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*Progress in Development Studies* 2009 9: 359

DOI: 10.1177/146499340900900409

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# The Doha development agenda of the WTO: possible institutional implications\*

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**Abstract:** Size of membership, diverging interest because of different stages of development and the depth of regulation undertaken or foreseen in the World Trade Organization (WTO) made the economics and politics of international trade negotiations more complicated. This has repercussions on the negotiating mechanics in the WTO including the continued appropriateness of the technique of 'rounds'. At the same time, the rationale of further trade liberalization in the context of sustainable development is questioned. The widening scope of issues covered – which impact of domestic policies give rise to – quests for more transparency and accountability. The lack of adequate know-how renders the effective participation of developing countries in the negotiating round more difficult or even impossible. New forms of network formation – drawing on the many forms of international cooperation, participation and agenda setting – have to be developed in order to maintain the WTO as the centre of the multilateral rule-based system.

**Key words:** DDA, WTO, negotiating forum, rule making, institutional constraints, accountability, interregionalism.

## I Challenges for the multilateral trading system

The negotiating saga of the Doha Development Agenda (DDA, 2001) which is competing in missed date lines with its precursor, the Uruguay Round, proves that global trade negotiations have become more and more difficult, some argue even impossible: The WTO has become nearly universal, 153 countries (as of 10 May 2009) covering more than 90 per cent of world trade are members and

most of them want to engage in the negotiating process, which is a formidable management challenge. Furthermore, gone are the days when General Agreements on Tariffs and Trade (GATT) negotiations centred primarily on tariff lines. The WTO agenda has increased in scope, depth and consequently in political importance. To give an example; the political and social implications of intellectual property rights and public services or the importance of trade policies for development – significant for

\* The author contributes this article in his academic capacity expressing his own views, which should not be attributed to the European Commission.

the ongoing DDA – have become clear to the general public outside the small circles of trade diplomats. National regulators have to take into account WTO rules, such as the ones on sanitary and phytosanitary standards. Thus, the political economy of trade policymaking has changed since the Uruguay Round, whose new issues (intellectual property rights, services and investment)

...did not involve the border barriers of the original GATT but domestic regulatory and legal systems embedded in the institutional infrastructure of the economy. The intrusiveness into domestic sovereignty bore little resemblance to the shallow integration of GATT. The barriers to access for service providers stemmed from laws, administrative actions, or regulations ... The telecommunications agreement set out a common framework for regulating competition in basic telecommunications... The intellectual property negotiations covered comprehensive standards for domestic laws and, perhaps more important, detailed provisions for enforcing individual (corporate) property rights. The WTO shifted from the GATT model of negative regulation – what governments must not do – to positive regulation – what governments must do. (Ostry, 2001: 363)

Consequently, the interest politicians, civil society and the general public show for international trade issues is unprecedented.

Therefore, the WTO has become for some the villain of globalization. It has ‘probably incurred the greatest hostility from anti-globalisation protestors’ (Armstrong *et al.*, 2004: 236). Slaughter also points to this paradox, ‘The European Union (EU) and the WTO have, at least in the popular perception, “real power” – meaning coercive power. Such power contains a paradox, however. It is these organizations that are the most sought after for membership’ (2004: 144–45).

For others, however, the WTO is the instrument to harness globalization for building global governance. Providing a platform for talks and negotiations, agreements on a variety of subjects and the efficient dispute settlement

procedure are the cornerstones for their belief. Therefore, it should not come as a surprise that concerns about public accountability and democratic legitimacy are on the rise.

The economics and politics of trade negotiations have become complicated – complicated issues always run the danger of meeting oversimplistic and populist explanations which do more harm than good without providing viable simple answers.

The economics are complicated, because the international trading system, progressively and harmoniously, has to integrate nations that are at very divergent stages of economic development. Therefore, the need to concentrate on development issues. However, experience of the 1990s tells us that poor countries do not automatically profit from open markets, a point made by the Carnegie Endowment study *Winners and Losers: Impact of the Doha Round on Developing Countries*, ‘trade is not a panacea for poverty alleviation or for development more generally’ (Polaski, 2006: ix).<sup>1</sup>

Furthermore, mastering change severely strains the multilateral trading system: the combination of the end of managed trade in textile products<sup>2</sup> – agreed more than a decade ago in the Uruguay Round – and China joining the WTO, also on mutually agreed terms – puts the trust in the free trade system to a severe test. Reference to strategic trade or a ‘new protectionism characterised by the legitimate management of trade relationships (European Voice, 2005: 26) become presentable again.

The politics of trade negotiations are complicated, because opening markets can unleash powerful resistance to change. The benefits of trade liberalization will remain not only a mystery to the unemployed but will even be perceived as the root cause of personal misery. Even the majority of gainers rarely recognize the benefits of faster growth and lower prices which often benefit the poorest consumers most. The more effective participation of developing countries

brings diverging interests with developed countries clearer to the forefront: While developing countries would like 'liberalize sectors in which they are competitive, such as agriculture, textile and apparel...which were liberalized least in earlier trade rounds, due to strong domestic constituencies in developed countries', they also have defensive interests as some of them are not interested in liberalizing their agriculture (small scale subsistence farming), manufacturing and services because of lack of competitiveness (Polaski, 2005: 1–2). Contrary to conventional wisdom, the Carnegie study concludes that developing countries would get about 90 per cent of the gains from liberalizing trade in manufactured goods and would suffer light losses as a group in liberalizing agriculture – the poorest countries and net food importers are regarded to be net losers. 'The benefits of agricultural trade liberalization flow overwhelmingly to rich countries' (Polaski, 2005, viii–x). Kinnman and Lodefalk (2007: 1323), however, identify based on their model simulation 'developing countries, including the [Least Developed Countries] LDCs, [as] the major winners of the simulated Doha scenarios' with gains in proportion to GDP twice as large for DCs (Developing Countries) and three times for LDs (Low Developed Countries) compared to industrialised countries.

Baldwin (2007: 255–56) points out that the efficient allocation of world resources can no longer explain the international trading system; concepts of 'fairness', 'equity' and goals like 'protecting and preserving the environment', 'preserving and maintaining sustainable development' enter political equations.

The political implications of trade rules and procedures, both international and domestic, are also of great importance to governments. Trade negotiations between governments ring about changes in international political power and cross-country social relationships, in addition to changes in economic welfare and the distribution of income. (Baldwin, 2007: 255–6)

If the politics and economics are difficult, the negotiating mechanics are also complicated. A hundred and fifty-three countries have to sign up to a deal and each of them has an equal vote, which amounts in theory to a veto. As nothing is agreed if not everything is agreed ('single undertaking'), trade-offs and deals are not only difficult to achieve but also necessitate experience in international negotiations to keep track of *de jure* or *de facto* interlinkages among agenda items. This bears the risk that nothing can be achieved if time pressure, the complexity of the issues and money at stake contribute to an atmosphere of brinkmanship, which could make the *status quo* seem preferable to any movement in an unknown direction. Furthermore, the new major players like the BRIC (Brazil, Russia, India, China) change the negotiating process and its dynamics. Baldwin (2007: 264) doubts whether developing countries as newcomers to these complicated negotiations will be able to make use of their increased negotiating power in their best interest, whether they are sufficiently united and experienced to recognize when it is time to compromise in the negotiating process or will they press their position to the point where the negotiations collapse.

Although some critics question the rationale of this development round the majority still holds the view that it is as strong now as it was at the inception of the DDA: Open markets are regarded as a precondition for growth, and growth is essential to economic development which in turn reduces poverty over time. It has been proven that development and economic growth cannot be achieved in isolation and behind protectionist walls – China and India<sup>3</sup>, but also Brazil, Korea and Malaysia, are noticeable examples. In addition, open economies tend to go along with open and democratic societies. Based on empirical evidence gathered in developing countries covering the 1970–1999 period, Milner and Kubota (2005: 137) make the argument, 'that a change in the political regime toward more

democracy should be followed by a move to liberalize trade’.

However, the multilateral approach in the WTO is challenged by an increase in regional and bilateral trade agreements, especially (but not only) in East Asia (Reiterer, 2005).

Although the European Union is party to many bilateral agreements, it is guided by the strong belief that bilateral and regional agreements can supplement the multilateral approach, but they cannot substitute for it. For once globalization seems to provide an answer: the multiplying power of market opening and multilateral disciplining of state aids and subsidies, undertaken by all nations together, cannot be matched any other way.

## **II The Rational for the Doha Development Agenda**

The Uruguay Round created for the first time a truly multilateral process, and started to integrate developing countries into the process. But that Round left crucial unfinished business: while it brought the General Agreement on Trade in Services (GATS), little liberalization in the field of services was achieved; hugely diverging industrial tariff conditions across the WTO membership, including the persistence of very high duties in middle income countries. Pockets of high tariffs in high income countries also remained. Last but not least, serious further reforms of the agricultural policies of major trading powers – although already on the horizon – were not agreed. Developing countries were ‘left largely in the lurch by the Uruguay Round “therefore” Development was to throw a bone to the developing world’ in the words of a critic (Reinert, 2007: 322).

As the primary objectives of the EU trade policy are to further multilateral trade, rule making, market opening, to integrate developing countries in the world trade system and to improve the functioning of the WTO,<sup>4</sup> the EU has set itself the following goals in the Doha Round<sup>5</sup>:

- 1 *Improved market access for industrial goods*  
Elimination of high tariffs, tariff peaks and tariff escalation, so as to significantly increase trading opportunities, both for north-south as for south-south trade.
- 2 *Improved market access for service providers*  
Improved market access for service providers should bring considerable market opportunities for business as well as benefits to consumers world-wide. However, the EU does not seek general deregulation or privatization of sectors where principles of public interest are at stake, and the EU is also committed to defending the right of WTO members to promote cultural diversity.
- 3 *Further liberalization of agriculture and trade in agricultural goods*  
Contrary to public perception, Europe is the biggest importer of agricultural goods worldwide and it is also the world’s largest importer of farm products from developing countries: it imports from developing countries as much as the US, Japan, Canada, Australia and New Zealand taken together.
- 4 *Development opportunities*  
Creation of further development opportunities for all WTO Members and realization of the goal of sustainable development in line with the ambitious Union Nations (UN) Development Agenda.
- 5 *Improving global governance*  
Improving global governance through increase in the coherence of action between the WTO and other international organizations such as the World Bank, the United Nations Conference on Trade and Development (UNCTAD) and the International Monetary Fund (IMF).

Governments will only be in a position to realize these gains associated with controlled

liberalization of international trade if they succeed in explaining to their electorates the political and economic benefits which would result from the achievement of the following goals:

- 1 *Welfare gains for all*  
While some like China in the developing world would enjoy the largest relative percentage gain, America, Europe, Japan and other rich countries would still be the largest gainers in absolute terms, because of their volume of trade. These gains arise not just from a further opening of the 'North' to the 'South' – a division that anyway needs rethinking given the wide divergences that have emerged between developing countries – but, crucially, from a big boost in South-South trade between developing countries themselves.
- 2 *A successful conclusion of Doha required*  
A successful conclusion of Doha would take forward the fundamental reshaping of the international division of labour, in which industrialized countries can develop their knowledge-based service and manufacturing economies, with manufacturing success based on leading edge innovation, top of the range products and niche specialization. This need not result in a race to the bottom: developed countries can contribute to raising labour standards not only in urging developing countries to do so, but in providing assistance and demonstrating best practice when investing. Such policies could also help overcome the colonial legacy by which developing countries were discouraged from exploiting their comparative advantage in production where their costs were lower – the wake up call for the textile industry has been heard.
- 3 *Advancing the integration of China into the global trading system*

Advancing the integration of China into the global trading system – with its huge advantages in labour intensive manufacturing – causes problems for Europe, the US and to a lesser extent for Japan, as well as for many developing countries. The economic 'fear of China' factor is wide spread, eroding the enthusiasm of many, even more in the 'South' than the 'North', for further liberalizing international trade. While China's transition period for adapting to the WTO rules ended 2006 with overall positive results, Chinese appetite for raw materials, in general, and energy, in particular, adds to the demand driven surge of the relevant prices on international markets.

- 4 *International security concerns*  
In the EU Security Strategy (Council, 2003), poverty and economic failure linked to political problems are identified as security threats. 'Security is a precondition for development' (Council 2003). However, the relationship between economic prosperity, on the one hand, and political and religious extremism, on the other, is a complex one. Poverty obviously can breed resentment, but it is not always the poor who feel resentment most keenly, as the case of Bin Laden shows. Countries that are trading harmoniously with each other generate well-being for their peoples<sup>6</sup> and are less likely to sustain extremist groups that threaten to undermine the economic relationship.

Martin Wolf (2001) rightly underlines the contribution a rule-based trading system makes to overall international security,

Although rule-governed trade may not guarantee peace, it does remove a potent cause of conflict. It offers an

alternative to reliance on unbridled force in the trading relations among States ... the trading system is, arguably, more than just the greatest achievement in institutionalized global economic cooperation; it is the greatest achievement in institutionalized global cooperation, *tout court*. (Wolf, 2001: 185–86)

5 *International cooperation is in need of a success story*

International cooperation is in need of a success story, a successful multilateral trade deal could inject much needed confidence in the world economy and multilateralism. This would be a vital gain in the face of uncertainty created by the recent sub-prime induced financial crisis, exploding commodity prices, including food and oil, aggravated by growing global security threats.

6 *Maintaining international solidarity*

A successful conclusion of the Doha Round, therefore, also is an essential test of whether the international community is determined to maintain international solidarity through economic growth, in face of the above mentioned uncertainties. A failure would be a huge setback for international cooperation at a time when it is greatly needed. Unfortunately, the mechanics of the negotiating process do not allow for a quick reaction to the mentioned 2008 food and raw material crisis.

7 *Poverty alleviation through market access and capacity building*

Developing countries, and in particular the low income, net food importers and 'at risk' countries in the global economy, have specific needs. WTO Members formally expressed their willingness to meet these needs and requests by committing to a development round. This includes universal duty and quota-free access for the poorest countries to as many markets that are in a position

to offer this undertaking. The EU's 'Everything but Arms' (*European Commission*, 2001)<sup>7</sup> initiative for least developed countries (LDCs) is a concrete although not undisputed (Reinert 2007: 319) example. Nevertheless, it is also an example for the EU's endeavour to realise its foreign policy goals, such as respect for human rights.

The streamlining of the Generalized System of Preferences (GSP) system as of 1 January, 2006 introduced the GSP Plus incentive system. This system grants additional preferences to vulnerable developing countries that pursue good governance and sustainable development policies.<sup>8</sup> The EU is aware of the problem of the erosion of preferences granted earlier: The success of past negotiations has eroded the preferential access to markets from which some poorer countries benefit at current tariff levels.

Opening markets to products from the neediest countries needs matching by a massive injection of capacity building, adjustment and infrastructure development assistance to enable these countries to adapt their economic policies from mainly domestic production to include export strategies. Taking into account the differences in development and capacity, the maintenance of certain exemptions from some WTO disciplines of least developed or particularly vulnerable or marginalized countries are justified. The intellectual property system, for example, has to allow that countries hit by pandemics have access to affordable drugs.<sup>9</sup> Furthermore, difficult decisions on the elimination of trade-distorting subsidies in key commodity products for developing countries, such as cotton and sugar, have to be taken.

8 *The direct interest of enterprises*

This relates to a measure in the direct interest of enterprises. In order to gain or maintain political momentum in

constituencies, economic operators of all sizes have to be convinced that they are the ultimate beneficiaries of the world trading system. In addition to profiting indirectly from transparency and predictability of the rule-based system, concrete measures, like cutting red tape in international trade, customs and investment are important. The trade facilitation initiative<sup>10</sup> attempts to achieve this.

All these issues must be addressed, for moral and political as well as economic reasons. Aid, debt relief and trade promotion have to reinforce each other – the ‘aid for trade’<sup>11</sup> initiative sums up the concept neatly.

In the aftermaths of the nearly failed Hong Kong Ministerial conference, the *Financial Times* had summed up the grand bargain of the DDA quite neatly: ‘The EU reduces farm tariffs, the US cuts agricultural subsidies and the advanced emerging market countries like India and Brazil open their services and goods markets’ (*Financial Times*, 2006: 2).

This underlines the political importance of agriculture in the negotiations, grouped around three pillars – domestic support, export competition and market access, including geographical indications. Agriculture remains the focus, although not the engine of this round because of the importance attached to it by developing countries as underlined by the food crisis – partly linked to the oil crisis. Developing countries feel that the trade barriers and support schemes of developed countries prevent them from fully exploiting their comparative advantage. Industrialized nations will have to use DDA both to bind and stimulate current or future reforms of their farm sectors. In short, while the Uruguay Round brought agriculture into the WTO, the DDA should open it up to competition. However, as the developing countries, more diversified than before, perceive the DDA as not offering enough for them in this respect

and resist therefore concessions to developed countries in the areas of market access for non-agricultural products (NAMA), the developed countries in turn perceive the situation as not in their interest either – neither in NAMA, nor in trade in services, nor in rule making which explains the lacklustre process.

Young (2007: 807) argues that these difficulties are due to the more comprehensive nature of trade policy (traditional, commercial, social) reflecting a significant change due to the ‘increased importance of the deep trade agenda’ which should lead to a broader approach to trade policy analysis, drawing on the tools of regulatory politics.

### III Possible Institutional Implications<sup>12</sup> for the WTO

The negotiating marathon shows that efficient negotiating mechanisms are needed to achieve results. All players, except perhaps the most vulnerable, need to identify and put on the negotiating table offers that will help others reciprocate. And it is also the only way for negotiators to demonstrate to their domestic constituencies that difficult concessions are worth the price because these are being matched by others.

Negotiations need leadership, in the Uruguay Round, this leadership was provided by the Quad – the EU, US, Canada and Japan. It maintains a hold on life in the form of the Quint (EU, US, Australia, Japan, Canada) in agricultural matters. However, the new Quad, called G4, reflects changes in the political economy – the EU and the US are joined by India and Brazil, two large developing economies<sup>13</sup> acting on behalf of the G20. The EU, US, G20 and G90 is the enlarged version of this new Quad format. The ministerial ‘Fluela Group’<sup>14</sup> helps test the G4 ideas on a larger group of about 16 nations. A ‘Core Group’ attempts to move the service negotiations forward.

Diego-Fernandez (2008) identifies the consensus rule of the WTO as a sort of equalizing force between major players and



smaller delegations, as a delicate balance leaving all delegations equally unsatisfied but with no possibility to block consensus. To this end, participation in coalitions is an advantage: advance a particular position, resource pooling, participation in restraint meetings ('green-room') thereby also helping avoid polarization along the lines of developed and developing countries, as there is no need for a single coalition but changing ones are possible depending on the subject matter (Diego-Fernandez, 2008: 449). The above outline of goals for and problems of the DDA exemplify that the WTO as an institution is faced with serious challenges – its Director-General and former EU Trade Commissioner, Pascal Lamy once called it 'medieval' after the failure of the Cancun Ministerial but also the best insurance policy for bad times.

Institutional improvements are linked to the establishment of an effective rule book, binding on all WTO Members, whether small or large, developed, in transition, emerging or developing, North or South, East or West. Trade policy instruments as well as the dispute settlement procedure provide the means for solving conflicts of interest only as long as they are perceived to be fair, up-to-date and capable of delivering on the tasks assigned. Thus, a changing economic environment necessitates either the adaptation of rules or the creation of new ones; therefore, the WTO has been tasked to provide a forum for quasi-permanent negotiations, also outside official rounds: While the telecommunication agreement covering 90 per cent of global revenues signed by 69 governments as well as a financial service agreement with 56 signatories were linked to the General Agreement in Trade in Services (GATS) of the Uruguay Round, the Agreement in Trade in Information Technology Products covered new ground (1997) (Winham, 2005: 110).

These plurilateral agreements – clearly covering a very substantial part of the trade involved – however, pose the problem of whether a plurilateral approach should be

reintroduced into the WTO after the Uruguay Round had moved away from this concept developed in the Tokyo Round through various codes. The concepts of reinforced cooperation, coalitions of the willing, variable geometry and so on. are familiar from the integration discussion in the EU; they certainly fragment the multilateral system further and, on the other hand, allow regulating areas which would otherwise not be covered. Such an approach calls for double vigilance:

First, this method must not be used to circumvent the consensus in choosing subject matters to be covered by the WTO. Second, the negotiating process has to remain transparent, which means that those members choosing to abstain from the negotiations have to be kept informed and should be offered to join in, either during the negotiations or at the end.

While these examples illustrate the need for vertical coordination of WTO members – whether to solve a problem internationally and anchor it in the WTO – the WTO is situated more and more at the intersection between international trade and other international policy areas necessitating horizontal coordination, as the WTO is part of the family of international institutions which contribute to the underpinning of global governance with concrete agreements, not least to assure coherence<sup>15</sup> in the international system<sup>16</sup> – necessitating not only cooperation but also compatibility and complementary of policies of institutions like UNCTAD, United Nations Development Programme (UNDP), International Labour Organization (ILO), World Health Organization (WHO), International Telecommunication Union (ITU), Food and Agriculture Organization (FAO), IMF and the WB.

Therefore, updating the world trade rule book and improving the rule-making process are preconditions for a fair, predictable and transparent rules-based trade and investment regime. On top of providing a negotiating forum to balance the often conflicting interests

of developed and developing countries, the core tasks of the WTO in the area of rule-making include: (i) balancing transparency, democratic control and accountability with efficiency; (ii) leadership with participation; (iii) flexibility with reciprocity; (iv) equality with differentiation and preferential treatment; and (v) the rule of law with pragmatic solutions and solving the problem of conflicting norms agreed in different institutions when they meet in the field of international economic relations. Delivering on these tasks appears more than ever to be a 'mission impossible'.

The EU has an interest to contribute to meeting these challenges, as only a success will assure that the multilateral trading system – to which the EU is attached through its adherence to effective multilateralism as a major foreign policy goal – will maintain control over the regionalization of world trade.

In contrast to the GATT regime, developing countries have become more vocal in international trade negotiations, particularly since the failure of Cancun (2003) (Kerremans, 2004: 363–93) where the G20 and G90, conscious of their bargaining power, emerged. Although inhibited by lack of specialized resources in material and intellectual terms – many LDCs and developing countries are under-represented in Geneva or even not represented at all and lack manpower and experts to handle the many meetings on complex issues – they have become more assertive, making use of the need to find consensus albeit not unanimity in the process.

Thus, the plenary structure of the WTO is an asset as well as a liability: an asset as it assures transparency and inclusiveness, a liability as it necessitates qualified participation on a large scale and incites informal sub-groupings in the (alleged) interest of efficiency of smaller groups, which in turn may cloud transparency if not managed properly. This 'member driven approach' puts a heavy burden on the members' delegations in Geneva while restricting the management function of the

professional staff of the WTO, including its director general.

Therefore, institutional changes in granting more rights of initiative to the WTO Secretariat and the director general – like chairing meetings, making policy recommendations and watching actively over the respect of WTO rules by its Members – should be considered. Establishing clear guidelines for selecting a competent director-general and avoiding political horse trading would facilitate the selection of the best suited and competent person who would command respect from the Members necessary to be (pro) active and to fulfil larger duties.

Additionally, improving the networking among the various office holders that is the director-general and his/her deputies and the chairs of the various WTO councils and other bodies could provide a middle ground between plenary and restricted participation, which could facilitate decision making through decision shaping.

Also inter-regionalism (Reiterer, 2006: 231) could make a contribution when the now 153 and soon more sovereign states attempt but fail to negotiate in an inclusive manner. The history of GATT and WTO shows that negotiations have been driven by the above-mentioned groupings of major players, particularly the EU and the United States, as they 'wield more control in shaping WTO rules because of the importance of their vast markets for other countries ... the essence of market power is the capacity to obstruct commercial exchange. Economic coercion and constraint play a greater role than military coercion in the trade and regulatory realm' (Shaffer, 2005: 133).

Consequently, the developing countries united their collective bargaining power in making use of the mentioned need for consensus with the WTO in order to play a greater role in the negotiations and to avoid a repetition of history, as they perceive the Uruguay Round of having been tilted in favour of industrialised countries. The already-mentioned G4 as compared to the

old Quad exemplifies this change. Ehlermann and Ehring (2005) draw attention to the fact, that 'consensus does not provide for equality (in terms of decision and influence) because not every Member has the same ability to maintain vetoes...it is questionable whether it is also more democratic than the majority rule'. They therefore propose to 'reviving the possibility of voting as a potential solution of last resort' (Ehlermann and Ehring, 2005: 51–52).

In order to accommodate the nearly universal membership of the WTO, flexible negotiating forums with a balanced (not only geographically but also from the development and influence points of view) and overlapping membership structure will have to be created.

Such a multilayered configuration would put new challenges for all WTO Members – they would have to adapt to negotiate simultaneously within a horizontal and vertical structure, taking into account not only their national interests but also the ones of those partners on whose behalf they prepare – not take – decisions. The consolidation of the G20 under Brazilian and Indian leadership is a good example. Its role as a credible negotiating interlocutor, capable of producing balanced proposals that, although not necessarily acceptable as such to the EU and to others, help the negotiating dynamics.

This multifaceted process of groups would combine negotiating techniques from an inter-regional with that of an intra-regional process. Close consultations, confidence-building measure to achieve trust and to allow negotiations in good faith which also take account of entrusted interests, combined with transparency and reporting mechanisms will be the negotiating technique of tomorrow.

In addition, the WTO could not only make use of the described intra-regional negotiating techniques, but also of the groups involved in the intra-regional talks, instead of always setting up new groups. WTO matters are regularly on the agenda of Asia-Europe Meeting (ASEM),

EU-Association of South-east Asian Nations (ASEAN) meetings, EU-Latin American Summits, EU-Andean Pact meetings, EU-Gulf Cooperation Council meetings, but also at Asia-Pacific Economic Cooperation (APEC), ASEAN, ASEAN Plus Three, the Shanghai Cooperation Organisation, the Forum for East Asia Latin America Cooperation and OECD at various levels, ranging from experts to head of state or government. Profiting from the culture and trust built up in these and other dialogue or negotiating forums would allow to make use of experience gained, add purpose and direction to these processes, facilitate regime building and lower overall transaction costs, make economies in costs and time allocation for negotiations and travelling, without forgetting the better use of the scarce commodity of experienced multilateral negotiators. These groups could be assigned specific tasks in preparing texts where their know-how is greatest – their diverse and often interlocking membership would contribute to consensus building.

The alternative to an improved multilateral negotiating process would be that major powers go down the uni- or bilateral route, strive to reach a critical mass for agreements primarily in their own interest and easily reachable among a very limited number of players. Furthermore, the reorientation towards more regionalism would be promoted, to profit from the decrease of the number of the actors involved, which could facilitate solutions as the degree of communality and coherence would be higher. This would, however, be to the detriment of smaller or developing states which are better served and protected in a functioning multilateral system than in any environment where the negotiating power of the stronger may unfold unchecked.

The jury is still out on whether regional agreements – as per definition an exception to the smaller and smaller ambit of most-favoured nation treatment – are stepping stones or stumbling blocs towards the multilateral trading system, whether the benefits of

trade creation outweigh the effects of trade diversion. The Consultative Board to the former WTO Director General Panitchpakdi Supachai (2005: 19) even refers to a new concept of 'LFN, Least Favoured-Nation treatment' as MFN (Most Favoured-Nation treatment) has become the exception.

Positive effects seem to depend on the depth of the agreement and are most obvious in integration. Thus, a close and better watch over the myriad of agreements, many of them under negotiation, is required, which means that the criteria against which to measure them need clarification and improvement.

Maintaining the rules-based approach to the multilateral system, favoured by the introduction of the binding dispute settlement system of the WTO with the Appellate Body, is an important task.

Three tasks are outstanding. First, strengthening the capacity of developing countries to effectively make use of the procedure. Second, keeping the 'politicisation' of the process to a minimum while, third, strengthening the democratic acceptance through more transparency and participation.

The first concern – capacity building – could be addressed through a significant increase of technical assistance. The second is linked to the third, creating pros and cons needing careful evaluation. As the WTO is often perceived 'as a formally contracted body of rules backed up by a judicial system and a minimum of political structure' (Winham, 2005: 107), there are valid arguments to strengthen the political element in opening the WTO to stakeholders in addition to its constituent member states. These proposals range from creating a parliamentary or consultative assembly to democratizing the dispute-settlement system.

Concerning the dispute-settlement system, which forms a second legal pillar of the WTO in addition to the political negotiation driven one, the overall approach should be 'if it isn't broken, don't fix it'. However, ideas and concepts discussed include increasing

transparency in opening panel procedures up for the public, allowing *amicus curiae* (friend-of-the-court) briefs, balancing trade compensation and retaliation, granting the right to be a party in the WTO to individuals/enterprises concerned and finding a solution to litigation costs incurred by developing country members, to name just a few.

In September 2005, the public was for the first time admitted by mutual consent in the case 'Continued suspension of obligations in the EC – hormones dispute' between the European Communities (EC), US and Canada (WTO, 2005).<sup>17</sup> *Amicus curiae* briefs, already permitted in 1998 by the Appellate Body in the Shrimp-Turtle Case (WTO, 1998)<sup>18</sup> on a trial basis, are favoured by some members, but meet resistance from others. In the US Copyright Case (2000), the US agreed in 2002 after arbitration to make a yearly contribution of more than one million euro to finance projects and activities in support of EC music creators (Bronckers and van den Broek, 2005: 101–26; O'Conner and Djordjevic, 2005). Individuals need to be represented by their state (diplomatic protection) although there are references to the rights and duties of the 'right holder', especially in the TRIPS agreement (Reiterer, 1998: 164–69).

One should, however, not overlook that the dispute settlement procedure is between WTO Members that is states, and encourages a negotiated solution at all stages, ranging from the time before a panel is convened to the implementation phase of a final decision.

Compared to the GATT, the WTO has already come a long way in increasing transparency, legitimacy and accountability. Its website offers up-to-date information, since 2002 documents are derestricted and published quickly; academic analysis, press reporting and public scrutiny have increased. The WTO (2005a) also introduced a specialized search function on its website, 'Find dispute cases'. The trade policy review mechanism (TPRM), a peer review of trade policies of members in the public eye, is another important exercise

in transparency. Furthermore, in line with its Charter,<sup>19</sup> the WTO reaches out to civil society through a special Non-Governmental Organizations (NGO) corner – ([http://www.wto.org/english/forums\\_e/ngo\\_e/ngo\\_e.htm](http://www.wto.org/english/forums_e/ngo_e/ngo_e.htm)),<sup>20</sup> – not only in disseminating information but also in organizing yearly events, fulfilling a secondary task in presenting the organization.

However, the prime responsibility to assure external transparency rests with the Members – they have to communicate and discuss with their stakeholders; the WTO cannot be expected to make up for national shortcomings. Thus, ministers representing democratic societies are nowadays held responsible for the positions they take when attending the bi-annual ministerial conferences by their parliaments, public opinion or civil society. Similarly, officials acting on behalf of Members in the daily work of the WTO are no longer on a long leash from headquarters or ‘faceless bureaucrats’, but instructed from their capitals and questioned by the press when controversial issues are at stake.

In recognition of this increased political awareness, ways and means are debated to bring the political level closer to the WTO process – changing the rhythm of the Ministerial Meeting from bi-annual to annual, adding meetings of capital based high officials and more political reporting, eventually by the WTO Director-General to ministers, are among the measures considered. Especially the biannual ministerials create big expectations, which are difficult to meet. If not met, the whole process is slowed down or can even be derailed, as evidenced in Cancun and Seattle, respectively. As for the WTO in general, the conduct of these ministerials needs improvement, more than 100 ministers sitting idle while others are busy negotiating is a recipe for disaster. Therefore, in line with an established process in Geneva, roles have to be assigned in advance to allow appointees to familiarise themselves, otherwise they cannot become ‘facilitators’ to the process.

It might also be worthwhile to consider who is best suited to chair a ministerial meeting – a carefully selected and universally accepted director-general of the WTO might be a good choice, bringing expertise and neutrality to this additional assignment.

The measures already taken have certainly narrowed the accountability gap of the WTO. As the general public is not aware of the member-driven approach, the actual power of the WTO as an organization is – as already mentioned – exaggerated in the public perception, which is an indication for the need for further actions to close the information and accountability gaps.

In addition, according to Slaughter:

[I]nvestigative networks are beginning to emerge to monitor the activities of traditional international organisations such as the World Bank and the WTO ... Addressing the assembled parliamentarians at Doha, [then] WTO Director General Michael Moore expressed precisely the sentiment that should motivate the formation of legislative networks of all kinds: ‘Parliamentarians have a vital role to play in bringing international organisations and people closer together and holding us and governments accountable ... Can I suggest that we should assemble more often and that all the multilateral institutions that you have created, that you own, could do with your assistance and scrutiny.’ (2004: 238–39)

Adding a consultative body to the WTO is certainly an option worth studying, however, as the WTO is not a world government or part of it, the parallelism with a ‘parliament’ should not be overstretched to avoid (further) misconceptions about the organization. Therefore, the organization should be responsive to the growing interest of civil society particularly from developed countries,<sup>21</sup> but this cannot obscure the fact that governments take decisions in the WTO, not the organization itself.

As Barnett and Finnemore (2004: 166) maintain, the ‘legitimacy of most modern public organizations depends on whether their

procedures are viewed as proper and correct [procedural legitimacy] and whether they are reasonably successful at pursuing goals that are consistent with the values of the broader community [substantive legitimacy]’ the WTO members still have to improve procedures and clarify the goals of the organization at the mentioned intersection of various policy areas in clarifying that the WTO’s task is to regulate trade and not act as general rule and standards setter for adjacent policy areas, such as environment, labour standards, human rights.

Politicians and civil society, including NGOs and Inter-governmental Organizations (IGOs), are often tempted to burden the WTO with exogenous tasks because of the relatively well-functioning dispute settlement system (see Benedek, 2005: 356) which was one of the main reasons to include TRIPS and service in the Uruguay Round. However, this temptation should clearly be resisted. Without this clarification, the legitimacy gap will be difficult to close and erroneous expectations could render this gap lasting.

While Cass (2005) rejects the constitutionalization of the WTO, she calls instead for ‘trading democracy’:

Making trading democracy, in the form of a focus on development, central to the WTO constitutionalization project would necessarily require altering some long-standing and tenacious assumptions about the international trading system. It would involve, for example, openly acknowledging, as many already have, that free trade is not an explicit objective of the system. Moreover, the only plausible reconciliation of the tension in the agreements between the principles of non-discrimination, multilateralism, liberalization, and transparency in trade, and the numerous departures from, and indeed contradictions with them, both within the terms of the agreement and its contextual interpretive background, is that the overriding *telos* of the WTO is economic development through non-discriminatory trade. Once explicit agreement is reached that the principles of non-discrimination and the like

exist to serve the goal of development, then it might be possible to construct a better constitutionalization project capable of accounting for this. (2005: 243–44)

This is an interesting proposition in the context of the ongoing DDA and could help overcome the wrong perception that liberalization can proceed without regulation. However, as explained above, the WTO and its predecessor, the GATT, have been set up to regulate international trade. Therefore, the temptations to assign additional tasks should be resisted. Trade is the ‘engine for development’ as Pascal Lamy (2005), the WTO Director-General confirms when necessary<sup>22</sup> and, therefore, the WTO has to ensure that the engine can work. Nevertheless, the main responsibility for development is with other international organizations, such as the UNCTAD, WB and UNDP.

#### IV Conclusions

The sub-prime crisis of 2008 and the ensuing financial and economic crisis added to the difficult environment in which the DDA negotiations have been taking place. In addition to the mentioned problem of the number of actors involved, making it difficult to set up the right process, there is the changing architecture of multilateral trade relations, where emerging powers shift the balance of power towards developing countries (contrast with emergence of G20 and G90 in Cancun) with their own offensive agendas on agriculture manufacturing and development-specific issues. Rationalizing the process within the WTO in making use of interregionalism could bring benefits to the international trade diplomacy (Reiterer, 2006: 230).

In addition the major players, the EU and the US both face a difficult domestic political environment, as large sectors of public opinion are nervous of trade liberalization because of fear of losing whole sectors – like agriculture – and of fear of trade-related job losses. Their public opinions unnerved by insecurity – rightly or wrongly attributed to globalization – need

attention in form of implication and explanation in order to land an agreement. Furthermore, gone are the times where the two major players could dictate results; but while they do not have this power any longer, no solution is possible without their consent either.

Contributing to the economic security is not a new challenge for the WTO, as that was one of the reasons why the Bretton Woods institutions were set up; however, in the post-Cold War system, the WTO at the core of the multilateral trading system is challenged to provide a forum for a multipolar economic system where new players emerge, search their role and participate actively in developing the system. Nevertheless, according to Cottey (2007: 46–47), economic security is a large and not always-clear concept ‘ranging from problems of dependence on external resources and/or markets, and to the problems of underdevelopment and poverty in the Third World’. The ever-intensifying interconnectedness strains the system further, as evidenced by a recent analysis of ‘Climate Change and International Security’ (Council, 2008),<sup>23</sup> which also has strong economic implications through conflicts over resources or tensions over energy supplies. This might need a certain positive politization of the organization, where technicalities used to prevail and ‘experts’ had the say. In addition, Keohane and Nye (in Porter *et al.*, 2001) pointed out that ‘[i]nternational institutions have facilitated cooperation by reducing the costs of making agreements, through established rules and practices, and by providing information, particularly about the extent to which governments were following these rules.’ Therefore, the WTO as a globalization-induced international institution<sup>24</sup> (Keohane and Nye in Porter *et al.*, 2001: 265) can provide a framework for negotiating and implementing rules in the economic area where governments can no longer act alone. Governments, therefore, choose to use the

WTO to benefit from cooperation on the international economic regulatory level, thereby regaining sovereignty lost. If the DDA fails, this will have negative repercussions on the trust in and the viability of the multilateral trading system, to the disadvantage of all, but difficult to subscribe to for any individual participant.

As evidenced by 26,000 pages signed in Marrakech when concluding the Uruguay Round in 1995, and by the ever-growing ‘jurisprudence’ of the Dispute Settlement mechanism, the WTO is everything but a rule-free market liberalization devil in the interest of the mighty, whether multinational enterprises or states exercising economic power. On the contrary, law protects the weak and sometimes re-regulation may be necessary before liberalization. The Asian Financial Crisis of 1997 was the negative example where liberalization without an adequate regulatory framework can lead to.

Implementing and consolidating the Uruguay Round results equals strengthening the multilateral trading system, but the mentioned shift in bargaining power and the ever-increasing number of Members willing to participate actively in the life of the WTO will require further institutional changes – along the lines outlined – in order to remain the focus of activities in the governance building of the international trade regime.

Institutional and procedural deficiencies cannot be allowed to stand in the way of effective negotiations, as a perceived or real inefficiency of the WTO negatively impacts on its overall mission as a forum for negotiations and trade rule making. The experience gained with the Uruguay Round and the DDA, however, legitimately raise the question whether the negotiating method of ‘rounds’ remains adequate in the new political environment that could ascribe a more important political role to the WTO itself, which in turn would necessitate a reform... but how best to achieve if not through a round?

## Notes

1. See also Bello, Walden (2006). *The Debacle of Doha*. FPIF Commentary, July 28, referring to studies by the World Bank and the Food and Agriculture Organization (FAO); <http://www.fpif.org/fpifxt/3393>.
2. The Multifibre Agreement (MFA) expired on 31 December 2004 after a transitional period of 10 years, which should have allowed for industrial adaptation.
3. India doubled the share of foreign trade in its GDP within 15 years from 6 per cent to 12 per cent.
4. Petersmann (2005: 590) provides a comprehensive analysis of academics and negotiators.
5. Council (2003) A Secure Europe in a Better World. <http://www.consilium.europa.eu/uedocs/cmsUpload/78367.pdf>
6. The WTO or the world trading system in general cannot be held responsible for domestic shortcomings in income distribution which remains the responsibility of each and every WTO member government.
7. [http://ec.europa.eu/trade/issues/global/gsp/eba/index\\_en.htm](http://ec.europa.eu/trade/issues/global/gsp/eba/index_en.htm)
8. [http://ec.europa.eu/trade/issues/global/gsp/index\\_en.htm](http://ec.europa.eu/trade/issues/global/gsp/index_en.htm)
9. [http://ec.europa.eu/trade/issues/global/medecine/index\\_en.htm](http://ec.europa.eu/trade/issues/global/medecine/index_en.htm)
10. [http://ec.europa.eu/trade/issues/sectoral/facilitation/index\\_en.htm](http://ec.europa.eu/trade/issues/sectoral/facilitation/index_en.htm)
11. Joint Note by the Staffs of the World Bank and IMF (2005) "Aid for Trade: Competitiveness and Adjustment". 12 April, at <http://www.imf.org/external/np/pp/eng/2005/041205b.pdf>
12. Supachai (2005) The Report of the Consultative Board on *The Future of the WTO – Addressing institutional changes in the new millennium*, commissioned by former WTO Director General Supachai on the occasion of the 10th anniversary, provides a thorough analysis of the principles and institutional improvements of the WTO-based trading system. [http://www.wto.org/english/thewto\\_e/10anniv\\_e/future\\_wto\\_e.htm](http://www.wto.org/english/thewto_e/10anniv_e/future_wto_e.htm)
13. The 'Five Interested Parties' (FIPs), the G4 plus Australia, are also active in agricultural matters; FIPS is the enlarged out reach group.
14. The EU and the US put forward their proposals to advance the DDA on 10 October 2005 in the context of this group.
15. Art. III.V of the Marrakech Agreement explicitly refers to greater coherence in international economic policy making; based on this Article agreements with the WB and IMF were negotiated in 1996. In 1997 an 'Integrated Framework' of cooperation between WTO, IMF, ITC, UNCTAD, UNDP, WB was launched to coordinate trade related and capacity building assistance.
16. The European Parliament (2003) expressed this idea clearly in its resolution before the Cancun Ministerial Meeting:
  36. Further beliefs that public confidence depends upon the capacity of the WTO to demonstrate that the trade system serves, rather than subordinates, our citizens' aspirations to environmental and social progress, human rights, food safety, good public services, core labour standards and a wide range of non-trade public goods;
  37. Believes that such issues can only be adequately addressed through a wider reform of global governance, establishing a more balanced and better-articulated relationship between the WTO and other international organisations, such as the World Bank, IMF, ILO and MEA [multilateral environment agreement] secretariats; calls on the Commission to insist in Cancun that the issues of democracy, transparency and openness be put firmly back on the WTO's negotiating agenda.
17. <http://www.europarl.europa.eu/sides/getDoc.do?type=MOTION&reference=B5-2003-0401&language=EN>
18. [http://www.wto.org/english/news\\_e/news05\\_e/openpanel\\_12sep\\_e.htm](http://www.wto.org/english/news_e/news05_e/openpanel_12sep_e.htm), Last accessed on 22 August 2009.
19. [http://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds58\\_e.htm](http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds58_e.htm) (\*WTO).
20. Art.V.2 of the Marrakech Agreement invites the General Council to 'make appropriate arrangements for consultation and cooperation with non-governmental organizations concerned with matters related to those of the WTO'.
21. The WTO website features a special NGO corner: [http://www.wto.org/english/forums\\_e/ngo\\_e/ngo\\_e.htm](http://www.wto.org/english/forums_e/ngo_e/ngo_e.htm), Last accessed on 22 August 2009.
22. Some developing countries regard the request of civil society to participate in the WTO primarily as a problem of developed countries' governments.
23. Lamy, Pascal (2005):
 

Clearly, the gains from world trade will need to be measured in quantifiable terms, whether this is in terms of per capita income, or export revenues and improved terms of trade, or foreign direct investment flows, or employment generation, or transfer of technology. The bottom line will have to be that trade must act, and deliver, as an engine of GDP growth and development, just as it has been emphasised in the Doha Work Programme.

Speech at the Trade and Development Board of UNCTAD, 6 October.



- [http://www.wto.org/english/news\\_e/sppl\\_e/sppl05\\_e.htm](http://www.wto.org/english/news_e/sppl_e/sppl05_e.htm), Last accessed on 22 August 2009.
23. [http://ec.europa.eu/external\\_relations/cfsp/doc/climate\\_change\\_international\\_security\\_2008\\_en.pdf](http://ec.europa.eu/external_relations/cfsp/doc/climate_change_international_security_2008_en.pdf)
  24. Keohane and Nye (in Porter *et al.*, 2001: 265) 'International institutions have facilitated cooperation by reducing the costs of making agreements, through established rules and practices, and by providing information, particularly about the extent to which governments were following these rules.'
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