines would cover literally thousands of individual products that may or may not have positive environmental end-uses.

Using data from the UNCTAD/WTO International Trade Centre's Trade Map statistical database, as of 2009, the value of OECD exports to non-OECD countries of products covered by these 166 tariff lines amounted to USD 181.542 billion, while OECD imports of products from non-OECD countries under these tariff lines amounted to USD 85.588 billion—i.e. OECD countries export more than double the value of non-OECD countries' exports of products in the same tariff lines, resulting in a trade surplus in favor of OECD countries in 2009 of USD 95.954 billion (112% of the value of non-OECD exports).[6] From this, it can be derived that developed countries, through this deal, can include in the list many of their products that they want to promote, even if they ought not be categorized as "environmental goods," thereby giving powerful countries a back-door method by which to increase market access for products of interest to them.

Negotiations on trade in EGS is being pursued even in frameworks outside the WTO. In the November 2012 Asia Pacific Economic Cooperation (APEC) Summit, APEC members agreed on an ambitious list of 54 Environmental Goods. (See Box 2.) It is expected that developed countries will use to raise the level of ambition in trade in EGS in multilateral negotiations in the WTO.

The persistent push for the reduction and elimination of tariffs on environmental goods and services would create a development "loss" for developing countries. Since developed countries already apply quite low or zero tariffs on most industrial goods, including environmental goods, their burden of effective tariff reductions would be relatively much less than for developing countries.

Cutting tariffs to zero for environmental goods would result in a surge of imports into developing countries and make them economically dependent on these imported goods and make it difficult or impossible for local industries producing environmental goods to survive or develop. The developing countries would also become technologically dependent, unless other measures are put in place to ensure that developing countries can obtain and design the technologies themselves. Essentially, a market access focus on the elimination of trade barriers is overly narrow and, in a developing country context, has the potential to limit or wipe out the ability of developing country producers to develop sufficient production and competitive capacity with respect to such environmental goods and services.

Box 2. APEC list of 54 Environmental Goods

The APEC List of Environmental Goods includes 54 items, including such core products as:

Renewable and clean energy technologies, such as solar panels and gas and wind turbines, on which tariffs in the region are currently as high as 35%;

Wastewater treatment technologies, such filters and ultraviolet disinfection equipment, on which tariffs in the region are currently as high as 21%;

Air pollution control technologies, such as soot removers and catalytic converters, on which tariffs in the region are as high as 20%;

Solid and hazardous waste treatment technologies, such as waste incinerators, and crushing and sorting machinery, on which tariffs in the region are currently as high as 20%; and

Environmental monitoring and assessment equipment, such as air and water quality monitors, and manometers to measure pressure, and water delivery systems, on which tariffs in the region are currently as high as 20%.

Source: http://www.ustr.gov/about-us/press-office/fact-sheets/2012/september/apec-environmental-goods

2. What are Global Value Chains (GVCs)?

The growing supply chain is the motor of international trade today. A value chain refers to the full range of value added activities required to bring a product from its conception, through design, sourcing raw materials and intermediate inputs, production, marketing, distribution, and support to final consumers.

A value chain can span enterprises in a local economy, a national economy, or a subregional or regional grouping of economies. A particular firm may choose to focus on one specific activity (and associated outputs) in the value chain, such as manufacturing or sales, or several activities as in the case of a more vertically integrated enterprise.

Figure 1. Garment/apparel Value Chain

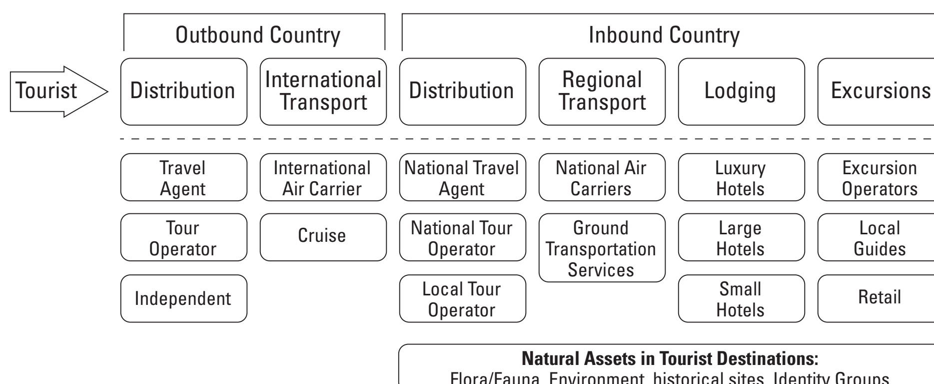
Value chains become "global" (global value chains, or GVCs) when their component activities are geographically dispersed across borders to multiple country locations. At the onset of globalization, many companies restructured their operations internationally through outsourcing and offshoring activities, dealing with several production networks. Different stages in the production process are located across different economies and intermediate inputs like parts and components are produced in one country and then exported to other countries for further production and/or assembly into final products. This has been described as the evolution from trading of goods to trading of tasks.

Instead of creating products themselves (which is capital intensive), "lead firms" are able to supply their clients through coordinating or orchestrating the activities of several independent firms (supported by subcontractors) around the globe to produce the merchandise that they need.

The globalization of production gave birth to the global value chains. As corporations continue to further unbundle their operations, the narrative on the GVCs now extends beyond the usual offshored value chain segments (supplies, assembly, distribution) into the support services that are traditionally done by the corporations themselves, but are now also offshored to further reduce their operations costs. These new areas include customer support, payroll, accounting, network management, market intelligence, product design, business analytics, legal services, and training. GVCs are not limited to the production process of goods, but also to the production process of services (tourism, telecommunications, financial services, health, education).

"Lead firms" often focus on their core activities and are involved in high-value, upper tier segments of the GVCs (design, product development, strategy). They outsource the lower-tier chain processes to developing countries which produce relative simple outputs and compete with each other on the basis of low cost. This is how they can push down prices of products, services, and wages in developing countries.

Figure 2 Example of a Tourism GVC

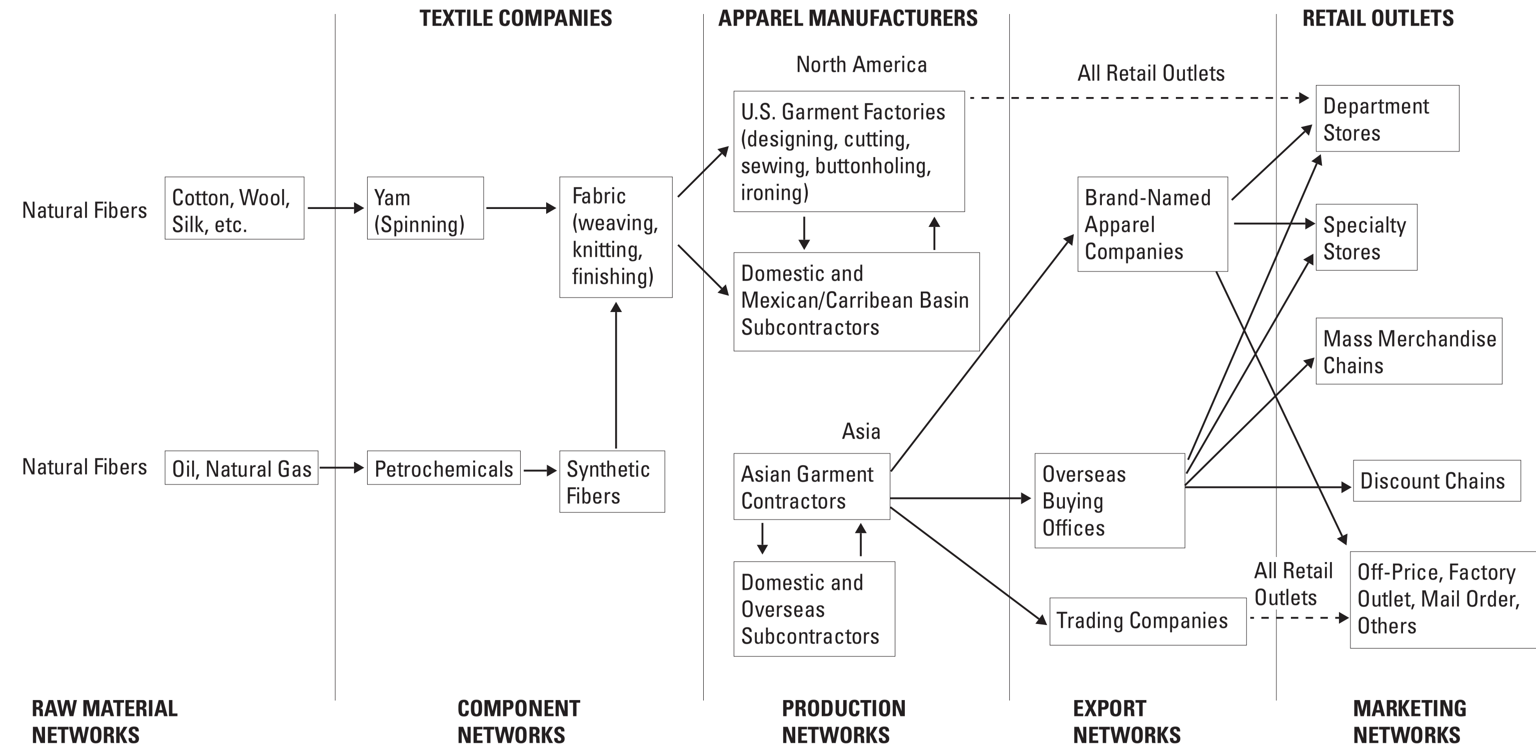


In this international trade order, access to the segments of GVCs is heralded as a way of achieving development and growth of developing countries. Developing countries can benefit from the GVCs from being low-tier supplier by upgrading to the higher tiers of the value chain segments—for example, from being producers of raw materials to actually processing those raw materials. In theory, this is possible through international knowledge spilling over to less technologically advanced countries, occurring through trade and "learning by doing." Through this, developing countries are posited to gain from access to knowledge through trade with developed countries. The transfer is supposed to happen, firstly through importing intermediate and capital goods from abroad (in which knowledge is embodied); secondly, through increased communication and cross-border learning of production methods; and finally through imitating foreign technologies. Because of this, manufacturers in developing countries can quickly meet the standards of world-class manufactured goods, that is, move up the value chain.

Proposals towards establishing an International Supply Chain Agreement (ISCA) are also already being explored. It is expected that the views and opinions of the business community will be highly influential in defining the agenda of the agreement. Agenda for ISCA negotiations will seek to cover areas already covered by WTO agreements like trade facilitation and export restrictions. Its other important aim is to create new disciplines or rules in areas and issues where relevant WTO agreements do not exist—areas like investment, competition, and preferential rules of origin.[7]

The growing abundance of GVCs creates a situation where foreign buyers now have more or less the power to dictate the price they pay to

Figure 3. Example of an Apparel GVC



Source: G. Gereffi and O. Memedovic. *The Global Apparel Value Chain* (Vienna, UNIDO, 2003)

producers in developing countries. In this trade network, the buyer has little commitment to its suppliers, because it can easily replace them with other suppliers. Similarly, although the producers in developing countries have managed to get inside a trade network, there is no guarantee they can last long, because new attractive suppliers with cheaper prices will keep coming. The result is a kind of "race to the bottom," in which they are forced to reduce wages, peg down or even reduce standards of living, as well as ignore the consequences of environmental destruction.[8]

Proposals of advancing talks on GVCs are received unenthusiastically by developing countries. South Africa, along with other groups of developing countries, contends that the concept is merely providing a further avenue for pressuring developing countries into liberalizing rather than engaging with the issue of how to increase the share that poorest countries have on the value added.[9]

A study conducted by Asia Monitor Resource Center, a labor research group, reveals how globalization and the increased internationalization of supply chains have been shaped primarily by TNCs, by increasingly globalizing their operations around the world in order to lower costs. Countries in need of investment and foreign exchange are put into competition with each other to attract these operations by offering their labor and natural resources. Ultimately, workers and communities in the participating countries are also put into competition against each other as they are dragged into jobs tied to global supply chains.

The significance of the global supply chain is not merely in terms of the movement of capital in search of cheap labor but also in terms of the change that it brings to the nature of work itself. The mobility and capacity of global capital have increased and intensified through the activities of capital accumulation, and have led to massive populations being brought newly into capitalist social relations as "informal labor." The expansion of global supply chains is closely linked to the still-dominant paradigm of export-driven economic development—leading governments to mold their national labor force, and even their societies in general, to meet the needs of global capital.

Large numbers of people in Africa, Latin America, and Asia are engaged in producing raw materials of various kinds for the final production of the world's consumer goods, and home-based workers across the globe doing

outsourced jobs are also integrated in the global supply chains. These in turn are subsidized by the natural resources (water, land) from which the workers and communities draw, in order to produce for the supply chains. Thus, the division of labor as enforced by this global supply chain ends up having disastrous impacts on the environment and the society of developing countries in various ways, and the worst affected are the labor force.

Moreover, governments, in trying to preserve or create attractive investment climates, are increasingly compelled to maneuver to either erode their own labor laws or find ways to allow non-enforcement of these laws. To facilitate capital flow, states in collusion with business are engaged in seizing lands, imposing industrial methods on agriculture, and commodifying natural resources and public goods, thus resulting in widespread violations of people's rights. Public institutions that are supposed to serve the people's basic needs serve the needs of big foreign capital instead. People lose their sovereignty over their own living environment as well as their labor, and get deprived of basic human and labor rights. The deeper the integration of these supply chains into society, the more the downward pressures on wages, working conditions, local environments and resource-based livelihoods, and the greater the suffering of the people.

Among the many negative impacts arising from this undemocratic insertion of the global supply chains into developing countries and their societies are environmental catastrophes and other social costs not easily quantified with price tags, such as loss of land and livelihood rights, increased migration, separated families, and loss of subsidized social benefits. Companies keep extracting maximum profits whereas the risks have been "externalized" to the society and environment. These enormous costs are borne by society and environment, but remain "invisible" to consumers. Asia-based supply chains, for instance, could come up with considerably cheaper products, such as USD 3,000 cars, USD 300 computers and USD 30 mobile phones that offer a nationwide service for just two cents a minute, only at the expense of these enormous social and environmental impacts that will affect not just present but also future generations. Global supply chains thus reflect a social relation that permits not only exploitation of capital over labor and environment, but also allows capital to deeply penetrate and distort all aspects of social life.[10]

3. Conclusion

The proposed Bali Package, along with the post-Bali Agenda, shows the developed countries' complete disregard for the Doha Development Agenda. The developed countries' agenda is strongly reflected in the promotion of the new trade narrative and the status of the negotiations towards the MC9 in Bali.

The global value chains, which is the so-called new narrative on trade, is highly promoted by developed countries. According to this narrative, developing countries must either link their economies to the GVCs or be left alone to survive on one's own. Developed countries claim that, for GVCs to succeed, the global trade and investment system needs to attain greater efficiency by removing all existing trade barriers. Their proposals especially on trade facilitation, TISA and ITA are moving forward, while proposals from developing countries are not gaining any traction.

While developed countries demand the developing world to further remove trade barriers and increase market access, they protect their own markets by blocking proposals that will constrain their own exports and economies, such as reforms in agriculture for food security, DFQF, simplified rules of origin, reduction of cotton subsidies, and the LDC services waiver.

If signed, the proposed deals will widen and deepen the scope of unbridled trade liberalization that has already distorted and eroded the economies of developing countries in favor of the needs of developed countries. The proposed deals will further undermine the right to development of developing countries and marginalized sectors by compelling their governments to change their laws and policies in accordance with the imperatives of wider access by foreign corporations to local markets and resources, export dumping, removal of state-owned enterprises, and privatization of social services.

The Bali Package and the post-Bali Agenda must be defeated by developing countries if they are to defend whatever remains of their national sovereignty and development policy space. The Bali Package may carry certain reforms in agriculture and LDC issues that could benefit developing countries, but its net worth remains negative for poor countries due to the adverse impacts of trade facilitation.

Real progress at the Ninth WTO Ministerial in Bali should not be about blindly joining the bandwagon of expanding trade liberalization at the expense of poor and developing countries. Rather, what the majority of member-countries should demand is an overhaul of the proposed agreements to ensure that runaway corporate power is put on a leash, that the rules and relations within the international trade system be recast to promote full equality among partners while upholding the special and differential treatment of developing countries, and that developing countries and LDCs retain their own sovereign control and policy space for shaping and owning their development process and outcomes.

The main theme of the WTO Bali ministerial is supposed to revolve on trade and innovation. Let it therefore allow countries and peoples to innovate their own development, to carve their own paths to progress, in a global community ruled by full equality and real cooperation. #

NOTES

1 See Doha Ministerial Declaration. Paragraph 31 (iii).

2 International Centre for Trade and Sustainable Development (ICTSD). (2007). Trade in Environmental Goods and Services and Sustainable Development.

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7 Nakatomi, Michitaka. (2012). International Supply Chain Agreement (ISCA) Concept Paper. Accessed September 2013 at http://www.wto.org/english/res_e/reser_e/wts_future2013_e/Nakatomi.pdf

8 Haque, Irfanul. (2007). Rethinking Industrial Policy, UNCTAD Discussion Papers No. 183. Page 5-6, 9.

9 Moving forward WTO debates of 'practical importance' to the ACP. Accessed April 2013 at http://agritrade.cta.int/en/layout/set/print/Agriculture/Topics/WTO/Moving-forward-WTO-debates-of-practical-importance-to-the-ACP

10 Global Supply Chains and their Impact on the Labor Movement in Asia. Accessed April 2013 at http://amrc.org.hk/node/1173