

NOTES

THE REALPOLITIK OF MULTILATERAL TRADE NEGOTIATIONS FROM URUGUAY TO THE DOHA ROUND

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This paper discusses the politics of multilateral trade negotiations. The failure of the WTO Ministerial Conference at Cancun has raised concerns about the viability of the multilateral trading system. As the WTO negotiations have become bogged down, this paper attempts to provide some guidance by looking at some of the lessons learnt from the past. It further suggests possible options for the WTO as Members attempt to bring the Doha Round negotiations back on track. Having been a negotiator in the Uruguay Round, the author provides practical insights into the negotiating history and negotiating dynamics, from when the Uruguay Round was launched, and analyses how the multilateral trading system and the dynamics of negotiations have changed over time from the GATT to the WTO.

I. INTRODUCTION

The World Trade Organisation (WTO) Ministerial Conference in Cancun in September 2003 was an important mid-point in the negotiations towards the realisation of the Doha Development Agenda. The failure of Cancun was a lost opportunity. If Cancun had succeeded, it would have set a clear political direction and framework enhancing the chances of a successful conclusion of the Round by its 1 January 2005 deadline. Instead, the outcome at Cancun has set back the negotiations by two to three years. It will be no easy task to re-inject momentum into the multilateral process. But neither should this be a cause for dejection. This paper looks back at the negotiating history and dynamics, from when the Uruguay Round was launched, and analyses how the multilateral trading system and the dynamics of negotiations have changed over time from General Agreement on Tariffs and Trade (GATT) to the WTO. The paper also looks at some of the lessons learnt from the past and suggests possible future options for the WTO, as Members attempt to bring the Doha Round negotiations back on track.

II. FROM URUGUAY TO CANCUN

The set-back at Cancun has led to predictions of an end to multilateral trade liberalisation, that countries will now turn progressively to bilateral and regional arrangements which could

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lead to a collapse of the multilateral trading system. However premature and exaggerated these predictions are (as they ignore the negotiating history of previous rounds), it would be useful to look back at the negotiating history of the Uruguay Round and see if some of the lessons learnt would apply to the present-day situation. The experiences of past rounds show that there have been crises at every Ministerial Conference before the Uruguay Round was finally concluded. The four years spent trying to launch the Uruguay Round, between 1983-1986, were extremely difficult and controversial. A group of five GATT members, *viz* India, Brazil, Argentina, Egypt and Yugoslavia, opposed the round and claimed to speak for the community of developing countries. The basic positions of these five countries were very much similar to the complaints of developing countries today. The New Round, especially the inclusion of new subjects like services and intellectual property rights, was unacceptable when the Tokyo Round Agreements had yet to be fully implemented. The topic of safeguards was the great example of “unfinished business”. The general complaint then was that developing countries had not benefited. This was so, even though they had few obligations and most of the obligations of the Tokyo Round Codes did not apply to them anyway. The strong opposition by the “gang of five” and their strong influence on the then GATT Director-General Arthur Dunkel almost paralysed the negotiating process. As a result, a group of nearly 50 countries, comprising both developed and developing countries, took the process out of the GATT building. They met day and night over several weeks in the European Free Trade Area (EFTA) building¹ and finally produced a draft Declaration that provided the basis for the launch of the Uruguay Round in Punta del Este (Uruguay) in 1986. Arthur Dunkel and the GATT Secretariat were brushed aside and the “gang of five” was completely ignored. The negotiations post-Punta proved to be difficult and controversial. There was crisis at the GATT Midterm Ministerial Conference in Montreal in December 1988 insofar as agreement could not be reached on agriculture, textiles, protection of intellectual property rights and reform of the safeguards system. In particular, negotiations floundered as to the scale of the reform to be undertaken in the agricultural sector and the objective of eliminating all subsidies having a trade-distortive effect within a specified time-frame. The results which were obtained at the Montreal Ministerial Conference in the other eleven negotiating groups were put on hold pending agreement on the four outstanding areas by the extended deadline of April 1989. Crisis erupted again at the GATT Ministerial Conference in Brussels in 1990. The Brussels Conference, which was supposed to conclude the Uruguay Round, broke down over agriculture. Nevertheless, the crisis at Brussels subsequently forced movement in agriculture post-Brussels, thus paving the way for the conclusion of the Uruguay Round in 1994.

The engineering of crisis seems to be part and parcel of the negotiating strategy, in the sense that one would need a crisis to compel members to compromise. Even at the WTO Ministerial Conference in Doha in November 2001, (which launched the Doha Round), there were the makings of a crisis, as the ACP countries (African, Caribbean and Pacific developing countries) threatened to block the launch of the Doha round if the waiver for the EC-ACP Cotonou Agreement² had not been granted. Fortunately, the Working Party³ that was established to examine the European Communities (EC) request for waiver succeeded after long sessions at Doha. The waiver was granted and the ACP countries, after having been assured of their continued preferential access into the European Union (EU) market, rallied around with their support for the Doha Round. This isolated those few hardline developing countries which had attempted to resist the launch of the Doha round.

¹ Office of the Members of the European Free Trade Area.

² The African Caribbean Pacific (ACP) grouping consists of 77 countries that are a beneficiary of the European Communities' preferential market-access programmes, as originally provided by the Lome Convention and later renewed by the Cotonou Agreement.

³ The author of this paper was then Chair of the Working Party.

Again, agriculture proved to be the major set-back at Cancun. Although the culprits were the Singapore issues (trade facilitation, transparency in government procurement, competition policy and investment), the failure in Cancun had deeper roots which stemmed from the agricultural sensitivities of the United States (US) and the EU. In any event, with the sudden closure of the Conference by Mexican Foreign Minister and Chairman of the Conference, Luis Ernesto Derbez, members did not even have the opportunity to get past the hurdle posed by the Singapore issues in order to negotiate the agriculture text or the issue of cotton subsidies, an issue of particular sensitivity to the US. This could well have been a skilful and tactical ruse by the two majors, *viz* the US and EU, to deflect blame for the failure of Cancun from the agriculture issues to the Singapore issues.

The EU saw the Singapore issues as pure trade-offs in return for a durable solution in agricultural subsidies; but obviously, the developing countries were not ready to accept such a *quid pro quo*. Securing market access in agriculture was their immediate priority. Hence, a group of African countries pressed their demand for immediate market access as well as for compensation for loss of earnings on their cotton exports. Apparently, this was the straw which broke the camel's back at Cancun.⁴

III. HAS THE MULTILATERAL TRADING SYSTEM CHANGED OVER TIME?

Looking back, the time needed to conclude each Round has lengthened steadily as successive deadlines have been overrun. The Uruguay Round (September 1986-April 1994) took seven and a half years to complete, while the Tokyo Round (1973-1979) took six. Several factors have created special challenges for the multilateral trading system.

A. *Enlarged Membership: From GATT to WTO*

The current membership has expanded vastly since the Uruguay Round was launched. More members mean more distinct points of view. With 147 members, all with unique needs and diverse voices, it is not easy to achieve consensus in the WTO. A large number of new entrants are from the developing world, including China. During the Uruguay Round negotiations, there were about 80 GATT Contracting Parties. The GATT was a contractual organisation which focused on the negotiation of rules to regulate international trade and to achieve greater market access in goods and services. Thus, the GATT was business-like as members negotiated seriously without the usual political rhetoric.⁵ To achieve strength in numbers, countries coalesced themselves into blocs according to issues of common interests rather than along regional or North-South lines. It was thus common for small and medium-sized developing and developed countries to group together to pursue their common interests on, for example, anti-dumping or safeguards or dispute settlement.

B. *Politicisation of the WTO*

With the establishment of the WTO and the expansion of its membership of developing countries, the organisation has, increasingly, become more like the UN in terms of the culture and approach adopted by its members. The WTO has become more politicised. Political rhetoric is increasingly becoming the order of the day.⁶ Developing countries have

⁴ See Chak Mun "Changing Global Trade Scenario and Responses" *The Financial Express of India* (22 June 2004).

⁵ Alan Oxley, "The Consequences of Cancun—the WTO Workhouse, not Poorhouse", online: The APEC Study Centre <<http://www.apec.org.au/docs/workhouse.asp>>.

⁶ Razeen Sally, "What Future for the WTO in a Changing World Order?" in *The World Trade Brief for the Fifth WTO Ministerial Conference, Cancun, 10-14 September* (Agenda Publishing, 2003) at 36.

also become more assertive and vocal in pursuing their trade interests. While this in itself is a good development, the Cancun Conference has highlighted a disturbing trend of intensified politicisation of the WTO negotiating process along North-South lines. Whereas North-South divisions are not new to the WTO, at Cancun, developing countries were able to organise themselves and more importantly, hold together as a group to confront the US and the EU on key issues.

This North-South divide was exacerbated by several factors, in the run-up to Cancun, which led to the radicalisation of the developing country position. One major factor was the emergence of the G20 group of developing countries,⁷ that included India, China, South Africa, Egypt, Mexico, and was co-ordinated mainly by Brazil. The group meant to counter an earlier US-EU framework agreement on agriculture which they criticised as insufficient in addressing the concerns of developing countries. Whilst the G20 demanded for the elimination of all forms of agricultural subsidies, they insisted that developing countries should not be required to cut agricultural trade barriers nor undertake liberalisation of industrial tariffs and service sectors. Another key factor was the emergence of the G70 group of developing countries⁸ including Malaysia, India, African and Caribbean groups that meant to thwart any progress on the Singapore issues. Even when the EU offered to drop two of the four Singapore issues (namely investment and competition policy) from the Doha agenda, the ACP and least developed countries (L.D.Cs) were adamant that there should be no negotiations on any of the Singapore issues. Their refusal to even negotiate trade facilitation and transparency in government procurement is indeed perplexing. Accepting the EU offer would have taken off investment and competition policy from the Doha Agenda altogether. However, spurred on by the Non-Governmental Organisations (N.G.Os) at Cancun, there was a great deal of political posturing and grandstanding. Emotions were high. Members were swayed by their political concerns and threw considerations of possible economic benefits accrued from a successful outcome at Cancun overboard.

C. *Difficulty to get Consensus at the WTO*

In the past, the major developed countries could hold sway over the GATT decision-making process. Now, developing countries, particularly the hardliners, have learnt to exploit the consensus principle to their tactical advantage. The fact that they succeeded in securing a co-term for Dr. Supachai for the Director-General post, despite strong US objections, has emboldened them to use their numerical superiority to block any consensus in the WTO.

At the WTO Ministerial Conference in Seattle in December 1999, the smaller countries, especially the African and Caribbean members, were up in revolt. They felt the system marginalised them to the point where they were not consulted about what was going on. Furthermore, they felt that they were compelled to sign on to a document which entailed substantive and binding obligations which would severely impact their right to freely pursue their own trade policies. To make things worse, this was a document that they had perhaps never bothered or were unable to digest. In other words, now that the transitional periods have expired, the developing countries have come to the realisation that the Uruguay Round Agreements are binding on them even though they never bothered to participate in the

⁷ G20: Coalition of 20 developing countries which later expanded to 22 comprised the following countries: Argentina, Bolivia, Brazil, Chile, China, Columbia, Costa Rica, Cuba, Ecuador, Egypt, Guatemala, India, Indonesia, Mexico, Nigeria, Pakistan, Paraguay, Peru, Philippines, South Africa, Thailand, Venezuela. Post-Cancun, 5 out of the 22 countries have since left the grouping. They include Costa Rica, Ecuador, Guatemala, Columbia and Peru.

⁸ G70/G90: originally a group of 70 developing countries formed to oppose the inclusion of Singapore issues at Cancun. The Group has now expanded in membership and focus and is now known as the G90, made up of an amalgamation of least developed countries, the African Group and the African-Caribbean-Pacific countries.

negotiations. As a result, the smaller developing countries are now demanding that there should be more transparency in the decision-making process. From now onwards, unless their voices are heard and their views taken into account, they would not agree to any text.

This means that consensus building at the WTO would be a tedious if not impossible process in the future. Yet, it would be inconceivable that the WTO would resort to voting to break any impasse. Because of the Most Favoured Nation (M.F.N.) principle, for WTO rules to be accepted universally and applied willingly, they would have to be agreed to by consensus. It would be difficult to see a situation whereby a member would, with equanimity, extend benefits on a M.F.N. basis to an adversary which has voted against its interests in the negotiations.

D. *Scope of WTO Work-Programme*

It is now more difficult to find consensus on substantive issues, not merely because WTO membership has expanded, but because of the expanded scope of the WTO work-programme. Over time, multilateral trade liberalisation has begun to cover an expanded list of issues. The Tokyo Round achievements paled in comparison with the Uruguay Round in terms of scope, depth and impact on the multilateral trading regime. Indeed, the Uruguay Round was the first truly comprehensive Round, as it went beyond tariffs and trade in goods to cover important areas such as agriculture, services and intellectual property. The Uruguay Round eliminated the so-called Voluntary Export Restraints (V.E.Rs), decided to remove by 2005 the textile quota restrictions under the Multi-Fibre Agreement (MFA) and adopted agreed modalities to liberalise trade in agriculture. More significantly the Uruguay Round brought into being a radically new set of rules and disciplines to govern trade in services as well as trade-related intellectual property rights (TRIPS). The WTO work-programme has since expanded even further to include areas such as trade and investment, trade and competition policy, trade and environment and electronic commerce. The more issues there are, the less likely that members will reach consensus without detailed and lengthy negotiations. More importantly, these issues are politically more sensitive as they are more likely to impinge on national regulatory and developmental policies.

E. *Problems of Marginalisation*

The economic gap between the developed and the developing countries, especially the least developed countries (the L.D.Cs) will continue to be an issue for the international economy. From the WTO rule-making perspective, it poses a problem of a different dimension. For instance, most of the Uruguay Round Agreements especially those relating to services and TRIPS appear to bear no direct relevance to the subsistence economy of most of the L.D.Cs. Yet, except for some gracious transitional periods, these new obligations apply equally to them. This has been a major contention among the developing countries as to the inequity and imbalance inherent in the WTO system. Thus, they would oppose inclusion of the Singapore issues and other areas as long as they see that they would only increase their burden of obligations without commensurate economic gains.

IV. DEMAND THAT THE WTO SHOULD BE CHANGED

The demand for change comes from two main quarters. First, a majority of the developing countries, particularly the Africans, generally feel that they have really not benefited from multilateral trade liberalisation. Furthermore, this is compounded by the disruptive effects on their traditional sectors. The WTO rules are stacked against them. Therefore, they

demand more equity as well as a two-tier WTO system where they should enjoy the benefits of multilateral trade liberalisation, but not bear the obligations. The second group comprises the N.G.Os, the environmentalists and the militant trade unions in developed countries who demand that multilateral trade liberalisation has to be accompanied by social responsibilities to the environment, the unemployed, the young and the vulnerable. In short, they insist that the WTO must change and adapt to social and environmental demands and not just focus on trade liberalisation *per se*.

Yet, it is equally true that WTO members and those opting for an open multilateral trading system should not be barred from negotiating new trading rules in order to adapt WTO rules to a changing international trading environment. In fact, a trading framework for a new knowledge-based world economy was already being laid down during the Uruguay Round which could be adapted to regulate trade transactions arising from rapid changes and innovation in IT technology and telecommunications. In the longer run, there seems to be two solutions. Foremost, a two-tier WTO system whereby the new rules as well as the rights and benefits would apply only to those which have negotiated them. This was exactly what took place during the Tokyo Round which resulted in the adoption of several plurilateral GATT Agreements. This may well be the case for some of the Singapore issues. That is, an opt-in/opt-out approach whereby WTO members that do not wish to participate in the negotiations or sign on to any results reached, would not be obliged to do so. Next, an entirely new set of Special and Differential Treatment (S.&D.) provisions which would help the developing countries meet their level of development needs. For example, should TRIMS (Trade-Related Investment Measures), especially local content requirements remain prohibited? Should the L.D.Cs be exempt from patent rules under the TRIPS altogether, instead of a mere transitional period? What are the trading rules which need to be revised that would find themselves meaningful to the development process such as infant industry development? If the majority of low-income countries are to find participation in the WTO meaningful to their economic needs, these questions must be addressed seriously. Otherwise, they will see their membership in the WTO to be irrelevant to their economic needs and will continue to oppose any new initiatives of trade liberalisation or new rules which aim at adapting WTO rules to meet the changing international trading environment.

V. THE ROAD AHEAD

The set-back at Cancun has shown that the negotiating dynamics have significantly changed since the Uruguay Round. The transition from the GATT to the WTO has brought about systemic challenges to the multilateral trading system. Nevertheless, the WTO needs to get back on track. Indeed, the WTO is especially important for developing countries, as many of them have benefited from its existence. It has ensured a universal, rule-based regime of open and non-discriminatory trade. Without the WTO, they would be at the mercy of larger and richer countries. Their real concerns would be better addressed within the WTO system rather than outside of it.

With political will from the WTO membership and leadership from the major players, both developed and developing, a successful conclusion of the Doha Round is still within reach, despite the many challenges in multilateral trade negotiations. The Doha Round should not take another six or seven years to conclude as the basic WTO framework of rules governing trade in goods, services and TRIPS are already in place. The Doha Round is intended to build on some of the gaps.

While Cancun floundered on the Singapore issues, agriculture will remain central in the Doha Round negotiations as hundreds of millions of farmers are involved. Some progress was made in Cancun on some of the Singapore issues (such as the EU offer to drop investment and competition policy from the Doha agenda) and on agriculture. Members should build on this and move on. There have been renewed attempts post-Cancun, led by the US and

EU, to revive the Doha Development Agenda. The EU appears willing to eliminate export subsidies at an appropriate date, to be negotiated, and to proceed with a 1 + 3 outcome for the Singapore issues that include the launching of negotiations on Trade Facilitation and leaving the other three issues (namely Competition Policy, Investment and Transparency in Government Procurement) for future review. More importantly, the Singapore issues should not be used again to affect progress in the core business of the WTO, which is market access for agriculture, non-agricultural goods and services. Greater attention should be given to market access, which is the bread and butter of the Doha Round.

The Doha Round is also intended to focus on development. The decision to implement the Doha Declaration on the TRIPS Agreement and Public Health was significant. It allowed poorer countries to make full use of the flexibilities within the WTO's intellectual property rules so as to gain affordable access to drugs to fight diseases. However, the real development gains from the Doha Development Agenda will come from the core market access negotiations on agriculture, non-agricultural goods and services. This would include, in particular, the removal of tariff peaks and tariff escalation in sectors of particular interests to developing countries. Developing countries will also benefit from greater South-South trade as 40% of global trade is trade between developing countries.⁹ Hence, there is also a need to address barriers that hinder South-South trade.

Agriculture will remain the key challenge as subsidies in OECD countries amount to about US\$330 billion per year. It is an area of central importance to both developed and developing countries. However, as some 70% of the world's poor live in rural areas and earn their income from agriculture, it is of particular significance to developing countries.¹⁰ Given the linkage game that is being played out, no progress in agriculture results in a negative impact on the other areas. Will the US and the EU be ready to make the necessary commitments to serious farm reforms? The US will be preoccupied with its Presidential Elections in 2004. A new European Commission will also be installed next year. The cast of key Trade Ministers in major economies, who have been the driving forces for the Doha Round, will also change over the next year. Hence, in all likelihood, the negotiations will have to be extended for one to two years if the EU and the US are to get the time they need to commit to serious agricultural reforms.

The World Bank's Global Economic Prospects report estimates that abolishing all trade barriers could boost global income by US\$2.8 trillion and lift 320 million people out of poverty by 2015.¹¹ The elimination of all tariffs and non-tariff barriers could result in gains for developing countries in the order of an estimated US\$182 billion in the services sector, US\$162 billion in manufacturing and US\$32 billion in agriculture.¹² Even as developed countries open up their markets, it is also necessary for developing countries to liberalise trade among themselves. This will enable them to benefit more from the opening of the global market and to expand South-South trade. It is in the interest of all countries, in particular the developing countries, to engage in the multilateral negotiating process. This will help to achieve a robust and open rules-based multilateral trading system. Developing countries would benefit most from a more open and equitable trading system.

What would be the consequences of continued impasse at the WTO? If the multilateral trading system breaks down, countries would turn to alternative means of pursuing their economic interests through bilateral Free Trade Area (F.T.A.), or Regional Trading Arrangement (R.T.A.) among groups of developing countries or even exclusive trading blocs. There

⁹ Peter Draper, "Cancun or Cannot? What Prospects for the Doha Round Now?" (16 September 2003) online: AllAfrica <<http://allafrica.com>>.

¹⁰ The World Bank, *Global Economic Prospects 2004—Realising the Development Promise of the Doha Agenda* (Washington, D.C.: The World Bank, 2004).

¹¹ *Ibid.*

¹² Mike Moore, "How Trade Liberalisation Impacts Employment" (Speech to the International Labour Organisation, March 2002) [unpublished].

has been a dramatic rise in the number of R.T.As since the Uruguay Round. To date, a total of 285 R.T.As and F.T.As have been notified to the WTO. Of course, R.T.As and F.T.As have been as much driven by perceived economic benefits of regional integration, as by strategic and political considerations. Increasingly, the larger developing countries are turning to F.T.As and R.T.As to open up markets in developed as well as in other developing countries. But it could also be a means for them to avoid the multilateral pressure on sensitive sectors such as agriculture and tariff reductions in certain sensitive industrial goods. Indeed, F.T.As and R.T.As seem to be the only means of achieving better market access among developing countries as they all eschew the multilateral route of making requests and offers among developing countries at the WTO. Whilst the larger developing countries could use their large market size to demand concessions from their F.T.A. partners, the smaller and poorer L.D.Cs, with little negotiating clout, will not be attractive F.T.A. partners and will be left out of the F.T.A. game. Overall, this would work against the interests of the global trading system and, in particular, the small and poorer developing and least developed countries. They would risk being further marginalised. Hence the need for all WTO Members to work towards an expeditious and successful conclusion of the Doha Round.

The Framework Agreement adopted at the WTO High-Level General Council Meeting in Geneva in July 2004 has put the Doha Round negotiations back on track. It will provide the broad parameters to guide negotiations, particularly in agriculture, non-agriculture market access, services and trade facilitation. With the removal of the three Singapore issues (investment, competition policy and government procurement) from the Doha agenda, the Doha round negotiations can now focus on achieving greater market access in agriculture, non-agricultural goods and services. Real development gains for developing countries will come from these core market access negotiations. While the Doha Round is unlikely to be concluded by its stipulated deadline of January 2005, conclusion within two to three years remains a possibility. The challenge now is to prevent polarisation and political fracturing as negotiations go forward.