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**The WTO In 2003: Structural Shifts,  
State-Of-Play And Prospects  
For The Doha Round**

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## ABSTRACT

Much has changed in the transition from the GATT to the WTO. Three worrying trends stand out: 1) standards harmonisation and regulatory overload; 2) excessive legalisation; 3) excessive politicisation. The WTO needs to arrest these trends and revive the diplomatic and negotiating mechanism that worked well in the GATT. The focus of efforts must be the Doha Round.

The new round has a large, messy agenda. The *market access* negotiations (on agriculture, services and industrial goods) have been held up due to the EU's unwillingness to undertake serious agricultural liberalisation. The *rules* negotiations (on anti-dumping procedures, countervailing measures, subsidies, regional trade agreements and dispute settlement) may well suffer from neglect. Negotiations on *developing country issues* (implementation, Special and Differential Treatment, and trade-related intellectual property rights), have missed key deadlines. Work programmes and negotiations on *new issues* (the four Singapore issues – investment, competition, trade facilitation and transparency in government procurement – and trade-and-environment) have hardly moved at all.

Initially, it is imperative to prevent a Seattle-style breakdown at the next WTO Ministerial Conference in Cancun. Even if it is kept on track, the round will be a long haul, lasting well beyond its (hopelessly optimistic) end-2004 deadline. At stake is the future of the WTO system. What might it look like?

*Scenario One* would rediscover the *raison d'être* of the GATT – the progressive liberalisation of trade – but with broader sectoral coverage and more focus on transparency in domestic regulation. *Scenario Two* is an EU-style future for the WTO, with an implicit standards harmonisation agenda and regulatory overload. *Scenario Three* is a UN-style future for the WTO, which would become another bureaucratic development agency-cum-talking shop.

Alas, the political constituency for Scenario One is too narrow. The silver lining is that the US, for the first time since the Uruguay Round, has begun to exercise active, robust leadership in the WTO, in contrast to the EU's defensiveness. A Bush administration leading from the front, notwithstanding protectionist blemishes at home, must forge issue-based and across-the-board alliances with market access-oriented WTO members, especially within the developing world. Only then will the WTO head in the right direction.

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## **THE WTO IN 2003: STRUCTURAL SHIFTS, STATE-OF-PLAY AND PROSPECTS FOR THE DOHA ROUND**

Where does the World Trade Organisation stand, one year into the Doha Round of multilateral trade negotiations? The WTO manifestly goes wider and deeper than its predecessor, the General Agreement on Tariffs and Trade; and the Doha Round, launched at the Fourth Ministerial Conference in Qatar in November 2001, proposes to take the WTO into new territory to cover investment, competition and environment-related policies.

On the other hand, the WTO is buffeted by hostile forces without and fractured within by sharp, bitter intergovernmental divisions. The accession of so many new members in quick succession has further slowed down decision-making. The result is stasis and drift, in striking contrast to the businesslike diplomacy and negotiating effectiveness of the GATT. Furthermore, there has been little progress since negotiations in the new round started in January 2002. No wonder doomsayers prophesy a replay of the Seattle disaster, perhaps at the next Ministerial Conference in Cancun; and a marginalised, increasingly irrelevant WTO further down the line.

These developments should impel all concerned with the health of the world trading system to ask a few basic questions – often overlooked by trade policy experts and practitioners fixated by the detail of trade agreements and negotiations. Where is the WTO heading, if anywhere? What is right or wrong with the Organisation? What is, or should be, its *raison d'être*? Should it have a GATT-style market access focus? Or widen its regulatory circumference to take in environmental, labour and other ‘trade-related’ issues? Or have more of a UN-style ‘development’ dimension? Or indeed all of the above? How does the new round fit into the picture? What difference, if any, is it likely to make to the WTO’s middle- and long-distance future?

The paper sets the scene by placing the WTO today in the context of wider trade policy developments in the world economy. Then it examines the structural shifts in the transition from the GATT to the WTO. Moving to the new WTO round, it surveys the political road-blocks impeding progress in the run-up to the Cancun Ministerial and

beyond, and posits medium to long-term scenarios for the WTO. The following sections concentrate on the main items on the negotiating agenda in the new round. The paper closes with an analysis of the intergovernmental politics and highly asymmetrical national trade policy capacities that will determine the eventual outcome, successful or otherwise, of this round.

### **Extended background: trade policy reforms and ‘multi-track’ trade policy**

To the ‘WTO junkie’, trade policy begins and ends in Geneva. This is far from the reality. Trade policy proceeds, usually simultaneously, along three main tracks: the national (unilateral) track, the bilateral/regional track and the multilateral (WTO) track. Arguably, trade policy takes place in the first instance at the national level. It takes place increasingly at bilateral and regional levels in the form of free trade agreements. The WTO is at best the *second* instance of trade policy.

Trade policy has become progressively more liberal in the last couple of decades as part of wider packages of economic policy reform, although this trend is patchy and uneven. The OECD countries have gradually opened their markets further, consolidating the liberalisation of trade and capital controls since the late 1940s. The real trade policy revolution, however, has occurred in developing countries and countries in transition (plus Australia and New Zealand). This began in East Asia in the 1960s and Chile in the 1970s, with other countries and regions following only in the 1980s and ‘90s (first in Latin America, then in Eastern Europe, the ex-Soviet Union, India and parts of Africa).

To repeat, this trend has been far from uniform: countries in East Asia, Latin America and Eastern Europe have liberalised more and integrated faster and deeper into the world economy, with stronger commitments in the WTO. They are mostly middle and higher-income developing and transitional countries – China being the significant exception. None except Singapore, however, comes close to the comprehensive, non-discriminatory free trade policies of Hong Kong. This group of relatively recent ‘globalisers’ (less recent in the case of Hong Kong, Singapore, South Korea and Taiwan) numbers about 20-25 countries.

The overwhelming majority of developing countries (not far off 100) are in the low or least-developed bracket and are concentrated in South and West Asia, Africa, the Middle East and parts of the ex-Soviet Union. In these regions protection is higher, with less liberalisation in the last few decades and relatively few WTO commitments. These tend to be countries with low or stagnant growth; and many of them, particularly the least developed, are mired in political and economic instability.<sup>1</sup>

The bulk of recent trade-and-investment liberalisation in developing and transitional countries has taken place unilaterally, i.e., governments have liberalised quotas, tariffs, licensing arrangements, restrictions on foreign investment and the like independently and not as part of international agreements. There are powerful economic and political arguments in favour of unilateral liberalisation. To begin with, national gains from trade result directly from import liberalisation, which replaces relatively costly domestic production and spurs more efficient resource allocation. One important effect of import liberalisation is to channel resources into profitable export sectors, removing the bias against exports inherent in protectionist regimes.<sup>2</sup>

Seen in this light, there is every reason to go ahead on the fast track to unilateral liberalisation without wasting time on the slow, circuitous track of reciprocal negotiations. However, given enduring protectionist pressures and ingrained mercantilist thinking, it is the exception, not the rule. In recent times, governments have overcome these obstacles and embarked upon radical unilateral liberalisation only in situations of national economic

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<sup>1</sup> On trade policy and wider economic policy trends, see David Henderson, *The Changing Fortunes of Economic Liberalism: Yesterday, Today and Tomorrow* (London: Institute of Economic Affairs, 1998); Constantine Michalopoulos, *Developing Countries and the WTO* (London: Palgrave, 2001), pp. 45-88.

<sup>2</sup> There is the theoretical possibility of (usually large) countries being able to exercise long-run market power in international demand for certain goods, thereby placing them in a position to shift the terms of trade in their favour by means of an optimal tariff. The obverse argument is that these countries should only lower tariffs if others reciprocate, in order to avoid worsening terms of trade. However, in reality very few countries have such market power under long-run conditions. In addition, retaliatory tariffs by other countries would tend to nullify terms-of-trade gains. Thus, a beautiful idea on the Olympian heights of theory (not for the first time!) turns out to have limited practical relevance. This returns policy, *as a practical proposition*, to a presumption in favour of unilateral free trade. On the terms of trade/reciprocity debate, see Lionel Robbins, *Robert Torrens and the Evolution of Classical Economics* (London: Macmillan, 1958), pp. 182-231; Douglas A. Irwin, *Against the Tide: An Intellectual History of Free Trade* (Princeton NJ: Princeton University Press, 1996), pp. 106-115.

and political crisis, especially when it has become all too clear that long-standing policies of protectionism have failed.<sup>3</sup>

Given the practical difficulty of undertaking autonomous liberalisation in the context of modern domestic politics, there is some merit to the multilateralised reciprocity that the GATT/WTO embodies. The mercantilist disadvantage of governments haggling over export concessions, for which they ‘concede’ import access to own markets, is counter-balanced by the following advantages:<sup>4</sup>

- Most obviously, international treaties act as an external prop: they can strengthen the hand of governments and shift the balance of interest group politics within the domestic sphere. Intergovernmental negotiations and binding international obligations help protect governments against powerful protectionist interests at home, and mobilise the support of domestic exporters.
- WTO rules provide rights to market access for exports; and rights against the arbitrary protection and predation of more powerful players. This is particularly important for developing countries.
- Perhaps most importantly, but often overlooked, multilateral rules can bolster domestic reform efforts and reinforce the *clarity, coherence and credibility* of national trade policy reform in the eyes of exporters, importers, local and foreign investors, and, not least, consumers. This is another way of saying that the WTO, at its best, is a helpful auxiliary to good national governance.

Regional trade agreements (RTAs), sandwiched between unilateral measures and the WTO, have proliferated in practically all regions of the world economy since the 1980s. Activity on the regional track has accelerated since the failure of the WTO’s Seattle Ministerial Conference in 1999, especially in Asia-Pacific, starting with Singapore and involving Japan, South Korea, Australia, New Zealand, Mexico, Chile, the US,

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<sup>3</sup> On the role of crisis in policy reform, see Stephen Haggard and John Williamson, “The political preconditions for economic reform”, in John Williamson ed., *The Political Economy of Policy Reform* (Washington DC: Institute for International Economics, 1995), pp. 527-596.

<sup>4</sup> Paul Krugman, “What should trade negotiators negotiate about?”, *Journal of Economic Literature* XXXV,1, pp. 13-20. Bernard Hoekman and Michel Kostecki, *The Political Economy of the World Trading System: From GATT to WTO* (Oxford: Oxford University Press, 1995), pp. 20-33.



Canada, and now China and Hong Kong. The WTO Secretariat estimates that there are 170 RTAs currently in force, and that this number could grow to 250 by 2005.<sup>5</sup>

So far, there is little evidence that RTAs have retarded the overall liberalisation of trade and FDI.<sup>6</sup> Indeed, RTAs may well have contributed to political stability and economic policy reform in some countries, e.g., in Mexico through NAFTA and the East Central European countries *en route* to EU membership. Nevertheless, the discriminatory, rule-evading and power-reinforcing potential of RTAs cannot be overlooked, especially as multilateral disciplines on them (in Article XXIV GATT and Article V GATS) are rather weak. The danger is that RTAs could coalesce into big blocks, competing with each other on the basis of power rather than cooperating on the basis of rules; and particularly putting the squeeze on small and poor countries excluded from preferential access to the markets of the major powers.

The proliferation of RTAs is a fact of life. A weak and demoralised WTO is increasingly overshadowed by events on the bilateral/regional track; and it is in serious danger of becoming marginalised by spider-webs of discriminatory trading arrangements. It is therefore vital to accelerate non-discriminatory liberalisation on the multilateral track, as well as strengthen WTO rules and procedures to monitor and discipline RTAs. If that does not occur, RTAs will have increasingly harmful effects, particularly for developing countries.

To sum up, unilateral liberalisation should be pursued on its own merits when and where politically feasible. However, most developed and developing countries lack the domestic political requisites to undertake and sustain unilateral trade reforms. The multilateral track can therefore serve as a helpful auxiliary: WTO agreements not only lock in unilateral reforms; they also provide a springboard for further and deeper unilateral reforms. RTAs 'in between' have ambiguous effects, but will be systemically damaging in the absence of accelerated multilateral liberalisation and strong WTO rules.

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<sup>5</sup> *Overview of Developments in the International Trading Environment: Annual Report by the Director-General* (Geneva: WTO, 2001), p. 86.

<sup>6</sup> World Trade Organisation, *Regionalism and the World Trade System* (Geneva: WTO, 1995).

## **A note of alarm: recent trends in the WTO**

### *Developments post-Uruguay Round: standards harmonisation, legalisation, politicisation*

The GATT provided rules for progressively more open trade, at the border, in (some) industrial goods. As a result of the Uruguay Round agreements, the WTO goes much wider and comes closer to universal coverage, providing market access rules for the bulk (if not all) of international trade. As important, the agreements go well beyond the coverage of border barriers (tariffs and quotas) to encompass a much broader range of behind-the-border non-tariff barriers, i.e., domestic regulations that hinder international trade.

GATT 1994 (replacing GATT 1947) continues the fifty-year-old process of reducing tariff and non-tariff barriers to trade in manufactures. The Agreement on Agriculture and the Agreement on Textiles and Clothing, although relatively weak and shot through with loopholes, have GATT-style rules and procedures for gradually liberalising important but hitherto highly protected chunks of goods trade. The GATS, although architecturally complicated and with modest commitments to date, nevertheless establishes the framework for the liberalisation of trade *and* factor movements in cross-border services transactions. The GATS also has provisions for making the domestic regulation of service sectors more transparent and non-discriminatory – a vital consideration given that opaque and discriminatory domestic regulations hinder services trade far more than classic border restrictions. New or revamped trade procedures, notably on subsidies, technical barriers to trade, sanitary and phytosanitary measures, customs valuation and import licensing, furnish some of the regulatory infrastructure for tackling behind-the-border trade restrictions and taking better advantage of trade opportunities. This is especially important for developing countries that lack such regulatory infrastructure. As for developing countries, an increasing number (though a relatively small minority of 20-25) are more active and effective participants in the WTO, less addicted to old-style Special and Differential Treatment and subscribing to basic, common rules for market access.

All the agreements mentioned above form part of the Single Undertaking, another Uruguay Round innovation. All WTO members have to comply with the obligations of all

the Uruguay Round agreements (with the relatively minor exceptions of agreements on public procurement and civil aircraft subsidies), rather than choosing *à la carte* (as was the case with the Tokyo Round codes for trade procedures). Finally, the WTO's quasi-automatic dispute settlement procedures, reliant more on law and due process than on the vagaries of diplomacy (compared with dispute settlement in the old GATT), give rules more teeth and bite. Developed and developing countries make much more use of WTO dispute settlement than was the case pre-1995. Arguably, such a stronger rules (or law) based system, with beefed-up enforcement mechanisms, benefits smaller and weaker players to a greater extent than the more power (or diplomacy) based GATT system.<sup>7</sup>

If this were the sum total of the WTO story, then it could be said that the WTO would be performing its ideal constitutional function. It would be supplying, and helping to enforce, a wider and deeper, transparent and non-discriminatory rule-base for market access in cross-border transactions. This kind of WTO would be a helpful, more effective auxiliary to better national governance, dovetailing with unilateral liberalisation and domestic regulatory reforms 'down below'. The WTO, however, like political life in general, is more complicated than that; there is another, more vexing side to the WTO story. Alarm bells toll on the following counts: standards harmonisation; legalisation; and politicisation. Let us take each in turn.

*First*, the WTO suffers from creeping *standards harmonisation*. The Trojan Horse for a standards harmonisation agenda goes by the name of TRIPS (the Agreement on Trade-Related Intellectual Property Rights). TRIPS is perhaps the strongest agreement coming out of the Uruguay Round, with harmonised legal standards on the protection of patents, trademarks and copyrights to be applied across the WTO membership, regardless of differences in levels of development. It differs fundamentally from classic GATT-type market access rules, for its short-term effect is to *close*, not open, markets: strong patent protection in particular increases prices and transfers rents from poorer developing countries to multinational enterprises headquartered in the West, especially in the

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<sup>7</sup> On the Uruguay Round agreements and the implications of the transition from GATT to WTO, see WTO, *The Legal Texts: The Results of the Uruguay Round of Multilateral Trade Negotiations* (Cambridge: WTO/Cambridge University Press, 1999); Hoekman and Kostecki, *op cit.*; John Croome, *Reshaping the World Trading System: A History of the Uruguay Round* (Geneva: WTO/Kluwer, 1999); John Jackson, *The World Trade Organisation: Constitution and Jurisprudence* (London: Pinter/ Royal Institute of International Affairs, 1998).

pharmaceuticals sector.<sup>8</sup> Most controversially, developing countries are concerned that TRIPS could inhibit cheap and plentiful access to essential medicines, such as patented drugs to combat HIV/AIDS.

The main point to bear in mind is that TRIPS takes WTO rules in a new direction – not farther in the direction of market access, but elsewhere, towards a complex, regulation-heavy standards harmonisation agenda intended to bring developing country standards up to developed country norms. It sets the precedent for artificially raising developing country standards in a range of other areas, such as labour, environmental, food safety, product labelling and other technical standards, armed with stronger WTO dispute settlement and the Damocletian Sword of trade sanctions in case of non-compliance.

Let us be clear: these are not negative, proscriptive, classical liberal-type general rules of conduct to protect property rights in international transactions, i.e., rules that tell actors what not to do but otherwise leave them free to do as they wish. The Most Favoured Nation and National Treatment clauses in GATT Articles I and III respectively, for example, like the rules of private (commercial) law, are negative in the sense that they enjoin governments *not* to discriminate in international trade but otherwise leave them free to do anything not specifically forbidden.<sup>9</sup> In stark contrast, TRIPS contains harmonised regulations, with detailed *prescriptions* on how they should be enforced within domestic jurisdictions. This could potentially hinder, not promote, market access. To Jagdish Bhagwati, this is not traditional frontal protectionism against cheap developing country imports. On the contrary, it is backdoor *intrusionism*, an attempt to iron out the asymmetries in other countries' domestic institutions and raise their costs out of line with comparative advantages. The effect is the same as classic protectionism.<sup>10</sup>

Admittedly, the issue is complicated and to some extent these pressures are inevitable. As border barriers come down and technology advances, globalisation inexorably runs up against all sorts of new barriers behind borders. If the WTO

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<sup>8</sup> On TRIPS, see Hoekman and Kostecki, *op cit.*, ch.6.

<sup>9</sup> Simple, transparent, negative and non-discriminatory rules of conduct have a long classical-liberal pedigree. They are David Hume's "general and inflexible rules of justice". In Hayekian terminology, they are *nomos*, not *thesis*. See Hume, *A Treatise of Human Nature*, Book III, Part II (Oxford: Clarendon, 1978 {1740}), pp. 520, 526, 567-69; F.A. Hayek, *The Constitution of Liberty* (London: Routledge, 1960), pp. 19, 162f., 529.

<sup>10</sup> Jagdish Bhagwati, *Free Trade Today* (Princeton NJ: Princeton University Press, 2002), pp. 51-52, 67.

disregarded these regulatory barriers, lower protection at the border would be nullified by higher protection behind it. This means the WTO has to tackle standards relating to production and processing methods that lie deep in the structure of the domestic economy, in addition to tackling remaining (and substantial) border barriers. Negative (proscriptive) rules continue to be crucially important; but the WTO needs to have some positive (prescriptive) procedural disciplines to make domestic trade-related policies more transparent. Otherwise market access would not be a reality. This is the original intention behind the WTO's agreements on subsidies, services, sanitary standards, technical barriers to trade, customs valuation and import licensing.

Nevertheless, WTO members should proceed very gingerly on the domestic regulatory front. In some cases, this approach hinders market access (TRIPS), or at least provides a GATT-legal floor for existing and future regulatory protection (anti-dumping). In other cases, WTO agreements with domestic regulatory content (e.g., GATS, SPS, TBT) could hold back a surge of non-border protection. However, even on the latter front one should be very sensitive to constraints in developing countries – especially the least developed among them – with scarce administrative, technical and financial resources to implement high-quality international standards. There is a tendency for international standards, such as the Codex Alimentarius on food safety, to be driven by developed country benchmarks and political agendas, taking little account of differences in national circumstances and capacities in the developing world. Viewed more cynically, organised interests in rich countries push for legally complex, costly and rigid standards in the WTO, enforceable through dispute settlement, in order to realise their protectionist aims. This is precisely the backdoor intrusionism feared by Bhagwati.

To cut a long story short, there are limits to a one-size-fits-all approach to regulatory issues in the WTO, which is in serious danger of regulatory overload. The Organisation risks neglecting its core purpose of furnishing reasonably simple negative rules to secure and extend market access as it moves into 'trade plus' issues involving domestic regulation. At best, trade-plus procedures help improve the transparency of domestic trade-related policies, giving effect to basic, negative WTO rules for market access. At worst, they are tantamount to an OECD standards harmonisation agenda.

Standards harmonisation poisons the international trading system in four ways. *Politically*, it intrudes too far into national regulatory competence, i.e., it tramples on national sovereignty. The WTO does not enjoy anything remotely approaching an intergovernmental consensus for this sort of thing: the result would surely be a destructive political backlash. *Legally*, this approach is Procrustean: it smacks of Cartesian, top-down legal symmetry, wonderful for lawyers and Utopian constructors of ‘global governance’; but it slams the door on healthy, competitive, decentralised and bottom-up national experiments with policies and institutions tailored to differing local circumstances. *Economically*, standards harmonisation hacks away at the principle of comparative advantage. It ignores the fact that policies and institutions differ according to differences in circumstance, not least comparative costs which vary with levels of development. Imposing regulations that raise costs out of line with national productivity levels would restrict developing country labour-intensive exports as surely as any anti-dumping action.<sup>11</sup> *Morally*, and of overriding importance, standards harmonisation is reprehensible, for it is tantamount to an extra-territorial invasion of private property rights. By imposing extra conditions and costs, it restricts the ability of employers and workers to strike mutually beneficial contracts, particularly in impoverished parts of the world. Individual liberties, therefore, are the first to be sacrificed on the altar of standards harmonisation.

Furthermore, a bulky domestic standards agenda compromises the traditional GATT bargaining model: the mercantilist exchange of export concessions. This has functioned well enough on old-style market access through reciprocal tariff and quota reductions that are relatively easy to measure and compare. It is a different matter with opaque, complex domestic regulations on all manner of trade-related issues for which data is lacking and comparison more subjective. Reducing Tariff A in Country B in exchange for a reduction of Tariff C in Country D has a proven record of success. Playing the same game with standards – e.g., reducing Tariff A in return for a stronger SPS measure or

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<sup>11</sup> On the dangers of regulatory overload and standards harmonisation, see Bernard Hoekman, “Strengthening the global trade architecture for development: the post-Doha agenda”, *World Trade Review* 1,1, 2002, pp. 32, 40; Thomas Hertel, Bernard Hoekman and Will Martin, “Developing countries and a new round of WTO negotiations”, *The World Bank Research Observer* 17,1, Spring 2002, p. 136; J. Michael Finger, “Implementing the Uruguay Round agreements”, *The World Economy* 24, 9, September 2001, p. 1098.

stronger GATS Article VI provisions on transparency in services regulation – does not work nearly as effectively, and might not really work at all.<sup>12</sup>

*Second*, the creeping *legalisation* of the WTO is not all good news – except for academic and practising lawyers, of course. Trade negotiators have a perhaps unavoidable tendency to conclude vaguely worded final texts that give legal expression to political compromise and fudge. In WTO-speak this is known (not so accurately) as ‘constructive ambiguity’. Many Uruguay Round agreements, such as GATS, SPS, TBT and TRIPS, contain numerous gaps and ambiguities, especially in the dense thickets of domestic regulation. Inevitably, there are limits to legal certainty on the nitty-gritty of this-or-that regulatory measure, with ample room for diverging legal interpretations – more so than with simpler, clearer border measures. Given quasi-automatic dispute settlement, there is an increasing, indeed alarming trend for governments, pressured by strong, organised interests, to fill in these regulatory gaps through litigation in panels and Appellate Body rulings rather than through negotiation and quiet, behind-the-scenes diplomacy.<sup>13</sup> This can only accelerate the trend towards standards harmonisation and regulatory overload.

This is a dangerous and slippery slope. The WTO, like the GATT before it, is a ‘contract organisation’ bringing together a large, diverse group of sovereign nation-states. Its always-brittle political consensus can only tolerate rules interpreted as much as possible according to the ‘letter of the law’, i.e., with judicial restraint. This is indeed a principle enshrined in the Uruguay Round agreements establishing the WTO and the new dispute settlement procedures.<sup>14</sup> The Dispute Settlement Body simply does not enjoy the political consensus to sustain ‘creative’ judicial interpretations of legal texts and policy driven by litigation, as happens from time-to-time in the US Supreme Court and the European Court of Justice. And this is for the best: unless the views of a wide cross-

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<sup>12</sup> J. Michael Finger and Julio Noguez, “The unbalanced Uruguay Round outcome: the new areas in future WTO negotiations”, *The World Economy* 25, 3, March 2002, pp. 321-340.

<sup>13</sup> John H. Jackson, “Dispute settlement and the WTO: emerging problems”, *Journal of International Economic Law* 1,3, 1998, p.344; Marco C.E.J. Bronckers, “Better rules for a new millennium: a warning against undemocratic developments in the WTO”, *Journal of International Economic Law* 2,4, 1999, pp. 551,554,562-564; Arthur Dunkel, Peter Sutherland and Renato Ruggiero, “Joint statement on the multilateral trading system”, *WTO News* 1<sup>st</sup> February 2001, p.2 ([www.wto.org/english/news\\_e/news01\\_e/jointstatdavos\\_jan01\\_e.htm](http://www.wto.org/english/news_e/news01_e/jointstatdavos_jan01_e.htm))

<sup>14</sup> Gilbert Winham, “The World Trade Organisation: institution-building in the multilateral trading system”, *The World Economy* 21,3, May 1998, pp. 349-368; Debra P. Steger and Susan M. Hainsworth, “World Trade Organisation dispute settlement: the first three years”, *Journal of International Economic Law* 1,2, 1998, p. 209; Bronckers, *op cit.*, pp. 554,556.

section of the WTO membership are heard, including developing and smaller members, policy may be driven in crucial areas by those large and powerful members able to commit significant legal resources to dispute settlement cases. This could conceivably lead to rulings inimical to developing country interests, such as an expansive, open-ended interpretation of the precautionary principle on food safety issues, and discrimination against imports based on their production and processing methods.

These trends in dispute settlement reinforce the case for the negotiation of reasonably simple, transparent and negative rules for market access, based on MFN and National Treatment, which give reasonably clear direction to dispute settlement. One of the dangers of intrusive and complicated TRIPS-type regulation is that it opens new vistas for judicial activism powered by rich WTO members able to afford armies of high-fee lawyers. The bottom line is this: governments and not international judges should determine the boundary between WTO rules and domestic policy space.<sup>15</sup>

*Third*, the WTO is manifestly more *politicised* than the old GATT. Externally, it faces the brunt of the anti-globalisation backlash, and is constantly buffeted by a combination of old-style protectionist interests and new-style NGOs, the latter mainly comprising well-funded, high-profile groups in the West purporting to represent causes (such as protection of the environment, food safety and other consumer issues, working conditions, human rights and animal welfare). The arcana of trade policy, previously handled through low key diplomacy and negotiation, now seems to be the crucible for global controversies, with their fair share of adversarial sloganeering and point-scoring.

As important – perhaps even more so – are the deeper internal, intergovernmental divisions within the WTO. These are many and cross-cutting, by no means restricted to traditional and new developed-developing country cleavages – though the latter are perhaps the most attention-grabbing. The hyperinflation of the GATT/WTO, i.e., the accession of so many developing and transitional countries during and especially after the Uruguay Round, has added new sets of interests and preferences to the Organisation’s ongoing business. Decision-making has become even more unwieldy and snail-like, more often than not distracted by windy rhetoric and political grandstanding in the WTO

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<sup>15</sup> Sylvia Ostry, “WTO: institutional design for better governance”, p. 9 [www.ksg.harvard.edu/cbg/trade/ostry.htm](http://www.ksg.harvard.edu/cbg/trade/ostry.htm)



General Council, on the one hand, and the Geneva trade officials' obsession with procedural minutiae, on the other. As worrying, it appears that an increasing number of recent appointments to the WTO Secretariat have been made more on the basis of appeasing developing country pressure for more representation within the Secretariat than on the basis of merit.

All the above – empty windbag speechifying, political point-scoring, running around in procedural circles, appointments made according to informal developing country quotas and not on merit – are vexing signs of the UN-isation (or UNCTAD-isation) of the WTO. The GATT escaped the pitfalls and egregious failures of other international organisations, particularly within the UN system, because it had a reasonably clear purpose, a well-framed negotiating agenda, a small number of key players, and, not least, a high quality Secretariat. If present UN-style trends continue, the WTO will simply be unable to function as an effective multilateral forum for trade negotiations. It will become a marginalised talking shop; and attention will shift elsewhere, particularly to bilateral and regional negotiating settings. If indeed the WTO comes to resemble a UN agency, one should pose the question: will the Geneva circus (the Secretariat and national delegations) be worth the candle?

The combination of these three structural shifts post-Uruguay Round – regulatory overload and standards harmonisation, excessive legalisation and politicisation – has polluted the atmosphere above the shores of Lac Léman. Taken together, they put the squeeze on the traditional virtue of the GATT: its ability to deliver results, i.e., stronger rules for progressively more open international trade, through effective diplomacy and negotiation.

This is not to say that the WTO should return to a golden yesterday. Far from it: the pressure for a wider agenda with domestic regulatory content has to be accommodated, especially if it enhances transparency and facilitates market access; legalisation is to some extent welcome as it makes the system more rules-based for smaller and weaker players; and politicisation is simply a fact of modern trade policy. Put another way, it would be both pie-in-the-sky and wrong to rely unduly on GATT-style diplomacy. However, the latter has been squeezed too tightly. It needs to be revived, for without it the WTO will not get out of its rut and advance.

The WTO, in short, needs to find a new balance: for dealing with domestic regulation so that it becomes more transparent and does not lead to regulatory overload and standards harmonisation; for dispute settlement so that legal procedures do not result in judicial policy-making; for accommodating an increasing and overwhelming developing country majority without a headlong descent into UN-isation.

Reviving the WTO's diplomatic and negotiating mechanism is really in the hands of the developed country majors (the US and EU in the first instance), other developed countries, and the key developing country governments (India, Brazil, China, South Africa and not more than a score of others) who are in a position to be effective in the WTO. The focus of their efforts must be the Doha round, whose success or failure will, alongside unilateral, bilateral and regional initiatives, determine the medium-term future of the world trading system. To the Doha round and its prospects I now turn.

### **The new round: launch and state-of-play**

After much political brinkmanship and down-to-the-wire haggling, members of the WTO successfully concluded their Ministerial Conference in Doha, Qatar, in November 2001 with an agreement to launch "broad and balanced" negotiations, which started in January 2002. The Doha Round, the successor to the Uruguay Round, puts the WTO show back on the road after the disastrous failure of the Seattle Ministerial Conference in 1999.

The post-Seattle period witnessed drift and deadlock in the WTO, with bitter and entrenched disagreements among member governments, and an anti-globalisation backlash outside. It took careful, painstaking preparation by the WTO Secretariat and member delegations to dig the WTO out of its post-Seattle ditch and bring about success at Doha. Here credit is due above all to Stuart Harbinson, Hong Kong's outstanding permanent representative to the WTO, Chairman of the General Council through 2001, and, since September 2002, *chef de cabinet* to the new WTO Director General, Dr. Supachai Panitchpakdi. Mr. Harbinson's role was pivotal in orchestrating reasonably transparent and inclusive consultations in the long lead-up to Doha, thereby gradually building up the trust and confidence that had been lost before and after Seattle.

Frankly, however, without the events of September 11<sup>th</sup> there would be no new round: great tragedy has indeed created a wholly unexpected opportunity for the WTO to get back on track. Anti-globalisation forces were momentarily less noisy; but more importantly the immediate post-September 11<sup>th</sup> environment – international political crisis and a world economy heading towards recession – concentrated minds wonderfully. A rejuvenated WTO, with a fresh round of negotiations to liberalise and regulate international trade, was seen as a much-needed confidence-booster for the global economy, with the prospect of delivering substantial gains in terms of economic growth and poverty reduction. Hence the political will to compromise, with attendant negotiating flexibility, from mid-September. These and other factors combined to produce an atmosphere of civility and co-operation in Doha, in stark contrast to the crotchety and sometimes explosive mood in Seattle.

What was agreed in Doha? Not least, China and Taiwan were welcomed into the club. The other key decisions were:<sup>16</sup>

- *Market access*: Continued but upgraded negotiations to liberalise agriculture and services markets, and new negotiations to reduce tariff and non-tariff barriers on industrial goods.
- *Rule-making*: Clarifying and improving WTO rules on anti-dumping procedures, subsidies and countervailing measures, regional trade agreements and dispute settlement.
- *Developing country issues*: Longer transition periods, improved technical assistance and other forms of ‘capacity building’ to help with implementation of Uruguay Round agreements. Special and Differential Treatment for developing countries is recognised in practically every aspect of the new round. WTO members also commit themselves to the objective of ensuring duty-free and quota-free access to goods originating in least developed countries. Lastly, it appears that

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<sup>16</sup> Refer to “Ministerial Declaration”, WT/MIN(01)/DEC/W/1 14 November 2001; “Declaration on the TRIPS Agreement and Public Health”, WT/MIN(01)/DEC/W/2 14 November 2001; “Implementation-Related Issues and Concerns”, WT/MIN(01)/W/10 14 November 2001. All available at [www.wto.org](http://www.wto.org)

developing countries will be able to interpret WTO rules on patent protection more flexibly in order to promote access to essential medicines and safeguard public health. In particular, they will have considerable leeway to override patents and issue compulsory licenses for generic products in emergency situations such as an HIV/AIDS pandemic.

- *Singapore and other new issues*: Preparatory work on investment and competition rules, with a presumption of starting ambitious negotiations after the next WTO Ministerial Conference, to take place in Cancun, Mexico, in September 2003. New negotiations on trade facilitation and transparency in government procurement, also to start after the next Ministerial. New negotiations to start immediately on trade-and-environment to clarify the relationship between the WTO and multilateral environmental agreements, and to liberalise environmental goods and services. Finally, preparatory work will be done on eco-labelling and other WTO environment-related rules, with the possibility of negotiations after the next Ministerial.
- Following Uruguay Round practice, the results of all the negotiations (with the exception of that on dispute settlement) will be treated as parts of a Single Undertaking, i.e., members will have to sign up to the whole package rather than accepting or rejecting individual elements of it.
- The round has a three-year time frame, with all negotiations to be completed “not later than” January 1<sup>st</sup> 2005.

This is a pretty large, complex and rather ambitious agenda, with 21 subjects listed, reflecting the post-September 11<sup>th</sup> mood of all-round compromise. There is a market access core to the new round, i.e., negotiations on further trade liberalisation, as demanded by the US, the Cairns Group (of leading developed and developing country agricultural exporters), Hong Kong and Singapore. Developing countries have successfully flexed collective muscle with major concessions on the ‘implementation agenda’ (flexibility and assistance in implementing Uruguay Round agreements) and flexibility in interpreting WTO rules on patent protection. The EU has forced other WTO members to dilute the

commitment to abolish agricultural export subsidies; and extracted new commitments to negotiate on environment and the 'Singapore issues' (competition, investment, trade facilitation and transparency in public procurement, all introduced into the WTO work programme at the Singapore Ministerial in 1996).

A Trade Negotiations Committee, chaired by the Director-General, was set up in January 2002. It comprises eight separate negotiating groups (on agriculture, services, non-agricultural market access, rules, trade-and-environment, TRIPS, dispute settlement, and trade-and-development), each chaired by a permanent representative (ambassador) to the WTO.

The good news is that agreement at Doha provided a short-term psychological boost to a demoralised and weakened post-Seattle WTO, and to the wider process of globalisation. Failure at Doha would have crippled the WTO, perhaps fatally, and speeded up regional block formation, leaving poor and weak countries exposed to the protectionist whims of rich and powerful counterparts.

The bad news is that very little progress has been made in Geneva since the round started. There are several reasons for this state of affairs, some short-term, others more worryingly long-term.

*First*, the key to moving ahead in WTO negotiations is the close involvement of ministers and senior officials in national capitals. Their attention has waned in 2002 as the post-September 11<sup>th</sup> crisis abated, leaving the business of the new round in the hands of Geneva negotiators. A firm rule of thumb in the WTO is that there is little forward movement without clear direction and strong engagement from national capitals. It is to be hoped that, as the Cancun Ministerial approaches, minds in key national capitals will be concentrated.

*Second*, business support for the new round has been conspicuously lacking in fervour. Historically, rounds have succeeded only with strong lobbying by large export and FDI-oriented firms in the major developed countries. They are not as yet lobbying nearly as hard for further multilateral liberalisation as they did in the Uruguay Round.

*Third*, the political climate has been stormy due to problems within the US and the EU, sometimes spilling over into bilateral spats.

In the US, President Bush has finally got the Trade Promotion Authority without which no WTO round would be taken seriously, but only at the cost of protectionist side-deals, particularly in agriculture and steel. The Farm Bill reverses the brief liberalising trend in US agriculture in the 1990s and dramatically increases domestic subsidies, with potentially grave trade-distorting effects. The massive tariffs imposed to ‘safeguard’ (i.e., protect) inefficient US steel producers have been almost as damaging, particularly in souring US-EU relations and distracting the attention of the two major powers from making headway in the new round.

Notwithstanding blemishes in US domestic trade politics, it is important to highlight a not insignificant shift in US trade policy from the Clinton to the Bush administration – with potentially vital and beneficial consequences for the WTO and the wider trading system down the line. The Clinton years were characterised by vacillation and drift in trade policy, as in foreign policy more generally. Often, especially in the twilight of the second Clinton administration, it seemed that US trade policy was held hostage by labour unions and environmental NGOs.

This has changed. The Bush administration, while all too willing to cave in to protectionist interests for short-term political advantage, nevertheless has powerful insiders committed to freer trade, and willing to exercise active, robust leadership in the WTO. This is especially the case with the US Special Trade Representative, Robert Zoellick, who, from the free-trader’s standpoint, is as sound a front man for US trade policy as one can realistically expect. He led from the front to launch the Doha Round, and has displayed clear, strong leadership with three ambitious market access proposals in the WTO during 2002 (on agriculture, services and industrial goods). The bold and imaginative US proposal on industrial goods, with its eye-catching target of abolishing tariffs worldwide by 2015, at last gives a potential focal point for the round as a whole.

In sum, the past year has witnessed tangible US leadership in the trading system for the first time since the Uruguay Round. To Mr. Zoellick, this is part of an overall strategy to build coalitions, step-by-step, for more open markets across the world.

Moreover, as he makes clear in his recent essay in *The Economist*, leadership in trade policy, especially post-September 11<sup>th</sup>, folds into more vigorous US leadership in foreign policy more generally.<sup>17</sup>

Over in the EU, the core problem remains the Common Agricultural Policy (CAP). The Commission came out with proposals for CAP reform which, while not proposing big cuts in overall levels of agricultural spending, would nevertheless sever the link between subsidies and production over time, thereby diminishing the trade-distorting effect of government intervention. If implemented, this would help to unblock the agricultural negotiations in Geneva. Most unfortunately, the prospects for radical surgery on the CAP were dealt a blow by the recent Council of Ministers' decision to maintain overall levels of CAP spending from 2006 to 2013. This diplomatic *coup* for the French government means that EU production-related domestic subsidies and export subsidies will continue to massively distort world agricultural markets for some time to come. EU foot-dragging on agricultural reform was reflected in the Commission's delayed and defensive set of proposals for the negotiations on agriculture in the Doha Round.

In general, the EU's record on trade policy, particularly in the crucial area of agricultural protection, reinforces the point made above: there is no substitute for US leadership to achieve progressively freer trade.

*Fourth*, the sense of disgruntlement among most developing countries has increased, with correspondingly decreasing readiness to compromise. They have a litany of complaints: the unwillingness of the EU and the US to contemplate serious liberalisation of agriculture and textiles anytime soon; the EU's over-aggressive stance on the Singapore issues and trade-and-environment; and no real progress on Special and Differential Treatment and the implementation agenda. The July 2002 deadline for "clear recommendations" on Special and Differential Treatment, for instance, first had to be postponed to end December 2002, and even this deadline has passed without agreement. Another deadline – this time to agree a TRIPS waiver so that developing countries without domestic production capacity can import generic drugs to deal with public health emergencies – has also been missed due to US blockage. It is increasingly likely that

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<sup>17</sup> Robert Zoellick, "Unleashing the trade winds", *The Economist*, December 7<sup>th</sup> 2002.

other important Doha Round deadlines on agriculture, industrial goods and services, set for end March 2003, will come and go without substantive agreement.

### **The new round: opportunities and dangers ahead**

Looking ahead to the negotiations to take place in the run-up to Cancun and beyond, there is much to play for, with vast opportunity and great danger in equal measure. Four factors deserve to be highlighted:

*First*, this is planned to be a two-stage round. A core of politically hypersensitive issues – competition, investment and bits-and-pieces of the environment – have been pushed back to the Mexico Ministerial, when decisions will have to be taken to launch new negotiations.

On the Singapore issues, the Doha Ministerial Declaration states that “negotiations will take place after the Fifth Session of the Ministerial Conference on the basis of a decision to be taken, by explicit consensus, at that Session on modalities of negotiations”.<sup>18</sup> The EU and the US sometimes seem to regard these negotiations as pre-programmed, but that is not the impression of India and perhaps other developing countries. India, with the help of an “interpretative note” extracted from other WTO members in the twilight hours of the Doha Ministerial, takes “explicit consensus” to mean that it or any other member can veto the launch of new negotiations on one, several or all of the Singapore issues.

On trade-and-environment the wording of the Ministerial Declaration is looser. Members instruct the Committee on Trade and Environment to give attention to relevant WTO rules, report to the Fifth Ministerial, “and make recommendations, where appropriate, with respect to future action, including the desirability of negotiations”.<sup>19</sup>

This two-stage procedure, while necessary to prevent failure in Doha, stores up potentially serious problems for the next Ministerial. Indeed, there is a grave risk of long-standing policy differences and negotiating stalemate in 2002/3 will be followed by crisis

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<sup>18</sup> “Ministerial Declaration”, paras. 20, 23, 26, 27.

<sup>19</sup> *Ibid.*, para. 32.



and collapse in Mexico. Several or all of the factors mentioned above could conspire to bring this about. The Latin American members of the Cairns Group, led by Brazil, have walked out of GATT ministerial sessions before due to EU intransigence on agriculture; they could do so again. India, perhaps in coalition with others, could veto the launch of new negotiations on environment and the Singapore issues. If this happens, the Mexico Ministerial will turn into a replay of the failed Ministerials of 1982, 1990 and 1999. Above all, it would raise the spectre of Seattle all over again, something that could easily derail the new round for many years and thereby cripple the WTO system. No one should be complacent on this score.

*Second*, this is going to be a long haul, lasting perhaps 5-6 years, or even as long as the Uruguay Round (6-7 years), with plenty of ups and downs, not to mention intermittent crises, *en route*. The stated objective of concluding the round in three years appears hopelessly optimistic. This is partly because the agenda is big and messy, especially with environment and the Singapore issues to be negotiated after the Fifth Ministerial (and to be completed in just over a year afterwards!). Furthermore, the WTO's expanding membership means that an ever-wider array of differentiated interests has to be accommodated. WTO decision-making, therefore, is bound to be more difficult and dilatory.

Playing the long game, moreover, may be no bad thing. There is much to be said for what Lord Bryce called "government by discussion", by which he meant the thorough and deliberative search for solutions to difficult problems, rather than rushed, unreflective action based on scant knowledge and eventuating in botched solutions. The latter, not the former spirit characterised the end-game of the Uruguay Round: the US and the EU bounced most developing countries into agreements (especially TRIPS) they did not understand and had little hope of implementing effectively afterwards. This must be avoided at all costs: developing countries must have time to get their domestic acts together, participate actively in multilateral negotiations, and understand the implications of the potential deals on the table. All this argues in favour of a longish round.

*Third*, the Doha Round presents WTO members with a major opportunity to shape the future of the multilateral trading system. There are three scenarios in view:

*Scenario One* would rediscover the *raison d'être* of the GATT: the progressive reduction and removal of barriers to trade, underpinned by simple, transparent, non-discriminatory rules, as embodied in the National Treatment and Most Favoured Nation principles. Admittedly, the GATT had lots of loopholes and a restricted remit of tackling border barriers on (most) industrial goods. Now a much expanded market access agenda subsumes agriculture, textiles and clothing, and services, as well as dealing with non-border trade barriers.

This scenario is *traditionalist* in the sense that it restores a GATT-like compass to the WTO. But it is also *reformist* in that it ranges wider (broader sectoral coverage than the GATT) and ventures deeper (procedural disciplines to make trade-related domestic regulations more transparent, as covered by GATT Article X and GATS Articles III and VI).<sup>20</sup> It is also a scenario of political and economic balance: one that furnishes a lowest common denominator of rules and obligations applicable to all WTO members – a level playing field for international trade; but still one that allows plenty of leeway for different countries to have different sets of economic policies with different institutional mixes of State and Market, all the way from European-style social democracy to Anglo-Saxon economic liberalism, Hong Kong-style classical liberalism, and Chinese-style economic liberalisation combined with political authoritarianism. Above all, this scenario would be sufficiently open-ended to encourage bottom-up unilateral experimentation by national governments in response to local circumstances and challenges. This would in turn promote a decentralised, market-like competitive emulation among governments in search of better policy and institutional practice.<sup>21</sup>

This constitutional package for open markets has a proven record of success, for growth and prosperity in developed and developing countries alike. The Bush administration's trade policy team, led by Robert Zoellick, has partial sight of this market access goal, but protectionist interests in US domestic politics, channelled through Congress, make it very difficult to achieve. A small core of other developed and

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<sup>20</sup> I owe this form of words to my former student Joakim Reiter, now dealing with trade policy at the Swedish Ministry of Foreign Affairs.

<sup>21</sup> It is the classical liberal tradition, from Hume and Smith to Hayek, which highlights the merits of national (unilateral) freedom of action and an intergovernmental institutional competition, all in search of better practice in a complex world of uncertainty and flux. See Razeen Sally, *Classical Liberalism and International Economic Order: Studies in Theory and Intellectual History* (London: Routledge, 1998), pp. 198-203.

developing countries (such as Australia, New Zealand, Hong Kong, Singapore, Chile and Mexico) have an even stronger stake in this kind of WTO. They and the US administration must forge effective alliances, in individual negotiating areas and across-the-board, to ensure the WTO heads in the right direction. The problem is that this market access constituency in the WTO is far too narrow for comfort. It is also far from coherent and unified, with different dividing lines on different issues.

*Scenario Two* is an EU-style future for the WTO, which is why the EU, arguably, presents the WTO with its major headache. It has imposed a *cordon sanitaire* around a scandalously protectionist and massively harmful agricultural regime. Moreover, it seems to want to turn the WTO into a lumbering regulatory agency in its own image. It proposes to add complex and intrusive regulation to the WTO agenda, some of which would impose burdensome environmental and other standards on developing countries. This implicit standards harmonisation agenda, aimed at raising developing country standards to developed country levels, is now the most insidious force in the WTO. The door was opened with the TRIPS agreement in the Uruguay Round; the environmental aspects of the Doha Round threaten to open the door much wider. The result could be an extra layer of developed country regulatory barriers that would shut out cheap developing country exports and negatively affect inflows of FDI.

Other WTO members must make sure the EU does not steer the new round by stealth in the wrong direction. On political, legal, economic and moral grounds (set out earlier), WTO rules, focused on market access, should provide the necessary minimum for fair play in international commerce while respecting the diversity of policies and institutions among countries at very different stages of development (not to mention different histories and preferences).

*Scenario Three* is a UN-style future for the WTO, the prospects for which have sadly increased with the accession of so many developing countries to the Organisation. There is much pressure to reopen Uruguay Round agreements and grant blanket exemptions to developing countries on the grounds of Special and Differential Treatment. There is also a clamour for technical assistance (i.e., aid), and demands to boost developing country representation in the WTO Secretariat (overriding meritocratic selection criteria). At the same time, the WTO is becoming more a forum for adversarial

political grandstanding and procedural nit-picking than one for effective decision-making. The danger is that a more politicised WTO would look more like a useless and wasteful UN development agency than the pre-1995 GATT. It would dole out lots of aid to poor countries and return to old-style Special and Differential Treatment, but would be too crippled to do much else.

It is all very well to say that the Doha Round should be used to realise Scenario One while avoiding Scenarios Two and Three, as might be the inclination of the politically ignorant free-trade economist. The political dilemma, however, is that this is going to be very difficult given the narrow and fractured market access constituency within the WTO. Drift and then gridlock might halt movement in any direction. Also possible is a dog's-breakfast compromise that would attempt a synthesis of all three scenarios. The likely result is that market access gains would be gutted by a combination of regulatory protectionism and politically correct giveaways and exemptions for developing countries. How can this be avoided? How to deliver Scenario One politically? That, more than anything, is the fundamental question facing the WTO.

### **The new round: specific issues**

Let us move now from the broad picture to the individual elements of the new round.

#### *a) Market access*

Market access – the reduction and removal of trade barriers in agriculture, services and industrial goods – is (or should be) the bread and butter of the new round. Direct border barriers to trade remain high in both developed and developing countries. Although the EU and the US have low average tariffs, they retain high-to-very high tariffs in agriculture, textiles and clothing – the sectors of major export potential for developing countries. Indeed, levels of developed country protection in these two sectors are more than ten times the average on other merchandise. Developed country tariffs on imports from developing countries are four times as high as tariffs on imports from other OECD countries. Non-tariff barriers are also not insignificant, especially in the form of

widespread and unreasonably onerous food safety, technical and other standards that have a chilling effect on developing country exports.

Developing countries have noticeably higher average tariffs, tariff peaks and tariff escalation (higher tariffs on processed goods), as well as higher non-tariff barriers than developed countries, not to mention proliferating anti-dumping actions. Much of this developing country protection is aimed at imports from other developing countries.<sup>22</sup> Rich country protection is psychologically damaging precisely because it provides developing countries with a pretext not to reduce their own trade barriers; it seriously undermines political efforts to accelerate pro-market reforms in the developing world.<sup>23</sup>

The World Bank estimates a gain of \$2800bn by 2015 from the elimination of trade barriers and trade-related reforms. Developing countries would gain to the tune of \$1500bn, which would lift 320m people out of poverty. Two-thirds of the gain from cutting tariffs on industrial goods would go to developing countries; and they would gain a roughly equivalent amount from the abolition of trade-distorting agricultural subsidies in the OECD. However, the biggest gains by far would come from radical services liberalisation in both developed and developing countries (estimated at about \$900bn, two-to-three times the gain from liberalising goods trade).<sup>24</sup>

### *Agriculture*

Agricultural protection in high-income countries remains almost as high as it was at the end of the Uruguay Round; and serious distortions continue to plague agriculture in developing countries. The 'built-in' WTO negotiations on agriculture, which started in early 2000, made some progress in clearing up outstanding technical and procedural issues, and generated a large number of negotiating proposals. However, in the absence of a larger round of multilateral negotiations, governments did not get to the stage of hard bargaining over market access.

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<sup>22</sup> See Michalopoulos, *Developing Countries in the WTO*, op cit., pp. 45-128.

<sup>23</sup> Jagdish Bhagwati, "Trading for development", *The Economist*, June 22<sup>nd</sup>, 2002, p. 28.

<sup>24</sup> *Globalisation, Growth and Poverty: An Inclusive Agenda for the World Economy* (Washington DC and Oxford: World Bank/Oxford University Press, 2002).

The Doha Ministerial Declaration states that “without prejudging the outcome of the negotiations we commit ourselves to comprehensive negotiations aimed at: substantial improvements in market access; reductions of, with a view to phasing out, all forms of export subsidies; and substantial reductions in trade-distorting domestic support”.<sup>25</sup> Market access negotiations now revolve around tariffs and tariff quotas; and negotiations on domestic subsidies focus on the ‘blue box’ and the ‘amber box’, which contain subsidies linked to production (and hence distort trade). The EU, and France in particular, objected strongly to language on “phasing out” export subsidies right to the last minute. The price of EU approval of the text was the prefatory insertion of “without prejudging the outcome of the negotiations”. This arguably dilutes the commitment to abolish export subsidies, but was necessary in order to avert outright failure in Doha.

In addition, developing countries are to have special and differential treatment, which will take account of food security and rural development needs. “Non-trade concerns will be taken into account in the negotiations” – which assuages EU sensibilities on animal welfare, consumer protection and rural development, but without mentioning “multifunctionality”.<sup>26</sup> Any mention of the latter in the text would have precipitated a walkout by the Cairns Group.

Finally, negotiations proper started in April 2002, with a stock-take of comprehensive draft Schedules to take place by the time of the Mexico Ministerial.<sup>27</sup> The highlight of negotiations so far has been the radical US proposal to reduce trade-distorting domestic subsidies (by \$100bn to 5 per cent of agricultural production), bring down average tariffs from 62 per cent to 15 per cent, and abolish export subsidies by 2010. The Cairns Group came up with a similarly radical proposal. The EU, however, shows no signs of significant movement. Its long-delayed proposal, finally tabled in December 2002, contains much more limited cuts on tariffs (by 36 per cent), domestic production-linked subsidies (by 55 per cent) and export subsidies (by 45 per cent). The EU stance, combining arch-conservatism on market access with a strong accent on non-trade concerns like environmental protection and animal welfare, is supported by its fellow Friends of Multifunctionality (Japan, Korea, Norway and Switzerland).

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<sup>25</sup> “Ministerial Declaration”, para. 13.

<sup>26</sup> *Ibid.*, para. 13.

<sup>27</sup> *Ibid.*, para 14.

Thus there remains a yawning gap between the US and the Cairns Group, on the one hand, and the EU and its allies, on the other, with plenty of other developing countries (such as India) highly ambivalent about own agricultural liberalisation. Alas, the prospects for a political breakthrough in the agricultural negotiations, upon which the future of the whole round hinges, appear depressingly remote. As things stand, it is almost a racing certainty that the March 31<sup>st</sup> 2003 deadline for establishing ‘modalities’ for the next (more serious) phase of agricultural negotiations will be honoured in the breach. This threatens to become the one major round-stopper, either pre-Cancun or in Cancun itself.

### *Services*

The General Agreement on Trade in Services (GATS) is complicated and messy, and so far has delivered modest market access commitments. The built-in GATS negotiations, like the parallel mandated agricultural negotiations, generated a large number of negotiating proposals but did not get to the stage of hard bargaining over market access. Nevertheless, they have clarified procedural issues and brought about a better understanding of the legal texts. In addition, the process may have marginally improved the medium-term prospects for *net* liberalisation, in contrast to GATS commitments at the end of the Uruguay Round, which mostly did not go beyond the status quo in national policies. Perhaps most important, some (though still a small minority of) developing countries have noticeably stepped up their participation in the services negotiations and have tabled several negotiating proposals.

The broad outlines of eventual agreement are not difficult to discern. All parties need to make more commitments on national treatment and market access (Articles XVI and XVII GATS), with fewer exemptions in their schedules. Developing countries need to make substantially more commitments in mode three of supply (‘commercial presence’, which effectively concerns inward investment). This would in any case complement autonomous liberalisation of inward investment, particularly in financial and telecom services (both key infrastructural inputs with potentially big economy-wide gains). Developed countries need to reciprocate with meaningful commitments in mode four of supply (‘movement of natural persons’, i.e., cross-border movement of workers on temporary contracts). This is the one key area in which developing countries have export

advantage in services. However, mode four commitments are very weak and largely restricted to the movement of intra-corporate transferees. Finally, both developed and developing countries need to make commitments to improve the transparency of domestic regulations covering services (covered by GATS Article VI:4 in particular). Opaque domestic regulations rather than border barriers are the main hindrance to market access and greater competition in services.

The post-September 11<sup>th</sup> environment complicates matters somewhat. It is going to be even more difficult to get developed countries to accept more developing country workers on short-term contracts, especially those who are semi- or unskilled (e.g., in catering and construction services). Developing countries would also gain substantially from the liberalisation of hitherto protected developed country markets in (air, land and maritime) transport and energy services. Again, the post-September 11<sup>th</sup> environment may make this more difficult.

Other subjects for the GATS negotiations include subsidies and emergency safeguards, both technically complicated and politically tricky. The Doha Ministerial Declaration stipulates that “participants shall submit initial requests for specific commitments by June 30<sup>th</sup> 2002 and initial offers by March 31<sup>st</sup> 2003” – a very tight time frame.<sup>28</sup>

So far negotiations have made some low-key progress, helped by the fact that they are not as politicised as other negotiating areas such as agriculture and the implementation agenda. The US’s ambitious proposal in mid 2002 puts transparency in domestic regulation (not surprisingly drawing on US practice) at the heart of GATS deliberations and future commitments. Nevertheless, real progress in the services negotiations will not occur unless there are breakthroughs in other negotiating areas, agriculture in particular.

### *Industrial goods*

Developed country peak tariffs and tariff escalation hinder developing country exports in textiles and clothing, foodstuffs, steel, energy products, leather goods and

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<sup>28</sup> Ibid., para. 15.



footwear. In addition, trade among developing countries is severely hampered by their own high and differentiated tariffs, not to mention a plethora of non-tariff barriers such as quotas and import licensing arrangements.

To begin with, developing countries will expect developed countries – the US in particular – to live up to commitments to phase out bilateral quotas on textiles and clothing by the beginning of 2005, as set out in the Uruguay Round Agreement on Textiles and Clothing (ATC). So far not much has been done (least of all in the US), and the phase-out of quotas is back-loaded to the last year. There is also the worry that high tariffs and a cascade of anti-dumping actions will follow in 2005 and beyond – even more so with China's entry to the WTO. Hence there is a good chance that the new round will be derailed if developed countries do not live up to their ATC commitments by the 2005 deadline.

The Ministerial Declaration proclaims new negotiations “to reduce or as appropriate eliminate tariffs, including the reduction or elimination of tariff peaks, high tariffs, and tariff escalation, as well as non-tariff barriers, in particular on products of export interest to developing countries. Product coverage shall be comprehensive and without a priori exclusions”. Developing and least-developed countries will have special treatment, “including through less than full reciprocity in reduction commitments”.<sup>29</sup>

One key to progress in these negotiations will probably be a formula approach to tariff harmonisation akin to the ‘Swiss formula’ followed during the Tokyo Round. This would entail higher cuts in tariff peaks and tariffs on processed goods. Request-offer negotiations, uniform tariff cuts, ‘zero-for-zero’ cuts and the like, on their own, would not tackle the tariff peaks and tariff escalation that hinder developing country exports.

The really radical proposals to date have come first from New Zealand, and then from the US. Both have the abolition of tariffs worldwide as the ultimate objective. The US proposal, drawing on that of the US National Foreign Trade Council, has 2015 as the target date for scrapping all tariffs, with 2010 as the intermediary target date for eliminating all tariffs under 5 per cent and bringing maximum tariffs down to 8 per cent.

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<sup>29</sup> Ibid., para. 16.

Arguably, this is the most important proposal to date in the Doha Round, and the most visible sign of resurgent US activism in international trade policy. If it could generate sufficient support from other WTO members, and providing movement occurred on other fronts (especially agriculture), it could give real focus to negotiations and set the round on its legs.

Predictably, the US proposal immediately ran into controversy. It is supported by New Zealand, Hong Kong and Singapore. The EU and Japan are sceptical. The real opposition, however, comes from most developing countries. Given higher average tariffs, greater incidence of peak tariffs and tariff escalation, and, not least, asymmetrical dependence on customs duties for government revenue, they would bear the brunt of adjustment *en route* to zero tariffs. The other side of the coin is that they stand to benefit most: through efficiency gains from opening own markets to imports; the opening of other developing country markets to their exports; and, finally, the opening of developed country markets to their exports, particularly in textiles and clothing.

There is a tight deadline of end March 2003 to establish modalities and formulas for actual tariff-cutting negotiations. Given the lack of consensus so far, the odds are that this deadline will not be met.

*b) Rule-making*

Market access negotiations are not enough: they need to be buttressed by improvements to the WTO rule base. This is the essential machinery that greases the wheels of multilateral market access on a day-to-day basis. It also tends to be neglected whenever the WTO becomes fixated with launching and then negotiating a new round.

The gaping hole in WTO rules is Article VI GATT, which governs anti-dumping and countervailing duties. It sets out the basic rules under which countries are permitted to impose duties on 'dumped' foreign products, i.e., pricing exports below comparable price in the exporting country. These rules, however, are very weak, doing little to arrest selective and open-ended anti-dumping (AD) actions to restrict imports – all too often the protectionist's weapon of choice. Small firms and new entrants from developing countries are especially vulnerable; indeed, the majority of AD actions are aimed at developing

country exports. Since the 1990s, developing countries have increasingly resorted to their own AD actions, especially against other developing countries. They would gain most from strengthened Article VI provisions.

In the Ministerial Declaration, WTO members agree to negotiations “aimed at clarifying and improving disciplines under the Agreements on Implementation of Article VI of the GATT 1994 and on Subsidies and Countervailing Measures”. This was a major concession by Robert Zoellick, overcoming domestic opposition in the US and winning him much respect among the WTO membership. Nevertheless, the scope of negotiations is hedged about with the caveat that they should preserve “the basic concepts, principles and effectiveness of these Agreements and their instruments and objectives”.<sup>30</sup> The fact remains that stronger WTO rules on AD actions will face formidable opposition, particularly in the US Congress.<sup>31</sup>

In addition, WTO members agree to “clarifying and improving” disciplines on fisheries subsidies (another developing country concern) and regional trade agreements, and to “improvements and clarifications” of the Dispute Settlement Understanding.<sup>32</sup>

There is the danger that these negotiations may suffer from neglect. For example, it will be difficult to strengthen disciplines on regional trade agreements (in GATT Article XXIV, GATS Article V and on preferential rules of origin) when nearly all WTO members are involved in one or several of them. This is alarming. RTAs are spreading like wildfire, splicing up world markets into unequal chunks benefiting insiders at the expense of those without privileged club membership. Most RTAs also have highly complicated, overlapping and contradictory rules of origin that tie up trade in knots of costly and burdensome red tape. Without further multilateral (non-discriminatory) liberalisation and stronger WTO disciplines on RTAs, this trend will make trade policy across the world even more unequal, opaque and discriminatory. If unchecked, it will marginalize the WTO and subject international trade-and-investment more decisively to the political whims of the major powers (notably the US and the EU) around which RTA

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<sup>30</sup> Ibid., para. 28.

<sup>31</sup> On US anti-dumping legislation and proposals for anti-dumping negotiations in the WTO, see Brink Lindsey and Dan Ikenson, “Anti-dumping 101: the devilish details of ‘unfair trade’ law”, *Cato Trade Policy Analysis* no. 20, November 26<sup>th</sup>, 2002; Brink Lindsey and Dan Ikenson, “Reforming the anti-dumping agreement: a road map for WTO negotiations”, *Cato Trade Policy Analysis* no. 21, December 11<sup>th</sup>, 2002.

<sup>32</sup> “Ministerial Declaration”, paras. 28-30.

blocks are forming. The smallest and poorest developing countries, of marginal interest to the big players, would be squeezed and lose most.<sup>33</sup>

The US proposal to abolish tariffs on non-agricultural goods is of major relevance here. The multilateral abolition of industrial tariffs would remove much of the trade diversion, rules of origin complications and assorted red tape that are associated with RTAs. Much discrimination would continue due to remaining non-tariff barriers and, not least, the persistence of agricultural tariffs.

c) *Developing country issues*

The preamble to the Ministerial Declaration places the “needs and interests (of developing countries) at the heart of the Work Programme .... In this context, enhanced market access, balanced rules, and well targeted, sustainably financed technical assistance and capacity building programmes have important roles to play. ... We are committed to addressing the marginalisation of least developed countries in international trade and to improving their effective participation in the multilateral trading system”.<sup>34</sup>

Issues specific to developing countries in the new round relate, *inter alia*, to the implementation agenda, Special and Differential Treatment, technical co-operation and capacity building, the TRIPS agreement, and least developed and small economies.

*The implementation agenda*

Most developing countries, particularly the least developed among them, face severe constraints in implementing Uruguay Round agreements, particularly those on intellectual property protection (TRIPS), trade-related investment measures (TRIMS), sanitary and phytosanitary standards (SPS), technical barriers to trade (TBT), customs valuation and import licensing. As Mike Finger points out, there are real and substantial costs involved in implementing these trade procedures domestically – much more so than

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<sup>33</sup> Peter Tulloch, “Regionalism and the WTO”, *The World Trade Brief*. Fourth WTO Ministerial Conference, 9-13 November 2001 (London: Agenda Publishing), pp. 43-44.

<sup>34</sup> “Ministerial Declaration”, paras. 2&3.

is the case with the removal of tariffs and quotas at the border.<sup>35</sup> This ‘implementation agenda’ has risen to the top of the WTO priority list in the past two years, but evinced no real progress until fairly recently.

Considerable progress, however, was made after July/August last year, and by the time of the Doha Ministerial about half the approximately one hundred implementation issues were resolved. These are contained in a separate Ministerial Decision issued at the end of the Doha Ministerial. *Inter alia*, they address the Agreement on Agriculture (e.g., exercising restraint in challenging developing country subsidies for food security and rural development purposes), the SPS and TBT agreements, the ATC (e.g., restraint in initiating AD investigations on developing country textiles and clothing exports), TRIMS (extension of transition periods), GATT Article VI (on AD measures), the Agreement on Subsidies and Countervailing Measures (e.g., restraint in challenging certain developing country subsidies, exempting least developed countries from the prohibition on export subsidies, extending transition periods for the phase-out of export subsidies in other developing countries).<sup>36</sup>

This leaves another fifty or so implementation issues outstanding, which are to be dealt with in the new round and form part of the eventual Single Undertaking. The main Ministerial Declaration states that these issues “shall be addressed as a matter of priority by the relevant WTO bodies, which shall report to the Trade Negotiations Committee ... by the end of 2002 for appropriate action”.<sup>37</sup> Very little progress has been made so far, and the end 2002 deadline has been missed.

Fresh implementation issues are bound to arise in the course of negotiations on market access, rules and new issues in the new round. These will be handled in the separate negotiating mandates.<sup>38</sup> It is vital that the implementation dimension of each and every negotiating mandate is carefully considered, with transition periods, technical assistance and the like built into new commitments on a flexible, case-by-case, needs-

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<sup>35</sup> Finger, “Implementing the Uruguay Round agreements”, *op cit.*

<sup>36</sup> “Implementation-Related Issues and Concerns”, *op cit.*. Also see “Proposed Procedures for Extensions Under Article 27.4 for Certain Developing Country Members”, Communication from the Chairman of the General Council, Committee on Subsidies and Countervailing Measures, G/SCM/W/471/Rev.1, 13 November 2001.

<sup>37</sup> “Ministerial Declaration”, para. 12.

<sup>38</sup> *Ibid.*, para. 12.

oriented basis. This has to be treated in an issue-specific and country-specific manner, and is inevitably going to be complicated and long drawn-out – another argument for a longer rather than shorter round. Above all, the Uruguay Round folly of rushing developing countries into agreements with blithe disregard for implementation effects must not be repeated.

### *Special and Differential Treatment*

‘Old-style’ special and differential treatment (SDT), as expressed in Part IV of the GATT and the Enabling Clause of the Tokyo Round, largely exempted developing countries from GATT rules and obligations. They were granted sweeping carve-outs from GATT disciplines; and they received developed country preferences but were not obliged to reciprocate. The whole process caused much self-inflicted damage in developing countries and marginalised them in the GATT. That changed during the Uruguay Round when some (but still a minority of) developing countries, on the back of unilateral liberalisation and a sharper appreciation of their trading interests, began to play a more active part in the GATT. They realised the importance of reciprocal obligations in order to be at the bargaining table; and they developed a better appreciation of non-discriminatory rules – to shield them from the protectionism of other, more powerful players, and to provide very necessary economic policy discipline domestically.

References to special and differential treatment are sprinkled liberally throughout the Ministerial Declaration and reaffirmed as “an integral part of the WTO Agreements”. They appear to encompass a ragbag of non (or less) reciprocal, preferential concessions, longer transition periods, technical assistance and related capacity building exercises, and (extra) special provisions for least developed countries. The Declaration also states that “all special and differential treatment provisions shall be reviewed with a view to strengthening them and making them more precise, effective and operational”.<sup>39</sup> In the separate Decision on implementation issues, there is reference to “converting (non-binding) special and differential treatment measures into mandatory provisions ... with clear recommendations for a decision by July 2002”.<sup>40</sup> This deadline had to be shifted

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<sup>39</sup> Ibid., para.44. Also see para. 50.

<sup>40</sup> “Implementation-Related Issues and Concerns”, para. 12.1(I).

back to end December 2002 due to lack of agreement, and even this second deadline has passed without agreement.

It would be a grave mistake if the reviews of SDT resulted in a return to the old-style non-reciprocity that did such damage to developing countries pre-Uruguay Round. Unfortunately, this looks like the position of one block of developing countries, particularly the 'Like-Minded Group' led by India, Pakistan and Egypt, whose focus is the implementation agenda. The hardliners seem to want to reopen existing Uruguay Round agreements in order to grant blanket carve-outs to developing countries – a non-starter for developed countries and the more advanced, sensible developing countries in the WTO. This would only exacerbate the begging-bowl, dependency mentality of so many developing country governments. They would become even more dependent on uncertain and insubstantial preferential market access to developed countries, and exposed to the vagaries of the latter's power politics.

On the contrary, it is in developing countries' interests to subscribe to the reciprocity principle and adhere to basic, common, non-discriminatory rules in order to extract maximum benefit from the WTO system. It is true that some low-income and all least developed countries have legitimate implementation issues to address, given the complexity of the Uruguay Round agreements and their limited capacity to give effect to them domestically; and they need a helping hand to participate more effectively in the WTO. But it is equally true that the score or so of more advanced middle-income developing country members of the WTO have few, relatively minor implementation problems. Even those faced by India are somewhat overblown (by the Indian government) and pale in comparison with the situation in sub-Saharan Africa.

Hence 'new-style' SDT, especially on implementation issues, should focus on the least developed countries where problems are real and pressing, not on the rest of the developing world. The countries concerned should have flexible (i.e., longer) transition periods, substantially increased, perhaps mandatory technical assistance, and associated capacity building measures. As mentioned before, this needs to be done in differentiated, bottom-up fashion congruent with national circumstances and capacities. For this the WTO needs to set up an appropriate mechanism to assess individual countries' implementation problems, appropriate transition periods and resource needs, as well as to

monitor and review subsequent progress. To be avoided are open-ended opt-outs and automatic extensions of transition periods for whole classes of countries.<sup>41</sup>

### *Technical co-operation and capacity building*

References to technical co-operation and capacity building are also spattered throughout the Ministerial Declaration, as well as occupying a four-paragraph separate section in it. The wording is mostly vague and exhortatory, even though there is reference to “firm commitments” in the Declaration. The WTO Secretariat is instructed “to support domestic efforts for mainstreaming trade into national plans for economic development and strategies for poverty reduction. The delivery of WTO technical assistance shall be designed to assist developing and least-developed countries and low-income countries in transition to adjust to WTO rules and disciplines, implement obligations and exercise the rights of membership .... Priority shall also be accorded to small, vulnerable, and transition economies, as well as to Members and Observers without representation in Geneva”. Technical assistance is supposed to be co-ordinated effectively with bilateral donors and other international organisations.<sup>42</sup>

The most specific reference is to the need for “secure and predictable funding” for technical assistance and capacity building. Accordingly, the Director-General is instructed “to report to the Fifth Session of the Ministerial Conference, with an interim report to the General Council in December 2002 on the implementation and adequacy of these commitments in the identified paragraphs”.<sup>43</sup>

Very little technical assistance from developed country coffers has been forthcoming since the Uruguay Round. It remains to be seen whether this will change substantially, even though the sums required are actually very modest and a drop in the ocean compared with overall aid transfers. The demand, however, is huge: up to 120 developing countries (existing WTO members and about 30 accession candidates) are in need of technical assistance for trade-related capacity building. So far governments have

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<sup>41</sup> Finger, “Implementing the Uruguay Round agreements”, *op cit.*, pp. 1104-1105, 1107; Hoekman, “Strengthening the global trade architecture for development”, *op cit.*, pp. 34-35.

<sup>42</sup> “Ministerial Declaration”, paras. 38-41.

<sup>43</sup> *Ibid.*, paras. 40&41.



pledged US\$ 10m as part of a Global Trust Fund for technical assistance in the new round.<sup>44</sup>

### *Least Developed Countries*

Again, there is much exhortatory language in the Ministerial Declaration. WTO members endorse the Integrated Framework for Trade-Related Technical Assistance to least Developed Countries (IF), and urge all involved to “explore the enhancement of the IF...” The Director-General and other heads of agencies are requested to provide an interim report to the General Council at the end of 2002, and a full report at the Mexico Ministerial, on all issues affecting LDCs.<sup>45</sup>

More specifically, WTO members commit themselves “to the objective of duty-free, quota-free market access for products originating from LDCs ... We further commit ourselves to consider additional measures for progressive improvements in market access for LDCs”.<sup>46</sup>

### *TRIPS*

The TRIPS Agreement has been a lightning-rod for developing country complaints. Its short-term effect is to increase prices and transfer monopoly profits from the poorer developing countries to multinational enterprises headquartered in the West, especially in the pharmaceuticals sector. The proponents of TRIPS argue that longer-term dynamic gains, e.g., from foreign investment and associated technology transfer, will outweigh short-term losses; but this is uncertain and probably applies in the main to the more advanced developing countries. TRIPS is also regulation-heavy, requiring much time and resources to put domestic enforcement mechanisms in place. Most controversially, developing countries are concerned that TRIPS could inhibit cheap and plentiful access to essential medicines, such as drugs to combat HIV/AIDS.

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<sup>44</sup> *WTO News*, 7 March 2002 [www.wto.org/english/news\\_e/pres02/pr277\\_e.htm](http://www.wto.org/english/news_e/pres02/pr277_e.htm) and 11 March 2002 [www.wto.org/english/news\\_e/pres02/pr279\\_e.htm](http://www.wto.org/english/news_e/pres02/pr279_e.htm)

<sup>45</sup> “Ministerial Declaration”, paras. 3&43.

<sup>46</sup> *Ibid.*, para. 42.

TRIPS was one of the most sensitive issues that had to be resolved by ministers at the Doha Ministerial itself. The pharmaceutical multinationals and developed country governments have had to concede greater flexibility in interpreting parts of TRIPS (especially Articles 7 & 8) after a series of public relations disasters in 2000 and 2001. The question was whether such flexibility was to be narrowly defined, essentially limited to overriding patents and issuing compulsory licences for generic production in public health emergencies, such as an HIV/AIDS pandemic, or whether it was to be more open-ended. In the end, in an agreement brokered by Brazil, developing countries seem to have won a major victory in procuring rather flexible interpretation of TRIPS inasmuch as it concerns public health.

A separate Ministerial Declaration on TRIPS states that, “while reiterating our commitment to the TRIPS Agreement, we affirm that the Agreement can and should be interpreted and implemented in a manner supportive of WTO Members’ right to protect public health and, in particular, to promote access to medicines for all. ... In this connection, we reaffirm the right of WTO Members to use, to the full, the provisions in the TRIPS Agreement, which provide flexibility for this purpose”. These flexibilities include: “Each Member has the right to grant compulsory licenses and the freedom to determine the grounds upon which such licenses are granted. ... Each Member has the right to determine what constitutes a national emergency or other circumstances of extreme urgency, it being understood that public health crises, including those related to HIV/AIDS, tuberculosis, malaria and other epidemics, can represent a national emergency or other circumstances of extreme urgency”. Each Member is also free to establish its own regime for the exhaustion of intellectual property rights without challenge, subject to MFN and national treatment provisions in TRIPS.<sup>47</sup>

The same Declaration instructs the TRIPS Council to “find an expeditious solution” to the problem of WTO members who find it difficult to take advantage of compulsory licensing due to lack of domestic manufacturing capacity, and to report to the General Council before the end of 2002. In addition, the transition period for least developed countries to implement large sections of TRIPS is extended by 10 years to 2016.<sup>48</sup>

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<sup>47</sup> “Declaration on the TRIPS Agreement and Public Health”, *op cit.*, paras. 4&5.

<sup>48</sup> *Ibid.*, paras. 6&7.

The main Ministerial Declaration agrees to new negotiations to establish a system of notification and registration of ‘geographical indications’ for wines and spirits by the Mexico Ministerial. The extension of geographical indications (place names used to identify products with characteristics associated with specific locations) to products other than wines and spirits will also be addressed by the TRIPS Council. Finally, the TRIPS Council is instructed to examine, *inter alia*, the relationship between the TRIPS Agreement and the Convention on Biological Diversity, and the protection of traditional knowledge and folklore.<sup>49</sup> All these issues for negotiation and examination are important for developing countries, but have not received the publicity and attention devoted to overriding drug patents during public health emergencies.

The main road-block in the TRIPS negotiations at the moment is the issue of compulsory licensing provisions for developing countries without domestic production capacity. This concerns the vast majority of developing countries in the WTO. TRIPS rules restrict their ability to import generic drugs from other developing countries; but this is their preferred course of action in order to provide essential medicines, at affordable cost, to deal with public health emergencies. A compromise deal, involving a waiver to relevant TRIPS provisions, was thrashed out at a mini-ministerial meeting in Australia in November 2002. The EU, other developed countries and the developing countries *en bloc* were supportive. However, a final agreement was blocked by the US administration, which came under heavy pressure from US pharmaceutical multinationals. The US argues that the proposed TRIPS waiver is open-ended and goes too far in weakening patent protection. Its preferred solution is to restrict the waiver to cover generic imports destined for LDCs, and only for certain epidemics such as HIV/AIDS, tuberculosis and malaria.

The lone US veto means another deadline has been missed and throws the TRIPS negotiations into turmoil. It adds to the general gloom in the run up to Cancun.

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<sup>49</sup> “Ministerial Declaration”, paras. 18&19.

### *Other developing country issues*

A new work programme will examine issues relating to the trade of small, vulnerable economies. Two new Working Groups are also to be set up: one to examine the relationship between trade, debt and finance; and the other to examine the relationship between trade and technology transfer.<sup>50</sup> It is difficult to imagine anything substantial coming out of these Working Groups in the near future.

#### *d) Singapore issues*

Of the four Singapore issues, two – investment and competition – are controversial. That is less the case with trade facilitation and transparency in public procurement. The EU succeeded in getting all four issues onto the negotiating agenda in a two-step procedure: preparatory work commenced at the beginning of the round; actual negotiations will only start after the Mexico Ministerial, “on the basis of a decision to be taken, by explicit consensus, at that Session on the modalities of the negotiations”.<sup>51</sup>

The outcomes of all four sets of negotiations will fold into the Single Undertaking at the end of the round.<sup>52</sup> This is unfortunate. There are reasonable arguments pro and contra these issues as negotiating items in the new round. Nevertheless, they are of secondary importance, well below the priority, big-ticket market access items identified earlier. Furthermore, as mentioned before, there is the possibility of India and perhaps other developing countries vetoing negotiations on the Singapore issues at the Mexico Ministerial if they feel aggrieved with lack of progress in the new round during the course of 2002/3. This could, in the worst scenario, turn into a replay of Seattle.

It would have been better to keep these issues out of the Single Undertaking. The alternative would have been opt-ins and opt-outs for WTO members – more along the lines of plurilateral codes (as exist for public procurement and civil aircraft) rather than GATT and TRIPS-type obligations binding on all. This would have allowed enthusiastic subsets of members to proceed with negotiations, while allowing others, especially

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<sup>50</sup> Ibid., paras. 35-37.

<sup>51</sup> Ibid., paras. 20, 23, 26, 27.

<sup>52</sup> Ibid., para. 47.

sceptical developing country members, to stand aside. It would have been a useful safety valve for the Mexico Ministerial.

The way out of the morass in the run-up to Cancun may be to build consensus around light, evolutionary agreements that would be *de minimis* to begin with, e.g., with opt-ins or opt-outs and not necessarily subject to dispute settlement. However, they could be strengthened gradually and incrementally given sufficient consensus in the future. The overriding imperative is to prevent the Singapore issues from becoming a round-stopper.

### *Trade and investment*

Given stronger linkages between trade and foreign direct investment (FDI), there is a long-term rationale for bringing investment rules into the WTO. A *strong* investment agreement in the WTO would create multilateral, non-discriminatory disciplines for a liberal investment climate. Nevertheless, there is continuing momentum behind unilateral liberalisation of FDI in developing countries, complemented by bilateral investment treaties and investment provisions in regional trade agreements. Finally, investment rules are already built into the WTO: strongly in GATS through “commercial presence” (mode three of supply); also in TRIPS; and weakly on the goods side in the agreements on TRIMS and Subsidies and Countervailing Measures.

Before negotiations start, the Ministerial Declaration charges the Working Group on the Relationship Between Trade and Investment to focus on issues of “scope and definition; transparency; non-discrimination; modalities for pre-establishment commitments based on a GATS-type, positive list approach; development provisions; exceptions and balance-of-payments safeguards; consultation and the settlement of disputes between Members”.<sup>53</sup>

### *Trade and competition policy*

The arguments in favour of bringing competition (antitrust) rules into the WTO are not as strong as those in favour of investment rules in the WTO. There are disagreements

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<sup>53</sup> Ibid., para. 22.

about the importance of private barriers to trade; and the latter are arguably not as important as the public (government-imposed) tariff and non-tariff barriers to trade, whose reduction and removal should be the WTO's core mission. Furthermore, new WTO competition regulations would impose an implementation burden on developing countries on top of their post-Uruguay Round obligations. The last thing they need right now is a WTO obligation to set up complex competition authorities, for which most of them simply do not have the resources.

Even the EU recognises that eventual WTO agreement on competition rules in this round will have to be loose and minimalist. In this vein, and before negotiations start, the Ministerial Declaration charges the Working Group on the Interaction Between Trade and Competition Policy to focus on “core principles; including transparency, non-discrimination and procedural fairness, and provisions on hardcore cartels; modalities for voluntary co-operation; and support for progressive reinforcement of competition institutions in developing countries through capacity building”.<sup>54</sup>

#### *Transparency in public procurement*

A plurilateral code, the Government Procurement Agreement (GPA), covers public procurement in goods. A limited number of mainly developed countries belong to it. They extend MFN and national treatment to each other but not to non-signatories, which is why the GPA falls outside GATT disciplines. In addition, as a result of an initiative taken at the Singapore Ministerial in 1996, a multilateral Working Group was set up to improve transparency in government procurement practices. Very little progress has been made to date on this front. Finally, while the GATS excludes coverage of public procurement in services, further negotiations are mandated. Again, there is next-to-no progress to report.

The Ministerial Declaration states that new negotiations “shall be limited to the transparency aspects and therefore will not restrict the scope for countries to give preferences to domestic supplies and suppliers”.<sup>55</sup>

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<sup>54</sup> Ibid., para. 25.

<sup>55</sup> Ibid., para. 26.

### *Trade facilitation*

Arbitrary, corrupt and time-consuming customs administration, excessive trade documentation and assorted red tape often do more harm than tariffs to trade in goods and services, especially in developing countries. Small and medium-sized firms are especially hit hard. Hence the Ministerial Declaration recognises “the case for further expediting the movement, release and clearance of goods, including goods in transit, and the need for enhanced technical assistance and capacity building in this area”. Before negotiations start, the Council for Trade in Goods “shall review and as appropriate, clarify and improve relevant aspects of Articles V, VII and X of the GATT 1994 ...”<sup>56</sup>

### *Trade and standards: labour and environment*

Environmental standards are definitely on the negotiating agenda for the new round; labour standards are definitely excluded from it.

### *Trade and labour*

Developing countries clearly recognise that bringing labour standards into the WTO, in whatever form, could be the thin end of the wedge. Developed countries would in due course press for obligations to comply with ‘minimum’ or ‘core’ labour standards, which could easily be abused (much like AD actions) in order to shut the door on cheap, labour-intensive developing country exports. Hence their understandable inflexibility on the issue.

The preamble to the Ministerial Declaration curtly reconfirms existing policy: “We reaffirm our declaration made at the Singapore Ministerial Conference regarding internationally recognised core labour standards. We take note of work underway in the International Labour Organisation (ILO) on the social dimension of globalisation”. Labour standards are staying off the WTO agenda – at least until this round is over.

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<sup>56</sup> Ibid., para. 27.

## *Trade and environment*

Trade-and-environment is more complicated than trade and labour standards. Parts of the former are also already built into the WTO, especially in the SPS and TBT agreements. The EU, the lead *demandeur* on this issue, has got what it wanted into the new round, and perhaps more than it dreamed of achieving. If WTO members, and developing countries in particular, are not careful, the environmental bits of the negotiating agenda could turn out to be the Trojan Horse in the new round, just as TRIPS was the Trojan Horse in the last round. This chunk of the new round will be the EU's chief vehicle for bringing new, complex and mostly dubious regulation into the WTO.

The Ministerial Declaration contains a wordy paragraph in its preamble, in which WTO members “strongly reaffirm (their) commitment to the objective of sustainable development”. It goes on: “We recognise that under WTO rules no country should be prevented from taking measures for the protection of human, animal or plant life or health, or of the environment at the levels it considers appropriate, subject to the requirement that they are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade, and are otherwise in accordance with the provisions of the WTO Agreements”.<sup>57</sup>

The section on Trade and Environment in the Work Programme is split into two parts. The first part launches immediate negotiations, “without prejudging their outcome”, on: 1) “the relationship between existing WTO rules and specific trade obligations set out in multilateral environmental agreements (MEAs). ... The negotiations shall not prejudice the WTO rights of any Member that is not a party to the MEA in question”; 2) “procedures for regular information exchange between MEA Secretariats and the relevant WTO committees, and the criteria for the granting of observer status”; and 3) “the reduction or, as appropriate, elimination of tariff and non-tariff barriers to environmental goods and services”.<sup>58</sup>

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<sup>57</sup> Ibid., para. 6.

<sup>58</sup> Ibid., para. 31.



Liberalising trade in environmental goods and services is welcome. Clarifying the relationship between the WTO and individual MEAs is probably necessary, but developing countries should proceed with a very watchful eye. If they do not watch out, WTO general or specific waivers could open the floodgates to an increasing number of badly-designed and administratively unwieldy MEAs that take little account of developing country concerns. Trade sanctions could then be used to enforce compliance with MEAs. This may make sense for some MEAs, but not for others.

The second part of the Ministerial Declaration on trade and environment instructs the Committee on Trade and Environment to work on the following: 1) “the effect of environmental measures on market access, especially in relation to developing countries, in particular the least developed among them, and those situations in which the elimination or reduction of trade restrictions and distortions would benefit trade, the environment and development”; 2) “the relevant provisions of the Agreement on Trade-Related Intellectual Property Rights”; and 3) “labelling requirements for environmental purposes”.<sup>59</sup>

It goes on: “Work on these issues should include the identification of any need to clarify relevant WTO rules. The Committee shall report to the Fifth Session of the Ministerial Conference, and make recommendations, where appropriate, with respect to future action, including the desirability of negotiations”.

Developing countries should again be watchful that the EU does not use the upgraded work of the Committee on Trade and Environment, and possible future negotiations, to insert into the round what it was not able to insert explicitly into the Ministerial Declaration. There are two danger zones.

The first concerns national environmental regulations that differentiate between products on the basis of how they are produced or processed. The conventional interpretation of GATT Article III stipulates national treatment for ‘like products’; it does not allow governments to discriminate between goods according to production and processing methods (PPMs). This prevents developed countries from ‘exporting’ (or imposing) their environmental standards on developing countries. The forthcoming work

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<sup>59</sup> Ibid., para. 32.

on eco-labelling could be a useful middle way to reconcile developed and developed country concerns; but it could equally be abused to impose costly and inappropriate standards on developing country exports.

The second danger zone concerns the EU's attempts to get its version of the 'precautionary principle' recognised in the WTO. This failed outright before and in Doha. All WTO members agree that precautionary measures, such as temporary import bans, can be applied if there is a danger to human, animal or plant life or health, but existing GATT rules, and especially the SPS Agreement, insist that these measures should be based on scientific evidence and should not constitute disguised restrictions on trade. The EU, however, takes a much more conservative view of risk assessment than other WTO members, especially where food safety standards are concerned. The EU stance on precaution is much less based on what existing scientific evidence would consider as 'acceptable' risk, and wishes to take consumer and other views into account. Hence its strong preference to 'clarify' relevant SPS provisions (especially the preamble, and Articles 3.3 & 5.7 of the agreement). Other WTO members consider this position to be an open invitation to restrict imports on all sorts of spurious grounds. It is nevertheless a politically sensitive and high-order issue for the EU, so it would not be surprising if it tried to introduce it by stealth into the new round.

At first glance, the wording on trade and environment in the Work Programme of the Ministerial Declaration is sufficiently tight to prevent EU skulduggery. It refers to the "effect of environmental measures *on* market access" (my italics), not the other way around. And it adds that the outcome of work and negotiations "shall not add to or diminish the rights and obligations of Members under existing WTO agreements, in particular the Agreement on the Application of Sanitary and Phytosanitary Measures, nor alter the balance of these rights and obligations, and will take into account the needs of developing and least developed countries".<sup>60</sup> Nevertheless, the preambular references to the environment, and the non-trade concerns taken into account in the agricultural negotiations,<sup>61</sup> provide the EU with worrying wiggle-room. Hence the need for other WTO members to be alert and cautious in this part of the new round.

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<sup>60</sup> Ibid., para. 32.

<sup>61</sup> Ibid., paras. 6&13.

## *Miscellaneous issues*

The Work Programme on electronic commerce, which has achieved very little, will continue, as will the current practice of not imposing customs duties on electronic transmissions. This will be reviewed at the Mexico Ministerial.<sup>62</sup> The preamble contains references to “work with the Bretton Woods institutions for greater coherence in global economic policy-making”; “concluding accession proceedings as quickly as possible ... (and) accelerating the accession of least developed countries”; and “making the WTO’s operations more transparent, including through more effective and prompt dissemination of information, and to improve dialogue with the public”.<sup>63</sup>

### **The politics of the new round**

To date there is little to report regarding the politics of the new round as the latter has made next-to-no progress. Politics will have to change if the new round is to pick up speed. Three old and three new features deserve to be highlighted.

First, as in the Uruguay Round, the necessary but not sufficient condition for success is for the major players, the US and the EU, to contain domestic political difficulties, defuse bilateral conflicts and co-operate intensively. In the case of the EU, putting the domestic house in order means doing something serious about the CAP and containing France, the eternal spoiler of international economic policy. France’s perverse but entirely predictable bloody-mindedness on the issue of agricultural export subsidies nearly caused the Doha Ministerial to collapse. It remains the towering obstacle to meaningful CAP reform. For the US, President Bush has to contain protectionist elements, particularly in the textiles and clothing lobbies, but also in agriculture and steel. Both sides must exercise restraint in taking cases to WTO dispute settlement and relying excessively on adversarial litigation.

The twist to the tale is the more vigorous exertion of US leadership in trade policy during the course of 2002, in contrast to the EU’s continued defensiveness on agricultural reform. This cannot be divorced from the broader strategic picture of an increasingly

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<sup>62</sup> Ibid., para. 34.

<sup>63</sup> Ibid., paras. 5,9&10.

confident and assertive US superpower on the international stage, compared with an internally sclerotic and externally pusillanimous EU. Since the Tokyo Round, the US and the EU have shared co-equal leadership in the GATT/WTO. To be sure, it will still take two to tango, but is the US about to lead the dance for the first time since the 1960s? It is too early to tell.

Second, following Uruguay Round precedent, success in the new round will require the effective participation of a core of about 25 developed and developing countries who are already active in the WTO. Canada, Japan, Australia and New Zealand from the OECD come to mind. In the developing country camp, Brazil, India and now China stand out, but this group also includes other Latin American countries (notably Mexico and Chile) and many East Asian countries (notably Thailand, Malaysia, Singapore, Hong Kong and Korea).

Third, multi-country coalitions will be important to give the round a kick in the right direction. Broad-based, informal, 'café au lait' developed-developing country coalitions will be useful to share information and act as sounding-boards for ideas (the 'chat group' phenomenon); and even to resolve crises or give fresh impetus at strategic junctures, as was the case with the Swiss-Colombian coalition and the De La Paix Group during the Uruguay Round.<sup>64</sup> The drawback of these groups (such as Friends of the New Round, Friends of GATS, G77, the African Group and the LDC Group recently) is that they are too big and heterogeneous to forge common positions.

Perhaps more important will be small, discrete, issue-based developed-developing country coalitions. The Cairns Group and the International Bureau on Textiles and Clothing (ITCB) are the pathfinders in this respect, although one cannot expect such formal and relatively tight-knit coalitions in other negotiating areas. More probable are looser, informal coalitions in areas like services, industrial goods, rules, implementation and other issues, with membership fluid and varying across negotiating areas.

Embryonic 'Friends' groups already exist in services (Really Good Friends of GATS), anti-dumping, subsidies (Friends of Fish), trade facilitation (Colorado Group),

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<sup>64</sup> On formal and informal coalitions in the Uruguay Round, see Croome, *Reshaping the World Trading System*, op cit..

dispute settlement and implementation (G15 and the Like-Minded Group). These need to be more coherent and proactive if the round is to advance. Not least, they are an important counter to the UN-isation of the WTO that threatens to stop all effective decision-making in its tracks.

The first novel element is that the active, first-division developing countries will be negotiating with each other and other developing countries, especially on the tariff and non-tariff barriers that throttle South-South trade in industrial goods. During the Uruguay Round, the active developing countries tended to go head-to-head with developed countries but not with each other. The present situation is but a reflection of the increasing differentiation within the developing world and the porousness of the North-South divide.

The second novel element will be the more active participation of many more developing countries, including some traditionally weaker developing countries and even some LDCs, than was the case in previous rounds. This was certainly in evidence during the consultations in the WTO before Doha, and in Doha itself. Of particular note was the proactive participation of the African Group – for the first time at a GATT/WTO ministerial meeting. The countries concerned are too small and weak to sustain effective participation on their own in the new round, so they will have to create like-minded coalitions for this purpose.

However, there are distinct limits to the active participation of the second and third division developing countries with limited-to-very limited trade policy capacity, even in coalition formation. During the long haul of complex and multiple negotiations, they are likely to remain passive followers, not initiators and proactive players. This applies particularly to the LDCs, but, albeit to a less extreme extent, also to large low-income countries such as Pakistan, Bangladesh, Egypt and Nigeria. All may have more ‘negative’ bargaining power than before, i.e., the ability and willingness to block agreement, but they will not have significant ‘positive’ bargaining power for the foreseeable future.

The third factor is the entry of China and Taiwan (“Chinese Taipei”) into the WTO and their participation in the forthcoming negotiations. Russia too may join while the round is ongoing, although Russian unwillingness to initiate WTO-compatible reforms may drag out the accession process for some time. Taiwan, with a track record of relative

openness to the world economy, and having liberalised further in order to join the WTO, is in a good position to play an active and constructive role in the new round.

What about China? That is the 64,000-dollar question, as China is now the most important developing country in the WTO and is bound to play a major role in the new round. China faces the monumental task of implementing WTO rules domestically; it is still far from having a Rule of Law compatible with a market economy. If it flouts WTO rules others will follow, with potentially devastating consequences for the WTO system.

This may be too melodramatic a scenario, for there are positive signs too. After a fifteen-year WTO accession negotiation, China has capable, savvy trade negotiators who will want to extract maximum benefit from the WTO and use it to further bolster domestic reform – not to destroy the WTO system. One year into its WTO membership, the Chinese government is roughly on track with the staged implementation of its WTO obligations. There are also welcome indications that China will adopt a Brazilian rather than an Indian strategy in the WTO. If it acts like Brazil, it will shape differentiated interests and adopt a mixture of offensive and defensive positions in the WTO, forming overlapping coalitions with other WTO members along the way. If it acts like India, it will be negative and block on several fronts, as India tried to do (unsuccessfully) in the Uruguay Round and in Doha. Let us hope China turns out to be the Asian equivalent of Brazil.

### **Developing country trade policy capacity<sup>65</sup>**

Developing countries account for a four-fifths (and increasing) majority in the WTO. As mentioned above, there are encouraging signs of more developing countries who are willing and able to make their participation count. Nevertheless, it is one thing for a developing country to organise itself for a Ministerial Conference; it is quite another to sustain effective participation over the long, difficult haul of multi-issue, simultaneous

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<sup>65</sup> This section draws on Razeen Sally, “Effective participation in the WTO: building trade policy capacity in developing countries”, *The World Trade Brief*. Fourth WTO Ministerial Conference, 9-13 November 2001 (London: Agenda Publishing), pp. 48-50. Also see Page, “Developing countries in GATT/WTO negotiations”, *op cit.*; Finger and Nogues, “The unbalanced Uruguay Round outcome”, *op cit.*, pp. 333, 338; Hoekman, “Strengthening the global trade architecture for development”, *op cit.*, pp. 30, 32; Richard Blackhurst, Bill Lyakurwa and A. Oyejide, “Options for improving Africa’s participation in the WTO”, *The World Economy* 23,4, April 2000, pp. 491-510.

negotiations in a new round. To do that attention must turn, in the first instance, from Geneva to the domestic setting of *national* trade policy-making, against the extended background of national economic policy. Here there are wide and glaring divergences between developing countries (and countries in transition too). This feeds through to divergences in WTO participation.

The score or so of really active, first-division developing countries are in the middle-income bracket (China and India being the significant exceptions), with rising shares of international trade and investment. Most have also undertaken radical and sustained unilateral liberalisation. They have well-staffed missions in Geneva with high-profile ambassadors, many of whom chair important WTO committees. They are active in the formal and informal coalitions where much of the deal making is done. Finally, they have reasonably well-resourced trade policy operations back in national capitals.

The last aspect – adequate trade policy resources at home – is now crucial to effective WTO participation. In the past, including the Uruguay Round, national participation in GATT negotiations involved the Geneva mission and the lead ministry on trade policy at home. Now, as trade policy and trade agreements become more complex, especially in their domestic regulatory detail, trade negotiations are more domestic, national capital-centred than before, involving line ministries and regulatory agencies across government as well as private sector consultation.

Below the first-division bracket is a motley crew of second-division poorer countries, some quite large (such as Egypt, Pakistan, Morocco, Nigeria and Bangladesh), with vocal ambassadors. However, their influence in the WTO is hampered by serious lack of administrative capacity at home. Finally, there is a very large residual group – the third division as it were – amounting to half or more of the WTO membership (80 plus countries), with huge trade policy deficits. Many LDCs and small island-states do not even have a Geneva mission. Most of the others have perhaps one or two representatives in Geneva to cover all international organisations in town.

It is the first division of developing countries that has on the whole benefited from the WTO system; the vast majority of the rest have been unable to participate effectively.

Thus it can be said that credible and sustainable trade policy outcomes, including effective participation in a WTO round, require an efficient delivery mechanism, i.e., good trade policy decision making, *at home*. The main objectives of trade policy management are threefold: 1) clear, precise definition of national interests in *policy formulation*, with a strong sense of how trade policy fits into the overall national economic strategy; 2) effective *negotiating capacity* at bilateral, regional and multilateral levels, with a good appreciation of the dynamic interaction between these levels; and 3) effective domestic *implementation* of unilateral measures and international agreements. Achieving these objectives requires, *inter alia*, an effective lead ministry on trade policy, good inter-agency co-ordination, substantial non-governmental input and a strong WTO mission.

Most developing countries, in the second and third divisions previously mentioned, fare badly on all these counts. Quite apart from political and economic instability, corruption, low civil service pay, lack of qualified personnel, policy reliance on the whims of a few powerful (and mostly incompetent and venal) personalities, and a host of other institutional, economy-wide gaping holes, there are specific trade policy weaknesses. They include: lack of competent staff to analyse and monitor the costs and benefits of existing and proposed trade policies, at home and abroad; lack of legal expertise; lack of able and experienced officials to participate seriously in multiple international trade negotiations; policy blockage from regulatory agencies that are malintegrated into the trade policy process and with protectionist interests to defend; and little input from business organisations.

All these problems in trade (and wider economic) policy operations prevent most developing countries from making a systematic assessment of national trade policy priorities, to be implemented unilaterally and pursued through regional and multilateral negotiations. Even capable heads of mission and negotiators in Geneva (not invariably the case with developing country delegations to the WTO) are not of much use without strong back up from national capitals. The increasing complexity of the WTO in the wake of the Uruguay Round imposes many more demands on trade policy capacity at home, but the latter has not improved in most developing countries, and in some cases has even worsened.



Hence the feeling of distrust and frustration, the sense of being overwhelmed and unable to cope, among developing country officials. Small national missions in Geneva do not have the staff to attend, let alone keep pace with, the huge number of formal and informal meetings in the WTO; and officials in national capitals simply do not have the time and resources to analyse issues and formulate negotiating positions. The size and complexity of the new round makes a bad situation worse. This time, the weaker developing countries do not wish to fall into the Uruguay Round trap of being rushed into agreements they cannot fathom and find very hard to implement. This accounts in some measure for their present defensive attitude.

Given these seemingly intractable problems with trade policy capacity, it is not surprising that most developing countries' positions in WTO negotiations tend to be conservative, passive and reactive, only making concessions if under extreme pressure from more powerful players. Their domestic disarray and consequent lack of negotiating preparedness also make them easier targets for the major powers to pick off and bully, as happened in the latter stages of the Uruguay Round.

Nonetheless, there are examples of good trade policy management across the developing world. Trade policy capacity can be improved gradually, but only in bottom-up fashion with domestic political will and in the context of credible domestic policies and institutions. To reiterate, the key is to have clear and sensible trade policies, within a coherent overall national economic policy framework, developed 'from below'. This is the precondition for successful participation in the WTO as well as in regional trade negotiating forums. Well-targeted external technical assistance and capacity building can then help at the margin. On the other hand, it is misleading and counter-productive to think of trade policy capacity building in top-down terms, as a global Cartesian construct in which international organisations and donors are the central actors. This misses the point: good trade policy, like charity, begins at home, not in the IMF and the World Bank, nor indeed in the WTO.

Building trade policy capacity from the ground up, with a central focus on putting the domestic house in order, is inevitably going to be a long drawn-out affair. It can by degrees translate into effective WTO participation for an increasing number of developing countries. As far as the new round is concerned, a smallish and manageable negotiating

agenda would have suited developing countries with scarce administrative and policy resources much better. Unfortunately, the large and messy agenda at hand, while not an insuperable problem for first-division developing countries, presents a daunting challenge to most of the rest, and an impossible burden for many. If the EU and other developed countries really had developing country interests at heart, they would have kept the agenda small and focused.

## Conclusion

*Beginning with David Hume and Adam Smith, the emphasis on free trade has been not just one of the postulates, but the very heart or essence, of economic liberalism.*

Jan Tumlir

*In political activity, then, men sail a boundless and bottomless sea; there is neither harbour for shelter nor floor for anchorage, neither starting place nor appointed destination. The enterprise is to keep afloat on an even keel; the sea is both friend and enemy; and the seamanship consists in using resources of a traditional manner of behaviour to make a friend of every hostile occasion.*

Michael Oakeshott

It is perhaps instructive to juxtapose the classical liberal free trade ideals of Jan Tumlir with the pragmatic conservatism expressed in one of Michael Oakeshott's most quoted passages. The balance between the two captures, I hope, the tone of this extended policy essay on the state-of-play and future of the world trading system, and in particular the role of the WTO within it.

On the one hand, there is the enduring classical liberal message that free trade is a desirable goal on economic and moral grounds, and progress in that direction, however gradual and piecemeal, should be integral to modern globalisation. This is first and foremost a task for national governance, but the WTO, with the right sort of rules to buttress the protection of private property rights and the enforcement of contracts in cross-border transactions, can be a helpful external prop. This, then, would be the WTO's circumscribed but vital contribution to the liberty of individuals and the prosperity of nations.

On the other hand, politics is a messy, practical affair. Sensible political economy has to factor it into the equation. Following Oakeshott, the seas of real-world international trade policy are indeed boundless, bottomless and turbulent; and the enterprise, for national governments and the WTO, must be to keep afloat on an even keel, “using resources of a traditional manner of behaviour to make a friend of every hostile occasion”. A compass is needed to chart the right course ahead – something the WTO clearly lacks today; but the seamanship should match ambitions to prevailing weather conditions and the tools at hand.

It is this liberal-conservative compass, mixing the ideal of progressively freer trade with pragmatic politics, that is sorely needed for the Doha Round in order to take the WTO, and with it the wider trading system, into the right middle-distance future. The task ahead is to set the objective, flesh out the policy detail, and build the requisite political constituency. The latter in particular will be a steep uphill struggle.

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