

ICC World Trade Agenda: Business Priorities to Move Beyond Doha

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ICC World Trade Agenda: Business Priorities to Move Beyond Doha The Trade Facilitation Agenda

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- This panel focuses on business priorities to move the trade agenda beyond Doha. More specifically, this presentation will be focusing on the multilateral trade facilitation agenda for two reasons. First, its conclusion would be a significant achievement of the Doha negotiations. And second, as a corollary to the first, it is a critical piece of the trade architecture that takes the global trading community beyond Doha and firmly into the 21st century.
- The International Chamber of Commerce (ICC) believes in the primacy of the multilateral trading system through the WTO. For these reasons, the ICC has identified the conclusion of a high quality and ambitious trade facilitation agreement coming out of the Bali Ministerial as a top priority. Ministers are urged to achieve this result.
- However, in looking at the current draft text and the work that still needs to be done to achieve this objective, it will not be without its challenges given the time remaining before Bali.
- This presentation will touch upon the following issues:
 - I. Why trade facilitation is very important to the business community.
 - II. What the parties have agreed to under the current draft trade facilitation agreement (and what yet remains unresolved).
 - III. Should we be talking about a “Plan B” if there is no agreement at Bali?

I. Why Trade Facilitation Is Very Important to the Business Community

- Two words answer this question: supply chains. In 2013, almost all companies, including small sized ones, have a web of suppliers who provide inputs and to whom they provide inputs, with goods crossing multiple jurisdictions, encountering multiple customs processes and multiple fees and formalities. Costly, unclear and slow customs processes are a trade barrier par excellence.
- In fact, it is relatively well documented and researched that trade facilitation measures reduce supply chain costs. This has spin off effects of increasing trade flows, increasing GDP and increasing employment for both developing and developed WTO Members.
- Estimates are that significant improvement in trade facilitation would result in approximately \$1 trillion in world export gains, about 60% of which would accrue to developing countries, similar GDP increases of close to \$1 trillion, and net increases in global job gains of 21 million, with developing countries gaining over 18 million of these jobs. The OECD estimates such improvement in trade facilitation would reduce trade costs for the lowest income countries of almost 15%. In other words, the current state of trade facilitation may be considered, in effect, a 15% tax on the poorest of the poor.
- The gains from trade facilitation measures are not just to big business. Small- and medium-sized enterprises (SME's) suffer more from higher trade administration costs than larger enterprises. And since SME's make up the vast majority of the business sector in developing countries, trade facilitation gains can provide significant benefit to SMEs, especially in these developing countries.
- Recognizing these gains, the goal of a trade facilitation agreement, launched by the Post Cancun General Council decision of 2004, is to simplify customs procedures, increase their efficiency and reduce their costs. This is all to be done taking fully into account the needs of developing and least developed countries. A corollary of the agreement is to create a multi-lateral system of transparent custom regulation grounded in due process. It is an ambitious, but highly valuable agenda.
- In this regard, what is in the trade facilitation agreement and what is its state of progress? This is important as it gives an idea of the challenges that lie ahead to complete the agreement at Bali.

II. What the Parties have Agreed to Under the Current Draft Trade Facilitation Agreement (and what yet remains unresolved)

- Rules relating to trade facilitation are not a radical idea, nor are they novel. Since 1947, the GATT has dealt with this issue in Article V, on freedom of transit, Article VIII, on customs fees and formalities, and Article X regarding the disclosure of requirements and regulations affecting importers. However, all these Articles are framed in broad, general language. None deal with preclearance. None deal with whether or how to make electronic payments. None deal with post clearance audits. After roughly 65 years, the rules are in need of updating.
- The draft agreement responds to this challenge through three pillars: (i) rules that address how to increase efficiency of trade and reduce the costs of that trade; (ii) rules that set out on customs cooperation and other institutional arrangements; (iii) and rules on how developing and least developing countries can take on the obligations in the agreement (“implementation modalities”).
- Regarding the first pillar, the draft text would contain rules relating to the publication of customs procedures; rules on appeals and penalties; the establishment of enquiry points to answer reasonable enquiries; rules on the making available of advance rulings prior to importation; rules that impose limitations on the customs documentation required; rules on fees including the acceptance electronic payment to pay customs duties; and rules on the release and clearance of goods.
- A recent OECD study based on trade facilitation indicators in the draft text concludes that globally a 10% percent reduction in trade costs is possible should all the trade facilitation measures contained in the agreement be implemented, with streamlining of customs formalities and advanced rulings having the largest impact in reducing these costs.
- This is a serious and significant body of economically beneficial rules that have a great deal of consensus (although not complete, for example, rules dealing with in transit goods are still being negotiated).
- Regarding the second pillar, the draft text generally calls for international cooperation of border and customs authorities. However, there is little consensus on rules on customs cooperation where an authority has reason to doubt the accuracy of an importer’s custom declaration and seeks verification from authorities in the exporter’s home country. Nor is there consensus on the application of the Dispute Settlement Body to the agreement: should it apply, how and when are still being negotiated.
- This is a concern. Such dispute settlement rules can provide business with the comfort of knowing that there is a clear framework they can ask their governments to use to resolve customs problems that business on its own cannot resolve.
- Finally, the current draft trade facilitation agreement aims to give significant flexibility to developing and least developed countries to implement the agreement. This is contained in a separate section of the agreement devoted exclusively to this issue. If agreed, it would provide three staged timelines for the implementation of commitments with developing and least developed countries having the option to choose the appropriate staging for a commitment.
- Nonetheless, this remains a heavily bracketed part of the agreement. There is little consensus on the rules for how to bring developing and least developed countries into the agreement, in particular, regarding (i) the staging rules; and (ii) rules on financial assistance and capacity building to implement commitments.

III. What about a Plan B

- The Bali Ministerial is being mentioned as an opportunity to announce an “early harvest” on certain components of the Doha Round. In this regard, WTO Ministers are strongly urged to embrace this early harvest and conclude the trade facilitation agreement.
- Indeed the Director General of the WTO has identified the trade facilitation agreement as a priority for conclusion at Bali.
- Failure to reach agreement could leave the WTO open to the complaint that it cannot deliver on even those benefits that are clear and immediate for both developing and developed countries. This would be unfortunate.
- However, timing presents a serious challenge. There is much to agree on by Bali, especially regarding the modalities for developing and least developed countries.
- If despite best efforts, there is no consensus on the current trade facilitation agreement by Bali, is there a Plan B to build on the gains for improved trade facilitation that have been negotiated to date?
- A Plan B may be premised on the following questions: Can the agreement be multilateralized in stages? And, what could this staged multilateralization look like?
 - The agreement has two core parts to it: substantive rules and implementation modalities for developing and least developed countries. This is a cumbersome architecture. The agreement links two separate but related negotiating tracks and requires any agreement on substance to be linked to agreement on implementation modalities before the rules may come into force. It has, in effect, a single undertaking architecture.
 - Since there is substantial agreement on the rules but significantly less on implementation modalities, can the “single undertaking aspect of the agreement” be removed?
 - In theory, it can be removed. In theory, there is nothing that would prevent the adoption of some variation on the following approach: (i) complete the negotiation of the remaining substantive issues that would enter immediately into force for developed and large economy developing country signatories to the agreement; (ii) accord MFN benefits to other developed and least developed countries that are not yet signatories to the agreement but conditional on an agreed period of time to enable rules to be negotiated for these countries to take on the agreement’s commitments. This would include the negotiation of modalities to provide capacity building assistance.
 - In other words, the agreement can be organized as a staged multilateral agreement, with a successive number of participants being added according to the negotiated modalities.

IV. Three Concluding Thoughts

1. There are clear benefits to the conclusion of the trade facilitation agreement. It would put in place a multilateral framework to lower supply chain transactional costs.
2. As a consequence, there would be serious disappointment if the Bali Ministerial didn't result in a conclusion to the trade facilitation agreement. Nonetheless, if it appears that consensus cannot be reached in time for the Ministerial, serious consideration ought to be given to a Plan B. One such suggestion has been made in this presentation.
3. Trade facilitation is so important that if the Bali Ministerial only resulted in a trade facilitation agreement, it would be viewed as a meaningful validation of the multilateral approach to trade negotiation that we so strongly support.