



Big Corporations, the Bali Package and Beyond

Deepening TNCs gains from the WTO

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November 2014

Executive Summary

This report, a sequel to the “Tailored for Sharks” published in 2013, delves deeper into the role the World Trade Organization (WTO) and its legal system play in the corporate architecture that benefits and protects interests of Transnational Corporations (TNCs); details concrete examples of TNCs behind trade disputes; and presents the post-Bali corporate roadmap.

The “historic” first agreement of the WTO at the December 2013 Bali Ministerial, after years of stalemate in multilateral trade negotiations, is a prime example of how WTO trade rules favor TNCs. The Bali Package has several elements but the centerpiece is the legally binding agreement: the Agreement on Trade Facilitation. The deal on agriculture is a weak and watered down peace clause – a temporary measure – that grants a short-term reprieve for developing country governments to provide support to their poor farmers and constituents without getting sued under the WTO Dispute Settlement Mechanism (DSM). The entire section on special and differential treatment and concerns of Least Developed Countries (LDCs) are all declarations and promises for future action. The Agreement on Trade Facilitation, however, in stark contrast, is legally binding and once it hurdles the current stalemate in Geneva will be legally adopted, ratified and included as an Annex into the “Marrakesh Agreement Establishing the WTO,” and thus will be legally enforced and guaranteed by the all-powerful WTO DSM. It is unclear how long India and other developing countries will hold their stand to not sign off on the adoption of the Trade Facilitation Agreement in exchange for the speeding up of the process for a permanent solution in Agriculture.



The clear winners of the Bali Package are transnational corporations (TNCs). TNCs, who control the global supply chains across the world, will gain the most from an Agreement that slashes costs and relaxes customs procedures, easing the flow of imports and exports. The 2010 UNCTAD report details that, “by 2009, it was estimated that there were 82,000 multinationals in operation, controlling more than 810,000 subsidiaries worldwide. Upwards of two-thirds of world trade now takes place within multinational companies or their suppliers – underlining the growing importance of global supply chains.”¹ The world’s largest business organization, the International Chamber of Commerce (ICC), with past and present leaders from corporate financial giants such as Rothschild Europe, McGraw Hill Financial and others, was first to congratulate WTO Director General Azevedo and the WTO Members on the deal, Chairman Harold McGraw stated after the Bali Ministerial, “Our efforts to push governments to show the political will needed to conclude a deal here have paid off.”² Their commissioned study touts 1 trillion US dollars in gains for the world GDP, a calculation that other economists have questioned. Questions have also been raised on the quality of work that developing countries gain from being employed in the low-value capture ends of these global value chains (GVCs).³

This report concludes that the Bali deal is testament to the tenacity of TNCs to push their corporate agenda. The Trade Facilitation Agreement was soundly rejected in 2003. Yet today it is the first ever agreement of the WTO since its establishment in 1995. The 18-year negotiating stalemate of the WTO had done nothing to dampen the determination of TNCs to get this deal. While many had written the WTO off or lost interest because of its numerous collapses and stalemates, TNCs had never lost confidence in the WTO and particularly, the WTO legal system. For while the WTO negotiating branch was trapped in a quagmire, the adjudication branch was fully functional. The WTO DSM, for the past 18 years, and continuing today, enforces WTO trade rules, compelling sovereign states to withdraw public policies that run counter to WTO agreements.

This report analyses the WTO DSM in depth, the “crown jewel” of the WTO, and concludes that, while technically, disputes under the WTO DSM are between Member governments, the reality is that almost no government goes into the DSM without the pressure of their corporations. World trade is in reality between corporations, in fact, as the 2013 World Trade Report points out this trade is concentrated in the hands of a few corporations only. “The findings suggest that current trade is mainly driven by a few big trading firms across countries.”⁴ It is thus obvious that trade disputes filed under the world’s only multilateral trading organization are invariably filed at the impetus of their corporations.

Furthermore, this report provides several dispute cases as examples, focusing in particular on the cases around renewable energy. It details the TNCs involved in both sides of the disputes, filed on their behalf by their governments. It also reviews cases involving India, China, the US, Canada, Japan, and the EU, noting the corporations involved and the profits at stake. The first ever ruling of the WTO DSM on a case around renewable energy provides a negative precedent of favoring trade rules over efforts to fight climate change. The WTO DSM though with its confidential panel deliberations is not the only problem, the rules per se of the WTO are *biased* towards TNCs interests. The “non-discriminatory” rules of *National Treatment* and *Most Favored Nation* are just some of the examples of how trade rules claim to level the playing field and yet end up providing an “equal” competition between highly unequal players.

TNCs however are not fully satisfied with the current workings of the WTO DSM. This report details the soft and hard corporate agenda for change to the DSM. As the study commissioned by the ICC details, there are “two overriding problems facing the dispute settlement system: time and money. Both problems result from the fact that the system was designed by governments largely to protect themselves from litigation, rather than to rigorously enforce the rulebook.”⁵ Their vision is of a DSM that provides direct compensation for litigation costs incurred by the corporations involved in WTO disputes, awards damages to the injured corporation, and monetary compensations for excessive delays.

This report also raises the alarm bells related to the coming post-Bali corporate roadmap. TNCs have already made clear in their World Trade Agenda that they are looking to enter new areas for profit expansion. Hence the determined impetus to conclude the Bali deal at a time when world trade was slowing to a crawl of only 2.5 percent. There is still a brave new world for big business to conquer through the WTO. That agenda includes: (1) an international trade agreement on services – wider and more expansive than the current General Agreement on Trade in Services (GATS), (2) a multilateral framework agreement on investment, (3) an agreement on environmental goods and services and (4) bringing the “gains” made by TNCs in Regional Trade Agreements under the multilateral framework of the WTO. Advances in the Trans-Pacific Partnership Agreement and the Transatlantic Trade and Investment Partnership are also encouraged and welcomed by the ICC, but notes that these developments should reinforce further trade liberalization under a multilateral framework.

This is a dangerous moment for all social movements and people who are struggling for economic justice. The tremendous political momentum gained by the conclusion of the Bali Package at the 2013 Bali Ministerial and the confidence earned by WTO Director General Azevedo from Member governments, could combine to open the door not only to further negotiations around the Doha Development Round but also to entirely new areas.

The challenge is great and urgent.

Published in 2014 by Transnational Institute (TNI) and Serikat Petani Indonesia (SPI)



Serikat Petani Indonesia (Indonesian Peasants Union), is a national movement organization for landless people, peasants, small farmers, farm workers, plantation workers, and peasants-based indigenous community. At the national level, SPI exists in 14 provinces and 33 districts with thousands of individual members at the village level. At the international level, SPI is a member of La Via Campesina – International Peasants Movement, whose International Operational Secretariat was based in SPI - Indonesia from 2004 to 2013. It is also one of the founding members of Gerak Lawan and one of the founding convenors of the Social Movements for an Alternative Asia.

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