



UNIVERSITY of the  
WESTERN CAPE

Faculty of Law

Department of Mercantile and Labour Law

**RESEARCH PAPER**

**THE IMPACT OF THE BALI AGREEMENT ON THE DOHA ROUND  
STALEMATE WITH PARTICULAR REFERENCE TO THE INTERESTS  
OF DEVELOPING AND LEAST DEVELOPED COUNTRIES**

Research Paper submitted in partial fulfilment of the requirements for the Master of Philosophy  
Degree (Mode I) in International Trade Law

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## DECLARATION

I, **Mohamed Djemilou**, do hereby declare that this Research Paper, titled “**The impact of the Bali Agreement on the Doha Round stalemate with particular reference to the position of Developing and Least Developed Countries**” is my original work and that to the best of my knowledge and belief; it has not been previously, in its entirety or in part, been submitted to any other university or institution for a degree or diploma. Other works cited or referred to are accordingly acknowledged. It is in this regard that I hereby present it in partial fulfilment of the requirements for the award of the Master of Philosophy Degree in International Trade Law.

Signature: \_\_\_\_\_

Date: \_\_\_\_\_



This Research Paper has been submitted for examination with my approval as the University Supervisor.

Professor Patricia Lenaghan

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Signed.....

Date.....

## ACKNOWLEDGEMENT

First and foremost, all the Praise is due to *Allah* Almighty, the Most Gracious, and Most Merciful; to Whom I am infinitely grateful for granting me life, good health and the strength and resilience to further my studies and complete this Research Paper.

Secondly, I would like to express my deepest gratitude to my Research Supervisor, Professor *Patricia Lenaghan*, for her wise counsel, her invaluable contributions and her patience in guiding, correcting, and encouraging me throughout the process of writing this Research Paper.

My sincere gratefulness also goes to Professor *Israel Leeman* and Professor *Jamiel Mujuzi* for taking their precious time to read and review my drafts and for their valuable comments.

I would like to sincerely thank all my siblings and family Members, specifically *Rabiatou, Ramatou, Mariam, Sanni, Yahya, Zoubeir, Ibrahim, Sadate, Mass-Oud, Issa Tanko* and *Akim Aminou* for being the drive behind my achievements. This work would never have been achieved without your unconditional love, support and encouragements. I love you all.

I wish to show my appreciation to all my beloved friends, particularly *Mr Khan Abdul Karim, Abdul Aziz Gierdien, Issa Sissoko, Musharraf Fooroooskar, Laurel Tsoamene, Evans Mouloungui, Michel Menie, Duduzile Manyoni, Sanele Ndwandwe, Nosilumko Maqanqa*, and *the Fredericks family*, who are all to me ‘what the rain is to plants’. Thank you all for your friendship, for making my life worthwhile and for being an unquenchable source of encouragement and inspiration.

Last but not least, I am undoubtedly grateful to the Gabonese government through the National Bursary and Grants Agency (ANBG), for fully funding my Postgraduate studies in South Africa.

## DEDICATION

First and foremost, this work is dedicated to my dearest mother, Mrs *Rekiya Tanko*. You held my little hand and took me to school to start a long and rewarding journey that has brought me this far, and throughout this journey, your presence and love have never departed from me. You gave selflessly and your support is beyond what I can repay. If there is someone who believes that I can achieve whatever I want, it is my beloved mother. Thank you so much for your unconditional love and indefectible support. May God reward you abundantly and give you the opportunity to reap what you sowed.

To my late father, *Elhadj Tanko Ibrahim*. Thank you so much for the stringent education and all the values that you taught me that shape me into the person that I am today. I will never stop loving and praying for you. May The Almighty grant you Peace in *Jannatul Firdaws*.

To my late uncle, Mr *Sanni Mahama* and his beloved wife, whom I refer to as my second mother, Mrs *Sanni Aoudou Aichatou*. Thank you for your affection, your kindness, for being exceptional role models and a real source of inspiration in my life. May The Almighty recompense you accordingly for all your efforts.

To Mrs *Sedicka Cassiem* & Mr *Mark Seale*, who have been during all these years at UWC outstanding parental figures to me and real pillars of strength. Your constant support, guidance and genuine encouragements mean a lot to me. I am so grateful to both of you.

## LIST OF ABBREVIATIONS

AoA	Agreement on Agriculture
ASEAN	Association of South East Asian Nation
BRICS	Brazil, Russia, India, China & South Africa
C4	Cotton-4 countries (Benin, Burkina Faso, Chad and Mali)
DCs	Developing Countries
DDA	Doha Development Agenda
DFQF	Duty-Free and Quota-Free
DSB	Dispute Settlement Body
DSM	Dispute Settlement Mechanism
EU	European Union
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade
GC	General Council
GWP	Gross World Product
IMF	International Monetary Fund
IPRs	Intellectual Property Rights
LDCs	Least Developed Countries
LMDC	Like Minded group of Developing Countries
MC	Ministerial Conference
NAMA	Non-Agricultural Market Access
TF/TFA	Trade Facilitation / Trade Facilitation Agreement

OECD	Organisation for Economic Co-operation and Development
Quad	Canada, the European Union, Japan and the United States
RoO	Rules of Origin
SC	Specialised Councils
S&DT	Special and Differential Treatment
TISA	Trade In Services Agreement
TPP	Trans-Pacific Partnership
TRIPS	Trade-Related Aspects of Intellectual Property Rights
TRQs	Tariff Rate Quotas
TTIP	Trans-Atlantic Trade and Investment Partnership
UNCTAD	United Nations Conference on Trade and Development
US	United States
WTO	World Trade Organisation



## KEY WORDS

Bali Accord / Bali Agreement

Bali Ministerial Conference / Bali Summit

Consensus

Decision making

Developing Countries

Doha Round / Doha Development Agenda

Green Room

Least Developed Countries

Multilateral trading system

Stalemate

World Trade Organisation



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## CHAPTER ONE: INTRODUCTION

### 1.1. Background to the study

The World Trade Organisation (WTO) is an international institution that aims to supervise and liberalise international trade and primarily deals with the regulation of trade between countries.<sup>1</sup> It provides a platform where Member States meet in an attempt to negotiate and formalise trade agreements, and to solve trade related issues they encounter with each other through the Dispute Settlement Body.<sup>2</sup>

Within the WTO, like the General Agreement on Tariffs and Trade (GATT) before it, decision making is ruled by two key characteristics of WTO jurisprudence: the requirement that decisions be made by means of consensus;<sup>3</sup> and the single undertaking principle, which means that every item of the negotiation is part of a whole and indivisible package and cannot be agreed separately.<sup>4</sup> The combination of these two elements means that 'nothing is agreed until everything is agreed to by everyone'.<sup>5</sup>

While it seems that the WTO is an organisation that establishes a sense of security and equality among Member Countries, it has over the years been criticised for its decision making process, particularly for its informal processes and politics (referred to as Green Room meetings) as well as the Member Countries that participate in those meetings.<sup>6</sup> The Green Room discussions are small gatherings of representatives from up to 30 Member States hosted by the Director-General of the WTO, which intend to narrow down the issues that need to be taken to the wider membership for discussion and provide the basis for a consensus on critical negotiating issues that can be brought to the WTO membership as a whole.<sup>7</sup>

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<sup>1</sup> World Trade Organisation *Understanding the WTO* 5ed (2011) Geneva: World Trade Organisation Available at [http://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/tif\\_e.htm](http://www.wto.org/english/thewto_e/whatis_e/tif_e/tif_e.htm) (Accessed 25 April 2014) 9.

<sup>2</sup> World Trade Organisation *Understanding the WTO* 5ed (2011) Geneva: World Trade Organisation Available at [http://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/tif\\_e.htm](http://www.wto.org/english/thewto_e/whatis_e/tif_e/tif_e.htm) (Accessed 25 April 2014) 9.

<sup>3</sup> Jones K 'Green Room Politics and the WTO's Crisis of Representation' (2009) 349.

<sup>4</sup> MacMillan E 'Doha Decision making: Implications of the Consensus and Single Undertaking Principles for Developing Countries' (2010) 1.

<sup>5</sup> World Trade Organisation *Understanding the WTO* 5ed (2011) Geneva: World Trade Organisation Available at [http://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/tif\\_e.htm](http://www.wto.org/english/thewto_e/whatis_e/tif_e/tif_e.htm) (Accessed 25 April 2014) 108.

<sup>6</sup> Kenworthy J 'Reforms of the WTO: Basic Issues and Concerns' (2000) 2; Jones K 'Green Room Politics and the WTO's Crisis of Representation' (2009) 349; Low P *WTO Decision making for the Future* (2011) Geneva: World Trade Organisation Available at: <http://ssrn.com/abstract=1833391> (Accessed 25 April 2014) 3.

<sup>7</sup> Kenworthy J 'Reforms of the WTO: Basic Issues and Concerns' (2000) 2; Low P *WTO Decision making for the Future* (2011) Geneva: World Trade Organisation Available at: <http://ssrn.com/abstract=1833391> (Accessed 25 April 2014) 3.

Hence, Green Room discussions are perceived by representatives of Developing Countries (DCs) and Least Developed Countries (LDCs) as unrepresentative and non-inclusive of their broader and more diverse interests and objectives. They have therefore been criticised because they tend to favour large and high income countries.<sup>8</sup> For this reason, the Third World Network<sup>9</sup> has called the WTO ‘the most non-transparent of international organisations’, because ‘the vast majority of DCs have very little real say in the WTO system’.<sup>10</sup>

The Doha Round or Doha Development Agenda (DDA) is the ninth Round of multilateral trade negotiations to be carried out since the end of World War II. The Round was launched in Doha, Qatar, in November 2001, at the WTO’s fourth Ministerial Conference (MC), where ministers provided a mandate for negotiations on a wide range of subjects and work in on-going WTO committees.<sup>11</sup>

The Doha Round stalled in November 2011, after 10 years of talks, in spite of all official efforts made by many countries and by nearly all the eminent trade scholars and experts of today.<sup>12</sup> The trade negotiations were scheduled to conclude at the end of 2005, but that did not happen, despite urgent and repeated gatherings of dignitaries and experts.<sup>13</sup>

After unsuccessful attempts to re-launch the negotiations at the 2009 and 2011 MCs, the meeting in Bali represents a tremendous opportunity to bring WTO Members back to the negotiation table.<sup>14</sup> Therefore, this Research Paper will attempt to look at the effect of the Bali Accord on the DDA, and will ascertain whether the Accord effectively takes into account the broader and more diverse interests of DCs and LDCs.

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<sup>8</sup> Jones K ‘Green Room Politics and the WTO’s Crisis of Representation’ (2009) 349; Low P *WTO Decision making for the Future* (2011) Geneva: World Trade Organisation Available at: <http://ssrn.com/abstract=1833391> (Accessed 25 April 2014) 4; Alqadhafi SAI *Reforming the WTO: Toward more Democratic Governance and Decision making* (2007) 7.

<sup>9</sup> The Third World Network is an independent non-profit international network of organisations and individuals involved in issues relating to development, the Third World and North- South issues. Its objectives are to conduct research on economic, social and environmental issues pertaining to the South; to publish books and magazines; to organize and participate in seminars; and to provide a platform representing broadly Southern interests and perspectives at international forums, such as UN conferences and processes.

<sup>10</sup> Quoted in Jones K ‘Green Room Politics and the WTO’s Crisis of Representation’ (2009) 2.

<sup>11</sup> [http://www.wto.org/english/tratop\\_e/dda\\_e/dda\\_e.htm](http://www.wto.org/english/tratop_e/dda_e/dda_e.htm) (Accessed 25 April 2014).

<sup>12</sup> Bhagwati J ‘Why Doha Round Failed’ (2009) Available at <http://economistonline.muogao.com/2008/08/bhagwati-why-doha-round-failed.html> (Accessed 25 April 2014) 1.

<sup>13</sup> Levy P ‘Alternatives to Consensus at the WTO’ (2010) Available <http://www.voxeu.org/article/alternatives-consensus-wto> (Accessed on 8 May 2014) 1.

<sup>14</sup> Helble M & Wignaraja G ‘Will the WTO Bali Conference Advance the Doha Round and Asia?’ (2013) Available at <http://www.voxeu.org/article/what-prospects-wto-deal-bali> (Accessed 11 May 2014).

## 1.2. Problem statement

The problem that this Research Paper is aiming to examine is whether the Bali Agreement has successfully impacted on the consensus pitfalls and the Doha Round stalemate as shown in the background to the study (part 1 above).

## 1.3. Research question

The role of DCs and LDCs in the arena of global trade has increased dramatically and constitutes a matter of great relevance. The main test of the Doha Round was to reform the multilateral trading system in order to have a level playing field that will reflect a new balance of power, interests, and views about the necessary steps to be taken by the WTO as an institution.<sup>15</sup> In the past few years, new economic actors, mostly DCs, have emerged in the international debate and have shifted the movement of rebalancing power and wealth that puts an end to the domination of developed countries over the rest of the world.

In order to effectively explore the growing influence of emerging economies in the multilateral trading system and in the global economy, the following research questions are asked:

1. What are the possible reasons for the impasse in the Doha Round of negotiations?
2. Did the Bali Package effectively resolve the stalemate or move the Doha Round forward?
3. Does the Bali Package effectively represent and take into account the interests of DCs and LDCs?
4. What other alternatives should Member States use in an attempt to make the decision making within the WTO more effective and to restore the credibility of the multilateral trading system?

## 1.4. Argument

The WTO is a Member driven organisation that strives to build consensus on key decisions and also provides assistance to DCs and LDCs in transition to adjust to WTO rules and disciplines. To gain consensus among the WTO's diverse membership of 161 countries and territories requires flexibility,

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<sup>15</sup> Laidi Z 'The BRICS Against the West?' (2011) *CERI Strategy Papers* Available at <http://spire.sciences-po.fr/hdl:/2441/eu4vqp9ompqllr09i4icocu28/resources/n11-112011.pdf> (Accessed on 24 April 2014).

both in the content of any final agreement and in the method by which these agreements are decided.<sup>16</sup> However, this flexibility sometimes results in negotiations taking a long time to be concluded and for consensus to be reached. At first glance, it seems that the requirement for consensus may complicate decision-making as it allows any Member to exercise a form of veto.

The multilateral trading rules are driven by several key principles such as non-discrimination, transparency and consensus. But one size does not fit all at the WTO, agreements on tariff levels and other obligations for instance are tailored in order to take into account the sensitivities of Member Countries.<sup>17</sup> Thus, it is one of the reasons why an agreement is so complex to reach within the WTO.

After the deadlock in the DDA talks in Geneva, government officials and the WTO Secretariat are picking up the pieces so as to save the Doha negotiations or at least salvage some parts of it.<sup>18</sup> In December 2013, ministers of trade from 160 countries have reached an unprecedented deal intended to boost global trade. The Bali Package as it is known, is a trade agreement resulting from the ninth MC of the WTO held in Bali, Indonesia.<sup>19</sup>

The Bali Package is a three part agreement of the DDA that covers Trade Facilitation (TF), agriculture, and development issues. It is aimed at lowering global trade barriers and is the first comprehensive agreement reached through the WTO that is approved by all its Members.<sup>20</sup>

Almost two years have passed since Member States agreed upon the Bali Package in December 2013. Despite the political will that yielded the first successful multilateral trade agreement under the DDA, the WTO has struggled greatly to process the Trade Facilitation Agreement (TFA), which is the key element of the Bali Package, into formal adoption and implementation.<sup>21</sup> Eventually, the TFA was successfully adopted in November 2014.<sup>22</sup>

It is submitted that the concepts of consensus and the single undertaking and their practical implications that require all Members, large or small, to participate in all the WTO negotiations and

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<sup>16</sup> VanGrasstek C *The History and Future of the World Trade Organisation* (2013) Available at [http://www.wto.org/english/res\\_e/booksp\\_e/historywto\\_e.pdf](http://www.wto.org/english/res_e/booksp_e/historywto_e.pdf) (Accessed 25 April 2014) 209.

<sup>17</sup> Kenworthy J 'Reforms of the WTO: Basic Issues and Concerns' (2000) 2.

<sup>18</sup> Khor M 'Why WTO Talks Collapsed' (2008) *Third World Network* Available at <http://www.twinside.org.sg/title2/wto.info/twninfo20080805.htm> (Accessed 11 May 2014) 2.

<sup>19</sup> Walker A 'WTO Agrees Global Trade Deal Worth \$1tn' Available at <http://www.bbc.com/news/business-25274889> (Accessed 11 May 2014) 1.

<sup>20</sup> Willenbockel D 'The WTO Bali Deal: 'Doha Lite and Decaffeinated' (2013) Available at <http://www.globalisationanddevelopment.com/2013/12/the-wto-bali-deal-doha-lite-and.html> (Accessed 11 May 2014) 1.

<sup>21</sup> Laroski J 'Roadblocks to Bali package implementation remain as summer deadline passes without a clear path forward' (2014) 1; Bridges Weekly (ed) 'WTO trade facilitation deal in limbo as deadline passes without resolution' (2014) 1; Bridges Weekly (ed) 'WTO chief warns of potential "freezing effect" as TFA, food stockholding deadlock persists' (2014) 1; Bridges Weekly (ed) 'Obama, Modi highlight TFA impasse concerns, call for "urgent" WTO consultations' (2014) 1; Bridges Weekly (ed) 'New stage of consultations begins as WTO deadlock persists' (2014) 1.

<sup>22</sup> Wolfe R 'First Diagnose, Then Treat: What Ails the Doha Round?' (2015) 23.

undertake commitments, are among the causes.<sup>23</sup> Although they both constitute a rampart against interference by some, they remain nevertheless difficult to put into operation without everyone agreeing to move at the speed of the slowest Member, or without long and complicated negotiations between all Members.<sup>24</sup>

Thus, this is a clear indication that the Doha Round shows a rising awareness of the dominance of DCs and LDCs in recent years.<sup>25</sup> However, since the WTO commitment to deliver the promised pro-development changes, the Doha has been unsuccessful in engaging on the interests DCs and LDCs in the past decade.<sup>26</sup> In this regard, this Research Paper will attempt to answer the research questions with a particular emphasis being placed on the concerns of these groups of countries and whether or not the Bali Package successfully addresses them.

## 1.5. Significance of the study

Although there is extensive literature on the stalemate in the current Doha Round of negotiation, very little in the literature exists with regard to the Bali Accord and its possible impact on the Doha Round. There is hardly any academic work which comprehensively deals with the effect of the Bali Accord on the Doha Round stalemate due to the novelty and the uniqueness of the topic. Hence, this study is significant because it seeks to provide an answer to the crucial question of the impact of the Bali Accord on the Doha Round stalemate. The Research Paper would serve as a contribution to the general jurisprudence of international trade law and as a point of academic reference for students and researchers.

Moreover, this study is significant as it will attempt to look broadly at the unique challenges and interests of the emerging countries within the WTO, which currently constitute two-thirds of the WTO's membership.<sup>27</sup> The political interests of the global economy powers have been shelved by

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<sup>23</sup> Bhagwati J & Sutherland 'The Doha Round: Setting a Deadline, Defining a Final Deal' (2011) Available at <http://www.number10.gov.uk/wp-content/uploads/doha-round-jan-2011.pdf> (Accessed on 23 April 2014).

<sup>24</sup> Bhagwati J & Sutherland 'The Doha Round: Setting a Deadline, Defining a Final Deal' (2011) Available at <http://www.number10.gov.uk/wp-content/uploads/doha-round-jan-2011.pdf> (Accessed on 23 April 2014).

<sup>25</sup> Laidi Z 'The BRICS Against the West?' (2011) *CERI Strategy Papers* Available at <http://spire.sciences-po.fr/hdl:/2441/eu4vqp9ompqllr09i4icocu28/resources/n11-112011.pdf> (Accessed on 24 April 2014).

<sup>26</sup> Bhagwati J 'Doha Round: Failure of Talks Means World Lost Gains That a Successful Treaty Would Have Brought' Available at [http://articles.economicstimes.indiatimes.com/2012-06-01/news/31959341\\_1\\_ptas-wto-multilateral-trade](http://articles.economicstimes.indiatimes.com/2012-06-01/news/31959341_1_ptas-wto-multilateral-trade) (Accessed on 23 April 2014).

<sup>27</sup> Amrita N & Tussie D 'The G20 at the Cancun Ministerial: Developing Countries and their Evolving in the WTO' (2004) 947.



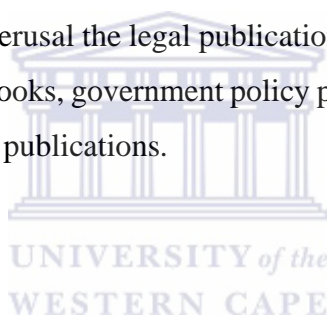
DCs. In 1995, the world went through major geopolitical changes<sup>28</sup> and has witnessed the rise of new actors that have asserted their own role in shaping the world's political economy.<sup>29</sup>

This study is also significant as it is believed that important lessons can be drawn from the Bali Accord that would effectively improve the WTO's decision making, achieve democratic governance, protect the rights of marginalised countries within the WTO, and rebalance the multilateral trading system.

## 1.6. Research methodology

This research will be conducted by desktop research only. The method employed in this research will require the use of international trade law and trade policies. It will involve a critical analysis of provisions of the trade Agreement signed during the MC in Bali, referred to as the Bali Package.

It will also be conducted by critical perusal the legal publications, such as case Law, legislation, peer reviewed journal articles, academic books, government policy papers, reports from international trade conventions, newspapers, and online publications.



## 1.7. Overview of chapters

This Research Paper is divided into five chapters, including this **introductory chapter**, which poses straightforward research questions and defines the topic to be discussed.

**Chapter Two** briefly examines the background of the WTO. It commences by discussing the main functions of the WTO. Then, it explores the decision making processes and the governance structures of the WTO, with the aim of placing the rationale behind choosing the 'one Member, one vote' and the single undertaking principles into context, followed by a short conclusion.

**Chapter Three** reviews the Doha Round of negotiations and looks at the possible reasons for the stalemate in the current Round. In this regard, it first examines the emergence of major DCs in the field of world trade. It then explores the nature and scope of consensus and the single undertaking

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<sup>28</sup>At the geopolitical level, the 1990s decade was marked by the collapse of the Soviet Bloc, the end of the Cold War and the collapse of the Berlin wall, which opened the way for the reunification of Germany and the whole of Europe. These events accelerated the decline of the communist ideology and saw a large number of countries convert to liberalism. The People's Republic of China has opened to international trade and foreign investment. This redefinition of the balance of power leads to the emergence of globalisation, and the introduction of a new world economic order.

<sup>29</sup> Ikenberry GJ 'The Future of the Liberal World Order: Internationalism after America' (2011) 56.



with the aim to expose their pitfalls. It finally looks at the intrinsic difficulties of finding agreement among all Member States and is followed by a short conclusion.

**Chapter Four** assesses the impact of the Bali Package on the decision making of the WTO, whether and how it comes to the rescue of the Doha Round. It commences the discussion by exploring the main issues of concern in Bali in order to obtain a balanced trade package. This is followed by an analysis of how far the Bali Agreement addresses the DCs' and LDCs' interests identified in Chapter Two. Then it looks at the future of the WTO's multilateral trading system, and particularly points out the rationale behind rebalancing the world trading system, followed by a short conclusion.

**Chapter Five** is the final chapter of the Research Paper. It ends the journey by answering the research questions formulated, whilst presenting the conclusions and addressing some recommendations on how to make the decision making within the WTO more effective.



## CHAPTER TWO: THE DECISION MAKING PROCEDURES AND THE GOVERNING STRUCTURES IN THE WORLD TRADE ORGANISATION

This chapter describes the governing structures and the different decision making processes of the World Trade Organisation (WTO) and the Doha Round of multilateral negotiations, followed by a short conclusion.

### 2.1. The World Trade Organisation: a Member driven organisation

The WTO officially came into force on 1 January 1995 under the Marrakech Agreement, replacing the General Agreement on Tariffs and Trade (GATT) that was established in 1947. Nevertheless, in spite of the seemingly recent inception of the WTO, its institutional history has existed for over six decades now, as the rules of the international trading system have been applied since the GATT era.<sup>30</sup> However, it was with the birth of the WTO that the rules of international trade were extended to include a number of areas that were previously outside the GATT system, most notably agriculture, textiles, trade in services and Intellectual Property Rights (IPRs). The changes gave the WTO much more power to influence people's lives than the GATT had ever had, especially in emerging economies.<sup>31</sup>

As a consequence, the creation of the WTO brought a body where Member Countries meet in an attempt to sort out their differences with regards to trade. The WTO has several core functions. In the broadest of terms, the primary functions of the WTO include:

‘facilitating the implementation and operation of the Multilateral Trade Agreements, providing a forum for negotiations, administering the Dispute Settlement Mechanism, providing multilateral surveillance of trade policies, and cooperating with the World Bank and the International Monetary Fund (IMF) to achieve greater coherence in global economic policymaking’.<sup>32</sup>

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<sup>30</sup> Hoekman BM & Kostecki MM *The Political Economy of the World Trading System: the WTO and Beyond* 3 ed (2009) 57; Narlikar A, Daunton M & Stern RM 'Introduction' in Narlikar A, Daunton M & Stern RM (eds) *The Oxford Handbook on the World Trade Organisation* (2012) 1; World Trade Organisation (ed) *Understanding the WTO* 5ed (2011) 10.

<sup>31</sup> Hoekman BM & Kostecki MM *The Political Economy of the World Trading System: the WTO and Beyond* 3 ed (2009) 58.

<sup>32</sup> Refer to Article III of the WTO Agreement; Hoekman BM & Kostecki MM *The Political Economy of the World Trading System: the WTO and Beyond* 3 ed (2009) 59; Lal Das B *The WTO and the Multilateral Trading System: Past, Present and Future* (2003) 34; World Trade Organisation (ed) *Understanding the WTO* 5ed (2011) 9; VanGrasstek C *The History and Future of the World Trade Organisation* (2013).

Other than that,<sup>33</sup> its overriding purpose is to help trade flow as freely and smoothly as possible providing that there are no disastrous side-effects.<sup>34</sup> The WTO is described as a Member driven organisation, which implies that it is an institution that is run by its Members. As such, it differs considerably from the international financial institutions such as the World Bank and the IMF, whose decisions are based on weighted voting and where power is delegated to a board of directors or the organisation's head.<sup>35</sup>

The WTO is administered by a certain number of decision making structures, the most prominent being the MC, the General Council (GC), and the Specialised Councils (SCs). These structures will be discussed in the following sections.

## 2.2. The decision making structures of the World Trade Organisation

Decision making relates to how a decision is arrived at in MCs, in the GC, and in the subordinate bodies of the WTO. All major decisions are made by the membership as a whole, either by ministers or by their ambassadors or delegates.<sup>36</sup>



### 2.2.1. The Ministerial Conference (MC)

The MC is the supreme and principal decision making body of the WTO. It usually convenes at least once every two years.<sup>37</sup> The MC is composed of minister level representatives (usually ministers of trade) of all Members States and has decision making powers on all matters under any of the WTO multilateral agreements. The inaugural MC was held in Singapore in 1996 and the most recent MC, which is the focus of this Research Paper, was held in Bali, Indonesia, in 2013.<sup>38</sup> The next MC will,

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<sup>33</sup> Due to the conciseness of this Research Paper, the history, functions and structure of the WTO will be explored briefly. For further reading on this section, refer to Hoekman BM & Kostecki MM *The Political Economy of the World Trading System: the WTO and Beyond* 3 ed (2009); VanGrasstek C *The History and Future of the World Trade Organisation* (2013) and World Trade Organisation (ed) *Understanding the WTO* 5ed (2011).

<sup>34</sup> World Trade Organisation (ed) *Understanding the WTO* 5ed (2011) 10.

<sup>35</sup> Hoekman BM & Kostecki MM *The Political Economy of the World Trading System: the WTO and Beyond* 3 ed (2009) 65; Nguyen T, Nguyen Q & Pham P 'Decision making by Consensus in the WTO' (2012) 4; Rolland SE *Development at the World Trade Organisation* 1 ed (2012) 215.

<sup>36</sup> World Trade Organisation (ed) *Understanding the WTO* 5ed (2011) 108.

<sup>37</sup> United Nations Conference on Trade and Development (ed) *Dispute Settlement of the World Trade Organisation: Overview* (2003).14; Lal Das B *The WTO and the Multilateral Trading System: Past, Present and Future* (2003) 13; Hoekman BM & Kostecki MM *The Political Economy of the World Trading System: the WTO and Beyond* 3 ed (2009) 59.

<sup>38</sup> [https://www.wto.org/english/thewto\\_e/minist\\_e/minist\\_e.htm](https://www.wto.org/english/thewto_e/minist_e/minist_e.htm) (Accessed 19 March 2015).

for the first time take place on African soil, and will be held in Nairobi, Kenya, from 15 to 18 December 2015.<sup>39</sup>

### 2.2.2. The General Council (CG)

The General Council (GC) is composed of ambassador level representatives representing all WTO Members and normally meets once every two months at the WTO headquarters in Geneva.<sup>40</sup> The GC is responsible for the continuing, day-to-day management of the WTO and its many activities; it also meets in the guise of the Trade Policy Review Body and the Dispute Settlement Body.<sup>41</sup> In between sessions of the MC, the GC exercises the full powers of the MC. In addition to the powers of the MC, it also carries out a few functions specifically assigned to it. The GC is responsible for the adoption of the annual budget and the financial regulations.<sup>42</sup>

### 2.2.3. The Specialised Councils (SC)

Below the GC are three more councils, also called SC, each handling a different area of trade and reporting directly to the GC. These are: the Council for Trade in Goods (Goods Council), the Council for Trade in Services (Services Council) and the Council for Trade-Related Aspects of Intellectual Property Rights (TRIPS Council).<sup>43</sup> Representation at all three levels is open to all Members of the WTO. The SCs also play an important role in the procedure for the adoption of waivers and the amendment procedure.<sup>44</sup>

Apart from the three SCs, there are a number of committees and working groups that assist the MC and the GC in carrying out their functions. The scope of their activities is smaller, but they still consist of all WTO Members. They cover issues such as trade and development, the environment, regional trading arrangements, and administrative issues.<sup>45</sup>

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<sup>39</sup> [https://www.wto.org/english/thewto\\_e/minist\\_e/minist\\_e.htm](https://www.wto.org/english/thewto_e/minist_e/minist_e.htm) (Accessed 19 March 2015).

<sup>40</sup> United Nations Conference on Trade and Development (ed) *Dispute Settlement of the World Trade Organisation: Overview* (2003).18.

<sup>41</sup> Nguyen T, Nguyen Q & Pham P 'Decision making by Consensus in the WTO' (2012) 4.

<sup>42</sup> Article VII:1-3 of the WTO Agreement.

<sup>43</sup> Nguyen T, Nguyen Q & Pham P 'Decision making by Consensus in the WTO' (2012) 4; United Nations Conference on Trade and Development (ed) *Dispute Settlement of the World Trade Organisation: Overview* (2003).19; World Trade Organisation (ed) *Understanding the WTO* 5ed (2011) 109; Hoekman BM & Kostecki MM *The Political Economy of the World Trading System: the WTO and Beyond* 3 ed (2009) 63.

<sup>44</sup> Article IX:3(b) and Article X:1 of the WTO Agreement.

<sup>45</sup> Refer to Article IV:6 of the WTO Agreement; World Trade Organisation (ed) *Understanding the WTO* 5ed (2011) 109; United Nations Conference on Trade and Development (ed) *Dispute Settlement of the World Trade Organisation: Overview* (2003).19.

It is important to note that on top of the aforementioned decision making bodies, the WTO follows a certain number of procedures when deciding the fate of the world multilateral negotiations. These decision making processes will be discussed below.

## 2.3. The different procedures for reaching a decision within the World Trade Organisation

The procedures of decision making are among the most important methods of functioning against which the legitimacy of one institution may be rated. It is because they show how the organisation treats its Members and thereby fulfils the first and minimal level of accountability.<sup>46</sup> The WTO is a 'one Member, one vote' organisation and in this regard, its decision making is concentrated around four key principles namely, the consensus rule, the 'one Member, one vote', the Member driven character and the importance of informal processes.<sup>47</sup> These principles will be discussed in the subsequent sections.



### 2.3.1. The consensus principle

The principle of consensus is the single most important rule in the decision making processes of the multilateral system<sup>48</sup> and hence remains the *modus operandi* of the WTO,<sup>49</sup> in other words the institution is based on bargaining and consultation.<sup>50</sup>

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<sup>46</sup> Nguyen T, Nguyen Q & Pham P 'Decision making by Consensus in the WTO' (2012) 4.

<sup>47</sup> Liang M 'Evolution of the WTO Decision making Process' (2005) 125; Hoekman B 'Proposals for WTO Reform: A Synthesis and Assessment' in Narlikar A, Daunton M & Stern RM (eds) *The Oxford Handbook on the World Trade Organisation* (2012) 746.

<sup>48</sup> Article IX: 1 of the WTO Agreement provides: "The WTO shall continue the practice of decision making by consensus followed under GATT 1947. Except as otherwise provided, where a decision cannot be arrived at by consensus, the matter at issue shall be decided by voting. At meetings of the Ministerial Conference and the General Council, each Member of the WTO shall have one vote. [...] Decisions of the Ministerial Conference and the General Council shall be taken by a majority of the votes cast, unless otherwise provided in this Agreement or in the relevant Multilateral Trade Agreement".

<sup>49</sup> Dube M *The Way Forward for the WTO: Reforming the Decision making Process* (2012) 13; Hoekman BM & Kostecki MM *The Political Economy of the World Trading System: the WTO and Beyond* 3 ed (2009) 65; Hoekman B 'Proposals for WTO Reform: A Synthesis and Assessment' in Narlikar A, Daunton M & Stern RM (eds) *The Oxford Handbook on the World Trade Organisation* (2012) 746; Rolland SE *Development at the World Trade Organisation* 1 ed (2012) 214; Low P *WTO Decision making for the Future* (2011) 3; MacMillan E 'Doha Decision making: Implications of the Consensus and Single Undertaking Principles for Developing Countries' (2010) 1; VanGrasstek C *The History and Future of the World Trade Organisation* (2013) 209.

<sup>50</sup> Hoekman BM & Kostecki MM *The Political Economy of the World Trading System: the WTO and Beyond* 3 ed (2009) 65.

A WTO body may decide by consensus on a matter submitted for its consideration, if none of the Members present at the meeting formally objects to the proposed decision when it is taken.<sup>51</sup> In other words, unless a Member State explicitly rejects a proposed decision, that decision is taken.<sup>52</sup>

The origins of decision making by consensus can be traced as far back as in the GATT system. Even in situations where the GATT rules provided for a formal vote such as granting of waivers, a consensus text would first be reached through negotiation and consultations before the formal vote was held.<sup>53</sup> Consensus was facilitated by a GATT tradition, namely, ‘not to allow progress to be frustrated by one party’s obstinacy, unless it happened to be one of the major trading powers.’<sup>54</sup>

It is important to distinguish consensus in the WTO from unanimity. Unanimity refers to complete and explicit agreement by everyone. Consensus on the other hand can be reached provided that no objections are raised to a decision, but also relates to the process of reaching such agreement.<sup>55</sup>

The multilateral trading system has been acknowledged as a prominent part of the architecture of global governance since the inception of both the GATT and the WTO. Compared to its Bretton Woods counterparts, the WTO has been relatively more successful in building a better decision making system that is based on consensus.<sup>56</sup>

In light of the aforesaid, it is suggested that consensus has generally received more praise than censure from experts, even though such praise is at times weak. Ehlermann and Ehring asserted that it is beneficial, because a consensus based decision will tend to enjoy broad support; it also means that no one loses face because implementation of such decision will be stimulated by the collaboration of all participants irrespective of their size and power; and consensus is the best out of all possible decision making options and processes due to the fact that developed countries would tend to fear being outvoted and DCs would fear being presented with done deals.<sup>57</sup>

According to the International Law Association, consensus ‘protects the quality and inclusiveness of decision making and gives each WTO Member a veto power, limited by joint political pressures, which is otherwise not present in the case of voting’.<sup>58</sup>

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<sup>51</sup> Footnote 1 to Article IX of the WTO Agreement.

<sup>52</sup> Should consensus not be achieved, then Article IX: 1 of the WTO Agreement provides for voting on a ‘one Member, one vote’ basis. Under the normal procedure, decisions are then taken by a majority of the votes cast. As under the old GATT, however, it is very exceptional for WTO bodies to arrive at a vote. See Hoekman BM & Kostecki MM *The Political Economy of the World Trading System: the WTO and Beyond* 3 ed (2009) 66.

<sup>53</sup> Nguyen T, Nguyen Q & Pham P ‘Decision making by Consensus in the WTO’ (2012) 4.

<sup>54</sup> Hoekman BM & Kostecki MM *The Political Economy of the World Trading System: the WTO and Beyond* 3 ed (2009) 66.

<sup>55</sup> Low P *WTO Decision making for the Future* (2011) 3.

<sup>56</sup> Ismail F *Reforming the World Trade Organisation: Developing Countries in the Doha Round* (2009) 128; Ismail F *Mainstreaming Development in the WTO: Developing Countries in the Doha Round* (2007) 22.

<sup>57</sup> Quoted in Dube M *The Way Forward for the WTO: Reforming the Decision making Process* (2012) 17.

<sup>58</sup> Quoted in VanGrasstek C *The History and Future of the World Trade Organisation* (2013) 212.



However, despite the advantages brought about by consensus, the conduct of negotiations leading to such decision making (referred to as informal consultations), which will be discussed in great detail in the forthcoming sections, has been vehemently criticised in much of the late GATT and the WTO to the extent that they are considered as plausible reasons for the stalemate in the current Round of negotiations. However, Ambassador John Weekes, former President of the WTO General Council, makes a graceful statement in support of consensus when he states:

‘There is some criticism that the consensus rule in the WTO makes progress difficult. However, it is hard to imagine how to reach agreement on a collective domestic reform agenda other than by consensus. Agreements entered into voluntarily will be much more durable and, importantly, easier to implement. Although the consensus system may retard progress, it is the best theoretical approach, since other systems would only further disadvantage DCs.’<sup>59</sup>

In light of the aforesaid, since most decisions within the WTO are virtually made by means of consensus among all Members, it is therefore submitted that consensus remains the most appropriate way of reaching an agreement at the WTO. Although the requirement for consensus may complicate decision making as it allows any Member to exercise a form of veto, it still appears the most suitable approach, as compared to qualified majority voting or the weighted voting systems that are prevalent in other international institutions and would be more detrimental to the emerging countries.

### 2.3.2. The concept of the single undertaking

The single undertaking plays a key role in the WTO negotiation structure and is closely related to consensus. In terms of this principle, nothing is agreed upon until all Members agree to all parts of the negotiations, thus resulting in a single, whole and indivisible package of multilateral commitments that cannot be agreed separately.<sup>60</sup> Hoekman argues that both consensus and the single undertaking are practices rather than formal rules.<sup>61</sup>

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<sup>59</sup> Alqadhafi SAI *Reforming the WTO: Toward more Democratic Governance and Decision making* (2007) 9-10; Alqadhafi SAI *The Role of Civil Society in the Democratisation of Global Governance Institutions: From ‘Soft Power’ to Collective Decision making?* (2007) 306; Weekes J *A Possible Scenario for a Deal on Agricultural Trade Reform* (2004). Available at [http://www.l20.org/publications/2\\_C3\\_A\\_S\\_Weekes.pdf](http://www.l20.org/publications/2_C3_A_S_Weekes.pdf) (Accessed 19 March 2015).

<sup>60</sup> Rolland SE *Development at the World Trade Organisation* 1 ed (2012) 223; Hoekman B ‘Proposals for WTO Reform: A Synthesis and Assessment’ in Narlikar A, Daunton M & Stern RM (eds) *The Oxford Handbook on the World Trade Organisation* (2012) 746; Dube M *The Way Forward for the WTO: Reforming the Decision making Process* (2012) 15; MacMillan E ‘Doha Decision making: Implications of the Consensus and Single Undertaking Principles for Developing Countries’ (2010) 1.

<sup>61</sup> Hoekman B ‘Proposals for WTO Reform: A Synthesis and Assessment’ in Narlikar A, Daunton M & Stern RM (eds) *The Oxford Handbook on the World Trade Organisation* (2012) 747.

Before the inception of the single undertaking principle, the involvement of DCs in the then GATT was only limited, and was made possible by the so called 'GATT *a la carte*', or 'cherry picking'; which meant that the system allowed Contracting Parties of the GATT to pick and choose some of the trade rules and disciplines by which they would be bound.<sup>62</sup> However, Member States can no longer have a free ride and just select any item that they like on the WTO negotiated agreements. Starting with the Uruguay Round, countries were compelled to participate in all of the negotiated agreements as part of a 'single undertaking'<sup>63</sup>.

It is noteworthy to mention that the single undertaking took a new significance after the launch of the WTO, by becoming not just an ordinary rule, but the gateway to WTO membership.<sup>64</sup> From that point, all future WTO signatories were required to accept the whole package of negotiated outcomes, with no partial opt-outs.<sup>65</sup>

One of the premises of the single undertaking is that it guarantees that all participants will at least obtain a net benefit from a package deal, by allowing for issue linkages or trade-offs. Issue linkages bring together trade related topics, such as Intellectual Property, labour standards and environmental protection into a single package in order to take full advantage of trade-off opportunities and to keep the enthusiasm for trade negotiations moving forward.<sup>66</sup>

As such, Dube concedes that the lack of the single undertaking principle would mean that trade matters would be negotiated in silos within the WTO, due to the fact that 'countries with only defensive interests would have no motivation to negotiate and that with issue linkages, there is always the guarantee, at least in theory, of getting concessions on offensive interests in other areas, thereby enabling negotiations.'<sup>67</sup>

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<sup>62</sup> Rolland SE *Development at the World Trade Organisation* 1 ed (2012) 224; Hoekman BM & Kostecki MM *The Political Economy of the World Trading System: the WTO and Beyond* 3 ed (2009) 51; Ansong A *Developing Countries and Decision making in the WTO: Reconciling the Principles of Special and Differential Treatment and Sovereign Equality of States* (2012) 105; Jones K 'Green Room Politics and the WTO's Crisis of Representation' (2009) 353.

<sup>63</sup> Low P *WTO Decision making for the Future* (2011) 4; Jones K 'Green Room Politics and the WTO's Crisis of Representation' (2009) 353.

<sup>64</sup> Article II:2 of the Agreement establishing the WTO provides: "The agreements and associated legal instruments included in Annexes 1, 2 and 3 (hereinafter referred to as "Multilateral Trade Agreements") are integral parts of this Agreement, binding on all Members."

<sup>65</sup> Hoekman BM & Kostecki MM *The Political Economy of the World Trading System: the WTO and Beyond* 3 ed (2009) 66; Ansong A *Developing Countries and Decision making in the WTO: Reconciling the Principles of Special and Differential Treatment and Sovereign Equality of States* (2012) 106; Dube M *The Way Forward for the WTO: Reforming the Decision making Process* (2012) 15; Low P *WTO Decision making for the Future* (2011) 4; MacMillan E 'Doha Decision making: Implications of the Consensus and Single Undertaking Principles for Developing Countries' (2010) 1; Jones K 'Green Room Politics and the WTO's Crisis of Representation' (2009) 353.

<sup>66</sup> Hoekman B 'Proposals for WTO Reform: A Synthesis and Assessment' in Narlikar A, Daunton M & Stern RM (eds) *The Oxford Handbook on the World Trade Organisation* (2012) 758; Rolland SE *Development at the World Trade Organisation* 1 ed (2012) 226; Dube M *The Way Forward for the WTO: Reforming the Decision making Process* (2012) 15; Low P *WTO Decision making for the Future* (2011) 4; MacMillan E 'Doha Decision making: Implications of the Consensus and Single Undertaking Principles for Developing Countries' (2010) 1.

<sup>67</sup> Dube M *The Way Forward for the WTO: Reforming the Decision making Process* (2012) 15.



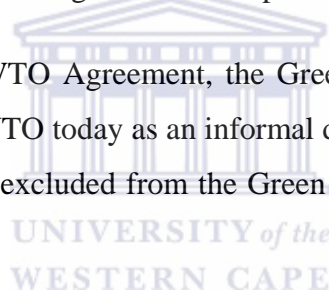
The concept of the single undertaking will be further discussed in great detail in the forthcoming chapter, as this principle is particularly crucial in the current situation that the DDA is facing within the WTO.

### 2.3.3. The informal meetings: the Green Room discussions

In an attempt to consolidate consensus in WTO decision making, informal group meetings can be used at the request of the WTO Director-General, or the Chairperson of a committee, such as the Green Room discussions, which refers to any closed negotiation in which only a limited number of countries (usually 20 to 25), mostly developed countries, are invited to participate in order to discuss notable trade issues.<sup>68</sup>

The term 'Green Room' results from the colour of the Director-General's conference room that was painted green and which was used to host smaller deliberative group discussions<sup>69</sup>. Decisions taken in the Green Room are conveyed to the larger membership for final decision.<sup>70</sup>

Although not provided for in the WTO Agreement, the Green Room consultations started in the GATT era and are still used in the WTO today as an informal decision making process.<sup>71</sup> Previously under the GATT, DCs were largely excluded from the Green Room discussions.<sup>72</sup> These meetings



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<sup>68</sup> Jones K *The Doha Blues: Institutional Crisis and Reform in the WTO* (2011) 1; Dube M *The Way Forward for the WTO: Reforming the Decision making Process* (2012) 18; Ansong A *Developing Countries and Decision making in the WTO: Reconciling the Principles of Special and Differential Treatment and Sovereign Equality of States* (2012) 131; Kenworthy J 'Reforms of the WTO: Basic issues and Concerns' (2000) 2; VanGrasstek C *The History and Future of the World Trade Organisation* (2013) 83; Hoekman BM & Kostecki MM *The Political Economy of the World Trading System: the WTO and Beyond* 3 ed (2009) 67; Rolland SE *Development at the World Trade Organisation* 1 ed (2012) 91; Jones K 'Green Room Politics and the WTO's Crisis of Representation' (2009) 349.

<sup>69</sup> However, Green Room meetings need not necessarily be held in the Director-General's conference room. Currently, the term has come to be used as a generic name for smaller deliberative group meetings convened to thrash out sensitive trade-related issues with the aim of working out compromise solutions in a smaller and intensive set-up.

<sup>70</sup> Ansong A *Developing Countries and Decision making in the WTO: Reconciling the Principles of Special and Differential Treatment and Sovereign Equality of States* (2012) 145; Jones K 'Green Room Politics and the WTO's Crisis of Representation' (2009) 350; Alqadhafi SAI *The Role of Civil Society in the Democratisation of Global Governance Institutions: From 'Soft Power' to Collective Decision making?* (2007) 400; VanGrasstek C *The History and Future of the World Trade Organisation* (2013) 83.

<sup>71</sup> Jones K *The Doha Blues: Institutional Crisis and Reform in the WTO* (2011) 1; Dube M *The Way Forward for the WTO: Reforming the Decision making Process* (2012) 18; Ansong A *Developing Countries and Decision making in the WTO: Reconciling the Principles of Special and Differential Treatment and Sovereign Equality of States* (2012) 131; Kenworthy J 'Reforms of the WTO: Basic issues and Concerns' (2000) 2.

<sup>72</sup> Rolland SE *Development at the World Trade Organisation* 1 ed (2012) 92; Ansong A *Developing Countries and Decision making in the WTO: Reconciling the Principles of Special and Differential Treatment and Sovereign Equality of States* (2012) 146; Lal Das B *The WTO and the Multilateral Trading System: Past, Present and Future* (2003) 166; Narlikar A 'Collective Agency, Systemic Consequences: Bargaining Coalition in the WTO' in Narlikar A, Daunton M & Stern RM (eds) *The Oxford Handbook on the World Trade Organisation* (2012) 1; World Trade Organisation (ed) *Understanding the WTO* 5ed (2011) 187; Narlikar A 'Unintended Consequences: The G20 and Global Governance' (2014) 65; Alqadhafi SAI *Reforming the WTO: Toward more Democratic Governance and Decision making* (2007) 7.

generally involved less than eight countries and were dominated by the Quad (Canada, the European Union (EU), Japan and the United States (US)).

After the launch of the Uruguay Round, however, the Green Room discussions evolved to include typically the Quad, Australia, New Zealand, Switzerland, Norway, a few transition economies and a handful of DCs such as Argentina, Brazil, Chile, Colombia, Egypt, Hong Kong, India, South Korea, Mexico, Pakistan, South Africa, and at least one ASEAN country.<sup>73</sup> This shows that the Green Room consultations have grown to include a substantial number of emerging economies.

It is suggested that Green Room meetings are intended to enhance the efficiency and effectiveness of negotiations by limiting the numbers of negotiators to those key and active players who could help move the negotiating process forward.<sup>74</sup> The rationale behind this policy is that the WTO has no formal steering body where decisions are based on weighted voting and where power is delegated to a board of directors or the organisation's head, as is the case with the executive boards of the IMF and the World Bank. Furthermore, since trade negotiators can rarely explore the limits of their partners' flexibility or expose their own difficulties in large on-the-record meetings, it is argued that it would be virtually impossible to conduct effective negotiations in an open-ended plenary session involving the total membership.<sup>75</sup>

The Green Room discussions are also believed to yield some success and cannot be universally praised or condemned. For instance, Blackhurst & Hartridge observe that the Green Room was for several years a highly efficient management tool and that 'restricted meetings are in principle indefensible, and they are always understandably resented by those excluded, but experience shows that they are tolerated, because they are recognized as necessary, so long as they produce results.'<sup>76</sup>

It must also be noted that due to the use of coalitions, especially in trade negotiations, the possibility exists for a large body of Members, if not the entire membership to be represented through their coalition representatives.<sup>77</sup> Narlikar supports this view by suggesting that 'coalitions allow greater voice to countries that would otherwise have no say at all in the small group meetings that underpin

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<sup>73</sup> Dube M *The Way Forward for the WTO: Reforming the Decision making Process* (2012) 18; Hoekman BM & Kostecki MM *The Political Economy of the World Trading System: the WTO and Beyond* 3 ed (2009) 66; Liang M 'Evolution of the WTO Decision making Process' (2005) 126; Rolland SE *Development at the World Trade Organisation* 1 ed (2012) 93.

<sup>74</sup> Jones K 'Green Room Politics and the WTO's Crisis of Representation' (2009) 350; Liang M 'Evolution of the WTO Decision making Process' (2005) 126.

<sup>75</sup> Hoekman BM & Kostecki MM *The Political Economy of the World Trading System: the WTO and Beyond* 3 ed (2009) 65; Nguyen T, Nguyen Q & Pham P 'Decision making by Consensus in the WTO' (2012) 4; Rolland SE *Development at the World Trade Organisation* 1 ed (2012) 215.

<sup>76</sup> Blackhurst R & Hartridge D (2005) 464, quoted in VanGrasstek C *The History and Future of the World Trade Organisation* (2013) 204.

<sup>77</sup> Ansong A *Developing Countries and Decision making in the WTO: Reconciling the Principles of Special and Differential Treatment and Sovereign Equality of States* (2012) 147.

WTO negotiations, as they allow Members not only greater possibilities of representation but also a more informed participation in the negotiation process.<sup>78</sup>

Nevertheless, the informal process of the WTO has come under significant disapprobation from experts who argue that the WTO decision making process has become the object of debate, after experiencing setbacks such as breakdowns in the Doha Round. The Green Room consultations raise questions related to the lack of transparency and exclusivity in the WTO negotiating process.<sup>79</sup>

Although the Green Room meetings do not have decision making powers, it is submitted that they serve as powerful lobbying forums and that their unrepresentative nature does not bode well for equal participation in the WTO decision making process. This question is central to the plausible reasons for the impasse in the Doha Round of negotiations and therefore will be discussed in greater details in the subsequent chapter.

## 2.4. Conclusion

The purpose of the WTO is to ensure that trade flows as smooth, sure and free as possible. It is obvious that consensus remains the single most important rule in the decision making processes of the WTO. To achieve broad consensus requires great flexibility not only in the content of any final agreement but also in the method by which these agreements are negotiated.<sup>80</sup> But one size does not fit all at the WTO, as agreements are tailored in order to take into account the sensitivities of Members and this is one of the reasons why WTO agreements are so complex.<sup>81</sup>

In light of all the aforesaid, it is clear that the governing bodies of the WTO rely heavily on a multiplicity of decision making processes which are intended to enhance the efficiency of the institution. However, as shall be explained further in the following chapter, despite the fact that the WTO governance has been praised as compared to its Bretton Woods counterparts; its decision

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<sup>78</sup> Narlikar A 'Collective Agency, Systemic Consequences: Bargaining Coalition in the WTO' in Narlikar A, Dauntun M & Stern RM (eds) *The Oxford Handbook on the World Trade Organisation* (2012) 1; World Trade Organisation (ed) *Understanding the WTO* 5ed (2011) 185.

<sup>79</sup> Dube M *The Way Forward for the WTO: Reforming the Decision making Process* (2012) 18; VanGrasstek C *The History and Future of the World Trade Organisation* (2013) 83; MacMillan E 'Doha Decision making: Implications of the Consensus and Single Undertaking Principles for Developing Countries' (2010) 3; Jones K *The Doha Blues: Institutional Crisis and Reform in the WTO* (2011) 1; Jones K *The Doha Blues: Institutional Crisis and Reform in the WTO* (2011) 38; Jones K 'Green Room Politics and the WTO's Crisis of Representation' (2009) 354; Patel M *New Faces in the Green Room: Developing Country Coalitions and Decision making in the WTO* (2007) 13; Nguyen T, Nguyen Q & Pham P 'Decision making by Consensus in the WTO' (2012) 12.

<sup>80</sup> VanGrasstek C *The History and Future of the World Trade Organisation* (2013).

<sup>81</sup> Kenworthy J 'Reforms of the WTO: Basic issues and Concerns' (2000) 2.

making process has brought about a number of impediments that ultimately caused the current multilateral Round of negotiation to stall for many years.



## CHAPTER THREE: THE MAIN REASONS FOR THE STALEMATE IN THE CURRENT DOHA ROUND OF NEGOTIATIONS

This chapter explores the Doha Round by briefly reviewing its history and subsequently examining the apparent causes for the impasse at the current multilateral trade negotiations, followed by a short conclusion.

### 3.1. The Doha Round of negotiations: a brief review

As stated previously, the Doha Round of multilateral talks is the first one to be negotiated under the umbrella of the WTO and the ninth since the end of World War II.<sup>82</sup> It was launched at the WTO's fourth MC in Doha, Qatar, in November 2001, where ministers provided a mandate that gives direction on the WTO's existing work programme in ongoing committees and the implementation of the WTO Agreement.<sup>83</sup>

The goal of the Doha Round is to continue the reduction of trade barriers in order to expand global economic growth, development, and opportunity. The Doha negotiations offer an opportunity to revive confidence in global trade and to lay the groundwork for the robust global trading system of tomorrow. In addition, the Doha Ministerial Declaration gave this Round its mandate to negotiate liberalisation of agriculture, services and IPRs.<sup>84</sup>

The new multilateral negotiations were billed as a Development Round or Doha Development Agenda (DDA) because of their presumed focus on the improvement of the trading prospects and needs of DCs and LDCs.<sup>85</sup> The DDA is considered a Round for DCs because it acknowledged the need to solve imbalances in areas of interest to DCs, recognised the need to provide binding and meaningful special and differential treatment and acknowledged the challenges faced by DCs in the implementation of the last Round of negotiations.<sup>86</sup>

The agenda of the Doha mandate is broad: there are 21 subjects listed in the Doha Declaration.<sup>87</sup> Initially intended to be completed by the end of 2005, the talks have been progressing at a very slow

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<sup>82</sup> Narlikar A 'New Powers in the Club: The Challenges of Global Trade Governance' (2010) 717.

<sup>83</sup> VanGrasstek C. *The History and Future of the World Trade Organisation* (2013) 413.

<sup>84</sup> World Trade Organisation (ed) *Understanding the WTO* 5ed (2011) 77; Bhagwati JN, Krishna P & Panagariya A *The World Trade System: Trends and Challenges* (2014) 15.

<sup>85</sup> Bhagwati JN, Krishna P & Panagariya A *The World Trade System: Trends and Challenges* (2014) 15.

<sup>86</sup> Hailu MB *Agriculture under the Doha Round and Food Security in Sub-Saharan Africa* (2005) 49.

<sup>87</sup> The 21 subjects listed in the DDA are: Implementation-related issues and concerns (par 12), Agriculture (pars 13, 14), Services (par 15), Market access for non-agricultural products (par 16), Trade-related aspects of intellectual property rights (TRIPS) (pars 17–19), Relationship between trade and investment (pars 20–22), Interaction between trade and competition policy (pars 23–25), Transparency in government procurement (par 26), Trade facilitation (par 27), WTO rules: anti-dumping and subsidies (par 28), WTO rules: regional trade agreements (par 29), Dispute Settlement Understanding (par 30), Trade and environment (pars 31–33),

pace because stricken by disagreements, specifically over agricultural issues, including cotton, and ended in deadlock on the 'Singapore issues'.<sup>88</sup> To date, and despite several attempts to advance the negotiations, this Round has not been successfully closed.<sup>89</sup>

After staggering along for six years, the Doha Round of multilateral trade negotiations in the WTO hit an impasse in July 2008 and again, in November 2011. Three years later, participants managed to ultimately harvest a small reward at the ninth MC in Bali in December 2013, promising to develop a work plan to complete the remainder of the agenda.<sup>90</sup>

In the following sections, some of the significant factors responsible for the Round's stalemate will be considered.

### 3.2. An overview of the causes of the Doha Round stalemate

The Doha Round was initially scheduled to conclude at the end of 2005. Nevertheless, that did not happen; the trade negotiations stalled in November 2011 after staggering along for 10 years of talks and despite official efforts by many countries and by nearly all the eminent trade experts of today.<sup>91</sup>

The failure to effectively conclude the Doha Round suggests that the world lost the gains from trade that a successful agreement would have brought about, since an incomplete Round would virtually halt trade liberalisation for years to come.<sup>92</sup> It is noteworthy to mention that the multilateral trade negotiations is one of the three pillars on which the WTO system relies, and according to Bhagwati, breaking that specific pillar adversely affects the functioning of the other two, namely, the WTO's rule making authority and its Dispute Settlement Mechanism (DSM).<sup>93</sup> Hence, it appears that the costs of the Doha stalemate are also likely to be high for the WTO itself.

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Electronic commerce (par 34), Small economies (par 35), Trade, debt and finance (par 36), Trade and technology transfer (par 37), Technical cooperation and capacity building (pars 38–41), Least-developed countries (pars 42, 43), Special and differential treatment (par 44) and Cancun 2003, Hong Kong 2005.

<sup>88</sup> The 'Singapore issues' refer to the four subjects that were originally included in the agenda of the Doha Round of the World Trade Organisation and consist of the following: investment, competition, transparency in government, procurement and trade facilitation. Ministers from WTO Member States decided at the 1996 Ministerial Conference in Singapore to set up new working groups on the four abovementioned subjects. Because the Singapore conference kicked off work in these four subjects, they are sometimes called the 'Singapore issues' ([https://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/bey3\\_e.htm](https://www.wto.org/english/thewto_e/whatis_e/tif_e/bey3_e.htm) (accessed on 27 May 2015)).

<sup>89</sup> World Trade Organisation (ed) *Understanding the WTO* 5ed (2011) 77; VanGrassstek C. *The History and Future of the World Trade Organisation* (2013) 416; Bhagwati JN, Krishna P & Panagariya A *The World Trade System: Trends and Challenges* (2014) 15.

<sup>90</sup> Wolfe R 'First diagnose, then treat: what ails the Doha round?' (2015) 7.

<sup>91</sup> Bhagwati JN 'Why Doha Round failed' (2009) Available at <http://economistonline.muogao.com/2008/08/bhagwati-why-doha-Round-failed.html> (Accessed 25 April 2014); Levy P 'Alternatives to consensus at the WTO' (2010) Available <http://www.voxeu.org/article/alternatives-consensus-wto> (Accessed on 8 May 2014).

<sup>92</sup> Bhagwati JN 'Why Doha Round failed' (2009) Available at <http://economistonline.muogao.com/2008/08/bhagwati-why-doha-Round-failed.html> (Accessed 25 April 2014).

<sup>93</sup> Bhagwati JN 'Why Doha Round failed' (2009) Available at <http://economistonline.muogao.com/2008/08/bhagwati-why-doha-Round-failed.html> (Accessed 25 April 2014).



In light of the aforementioned, it is significant to understand the causes for the deadlock in the multilateral negotiations. The following subsections will identify some of the most significant factors responsible for the Round's standstill. Although the causes that lead to the impasse in the Doha Round are multiple, they cannot all be explored, due to limitations on the length of this Research Paper. As this research topic places great emphasis on the position of the emerging economies and LDCs, only those plausible causes associated to this particular topic will be explored.

### 3.2.1. The rise of the South as an impediment to achieving consensus

The emergence of major DCs and LDCs in the field of world trade has changed the configuration of economic power and has also been one of the defining features of globalisation since the start of the current Round, and as such could be perceived as one of the main causes of the Doha Round stalemate.<sup>94</sup> The world economy has witnessed an unprecedented growth rate in the DCs' share of global output, doubling from about 20 per cent in the early 2000s to 40 per cent in 2013.<sup>95</sup> This progress has also been reflected in their rapidly expanding export volume. In 1990, the combined merchandise exports from all DCs stood at US\$850 billion, which reached US\$2 trillion over the next decade and then US\$9 trillion in 2012. Now, the DCs' combined share of global export trade is almost 50 per cent.<sup>96</sup>

Consequently, there is an evident shift in world economic power that has profoundly improved the way DCs and LDCs are now perceived at the WTO.<sup>97</sup> The WTO is increasingly spreading its coverage to different areas of the globe, particularly to these DCs and LDCs, and the impact of the WTO agreements (as compared to the GATT) and their operation are much wider and deeper for the economies of those countries.<sup>98</sup>

During the GATT era, the DCs and LDCs remained unheard; they never had a decisive role in the GATT system and their interests were generally ignored or were never seriously executed by the developed countries.<sup>99</sup> For instance, the tariffs in the developed countries on the products of special

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<sup>94</sup> Gantz DA *Liberalising International Trade after Doha: Multilateral, Plurilateral, Regional and Unilateral Initiatives* (2013) 9; Razzaque MA & Gosset L 'Trading with the Rising South: Challenges and Opportunities for Sub-Saharan Africa' (2014) 1; Muzaka V & Bishop ML 'Doha Stalemate: The End of Trade Multilateralism?' (2015) 388; International Monetary Fund (IMF) (ed) *The WTO Doha Trade Round—Unlocking the Negotiations and Beyond* (2011) 3.

<sup>95</sup> Bhagwati JN, Krishna P & Panagariya A *The World Trade System: Trends and Challenges* (2014) 18.

<sup>96</sup> Razzaque MA & Gosset L 'Trading with the Rising South: Challenges and Opportunities for Sub-Saharan Africa' (2014) 1.

<sup>97</sup> Muzaka V & Bishop ML 'Doha Stalemate: The End of Trade Multilateralism?' (2015) 388.

<sup>98</sup> Lal Das B 'Strengthening Developing Countries in the WTO' 8 *Trade and Development Series* Available at <http://www.twinside.org.sg/title/td8.htm> (accessed 10 May 2014).

<sup>99</sup> Alqadhafi SAI *The Role of Civil Society in the Democratisation of Global Governance Institutions: From 'Soft Power' to Collective Decision making?* (2007) 309; Alqadhafi SAI *Reforming the WTO: Toward more Democratic Governance and Decision Making* (2007)12; Lal Das B 'Strengthening Developing Countries in the WTO' 8 *Trade and Development Series* Available at

export interest to DCs and LDCs remained high; quantitative restraints on imports continue to exist in some important sectors of interest to them, such as textiles.<sup>100</sup>

Nowadays however, the structural change in the distribution of world economic power could be seen as a positive mechanism for the balance of the global trading system. There is a clear indication that DCs and LDCs are no longer ignored and voiceless at multilateral talks, and that the more powerful emerging countries can resist what they perceive to be a flawed, unfair, or unacceptable deal.<sup>101</sup> This is further illustrated by VanGrasstek when he states:

‘A small circle of developed countries called the shots in the GATT period, but economic influence and political power are much more broadly distributed in the WTO period. The widening scope of membership, coupled with different rates of growth in developed and developing countries, can be seen in the relative decline of the Quad and the commensurate rise of emerging economies such as Brazil, China, India, Indonesia, Malaysia, Mexico, South Africa and Turkey [...].’<sup>102</sup>

In light of this quote, it is assumed that the emerging economies have become a dominant force in the global economy and are having a greater influence than ever at the WTO that enables them to veto most decisions that are to their detriment in multilateral talks. For instance, in 2001 when China became a Member of the WTO, nobody predicted it to become the world’s largest exporter by 2010. And now that issues, such as China’s tariff profile have become of global interest, China has gained great influence during trade negotiations.<sup>103</sup>

As such, the slow pace of the Doha negotiations is exacerbated by the division between developed nations and DCs.<sup>104</sup> It is widely accepted among trade experts that on a broader level, at the heart of the current Doha difficulties lies a conflict that has always been present, to varying degrees, in the modern multilateral trade system between the majority of DCs which wish to orient it towards their developmental needs since the Round is labelled as a Development Agenda, and developed Members

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<http://www.twinside.org.sg/title/td8.htm> (accessed 10 May 2014); Lal Das B *The WTO and the Multilateral Trading System: Past, Present and Future* (2003) 155.

<sup>100</sup> Lal Das B ‘Strengthening Developing Countries in the WTO’ 8 *Trade and Development Series* Available at <http://www.twinside.org.sg/title/td8.htm> (accessed 10 May 2014); Eagleton-Pierce M *Symbolic Power in the World Trade Organisation* (2013); Lal Das B *The WTO and the Multilateral Trading System: Past, Present and Future* (2003) 155.

<sup>101</sup> Muzaka V & Bishop ML ‘Doha Stalemate: The End of Trade Multilateralism?’ (2015) 390.

<sup>102</sup> VanGrasstek C *The History and Future of the World Trade Organisation* (2013) 11.

<sup>103</sup> Bhagwati JN, Krishna P & Panagariya A *The World Trade System: Trends and Challenges* (2014) 17; Helble M & Wignaraja G ‘Will the WTO Bali conference advance the Doha Round and Asia?’ (2013) Available at <http://www.voxeu.org/article/what-prospects-wto-deal-bali/> (Accessed 11 May 2014).

<sup>104</sup> Lal Das B ‘Strengthening Developing Countries in the WTO’ 8 *Trade and Development Series* Available at <http://www.twinside.org.sg/title/td8.htm> (accessed 10 May 2014); Baldwin RE ‘Standstills in WTO trade negotiations are not that unusual’ (2009) Available at <http://www.voxeu.org/article/doha-round-not-breathing-still-alive> (Accessed 10 May 2014); Alqadhafi SAI *Reforming the WTO: Toward more Democratic Governance and Decision Making* (2007) 7.



which consider it as a means to improve market access in their favour with the fewest concessions possible.<sup>105</sup> This conflict of interests between parties would in turn prevent from yielding the necessary political will that is needed to successfully close this Round.

As a matter of fact, the DCs have played a key role in instances of deadlock in trade negotiations since the Uruguay Round and have sometimes been at the centre of such impasse, thus demonstrating a clearer picture of what the balance of power is within the WTO. With the power shift within the WTO, this process is intensifying nowadays as the DCs are now able to not merely resist, but increasingly set the terms of debate and influence certain changes in the structure of the institutions of global governance.<sup>106</sup> This statement is clarified once again below:

‘The politics within and between these groups,<sup>107</sup> and their relationships with the remaining Members of the WTO, are much more complicated and contentious than had been the case in the GATT period. This has altered the conduct of multilateral trade diplomacy, which once appeared to be something like a developed-country oligarchy that met in the Green Room but today bears a closer resemblance to a diverse, representative democracy that is principally conducted through coalitions.’<sup>108</sup>

In this sense, it can be seen that the emerging economies are more aware of their influence within the WTO; and that such influence enables them to oppose whichever proposition that is to their detriment, which as a result paralyses the whole negotiating process.

### **3.2.2. The size of the World Trade Organisation’s current membership**

Any system of decision making is bound to have some degree of friction. However, the cumulative frictions associated with a decision making system that takes into account a large number of actors, such as in the case of the WTO, would inevitably lead to co-ordination failure.<sup>109</sup>

As such, the number of participants in the WTO talks is by far the largest ever, and makes it intrinsically difficult to reach consensus on all negotiations. The WTO’s membership currently stands at 161 countries,<sup>110</sup> and amongst them are nine countries that each have more than 100 million

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<sup>105</sup> Muzaka V & Bishop ML ‘Doha Stalemate: The End of Trade Multilateralism?’ (2015) 390.

<sup>106</sup> Muzaka V & Bishop ML ‘Doha Stalemate: The End of Trade Multilateralism?’ (2015) 390.

<sup>107</sup> These groups referred to the Quad and the top emerging economies.

<sup>108</sup> Patel M ‘Building coalitions and consensus in the WTO’ (2007) 1; Rolland SE Developing country coalitions at the WTO: in search of legal support (2007) 484; VanGrasstek C *The History and Future of the World Trade Organisation* (2013) 11.

<sup>109</sup> MacMillan E ‘Doha Decision making: Implications of the Consensus and Single Undertaking Principles for Developing Countries’ (2010) 2.

<sup>110</sup> The WTO had 160 Members as of June 2014. Seychelles joined on 26th April 2015 and became 161<sup>st</sup> Member of the WTO. Available at [https://www.wto.org/english/news\\_e/news15\\_e/acc\\_syc\\_01apr15\\_e.htm](https://www.wto.org/english/news_e/news15_e/acc_syc_01apr15_e.htm) (Accessed 19 March 2015).

inhabitants (two have above 1 billion) and another 13 countries that have less than 100,000 inhabitants each. In these conditions, reaching consensus among such a diverse membership is undeniably a herculean task, considering the fact that each Member State has its particular trade interests and that the world trade agenda is set by developed countries, which make up less than one-third of the total membership while DCs and LDCs now make up the mathematical majority. Hence, they should be setting the agenda.<sup>111</sup> VanGrasstek demonstrated this argument when he states:

‘Consider the hypothetical case of China and India blocking consensus on some matter that otherwise has wide support, which might lead indignant negotiators from other countries to criticise the ability of just two Members to frustrate the aims of the rest. A Chinese or Indian negotiator might respond that, as the representatives of 37 per cent of the world’s population, they must exercise their right to prevent a deal that they judge not to be in the best interests of their people. Consider also that the 22 smallest WTO Members are home to just 7.5 million people. Should that group, with a shared population approximating those of Bulgaria or Bogotá, have 10 per cent more votes than the entire Group of Twenty (G20)? Any forum in which such demographically disparate units come together needs to develop rules that balance the sometimes conflicting needs of inclusiveness and efficiency, as well as the competing demands of predictability and flexibility.’<sup>112</sup>

In light of the aforesaid, it is difficult to achieve and sustain consensus over a comprehensive agenda from 161 Members. Regardless of whether it is developed, DC or LDC, if a country is big enough to cast its shadow over the trade negotiations, it can bend the agenda to its own will; and regardless of the fact that they constitute the majority, DCs and LDCs differ among themselves when it comes to their national interests.

### **3.2.3. The problematic issue of the single undertaking in the Doha Round**

Another cause for the standstill in the Doha Round could be the use of the thorny single undertaking rule. As the negotiations are indivisible, trade-offs and deals are not only challenging to achieve, but also demand experience in international negotiations. This of course bears the risk that nothing can be achieved if time pressure, the complexity of the issues within the DDA and the money at stake contribute to an atmosphere of brinkmanship, which could

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<sup>111</sup> VanGrasstek C *The History and Future of the World Trade Organisation* (2013); Ansong A *Developing Countries and Decision making in the WTO: Reconciling the Principles of Special and Differential Treatment and Sovereign Equality of States* (2012) 131; Kenworthy J ‘Reforms of the WTO: Basic issues and Concerns’ (2000) 2.

<sup>112</sup> VanGrasstek C *The History and Future of the World Trade Organisation* (2013) 201.

make the *status quo* seem preferable to any movement in an unknown direction.<sup>113</sup> Therefore, Members willingly join a consensus if they believe it will be the most beneficial, even if it is not what they really want.

Although this rule is crucial for the decision making within the WTO, it remains, however, a serious problem and therefore is perceived by many as a severe disadvantage for DCs and LDCs and a great impediment to the conclusion of the DDA.<sup>114</sup> A number of trade analysts reflect that, on the one hand, the single undertaking entails issue linkages and logrolling; in other words, all future WTO signatories are required to accept the whole package of negotiated outcomes, with no partial opt-outs.<sup>115</sup>

On the other hand, it is believed that the DCs and LDCs are compelled to be party to the wide range of new agreements under the single undertaking principle, which some governments considered as 'coercive'. They perceive it to be a selective and exclusionary system of decision making, claiming that it is inherently biased against their interests and produces asymmetrical agreements.<sup>116</sup> This requirement has become a 'double-edged sword' as far as DCs and LDCs are concerned, and it would particularly mean that they have to commit to substantially greater reforms of their trade barriers and trade practices than they did in the past; thus, they need to be better informed about the trade issues under negotiation.<sup>117</sup>

Furthermore, Oxfam contends that the single undertaking approach 'wrongly assumes a parity in the readiness of all WTO Members to undertake commitments in areas such as IPRs and investment liberalisation'.<sup>118</sup> But the reality is that the lack of legal resources and research support weakens the ability of DCs to raise their voices and address their priorities in a more effective way as all countries are not engaging on equal terms.<sup>119</sup>

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<sup>113</sup> Reiterer M 'The Doha Development Agenda of the WTO: Possible Institutional Implications' (2009) 361.

<sup>114</sup> Amongst the many writings on this particular aspect, the literature include including Rolland (2012), Ismail (2007), Hoekman and Kostecki (2009).

<sup>115</sup> Hoekman BM & Kostecki MM *The Political Economy of the World Trading System: the WTO and Beyond* 3 ed (2009) 66.

<sup>116</sup> Low P *WTO Decision making for the Future* (2011) 4.

<sup>117</sup> Ismail F *Mainstreaming Development in the WTO: Developing Countries in the Doha Round* (2007) 4; Rolland SE *Development at the World Trade Organisation* 1 ed (2012) 224; Wallach L & Sforza M *The WTO: Five Years of Reasons to Resist Corporate Globalization* (1999) 56; Eagleton-Pierce M *Symbolic Power in the World Trade Organisation* (2013); Hoekman B 'Proposals for WTO Reform: A Synthesis and Assessment' in Narlikar A, Daunton M & Stern RM (eds) *The Oxford Handbook on the World Trade Organisation* (2012) 758; Hoekman BM & Kostecki MM *The Political Economy of the World Trading System: the WTO and Beyond* 3 ed (2009) 66; Low P *WTO Decision making for the Future* (2011) 4

<sup>118</sup> Oxfam 'Institutional reform of the WTO', *Oxfam GB Discussion Paper*, March 2000. Available at [http://www.oxfam.org.uk/resources/policy/trade/downloads/wto\\_reform.rtf](http://www.oxfam.org.uk/resources/policy/trade/downloads/wto_reform.rtf)

<sup>119</sup> Alqadhafi SAI *Reforming the WTO: Toward more Democratic Governance and Decision Making* (2007)12; Alqadhafi SAI *The Role of Civil Society in the Democratisation of Global Governance Institutions: From 'Soft Power' to Collective Decision making?* (2007) 285.

It is noteworthy to mention that all Member States are not on the same level within the various WTO committees, and that the smaller LDCs remain at a distinct disadvantage with regards to the single undertaking because their governments are less experienced regarding the details of international trade rules and often lack resources, having at times only one representative in Geneva to follow all WTO matters.<sup>120</sup> Consequently, the more powerful States, such as the US and the EU, drive the agenda of the WTO. Needless to say, a number of DCs and LDCs are still grappling with the implementation of some of the agreements ratified during the Uruguay Round and are simply not ready to take on additional reform burdens at least at the pace at which their developed counterparts want them to.<sup>121</sup> Therefore, it remains difficult to put agreements into operation without everyone agreeing to move at the speed of the slowest Member.

#### 3.2.4. The Green Room meetings and their lack of transparency concerns

A further probable reason for the Doha impasse is the apparent lack of transparency within the WTO decision making system. Although the WTO has been relatively effective in devising a consensus based decision making system that empowers any Member State irrespective of its size, demographics and economic influence, to have veto power, the conduct of negotiations leading to such decision making by means of informal consultations has been vehemently criticised in both the GATT and the WTO.<sup>122</sup>

The method, referred to as Green Room meetings, has largely been unsuccessful at being transparent and inclusive, resulting in major setbacks for the negotiations and the institution, to the extent that then EU Trade Commissioner Lamy criticised the decision making by referring to it as 'medieval'.<sup>123</sup>

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<sup>120</sup> Shaffer G 'The World Trade Organisation under Challenge: Democracy and the Law and Politics of the WTO's Treatment of Trade and Environmental Matters' (2001) 52.

<sup>121</sup> Khumalo N *Looking beyond the Doha Round: Reforming the WTO negotiating process* (2009) 4.

<sup>122</sup> Dube M *The Way Forward for the WTO: Reforming the Decision making Process* (2012) 18; Gantz DA *Liberalising International Trade after Doha: Multilateral, Plurilateral, Regional and Unilateral Initiatives* (2013) 11; MacMillan E 'Doha Decision making: Implications of the Consensus and Single Undertaking Principles for Developing Countries' (2010) 3; Patel M 'Building coalitions and consensus in the WTO' (2007) 1; Jones K *The Doha Blues: Institutional Crisis and Reform in the WTO* (2011) 1; VanGrasstek C *The History and Future of the World Trade Organisation* (2013) 83; Jones K 'Green Room Politics and the WTO's Crisis of Representation' (2009) 354; Patel M *New Faces in the Green Room: Developing Country Coalitions and Decision making in the WTO* (2007) 13; Nguyen T, Nguyen Q & Pham P 'Decision making by Consensus in the WTO' (2012) 12; Rolland SE *Developing country coalitions at the WTO: in search of legal support* (2007) 484.

<sup>123</sup> Ismail F *Mainstreaming Development in the WTO: Developing Countries in the Doha Round* (2007) 19; Alqadhafi SAI *The Role of Civil Society in the Democratisation of Global Governance Institutions: From 'Soft Power' to Collective Decision making?* (2007).305; Eagleton-Pierce M *Symbolic Power in the World Trade Organisation* (2013) Alqadhafi SAI *Reforming the WTO: Toward more Democratic Governance and Decision making* (2007) 9-10; Kenworthy J 'Reforms of the WTO: Basic issues and Concerns' (2000) 3; Liang M 'Evolution of the WTO Decision making Process' (2005) 127.

The traditional Green Room consultations, in which a relatively small number of selected developed and emerging countries get together to decide on divisive issues, excluded too many newly active players in WTO negotiations and thus had problems building consensus. The few contracting parties allowed into the Green Room cut the most important deals, provoking resentment from those left outside.<sup>124</sup>

Likewise, the WTO like the GATT before it is most severely criticised for reflecting the powerful economic and trade interests of the major developed countries in informal consultations, rather than the interests of the entire membership as a whole. As a result, a number of observers are questioning the legitimacy of the G-20<sup>125</sup> within the Green Room discussions.<sup>126</sup> They all point out the problematic exclusionary membership of the G20, to the extent that it leads the DCs that are not included to invest in alternative trade forums, as clearly underlined by Narlikar when she asserts:

‘One only has to look back on the GATT, and the WTO [...], and recall the amount of flack that they attracted because of their lack of transparency and accountability towards the great majority of DCs. The GATT was often referred to as the ‘Rich Man’s Club’ where consultations were held in invitation-only ‘Green Room’ meetings, and where the key decision making forum was the so-called Quad. This exclusionary method of decision making led poor countries to turn to alternative forums – such as the UNCTAD – rather than invest their resources and efforts in the GATT/WTO’.<sup>127</sup>

It is apparent in view of the foregoing that the perceived bias within the WTO had led to the formation in recent years by the emerging economies of some alliances which are seen as positive counterbalances to the power of the Quad in directing global trade, particularly with respect to negotiations over agricultural goods, upon which most of these economies depend.<sup>128</sup> The recent trade

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<sup>124</sup> Jones K *The Doha Blues: Institutional Crisis and Reform in the WTO* (2011) 1; VanGrasstek C *The History and Future of the World Trade Organisation* (2013) 83.

<sup>125</sup> Founded in 1999, the G-20 or Group of Twenty is an international forum that brings together the governments and central bank governors of the 20 most important economies in the world and that collectively account for around 80 per cent of world trade, 85 per cent of the Gross World Product (GWP) and two-thirds of the world population. The Members include 19 individual countries— Argentina, Australia, Brazil, Canada, China, France, Germany, India, Indonesia, Italy, Japan, South Korea, Mexico, Russia, Saudi Arabia, South Africa, Turkey, the UK and the US; along with the EU, which is represented by the European Commission and by the European Central Bank.

<sup>126</sup> Aslund, Bhushan and Tussie all pointed to the fact that the G20 included no LDCs enjoying actual membership status in the group; this exclusion persists to the present day. For further reading, refer to Aslund A ‘The Group of 20 must be stopped’ *Financial Times* (26 November 2009); Bhushan A & Tussie D ‘Widening Global Governance: Building on the G20’ in *A Global Crisis on Development: Responses and Responsibilities* (2010) *Canadian Development Report* Available at <http://www.nsi-ins.ca/wp-content/uploads/2012/11/2010-CDR.pdf> (Accessed on 6 August 2014).

<sup>127</sup> Narlikar A ‘Unintended Consequences: The G20 and Global Governance’ (2014) 65.

<sup>128</sup> Ismail F *Mainstreaming Development in the WTO: Developing Countries in the Doha Round* (2007) 19; Alqadhafi SAI *The Role of Civil Society in the Democratisation of Global Governance Institutions: From ‘Soft Power’ to Collective Decision making?* (2007) 309; Patel M ‘Building coalitions and consensus in the WTO’ (2007) 1-2; Alqadhafi SAI *Reforming the WTO: Toward more Democratic Governance and Decision making* (2007) 9-10; Kenworthy J ‘Reforms of the WTO: Basic issues and Concerns’ (2000) 3; Rolland SE *Developing country coalitions at the WTO: in search of legal support* (2007) 484; Liang M ‘Evolution of the WTO Decision making

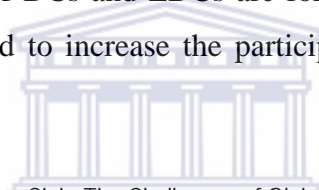


negotiations further cemented this process of incorporating coalitions into WTO decision making, particularly the informal meetings. Several alliances have been created since the Cancun MC in 2003, which include but are not limited to the ACP,<sup>129</sup> the G-33,<sup>130</sup> the African Group,<sup>131</sup> the LDCs (G-90)<sup>132</sup>, and so forth.<sup>133</sup>

One such coalition, the Like Minded group of Developing Countries (LMDC)<sup>134</sup> under the leadership of China and India, initially brought together countries that opposed the placement of labour standards on the negotiating agenda at the 1996 Singapore MC. Later this Group stressed the importance of implementation issues for DCs, and favoured a more inclusive negotiating procedure over the domination by large countries in the Green Room.<sup>135</sup>

According to Jones, the LMDC ‘was attempting to restrike the balance of negotiating power in the WTO in favour of the growing majority of DCs by bringing the negotiating process more into the open, where the large and rich countries would have to leave their backroom machinations behind.’<sup>136</sup>

Hence, it is evident that coalitions of DCs and LDCs are formed in order to reduce the sphere of influence of developed countries and to increase the participation of emerging economies in the



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Process' (2005) 127; Narlikar A 'New Powers in the Club: The Challenges of Global Trade Governance' (2010) 719; Narlikar A 'Unintended Consequences: The G20 and Global Governance' (2014) 65; Narlikar A 'Collective Agency, Systemic Consequences: Bargaining Coalition in the WTO' in Narlikar A, Daunton M & Stern RM (eds) *The Oxford Handbook on the World Trade Organisation* (2012) 1; World Trade Organisation (ed) *Understanding the WTO* 5ed (2011) 187.

<sup>129</sup> The African, Caribbean and Pacific Group of States (ACP) is a group of countries in Africa, the Caribbean, and the Pacific that was created by the Georgetown Agreement in 1975. The group's main objectives are sustainable development and poverty reduction within its Member States, as well as their greater integration into the world's economy. The ACP Group consists of 79 Member-States, all of them, except Cuba are signatories to the Cotonou Agreement which binds them to the EU: 48 countries from Sub-Saharan Africa, 16 from the Caribbean and 15 from the Pacific.

<sup>130</sup> The G33, also called 'Friends of Special Products' in agriculture is a group of DCs that coordinate on trade and economic issues. It was created in order to help a group of countries that were all facing similar problems. The G33 has proposed special rules for DCs at WTO negotiations, like allowing them to continue to restrict access to their agricultural markets.

<sup>131</sup> The African Group consists of all the 54 Member States on the African continent, which constitutes 28 per cent of all UN Members. It is thus the largest regional group by number of Member States and the only regional group that has a territory that coincides with the traditional continent of which its name originates. The African Group has 3 seats on the Security Council, all non-permanent, currently occupied by Angola, Chad, and Nigeria. The Group also has 14 seats on the United Nations Economic and Social Council and 13 seats on the United Nations Human Rights Council.

<sup>132</sup> The G-90 is an alliance between the poorest and smallest DCs, many of whom are part of the WTO. The G-90 emerged as a strong grouping at the WTO's MC at Cancun in 2003, taking common positions representing the largest number of countries with 64 of the 90 countries in the G-90 being Members of the WTO. It is the largest trading body in the WTO, and it was formed as an umbrella body including the African, Caribbean and Pacific Group (ACP), the African Union, and the group of Least Developed Countries (LDC).

<sup>133</sup> Narlikar A & Van Houten P 'Know the Enemy: Uncertainty and Deadlock in the WTO' in Narlikar A (ed) *Deadlock in Multilateral Negotiations: Causes and Solutions* (2010) 152; Rolland SE Developing country coalitions at the WTO: in search of legal support (2007) 484; Patel M 'Building coalitions and consensus in the WTO' (2007) 1-2; Patel M *New Faces in the Green Room: Developing Country Coalitions and Decision making in the WTO* (2007) 13-14.

<sup>134</sup> The Like Minded group of Developing Countries (LMDC) is a group of DCs who organise themselves as a block negotiators in international organisations such as the UN and the WTO and they represent more than 50 per cent of the world's population. The Member Countries of the LMDC are: Algeria, Bangladesh, Belarus, Bhutan, China, Cuba, Egypt, India, Indonesia, Iran, Malaysia, Myanmar, Nepal, Pakistan, The Philippines Sri Lanka, Sudan, Syria, Vietnam, and Zimbabwe.[1]

<sup>135</sup> VanGrasstek C *The History and Future of the World Trade Organisation* (2013) 93.

<sup>136</sup> Jones K *The Doha Blues: Institutional Crisis and Reform in the WTO* (2011) 38.

informal processes. Given this trend, DC coalitions have now emerged as an integral part of the consensus-building process in the WTO.

### **3.2.5. The intrinsic difficulties of reaching an agreement among Member States**

#### **3.2.5.1. The broadness of the Doha Development Agenda**

One of the most immediate factors that has led to the standstill in the recent multilateral negotiations is unquestionably the sheer breadth of the DDA. The Doha mandate is comprehensive: there are 21 wide-ranging subjects from the area of agricultural subsidies to the ‘new issues’ of investment, IPRs, and government procurement.<sup>137</sup> And due to the use of the single undertaking format at the current Round of negotiations, there are nine areas<sup>138</sup> that can be revisited at any time until everything is agreed upon.<sup>139</sup>

Hence, this makes the root of the problem structural in nature as the number of issues is too vast to be tackled under a ‘single undertaking,’ which exacerbates the difficulty still further.

#### **3.2.5.2. The burning issues of agricultural trade, subsidies and market access**

Similarly, one of the most important issues that was brought to the table in the Doha Round and had not yet made its way through is indeed agricultural trade, a very sensitive topic especially for countries like the US and the EU that heavily subsidize this economic sector.<sup>140</sup> The topic was isolated from the GATT in the 1950s and was the subject of failed negotiations in both the Kennedy and the Uruguay Rounds. Negotiators re-incorporated agriculture into the system, with countries making commitments affecting not only market access but also their production and export subsidies.<sup>141</sup>

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<sup>137</sup> Refer supra for the list of the 21 subjects listed in the DDA (See Section 3.1).

<sup>138</sup> These areas are agriculture (including cotton), market access for manufactured or non-agricultural products (NAMA), services, rules (including antidumping, non-agricultural subsidies and countervailing measures, and fisheries subsidies), trade facilitation, trade-related aspects of intellectual property rights (TRIPS), environmental goods and services, and development (mainly comprising revision of Special and Differential Treatment provisions across WTO agreements). Furthermore, negotiations to update rules governing WTO dispute settlement, while not formally part of the Doha talks, may be difficult to conclude without being balanced through a broader Doha agreement.

<sup>139</sup> International Monetary Fund (IMF) (ed) *The WTO Doha Trade Round—Unlocking the Negotiations and Beyond* (2011) 3.

<sup>140</sup> Bhagwati JN, Krishna P & Panagariya A *The World Trade System: Trends and Challenges* (2014) 17; Khor M ‘Why WTO talks collapsed’ (2008) *Third World Network* Available at <http://www.twinside.org.sg/title2/wto.info/twninfo20080805.htm> (Accessed 11 May 2014).

<sup>141</sup> Eagleton-Pierce M *Symbolic Power in the World Trade Organisation* (2013) 71; Bhagwati JN, Krishna P & Panagariya A *The World Trade System: Trends and Challenges* (2014) 17; VanGrasstek C *The History and Future of the World Trade Organisation* (2013) 56.

During the Doha negotiations, the emerging economies pursued maximum flexibility for their group and focussed on the market opening obligations of the developed countries. The greatest cuts in tariffs and the most significant burdens fall on the developed countries, whereas DCs enjoy more relaxed cuts and longer implementation time, thus having significant flexibility.<sup>142</sup> While hegemonic countries like the US and the EU managed to impose their own rules on weaker countries, emerging economies such as Brazil, India, China and South Africa (BRICS) insisted on rejecting such demands when made part of multilateral talks.<sup>143</sup>

### 3.2.5.3. The call for considerable tariff cuts and Non-Agricultural Market Access (NAMA)

Since 2008, multilateral talks have stalled mainly over tariff reduction initiatives for specific industrial goods sectors. Developed countries have insisted on unlocking greater gains in actual market access for these sectors than implied by the planned broad based cuts. However, an agreement has not been reached with key emerging countries.<sup>144</sup> After the stalemate in negotiations, many representatives expressed regret at the failure. Malaysian Ambassador Yacob voiced his frustration, asserting that it meant that a chance for lowering the developed countries' agricultural subsidies was squandered, and also because his country would have had more export opportunities had the tariffs been reduced.<sup>145</sup>

The grand bargain of the DDA was easily and quite precisely summed up in the aftermath of the Hong Kong MC, in 2006 by the 'Financial Times': 'The EU reduces farm tariffs, the US cuts agricultural subsidies and the advanced emerging market countries like India and Brazil open their services and goods markets'.<sup>146</sup> The foregoing statement clearly illustrates the extent to which the contentious divisions have deeply affected the multilateral negotiations for the past 20 years.

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<sup>142</sup> Helble M & Wignaraja G 'Will the WTO Bali conference advance the Doha Round and Asia?' (2013) Available at <http://www.voxeu.org/article/what-prospects-wto-deal-bali> (Accessed 11 May 2014).

<sup>143</sup> Eagleton-Pierce M *Symbolic Power in the World Trade Organisation* (2013) 71; Bhagwati JN 'Why Doha Round failed' (2009) Available at <http://economistonline.muogao.com/2008/08/bhagwati-why-doha-round-failed.html> (Accessed 25 April 2014).

<sup>144</sup> International Monetary Fund (IMF) (ed) *The WTO Doha Trade Round—Unlocking the Negotiations and Beyond* (2011) 2.

<sup>145</sup> Bhagwati JN 'Why Doha Round failed' (2009) Available at <http://economistonline.muogao.com/2008/08/bhagwati-why-doha-round-failed.html> (Accessed 25 April 2014); Bhagwati JN, Krishna P & Panagariya A *The World Trade System: Trends and Challenges* (2014) 17.

<sup>146</sup> Eagleton-Pierce M *Symbolic Power in the World Trade Organisation* (2013) 74; 'Doha Unity Boils down to a Matter of Trust and Time' *The Financial Times* (2006) 2, quoted in Reiterer M 'The Doha Development Agenda of the WTO: Possible Institutional Implications' (2009) 365; Bhagwati JN, Krishna P & Panagariya A *The World Trade System: Trends and Challenges* (2014) 17.



### 3.3. Conclusion

To conclude, it is widely understood that the apparent long standing impasse in the DDA is largely caused on the one hand by the lack of flexibility in the decision making system within the WTO, particularly the consensus and single undertaking principle, and by the confrontation between developed and DCs/LDCs on sensitive trade issues on the other hand.<sup>147</sup>

Nevertheless, as stated earlier, consensus remains the sole most significant rule in the decision making processes of the WTO. While some question whether the multilateral trading system is well served by a rule that confers a veto power on each and every Member, irrespective of its physical, demographic and economic size, there is also a widespread belief that the WTO Members would likely oppose any efforts to replace consensus with qualified majority voting.<sup>148</sup>

It is clear that rescuing the Doha Round seems to be a challenging task. But a more impossible mission would be to prolong the Round any longer than it already has been, due to the fact that 'it might end up jeopardising the multilateral trade system as well as threaten future prospects for WTO-led liberalisation and reform'.<sup>149</sup> However, Baldwin contends that there is no reason to be anxious over the current stalemate, because history has shown that the past multilateral negotiations were overwhelmed by lengthy stalemates as well without resulting in the complete failure of a negotiating Round, so long as the Member States are still committed to a successful outcome.<sup>150</sup>

Thus, a viable option could be to rescue at least the partial agreements that resulted from the previous negotiations and focus on launching new multilateral initiatives aimed at reinstating trust and credibility within the WTO and keeping the Organisation on track to achieving its goals.<sup>151</sup> By agreeing on these terms, the multilateral trade system would benefit from more credibility as it will provide near-term results.<sup>152</sup>

Following unfavourable efforts to revive the negotiations at the 2009 and 2011 MCs, the following MC in Bali symbolises another tremendous chance for WTO delegates to go back to the drawing

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<sup>147</sup> Dube M *The Way Forward for the WTO: Reforming the Decision making Process* (2012) 5; Muzaka V & Bishop ML 'Doha Stalemate: The End of Trade Multilateralism?' (2015) 390.

<sup>148</sup> VanGrasstek C *The History and Future of the World Trade Organisation* (2013) 209.

<sup>149</sup> Bhagwati JN 'Why Doha Round failed' (2009) Available at <http://economistonline.muogao.com/2008/08/bhagwati-why-doha-round-failed.html> (Accessed 25 April 2014).; Khor M 'Why WTO talks collapsed' (2008) *Third World Network* Available at <http://www.twinside.org.sg/title2/wto.info/twninfo20080805.htm> (Accessed 11 May 2014).

<sup>150</sup> Baldwin RE 'Standstills in WTO trade negotiations are not that unusual' (2009) Available at <http://www.voxeu.org/article/doha-round-not-breathing-still-alive> (Accessed 10 May 2014).

<sup>151</sup> Bhagwati JN 'Why Doha Round failed' (2009) Available at <http://economistonline.muogao.com/2008/08/bhagwati-why-doha-round-failed.html> (Accessed 25 April 2014).

<sup>152</sup> The Times of India 'WTO package is to India's advantage and should receive broad political support' (2013) Available at <http://timesofindia.indiatimes.com/home/opinion/edit-page/WTO-package-is-to-Indias-advantage-and-should-receive-broad-political-support/articleshow/27142204.cms> (Accessed 29 April 2014).

board.<sup>153</sup> As shall be discussed further in the following chapter of this Research Paper, the successful conclusion of the ninth MC in Bali some 12 years after the launch of the DDA has brought a fresh and reinvigorating impetus to the future of the Round and the WTO multilateral trading system as a whole, thus enabling talks to get back on track post-Bali. Given the numerous attempts to address these issues at previous MCs, what could be done differently in Bali to move the process forward?



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<sup>153</sup> Helble M & Wignaraja G 'Will the WTO Bali conference advance the Doha Round and Asia?' (2013) Available at <http://www.voxeu.org/article/what-prospects-wto-deal-bali>(Accessed 11 May 2014).

## CHAPTER 4: THE IMPACT OF BALI ACCORD ON THE DOHA ROUND STALEMATE

This chapter evaluates the influence of the Bali Accord on the Doha Round impasse, specifically how it comes to the rescue of the DDA and how far the agreement puts an emphasis on the interests of DCs and LDCs, followed by a short conclusion.

### 4.1. Bali Accord: saviour of the Doha Round

After years of uncompromising stances that continuously culminated in collapsed multilateral negotiations of Doha and the unsuccessful attempts to re-launch the negotiations at the 2009 and 2011MCs, the WTO Member States have eagerly decided to pick up the pieces with the purpose of concluding the Doha Round, if nothing else to salvage some parts of it.<sup>154</sup>

In December 2013, after five days of intense negotiations that had often seemed too close to call, trade ministers from 159 countries managed to generate sufficient political will and finally reached an agreement intended to boost global trade, the first comprehensive agreement reached through the WTO that is approved by all its Members.<sup>155</sup> The Bali Agreement as it is known, is a trade agreement resulting from the 2013 Bali MC held in Indonesia and is aimed at lowering global trade barriers and involves an effort to simplify the procedures for doing business across borders.<sup>156</sup> As such, the Bali Summit marked the first substantive breakthrough for the WTO since the launch of the Doha Round in 2001 and the inception of the organisation in 1995. It represents a tremendous opportunity to bring

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<sup>154</sup> Priyadarshi S & Rahman T 'Build up to the ninth WTO Ministerial Conference: issues of interest to LDCs' (2013)1; Wolfe R 'First Diagnose, Then Treat: What Ails the Doha Round?' (2015) 7; Jatkar A & Mukumba C *Unpacking the Bali Package A Snapshot of the Bali Ministerial Decisions of the WTO Members* (2014) 2; Khor M 'Why WTO talks collapsed' (2008) Third World Network Available at <http://www.twinside.org.sg/title2/wto.info/twninfo20080805.htm> (Accessed 11 May 2014); Bhagwati JN 'Why Doha Round failed' (2009) Available at <http://economistonline.muogao.com/2008/08/bhagwati-why-doha-round-failed.html> (Accessed 25 April 2014).

<sup>155</sup> Food and Agriculture Organisation (ed) *The Bali Package – Implications for Trade and Food Security* (2014) 1; Soobramanien TY & Fevrier S 'The Bali package – A breath of fresh air to the Doha round' (2014) 1; Wolfe R 'First Diagnose, Then Treat: What Ails the Doha Round?' (2015) 7; Dube M *Can the Bali Package Resolve the Doha Impasse and Secure the Future of the WTO?* (2014) 1; Bellmann C 'The Bali agreement: implications for development and the WTO' (2014) 3; Wilkinson R 'Fit for Purpose?: The multilateral trading system and the post-2015 Development Agenda' (2014) 1; Wilkinson R, Hannah E & Scott J 'The WTO in Bali: what MC9 means for the Doha Development Agenda and why it matters' (2014) 1033; Narlikar A & Priyadarshi S 'Empowering the poor? The successes and limitations of the Bali package for the LDCs' (2014) 1054; Priyadarshi S & Rahman T 'The Bali LDC package: how to take it forward' (2014) 1.

<sup>156</sup> Bellmann C 'The Bali agreement: implications for development and the WTO' (2014) 3; Priyadarshi S & Rahman T 'The Bali LDC package: how to take it forward' (2014) 1; Walker A 'WTO agrees global trade deal worth \$1tn' (2013) Available at <http://www.bbc.com/news/business-25274889> (Accessed 11 May 2014); Willenbockel D 'The WTO Bali Deal: 'Doha Lite and Decaffeinated' (2013) Available at <http://www.globalisationanddevelopment.com/2013/12/the-wto-bali-deal-doha-lite-and.html> (Accessed 11 May 2014).

back WTO Members to the negotiation table with the objective of reinstating trust and credibility within the WTO.<sup>157</sup>

At the closing ceremony of the Summit, Director Azevêdo declared that 'It may have seemed impossible, but now it is done. For the first time in our history, the WTO has truly delivered', causing his speech to be greeted with acclamation from the audience.<sup>158</sup> He believes that the Bali Accord is the springboard to complete the DDA, arguing that this package was the first successful agreement in WTO meetings for the past 20 years since the last multilateral deal was signed.<sup>159</sup> Another reason is that there was recognition that an agreement on the entire Round, which involves agriculture, manufacturing and services, was a non-starter and also because the WTO found a way of conducting the talks during the Bali Summit that avoided alienating the bulk of the membership.<sup>160</sup>

It is significant to acknowledge the role of the new WTO governance in successfully concluding the Bali meeting. Although there was apprehension over what a failure in Bali would mean for the future of the multilateral trading system, several scholars and experts across the literature explored have essentially credited Azevêdo's leadership, energy and efforts at forging an inclusive and transparent negotiation process for the successful agreement of this package.<sup>161</sup> His attempt to ensure that the negotiations be conducted on the basis of a freely given mandate together with his clear desire not to present Members with a negotiating text that reflected his views – as it had been the case during previous Rounds – have been widely praised, causing him to receive a great standing ovation by the entire membership.

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<sup>157</sup> Wilkinson R, Hannah E & Scott J 'The WTO in Bali: what MC9 means for the Doha Development Agenda and why it matters' (2014) 1033; Narlikar A & Priyadarshi S 'Empowering the poor? The successes and limitations of the Bali package for the LDCs' (2014) 1054; Priyadarshi S & Rahman T 'The Bali LDC package: how to take it forward' (2014) 1; Koopmann G & Wittig S *Whither WTO – The Multilateral Trading System After Bali* (2014) 2; Soobramanien TY & Fevrier S 'The Bali package – A breath of fresh air to the Doha round' (2014) 1; Meléndez-Ortiz R; Bellmann C & Hepburn J (eds) *Tackling Agriculture in the Post-Bali Context* (2014) 5; Fukahori Y 'The Doha development round of the WTO negotiations: A possible future direction' (2013) 26; Dube M *Can the Bali Package Resolve the Doha Impasse and Secure the Future of the WTO?* (2014) 1; Kyo Suh J 'The WTO Ministerial and Asian Integration: A Korean Perspective' in Fukunaga Y, Riady J, and Sauv   P (eds) *The Road to Bali: ERIA Perspectives on the WTO Ministerial and Asian Integration* (2013) 38; Walker A 'WTO agrees global trade deal worth \$1tn' (2013) Available at <http://www.bbc.com/news/business-25274889> (Accessed 11 May 2014).

<sup>158</sup> Azev  do R 'Speech of the WTO Director-General in the Bali Ministerial Conference closing ceremony' (2013) Available at [http://wto.org/english/news\\_e/news13\\_e/mc9sum\\_07dec13\\_e.htm](http://wto.org/english/news_e/news13_e/mc9sum_07dec13_e.htm) (Accessed 5 May 2014).

<sup>159</sup> Bellmann C 'The Bali agreement: implications for development and the WTO' (2014) 3; Priyadarshi S & Rahman T 'The Bali LDC package: how to take it forward' (2014) 1; Walker A 'WTO agrees global trade deal worth \$1tn' (2013) Available at <http://www.bbc.com/news/business-25274889> (Accessed 11 May 2014); Hoekman B *The Bali Trade Facilitation Agreement and Rulemaking in the WTO: Milestone, Mistake or Mirage?* (2014) 1.

<sup>160</sup> Dube M *Can the Bali Package Resolve the Doha Impasse and Secure the Future of the WTO?* (2014) 1; Walker A 'WTO agrees global trade deal worth \$1tn' (2013) Available at <http://www.bbc.com/news/business-25274889> (Accessed 11 May 2014).

<sup>161</sup> Wilkinson R, Hannah E & Scott J 'The WTO in Bali: what MC9 means for the Doha Development Agenda and why it matters' (2014) 1038; Wilkinson R *The WTO, The UN, and the Future of Global Development: What Matters and Why* (2014) 1; Dube M *Can the Bali Package Resolve the Doha Impasse and Secure the Future of the WTO?* (2014) 1; Narlikar A & Priyadarshi S 'Empowering the poor? The successes and limitations of the Bali package for the LDCs' (2014) 1054.

Building up to Bali, the systemic implications of a failed meeting have been questioned by almost all the trade specialists. In this context, the successful conclusion of the Bali Agreement is the best possible global trade development orchestrated by the entire WTO membership, as failure of Bali in this respect would have represented a serious setback for the WTO and would have eroded confidence in the process of multilateral trade negotiations in the DDA.<sup>162</sup> The failure of the Bali Summit would also have translated into a seriously weakened WTO and prompted recourse to more mega-regional deals, bringing with them non-negligible risks of serious fragmentation along regional and preferential lines.<sup>163</sup>

That being said, what exactly are the negotiated outcomes that were agreed in Bali? The following sections will elaborate on the main issues of the Bali Accord.

## 4.2. An overview of the main focus areas of the Bali Package

The Bali agreement comprises 10 texts covering three broad areas namely, TF, agriculture and issue of interest for LDCs. The content and politics of each of these will be examined in turn.

### 4.2.1. Trade Facilitation Agreement

The TFA or TF<sup>164</sup> constitutes without a doubt the single most significant component of the Bali Accord and hence the main outcome of the Bali Ministerial.<sup>165</sup>

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<sup>162</sup> Bendini R, O'Keefe J & Nieminem H *The 2013 Ministerial Conference in Bali: Last chance for the WTO?* (2013) 4; Wilkinson R, Hannah E & Scott J 'The WTO in Bali: what MC9 means for the Doha Development Agenda and why it matters' (2014) 1038; Karmakar S *Life after Bali: Renewing the World Trade Negotiating Agenda* (2013) 2; Narlikar A & Priyadarshi S 'Empowering the poor? The successes and limitations of the Bali package for the LDCs' (2014) 1054.

<sup>163</sup> Oo S and Naing ZZ 'Expected Outcomes from the Bali Accord: the View from Myanmar' in Fukunaga Y, Riady J, and Sauvé P (eds) *The Road to Bali: ERIA Perspectives on the WTO Ministerial and Asian Integration* (2013) 123; Bhagwati JN, Krishna P & Panagariya A *The World Trade System: Trends and Challenges* (2014) 4; Narlikar A & Priyadarshi S 'Empowering the poor? The successes and limitations of the Bali package for the LDCs' (2014) 1054; The Times of India 'WTO package is to India's advantage and should receive broad political support' (2013) Available at <http://timesofindia.indiatimes.com/home/opinion/edit-page/WTO-package-is-to-Indias-advantage-and-should-receive-broad-political-support/articleshow/27142204.cms> (Accessed 29 April 2014); Willenbockel D 'The WTO Bali Deal: 'Doha Lite and Decaffeinated'' (2013) Available at <http://www.globalisationanddevelopment.com/2013/12/the-wto-bali-deal-doha-lite-and.html> (Accessed 11 May 2014).

<sup>164</sup> The acronyms TFA or TF will be used interchangeably. Trade facilitation (TF) looks at how procedures and controls governing the movement of goods across national borders can be improved to reduce associated cost burdens and maximise efficiency while safeguarding legitimate regulatory objectives. The Trade facilitation Agreement (TFA) on the other hand refers to that specific component of the Bali Accord that was negotiated in the Bali Summit in 2013 and that is legally binding between WTO Member States.

<sup>165</sup> Bellmann C 'The Bali agreement: implications for development and the WTO' (2014) 6; Kyo Suh J 'The WTO Ministerial and Asian Integration: A Korean Perspective' in Fukunaga Y, Riady J, and Sauvé P (eds) *The Road to Bali: ERIA Perspectives on the WTO Ministerial and Asian Integration* (2013) 39; Dube M *Can the Bali Package Resolve the Doha Impasse and Secure the Future of the WTO?* (2014) 2; Jatkar A & Mukumba C *Unpacking the Bali Package A Snapshot of the Bali Ministerial Decisions of the WTO Members* (2014) 3.



Before discussing the TFA, it is noteworthy to understand the rationale behind negotiating such an agreement and its influence on countries. Over the last 30 years, governments around the globe have greatly reduced tariffs and removed quantitative restrictions on imports. Today, the international flow of goods, services and knowledge is mainly constrained by real trade costs, which reflect a combination of discriminatory policies that hinder the entry and operation of foreign firms in a given territory and regulatory policies that apply equally to local and foreign firms.<sup>166</sup>

As a matter of fact, a report from the World Bank titled *Doing Business* indicated that it takes on average three times as many days, twice as many documents and six times as many signatures to trade in many African countries than in developed ones; and the costs of doing business in Africa are so substantial, to such an extent that every extra day it takes to get a shipment to its destination corresponds to a 1.5 per cent additional tax.<sup>167</sup>

As such, TF aims at the simplification, modernisation and harmonisation of border trade procedures<sup>168</sup> with respect to activities, practices and formalities involved in collecting, presenting, communicating and processing data and other requirements for cross-border movement of goods in order to ease trade flows.<sup>169</sup> The final text of the TFA adopted in Bali is divided into two parts. Section I of the Agreement deals with substantive and procedural standards including availability of information, facilitated customs procedures such as advance ruling, pre-clearance and risk management, border cooperation, and dispute resolution. Section II deals with Special and Differential Treatment (S&DT) for DC and LDCs enumerating the type of technical assistance needed to ensure the implementation of new TF measures.<sup>170</sup>

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<sup>166</sup> Hoekman B *The Bali Trade Facilitation Agreement and Rulemaking in the WTO: Milestone, Mistake or Mirage?* (2014) 3.

<sup>167</sup> Djankov *et al.* 'Trading on Time' (2010) and Freund C & Rocha N 'What constrains Africa's exports?' (2011), quoted in Hoekman B *The Bali Trade Facilitation Agreement and Rulemaking in the WTO: Milestone, Mistake or Mirage?* (2014) 4.

<sup>168</sup> When tariffs and other non-tariff barriers to trade have been included in WTO agreements and gradually removed in favour of free trade, TF aims at removing those remaining bureaucratic procedures that constitute obstacles for traders.

<sup>169</sup> Bendini R, O'keefe J & Nieminem H *The 2013 Ministerial Conference in Bali: Last Chance for the WTO* (2013) 11; Grainger A 'Trade facilitation: A conceptual review' (2011) 42; Bellmann C 'The Bali agreement: implications for development and the WTO' (2014) 6; Kyo Suh J 'The WTO Ministerial and Asian Integration: A Korean Perspective' in Fukunaga Y, Riady J, and Sauvé P (eds) *The Road to Bali: ERIA Perspectives on the WTO Ministerial and Asian Integration* (2013) 39; Priyadarshi S & Rahman T 'The Bali LDC package: how to take it forward' (2014) 3; Soobramanien TY & Fevrier S 'The Bali package – A breath of fresh air to the Doha round' (2014) 1; Dhar B 'The Road to 9th WTO Ministerial Conference: Issues and Challenges' in Fukunaga Y, Riady J, and Sauvé P (eds) *The Road to Bali: ERIA Perspectives on the WTO Ministerial and Asian Integration* (2013) 137-8; Wilkinson R, Hannah E & Scott J 'The WTO in Bali: what MC9 means for the Doha Development Agenda and why it matters' (2014) 1039; Narlikar A & Priyadarshi S 'Empowering the poor? The successes and limitations of the Bali package for the LDCs' (2014) 1054; Persson M 'From trade preferences to trade facilitation' (2009) 12.

<sup>170</sup> Jatkar A & Mukumba C *Unpacking the Bali Package A Snapshot of the Bali Ministerial Decisions of the WTO Members* (2014) 3; Soobramanien TY & Fevrier S 'The Bali package – A breath of fresh air to the Doha round' (2014) 2; Wilkinson R, Hannah E & Scott J 'The WTO in Bali: what MC9 means for the Doha Development Agenda and why it matters' (2014) 1041; Bendini R, O'keefe J & Nieminem H *The 2013 Ministerial Conference in Bali: Last Chance for the WTO* (2013) 13; Bellmann C 'The Bali agreement: implications for development and the WTO' (2014) 7; Hoekman B *The Bali Trade Facilitation Agreement and Rulemaking in the WTO: Milestone, Mistake or Mirage?* (2014) 12.



It is submitted that the benefits of TF will ensue to all Members, including LDC; since most of the measures deal with easing of customs procedures which hold potential to reduce trade costs, which is in itself a factor that still undermines the export competitiveness of LDCs.<sup>171</sup> Even though, some specialists are denying such claims, arguing that the TF will mostly benefit the Organisation for Economic Co-operation and Development (OECD) countries.<sup>172</sup> Having said that, the economic gains from successful implementation of TF measures have been estimated to be quite significant. Estimates of the gains from a concluded WTO TFA varied dramatically, ranging from US\$68 billion to \$1 trillion, with some experts claiming that DCs stood the most to gain.<sup>173</sup>

A recent study conducted by the OECD estimates that the implementation of all the TF measures is likely to decrease total trade costs by 10 per cent for developed countries and by 13 to 15.5 per cent for DCs and LDCs and cutting global trade costs by just 1 per cent would increase worldwide income by over \$40 billion, of which a staggering 65 per cent would accrue to DCs.<sup>174</sup>

That being said, it is of utmost importance to mention that these estimates may be too high given that the trade effects of facilitation will depend on the trade potential that each country has. Hoekman believes that if there is significant trade potential, then countries would have greater incentives to invest in TF. The author clarifies that if Rwanda for instance were to try to emulate what has been achieved by Singapore, it would not necessarily realise the same level of trade performance achieved by Singapore.<sup>175</sup>

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The concept of TF is not new in the WTO. In fact, the WTO is all about facilitating trade. WTO Members put the topic of TF on the agenda of the Singapore MC in 1996, resulting in one of four so-called Singapore issues.<sup>176</sup> Working groups were formed to discuss the other three subjects, while TF

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<sup>171</sup> Moisé E & Sorescu S *Trade Facilitation Indicators: The Potential Impact of Trade Facilitation on Developing Countries' Trade*, (2013) Available at <http://www.oecd.org/trade/facilitation/indicators.htm> (Accessed 05 May 2015); Soobramanian TY & Fevrier S 'The Bali package – A breath of fresh air to the Doha round' (2014) 2; Bellmann C 'The Bali agreement: implications for development and the WTO' (2014) 6.

<sup>172</sup> Wilkinson R, Hannah E & Scott J 'The WTO in Bali: what MC9 means for the Doha Development Agenda and why it matters' (2014) 1045; Narlikar A & Priyadarshi S 'Empowering the poor? The successes and limitations of the Bali package for the LDCs' (2014) 1055; Priyadarshi S & Rahman T 'The Bali LDC package: how to take it forward' (2014) 4;

<sup>173</sup> Lamy P 'A trade facilitation deal could give a US\$1tn boost to world economy' (2013) Available at: [www.wto.org/english/news\\_e/sppl\\_e/sppl265\\_e.htm](http://www.wto.org/english/news_e/sppl_e/sppl265_e.htm) (Accessed 25 May 2015); Walker A 'WTO agrees global trade deal worth \$1tn' (2013) Available at <http://www.bbc.com/news/business-25274889> (Accessed 11 May 2014); *The Economist* (ed) 'The Indian Problem' *The Economist*, 23 November 2013; Hoekman B *The Bali Trade Facilitation Agreement and Rulemaking in the WTO: Milestone, Mistake or Mirage?* (2014) 8; Wilkinson R, Hannah E & Scott J 'The WTO in Bali: what MC9 means for the Doha Development Agenda and why it matters' (2014) 1040; Narlikar A & Priyadarshi S 'Empowering the poor? The successes and limitations of the Bali package for the LDCs' (2014) 1054; Bendini R, O'keefe J & Nieminem H *The 2013 Ministerial Conference in Bali: Last Chance for the WTO* (2013) 11-12; Bellmann C 'The Bali agreement: implications for development and the WTO' (2014) 6.

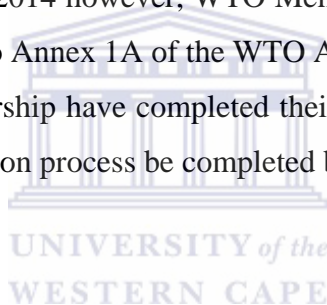
<sup>174</sup> Bendini R, O'keefe J & Nieminem H *The 2013 Ministerial Conference in Bali: Last Chance for the WTO* (2013) 11-12; Bellmann C 'The Bali agreement: implications for development and the WTO' (2014) 6; Hoekman B *The Bali Trade Facilitation Agreement and Rulemaking in the WTO: Milestone, Mistake or Mirage?* (2014) 10; Wilkinson R, Hannah E & Scott J 'The WTO in Bali: what MC9 means for the Doha Development Agenda and why it matters' (2014) 1040.

<sup>175</sup> Hoekman B *The Bali Trade Facilitation Agreement and Rulemaking in the WTO: Milestone, Mistake or Mirage?* (2014) 8.

<sup>176</sup> The others three issues being investment policy, competition policy and transparency in government procurement.

was addressed by the WTO Council for Trade in Goods given that the subject was already covered by WTO disciplines.<sup>177</sup> At the time of the launch of the Doha Round in 2001, many countries did not believe that enough progress was made to agree on a negotiating agenda for these issues and decided to wait until the fifth Cancún MC in 2003 to determine whether and how to launch these issues.<sup>178</sup> When WTO Members regrouped in Geneva in July 2004, it was decided that the other three Singapore issues would be discarded and negotiations would only be launched on TF, as it proved impossible to agree on the other three subjects.<sup>179</sup>

Renewing the mandate, the General Council decided on 1 August 2004 to begin talks. After the collapse of the entire Doha negotiations in 2008, a final text was ultimately adopted by consensus at the Bali meeting in 2013.<sup>180</sup> However, on 31 July 2014, the WTO missed the deadline that was set in Bali for the adoption of a Protocol of Amendment of the TFA, causing another roadblock for the Bali Accord implementation and further uncertainty in the future of the multilateral trading system as a whole.<sup>181</sup> India had decided to hold-out on ratification of the TFA, which froze discussions of the work program.<sup>182</sup> On 27 November 2014 however, WTO Members ultimately adopted the Protocol of Amendment to insert the TFA into Annex 1A of the WTO Agreement.<sup>183</sup> The TFA will enter into force once two thirds of the membership have completed their domestic ratification processes, and the WTO is hopeful that the ratification process be completed before the 11<sup>th</sup> MC in 2017.



#### 4.2.2. Agriculture Agreement

Over the years, agriculture negotiations have proven to be a major stumbling block and the most contentious issue in the way of forging consensus at Doha. Differences between the major

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<sup>177</sup> Trebilcock MJ & Howse R *The Regulation of International Trade* 3 ed (2005) 613; Gregorsson L *A Legal Analysis of the New WTO Agreement on Trade Facilitation- With a Focus on Developing Countries* (2014) 15;

<sup>178</sup> Gregorsson L *A Legal Analysis of the New WTO Agreement on Trade Facilitation- With a Focus on Developing Countries* (2014) 15; Hoekman B *The Bali Trade Facilitation Agreement and Rulemaking in the WTO: Milestone, Mistake or Mirage?* (2014) 4.

<sup>179</sup> Trebilcock MJ & Howse R *The Regulation of International Trade* 3 ed (2005) 613; Hoekman BM & Kostecki MM *The Political Economy of the World Trading System: the WTO and Beyond* 3 ed (2009) 173.

<sup>180</sup> WTO (ed) 'Bali Ministerial Declaration' (2013a) Para 1.8; Gregorsson L *A Legal Analysis of the New WTO Agreement on Trade Facilitation- With a Focus on Developing Countries* (2014) 15.

<sup>181</sup> Laroski J 'Roadblocks to Bali package implementation remain as summer deadline passes without a clear path forward' (2014) 1; Bridges Weekly (ed) 'WTO trade facilitation deal in limbo as deadline passes without resolution' (2014) 1; Bridges Weekly (ed) 'WTO chief warns of potential "freezing effect" as TFA, food stockholding deadlock persists' (2014) 1; Bridges Weekly (ed) 'Obama, Modi highlight TFA impasse concerns, call for "urgent" WTO consultations' (2014) 1; Bridges Weekly (ed) 'New stage of consultations begins as WTO deadlock persists' (2014) 1.

<sup>182</sup> Wolfe R 'First Diagnose, Then Treat: What Ails the Doha Round?' (2015) 23.

<sup>183</sup> WTO (ed) 'Encouraging signs on acceptance of WTO's trade facilitation agreement' (2015) 1; Bellmann C 'The Bali agreement: implications for development and the WTO' (2014) 3; Bridges Weekly (ed) 'Davos: trade ministers call for credible, realistic path to finish Doha round' (2015) Available <http://www.ictsd.org/bridges-news/bridges/news/davos-trade-ministers-c...> (Accessed 10 April 2015).

protagonists have effectively stalled the negotiations since 2008.<sup>184</sup> In the run-up to Bali, agriculture had been identified as a priority area by two groups of DCs. Hence, the Bali outcome on agriculture focused on three distinct areas, namely export competition (export subsidies); Tariff Rate Quotas (TRQs) administration; and public stockholding for food security.<sup>185</sup>

On the one hand, the G-33 was seeking amendments on the domestic support provisions in the Agreement on Agriculture (AoA). Its proposal for public stock-holding for food security purposes was raised at the informal meeting of the special session of the committee on agriculture in 2012. The deal was to a large extent shaped by India, through the determination of its negotiators to secure a meaningful package. It called for the provisions on public stockholding for food security purposes to be taken up for a formal decision at the Bali Summit.<sup>186</sup>

Indian demands were the main cause of deadlock in the Bali MC and it was only after satisfactory terms on food security were established that India conceded to the agreement. The Bali Summit clearly mirrored previous attempts by India to renegotiate policy space in the WTO, demonstrating the continuity which underpins the diplomacy of emerging powers as they engage with the global trading system.<sup>187</sup>

The G-20 of emerging economies<sup>188</sup> on the other hand has proposed strengthening the export competition pillar. Its proposal deals with administering TRQs in agricultural trade. It looks at the way quotas for lower-duty volumes are allocated among importers. Some countries have expressed that the proposal on TRQ administration is essentially about balancing it with market access

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<sup>184</sup> Karmakar S *Life after Bali: Renewing the World Trade Negotiating Agenda* (2013) 5; Dhar B 'The Road to 9th WTO Ministerial Conference: Issues and Challenges' in Fukunaga Y, Riady J, and Sauvé P (eds) *The Road to Bali: ERIA Perspectives on the WTO Ministerial and Asian Integration* (2013) 137; Soobramanien TY & Fevrier S 'The Bali package – A breath of fresh air to the Doha round' (2014) 2.

<sup>185</sup> Dhar B 'The Road to 9th WTO Ministerial Conference: Issues and Challenges' in Fukunaga Y, Riady J, and Sauvé P (eds) *The Road to Bali: ERIA Perspectives on the WTO Ministerial and Asian Integration* (2013) 137; Soobramanien TY & Fevrier S 'The Bali package – A breath of fresh air to the Doha round' (2014) 2.

<sup>186</sup> Jatkar A & Mukumba C *Unpacking the Bali Package A Snapshot of the Bali Ministerial Decisions of the WTO Members* (2014) 9; Chatterjee B & Jatkar A *Unlocking the Doha Impasse: Imperative of a Balanced Bali Package* (2013) 2; Bellmann C 'The Bali agreement: implications for development and the WTO' (2014) 9; Kyo Suh J 'The WTO Ministerial and Asian Integration: A Korean Perspective' in Fukunaga Y, Riady J, and Sauvé P (eds) *The Road to Bali: ERIA Perspectives on the WTO Ministerial and Asian Integration* (2013) 40; Dhar B 'The Road to 9th WTO Ministerial Conference: Issues and Challenges' in Fukunaga Y, Riady J, and Sauvé P (eds) *The Road to Bali: ERIA Perspectives on the WTO Ministerial and Asian Integration* (2013) 140-41.

<sup>187</sup> Efstathopoulos C & Kelly D 'India, developmental multilateralism and the Doha Ministerial Conference' (2014) 1078; The Times of India 'WTO package is to India's advantage and should receive broad political support' (2013) Available at <http://timesofindia.indiatimes.com/home/opinion/edit-page/WTO-package-is-to-Indias-advantage-and-should-receive-broad-political-support/articleshow/27142204.cms> (Accessed 29 April 2014); Ayres A 'India: tough talk and the Bali trade facilitation agreement' *Forbes* 30 July 2014 3 Available at <http://www.forbes.com/sites/alyssaayres/2014/07/30/india-tough-talk-and-the-bali-trade-facilitation-agreement-2/print/> (Accessed 19 March 2015).

<sup>188</sup> The G20 'emerging economies' refers to a coalition of DCs pressing for ambitious reforms of agriculture in developed countries with some flexibility for DCs (this should not to be confused with the G-20 group of finance ministers and central bank governors from the 20 major economies). This group accounts for 60 per cent of the world's population, 70 per cent of its farmers and 26 per cent of world's agricultural exports. It has 23 Members: Argentina, Bolivia, Brazil, Chile, China, Cuba, Ecuador, Egypt, Guatemala, India, Indonesia, Mexico, Nigeria, Pakistan, Paraguay, Peru, Philippines, South Africa, Tanzania, Thailand, Uruguay, Venezuela and Zimbabwe.

provisions in the agriculture negotiations and have asked whether special treatment for DCs would leave major food importers as the main target of the proposal.<sup>189</sup>

The TRQ discussion remained a rather technical issue and was eventually solved through an understanding on TRQ administration.<sup>190</sup> The discussion on export subsidies on the other hand was dealt with through a political statement. WTO Members had already agreed in 2005 to eliminate export subsidies by 2013 as part of a broader Doha deal but this deadline had been missed because of the general impasse in the Round.<sup>191</sup> The text also proposes improved information sharing and monitoring in order to support reform in this area.<sup>192</sup>

### 4.2.3. Least Developing Countries Agreement

The LDC agreement was the most finalised of the three areas being prepared for approval in Bali. In May 2013, the LDC group had submitted a document outlining the issues it considered to be priority for agreement. The LDC agreement consists of three specific decisions namely, Duty-Free and Quota-Free (DFQF) market access,<sup>193</sup> preferential Rules of Origin (RoO) and the LDC services waiver.<sup>194</sup> A fourth decision on cotton is also of particular importance to the LDCs.<sup>195</sup>

The first element of the LDC agreement is the establishment of a monitoring mechanism on Special and Differential Treatment (S&DT). This responds to Paragraph 44 of the 2001 Doha Ministerial Declaration which granted a mandate to review all S&DT provisions with a view to making them stronger, more precise, effective, and operational.<sup>196</sup> As established in Bali, the mechanism will serve

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<sup>189</sup> Chatterjee B & Jatkar A *Unlocking the Doha Impasse: Imperative of a Balanced Bali Package* (2013) 2; Jatkar A & Mukumba C *Unpacking the Bali Package A Snapshot of the Bali Ministerial Decisions of the WTO Members* (2014) 9.

<sup>190</sup> During the Doha negotiations, several countries have expressed concerns that the methods that governments use to share agriculture quotas among traders could become an additional trade barrier, pointing to the fact that part or all of certain TRQs almost systematically remained under-filled. According to the Bali understanding, if a quota is persistently under-filled, the importing government would have to apply one of a prescribed set of methods for administering quotas aimed at removing impediments. For further reading on the topic, refer to WTO (ed) 'Understanding on Tariff Rate Quota Administration Provisions of Agricultural Products, as Defined in Article 2 of the Agreement on Agriculture - Ministerial Decision (2013d) 48.

<sup>191</sup> Bellmann C 'The Bali agreement: implications for development and the WTO' (2014) 9.

<sup>192</sup> WTO (ed) Export Competition - Ministerial Decision (2013e) 53.

<sup>193</sup> Which also refers to Special and Differential Treatment (S&DT).

<sup>194</sup> Which refers to a decision to facilitate granting of preferences to LDCs in services.

<sup>195</sup> Grainger A 'Trade facilitation: A conceptual review' (2011) 42; Bendini R, O'keefe J & Nieminem H *The 2013 Ministerial Conference in Bali: Last Chance for the WTO* (2013) 11; Kyo Suh J 'The WTO Ministerial and Asian Integration: A Korean Perspective' in Fukunaga Y, Riady J, and Sauvé P (eds) *The Road to Bali: ERIA Perspectives on the WTO Ministerial and Asian Integration* (2013) 39; Bellmann C 'The Bali agreement: implications for development and the WTO' (2014) 13; Priyadarshi S & Rahman T 'The Bali LDC package: how to take it forward' (2014) 3; Soobramanien TY & Fevrier S 'The Bali package – A breath of fresh air to the Doha round' (2014) 1; Dhar B 'The Road to 9th WTO Ministerial Conference: Issues and Challenges' in Fukunaga Y, Riady J, and Sauvé P (eds) *The Road to Bali: ERIA Perspectives on the WTO Ministerial and Asian Integration* (2013) 137-8; Wilkinson R, Hannah E & Scott J 'The WTO in Bali: what MC9 means for the Doha Development Agenda and why it matters' (2014) 1044-45.

<sup>196</sup> WTO (ed) 'Monitoring Mechanism on Special and Differential Treatment (2013b) Para 3.



as a focal point within the WTO for analysing and reviewing all aspects of the implementation of S&DT provisions.<sup>197</sup> But it will not function as a negotiating forum. In cases in which the review identifies a problem, the mechanism may make recommendations to the relevant WTO body.<sup>198</sup>

Another hard fought decision relates to the DFQF market access for the LDCs. It was *inter alia* decided that developed country Members that do not yet provide DFQF market access for at least 97 per cent of products originating from LDCs, shall seek to improve their existing DFQF coverage for such products, so as to provide increasingly greater market access to LDCs, prior to the next MC.<sup>199</sup>

The second element of the LDC agreement deals with RoO. The Bali MC marked an important step forward in the multilateral trading system by adopting the first ever set of multilateral guidelines on preferential RoO for LDCs. This was in response to a longstanding demand from the LDCs to make rules of origin associated with preference programmes simple and flexible, and commensurate with the level of their development. In the context of trade preference granted to LDCs, RoO define how much processing must take place locally before goods are considered to be of an LDC origin and therefore benefit from preferential treatment. In practice however, preferential RoO are often considered too restrictive and inflexible, making it difficult for LDCs to effectively take advantage of the intended preferences.<sup>200</sup> The Bali decision thus brings this issue under the umbrella of the WTO for the first time.<sup>201</sup>

The third element of the LDC agreement deals with securing preferences for LDC services and service suppliers. This work stems from the Bali decision on LDC services waiver, which sets out a sequence of activities to help LDCs benefit from the waiver which was adopted in 2011.<sup>202</sup> The adoption of the

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<sup>197</sup> Discussions regarding a series of concrete propositions for strengthening S&DT proposals had previously been considered as a possible deliverable for Bali, but these were ultimately dropped from the Bali proposed package a few months ahead of the Bali Ministerial Conference when Members decided to address them post-Bali.

<sup>198</sup> Kyo Suh J 'The WTO Ministerial and Asian Integration: A Korean Perspective' in Fukunaga Y, Riady J, and Sauvé P (eds) *The Road to Bali: ERIA Perspectives on the WTO Ministerial and Asian Integration* (2013) 39; Priyadarshi S & Rahman T 'The Bali LDC package: how to take it forward' (2014) 3; Soobramanien TY & Fevrier S 'The Bali package – A breath of fresh air to the Doha round' (2014) 1; Bendini R, O'keefe J & Nieminem H *The 2013 Ministerial Conference in Bali: Last Chance for the WTO* (2013) 11; Grainger A 'Trade facilitation: A conceptual review' (2011) 42; Bellmann C 'The Bali agreement: implications for development and the WTO' (2014) 13; Dhar B 'The Road to 9th WTO Ministerial Conference: Issues and Challenges' in Fukunaga Y, Riady J, and Sauvé P (eds) *The Road to Bali: ERIA Perspectives on the WTO Ministerial and Asian Integration* (2013) 137-8; Wilkinson R, Hannah E & Scott J 'The WTO in Bali: what MC9 means for the Doha Development Agenda and why it matters' (2014) 1044-45.

<sup>199</sup> Priyadarshi S & Rahman T 'The Bali LDC package: how to take it forward' (2014) 2; Soobramanien TY & Fevrier S 'The Bali package – A breath of fresh air to the Doha round' (2014) 3; Bendini R, O'keefe J & Nieminem H *The 2013 Ministerial Conference in Bali: Last Chance for the WTO* (2013) 11;

<sup>200</sup> Dhar B 'The Road to 9th WTO Ministerial Conference: Issues and Challenges' in Fukunaga Y, Riady J, and Sauvé P (eds) *The Road to Bali: ERIA Perspectives on the WTO Ministerial and Asian Integration* (2013) 143; Priyadarshi S & Rahman T 'The Bali LDC package: how to take it forward' (2014) 2; Soobramanien TY & Fevrier S 'The Bali package – A breath of fresh air to the Doha round' (2014) 3; Kyo Suh J 'The WTO Ministerial and Asian Integration: A Korean Perspective' in Fukunaga Y, Riady J, and Sauvé P (eds) *The Road to Bali: ERIA Perspectives on the WTO Ministerial and Asian Integration* (2013) 41; Wilkinson R, Hannah E & Scott J 'The WTO in Bali: what MC9 means for the Doha Development Agenda and why it matters' (2014) 1044-45.

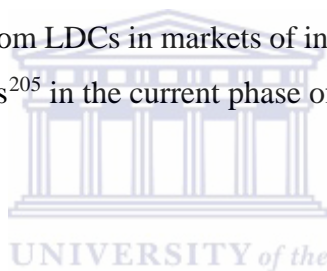
<sup>201</sup> WTO (ed) *Preferential Rules of Origin for Least-Developed Countries - Ministerial Decision* (2013c) 58.

<sup>202</sup> Soobramanien TY & Fevrier S 'The Bali package – A breath of fresh air to the Doha round' (2014) 3; Bendini R, O'keefe J & Nieminem H *The 2013 Ministerial Conference in Bali: Last Chance for the WTO* (2013) 11; Bellmann C 'The Bali agreement:

waiver itself represented a breakthrough in 2011 in the context of the General Agreement on Trade in Services (GATS), where preferential market access treatment was previously not possible without such an instrument.<sup>203</sup>

The fourth and last element of the LDC agreement deals with Cotton. Cotton has long been considered a symbol of the Development dimension of the Doha Round and has been high on the WTO's agenda. Ever since 2003, when a group of West African countries known as the Cotton-4 or C4 which include Benin, Burkina Faso, Chad, and Mali, launched the Cotton initiative.<sup>204</sup> At that time, the C4 countries accused the EU and the US of providing trade-distorting subsidies to their farmers, depressing world prices and affecting poor producers in Africa who are unable to compete with Brussels and Washington treasuries.

The C4 proposed that a Bali agreement should include the immediate elimination of export subsidies in the sector. Although the Bali agreement on Cotton aims at enhanced transparency and monitoring of trade-related aspects of Cotton and envisages for the first time the consideration of non-tariff measures applied to cotton exports from LDCs in markets of interest to them, the LDCs, in particular the C4, need to define their ambitions<sup>205</sup> in the current phase of DDA negotiations.<sup>206</sup>



### 4.3. The influence of the Bali Conference on the Doha Round stalemate

Before the resume of the multilateral talks in Geneva in 2006, then WTO head Lamy cautioned that 'were this Round to fail, DCs would pay the highest price [...] the biggest loser, however, would undoubtedly be the WTO.'<sup>207</sup>

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implications for development and the WTO' (2014) 13-14; Jatkar A & Mukumba C *Unpacking the Bali Package A Snapshot of the Bali Ministerial Decisions of the WTO Members* (2014) 16; Priyadarshi S & Rahman T 'The Bali LDC package: how to take it forward' (2014) 2; Dhar B 'The Road to 9th WTO Ministerial Conference: Issues and Challenges' in Fukunaga Y, Riady J, and Sauvé P (eds) *The Road to Bali: ERIA Perspectives on the WTO Ministerial and Asian Integration* (2013) 144-45.

<sup>203</sup> In substance, this decision seeks to assist LDCs to benefit from new market access opportunities to be made available through commitments taken by WTO Members to accord special treatment to services and services suppliers from LDCs. The decision mandates the Council for Trade in Services to assist LDCs in beneficially utilising the commitments already taken in this regard. Substantively, the Council is mandated to convene a high-level meeting to assist developed countries and self-identified DCs respond to market access requests received from LDCs.

<sup>204</sup> Wilkinson R, Hannah E & Scott J 'The WTO in Bali: what MC9 means for the Doha Development Agenda and why it matters' (2014) 1044; Jatkar A & Mukumba C *Unpacking the Bali Package A Snapshot of the Bali Ministerial Decisions of the WTO Members* (2014) 12; Bellmann C 'The Bali agreement: implications for development and the WTO' (2014) 13-14.

<sup>205</sup> While the four issues in the LDC agreement are significant and the LDCs themselves may have been satisfied with the package on offer, doubts remain over precisely how much positive impact the agreement will have on development.

<sup>206</sup> Bellmann C 'The Bali agreement: implications for development and the WTO' (2014) 13-16; Wilkinson R, Hannah E & Scott J 'The WTO in Bali: what MC9 means for the Doha Development Agenda and why it matters' (2014) 1044.

<sup>207</sup> Lamy P *Negotiations on the Doha Development Agenda: we approach the moment of truth* (2006) quoted in Muzaka V & Bishop ML 'Doha Stalemate: The End of Trade Multilateralism?' (2015) 383.



After years of stalemate, the Agreement reached at Bali injects a new life and vitality not only into the Doha negotiations, but also into the multilateral trading system. Although the Bali Agreement has brought a revitalising perspective into a stalled Round, it does not effectively address the DCs and LDCs interests and as such it has been criticised with reference to its impact within the WTO decision making process by some renowned specialists. The critics fall into two camps. There are those who see the WTO and its agreements as mechanisms dedicated to delivering solely for Western countries at the expense of poor people.<sup>208</sup> Conversely, there are those who are so frustrated by the very slow pace of WTO talks to the extent that they are seeking to make bilateral deals such as the EU-US trade partnership.<sup>209</sup>

The Bali Accord was also criticised by some development activists and eminent trade researchers who believe that it was not going far enough.<sup>210</sup> Bhagwati and Willenbockel referred to the Agreement as ‘Doha lite and decaffeinated’,<sup>211</sup> Bhagwati *at al.* labelled it as an ‘admittedly minor breakthrough’,<sup>212</sup> Hoekman, Karmakar, Jatkar & Mukumba and Wolfe all described it as an ‘early harvest package’<sup>213</sup> and Imboden called it ‘low-hanging fruits’;<sup>214</sup> to highlight the extent to which ambitions had been lowered over twelve frustrating years of negotiating the Doha Round of trade consultations.

Khor affirmed that the Bali Agreement needs to critically address the existing global trading system in order to make it ‘fairer and more effective’. The reason is that DCs have attempted to reform the existing rules while developed countries have been making excessive demands on them in the Round; even though it was dubbed a Development Round, and are also preparing to propose new rules that would make the system more imbalanced.<sup>215</sup>

Likewise, for development activist Tujan, the Bali Accord is essentially a step backwards for the WTO, as it claims to include not only the favoured issues of wealthy countries (like the TF) but also

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<sup>208</sup> Walker A ‘WTO agrees global trade deal worth \$1tn’ (2013) Available at <http://www.bbc.com/news/business-25274889> (Accessed 11 May 2014).

<sup>209</sup> Willenbockel D ‘The WTO Bali Deal: ‘Doha Lite and Decaffeinated’ (2013) Available at <http://www.globalisationanddevelopment.com/2013/12/the-wto-bali-deal-doha-lite-and.html> (Accessed 11 May 2014).

<sup>210</sup> Walker A ‘WTO agrees global trade deal worth \$1tn’ (2013) Available at <http://www.bbc.com/news/business-25274889> (Accessed 11 May 2014).

<sup>211</sup> Willenbockel D ‘The WTO Bali Deal: ‘Doha Lite and Decaffeinated’ (2013) Available at <http://www.globalisationanddevelopment.com/2013/12/the-wto-bali-deal-doha-lite-and.html> (Accessed 11 May 2014).

<sup>212</sup> Bhagwati JN, Krishna P & Panagariya A *The World Trade System: Trends and Challenges* (2014) 16.

<sup>213</sup> Jatkar A & Mukumba C *Unpacking the Bali Package A Snapshot of the Bali Ministerial Decisions of the WTO Members* (2014) 2; Karmakar S *Life after Bali: Renewing the World Trade Negotiating Agenda* (2013) 2; Hoekman B *The Bali Trade Facilitation Agreement and Rulemaking in the WTO: Milestone, Mistake or Mirage?* (2014) 1; Wolfe R ‘First Diagnose, Then Treat: What Ails the Doha Round?’ (2015) 25.

<sup>214</sup> Imboden N ‘Bali, the Doha Round and the Multilateral Legal Framework’ (2013) 1.

<sup>215</sup> Khor M ‘Why WTO talks collapsed’ (2008) Third World Network Available at <http://www.twinside.org.sg/title2/wto.info/twninfo20080805.htm> (Accessed 11 May 2014).

the concerns of LDCs, instead of focussing exclusively on a much more innovative Development focussed Agenda that can rally the support of more DCs.<sup>216</sup> He argues that the DDA, which was deceptively tagged as a Development Round, has pushed for agreements and rules on new issues<sup>217</sup> that many DCs and LDCs were not ready or willing to tackle, at the same times it urged these groups of countries to further open up their markets through elimination of tariffs and subsidies. The accord was supposed to end the Doha stalemate but instead continued to play this quid-pro-quo game of issue linkage.

The straightforward criticism of the deal on the table at the start of the Summit by then Indian trade Minister Sharma reflected that particular sentiment that the Bali Accord does not address the fundamental issues of concern of DCs and LDCs when he asserted:

‘We have a half-baked agricultural package, statements of pious intent for LDCs and several unresolved issues in the TFA [...] None of these texts require the developed countries to make binding commitments for the benefit of DCs. In contrast, DCs and LDCs would be required to undertake significant commitments in TF. If this imbalance in the Bali Accord is not redressed, the world at large would accuse all of us of collectively making hollow promises and keeping the tank empty on Development content.’<sup>218</sup>

Meanwhile, the completion of the Bali Summit has clearly exposed the pitfalls of the decision making system that is utilised in the Doha Round as well as within the WTO, mainly the single undertaking format, given the number of parties that partake in the discussions and the multiplicity of issues involved. As such, Dube submits that it is time to reassess the single undertaking in both the WTO and the Doha Round’s ambitions.<sup>219</sup>

Notwithstanding the censure that the WTO and the Bali Accord came under, the LDC package itself has also been disapproved as well. Among its detractors is South African trade Minister Davies, who pointed out that:

‘While the agreements reached at Bali are important, it is important to ensure balance in the agreements. We are of the view that there is a structural imbalance in which the LDCs secured only best endeavour solutions while there is a binding agreement on TF.’<sup>220</sup>

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<sup>216</sup> Tujan Jr. A ‘Drawing the Lines in Bali: Global South Must Demand No Less Than Development Justice *Common Dreams* 4 December 2013 Available at <http://www.commondreams.org/view/2013/12/04-6> (Accessed 14 March 2014).

<sup>217</sup> Such as investment, competition, government procurement, IPRs and services.

<sup>218</sup> Narlikar A & Priyadarshi S ‘Empowering the poor? The successes and limitations of the Bali package for the LDCs’ (2014) 1056.

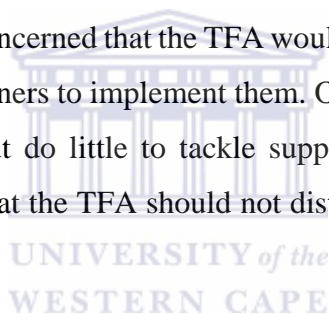
<sup>219</sup> Dube M *Can the Bali Package Resolve the Doha Impasse and Secure the Future of the WTO?* (2014) 1;

<sup>220</sup> Narlikar A & Priyadarshi S ‘Empowering the poor? The successes and limitations of the Bali package for the LDCs’ (2014) 1056.

Similarly, Wilkinson *et al.* and Dube believe that the LDC package contains little of substantive value, as it is largely best-endeavour on the part of preference-granting countries. They claim that in the absence of legally binding commitments, LDCs will have to continue their fight to convince the industrial countries to fulfil their best endeavour promises made almost a decade ago when the Doha Round was launched.<sup>221</sup>

The TF within the Bali Accord is also a source of disapproval, as it prolongs the pattern of asymmetrical powers witnessed in previous Rounds of WTO negotiations. According to Wilkinson *et al.*, the politics that played out both before and during the Bali Summit revealed the emerging countries' frustration with the stark imbalances that are likely to be exacerbated by the TFA and by the Bali Accord as a whole.<sup>222</sup> The benefits of the TFA remains a debatable issue, whether or not it will not ensue to all Members, particularly LDCs. The authors again suggest that although the poorest countries will certainly benefit from all three parts of the package somehow, the gains from TFA will accrue overwhelmingly to high-income economies instead.<sup>223</sup>

In fact, many DCs and LDCs were concerned that the TFA would lock them into costly commitments, with little aid from development partners to implement them. Others feared that the TFA would only contribute to increasing imports, but do little to tackle supply-side constraints affecting exports. Finally, others insisted on the fact that the TFA should not distract the LDCs from their top priority reflected in the LDCs package.<sup>224</sup>



Bellman on the other hand submitted that the TFA is probably the area of the Bali Accord that will generate the largest immediate benefits to poor countries, even though paradoxically most of them were not the main seeking party in this area.<sup>225</sup> He argued that the most significant gains for LDCs in the TFA are likely to arise from a possible boost in intra-regional trade where a considerable growth potential remains untapped.

As far as agriculture is concerned, its impact has also been questioned. Dube concedes that the entire Bali Accord lacks depth, except perhaps the TFA. The agriculture package does not attempt to address the issues preventing a broader agriculture deal in Doha and merely postpones negotiations on food stockholding to the 11th MC.<sup>226</sup> Roy & Doerr suggest that the Accord has failed to address other

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<sup>221</sup> Dube M *Can the Bali Package Resolve the Doha Impasse and Secure the Future of the WTO?* (2014) 3; Wilkinson R, Hannah E & Scott J 'The WTO in Bali: what MC9 means for the Doha Development Agenda and why it matters' (2014) 1045.

<sup>222</sup> Fukahori Y 'The Doha development round of the WTO negotiations: A possible future direction' (2013) 35; Wilkinson R, Hannah E & Scott J 'The WTO in Bali: what MC9 means for the Doha Development Agenda and why it matters' (2014) 1039.

<sup>223</sup> Wilkinson R, Hannah E & Scott J 'The WTO in Bali: what MC9 means for the Doha Development Agenda and why it matters' (2014) 1045.

<sup>224</sup> Bellmann C 'The Bali agreement: implications for development and the WTO' (2014) 7.

<sup>225</sup> Bellmann C 'The Bali agreement: implications for development and the WTO' (2014) 6.

<sup>226</sup> Dube M *Can the Bali Package Resolve the Doha Impasse and Secure the Future of the WTO?* (2014) 3

issues of utmost importance to DCs and LDCs such as promises made during the MC in Hong Kong in 2005 regarding the US' Cotton subsidies and other export subsidies of industrialised countries.<sup>227</sup>

In light of the aforesaid, it is clear that the recent breakthrough at the Bali Conference has been a breath of fresh air aimed at reinvigorating the stalled Doha Round. But what influence will the Bali Accord have on the multilateral trading system? How should the WTO capitalise on the Bali historical achievement in order to successfully conclude the Doha Round? These crucial questions will be elaborated in the forthcoming section.

#### 4.4. Life after Bali: the future of the WTO's multilateral trading system

In 2006, after the multilateral discussions subsequently broke down in Geneva, a number of observers lamented over the impact of the stalled Round on the WTO and the trade multilateralism more generally. Former GATT Director Sutherland claimed that 'the collapse of the talks leaves the global multilateralism in a parlous state' and that abandoning the Round would ultimately leave the WTO damaged.<sup>228</sup> Likewise, the mass media also portrayed the inability to conclude the Round as the 'final nail in the coffin' for the organisation, aiming at the danger that 'the entire multilateral trading system could now unravel'.<sup>229</sup>

In 2012, former WTO head Lamy himself acknowledged that 'multilateralism is struggling in almost all spheres of global co-operation', and the lack of progress in the Doha Round 'demonstrates that the WTO is not immune to the geo-economic and geo-political transformations of our time'.<sup>230</sup>

After a decade of talks in the DDA marked by a slow pace in the negotiations, the Bali Agreement is perceived as a symbol of the spirit of compromise and political will that yielded the first multilateral trade agreement under the WTO. The Accord is credited to provide near-term results and hence is seen as a fresh and invigorating opportunity to reform the multilateral trading system and restore trust in the WTO.<sup>231</sup> Apart from stimulating the WTO system, the agreement would also give a needed

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<sup>227</sup> Roy D & Doerr F 'Free trade or food security – Did India succeed at WTO Bali?' (2013) 125.

<sup>228</sup> Peter Sutherland, quoted in Muzaka V & Bishop ML 'Doha Stalemate: The End of Trade Multilateralism?' (2015) 384.

<sup>229</sup> Beattie A 'WTO Faces an Uncertain Future as its Negotiating System Seizes Up' *Financial Times* 25 July 2006; Edmund Conway E 'Just like England, Doha Talks Fade Before the Final Stretch' *Daily Telegraph* 25 July 2006; Halligan L 'We Should Protest About the Death of Doha' *Sunday Telegraph* 30 July 2006; Crook C 'The End of the WTO?' *The Atlantic* 30 July 2008 Available at: <http://www.theatlantic.com/business/archive/2008/07/the-end-of-the-wto/8617/> (Accessed 10 July 2015); Bradford A 'Future of the WTO: End of Multilateralism?' *University of Chicago Law School Faculty Blog* 24 February 2009 Available at: <http://uchicagolaw.typepad.com/faculty/2009/02/future-of-the-wto-end-of-multilateralism-.html> (Accessed 10 July 2015).

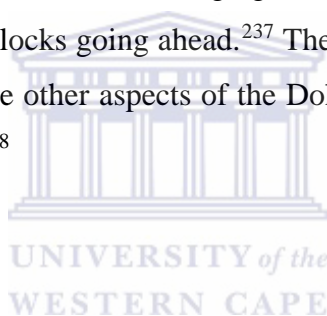
<sup>230</sup> Lamy P, 'Multilateralism is struggling' (2012) quoted in Muzaka V & Bishop ML 'Doha Stalemate: The End of Trade Multilateralism?' (2015) 384.

<sup>231</sup> Jatkar A & Mukumba C *Unpacking the Bali Package A Snapshot of the Bali Ministerial Decisions of the WTO Members* (2014) 9.

boost to the world economy. It is also believed that the acceptance of the Bali Agreement could also help establish a meaningful post-Bali agenda, which may possibly kick-start the other contentious issues of the Doha Round that were not included in the package.<sup>232</sup>

Meanwhile, Members have let the momentum from Bali languish; as they continue with the negotiation of mega-regional agreements to advance trade liberalisation outside of the WTO framework. These included the negotiation of large cross-regional schemes initiated by the US, such as the Trans-Pacific Partnership (TPP)<sup>233</sup> and the Trans-Atlantic Trade and Investment Partnership (TTIP);<sup>234</sup> or plurilateral initiatives such as the Trade in Services Agreement (TISA),<sup>235</sup> which is currently being negotiated by a group of leading countries representing roughly 70 per cent of the world's trade in services.<sup>236</sup>

Despite the gloomy prediction beforehand, the Bali Summit was a genuine success, concluding the most significant multilateral trade agreements since 1995. Yet, the other remaining issues of the DDA such as NAMA, trade in services and the outstanding agriculture topics will probably be the most critical and fundamental stumbling blocks going ahead.<sup>237</sup> The challenge from the start of 2014 and beyond is to find a way to restructure other aspects of the Doha Round into an achievable package for the next MC in Kenya, in 2015.<sup>238</sup>



## 4.5. Conclusion

Stricken by divergences, the DDA remained inconclusive for well over 13 years. Nevertheless, the successful adoption of the Bali Accord is a critical step forward. On the one hand, it has breathed a new life into the Round, retained and reinforced the promise of development as envisioned by the

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<sup>232</sup> Bendini R, O'keefe J & Nieminem H *The 2013 Ministerial Conference in Bali: Last Chance for the WTO* (2013) 14.

<sup>233</sup> The Trans-Pacific Partnership (TPP) is a trade agreement among twelve Pacific Rim countries concerning a variety of matters of economic policy, about which agreement was reached on 5 October 2015 after 7 years of negotiations. These countries are: Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, the US and Vietnam.

<sup>234</sup> The Transatlantic Trade and Investment Partnership (TTIP) is a proposed free trade agreement between the EU and the US, with the aim of promoting multilateral economic growth. The American government considers the TTIP a companion agreement to the TPP.

<sup>235</sup> The Trade in Services Agreement (TISA) is a proposed international trade treaty between 23 Parties and a total of 50 countries (Since the EU represents 28 Member States, hence there are 50 countries represented). The agreement aims at liberalising and privatising the worldwide trade of services such as banking, health care and transport and covers about 70 per cent of the global services economy. These countries are: Australia, Canada, Chile, Colombia, Costa Rica, the EU, Hong Kong, Iceland, Israel, Japan, Liechtenstein, Mauritius, Mexico, New Zealand, Norway, Pakistan, Panama, Peru, South Korea, Switzerland, Taiwan, Turkey and the US.

<sup>236</sup> Bellmann C 'The Bali agreement: implications for development and the WTO' (2014) 3.

<sup>237</sup> Jatkar A & Mukumba C *Unpacking the Bali Package A Snapshot of the Bali Ministerial Decisions of the WTO Members* (2014) 21.

<sup>238</sup> Wolfe R 'First Diagnose, Then Treat: What Ails the Doha Round?' (2015) 23.

DDA, and has bolstered the credibility of the multilateral system. On the other hand, it has also shown that the membership can deliver results for the LDCs.<sup>239</sup>

While a compromise deal was reached in the Bali MC, concluding the Round successfully remains a demanding task as serious discrepancies exist between the developed and DCs on contentious issues such as market access and agricultural subsidies.<sup>240</sup> The onus is on all the Members to ensure that the DDA closes successfully.

All in all, the successful ratification of the Bali Accord in 2013 and the Protocol of Amendment to insert the TFA into the WTO Agreement in 2014 is a valuable evidence that the DDA has moved past its unflattering stalemate stage. Therefore, it does not seem accurate anymore to use expressions such as ‘deadlock’, ‘impasse’, ‘stalemate’ ‘standstill’ and so forth to qualify the Doha Round, as they do not truly reflect the *status quo* brought about by the unwavering political will that culminated with the first Agreement since the inception of the WTO in 1995.



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<sup>239</sup> Narlikar A & Priyadarshi S 'Empowering the poor? The successes and limitations of the Bali package for the LDCs' (2014) 1062.

<sup>240</sup> Muzaka V & Bishop ML 'Doha Stalemate: The End of Trade Multilateralism?' (2015) 390.



## CHAPTER 5: CONCLUDING REMARKS AND RECOMMENDATION

This final chapter, will present the conclusions and address some recommendations on how to make the decision making within the WTO more effective.

### 5.1. Concluding Remarks

To conclude, this Research Paper endeavoured to evaluate whether the Bali Summit has successfully impacted on the Doha stalemate and the decision making pitfalls.

The WTO governance has been relatively more successful in building a better decision making system and thus has been praised as compared to its Bretton Woods counterparts. As demonstrated in chapter two, section 2.3.1, consensus remains the most essential rule in the decision making process of the WTO. Nevertheless, its practical implications together with those associated with the single undertaking have also brought a number of obstacles that ultimately caused the current Round of negotiations to stall for many years.

It was argued in chapter three, section 3.2.1 that while agreements within the WTO are based on consensus, attaining this is quite problematic as the negotiating mechanism within the WTO entails that each and every Member, irrespective of its political and socioeconomic influence must vote on a wide range of matters, and to make it more complex, each has the right of veto, which could at some point impede trade negotiations.

Also evidenced in section 2.3.1, the slow pace in the Doha negotiations is likewise due to an altered geopolitical environment, caused by the rise of emerging economies in the field of world trade and complicated by the division between developed and emerging economies on the balance of concessions, all these have made consensus difficult to achieve. While a compromise deal was reached in the Bali MC, successfully concluding the DDA is a challenging task as the fundamental differences that exist between these two groups could further delay talks.

As mentioned in section 3.2.3, although the single undertaking constitutes a protection against partial opt-outs in negotiated agreements, its practical implications that require all Members whether large or small, to undertake commitments and accept the whole and indivisible package are among the reasons of the Round's previous impasse, as some LDCs face tremendous difficulties to put agreements into operation without everyone agreeing to move at the speed of the slowest Member, or without long and complicated negotiations between all Members, which would at some point impede negotiations.

As described in sections 3.2.2, 3.2.3 and 3.2.5, the DDA's main shortcomings are the fact that it was designed with a wide and distinct agenda spanning nine negotiation areas. Combined with the single undertaking, which bundles all the issues under negotiation into a single indivisible package, together with the large size of the WTO membership, each with its various trade interests, all these make the decision making considerably complex and reaching agreements becomes challenging.

As also explained in 3.2.4, the analysis of the Green Room processes within the WTO showed that in spite of the formally fair provisions, the informal procedures of decision making are problematic and breach the principle of transparency and equal participation of Member States.

As evidenced in chapter four, the successful outcome in Bali has reignited interest in the Doha talks and has injected an invigorating perspective for both the WTO and the multilateral system. The Bali Accord symbolises a beacon of hope for LDCs who have witnessed a historic achievement as their issues of interest have been taken into account in multilateral discussions, albeit not effectively. The positive conclusion of the Bali Summit that culminated with the ratification of the Bali Accord in 2013 and the Protocol of Amendment of the TFA in 2014 show that the DDA has moved past its stalemate phase and deserves not to be qualified with such pejorative terms.

The WTO is facing numerous challenges in order to achieve the daunting task of liberalising trade. The successful conclusion of the DDA is undoubtedly a great step in this direction. However, it is not yet clear where the Doha discussions are headed on post-Bali. The operation of the Bali package could keep the momentum going on the Doha Round, provided that there is sufficient political will, leadership and creativity. Hence, it will be in the best interest of all the countries and the global economy to look beyond their differences and generate enough resolution to resolve the most contentious issues that would take the Round towards a successful completion.

In order to make the decision making processes more flexible and effective, some recommendations will be presented in the ensuing section.

## **5.2. Recommendations**

In order for the decision making within the WTO more effective, consensus should be active, whereby Members have to state explicitly that they are in agreement, as opposed to silence, which could mean consent.

For transparency purposes within the WTO, there should be no place for informal meetings such as the Green Room. In other words, only decisions taken in formal meetings with the entire membership should be considered as legitimate. However, if the WTO does not want to do away with informal meetings, it should establish an informal steering committee (a consultative board) or a fully constituency based deliberative body where each constituency elects a representative that can be delegated responsibility in order to expedite consensus on trade issues among Member Countries.

It is recommended that transcripts should be the preferred form of record keeping of meetings, which will ensure accuracy and transparency. There should also be a rationalisation of the WTO agenda. No more issues should be introduced whilst LDCs continue to participate in a disadvantaged position in terms of coming to terms with the issues and the resources to examine their implications.

Additionally, Members should consider having a system of tiered voting. The use of the critical mass concept is seen as crucial in reforming the consensus and single undertaking principles and existing provisions in the WTO Agreement can be adapted for use in such concept. There should also be a parliamentary assembly to allow for a more democratic participation in WTO decision making.

The WTO scored a notable victory at Bali. Members were able to renew the relevance of the multilateral trading system. Having reached an agreement on the 'low-hanging fruits', countries will now have to turn their attention into the more problematic issues that had previously been avoided. How Members choose to tackle and whether they will be able to arrive at a convergence on the remaining issues will determine whether the WTO negotiations agenda will be able to achieve another breakthrough in the future.

It would therefore be useful for the membership to reflect on this lesson and set a pragmatic post-Bali agenda to build on the first success of the WTO in its 20-year history. One way to take negotiations forward post-Bali is for Members to attempt pursuing the negotiations of the remainder of the DDA as a set of mini-packages, similar to what was agreed in Bali. In such a scenario, small positive gains for development are possible, provided there is enough political will and leadership.

**Final word count: 18 411**

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