TRADEWINS

BRINGING BALI HOME: A U.S. PERSPECTIVE

-- SPEAKING NOTES --

Presentation in NGO Center
9th WTO Ministerial Conference

Program organized by:

Global Business Dialogue
and
ABA Section of International Law

Bali, Indonesia

John R. Magnus
TRADEWINS LLC
December 4, 2013

TRADE**WINS** LLC
2740 34th Place, NW
Washington, DC 20007
(202) 744-0368
www.tradewinsllc.net

December 4, 2013

BRINGING BALI HOME: A U.S. PERSPECTIVE

-- SPEAKING NOTES --

Good morning and thank you all for attending.

Preparations for today's discussion were complicated by uncertainty about whether there will be any package of commitments adopted here at MC9 …

… and then further complicated by uncertainty about which, if any, new commitments in such a package might require legislative implementation in the United States.

But the topic is a useful one. The U.S. implementation scenario is unusual and has so far received little attention.

I'll start with what's normal for U.S. implementation of trade agreements, and then turn to what is distinctive here. And then will be glad to have the discussion steered by your comments and questions, which I suspect may (understandably!) delve into the broader topic of the U.S. Congress' troubled posture on trade.

I. Normal U.S. Approach to Implementation

Single implementing bill for any changes needed at statutory level

- May amend various elements of "permanent" US law
- Certified by Exec. and Cong. officials to contain all necessary changes
- Enacted during window between signature and entry-into-force
- May contain "pay-fors" and other "appropriate" add-ons
- Streamlined congressional procedures via TPA
- Exception – separate, non-TPA legislation for certain kinds of commitments, e.g. on ag subsidies and (supposedly) on "Mode 4" services access

International obligations remain outside US legal system.

- Up-front, "one fell swoop" approach to implementation
- Govt agencies are bound to follow amended US law
- Govt's adherence to int'l obligations is self-policed (no courts)

Tariff modifications not directly legislated; effectuated afterwards by Proclamation

Needed updates to published regulations etc. follow statutory changes

TRADE**WINS** LLC
2740 34th Place, NW
Washington, DC 20007
(202) 744-0368
www.tradewinsllc.net

II. Unusual Scenario for Implementing Possible Bali Results

No TPA in place. None likely soon, unless you expect big trade votes during 2014 (I do not). Discussion of TPA renewal is in any event FTA-focused, not WTO-focused.

Bali content maps to various components of the US trade regime:

- Ag subsidy commitments would connect to Farm Bill.
- Ag Peace Clause sought by India has implications for Trade Act of 1974.
- Trade Facilitation connects to, among others, Customs Reauthorization.
- Development items map to GSP (for DFQF), maybe also elsewhere.
- Tariff commitments – need proclamation authority, which for certain product categories is already in place.

We might not, technically, "need" an implementing bill given Bali's narrow content. But that does not ensure there will be no legislative action.

- Sometimes we legislate even when not strictly necessary (e.g., to "implement" OECD anti-corruption agreement).
- Plus we have some adverse WTO decisions stockpiled, whose legislative fixes are seemingly awaiting a WTO-related bill.

But there are reasons why the USG might not want a Bali implementing bill.

- Trade legislation overall is hamstrung -- inability to deal even with mundane items like continuity of GSP and MTB measures.
- A pre-election trade legislative package during 2014 would be tough politically.

This conundrum may indeed have shaped the USG's position on what it could agree to, in a Bali package. Imagine a package so lightweight that not one syllable of any U.S. statute has to be changed in response to it!

Bottom line: to an unusual extent, the conversation about implementation is a speculative one.

III. Stuck With the Bare Minimum?

A related question is what the U.S. Congress might do – and what the business community could ask it to do – above and beyond what is strictly necessary, for example in connection with a Bali package's "best efforts" provisions.

If an agreement is somehow salvaged this week, it will represent a welcome step away from destructive grandstanding, mercantilist squabbling, and North-South acrimony. In short, something of a big deal, even though it's a small deal. A U.S.

TRADE**WINS** LLC
2740 34th Place, NW
Washington, DC 20007
(202) 744-0368
www.tradewinsllc.net

approach in the ensuing months that focuses narrowly on what we are "obligated" to do, by way of implementation, would amount to a missed opportunity.

This point ties into a broader one regarding autonomous versus negotiated trade reform. We all need reminding occasionally, and perhaps especially at moments like the present one, that exchanging commitments in multilateral negotiations is not an end in itself but merely a tactic in the service of something more important – that being, of course, liberalizing changes in the actual, applied trade policies of WTO Members.

It would be good to see governments taking forward some of the most beneficial reforms identified during a dozen years of DDA negotiations, notwithstanding that they have not, technically, "promised" to do so. This general argument for autonomous reform in capitals, infused by the spirit of the DDA, will be doubly strong in respect of any "best efforts" commitments set out in Declarations and Decisions issued by the MC here in Bali.

Persuading the U.S. Congress to extend itself in this way would be difficult … but then, every aspect of the Congressional dialogue on trade is difficult at the moment. And it's never too late for statesmen/stateswomen to emerge. The business community should keep trying to find and cultivate them.

TRADE**WINS** LLC
2740 34th Place, NW
Washington, DC 20007
(202) 744-0368
www.tradewinsllc.net