

## Towards a Multilateral Consensus on Trade and Investment: Bali and Beyond

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Balanced and fair trade and investment rules are a pre-requisite to a balanced world economy characterised by substantially reduced poverty, job creation, and access to essential services. However, development of such rules requires inputs from, participation of, and ownership by all relevant stakeholders. These include governments, international organisations (e.g. the WTO and UNCTAD), CSOs including those representing the grassroots, private sector including SMEs, and parliamentarians. Often these stakeholders work in their respective silos – a situation that must be reversed by encouraging and organising multi-stakeholder discussions. This is urgent as the preparations for the 9<sup>th</sup> WTO Ministerial Conference to be held in Bali, Indonesia in December 2013 pick gears which will be an important occasion to shape a Multilateral Consensus for balanced and fair multilateralism.

Within the above context, CUTS International Geneva organised a breakout session during the UNCTAD Public Symposium 2013. The objective was to bring together relevant stakeholders to discuss a Multilateral Consensus on Trade and Investment that will lead to a balanced world economy in the long term while guiding preparations for Bali Ministerial in the immediate term.

Rashid S. Kaukab (Director of CUTS International Geneva) welcomed the panelists and participants, starting by drawing a context of the multilateral system in crisis, but adding that the 21<sup>st</sup> century issues that are closely interlinked need to make a harmonious progress into a multilateral consensus. The quest of the session for the panelists was to find out what can be the features of a multilateral consensus on trade and investment? How to bring all the stakeholders together? And, what should Bali deliver for a balanced global economy?

H.E. Ms. Paivi Kairamo, Ambassador and Permanent Representative of Finland to the UN, WTO and Other International Organisations in Geneva in her opening statement as the first panellist acknowledged that the Multilateral Trading System (MTS) is in crisis and distrusted in such way that the only consensus in Geneva is that there is no consensus on numerous issues. The forthcoming Bali Ninth Ministerial Conference (MC9) of the WTO is our gateway to move on and the failure of this conference will make it harder to revive the DDA. According to the Ambassador, there are new and old issues to be tackled multilaterally, such as restoring trust, development, Aid for Trade, Agriculture, LDC issues, that should be included in the Bali package. But with respect to other issues, investment and FDI regulation are pressing ones, because they are considered parts of engine of economies. She suggested two ways to improve the international framework for investment: (1) practical improvement of the system by collecting good practices; and (2) a comprehensive multilateral investment treaty. A multilateral consensus is too important for MC9 to be neglected. “There is still a strong incentive to continue on the Doha Development Agenda (DDA),” Ms. Kairamo said.

Mr. Lucas Saronga, the Acting Ambassador and Permanent Representative of Tanzania to the UN, WTO and Other International Organisations in Geneva, the second panelist, questioned what would be a

decent outcome in Bali, acknowledged the dire state of the multilateral system and considered investment as the engine of development. However, investment issues in their current form within the bilateral investment treaties (BITs) and FTAs are problematic, imbalanced, and not working for sustainable development. Investment need to be thought multilaterally, however investment is not a trade issue and so discussing it in the WTO is seen as disrupting to the trading system. Investment treaty represents two challenging issues: (1) the definition of investment, which is currently too broad to be understood clearly by all; and (2) Special & Differentiated treatment for LDCs should be addressed. Finally, to answer the initial question, Mr. Saronga said that the MC9 should have deliverables with the full participation of members and the respect of inclusiveness and transparency. If early harvest takes place, it should at least include LDC issues.

Mr. Shishir Priyadarshi, Director of the WTO Development Division, in his comprehensive and balanced intervention as a panelist, regretted the absence of any outcome from MC8 in 2011 and the failure of the LDC package despite a consensus on the main features of this package. At the moment, there are talks for an LDC package at Bali and no explicit attempt have been made so far to add side features to it. Issues that LDCs have put on the table for the Bali Ministerial are: (1) market access (DFQF) implementation, (2) rules of origin, (3) preferential access for LDC service providers, and (4) cotton (development and trade aspects). Trade facilitation is a simple agreement which could provide some win for everyone. What is on the table for Bali is significant from the point of view that nothing has been concluded for quite some time, but even if everything that is on the table is harvested, we should not think that this means the DDA will be concluded faster.

Context of trade is inside the boundaries and limitations of our planetary/environmental system, said the next panelist, Ms. Anja Von Moltke, Acting head, Trade, Policy and Planning Unit, Economics and Trade Branch, Division of Technology, Industry and Economics, United Nations Environment Programme (UNEP). From the perspective of the environment, investment system has several core and crucial implications, i.e. food security, energy security, biodiversity, climate change etc. Growth cannot address these climate related changes unless environment is economically taken into account. Ms. Von Moltke conveyed four key messages. Firstly, the need to shift the paradigm from growth at all costs to adapting our economic structures to the realities of scarce resources within which we live, and to take it into consideration for any investment and trade discussion. Secondly, in terms of investments, we can jump into green growth and employment if we only invest 2% of our GDPs into green economy and outperform "brown economies". The third message is that the resources to invest already exist, particularly from the public sector side which subsidises fossil fuel, fishery, and agriculture production that adversely affects the environment. Ms. Von Moltke, conscious of the dire economic situation calls not for more investments, but for better investments. The fourth and last message consists on promoting market access of developing countries to environmentally sustainable products and supply chains, where markets of low carbon energy is projected to triple from now to 2020, representing a huge opportunity to switch the paradigm. As a concluding remark, trade and investment issues do not have to be seen in a conflictual context, and there are many ways where they can be mutually supportive.

Addressing the international investment framework, Ms. Nathalie Bernasconi-Osterwalder, Head, Investment Programme, International Institute on Sustainable Development (IISD) and the last panellist answered many of the issues that had been raised by previous speakers. She stated that the aggregate of the thousands of bilateral and regional trade agreements including investment is a spaghetti bowl difficult to digest, which pleases only the lawyers. She therefore calls for more multilateralism in order to find a better balance among **investment protection** (inherited from early post-colonial times), **liberalization** and **dispute settlement provisions** (maybe most important issue which is also the most problematic for it has to deal with many public policy issues) encompassed in investment agreements.

UNCTAD and IISD agree on the main 4 challenges of the current investment framework: (1) lack of sustainable (and balanced) development; (2) regulatory space problems for the host state and the broad definition of investment which create problems in legal terms; (3) serious deficiencies of investor-state dispute settlements which is very *ad hoc* (no appellate body etc.); and (4) increasing complexity of the investment system, with the multiplicity of treaties and MFN principle not really integrated. These issues should be dealt with at the multilateral level, not through a multilateral treaty but rather by establishing multilateral principles to bring coherence and transparency. Other ideas include an appellate process, or even an international investment court.

The main points emerging from the presentations and the brief discussion included the following:

- The Bali Ministerial presents an opportunity to build confidence in the multilateral trading system. However there is a need to be cautious by not overloading the agenda in order to ensure positive outcomes. The aim should be decent, concrete and realistic outcomes.
- There is general consensus that current investment regimes in the form of BITs and FTA chapters on investment etc. are not ideal especially for developing countries. Given that more than half such arrangements will soon expire, this is a good time to re-think the investment agreement model and ensure that equity and sustainability aspects are emphasized.
- Investment reforms and solutions should be phased, that is first developing general principles encompassing good practices, without necessarily leading to a multilateral treaty.
- The environmental and trade agendas can and should move towards convergence for inclusive development, e.g. through meaningful reform of subsidies for agriculture, fisheries and fossil fuels that will level the trade playing field as well as free up resources for investment towards green economy.
- A step-by-step approach will be more appropriate for multilateral consensus building on trade and investment.