

Year 10 No.5 August 2006

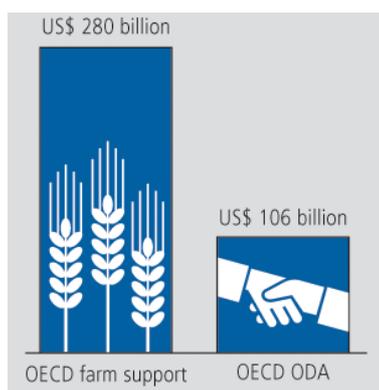
In this issue

- 3 After Doha: A Fearful New World?
- 6 Developing Country Views on the Development Package
- 7 What Now for Africa?
- 8 Aid for Trade Independent of Doha Round, Task Force Says
- 9 WTO Dispute Settlement News
- 10 WTO Dispute Settlement After Doha: A 'Risk of Imbalance'?
- 11 Brazil Reactivates Cotton Dispute
- 12 Convergence Between Trade Agreements in Latin America
- 13 Regional Integration
- 15 The Doha Round Suspension: The Role of US Politics
- 17 The Paradoxes and Contradictions of World Trade
- 20 Meeting Calendar and Resources

Published by the International Centre for Trade and Sustainable Development

Facts and Figures

Government support to farmers in OECD countries totalled US\$280 billion in 2005, representing 29 percent of farm receipts. The EU ranks first with US\$134 billion in absolute terms, followed by Japan (US\$47b) and the United States (US\$43b). As a ratio of farm receipts, Switzerland (68%), Norway (64%) and Korea (63%) take the lead. Due to debt cancellations for Nigeria and Iraq, as well as tsunami aid, official development assistance (ODA) reached an all time high of US\$106 billion in 2005 – about 38 percent of OECD farm spending.



Sources: *Agricultural Policies in OECD Countries at a Glance*, OECD, 2006; and *Preliminary ODA in 2005*, DAC/OECD, 2006
© 2006 ICTSD/GerstnerConsulting

What Can We Expect Next?

Views differ on whether the Doha Round is dead or merely comatose following the suspension of all negotiations in late July. Even if attempts to revive the talks are successful, they may take years rather than months to conclude.

As in June, the July talks never progressed beyond agriculture (Bridges Year 10 No.5, page 1). Despite the promise of more flexibility made at G-8 Summit, trade ministers from the G-6 configuration – Australia, Brazil, the EU, India, Japan and the US – showed none. Fingers were pointed, perhaps most frequently at the US, which refused to discuss greater domestic subsidy reductions in the absence of significantly improved tariff cut offers from others.

However, other G-6 parties also clung to their previous positions, and WTO Members agreed with Director-General Pascal Lamy's assessment that "the only course of action available was to suspend the negotiations across the round" to enable serious reflection by participants. Mr Lamy deliberately set no new deadlines or dates for resuming the negotiations as renewed progress would require changes in entrenched positions.

The likelihood of such changes in the near future is generally deemed low. Congressional elections are fast approaching in the US, where the farm vote is crucial to both parties (see page 15). The European Commission continues to face serious opposition to a more extensive agricultural negotiating mandate from several member states. India keeps on calling on the rich countries to act first, particularly on agricultural subsidies, while highly-protected farmers in wealthy countries have stepped up resistance to already planned reforms.

And yet, nearly all WTO Members – both developed and developing, including the G-6 – have expressed regrets over the Doha Round's collapse and called for its rapid resumption. Many have evoked fears of a serious weakening of the multilateral trading system, due to a loss of confidence in its power to act as a negotiating forum and the corollary rush to bilateral agreements that are usually shaped by the richer partner's priorities.

Pascal Lamy noted that suspending the Doha Round meant that "the progress made to date on the various elements of the negotiating agenda has been put on hold, pending the resumption of the negotiations when the negotiating environment is right." Among those elements are the elimination of agricultural export subsidies in 2013, granting universal duty- and quota-free market access to products from least-developed countries (LDCs), and finding solutions to the problems faced by cotton-exporting African countries due to low world market prices distorted by the generous support provided to farmers in a few countries, and the US in particular (see related story page 11).

Much pertinent analysis has been devoted to the causes of the collapse, but – beyond calls for greater flexibility from the key players – few have ventured suggestions for the future.

Focus on Development?

EU Trade Commissioner Peter Mandelson has called on WTO Members to "extract from the rubble of the negotiation a significant development package and frontload it, creating an early harvest for the most needy developing countries." However, some elements of the package are contested: trade facilitation, which is formally part of the Doha Round and should therefore

Continued on page 2

Bridges

Between Trade and Sustainable Development

Published by the International Centre for Trade and Sustainable Development.

Director: Ricardo Meléndez-Ortiz
Editor: Anja Halle
Address: 7 chemin de Balexert
1219 Geneva, Switzerland
Tel: (41-22) 917-8492
Fax: (41-22) 917-8093
E-mail: ictsd@ictsd.ch
Web: <http://www.ictsd.org>

Regular ICTSD contributors include:

Heike Baumüller
Johanna von Braun
Jonathan Hepburn
Mahesh Sugathan
David Vivas

The opinions expressed in signed contributions to *BRIDGES* are the authors' and do not necessarily reflect the views of ICTSD. Manuscripts offered for publication are expected to respect good journalistic practice and be compatible with ICTSD's mission. Guidelines for contributors are available on request, as well as on ICTSD's website.

Material from *BRIDGES* can be used in other publications with full academic citation.

© ICTSD and contributors of signed articles.
ISSN 1562-9996

Annual subscription:

US\$225 for OECD country addresses
US\$75 for other countries
Courtesy subscriptions are possible thanks to the support of ICTSD's funders.

The *BRIDGES* series of publications is possible in 2005–2006 through the generous support of the Swiss Agency for Development and Co-operation (SDC), the UK Department for International Development (DfID) and the Rockefeller Foundation.

It also benefits from contributions from ICTSD's core funders: the development co-operation agencies of Denmark, the Netherlands and Sweden; the Foreign Ministry of Finland, Christian Aid (UK), NOVIB (NL) and Oxfam (UK).

See inside back cover for information on other ICTSD periodicals.

in the opinion of many remain suspended; duty- and quota free access for LDCs, which the US has declared contingent on the successful conclusion of the round; and improvement of dispute settlement rules, which some Members do not see as a development issue per se (see page 6).

Renowned Canadian scholar Sylvia Ostry has proposed putting together a coalition of middle powers that could “make a sustained effort to not to re-launch the negotiations but to confront the crucial issues of reform of the multilateral trading system,” starting with trade and development (see page 3). In a similar vein, former UNCTAD Director-General Rubens Ricupero has predicted an enduring crisis, unless system's persistent injustices and imbalances are squarely confronted (see page 17).

Aid for Trade

Aid for Trade (A4T) is the perhaps the only major and specific development issue that will certainly be addressed at the WTO, as well as other fora, even in the absence of progress in the Doha Round. All Members that made commitments in Hong Kong to increase trade-related development assistance have vowed to keep their promises,¹ although it is not yet entirely clear how this aid would be delivered. Nevertheless, the issue is firmly on the WTO agenda, particularly after the Task Force on Aid for Trade clearly affirmed that A4T was important in its own right, and that its scope and funding should be expanded as soon as possible (see page 8).

Shuttle Diplomacy Continues

Meanwhile, little has changed in the world of international trade diplomacy. Ministers and high officials continue to attend and host meetings, issuing ringing statements on their commitment to reviving the talks.

In August, trade ministers of the ten-member Association of Southeast Asian Nations and the US jointly called for putting the Doha Round back on track before the end of the year. US Trade Representative Susan Schwab visited China, and urged it to play a greater role in the negotiations. She also questioned the wisdom of allowing the leaders of the G-20 and G-33 coalitions of developing countries to “appear to speak for China to influence the outcome of the negotiations in ways that do not necessarily reflect China's strength and needs.”

The G-20 is expected to call for a rapid start of the negotiations at its first post-collapse ministerial gathering, to be held in Rio de Janeiro from 9-10 September. The trade ministers of all G-6 countries are expected to attend, as are representatives of the African, Caribbean and Pacific (ACP) Group of States, least-developed countries and West African cotton-producing countries. According to some sources, the meeting could try to establish a road map of intermediary goals for the remaining months of 2006, perhaps in the form of setting a target date for agreement on a possible range of farm subsidy cuts, as well as agricultural and industrial tariff reductions. Presently, the figures offered/requested by different Members and coalitions are too far apart to provide any guidance to high-level negotiators.

The Cairns Group of 18 agriculture-exporting nations will hold its 20th anniversary ministerial from 20-22 September, and dozens of ministers from other countries have been invited to attend in another attempt to rally support for restarting the round (the EU trade and agriculture commissioners have reportedly declined the invitation). And finally, the Asia Pacific Economic Co-operation summit in November is expected to strongly endorse the proposal.

The missing element is a single indication of change of position from any WTO Member. Until that happens, no amount of statements will breathe life to a round whose successful conclusion has been repeatedly described of critical importance by the quasi-totality of the participants.

ENDNOTE

¹ Japan announced development assistance spending on trade, production and distribution infrastructure of US\$10 billion over three years; the US announced Aid-for-Trade grants of US\$2.7 billion a year by 2010; and the EU and its member States announced trade-related development assistance spending of • 2 billion per year by 2010.

After Doha: Fearful New World?

Sylvia Ostry

The failure of Doha is not the failure of negotiations but the demise of rules-based multilateralism.

The multilateral trading system (MTS) was a key element in the post-war architecture of international policy-making. It was created by the hegemon US with some help from its friends, although the naughty doggerel “In Washington Lord Halifax whispered to Lord Keynes, they’ve got all the money bags but we’ve got all the brains” is rather exaggerated. The two Bretton Woods institutions – the World Bank and the International Monetary Fund – were to have been joined by the International Trade Organisation or ITO. In the event, because the Republican Congress was opposed, the third leg of the stool was the GATT (General Agreement on Tariffs and Trade), which did not require Congressional approval.

The GATT worked very well, effectively managed from the 1960s by the European Community (now European Union or EU) and the US with a club of friends. No headlines for the General Agreement to Talk and Talk. The club model was based on a post-war consensus termed ‘embedded liberalism’: rules and other arrangements to buffer or interface between the *international* objective of sustained liberalisation through the reduction or elimination of border barriers and the objectives of *domestic* policy, sovereignty and stability. This largely transatlantic consensus was greatly aided by the use of reciprocity in negotiations (denounced as mercantilist by purists) and by the virtual exclusion of agriculture (via an American waiver and the near-sacrosanct European CAP or Common Agricultural Policy). Developing countries were largely ignored, although that began to change in the 1970s as a consequence of the OPEC oil shock.

Finally, and perhaps most importantly, the Cold War constrained the role of Congress in American trade policy. Congress, under the American Constitution, is in charge of trade policy. This made international negotiations by the Executive extraordinarily difficult. As H.L. Mencken so aptly put it: “If a congressman had cannibals in his district, he would promise them missionaries for breakfast.” While federal legislation did help constrain this lobbying virus, it was mainly the impact of the Cold War which enabled the government to shape the major objectives and thrust of US trade policy in the post-war ‘golden age’ of the 1950s and 1960s.

The Uruguay Round was a watershed in the evolution of the system. Agriculture was at the centre of the negotiation as American exports to the European Community diminished, and EC’s heavily subsidised exports flourished and even penetrated the American market. A US call for negotiations started in 1981, but was stalled by the endless foot-dragging by the Community, aided by a small group of developing countries, led by Brazil and India, which strongly opposed to the so-called ‘new issues’ of services, intellectual property and investment demanded by the Americans. The round was finally launched in September 1986, at Punta del Este, Uruguay. It concluded in December 1994, four years beyond the target date agreed at the launch.

So the negotiations were almost as tortuous as the launch. The Grand Bargain was completely different from old-time GATT reciprocity. It was essentially an implicit deal: the opening of OECD markets to agriculture and labour-intensive manufactured goods, especially textiles and clothing, in exchange for the inclusion into the trading system of services, intellectual property and (albeit to a lesser extent than originally demanded) investment. And – a virtually last minute piece of the deal – the creation of a new institution, the WTO, with the strongest dispute settlement mechanism in the history of international law and practically no executive or legislative authority.

The Grand Bargain tuned out to be a Bum Deal. There was far less opening in agriculture than expected, and the reduction of restrictions on textiles and clothing was back-loaded and

more than offset by the impact of China. The South side of the deal required a major institutional upgrading and change in the infrastructure of most developing countries. Such changes take time and cost money. The new issues did not involve border barriers but domestic regulatory and legal systems. The barriers to access for service providers stemmed from laws, administrative action, or regulations. The intellectual property inclusion covered comprehensive standards for domestic laws and detailed provisions for enforcing corporate property rights. Social regulation covering product standards and health and safety involved sophisticated administrative procedures, as well as highly trained scientific human resources.

The complexity and knowledge-intensity of the system created a profound asymmetry, a ‘knowledge trap’: the strong are stronger because of their store of knowledge and the weak are weaker because of their poverty of knowledge. Further, the trading system was transformed from the *negative* regulation of the GATT – what governments must not do – to *positive* regulation – what governments must do. Thus, the post-war consensus was irrelevant. There were no ‘buffers’ between international and domestic policies. The concept of sovereignty became rather archaic (except perhaps for the strong).

It is important to note that the inclusion of the new issues in the Uruguay Round was an American initiative and this policy agenda was largely driven by American multinational enterprises (MNEs). These corporations made it clear to the government that without a fundamental rebalancing of the GATT they would not continue to support a multilateral policy but would prefer a bilateral or regional track. But they didn’t just talk the talk, they also walked the walk, organising business coalitions in support of services and intellectual property in Europe and Japan, as well as some smaller OECD countries.

Continued on page 4

The activism paid off and it's fair to say that American MNEs played a key – perhaps even *the* key – role in establishing the new global trading system. But the strategic skills of the American corporations were aided by the US government's multi-track policy, including preferential trade agreements (e.g. NAFTA) and a new unilateral instrument, 'special' 301 of the 1988 Trade and Competitiveness Act, targeted at countries with 'inadequate' intellectual property law.

The Uruguay Round consisted, thanks to some clever legalistic juggling by the US and the EC, in the end game of a 'single undertaking'. There were no 'escape hatches' for the Southern countries: it was a take it or leave it deal. So they took it but, it's safe to say, without a full comprehension of the profoundly transformative nature of the new system to say nothing about the Bum Deal. As one of the Southern participants was reported to have said, "TRIPS was part of a package in which we got agriculture."

There were many significant unintended consequences of the Uruguay Round. For example, the rise in profile of the MNEs, due to their crucial role in securing inclusion of the 'new issues', helped catalyse activist NGOs (non-governmental organisations) and launch the anti-corporate globalisation movement. But equally important and not unrelated, the round left a significant North-South divide in the WTO. While the South is hardly homogeneous, there is a broad consensus that the outcome was seriously unbalanced.

The North-South divide was visible at the battle of Seattle when virtually all the developing countries walked out. Then came

I am tired of being told that the WTO is 'not a development agency'. Of course it is not if the word is intended to embrace everything that is involved in efforts to raise living standards and improve opportunity in poor countries. But what does fall to the mandate of the WTO is an essential part of that complex process. So let us look at the links between trade and development. What changes would be helpful?

Doha. The main objective was to avoid another Seattle: thus its great success was that it did not fail. The term Doha Development Agenda (DDA) and the endless references to technical assistance and capacity building were not just symbolic. As one American expert has noted, they were part of a 'normal negotiating side payment'. But maybe it was all too clever by half as was demonstrated by the failure at Cancun.

The Emergence of the G's

There, a 'new geography' became evident in coalitions of Southern countries. The G-20, led by Brazil and India, includes China, Mexico and many others. The group continues to play a key role in the negotiations. The G-90 coalition of poor countries was also prominent at Cancun, and was included in the G-110 (do your maths) in Hong Kong. But there are now lots more G's, and it was the G-6 (the EU, the US, Brazil, India, Japan and Australia) that presided over the end of Doha. (Why was China the dog that did not bark?)

The proliferation of G's may be meaningful but the meaning has eluded me. The new geography has not generated a new consensus. The transatlantic alliance is pretty weak because of growing differences in values and objectives. Embedded liberalism is dead. The Washington Consensus is almost dead as well. But one should note that the demise of the MTS itself has engendered a new consensus of sorts.

While the anti-globalisation movement's profile is much diminished, there are a number of influential NGOs and, indeed, a growing number in Southern countries. Many of these greeted the 'death of Doha' with great enthusiasm as 'good for the poor'. This was certainly not the view expressed by developing countries at the meeting of the WTO General Council after the suspension of the negotiations. Many voiced their deep concern about an uncertain and unstable world without clear rules and without leadership: a 'fearful new world'.

A Fearful New World

Why fearful? The proliferation of preferential agreements (the American 'competitive liberalisation' and the vast increase already apparent in Asia) is a serious and ongoing threat to economic and political stability in today's environment. If the Cold War was the glue that binds, the current wars are the acid that erodes. Even those who cheered the demise of Doha – hailing it as the beginning of the end of globalisation – might want to reconsider. But the overflowing spaghetti bowl is not the only reason to be fearful. "If you cannot legislate, why not litigate" is likely to become a slogan for a herd of eager lawyers and this new trend could create a backlash in the US Congress, including a genuine threat of US withdrawal from the WTO.

There have been a number of suggestions to cope with the current crisis. They range from unilateral liberalisation by the US (a good idea but seems unlikely to appeal to Congress) to encouraging the harmonisation of current and ongoing preferential treaties into coherent regional arrangements.

There are also major uncertainties. For instance, will the US TPA (Trade Promotion Authority) expiring in mid-2007 be renewed just before a mid-term election? Will the French and other upcoming elections improve the prospects for rescuing the multilateral system? And where is the support in the business community? And most importantly, where's the leadership? Gramsci, the Italian philosopher, defined leadership as pessimism of the intellect and optimism of the will. It seems that there is a lot of the former but a paucity of the latter. But let us not give up.

Confronting the Need for Reform

Let's look back at post-war history in our search for leadership. When the Bretton Woods system broke down in the 1970s, the response came from two middle powers, France and Germany. President Valéry Giscard d'Estaing and Chancellor Helmut Schmidt established the Economic Summit, the first important post-war institution since Bretton Woods.

As the Uruguay Round negotiations dragged on, a group of middle powers involving OECD and developing countries and geographic representation from all regions, decided to 'seize the

reins' and played a key role in formulating the Punta del Este Declaration that launched the round. Although the major powers were not members of the group, it was critical to the success of the process that they were kept fully informed of its deliberations. Their key point was the role of the coalition of middle powers. Could we do it again?

Agreed, this is a tall order. There are a vast number of issues and it would be necessary to start with one big one – *trade and development*. I am tired of being told that the WTO is 'not a development agency'. Of course it is not if the word is intended to embrace everything that is involved in efforts to raise living standards and improve opportunity in poor countries. But what does fall to the mandate of the WTO is an essential part of that complex process. Perhaps use of the word 'development', which embraces so much, is a barrier to sensible discussion of the issues. In any case, the cat is out of the bag and cannot be put back.

So let us look at the links between trade and development. What changes would be helpful? For example, agriculture is key to development in non-OECD countries, but its nature and role in development differ among those countries. Instead of endless debate on the 'specials' (special products; special safeguard mechanism), how could the formidable issue of *adjustment of subsistence* agriculture be handled? The debate on the 'specials' degenerated into what the US called 'layers of loopholes', but the basic issue of how to sequence trade liberalisation and co-ordinate domestic policy to facilitate the adjustment process involving massive reallocation of labour was never even mentioned. In industry, do similar issues arise? Instead of decades of debate on 'special and differential' treatment, maybe a reasoned discussion on 'policy space' would be useful? If that term is too offensive, think of another one. What is the difference between market access and market entry? And liberalisation of services could be very beneficial to development if capacity-building was actually defined and then delivered. These are just a few examples. A great deal of useful research is already available on all these issues, as are a number of excellent and competing models. But there is no policy forum in which to discuss them in the WTO.

A Possible Way Forward

What about putting together a coalition of middle powers to urgently launch an analysis and discussion of trade and development? It could (one hopes) meet at the WTO. The coalition could be serviced (one hopes) by the WTO Secretariat. Funding could (one hopes) be secured from Foundations or philanthropic individuals. The research and discussion should all be available on the Internet and briefing for the 'great powers' should be arranged. Business groups, farm federations, NGOs and academics should be invited so that a knowledge network can be established. A representative from the coalition of least-developed countries should be financed to attend.

The second issue should be to deal with 'international coherence' – i.e. modalities of co-operation with the World Bank. The Bank is a development institution. But the experiment of co-operation with the WTO (the Integrated Framework or IF) has been seriously criticised. What went wrong? How can a better arrangement be designed and monitored? And so on.

A very difficult problem is how to form the coalition. It should be voluntary so that there is *no linkage* with WTO rules or negotiations. And countries should be free to drop out and suggest a replacement. Indeed, since the coalition must be a reasonable size (not more than thirty), a rotation might be a good idea. The simplest way to handle this would be for the Director-General to convene a meeting of the General Council early in September and put forward a suggested list. Other routes could be explored. The reports of the coalition should be presented to the General Council.

Of course, this coalition of the middle powers might not work. But since it would be informal and voluntary, it would also be adaptable. It might not create a Brave New World but it should produce something more hopeful than our present Fearful New World. Remember Gramsci!

Sylvia Ostry is Distinguished Research Fellow, Centre for International Studies, University of Toronto and a member of ICTSD's Governing Board.

Lamy on the Future

"Suspending the negotiations means that the progress made to date on the various elements of the negotiating agenda has been put on hold, pending the resumption of the negotiations when the negotiating environment is right."

"I think it is clear that no-one wants to give up on our collective effort here. My sense is that there remains widespread determination, despite this setback, despite this deadlock, despite this crisis, to try and bring the Round to a successful conclusion. How do we do that? How you do that can only appear after a bit of hard thinking and deep reflection, which is why this time out is in my view necessary. It's the time for quiet thinking as opposed to megaphone diplomacy, which is why I would like to urge all Members to avoid the well-known blame game and instead use this period of reflection for serious and sober reflection on what is at stake here. Everyone knows that what's on the table is already quite important, and the package risks to be lost. [...] My priority will remain to continue to defend the integrity of the WTO system, which has served us quite well in the past decades, and to continue to assist the membership to reach agreement."

"A resumption of the negotiations will only come in the right conditions after some political decisions have been taken. I believe this is possible. I'm not sure it's going to happen, but I think we have to keep on trying, probably quietly during some time and this is what I will try to do and I hope that this time of reflection will be fruitful so that at the end of this period, refreshed, revamped, re-thought positions on the few, but very important issues which remain at stake, can be possible."

Extracted from the Director-General's report to the WTO General Council on 27 July 2006.

Developing Country Views on the Development Package

“We should extract from the rubble of the negotiations a significant development package and frontload it, creating an early harvest for the most needy developing countries.”

Peter Mandelson’s late July proposal for a ‘development package’ sought to light a fire amidst the ashes of the stalled Doha talks by attempting to ensure the continuing relevance of the WTO in concluding agreements that allow the poorest developing countries to reap benefits from trade. Mandelson’s vision is built upon restoring the confidence of these countries in the WTO through early agreement on an initial set of seven issues, including Aid for Trade, trade facilitation, the new Integrated Framework for technical assistance to trade for the least-developed countries (LDCs), duty- and quota-free market access for products from LDCs, special and differential treatment, rules of origin and improvements to the Dispute Settlement Understanding.

While the proposal made quite a few countries and trade observers sit up and take notice, it – like most recent suggestions relating to a short-term work programme for the WTO – nevertheless met with a fair dose of cynicism.

Much of the adverse reaction focused on the inclusion in the development package of a new agreement on trade facilitation, which many see as a non-starter notwithstanding the advantages that multilateral rules in this area could bring across the board for both developed and developing country Members. This is due in large part to trade facilitation being perceived as a negotiating issue that is irrevocably linked to other core issues like agriculture, non-agricultural market access and services under the Doha Round. It is thus an integral element of the final balance to be struck at the end of the round, whenever that happens.

Since many developing countries see trade facilitation from a negotiating dynamic perspective as one demanded by developed countries, and in which developing countries are making concessions, an ‘early harvest’ would result in loss of negotiating leverage vis-à-vis other issues where developing countries may have stronger offensive interests and demands.

Furthermore, the notion that trade facilitation is a remnant of the so-called ‘Singapore issues’ of which the EU was the primary *demandeur* is yet to be blotted out completely from many Members’ collective memory. Its inclusion in the development package creates the perception that the EU is trying to use the package as a guise for inserting a much-contested new set of rules.

Compounding the cynicism with regard to this element in the development package is the explicit link being established with Aid for Trade (A4T) and the EU’s trade-related assistance. Only LDCs are certain to be beneficiaries under A4T and the EU’s trade-related assistance programme, and yet all developing countries would have to undertake obligations under new rules on trade facilitation. Even LDCs have pointed to the unfairness of the linkages being drawn, as A4T has a much broader scope of intended benefits than simply enhancing LDCs’ ability to apply such new rules (see page 8). Moreover, the explicit link between a core negotiating issue under the Doha Round and A4T, which is arguably outside the bounds of the round, has been criticised by many as tantamount to an iniquitous pay-out for subscription to new multilateral rules.

Neither was Mandelson’s advocacy for more development-friendly rules of origin unreservedly welcomed. Quite a few delegates have noted that the EU continues to impose very strict rules through its various preferential trading arrangements, which some claim diminish developing country partners’ ability to optimise the preferential access granted. Moreover, given the track record of the WTO in resolving differences at the Committee on Rules of Origin, an ‘early harvest’ on this issue, with enhanced development-friendly elements at that, seems overly ambitious and optimistic at best.

The same veil of cynicism hung over the call for improvements to the Dispute Settlement Understanding (DSU) that would make it easier for developing countries to use the system. Given the experience of nearly a decade of reviewing the DSU, the candidates in a best-case scenario for improving the DSU – the notion of remand by the Appellate Body to the original panel for purposes of completing examination of facts in dispute, some enhancement of third-party rights and perhaps transparency – do not realistically appear to significantly alter developing countries’ ability to participate in the system.

However, it must be emphasised that other elements in Mandelson’s proposal are seen as laudable attempts in harnessing the WTO membership’s will towards agreement on critical issues flanking the Doha negotiations. Aid for Trade, special and differential treatment and the new Integrated Framework are considered as initiatives aimed at addressing developing countries’ difficulties in implementing their Uruguay Round obligations and, perhaps even more importantly, taking advantage of opportunities to further their development goals through trade. These initiatives seek to resolve problems that antedate the Doha negotiations, and they should rightfully be addressed prior to developing countries undertaking new commitments. Indeed, these issues were never seen as tools that would enable developing countries to undertake new obligations under the Doha Round, and as such, are not intended as tradeoffs in exchange for developing countries’ agreement to further open up their markets and accede to new trade rules.

Aid for Trade, and to a varying, more nuanced degree, the Integrated Framework for technical assistance, were never seen by many developing countries as an integral part of the Doha Round. These programmes were intended to be stand-alone initiatives intended to rectify developing countries’ inability to partake of the benefits of the multilateral trading system because of supply side constraints on their domestic end or inability to meet WTO-consistent standards and measures in place in trading partners’ markets.

Many still hold the view that special and differential treatment (SDT) should contribute to redressing failures of existing WTO agreements to work equitably before any new obligations are assumed by those who find themselves on the shorter end of the scale. In the context of a development package ‘for the most needy developing countries’, the question arises as to whether the specific STD proposals to be addressed are limited to those that are targeted towards LDCs. Many pundits note that many STD proposals on the table since nearly a decade are intended to apply horizontally to all developing countries, not just LDCs.

Mandelson’s statement affirming the commitment to the Hong Kong agreement on duty-and quota-free market access and pushing for its full implementation and possible improvement outside of the Doha Round was highly appreciated, particularly as the US still insists that this issue can only be resolved in the context of the Doha negotiations.

Regardless of all the criticisms which have been levied against the development package, Mandelson’s proposal at the very least provides a semblance of leadership amidst the rubble of the negotiations. The package may be too little too late; it may be severely defective on certain points; it may even be nothing but a mirage. However, in a situation rife with mudslinging and calls for draconian alternatives to the multilateral trading system, a voice seeking a way forward may very well be the only lead.

What Now for Africa?

Gerhard Erasmus

There will be numerous explanations in the coming weeks and months as to what finally happened in Geneva and why the Doha Round negotiations have been ‘suspended’.

The domestic agricultural support policies of the US and the EU will be criticised and the failure of the July G-8 meeting to generate a new impetus will be noted in the context of the bigger political picture. Some will focus on the signs that domestic pressures are as strong as ever in developed countries. Others will detect a decreasing concern for Africa, while pointing to the successes of several emerging economies. Commentators will discuss the unfortunate implications for developing countries generally and for Africa in particular.

The political and diplomatic dimensions will also be analysed and there will be speculation on what it would take to revive the talks; recognising the formidable obstacle posed by the expiry of the fast track authority of the US President by the middle of next year.

Some will ask that other looming question: what if there is no formal Doha agreement? The world is a different place now compared to the Uruguay Round, they will write. However, we will also hear that the multilateral trading system simply cannot afford a failed Doha Round. It will, amongst other things, signal an unacceptable snub to developing countries and efforts to alleviate poverty. What could African governments and regional organisations do while the efforts continue to get Doha back on track again? What should guide their deliberations?

- They cannot give up on the WTO system and must remain part of the effort to revive the negotiations. African economies need fuller integration into the global economy and the multilateral trading system is the formal structure through which this must happen.
- They should not abandon the efforts to reform the WTO. This will call for co-ordinated policies and sound proposals; going beyond the traditional emphasis on special and differential treatment. Some original ideas are required. The Doha Round is about much more than just market access for agricultural exports.
- African governments can do many things to improve domestic conditions, transparency and the rule of law generally. This is their first responsibility if they are serious about alleviating poverty and improving governance. The latter is vital for attracting investment.
- The regional dimension and intra-Africa trade are increasingly important. Africa needs a serious effort to promote deeper regional integration and reap the associated benefits. Too often we still cling to dated and inflated views about ‘sovereignty’. This challenge should be tackled with clear plans based on realistic expectations and sound analyses. There are also examples of haste, overlapping membership and unrealistic schemes. Regional integration should make sense in terms of membership, agendas, rules and institutions.

- Free trade agreements with specific developed countries and with emerging economies such as China, India, Brazil and others will figure prominently again. They need to be planned with care; there is no one-size-fits-all formula and bargaining power is less when negotiating bilaterally. Such negotiations should, where possible, be tackled by regional groupings and as part of a bigger regional integration strategy.
- The EPA negotiations with the EU have entered a serious phase now. They have a logic and historical context of their own and should be a priority for the regional groupings involved.
- The rules-based nature of the WTO regime will not disappear. African states still have to implement many domestic reforms in order to comply with their obligations as Members of the WTO. These efforts are hampered by technical capacity constraints but home-grown and regional solutions are quite possible.
- Reform to existing multilateral rules in sensitive areas such as intellectual property must continue and be implemented. Nothing prevents Africa from pursuing these objectives and reviving *ad hoc* talks. This will need clever diplomatic initiatives.

Gerhard Erasmus is Senior Research Fellow at the Trade Law Centre for Southern Africa (tralac) in Stellenbosch, South Africa.

Aid for Trade Independent of Doha Round, Task Force Says

The WTO Task Force on Aid for Trade (A4T) has strongly stressed that increasing trade opportunities for developing countries remains the most important contribution that the WTO can make to development, and therefore A4T should be operationalised without delay.

The Task Force concluded its work on schedule in July. Significantly, it recognised that A4T was “important in its own right, and should assist developing countries to benefit from increased trade opportunities multilaterally (both from previous rounds and from the anticipated results of the DDA), regionally, bilaterally and unilaterally.” But it also noted that developing countries needed support “to put in place accompanying measures that assist them to benefit from liberalised trade.”

Speaking in Jackson Hole on 25 August, US Federal Reserve Chairman Ben Bernanke noted that the challenge facing policy-makers was to “ensure that the benefits of global economic integration are sufficiently widely shared – for example, by helping displaced workers get the necessary training to take advantage of new opportunities – that a consensus for welfare-enhancing change can be obtained. Building such a consensus may be far from easy, at both the national and the global levels. However, the effort is well worth making, as the potential benefits of increased global economic integration are large indeed.”

The novelty of the Task Force’s A4T concept is this recognition that there will be losers, as well as winners, from trade integration and liberalisation. Thus, a responsible global governance regime for trade must incorporate a dimension that effectively addresses adjustment and preparedness.

Financing A4T

The recommendations strongly emphasise the crucial need for adequate financing, as well as monitoring of A4T spending, but do not formally commit Members to provide such funds. Instead, they refer to a number of existing international commitments to significantly scale up development assistance, as well as the announcements made in Hong Kong regarding trade-related assistance in particular.

Governments are urged to make “targeted funds available for building infrastructure

and removing supply-side constraints – over and above capacity-building and technical assistance.” They could use bilateral, as well as multilateral channels, including UN agencies and regional development banks, as well as the Integrated Framework for least-developed countries (LDCs) and perhaps create a similar mechanism for the poorest non-LDCs.

Rather than rely on a complex web of funding channels, a number of countries would prefer the establishment of a stand-alone mechanism, possibly modelled on the Global Environment Facility, which helps developing countries fund projects related to biodiversity, climate change and other global concerns. There is also great interest in the Task Force’s suggestion that WTO Members “explore the merits of establishing a Regional Aid-for-Trade Committee, comprising sub-regional and regional organisations and financial institutions, to oversee the implementation of the sub-regional and regional dimensions of Aid for Trade, to report on needs, responses and impacts, and to oversee monitoring and evaluation.”

Monitoring Financial Flows and Performance

Monitoring would be assured through reporting requirements at all levels – donor and recipient countries, as well as institutions, with the WTO conducting periodic global reviews based on those reports. The reviews should be followed by a General Council debate to give political guidance on A4T. The Members could also be required to notify the WTO of their A4T activities.

The elaborate reporting requirements stem from the difficulty in tracking official development assistance (ODA) and measuring whether funding for any particular activity is ‘additional’ rather than diverted from other areas or just repackaged under a new label.

There is also a deliberate thrust to ensure recipient countries’ ownership of and participation in A4T activities. National A4T Committees could be established “to ensure trade mainstreaming in national development strategies, determine country needs, set priorities, assist in matching ‘demand’ and ‘response’, and help in evaluation.”

A4T and the Doha Round

The Task Force stressed that A4T was not conditional upon the Doha Round’s success, and should be operationalised ‘as soon as possible’. At the same time, it reminded Members that A4T could complement but not substitute for the development benefits that would result from the round’s successful conclusion, particularly on market access. For instance, such an outcome would increase the need for assistance to ease adjustment costs, implement new commitments, and make use of new market access.

What Next?

The WTO’s General Council will address the Task Force’s report at its 10-11 October session. The Director-General has been invited to (i) establish an *ad hoc* consultative group to take forward the practical follow-up of the recommendations; (ii) begin examining how to implement the recommendations regarding WTO monitoring of A4T, and; (iii) convene, at an appropriate time, an initial review of A4T, with the participation of all relevant stakeholders. Referring to pledges made in Hong Kong, the Task Force also urged the Director-General to seek confirmation from donors that funds would be ‘readily available’ to implement A4T.

Aid for trade, including strengthening support for regional, sub-regional and cross-border needs, is on the agenda of the 18 September meeting of the World Bank/IMF Development Committee in Singapore. The OECD will organise a meeting with non-members in early November to discuss aid, trade and development.

Zeroing Condemned Again, New Gambling Ruling Sought

New developments with regard to US implementation of dispute settlement rulings in the softwood lumber and Internet gambling cases have wider systemic implications to the interpretation of WTO rules.

The string of WTO rulings against the controversial practice of ‘zeroing’ when calculating anti-dumping duties is growing longer with the Appellate Body’s latest report on the softwood lumber dispute between the US and Canada.

The method inflates dumping margins as it only takes into account prices found to be higher in the exporter’s domestic market, but ignores those where the exported good is less expensive in its country of origin. A large number of WTO Members have tried to explicitly prohibit zeroing in the Doha Round negotiations on anti-dumping rules, but so far successive dispute settlement rulings on different aspects of the practice have done more to restrict its use.

The latest finding was made in the context of Canada’s challenge of US implementation of a ruling that condemned the ‘weighted average-to-weighted average’ comparison methodology US authorities had used to calculate anti-dumping duties on Canadian soft wood lumber. To comply with the ruling, the Department of Commerce shifted to another form of zeroing that compared transactions rather averages. Reversing the compliance panel ruling, the Appellate Body found that “zeroing in the transaction-to-transaction methodology does not conform to the requirements of Article 2.4.2 [of the Anti-dumping Agreement] in that it results in the real values of certain export transactions being altered or disregarded.” A leading dispute settlement expert called the decision on transaction-to-transaction comparisons “clear and authoritative, leaving little room for the continued application of this WTO-inconsistent practice.”

US Trade Representative spokesperson Sean M. Spicer expressed disappointment with the ruling and said that litigation was not the best way to resolve the dispute. The Chair of the US Coalition for Fair Lumber Imports, Steve Swanson, used stronger language, calling the decision “just another example of WTO overreaching. Zeroing was a common practice when the current WTO rules were put into place, and there is nothing in those rules that forbids it.” At least until the latest ruling, that was the view of the Department of Commerce as well. An indeed, while the WTO has found different specific instances and methods of zeroing inconsistent with the Anti-dumping Agreement, the entire practice has never been condemned as such.

Although the latest ruling in the softwood lumber case sets an important precedent for WTO jurisprudence, it will have no impact on the actual dispute. The two sides have reached a negotiated solution, according to which the US will return to Canada four-fifths of the US\$5 billion that it has collected in anti-dumping duties over the years. Canadian exports will be limited to about 34 percent of the US market, and Canada will exact a 5-15 percent border tax when prices are low or quotas are exceeded. Either side may terminate the agreement after two years. It will be put to a confidence vote in the Canadian Parliament later this autumn, and Prime Minister Stephen Harper has said he will call new elections in case of rejection.

Antigua Challenges US Implementation of Gambling Decision

At the request of Antigua and Barbuda, a panel was established on 19 July to examine whether the US had complied with the April 2005 Appellate Body ruling, which found that the 1978 Interstate Horse Racing Act discriminated against foreign providers of Internet gambling services. In contrast, the AB accepted the US argument that the prohibition of other kinds of remote gambling did not discriminate between foreign and domestic suppliers, and was justified under Article XIV(a) of the General Agreement on Trade in Services (GATS) as “necessary to protect public morals or to maintain public order.”

On 5 April 2006, the US told the Dispute Settlement Body (DSB) that its Department of Justice had determined that all interstate transmissions of bets or wagers, including those under the Horse Racing Act, were in fact prohibited under existing criminal statutes. No

additional steps were thus needed to achieve compliance in the case, the US asserted.

In its compliance panel request, Antigua and Barbuda alleged that this amounted to “nothing more than a restatement of the position taken by the United States during the course of [the dispute] that was ultimately found unpersuasive by both the panel and the Appellate Body.” As such, it could not be considered a ‘measure taken to comply with the recommendations and rulings’ of the DSB.

The complainant also maintained that not only had no domestic remote gambling and betting service providers been prosecuted under the Horse Racing Act, but that domestic remote gambling services more generally had in fact experienced ‘significant growth and expansion’ since the Appellate Body ruling. Meanwhile, gambling and betting services from Antigua and Barbuda remained subject to criminal prosecution by US authorities.

Antigua and Barbuda further claimed that two pending bills aimed at tightening Internet gambling restrictions would violate the GATS. According to the compliance panel request, both bills would exclude transactions made in accordance with the Horse Racing Act, as well as ‘intrastate transactions’ that occur wholly within US borders, and remote gambling conducted by Native American tribes in accordance with existing federal legislation.

The gambling dispute was the first GATS-related case where the defendant successfully justified WTO-inconsistent trade restrictions under the public morals exception. It has also underscored small Members’ limited scope for using WTO remedies: even if the tiny island nation wins its latest challenge, what form of trade sanctions could it possibly impose to force the US to comply with the ruling?

The compliance panel is due to release its report in November.

WTO Dispute Settlement After Doha: A 'Risk of Imbalance'?

Brendan McGivern

The suspension of the Doha Round has focused new attention on the role of the WTO dispute settlement system to deliver results that the negotiations have not.

Australian Trade Minister Mark Vaile has stated that “[w]here member countries want to pursue their national interests, if they can’t see opportunities at the end of a negotiation, then it is fully within their rights to pursue their opportunities through the dispute settlement process.”¹ John Murphy of the US Chamber of Commerce predicted “an explosion of cases brought before WTO dispute settlement panels” as countries seek to “obtain through litigation what they could not achieve through negotiation.”² At the same time, WTO Director-General Pascal Lamy has cautioned against a ‘risk of imbalance’ between litigation and negotiation.³

As the negotiating process within the WTO has now been indefinitely halted, will there be a substantial increase in dispute settlement?

During the GATT era, there was a clear link between failed negotiations and an upsurge in disputes. For example, the number of GATT disputes rose following the collapse of the 1990 GATT Ministerial meeting in Brussels. After the suspension of the Doha Round this summer, a number of observers pointed to such GATT precedents in predicting a similar increase in WTO dispute settlement.

However, it is a mistake to assume that the WTO will simply repeat the pattern established under the GATT. During the Uruguay Round, a significant number of countries viewed negotiations and dispute settlement as alternative options, in part because negotiations then had a much higher chance of success. The negotiating dynamic was far less complex, and a consensus among a small group of major players was often sufficient to establish agreement among GATT Parties collectively. The 1992 US-EC ‘Blair House’ agreement on agriculture is probably the best known (and perhaps most notorious) example of this. So, particularly for larger GATT members,

it was realistic to pursue their trade objectives through negotiations, and to consider dispute settlement as a fallback option in case the negotiations failed.

By contrast, the Doha Round has been characterised by gridlock from its inception. There is a significantly larger number of active participants, and the major players have long since recognised that they cannot impose their will on the WTO as a whole. While this has led to a more democratic and representative organisation, it has also made consensus considerably harder to achieve. Despite the early hopes of some Members for ambitious results from the Doha Round, one of the few areas of agreement has been the need of Members continually to ‘lower expectations’.

In such an atmosphere, it is highly doubtful that WTO Members considered negotiations and dispute settlement as true alternatives. Rather than seeing dispute settlement as a backup to negotiations – to be used in the event that negotiations failed – many WTO Members came to see dispute settlement as the only viable, functioning part of the WTO, even when the Doha Round was still underway. A WTO Member would have needed to be exceedingly optimistic to view negotiations as its ‘first best’ option – and the Doha Round, to date, has never given rise to such optimism.

For this reason, it is unlikely that there will be an ‘explosion’ in dispute settlement as a direct result of the failure of the negotiations. While the number of disputes may well rise, few if any WTO Members needed a formal suspension of the Doha Round to tell them what they already knew – that the negotiations were unlikely to produce meaningful results in any event. To take one example, Brazil did not await the results of the Doha Round negotiations on cotton before challenging US subsidies in *US – Upland Cotton* (DS267).

In current circumstances, some governments may be motivated to pursue dispute settlement at least in part to demonstrate the costs of allowing the Doha Round to break down, and to help raise the political pressure for its resumption.

At the same time, Lamy’s warning about the ‘risk of imbalance’ between litigation and negotiation is well-placed. The drafters of the Uruguay Round agreements were conscious of such a risk, and tried to avoid it. As they agreed on significant improvements to the WTO dispute settlement system, they added provisions that they hoped would also reinforce the legislative functions of the WTO.

The dispute settlement system was dramatically improved during the Uruguay Round through the addition of automatic panel establishment, automatic adoption of panel reports, appellate review, and the suspension of concessions. This resulted in what is demonstrably the most effective dispute settlement mechanism in the international treaty system, even allowing for the implementation problems that have arisen in some cases.

Concurrently, the Uruguay Round negotiators added provisions that they hoped would strengthen the legislative capacity of the new organisation, such as decision-making through voting, and the use of authoritative interpretations. Yet these procedures have remained a dead letter. In practice, the principle of decision-making by consensus continues to be strictly applied, and no authoritative interpretation has ever been adopted. The intended conclusion of the Doha Round through consensus decision-making and the ‘single undertaking’ has meant that the negotiations can go no further than that which is acceptable to the most recalcitrant Member.

Therefore, the imbalance between the judicial and the legislative functions of the WTO, far from being a ‘risk’, has been a fact of life virtually since the entry into force of the WTO Agreement. The suspension of the Doha Round will merely exacerbate, not cause, this tendency.

Such an imbalance is not conducive to a healthy and adaptable multilateral trading system characterised by fully-functioning checks and balances. The WTO dispute settlement system has registered outstanding successes, and in all likelihood will continue to do so. However, WTO Members have a critical role to play in defining the rights and obligations that should apply under agreed disciplines. Moreover, the dispute settlement system will have reduced legitimacy over time if it is called upon merely to construe rules that were frozen at the conclusion of the Uruguay Round, rather than to interpret evolving disciplines that reflect the contemporary will of the international trading community.

Now that the negotiations have been formally halted, the dispute settlement system – which has long dominated the functions of the WTO – has become the exclusive channel to seek meaningful, substantive results. It is in the interests of all Members to resume the negotiations as quickly as possible to seek to ensure that the ‘imbalance’ does not become the permanent,

defining characteristic of the World Trade Organisation.

Brendan McGivern is Counsel with White & Case International Trade in Geneva.

ENDNOTES

¹“Officials Predict Rise in Dispute Cases At WTO After Collapse of Doha Trade Talks.” BNA International Trade Daily, July 25, 2006.

²“Last Round? We’re about to find out if Doha really is too important to fail.” John G. Murphy, Vice President, International Affairs, US Chamber of Commerce. July 14, 2006.

³ See supra note 1.

Brazil Reactivates Cotton Dispute, C-4 May Follow Suit

On 21 August, Brazil tabled a request for a WTO compliance panel to determine whether the US has fully implemented panel and Appellate Body rulings against several forms of domestic support to its cotton sector. The US repealed the WTO-illegal Step 2 subsidy programme on 1 August 2006, but Brazil claims that it has not done enough to remove the subsidy element of its export credit guarantee programmes, and has taken no action to reform its counter-cyclical and marketing loan payments. The AFP news agency quoted US government figures showing that the country’s cotton subsidies – excluding federal insurance guarantees for farmers – stood at US\$3.1 billion for the 2005 crop year, down from US\$3.7 billion in 2004.

The two sides agreed last year to suspend litigation on the subsidies still in place in hopes that a negotiated solution would emerge from the Doha Round agriculture negotiations. In addition to domestic subsidy reductions, the negotiations were expected to result in an expanded Blue Box, which would have covered the counter-cyclical payments provided to US farmers when world prices drop below a certain level.

Brazil is also likely to request the reactivation of WTO arbitration of the level of damage that the remaining condemned subsidies are causing to its economy. In its October 2005 arbitration request, Brazil asked for the right to impose trade sanctions worth US\$1 billion annually. Earlier in the dispute, Brazil said that its retaliation measures might target other sectors than goods, including the suspension of concessions in several areas of intellectual property rights – such as copyrights, industrial designs, patents and the protection of undisclosed data – as well as the withdrawal concessions in some services sectors.

The compliance panel must deliver its verdict within 90 days of its constitution. The ruling can be appealed by either party.

In related news, Benin, Burkina Faso, Chad and Mali – all least-developed countries (LDCs) – have announced that they may lodge a complaint of their own against US cotton subsidies. After years of inconclusive WTO discussions, the four countries obtained a commitment at the Hong Kong Ministerial Conference that trade-distorting domestic

cotton subsidies would be reduced faster and more ambitiously than those for other agricultural products. Export subsidies were to be eliminated by 1 January 2007, and developed countries were to grant duty- and quota-free market access for cotton exports from LDCs.

In March 2006, the Cotton Four (C-4) proposed a formula designed to ensure a significant reduction in cotton subsidies even if the general domestic support cut turned out to be small (Bridges Year 10 No.2, page 6). The US, however, strongly insisted that the fate of cotton would depend on the level of ambition of the overall result in agriculture, including export subsidies, domestic support and tariff reductions. A negotiated solution now out of reach, the C-4 are considering litigation to achieve the elimination of subsidies, which they believe to be the chief reason for a price slump that has caused their exports earnings to plummet. The livelihoods of an estimated 20 million people in Africa depend on cotton, which for a number of LDCs represents the main source of both employment and export earnings.

Convergence between Trade Agreements in Latin America

Oswaldo Rosales

Although faster and deeper integration is a necessity in Latin America, convergence among the continent's complex web of trade agreements could be best promoted through first strengthening regional co-operation in other areas.

During the first half of the 1990s, intra-regional trade was liberalised through agreements signed under the framework of the Latin American Integration Association (LAIA). As of 1995, the emphasis shifted towards bilateral trade agreements with extra-regional partners: Canada, the European Union, Japan, the United States and, more recently, China and other Asian countries. This signalled a new phase in Latin American and the Caribbean trade policy, reflecting a change in geographical trade patterns and a challenge to existing regional integration processes.

Different Rules and Disciplines

The combination of different bilateral, multilateral and regional liberalisation commitments in Latin America and the Caribbean may generate discrimination among countries and sub-regional groups. Convergence among the various kinds of agreements is thus urgently needed to avoid trade deviation and the escalation of transaction costs for intra-regional trade.

In 2006, the secretariats of LAIA, Mercosur and the Andean Community measured the share of duty-free trade among the countries of the South American Community of Nations. The results suggest a slow convergence towards free trade, although even in 2014 there will be: (i) a substantial share of trade still subject to tariff barriers; and, (ii) many cases in which less than 90 percent of trade is liberalised, notably between the Andean Community and Mercosur.

Such a lengthy liberalisation process is not very encouraging for exporters and investors in the region, particularly as several Latin American countries will reduce trade barriers much more rapidly as part of their agreements with the US and probably with the EU. This is why the integration secretariats have proposed to speed up the timeframes to ensure that at least 90 percent of intra-regional trade will be duty-free in the short run.

However, tariff cuts need to be accompanied by other rules and disciplines to guarantee their effectiveness. At present, those incorporated into the intra-regional agreements are both less extensive and less binding than the disciplines agreed under the WTO, while they tend to exceed WTO standards in extra-regional agreements with developed country partners.

Most intra-regional agreements include rules on trade remedies to facilitate tariff reduction and to prevent the adoption of non-tariff barriers affecting trade flows. However, they exclude other types of rules which, when not fully addressed, may also become non-tariff barriers, such as sanitary and phytosanitary measures and technical regulations. Moreover, in other trade-related areas (services, investment, government procurement or intellectual property rights) the coverage of intra-regional agreements is incomplete compared to some extra-regional ones.

The level of commitments in trade disciplines also varies among intra-regional agreements. While the customs union agreements include extensive measures related to trade remedies and dispute settlement, they are less complete with regard to sanitary and phytosanitary measures, and technical regulations. In contrast, some of the FTAs signed by Chile and Mexico, among themselves and with Central American countries, offer broader coverage.

Possible Convergence Modalities

Strong asymmetries have developed between intra- and extra-regional bilateral and multilateral agreements. Four types of problems need to be addressed in this context: (i) *operational issues*, such as customs/transit procedures and merchandise warehousing; (ii) *rules and disciplines*, which exist in some agreements but are absent in others, or have different provisions for similar topics (national treatment) or different treatment of identical issues (models for negotiation or commitments); (iii) the *institutional strength* of the agreements; and (iv) *discrimination among trading partners*, with the members of intra-regional agreements often receiving less favourable treatment than that prevailing between participants extra-regional agreements.

With regard to operational issues, convergence may be reached either through informal arrangements to facilitate trade or formal exchanges of customs information; by reducing the regulatory burden of technical barriers; the unilateral recognition of safety standards; or the harmonisation of trade facilitation rules in transport, border controls or immigration.

As to rules and disciplines, member countries of an agreement could agree on common interpretations. In the case of common provisions but different drafting, members might, for example, reach consensus on using WTO interpretations. If particular disciplines and rules are absent in certain agreements, they should be included through negotiations, taking into account differences in approaches for their treatment and application. When the adoption of disciplines in intra-regional integration agreements is delayed relative to extra-regional accords, voluntary convergence would be preferable, as more favourable treatment of extra-regional partners by members of a sub-regional integration scheme – or different treatment of identical topics – would not be justified. Countries should adopt a common approach and grant among themselves the best treatment possible to streamline regional integration.

Integration schemes and their members urgently need to strengthen their institutions. Support should be given, through existing institutions, notably to assist the less developed countries within each integration scheme to adopt trade facilitation measures, and to provide better access to, and analysis of, information. Moreover, these countries need technical assistance to interpret provisions, implement commitments and settle disputes.

In September 2005, the South American Community of Nations adopted an important initiative towards intra-regional convergence, asking the LAIA, Mercosur, Andean Community and CARICOM¹ secretariats to prepare studies and proposals for the convergence of South American agreements in three areas: (i) trade and complementary rules and disciplines; (ii) institutional arrangements, and (iii) the treatment of asymmetries. For the regional convergence of trade agreements, supporting and deepening this effort is the most urgent task, particularly if it will include extra-regional agreements.

Conclusions

Regional integration is necessary and urgent. To the traditional arguments for integration, one may add the challenges posed by globalisation, such as the need to establish strategic international alliances in production, logistics, commercialisation, investment and technology. Pressures to be competitive and the need for technological innovations have increased with the emergence of China, India and other Asian countries, which have completely changed geographical trade patterns and comparative advantages. Expanded markets, legal certainty and convergence of rules and disciplines, combined with better infrastructure, energy and connectivity, are key conditions for growth with equity today.

Accepting differences in size and trade orientations, and preserving the achievements of the integration processes is fundamental, as is the promotion of convergence in commercial and non-commercial areas. Each integration scheme must ask how much it has contributed to its members' growth and competitiveness.

Harmonisation of the overlapping and yet different trade commitments and disciplines will be a complex task. It would make sense to focus first on creating the underpinnings of integration through strengthening regional co-operation in a number of other areas.

For instance, efforts are needed to build common spaces, starting with seeking convergence in energy and infrastructure policies, and then moving on to explore such areas as the environment, tourism, connectivity, information and communication technologies, and electronic commerce and regulation, among others. Rebuilding mutual confidence through such collaboration, useful to improve competitiveness in any case, will – later on – help connect the multiple intra-regional commercial agreements, defining a set of shared obligations. Flexibility in their application is required for the smaller economies, with specific programmes – including special and differential treatment – to address constraints in infrastructure, trade facilitation and connectivity.

It is also necessary to gradually build institutional bridges among the different integration schemes without losing sight of the overall regional trade objectives, such as expanded markets, free flow of goods and production factors, macroeconomic co-ordination, binding dispute settlement mechanisms, adequate treatment of asymmetries, structural funds to distribute benefits, co-ordination of social policies and bold initiatives in energy and infrastructure.

In the short term, however, the emphasis should be on re-establishing a climate of inclusive dialogue and on fostering respect for existing mechanisms of regional co-operation, leaving the issues of trade convergence and integration for later.

To reach these objectives it will be important to understand the interests of each country and the diversity of the continent's economic and trade contexts, to promote consensus-building and focus on areas where agreement seems most likely, taking into account the needs of regional integration and the demands of today's world.

Oswaldo Rosales is Director, International Trade and Integration Division at the Economic Commission for Latin America and the Caribbean in Santiago.

ENDNOTE

¹ In co-operation with Chile, Guyana and Surinam

LatAm in Brief

- **US-CAN:** The US and Colombia have settled their remaining differences over farm goods, and on 24 August the Bush Administration formally sent to Congress the bilateral free trade treaty it negotiated within the framework of the Andean Trade Promotion Agreement (ATPA). The final deal required a compromise regarding market access restrictions that both sides had placed on beef, Colombia due to concerns about mad cow disease, and the US because of its sanitary requirements on foot and mouth disease.

ATPA negotiations have also concluded between the US and Peru, where Congress overwhelmingly approved the treaty in June. However, President Alan Garcia said on 17 August that his government would seek to renegotiate the agreement, as the country needed to “think about a different accord, one for the poor, one that looks within, complying with a national agenda.” The US has not yet taken any action on ratification.

Negotiations with Ecuador are currently suspended, while Bolivia has participated in the talks only as an observer. Venezuela, which used to be the fifth member of the Andean Community of Nations (CAN), formally joined Argentina, Brazil, Paraguay and Uruguay as a full member of Mercosur in July (see related story on EU-CAN on page 14).

- **Mercosur:** Carlos Alvarez, who presides the Mercosur Commission of Permanent Representatives, told the Buenos Aires Herald on 22 August that the Free Trade Area of the Americas (FTAA) was ‘dead’. Negotiations on the hemisphere-wide trade pact – only Cuba was not included – were suspended in 2004 over disagreements between Mercosur and the US regarding the treaty's coverage and the treatment of agricultural subsidies.

Meanwhile, Mercosur and EU officials have multiplied contacts aimed at reviving inter-regional FTA talks, which foundered over market access in 2004.

ASEAN Update

Meeting on 23 August in Kuala Lumpur, trade ministers of the Association of Southeast Asian Nations (ASEAN) decided to bring forward – from 2020 to 2015 – the target date for achieving an EU-style economic community with a free flow of goods and services between the ten member countries. Malaysia's Trade and Industry Minister Rafidah Aziz vowed to keep to the accelerated timetable, which some consider optimistic given the wide disparity between the economies of the six original ASEAN countries – Brunei, Indonesia, Malaysia, the Philippines, Singapore and Thailand – and its newer members, Cambodia, Laos, Myanmar and Vietnam. The plan to speed up the integration process must still be approved by the bloc's leaders when they meet in the Philippines in December.

At the Kuala Lumpur meeting, ASEAN and the US signed a Trade and Investment Framework Arrangement, and established a work plan that is initially to tackle three projects: the development of an ASEAN 'single window' for the entry of goods, the establishment of a framework agreement on sanitary and phytosanitary issues, and the development of harmonised standards for pharmaceutical registration and approval "aimed at speeding the delivery of innovative medicines to ASEAN countries."

A comprehensive US-Singapore free trade agreement is already in force, and the US has bilateral FTA negotiations underway between with both Thailand and Malaysia. As a bloc, ASEAN is involved in several negotiating processes, including those with India, South Korea, Australia and New Zealand.

The ASEAN ministers and US Trade Representative Susan Schwab also issued a joint statement in which they pledged to work for putting the Doha Development Round back on track before the end of 2006 and to "ensure that the flexibility provided for in NAMA and agriculture do not undermine substantially improved market access."

An EU-Andean FTA by 2008?

The European Commission and the Andean Community (CAN) agreed in July to launch negotiations on an Association Agreement – consisting of development co-operation, political dialogue and trade – in January 2007.

The goal is to conclude the talks by the 2008 EU-Latin America Summit. The Commission is expected to seek negotiating authority from the European Council of Ministers in September.

The fate of the EU-CAN Association Agreement was left in suspension at the 2006 EU-Latin America Summit due to uncertainties surrounding Andean integration after Venezuela's withdrawal from the CAN (Bridges Year 10 No.3, page 19). In order to prepare for the negotiations, the remaining CAN members – Bolivia, Colombia, Ecuador and Peru – are expected to deepen integration in 2005, particularly with regard to simplifying and harmonising customs duties, and taking measures to facilitate transborder road transport.

The Andean partners hope to achieve an 'asymmetrical' agreement that would take into account the important economic differences between the two sides through different market access commitments both in terms of tariffs and the degree national treatment.

The Bolivian government – which currently holds the rotating CAN presidency – has already made its negotiating position public. Highlights include the following:

- The rules of the Association Agreement in the sphere of trade cannot be equal for both parties while profound inequality exists both between and within regions. The GDP of the EU is 50 times the GDP of the CAN, and – in comparison with some countries such as Ecuador and Bolivia – between 300 and 1000 times greater. In order to have a just and equitable agreement the approved rules must be much more favourable to CAN than to the EU. This is not a question of a better application of special and differential treatment, but rather unequal rules which allow a balanced integration of unequal realities.
- The EU should unilaterally grant duty-free access to all products originating in the CAN, and in particular value-added goods that contribute to the development of small producers, micro-entrepreneurs and farmers' co-operatives. EU members should give CAN countries preferential access to government purchases, and eliminate non-tariff barriers such as technical or phytosanitary standards that unfairly restrict market access.
- Agriculture can not be treated as another economic activity as the life and nutrition of millions of peoples depend on it, as well as the survival and culture of hundreds of indigenous peoples in the Andean region. The EU should recognise Andean states' right and obligation to guarantee the food sovereignty and security of their populations, putting the collective good ahead of the interests of agribusiness.
- Foreign investors should be protected provided that they truly invest, transfer technology, use Andean raw materials and inputs, as well as labour, and respect domestic environmental and labour laws and other regulations. Any dispute between a foreign investor and a State must be resolved in domestic courts rather than by international panels. Foreign investors have the right to recover their investment and to make a reasonable profit but cannot ask for compensation for exorbitant or future profits. The Association Agreement must recognise the right of Andean countries to recover and/or exercise control over their natural resources.
- Access to generic medicines must be guaranteed and compulsory licensing of patented medicines made more flexible to meet public health needs. The patenting of plants, seeds, animals and micro-organisms and all living material must be prohibited. The treaty must recognise and protect the traditional knowledge of indigenous peoples. A broad debate should be launched on the concept of patents and intellectual property in order to prevent the privatisation of knowledge.
- The Association Agreement should strengthen public services – including health, education, social security, water and basic sanitation – and promote universal access to them rather than seek their liberalisation or privatisation.

The Doha Round Suspension: The Role of US Politics

Robert L. Thompson

US agricultural and rural politics played a key role in the demise of the Doha Round negotiations.

The political power of certain US farm organisations is well recognised. Farmers regularly receive direct federal support worth over US\$20 billion per year despite their small numbers, the federal budget deficit, and the fact that the majority of the benefits go to larger than average producers of only five commodities. Two-thirds of American agriculture receive no support.

What may be less well understood is the important role that farm organisations play in securing Congressional authorisation of fast-track negotiating authority and the approval of trade agreements. Without the efforts of the agriculture lobbies, little trade liberalising legislation would be passed by Congress.

The red and blue state map shows which states voted for the Republican or Democratic presidential candidate. What is less frequently published is the red and blue county map, in which much of rural America is Republican red. In the last narrowly fought presidential election, President Bush lost votes in urban districts and gained votes in rural ones.

In this November's Congressional elections, the Republicans hope to retain a majority in both chambers of Congress, and the Democrats hope to gain a majority in at least one chamber. With an eye to the next presidential election in November 2008 as well, neither party is likely to do anything that might risk losing rural votes. Moreover, US farm organisations are generous campaign contributors.

The Uruguay Round Agreement on Agriculture

American farmers produce one-third more agricultural output than is consumed domestically. So the volume of exports is an important factor in determining profitability. US farm organisations were enthusiastic supporters of the Uruguay Round negotiations, and they lobbied Congress to secure its passage.

The Uruguay Round Agreement on Agriculture contained many conceptual advances, including the conversion of non-tariff barriers to trade into tariffs and, for the first time, both trade-distorting domestic support and agricultural export subsidies were capped and bound. Nevertheless, the agreement was rife with loopholes, and little real trade liberalisation occurred. American farmers, who had expected significant increases in exports, became frustrated as they watched Brazil capture most of the growth in the world market. They also viewed it as unfair that both the EU and Japan had negotiated much higher caps on their trade-distorting domestic support (Aggregate Measure of Support or AMS).

As a result, US farmers have never been very enthusiastic about the Doha Round. In fact, they see much more potential to expand the markets for their products through biofuels than exports.

The 2002 Farm Bill

In the Uruguay Round agricultural negotiations the US, like the Cairns Group, was a strong advocate for agricultural trade liberalisation and the reduction in trade-distorting domestic support. In parallel with the negotiations, three successive farm bills, in 1985, 1990, and 1996, progressively reduced the linkage between the amount of support and the production or prices of *specific* commodities, shifting support away from the most trade-distorting Amber Box towards the least distorting Green Box.

However, in 2002, when the last US farm bill was written, the federal budget was in significant surplus, and Congress was in a spending mood. Congress saw the AMS cap as a target to be attained rather than a ceiling under which trade-distorting support should be held. Moreover, there was significant back-sliding in the direction of recoupling support to production or

prices of specific commodities. This occurred as both the EU and Japan were moving in the opposite direction, from the Amber to the Green Box.

Payments to farmers under the 2002 Farm Bill are projected to average over US\$20 billion per year from 2005 to 2007, with 93 percent of the payments going to the producers of only five commodities. The majority of producers of these commodities like the 2002 Farm Bill very much, and most farm organisations are on record as wanting Congress to extend the support provisions in the 2002 Farm Bill unchanged when the law comes up for renewal in 2007.

The Agriculture Negotiations

Early in the Doha Round, US farm organisations, remembering their dashed hopes following the Uruguay Round, made it very clear to the Administration that they would support a Doha Round agreement on agriculture only if it included significant increases in foreign market access to compensate for any reductions in domestic support that the US negotiators might accept.

In the Doha Round, the United States has consistently advocated further progress on all three pillars of the Agreement on Agriculture: increased market access, with the highest tariffs being cut the most; reductions in trade-distorting domestic support, with those with the highest trade-distorting supports making the deepest cuts; and the elimination of export subsidies.

The July 2004 Framework Agreement in general embraced these principles, although it provided the US some relief by relaxing the definition of the Blue Box to accommodate the counter-cyclical payment scheme created in the 2002 Farm Bill. (While this support is not linked to the volume of production of specific commodities, it is linked to their market prices.)

The 2002 Farm Bill undermined the moral authority of the United States as an advocate

Continued on page 16

cate for agricultural trade liberalisation in the Doha Round negotiations. This was reinforced by the cotton dispute in which a number of features of the 2002 Farm Bill cotton support programme – similar to those for cereals and oilseeds – were found to be inconsistent with US obligations under the Agreement on Agriculture.

In October 2005, the US tabled an expanded proposal, which called for large percentage cuts from bound levels in agricultural import tariffs and in trade-distorting domestic support, with the highest being cut the most, and with a minimum of exceptions allowed. The percentage reductions had to be large in order to have any real effect because there is substantial unused capacity in most years under the bound levels for both tariffs and domestic support.

Most US farm groups applauded the deep cuts called for in agricultural import tariffs. However, the proposal to reduce domestic support was communicated very poorly to American farmers. Two essential terms were missing in almost all of the media coverage in rural America – ‘cap’ and ‘trade-distorting’. The US offered a 60 percent reduction over five years in the *cap* on *trade-distorting* domestic support. Most farmers took that to mean that their government had offered a 60 percent cut in the amount of support they received last year. In reality the US proposal would have involved negligible reductions in actual supports in most years.

Furthermore, most American farmers fail to recognise that no cap has been proposed on non-trade-distorting Green Box supports, and that any real loss in Amber Box support could be made up dollar-for-dollar with larger Green Box supports, such as truly decoupled income transfers.

The US offer, which entailed no reduction in overall agricultural support, got the worst possible media play. The European media played it as an empty offer, and Midwestern US media made farmers believe they were going to lose 60 percent of the total support they received last year. In the early summer of 2006, when USTR asked farm organisations if they would go along with increasing the offered reduction in trade-distorting domestic support from 60 to 70 percent, the answer was no.

The Doha Development Agenda

There is a second misperception that is important to understanding the politics behind the the US refusal to bend on market access demands. I would argue that this insistence on increased market access is the right policy for the wrong reason. All the studies suggest that the greatest gains from trade liberalisation would come from increased market access because it both reduces consumers’ cost of living and forces greater efficiency in the use of a nation’s resources.

However, there is an exaggerated vision in the United States of what increased market access in high-income countries would do for its agricultural exports. According to the UN Population Office, the European and Japanese populations will fall by 10 and 22 percent, respectively, between now and 2050. These populations are wealthy and aging, and as people age, they eat less; little of any incremental income in a rich country gets spent on raw agricultural products. Europe and Japan are markets of the past, not of the future.

The only significant agricultural market growth prospects are in developing countries, particularly those that have much more of the world’s population than of its arable land or available fresh water. The global population is projected to grow from six to nine billion people in the first half of the 21st century. About half of the world’s present population lives on less than two dollars per day, and much of the future population growth will be born into poverty. Broad-based economic growth that lifts people out of this poverty can add as much to world demand for food by 2050 as population growth.

There are two ways for a country’s exports to expand: increase market share or grow the total size of the market. Too much of the US negotiating emphasis is on market share, when in reality the biggest potential for export growth will come from expanding the total size of the market. American farmers should be the strongest advocates for this to be a successful ‘development round’ that results in faster economic growth in presently low-income countries. For this to be successful, however, will require greater market access in high-income country markets, including the US, for the products in which low-income countries have a comparative advantage, such as labour-intensive manufactures like textiles and footwear, as well as agricultural products that do well in the Tropics like sugar, rice and cotton.

There are two other issues related to developing countries that are germane to understanding the US position. The first is that US farmers do not understand that developing countries’ unwillingness to open up their markets to agricultural imports stems in part from the fact that OECD countries’ import barriers and production subsidies artificially depress world market prices. The cotton case brought by Brazil concluded that US support policies had depressed the world price of cotton by somewhere between 10 and 20 percent. The support received by sugar, rice and milk is generally higher than that for cotton in OECD countries. Even if developing countries were willing to expose their farmers to competition from the much larger and more technologically sophisticated farmers in the OECD, they are not willing to subject their farmers to competition from the US or EU treasuries.

There is also the problem caused by the WTO’s lack of definition for ‘developing country’. The UN, the IMF, the World Bank and the WTO all share a definition of ‘least-developed country’, with an accepted income threshold at which a country graduates to ‘developing country’ status. The first three institutions have also agreed upon a threshold at which a country must graduate from ‘developing country’ status. In the WTO, however, ‘developing countries’ are self-designated. When a highly competitive exporting country such as South Korea can obtain special and differential treatment merely by declaring itself a developing country, this is viewed as unfair.

This is most delicate when a large developing country attains substantial export success in some geographical areas but also has a substantial poverty in other regions, e.g. China in manufactured products and Brazil in soybeans and some other agricultural products. US farm organisations are particularly sensitive about the latter, as they have watched Brazil capture much of the growth in world agricultural trade since the end of the Uruguay Round.

Conclusion

A great deal had been achieved in the Doha Round negotiations on agricultural modalities, which appear unlikely to conclude for the foreseeable future. There now is a high probability that a series of WTO cases will be brought against the United States for other commodities with support programmes similar to those for cotton. There will be no Peace Clause, and there is no 'new' Blue Box which would redefine counter-cyclical payments from amber to blue. With the precedents set by the cotton dispute, it is hard to see how the US would win those cases. The US could have given up marketing loans, loan deficiency payments and counter-cyclical payments in the Doha Round and got something in exchange. Instead, it is likely to lose them through

litigation, get nothing in return and perhaps have to pay a fine, too.

Robert L. Thompson holds the Gardner Chair in Agricultural Policy at the University of Illinois at Urbana-Champaign. He is a member of the International Food & Agricultural Trade Policy Council and formerly served as Assistant Secretary of Agriculture at USDA and as Director of Rural Development at the World Bank.

The Paradoxes and Contradictions of World Trade

Rubens Ricupero

Throughout the past few decades, I have been impressed by the constantly deepening gap that separates the world of real trade from the smaller world of trade negotiations. A closer look at some such contradictions may help us understand the reasons underlying today's problems.

Paradox I

World trade is thriving but the negotiations are at an impasse.

The first dramatic demonstration of this was the violent and chaotic WTO Ministerial Conference in Seattle, held in late 1999, on the eve of a year during which international trade grew by more than 13 percent in volume, one of the best results in history.

The quasi-constant growth of world trade since then has coincided with better prices for primary products thanks to the 'commodity boom' that has considerably improved terms of trade for many countries. Much of this has been driven by vigorous economic growth in China and other Asian countries, while the gigantic US economy remains the motor of additional demand for imports on the global scale.

We were always taught that economic growth, expanding trade and recovering prices were the three key variables that would provide a propitious climate for trade negotiations. Then how come that we now face paralysis in the two most ambitious initiatives in more than decade: the Free Trade Area of the Americas and the Doha Round?

Part of the answer is that economic growth – and the concomitant increase in import demand – are not enough to guarantee success if the obstacles to agreement are of a political rather than economic nature. This is evident today in the influence wielded by the farming sector, which is not an economic heavyweight in most countries, but has considerable political clout.

Paradox II

The WTO performs better as a tribunal than a negotiating forum.

This perception, though accurate, was unintended by those who successfully pushed for converting the GATT into the WTO in the final stages of the Uruguay Round. Indeed, the European and Canadian authors of the proposal wished to reinforce the multilateral trading system by creating an organisation that would provide a permanent negotiating forum and thus make it unnecessary to initiate trade rounds every five or ten years.

In the beginning, this seemed to work. Shortly after the WTO's entry into force in 1995, Members adopted the Information Technology Agreement, committing a significant number of countries to liberalised trade in electronic products, as well as other accords on basic telecommunications services and financial services. With these, US Trade Representative Charlene Barshefsky said in 1997 that the US had achieved all its objectives and therefore saw no need for a new round of negotiations.

The EU, however, called for a broad-based 'millennium round', which – helped in part by the worldwide reaction to the terrorist attacks of September 11 – was launched in Doha in 2001. The undertaking was renamed a 'development round' in an exercise aimed at winning over the poorer countries and creating a public perception that an initiative distrusted by developing countries would in fact be beneficial to them.

Least-developed countries in particular were reluctant to risk facing new liberalisation demands at a time when they were still making major efforts to implement their Uruguay Round commitments. They also felt that they had little or nothing to gain due to the supply side constraints of their economies.

In addition, developing countries considered that a new round was unnecessary to achieve progress in areas where they did have a supply capacity, such as agriculture and services provided by temporary workers. After all, the relevant WTO agreements already contained a commitment to begin negotiations in 2000 to deepen the modest results achieved during the Uruguay Round.

Developing countries thus felt from the start that the EU demand for a new round was in fact aimed at complicating the built-in agenda negotiations in agriculture, either to gain time or, in the worst case, to make developing countries pay a second time for concessions already paid for during the Uruguay Round.

Continued on page 18

Ten years into the WTO's existence, we cannot avoid the conclusion that, contrary to the intention of its founders, the global trade body functions much more successfully as a tribunal than as a permanent negotiating forum. Indeed, its dispute settlement system has proved capable of decisive rulings that are far more relevant than the negotiations.

The WTO's incapacity to become an efficient negotiating forum is primarily due to the problems faced by nearly all industrial countries with regard to liberalising trade in agriculture. The persistent impasse in the negotiations, which affects not only agriculture but also anti-dumping and other areas, spurs countries to seek recourse to dispute settlement in an attempt to force the hand of those that block the negotiations. This is not without risks: there are legitimate concerns that having quasi-judicial panels settle issues that should normally be resolved through negotiations between sovereign states could eventually result in a serious crisis for the organisation.

Paradox III

Contrary to the initial expectations of many, the WTO – once called the 'constitutive assembly' of globalisation by its chief Renato Ruggiero – has failed to take on board the so-called 'new issues' necessary for the 'deep' integration of the global economy, including the trade implications of investment, competition, and labour and environmental standards.

At the time of the Uruguay Round, most developed country trade experts insisted that the possibilities of trade liberalisation had for all practical purposes been exhausted with regard to border measures such as tariffs and quantitative restrictions. They thus advocated shifting the focus to the adoption of universal norms in order to prevent different rules and models from creating distortions that would favour the relative competitive position of certain countries in world trade competition.

Following this logic, the Uruguay Round brought services, trade-related aspects of intellectual property rights (TRIPS), and trade-related investment measures (TRIMS) within the ambit of the multilateral trading system. The treaties on in-

tellectual property rights and investment continue to raise serious concerns, which have contributed to the popular backlash against globalisation and the WTO. The TRIPS Agreement in particular has proved a huge public relations disaster due to its impacts on access to affordable medicines to fight AIDS and other diseases that affect poor countries, particularly in Africa.

North-South confrontation increased over the WTO's first decade. Developed countries were unable to instil the necessary confidence among developing countries to undertake negotiations on several deep integration issues, and attempts were eventually abandoned to include labour standards, investment, competition policy and transparency in government procurement in the negotiating agenda.

The ironic result is that an institution originally conceived to deal with deep integration was forced to become largely confined to 'unfinished business' from the Tokyo and Uruguay Rounds: agriculture, tariff peaks and escalation, sensitive products, the abuse of anti-dumping measures, and the much delayed task of strengthening provisions on special and differential treatment for developing countries.

The Challenge Today

Why is this unfinished business proving so contentious? The problem is that these issues form what could be called the 'hard core' of protectionism, defended tooth and nail by influential agricultural pressure groups in the US and the EU, or lobbies seeking anti-dumping measures in order to protect industries. Trade in textiles and clothing is instructive in this regard: since the end of quotas in 2005, China's growing competitiveness has been reined in through 'voluntary' agreements to restrict exports, in other words, through instruments of 'managed' trade.

The GATT's much celebrated success in reducing or eliminating trade barriers, particularly with regard to industrial products, was largely due to the American and European decision in the 1950s to isolate the thorniest issues, such as agriculture and textiles, from the process. This allowed the two great trading powers to protect themselves against the Asian onslaught in textiles and clothing while continuing to subsidise their farm sectors. Under these conditions, the system functioned like a dream. The challenge is whether it will work when the resolution of problems accumulated in the course of the last decades can no longer be postponed.

The Dangers of Asymmetrical Regionalisation

The slow pace and limited scope of WTO negotiations has led to the erosion of the multilateral system and to the proliferation of bilateral and regional agreements on trade, investment and other issues. With a handful of exceptions, these treaties have not, however, created 'true' free trade areas, since they have not eliminated tariffs and other trade barriers on 'substantially all the trade' among the parties, as required by GATT Article XXIV:8(b). Furthermore, regional agreements frequently create additional impediments, such as varied rules of origin, which increase rather than reduce trade barriers.

Even more seriously, under their ostensible aim of creating 'building blocks' for the total liberalisation of all trade, regional agreements undermine the basic principles of the multilateral trading system: non-discrimination and most-favoured-nation (MFN) treatment.

Regional trade agreements can be justified if they are concluded between developing countries at similar stages of development with a view to overcoming the limitations of national markets in order to allow them to better prepare for global competition.

Unfortunately, integration under this model – such as the Andean Group or Mercosur – seems to have run out of steam. Instead, recent years have seen many more preferential agreements between powerful developed countries and much weaker developing economies, as evidenced by CAFTA and other treaties concluded by the US since 1995. These agreements have aggravated existing asymmetries, by giving Washington an opportunity to demand from its vastly smaller partners concessions that go far beyond those required by the WTO in such areas as services, intellectual property and investment. The compensation consists of greater and pref-

erential market access, which discriminates against third parties. Furthermore, these agreements generally do not cover sensitive areas such as agricultural subsidies, anti-dumping and other controversial points of the Doha Round.

A recent World Bank report warned developing countries against signing free trade pacts with much more powerful partners, precisely because they require complex legislation and costly institutions that do not take into account their development needs or their capacity to implement obligations.

The last decade has effectively shown that in most cases asymmetrical agreements create opportunities for assembly line industries, which increase exports and industrial employment, but have only modest effects on adding value to manufactures or accelerating economic growth.

The Political Context of the Final Phase of the Doha Round

While everyone agrees that WTO Director-General Pascal Lamy has impeccable political credentials and formidable negotiating skills, he may not be able to match Peter Sutherland's success in steering paralysed negotiations to fruition due to the considerable differences between today's situation and the end of the Uruguay Round.

The first is that when Mr Sutherland took the reins of the multilateral trading system, his predecessor Arthur Dunkel had already issued a voluminous and complete rough draft agreement, which contained all the basic elements for concluding the round. Nothing like that currently exists for the Doha Round, where agreement is still lacking even on the negotiating modalities for the main issues.

Second, the years immediately after the fall of the Berlin Wall and the disintegration of the Soviet Union marked the apotheosis of politico-economic globalisation, with the foundation of the WTO greeted as the beginning of a new era.

Eleven years later, this period of innocence and illusions is over. Terrorist attacks have signalled a return to violence and the militarisation of diplomacy. Successive monetary and financial crises since 1995 have shown the limits of financial and trade liberalisation. Furthermore, the irresistible rise of China has cooled desires for further market opening in many parts of the world.

Thus, it is easy to draw the conclusion that a good part of the less-complicated liberalisation opportunities have been exhausted, and that the prevailing conditions are unlikely to lead to an ambitious result of the negotiations.

Conclusions and Perspectives

In light of all these factors, it is difficult to imagine how the Doha Round could fulfil its promise to transform the multilateral trading system in favour of development through correcting its injustices and imbalances. Nevertheless, it is also unlikely that a modest conclusion of the current negotiations would represent a mortal blow to the multilateral trading system.

Instead of the exclusive predominance of any possible model – a super-WTO aimed at deep integration, the fragmentation of the multilateral system into numerous bilateral and regional agreements, or a system dominated by managed trade – we are likely to see these variants continuing their uneasy co-existence, with the traditional multilateral system in a constant alternation between collaboration and tension.

The current crisis in the negotiations is a consequence of insufficient political will to face the never-resolved problems of previous rounds. The challenge we face today is this: either we address the system's persistent injustices and imbalances, or we will be condemned to an enduring crisis of its capacity to find solutions through equitable and balanced negotiations.

Rubens Ricupero is Dean of the Economics Faculty at the Fundação Armando Álvares Penteado in São Paulo and former Director-General of UNCTAD.

The International Centre for Trade and Sustainable Development (ICTSD) is an independent non-profit organisation that upholds sustainable development as the goal of international trade and promotes participatory decision-making in the design of trade policy.

BRIDGES Regional Editions

PUNENTES

entre el Comercio y el Desarrollo Sostenible

Co-publisher: Centro Internacional de Política Económica para el Desarrollo Sostenible (CINPE), San José, Costa Rica
Web: <http://cinpe.una.ac.cr>

PONTES

entre o Comércio e o Desenvolvimento Sustentável

Co-publisher: Fundação Getúlio Vargas, São Paulo
Web: <http://www.edesp.edu.br>

PASSERELLES

entre le commerce et le développement durable

Co-publisher: ENDA – Tiers Monde, Dakar, Senegal
Web: <http://www.enda.sn>

Other ICTSD Periodicals

BRIDGES Weekly Trade News Digest

A weekly electronic news service on trade, sustainable development and the WTO.
Editor: Trineesh Biswas

BRIDGES BioRes

Co-publisher: IUCN – The World Conservation Union
A bi-weekly electronic news service on trade, sustainable development and biological resources.
Editor: Heike Baumüller

TRADE NEGOTIATION INSIGHTS

Co-publisher: ECDPM
Bi-monthly publication on trade negotiations of particular importance to Africa and ACP countries.
Editors: Yvonne Apea, Christophe Bellman and Sanoussi Bilal

ECLAIRAGE SUR LES NEGOCIATIONS

Co-publisher: ECDPM
Publication bi-mensuelle sur les enjeux des négociations commerciales pour les pays d'Afrique et ACP.
Rédaction: Yvonne Apea, Christophe Bellman et Sanoussi Bilal

PASSERELLES SYNTHÈSE MENSUELLE

Co-publisher: ENDA – Tiers Monde
Publication électronique mensuelle sur les questions de commerce et développement durable d'importance particulière à l'Afrique.

PUNENTES QUINCENAL

Co-publisher: CINPE
Servicio de información electrónico quincenal enfocado a la difusión de noticias relacionadas con el comercio y el desarrollo sostenible

PONTES QUINZENAL

Co-publisher: Fundação Getúlio Vargas
Serviço de informação eletrônico quinzenal focado na difusão de notícias relacionadas ao comércio e ao desenvolvimento sustentável.

For subscription details, visit <http://www.ictsd.org> or send an e-mail to subscribebridges@ictsd.ch

WTO Meetings

- Sept. 25-26 WTO Public Forum: What WTO for the 21st Century?
- Sept. 27-28 Public Hearing of scientific experts and parties & Oct. 2-3 in the Beef Hormones dispute
- Sept. 27-28 Committee on Trade and Development
- Sept. 28 Dispute Settlement Body
- Oct. 4 Committee on Market Access
- Oct. 5 Committee on Rules of Origin
- Oct. 6 Council for Trade in Services
- Oct. 6 Working Group on Trade and Transfer of Technology
- Oct. 10-11 General Council
- Oct. 11-13 Committee on Sanitary and Phytosanitary Measures
- Oct. 13 Committee on Regional Trade Agreements
- Oct. 25 Council for TRIPS

Other Meetings

- Sept. 9-10 G-20 Ministerial Meeting
Rio de Janeiro
- Sept. 19-20 Annual Meetings of the International Monetary
Singapore Fund and the World Bank
<http://www.worldbank.org/>
- Sept. 20-22 Cairns Group Ministerial Meeting
Cairns <http://www.cairnsgroup.org/>
- Sept. 25 Assemblies of the Member States of the World
to Oct. 3 Intellectual Property Organisation
Geneva <http://www.wipo.int/meetings/>
- Oct. 5-6 First Inter-American Meeting of Ministers and
Santa Cruz High-level Officials of Sustainable Development
Bolivia <http://www.oas.org/>
- Nov. 6-7 OECD Policy Dialogue with Non-Members on
Doha Aid for Trade: From Policy to Practice
<http://www.oecd.org/>
- Nov. 17-10 APEC Summit Meeting
Hanoi <http://www.apecsec.org.sg/>

Selected Documents Circulated at the WTO

- Agriculture. 27 July 2006. Negotiations on Agriculture. Report by the Chairman to the General Council (TN/AG/23)
- Dispute Settlement. 27 July 2006. Report by the Special Session Chairman to the Trade Negotiations Committee (TN/DS/17)
- Dispute Settlement. 21 August 2006. United States – Subsidies on Upland Cotton. Compliance panel request by Brazil (WT/DS264/30)
- Dispute Settlement. 15 August 2006. United States – Final Dumping Determination on Softwood Lumber from Canada. Appellate Body report on Canada's compliance challenge (WT/DS264/AB/RW)
- Doha Round. 27 July 2006. Report by the Chairman of the Trade Negotiations Committee to the General Council. Available online at <http://www.wto.org>
- Services. 30 August 2006. Special Session of the Council for Trade in Services. Report by the Chairman to the Trade Negotiations Committee (TN/S/30)
- Trade Facilitation. 11 August 2006. Compilation of Members' Proposals – Revision (TN/TF/W/43/Rev.10)

Other Selected Resources

- Huq, Saleemul; Reid, Hannah and Murray, Laurel. May 2006. Climate Change and Development Links. International Institute for Environment and Development. London
- Daviron, Benoit and Ponte, Stefano. 2006. The Coffee Paradox: Global Markets, Commodity Trade and the Elusive Promise of Development. Zed Books. London
- Ruane, J. and A. (eds). 2006. The Role of Biotechnology in Exploring and Protecting Agricultural Genetic Resources. FAO. Rome
- Sacerdoti, Giorgio; Yanovich, Alan and Bohanes, Jan. July 2006. The Contribution of the Dispute Settlement System. WTO. Geneva
- Trade – Human Rights – Equitable Economy (3D) and Red Universitaria de Derechos Humanos (Sur). July 2006. Guía Práctica sobre la OMC y otros Acuerdos Comerciales para Defensores de los Derechos Humanos. 3D. Geneva
- UN Conference on Trade and Development. 31 August 2006. Trade and Development Report 2006. UNCTAD. New York and Geneva

New from ICTSD

- Asche, Frank and Khatun, Fahmida. July 2006. Aquaculture: Issues and Opportunities for Sustainable Production and Trade.
- Howse, Robert and van Bork, Petrus. July 2006. Options for Liberalising Trade in Environmental Goods in the Doha Round.

