CII
Confederation of Indian Industry

POLICY watch

January 2014, Volume 2, Issue 7

Focus: WTO Ministerial Conference at Bali

The outcomes of the recently-concluded WTO Ministerial Conference at Bali prove that a collective political will can transcend barriers to meet goals. The success of the Ministerial at Bali not only gave a new lease of life to the beleaguered Doha Round of trade negotiations but also put a lid on the speculation that the WTO as a rules-making body is losing its relevance and effectiveness.

There can be no two opinions on the fact that a multilateral trading system is the most optimum way to liberalize trade and protect the interests of unequal partners spread across the global trading landscape. The outcomes of the Bali Ministerial is a testimony to this fact. The results on food security and the development package for Least Developed Countries (LDCs) are truly remarkable and historic from the perspective of developing countries, which account for a majority in the WTO membership.

In the history of GATT/WTO, it is definitely not the first time that developing countries have raised their voices to champion their collective interests. But on most previous occasions, such as the Seattle Ministerial in 1999, Cancun in 2003 and the more recent one in December 2008, the talks have collapsed once developing countries stood solidly for their collective cause.

The Bali Ministerial too could have met with a similar fate had the WTO members not realised the cost of failure of this meeting. In many ways, the agenda for the Bali Ministerial was simplified much in advance and consciously made more balanced by including issues of interest to all three constituents – developed, developing and LDCs – of the WTO membership.

While developed countries pushed for an ambitious trade facilitation agreement, G-33 (of which India is a member) countries wanted adequate safeguards to run their food security programmes. LDCs had their own four point agenda which included duty and quota free market access, operationalisation of the waiver concerning preferential treatment to services and service suppliers of LDCs, preferential rules of origin and establishment of a monitoring mechanism for special and differential treatment.

Bali delivered on all three counts. The final outcomes are truly historic as perhaps for the first time in the history of a multilateral trading system all parties returned home victorious. It is the collective victory and triumph of multilateralism.

Industry in India is now expecting more from the Trade Facilitation agreement. Since the agreement makes strong provisions for technical and financial assistance to poor countries, presumably a major chunk of this will go to build the capacity of poor countries in Africa and Asia. This will help in promoting greater South-South trade and investment. India too has been trying to deepen its trade and economic ties with Southern countries, particularly in Africa and Asia.

Indian industry always supported a balanced but ambitious trade facilitation agenda that would help build greater market access opportunities for them. Specifically, it supported a good Trade Facilitation agreement that can cut transaction costs and help make it more competitive.

From the development perspective, the agreements on LDC package and food security are path breaking.

The Bali Package covers only a selection of issues from the much broader and ambitious Doha Development Agenda. All eyes are now focused on the remaining unresolved issues of the Doha agenda, which includes Non-Agricultural Market Access (NAMA), and Services. Both these issues are extremely important for Indian industry, especially Services. A select group of WTO members are trying to negotiate a plurilateral agreement. India, so far, has not joined this grouping.

In his closing remarks, the WTO DG said that by adopting the Bali package, members have reaffirmed their support and commitment to WTO and more importantly to the Doha Round. Now, the next logical step is to work out a post-Bali roadmap with an aim to conclude the Doha Round. In this issue of Policy Watch we look at the issues that plague international trade and how the Bali Ministerial is a step forward in resolving them. ■

Chandrajit Banerjee
Director General
Confederation of Indian Industry

Inside this Issue

Bali Ministerial: A Step Forward But Much More Needs To Be Done

The recently concluded 9th World Trade Organisation (WTO) Ministerial Conference at Bali brought the smile back on the faces of all those who believed in a rules-based multilateral trading system. The Doha Round, which has been in limbo for the last several years, got the much needed lifeline. Since the ultimate objective is to see the logical conclusion of the Doha Development Round, the achievements at Bali are a stepping stone to a time bound post-Bali work programme.

The outcome of the Bali Ministerial is truly historic on many counts. It is for the first time since the beginning of the economic crisis in 2008 that countries across the world arrived at a rare consensus on any international agreement. All credit goes to the current WTO Director General, Roberto Azevedo, who facilitated this outcome and his predecessor Pascal Lamy who very carefully crafted the agenda for the Bali Ministerial.

Secondly, all parties returned home triumphant – a rare phenomenon. While US and other developed nations are pleased to have a deal on Trade Facilitation, for India and the G-33, an agreement on food security is an iconic gain. Spearheaded by India, the G-33 group sought relaxation in the WTO farm subsidies rule, which will allow Governments more scope to buy food at administered prices as part of their food stockholding schemes.

Least Developed Countries (LDCs), which constitute a sizeable number in the WTO membership, too are reasonably satisfied with their development package, which includes decisions on Preferential Rules of Origin, operationalisation of the waiver concerning preferential treatment to Services and service suppliers of LDCs, Duty-Free and Quota-Free Market Access and the establishment of a monitoring mechanism on Special & Differential Treatment (S&DT).

Trade Facilitation

From a business perspective, the agreement on Trade Facilitation is being seen as a

Deep Kapuria
Chairman, CII MSME Council and Chairman, Hi-Tech Group

major breakthrough. Trade Facilitation refers to measures aimed at simplifying, modernising and improving border tax collection, transit procedures, especially customs requirements and also procedures of the other agencies operating at borders. Possible measures include simplifying rules, standardising and reducing the number of custom forms and computerisation. The WTO Trade Facilitation Agreement creates an international framework for these reforms, thereby spreading the benefits of trade facilitation across the globe.

Indian industry supported a good Trade Facilitation Agreement that can cut transaction costs and help make it more competitive. The provisions, agreed under Article 1 & 5 to ensure transparency, sharing of information and non-discrimination, will help Indian industry in accessing overseas markets. Another positive from a developing countries' perspective is provisions aimed at simplifying transit documents pertaining to exportation and importation. Recently India had to face problems at European ports while sending its consignments to Latin America, particularly in the case of exports of generic drugs.

Food Security

For India, this was the most important demand. The major concern for India was to insulate its new food security programme under the National Food Security Act (NFSA) from any potential dispute in the WTO if India breaches the ceilings decreed by the WTO's 1994 Agreement on Agriculture (AoA). While the AoA permits Governments to operate public stockholding programmes and provide foodstuff to the poor at subsidised rates, the provisions of that agreement were ambivalent enough to cause concern. For the past few years, India, as a member of the Group of 33 coalition at the WTO, has been demanding that the rules on public distribution programmes, particularly the manner in which the food subsidy is measured on the basis of outdated reference prices of 1986-88, must be changed.

Post-Bali Work Programme

The WTO Bali Ministerial Conference is behind us. The WTO members will soon confront the new challenge of revisiting the remaining part of the Doha Development Agenda and prepare a "clearly defined" work programme over the next 12 months on how to address and resolve issues.

One may recall that the failure of the talks in December 2008 led to the impasse in the Doha Round of trade negotiations and that two back-to-back Ministerial conferences in Geneva in 2009 and 2011 too failed to break the logjam. Repeated breakdown of talks have plagued the negotiations throughout its 12-year run.

It is noteworthy that the Bali Ministerial Declaration clearly spells out the post-Bali work programme. The Ministers, through the Bali Ministerial Declaration, instruct the Trade Negotiations Committee to prepare - within the next 12 months - a clearly defined work programme on the remaining Doha Development Agenda issues.

In the course of more than a decade of laborious negotiations, the toughest areas of negotiations have centered on domestic agriculture support, non-agricultural market access (NAMA) and Services. From the perspective of the Indian industry, the negotiations on NAMA and Services hold immense importance.

The negotiations on NAMA aim to reduce or eliminate tariffs, including tariff peaks, high tariffs, tariff escalation and non-tariff barriers (NTBs) for non-agricultural goods, in particular on products of export interest to developing countries. Special and differential treatment for developing and least developed members shall be fully taken into account, including less than full reciprocity in the reduction commitments and measures to assist LDCs to participate effectively in the negotiations.

Since the Hong Kong Ministerial meeting in December 2005, member countries of WTO have agreed on the following main areas in NAMA:

- All member countries would adopt a Swiss formula with different co-efficients for developed and developing countries.
- Members agreed that 'Special and Differential' treatment for developing countries including flexibilities and 'less than full reciprocity' in tariff reductions will be an integral part of the modalities.
- Members also agreed to declare sectoral initiatives on non-mandatory basis. This means that the countries decided that

any initiative to eliminate customs duties on specific sectors should not be binding. US and EU, however, demand mandatory participation in sectoral tariff negotiations from large emerging economies like India, Brazil, South Africa, and China.

- The efforts to eliminate NTBs are to be accelerated.

The Services sector, in particular, has not seen much movement in the course of long-continuing Doha negotiations. The stalling of the Doha Development Round led to some WTO members thinking of an alternative approach to opening up the Services market across countries in early 2012. The Trade in Services (TISA) is an attempt, led by developed countries, in this direction. The US, the EU and Australia, along with some other likeminded members, called the Really Good Friends (RGF) of Services, have proposed this new approach to Services trade.

Such a deal could be pursued under Article V of the General Agreement on Trade in Services (GATS), provided certain criteria are met. The big developing countries - which include Brazil, India, China and South Africa – disapprove of this idea. US wants to go ahead even without them on board. China, however, has recently shown its inclination to join TISA negotiations. As this marks a departure from the existing GATS framework, a need has arisen to analyse and strategise India's position vis-a vis the features of the proposed agreement.

Conclusion

The outcomes at Bali have no doubt sparked renewed interest and hope in the 159-member global trade body. This deal also comes at a time when major trading nations have launched mega-FTAs, such as the Trans-Pacific Partnership (TPP) and the Trans-Atlantic Trade and Investment Partnership and Regional Comprehensive Economic Partnership (RCEP). The next 12 months are indeed crucial as consensus is to be built around the remaining Doha Agenda. ■

CII at the WTO Ministerial Conference

In a session on 'Trade Facilitation - Identifying and Addressing SMEs and Consumers' Needs and Considerations', organized by CUTS International on the sidelines of the 9th WTO Ministerial Conference, Mr. Deep Kapuria, leader of the CII business delegation to the Conference stressed on the need for trade facilitation in global trade. He said that trade facilitation will lead to improved collection of revenue and cut transaction costs for countries, which in turn would help in attracting foreign investment.

Mr. Kapuria also chaired a session on 'Multilateral Trade Agenda beyond Bali: A Private Sector Perspective' jointly organized by CII and the International Centre for Trade and Sustainable Development (ICTSD). During the session Mr. Kapuria said that the post Bali roadmap must look at how large, evolving, common regional and inter regional markets can work with each other to help businesses develop value chains that benefit all countries and make trade efficient and transparent. On behalf of the CII delegation Mr. Siddhartha Roy, Economic Advisor of the TATA Group and Mr. T S Vishwanath, Principal Advisor, APJ-SLG Law Offices also addressed the session.

In a high-level Bali Business Forum on 'The role of the private sector in the WTO and the new issues for the multilateral trading system' jointly organized by the International Chamber of Commerce (ICC), the Evian Group and the International Centre on Trade and Sustainable Development (ICTSD), Mr. Kapuria, who was one of the panellists, said that WTO needs to increase its engagement with the private sector. While the importance of WTO has grown over the years as a potentially strong forum for liberalizing trade, industry has, till date, had a limited role in influencing the negotiations within the organization. ■

Bali Ministerial Declaration: Implications of the Trade Facilitation Agreement

The decision to adopt a Trade Facilitation Agreement at the recently concluded Ministerial meeting at Bali, Indonesia, by the 159 member countries of the World Trade Organization provides significant opportunities for industry in India to reduce transaction costs and look at joining global or regional value chains across the globe. As per initial estimates by think tanks, global trade could be boosted by about US$1 trillion due to the new agreement.

The Agreement would considerably supplement the market access prospects that will grow through the tariff liberalization efforts under the multilateral agenda as also through the comprehensive trade agreements signed with several large trade partners.

The Trade Facilitation Agreement would provide greater transparency and predictability in the customs procedures of countries, which need to be tapped by companies across sectors.

Interestingly, Section II of the Agreement focuses on technical and financial support for least developed countries. This would help build capacity in several countries in Africa, which can benefit Indian industry. With better trade facilitation infrastructure coming up in Africa, industry in India can look at easier penetration into the African continent for investments and trade.

To use the Trade Facilitation Agreement it will be important to understand a few important articles that form part of the Agreement.

The first builds on transparency. Member countries have now agreed to publish and put out in the public domain information related to procedures, taxes and duties and fee and charges among others. This would help industry plan better and reduces the scope for any subjective interpretation by

T S Vishwanath
Principal Advisor
APJ-SLG Law Offices

the authorities. What is even more important is the fact that member countries would not allow for industry to comment on any new laws and regulations.

The second, important aspect is the decision on advance rulings. As per the Agreement each member country of WTO shall issue an advance ruling in a reasonable, time bound

manner to an applicant who has submitted a written request containing all necessary information. If a country declines to issue an advance ruling it shall promptly notify the applicant in writing, setting out the relevant facts and the basis for the decision.

The Agreement has also strengthened the appeal and review procedures, which can benefit industry significantly. It also has a healthy portion on release and clearance of goods, which includes pre-arrival processing and electronic payment that would help in saving transaction costs due to demurrage. Authorized operators would also receive special attention under this agreement, which would certainly help several companies, which are part of value chains. For courier companies the article on expedited shipments would be very beneficial. Perishable goods, countries have agreed, would be cleared in the shortest period of time to prevent loss. Countries would also arrange for proper storage of perishable goods that would be very important for agricultural exporters.

An important aspect is rejected goods. The Agreement now states that where goods presented for import are rejected by the competent authority of a member country on account of their failure to meet prescribed sanitary or phytosanitary regulations or technical regulations, the country shall allow the importer to re-consign or to return the rejected goods to the exporter or another person designated by the exporter. This would be beneficial for several exporters who have their goods destroyed when a country rejects its goods.

There are several such provisions in the Agreement that will be beneficial for industry in India while tapping global markets.

As per the Agreement, countries would now work to ensure that the Agreement is fully put in place by July 31, 2014. Industry needs to take the opportunity provided by the new Agreement on trade facilitation to build value chains and also identify new markets that may become easier to tap due to greater transparency in trade facilitation measures. ■

Key Highlights of the Declaration

The 9th World Trade Organisation (WTO) Ministerial Conference was held in Bali, Indonesia from December 3-6, 2013. The main issues on the agenda included trade facilitation, issues related to Least Developed Countries (LDCs) and various issues related to agriculture, including export subsidies, tariff rate quotas and food security. It concluded with an agreement on issues related to trade facilitation, cotton, agriculture and LDCs under the broader Doha Development Agenda. The Bali Package consists of decisions and declarations in two parts: Part I regarding the regular work under the General Council and Part II regarding work under the Doha Development Agenda.

Trade Facilitation

One of the most significant parts of the WTO Bali Ministerial Declaration is the decision on Trade Facilitation to simplify customs procedures by reducing costs and improving speed and efficiency at the border. The Ministerial Declaration on Trade Facilitation consists of two sections, containing 13 Articles and Special & Differential Treatment (S&DT) provisions for developing and LDCs. The main thrust is on creating transparency in measures applicable to imports, exports and transit traffic through various publication and notification requirements. The key highlights of the Trade Facilitation text are as follows:

- WTO member states to promptly publish documentation and procedural requirements, applied import duties and taxes, government fee and charges, rules for the classification or valuation of products, appeal procedures and tariff rate quotas and administrative procedures applicable to exportation, importation and transit.
- Countries are also encouraged to publish the average release time of goods at their borders and any information regarding advanced rulings that may be of interest to other parties.
- Member states are required to make procedures and documentation requirements related to imports, exports and transit and the contact information of enquiry points available on the internet. Each member state is also required to establish a national enquiry point.
- An advance ruling is required to be given within a reasonable time after receiving the written request by a member state. If the advance ruling is declined, written notification must be given to the applicant with the facts and basis for the decision.

- Any enhanced level of control or inspection at the border with respect to food, beverages or foodstuff to protect human, animal or plant life or health must be notified.
- The amount of Government fee and charges must be limited to the cost of the services rendered for the specific import or export operation. Penalties are allowed where a breach of a customs law, regulation or procedural requirement has taken place.
- Where appropriate, electronic payment of fee, charges, duties and taxes must be possible as well as filing documents electronically for pre-arrival processing.
- To the extent possible, members must adopt customs control based on a risk management system that includes selectivity criteria, including HS code, country of origin and the nature of the goods.
- Provision for additional trade facilitation measures to be provided for authorised operators that have met specific criteria, including financial solvency and appropriate record of compliance with customs and other related laws and regulations.
- These authorised operators must enjoy at least three of the following trade facilitation measures: low documentary and data requirements; rapid release of goods, low rate of physical inspections; deferred payment of duties, taxes, fee and charges; use of comprehensive or reduced guarantees; a single customs declaration; and clearance of goods at the premises of the authorised operator or another place authorised by customs.
- Member states are required to facilitate

inter-and intra-agency cooperation at borders to improve exportation, importation and transit.

- The S&DT provisions applicable to developing and LDCs apply to 12 of the 13 articles of the Agreement. The only article excluded from the S&DT provisions is the one related to the establishment of Committees (multilateral and national level) on Trade Facilitation.
- The provisions of the Agreement to which the S&DT provisions apply are divided into three categories with different notification and implementation requirements for each category:

Agriculture

The Bali Ministerial Declaration on Agriculture consists of texts on Public Stockholding for Food Security Purposes, Understanding on Tariff Rate Quota Administration Provisions of Agricultural Products, and Export Competition.

Public Stockholding for Food Security Purposes

- The members have agreed to put in place an interim mechanism and to negotiate a permanent solution on the issue of public stockholding for food security purposes.
- During the interim period (until a permanent solution is found) subject to certain other conditions, WTO members shall not challenge measures, through the WTO Dispute Settlement Mechanism, utilised by developing countries to support traditional stable food crops to enable public stockholding programmes for food security purposes that exist as of the date of the decision.

Understanding of Tariff Rate Quota Administration Provisions

- According to the Ministerial decision, members must evaluate the allocation of import licences and consider the allocation of new licences when licences held by private operators are under-filled for reasons other than those that would be expected to be followed by a normal commercial operator.
- If there is no commercial reason for under-filled licences, countries must request holders of these licences whether they would be prepared to make them available to other potential users. Countries must provide for an effective re-allocation mechanism of import licences when member states do not notify their quota-fill rate or if the fill rate is below 65 per cent.

Export Competition

- Members reaffirm their commitment to the parallel elimination of all forms of export subsidies and disciplines on all export measures with equivalent effect, as set out in the 2005 Hong Kong Ministerial Declaration.
- Members agree that fulfilling the objective set out in the 2005 Hong Kong Ministerial Declaration on export competition remains a priority issue for the post-Bali work programme.
- To review the situation regarding export competition at the 10th Ministerial Conference.

LDCs Package

Preferential Rules of Origin

- Countries should aim to develop non-reciprocal preferential rules of origin for LDCs based on the various guidelines described in the decision, including transparency and simplicity.
- Preferential rules of origin should be as transparent, simple and objective as possible. Other than wholly obtained products, origin may be conferred by substantial or sufficient transformation, which can be defined in a number of ways, including through: (a) ad valorem percentage criterion; (b) change of tariff classification; and (c) specific manufacturing or processing operation.
- Given the limited production capacity of LDCs the level of value addition based on the ad valorem percentage criteria must be kept as low as possible with foreign imports being a maximum of 75 per cent of the value for goods to qualify for preferential LDC rules of origin.
- Regarding rules of origin based on specific manufacturing and processing operations, countries must take cognisance of the limited productive capacity of LDCs.

Operationalisation of the Waiver for Preferential Treatment to Services and Service Suppliers of LDCs

- The Council for Trade in Services is instructed to initiate a process aimed at promoting the expeditious and effective operationalisation of the LDC Services waiver.
- The Council of Trade in Services to convene a high-level meeting within six months of the submission of an LDC collective request regarding the Services waiver for preferential treatment for Services and Service suppliers of LDCs,

identifying the sectors and modes of supply of interest to these countries.

- Members underline the need for enhanced technical assistance and capacity building to help LDCs benefit from the operationalisation of the waiver. Special focus should be directed towards the delivery of targeted and coordinated technical assistance aimed at strengthening the domestic and export services capacity of LDCs.

Duty-Free and Quota-Free Market Access

- The Ministerial decision requires developed countries to ensure that a minimum of 97 per cent of products originating from LDCs enjoy duty-free and quota-free access to the markets of developed countries. Developing countries, to the extent possible, should improve duty-free and quota-free market access for products originating from LDCs.

Monitoring Mechanism for S&DT

- Member states have agreed to establish a monitoring mechanism to review all aspects of implementation regarding S&DT provisions in all WTO agreements and Ministerial and General Council decisions. However, the review process cannot alter or affect the rights or obligations of the member countries and can only make recommendations to the relevant WTO bodies to initiate negotiations on the various S&DT provisions in the legal instruments.

Cotton

- The Ministerial Declaration seeks to improve market access for cotton products from LDCs and provide development assistance for cotton production in LDCs. In particular, Ministers agreed to have bi-annual discussions in the context of the Committee on Agriculture to determine the effect of trade-related developments, especially export subsidies and export measures, domestic support, tariff measures and non-tariff measures on market access and export competition of cotton products exported from LDCs to markets of interest to them.

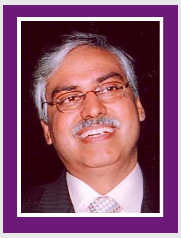
Regular Work under the General Council

- As part of the regular work of the WTO, the Ministers agreed that work should continue in the following five areas: electronic commerce under the Work Programme on Electronic Commerce; Trade-Related Aspects of Intellectual Property Rights under sub-paragraphs 1(b) and (c) of Article XXIII of the General Agreement on Tariffs and Trade 1994; the effect of non-tariff measures on small economies and the challenges and opportunities experienced by small economies when linking into the global value chains in trade in goods and services under the Work Programme on Small Economies; actions to support Aid for Trade commitments; and trade and the transfer of technology under the Working Group mandated by the Doha Ministerial Declaration.

Post-Bali Work on Doha Agenda

- Members demonstrate their commitment by instructing the Trade Negotiations Committee to prepare within the next 12 months a clearly defined work program on the remaining issues under the Doha Development Agenda.
- This will build on the decisions taken at this Ministerial Conference, particularly on agriculture, development and LDC issues, as well as all other issues under the Doha mandate that are central to concluding the Round.
- Issues in the Bali Package where legally binding outcomes could not be achieved will be prioritised. Work on issues in the package that have not been fully addressed at this Conference will resume in the relevant Committees or Negotiating Groups of the WTO. ■

The successful conclusion of the WTO Ministerial Conference at Bali in Indonesia is a major breakthrough for the multilateral trading system. While the Trade Ministers reached an agreement on trade facilitation, food security and developmental package for LDCs, the real hope is that the outcomes of the Bali Ministerial will pave the way for the successful conclusion of the Doha Round, which has been languishing for the last 12 years because of lack of consensus on agriculture and NAMA. Post-Bali, the focus is likely to shift on core issues of market access pertaining to NAMA and Services. Both these issues are critical to Indian industry.



Sunil Kant Munjal

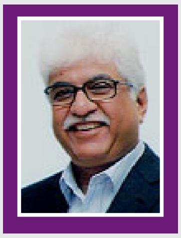
Past President, CII; Chairman, CII International Policy Council and Chairman, Hero Corporate Service Limited

The recently concluded Bali Ministerial, especially the agreement on trade facilitation is very important for Indian industry. Successful implementation of the agreement will help businesses in reducing their transaction cost by cutting red tape, improving transparency, simplifying and streamlining customs and port procedures. The implementation of trade facilitation agreement, particularly in Africa, will help Indian industry in deepening its trade and investment ties with the entire region. It will also facilitate integration of industries from developing countries into regional and global value chains.

R Seshasayee

Past President, CII; Chairman, CII Economic Policy Council and Executive Vice Chairman, Hinduja Group

The outcome on food security is a big victory for the multilateral trading system. It is truly a historic achievement for all WTO member countries. The Ministerial decision on food security will enable many developing countries to run their food security programmes without fear of being dragged to a WTO dispute settlement body. It will not only restore the faith of a large number of developing countries in the multilateral trading system but bring back the credibility of WTO in delivering on its core development mandate as agreed in 2001 at Doha.



Rakesh Bharti Mittal

Chairman, CII Development Initiatives Council and Vice Chairman & Managing Director, Bharti Enterprises Limited

For suggestions please contact Priya Shirali, Corporate Communications at priya.shirali@cii.in

Published by Confederation of Indian Industry (CII), The Mantosh Sondhi Centre; 23, Institutional Area, Lodi Road, New Delhi-110003 (INDIA)
Tel: +91-11-24629994-7, Fax: +91-11-24626149; Email: info@cii.in; Web: www.cii.in