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A Future for Multilateralism?: New Regionalism, Counter-Multilateralism and Perspectives for the World Trade System after the Bali Ministerial Conference

Frank Altemöller*

Participation in the World Trading System is generally considered to bring substantial benefits. However, the developments of the Doha Round show, that the multilateral trade negotiations are progressing at an unprecedentedly slow pace accompanied by constant setbacks. This resistance towards stronger multilateral economic integration may at first appear not very plausible.

This article sets out to look for the causes of these difficulties. From that base, it describes the ways that WTO Member States are seeking different strategies for economic integration on the bilateral, regional and inter-regional levels. The perspectives for the future of the World Trading System and multilateralism are discussed.

1 Introduction

Does Multilateralism have a future? Such a question would have been unthinkable after the last completed round of world trade negotiations, in Uruguay in 1994. So it is all the more surprising that negotiations within the current Doha Round are such heavy going, and appeared already to stand on the threshold of failure. Notwithstanding, at the Ministerial Conference in Bali last December, the WTO Member States did achieve some results, along with a resolution to push on with negotiations. However, whether the current multilateral trade negotiations can be completed successfully still remains unclear.

This contribution analyzes the reasons for the tough course of the negotiations. It comes to the conclusion that the difficult progress is not caused by a lack of willingness of WTO Members to agree on individual negotiating positions. In fact, the reasons are much more deeply seated, and lie in the multilateral approach itself, which finds less acceptance in today's changing global environment, than it had in previous times. There appears to be a process of structural transformation emerging within the framework of global economic integration. Other forms of economic integration are gaining importance. These are increasingly forming the basis for more far-reaching trade liberalizations.

The outcomes of the highly successful Uruguay Round form the basis of today's World Trading System. As a consequence, economic multilateralism experienced a push towards integration as had been seldom seen before. Then, in 2001, the WTO Member States adopted the Doha agenda and negotiations were formally opened.[1] During the following years, however, the complex negotiations progressively stagnated. It seemed ever more difficult to find common interests, let alone to formulate results, amongst the numerous, politically outspoken and highly disputatious Member States. Several WTO Ministerial Conferences ended in failure.[2] These conflicts are clearly reflected in the cover image of Peter van den Bossche's

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* Dr Frank Altemöller is Professor for European Law and European Public Management at the University of Harz in Germany (University of Applied Studies and Research). Concurrently he is affiliated with the University of Münster, where he provides academic advice for study programmes in international trade law and customs. He also works for the German Ministry for Economic Cooperation and Development in international Capacity Building on trade and customs policies and the World Trade System. He has given numerous guest lectures, *e.g.* in the Middle East, Africa and Eastern Europe. Prof. Dr. Frank Altemöller can be reached at Harz University, Department for Public Management, Domplatz 16, D-38820 Halberstadt/Germany. Or at faltemoeller@hs-harz.de.

1 Ministerial Declaration, WTO document WT/MIN(01)/DEC/1, adopted 14 Nov. 2001.

2 An analysis of the factors that influence the development of the Doha Round is given in: Evenett, J. Simon, The Prospects for the World Trading System 2010: 'Events Dear Boys, Events', Aussenwirtschaft 2010, pp. 7–19, see further: Cottier/Elsig (Eds.), Governing the World Trade Organization, Past, Present and Beyond Doha; David A. Gantz,

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book on the World Trade Organization: It depicts the mood that accompanied the broken negotiations in Seattle in an almost expressionistic way, as buildings begin to sway before a colourful protest crowd.[3]

Subsequently, in many eyes, the failure of the Doha Round seemed almost a foregone conclusion.[4] Thus, attention was directed all the more to the Ministerial Conference of WTO member countries that concluded in Bali in December 2013. Would the outcomes from Bali give the stalled negotiations new impetus? The answer to that question is really quite complex: The aftermath of numerous hard-fought struggles saw the adoption of the 'Bali Ministerial Declaration' – a minimal consensus, intended to ensure the continuation of multilateral negotiations.[5]

The Agreement on Trade Facilitation is the most prominent part of the Bali Package. Trade facilitation is aimed primarily at the technical side of trade liberalization. By means such as simplified customs procedures, it should enable improved implementation of goods traffic. It will be a great advantage, not only for investors, but for all WTO Member States, if greater transparency in customs procedures and more effective customs clearance can be achieved. Trade facilitation forms the interface between the comprehensive liberalization rules of the WTO and their practical implementation. Thus, the Agreement calls for far-reaching measures: These include, for example, the introduction of electronic customs procedures, the availability of important information via the internet, the establishment of information points, as well as the possibility of obtaining legally binding rulings and the establishment of appeals processes[6]. The WTO is not the only body pursuing the issue of trade facilitation. The World Customs Organization, as well as numerous regional organizations and institutions for development cooperation have already been working on this for years following the Revised Kyoto Convention.[7] Against this background, the approach of the WTO is aimed at direction, systematisation and coordination at the multilateral level. However, the developing countries and the least developed countries, which are the primary targets of the agreement, must still demonstrate how actively they implement the measures categorised by the WTO, considering the agreement allows them a great deal of freedom in determining the 'if' and 'how' of implementation.[8]

2 Reasons for difficulty in obtaining results from negotiations at the multilateral level

The resistance towards stronger multilateral economic integration may at first appear not very plausible. Participation in the World Trading System and increased economic integration are generally considered to bring substantial benefits. It opens up the opportunity to all members, to come together in a wide variety of coalitions where they can promote their national interests far more effectively with others than alone. However, it became apparent very early, that the Doha Round was going to take place in a harsher environment, and with far greater critical scrutiny, than the previous rounds of negotiations. Under these circumstances, the attitude of many developing countries towards the World Trade System changed. Up until the 90s, the developing countries had taken part in the world trade rounds, offering little criticism, and had gone along with the outcomes in exchange for agreed concessions. Since those times, however, the self-awareness and self-confidence of many developing countries has changed. They have, more and more, formulated their own positions, which oppose and conflict with those of the industrialized countries.[9] What this meant for the World Trading System was that

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Liberalizing International Trade after Doha, Multilateral, Plurilateral, Regional, and Unilateral Initiatives; Georg Koopmann, Doha Development Round Perspectives, Intereconomics July/August 2005, S. 235–240. On the development of the Doha Round see: Faizel Ismail, From the Hong Kong WTO Ministerial Conference to the Suspension of the Negotiations, World Economics 2006, pp. 133–166 and for further discussion see: Kent Jones, The Doha Blues, Institutional Crisis and Reform in the WTO.

3 Peter van den Bossche, The Law and Policy of the World Trade Organization, 1st edition with cover illustration from: Chris Hoglund, World Class City, The WTO in Seattle, 1999.

4 On the progress of the negotiations, see for example: New York Times, A Way to Salvage Global Trade Talks, 20 Oct. 2013.

5 Bali Ministerial Decision, WTO document WT/MIN(13)/DEC 11 Dec. 2013, adopted on 7 Dec. 2013 and General Counsil Decision, WTO document WT/L/940, adopted on 27 Nov. 2014. The New York Times speaks of a 'make-or-break agreement', W.T.O. Reaches First Global Trade Deal, 7 Dec. 2013; for further detail see: Frank Altemöller, What are the Perspectives for the World Trade System after the Ministerial Conference in Bali? European Journal of Economic Law, 2014, vol. 2, pp. 41–42 and on the state of the Doha Round following the temporary suspension of negotiations: Frank Altemöller, What are the perspectives for the World Trade System after the suspension of the Doha Round? European Journal of Economic Law, vol. 22, p. 681.

6 Agreement on Trade Facilitation, Ministerial Decision of 7 December 2013, WTO document WT/MIN(13)/36 WT/L/911 from 11 December 2013 and Protocol Amending the Marrakesh Agreement Establishing the World Trade Organization, General Council Decision of 27 November 2014, WTO Document WT/L/940 from 28 November 2014.

7 See for example:Hans-Michael Wolffgang and Edward Kafeero Old wine in new skins: analysis of the Trade Facilitation Agreement vis-à-vis the Revised Kyoto Convention, World Customs Journal 2014, Vol. 8, No. 2.

8 See Articles 16-19 Trade Facilitation Agreement.

9 For background see, for example: Petros C. Mavroidis, Petros, WTO Law and Developing Countries, Cambridge 2011; Odell (Ed.), Negotiating Trade, Developing Countries in the WTO and NAFTA, Cambridge 2006; Greg Buckman, Global Trade, Past Mistakes, Future Choice, London 2005; Roman Grynberg, WTO at the Margins, Small States and the Multilateral Trading System, Cambridge 2012; Martin Khor, Rethinking Globalization, Critical Issues and Policy Choices, 2001 or Yong-Shik Lee, Reclaiming Development in the World Trading System, Cambridge 2009.

negotiating positions were far less often in agreement. Many new conflicts arose and they are most strongly articulated in the following areas:

One reason of conflict derives from tariff structures. Industrialized countries have a fundamental interest in the import of raw materials. Therefore, the duties on raw materials imported from developing countries to the developed countries are very low. However, by contrast, the developing countries themselves have a primary interest, not in exporting their raw materials, but in processing and post-processing them. That would enable them to set production chains in motion, and to pursue much greater value-adding opportunities. However, the tariffs that developed countries impose on processed and re-processed products are much higher, in contrast, to those on the underlying commodities.[10] Thus, it often happens that raw materials continue to be used for export, without incentives to establish appropriate diversification processes locally.[11]

Yet another reason for the conflict of interests lies in subsidies (particularly agricultural subsidies) and their legal conformity with GATT and the 'Agreement on Agriculture'. Industrialized countries have far greater ability than developing countries to grant subsidies on export goods. In this way, they can establish their own competitive capacity in select sectors (particularly agriculture) in the markets of developing countries, which they could not otherwise do in an undistorted competitive environment. Developing countries view these practices as unfair competition. Once the subsidized products have squeezed out domestic competitors, price increases often follow, and these are only borne with hardship by the local population. Developing countries criticize such subsidy policies, which are largely legitimized under WTO law. Subsidies have numerous negative effects beyond trade policy. In many cases they contradict the sustainability principle and the doctrine of preservation of resources, plus they lead to misallocation and to the maintenance of economic activity that could not exist without subsidies.[12] The industrialized countries have the economic power that allows them to open up markets in less developed countries. This way, they are able to supply products that compete with those in developing countries, while the corresponding local industries are still struggling to bring their own production up to competitive international standards. In affected sectors, developing countries have a tendency towards market foreclosure. On the other hand, the industrialized countries themselves have an interest in closed markets. This applies particularly in cases in which products that are manufactured in developing countries actually are competitive with those in industrialized countries. This potential for conflict exists not only between the developed and the developing countries, but also in the relationship between the industrialized countries and the emerging economies. Here the conflict is even more pronounced because of the greater economic impact. It can also be observed in a diluted form in the so- called South-South conflict between emerging and developing countries. Emerging markets are succeeding more and more in becoming competitive with the industrial countries. The dynamic changes, especially in China, Brazil, India and Russia are leading increasingly to a shift in the flow of goods. Through their increasing economic power and strengthening geopolitical importance, these countries are placing the Western industrialized countries under growing pressure. Now, in accordance with their rising importance, these players increasingly seek a more decisive role in world trade. They are able now, for example, to produce more and more goods whose production was previously largely confined to Western industrialized countries.[13] As they have become increasingly competitive, even overtaking the Western industrial states in important areas, the interest in liberalization takes on significant differences for developed and emerging countries: The World Trading System was based for a long time on the interests of the Western countries, who dominated the world economy. Therefore, a large portion of current trade negotiations is dependent on the extent to which increasingly significant players are able to assert their own liberalization interests. While the industrial countries try to maintain the structures that are favourable to them, it is in the interest of these players to adapt and update them. If the Western industrialized countries are not sufficiently willing, the new players respond with blockades in various forms. This was vividly displayed in the negotiations over 'non-agricultural

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[10] To some extent, developing countries were already offered the elimination of tariffs on all products, in inter-regional trade negotiations (such as in the negotiations between the EU and various African regions over the Economic Partnership Agreements). However, a reduction of tariffs on processed materials would have little effect if the underlying commercial structures remained unchanged.

[11] For a discussion, see: David Signer, Afrikas Sprung von der Prämoderne ins digitale Zeitaler, Neue Zürcher Zeitung NZZ No. 138, Jun. 18, 2014, p. 7.

[12] For discussion see: Peter M. Rosset, Food is Different, Why we must get the WTO out of Agriculture, 2006; Joseph McMahon, The WTO Agreement on Agriculture, A Commentary, Oxford 2006; Meléndez-Ortiz/Bellmann/Hepburn, Agricultural Subsidies in the WTO Green Box, Ensuring Coherence with Sustainable Development Goals, Cambridge 2009 or Orden/Blandford/Josling, WTO Disciplines on Agricultural Support, Seeking a Fair Basis for Trade, Oxford 2014.

[13] See: Jonas Grätz, Verliert der Westen die Kontrolle über die Globalisierung? (Is the West going to loose control over globalisation?) Neue Zürcher Zeitung NZZ No. 230, Oct. 4, 2014, p. 9 or Oliver Thränert, Strategic Trends 2013, Key Developments in Global Affairs, Center for Security Studies/Zürich.

market access negotiations', a major segment of the current Doha Round, and for which, up till now, no agreement could be reached.[14]

This illustrates that the increasing role of some WTO Member States is revealing a far more complex network of relationships than existed previously. More stakeholders with greater importance are facing each other, arguing to an increased extent over the diverse and conflicting interests of liberalization and their containment. Accordingly, expectations rise for the World Trade Organization to act as a moderator in these processes. Of particular importance in this regard, is the formation of coalitions. Forming coalitions allows different stakeholders to jointly push through results that they could not otherwise have achieved. Success in negotiation also depends largely, therefore, on within which power group individual stakeholders can enforce certain positions.[15] As a result, this means a far more complex potential for conflicts needing to be solved within the World Trade System.

The lack of success of the current Doha Round negotiations can also be attributed to the following: The negotiations are, and only can be, conducted by the governments of WTO Member States, since they are the contracting parties. As the negotiations always exist on the basis of give and take, the governments don't just stand to win positive results for their industries, but they necessarily have to confront them with negative prospects as well. The emergence of winners and of losers from the negotiated liberalizations go together indispensably. Negative outlooks however, arouse opposition in the effected industries. This complicates the position of governments and can subsequently lead to prevent them reaching their goals.

A further point of criticism concerns the compatibility of the overarching objectives of the international community with the World Trading System. The international community has formulated a great number of goals in very different agreements that are closely linked to trade. But, for example, it remains unclear how the WTO treaty texts relate to the Millennium Development Goals of the United Nations. The liberalization of world trade certainly has impacts on human rights, on the eradication of poverty and on, for example, educational opportunities. In many different ways, it still remains an open question how the WTO agreements and the agreements of the international community of states can support and not hinder one another. At the same time, the criticism also concerns adherence to the overarching issues described within the World Trade System itself, in particular those in the Marrakesh Agreement. The WTO treaty texts set out the implementation of important overarching objectives, such as sustainability and environmental protection. The point of criticism is that the subordinate WTO treaty texts hardly contain specific instruments with which the respective overarching objectives are able to be implemented. The WTO dispute settlement bodies have, in fact, ruled on several occasions that the overarching objectives must be considered in the interpretation of indeterminate legal texts. Nonetheless, the overarching objectives stated in the preamble remain an factor, having very little connection to the implementation-oriented legal provisions. Therefore, the WTO treaty texts lack the necessary connection between the overarching objectives and the implementation. This situation encourages the view that the World Trading System should promote trade, but not other policy areas. As a result, the long proven links between trade policy and other objectives, such as social and environmental policy are given too little attention.

The WTO's reticence towards broaching the issue of the impacts of trade policies on other policy areas has led in recent years to an increased scepticism about the World Trading System. The central thought is that governments, in reconciling WTO rules, allow them to not only regulate trade issues, but to interfere, to a degree, into the deeper sphere of their national sovereignty.[16] The effects of trade liberalization rules on other policy areas can be significant. For example, the 'Agreement on Agriculture' in which is formulated the legal framework for the awarding of agricultural subsidies, affects to a large extent the labour markets and social policy in the countries affected by the subsidies. In another example, greater market liberalization, in bringing markets together, can place a country under pressure if it practices a high level of environmental protection, when it increases trade with countries that have lower levels.[17] This leads to further caution amongst the parties involved in multilateral negotiations. The WTO negotiating partners can therefore retreat less (than used to be the case) to the position that trade stands alone and that other policy objectives should be addressed by measures independent of the WTO. This

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[14] See for example: Matthew D. Stephen, Rising Regional Powers and International Institutions. The Foreign Policy Orientations of India, Brazil and South Africa, in: Global Society, Vol. 26, No. 3, Special Issue 'Regional Powers and Global Redistribution', S. 289-309.

[15] See for example: Mayur Patel, Building Coalitions and Consensus in the WTO, International Centre for Trade and Sustainable Development, Bridges 2007, Vol. 11, No. 5.

[16] For background see: John H. Jackson, Sovereignty, the WTO, and Changing Fundamentals of International Law, Cambridge 2009.

[17] In detail: Frank Altemöller, Welthandelsordnung und einzelstaatliche Umweltschutzpolitik – Ein Widerspruch? Grundlegende Probleme und Ansätze einer zuk inftigen Beurteilung umweltpolitischer Maßnahmen vor dem Hintergrund der bisherigen GATT/WTO-Spruchpraxis (World Trade Order and National Environmental Policy – a Contradiction? Problems with, and approaches to the interpretation of environmental measures based on the recent GATT/WTO panel reports ('Rabel Journal' published by the Max Planck Institute for Comparative and International Private Law (Hamburg), Vol. 64 (2000), pp. 213–255.

is all the more so in recent years, as the effects of trade on other policy areas has been analysed and criticized increasingly more than it previously had.

These conflicts make it clear that the power balances in multilateral trade negotiations are moving. The difficulty in finding consensus is based on the growing importance of certain stakeholders, the associated increase of divergent concerns and a more complex web of liberalization interests. This is not just about the substantive positions in multilateral negotiations, but also the manner in which the negotiations are carried out. Already in the Uruguay Round, and earlier, the GATT Secretariat was accused of not conducting negotiations transparently. It was suspected that the proposals resulting from negotiations were prepared just by the biggest industrial countries. The criticism focused primarily on the fact that smaller Member States were thereby marginalized and that their legitimate interests were not, or were at least too seldom, respected. It was claimed that for the majority of Member States there was far too little opportunity to participate in the shaping of the negotiating processes, or their preparation. These procedures ultimately led to a lack of legitimacy of those processes, particularly if consent could only be achieved under considerable political and economic pressure from stronger members.[18]

3 Alternative strategies for economic integration

The commercial importance of regional economic and trade agreements has increased considerably since the beginning of the 90s. By 15 June 2014, a total of 585 agreements on the liberalization of goods and services, within the framework of regional trade agreements, have been notified at the World Trade Organisation, of which 379 had been put in force.[19] The reasons for participation in regional economic integration are many: Basically, the core argument, according to classical international trade theory, concerns the benefits that accrue from trade liberalization. In that respect, the situations at the regional and multilateral levels are similar to each other.

However, an important difference is that there are fewer stakeholders at the regional level than on the multilateral level. Therefore, it is often much easier to find common interests at the regional level. And it follows that corresponding agreements tend to be easier to implement there, than they are in the Multilateral Trading System. One important incentive for trade liberalization at the regional level concerns tariffs. In contrast to conditions in the World Trading System, duties are entirely eliminated within customs unions and in free trade areas. This creates, among the participating countries, the incentive to exercise trade more with the other members, than with third countries. The abolition of tariffs in the customs unions and in the free trade areas provide members of regional trade agreements with an advantageous departure from the WTO most-favoured-nation (MFN) treatment principle in Article I GATT. It rules that a WTO member country is entitled to concessions concurrent with those granted to all other members.[20]

The specific advantage for the Member States of regional trade agreements is that the benefits granted to each other therein do not need to be extended to the many other WTO Member States. Rather, they are exclusive to the members of the relevant trade agreement. There is a further advantage for the members of regional trade agreements that are formed as customs unions, in that they have to set a common external tariff for goods imported from third countries. This often gives them considerable capacity to coordinate their market power in relation to third countries. The more attractive their markets, the higher external tariffs they may agree to, thus achieving higher revenues, while at the same time they tend to insulate their domestic economies against unwanted competition. Conversely, it is possible to set the common external tariff particularly low when the cheap importation of certain goods is strategically desired. Conditionality occurs in all cases: in a reciprocal manner, market access can be made dependent on the negotiation of benefits.[21]

This imposes substantial incentives for third countries to join up to regional trade agreements. It is often better for them to be 'in the club', rather than taking a position

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[18] For background see: Yves Bonzon, Public Participation and Legitimacy in the WTO, Cambridge 2014; Carolyn Deere Birkbeck, Making Global Trade Governance Work for Development, Perspectives and Priorities from Developing Countries, Cambridge 2011; Miguel F. Lengyel, Rule-Making in Global Trade: The Development Challenge, in: Pierre de Senarclens/Ali Kazancigil (Eds), Regulating Globalization, Critical Approaches to Global Governance, Tokyo 2007, pp. 118–149 or: Gnath/Mildner/Schmucker, G20, IMF und die WTO in turbulenten Zeiten, Legitimität und Effektivität auf dem Prüfstand, Stiftung Wissenschaft und Politik, Deutsches Institut für internationale Politik und Sicherheit, Study S 9/2012.

[19] The WTO's RTA database gives a comprehensive overview: WTO, Regional Trade Agreements, counting goods, services and accessions separately; for a further overview of regional trade agreements see: Sebastian Santander, List of Regional and Interregional Arrangements, in the appendix of: Mario Telò (Ed.), European Union and New Regionalism, 2nd edition Aldershot/Hampshire 2007, pp. 327–356; for background with regard of different regions and sectors see: Chukwuma Agu, Multilateralism, Regionslism and the Paradox of the 'Spahhetti Bowl' in Developing Countries, Aussenwirtschaft 2009, S. 293-316; James Thuo Gathii, African Regional Trade Agreements as Legal Regimes; Shintaro Hamanaka, The Building Block versus Stumbling Block Debate of Regionalism: From the Perspective of Service Trade Liberalization in Asia, Journal of World Trade 2009, vol. 43, no. 4, pp 873–891.

[20] In this sense Art. I GATT provides that 'any advantage, favour, privilege or immunity granted by any contracting party ... shall be accorded immediately and unconditionally to the like product originating in or destined for the territories of all other contracting parties'.

[21] Baldwin, Richard, The Causes of Regionalism, The World Economy 1997, pp. 865–888; Baldwin/Low, Multilateralizing Regionalism, Challenges for the Global Trading System, Cambridge 2009 or: Lester/Mercurio, Bilateral and Regional Trade Agreements, Commentary and Analysis, Cambridge 2009.

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