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Life after Doha

Some reflections in the run up to the
9th WTO Ministerial Conference on Bali
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TABLE OF CONTENTS

Abstract	1
Executive Summary	2
1 Remembering the Doha Ministerial Conference (MC 4)	3
1.1 <i>Seattle, September 11 and Launching the Doha Development Agenda</i>	3
1.2 <i>Implementation Issues and the Flaws of the Grand Bargain</i>	5
1.3 <i>The Doha Ministerial Declaration</i>	6
2 Getting to the Current Impasse	8
2.1 <i>The Collapse at Cancun (MC 5), and the Round's Subsequent Rescue in July 2004</i>	9
2.2 <i>Hong Kong (MC 6), Aid for Trade and Pork-Barrel Commercial Diplomacy</i>	13
2.3 <i>Geneva 2008 – Much Ado about Special Safeguard Measures</i>	14
2.4 <i>The Global Economic Crisis and Subsequent Developments for the DDA</i>	17
3 What to do with the WTO	20
3.1 <i>Debunking the Bicycle Theory</i>	20
3.2 <i>The WTO is not a Development Organization (at least not directly)</i>	22
3.3 <i>Things the WTO Does Well</i>	25
Conclusion	28
References	30

Abstract

The Doha Round continues to struggle on with its ultimate fate still largely uncertain. This paper, written as part of a broader initiative by the World Trade Institute (WTI), the Economic Research Institute for ASEAN and East Asia (ERIA) and Universitas Pelita Harapan (UPH) in the run up to the ninth WTO Ministerial Conference on Bali in December 2013, discusses how the multilateral trading system got to the current impasse and offers some preliminary thoughts on decoupling the fate of the WTO from that of what is now a largely moribund round of multilateral trade negotiations. This paper argues that the WTO is still the best organization the world has for tackling a number of increasingly pressing issues, and that despite the quagmire that the Doha Round has become, there still remains a number of important roles for the WTO to assume and to continue playing, not least of which being the ultimate arbiter of what constitutes compliance with international trade rules.

Executive Summary

The Doha Round has proven to be an interesting but ultimately anticlimactic ride. It is probably not unfair to say that it should never really have been launched when it was and certainly not under the auspices of a development round. The Uruguay Round was arguably the last round in which large-scale, cross-cutting trade-offs could be achieved under the all-or-nothing formula that is the Single Undertaking. Pascal Lamy, the man who many would agree has invested the most energy to try and see the Doha Round come to at least some kind of positive conclusion in his capacity as Director General, likely came to the same conclusion when previously, as chief negotiator for the European Union, he started to question the Single Undertaking approach by floating the concept of variable geometry. This concept was quickly forgotten, probably because most other WTO Members - developed and developing - distrusted the EU's motives, but this approach now seems to have prevailed by sheer attrition, since it apparently offers the only possible way to get things done given the WTO's growing and increasingly fractious membership.

This short opinion piece first revisits how and why the Doha Round was launched, thereby seeking to show that it was actually done on little more than false pretences, which incidentally goes a long way to explaining why Members have been so divided and half-hearted in whether or not to push for its conclusion. It then follows the trajectory of the Round through some peaks and troughs, while also keeping one eye on how the global economy has changed over the years that the Round has been on-going. This is in order to show that the assumptions and objectives on which the DDA was predicated are now largely obsolete, meaning that the Round has also lost much of its inherent *raison d'être*.

Finally it discusses some of the issues that the WTO should be focusing on, while attempting to make the case that despite the many setbacks of Doha, the WTO still remains the single most important forum for discussing and resolving many of the world's most pressing and seemingly intractable trade policy issues. Although the lion's share of trade liberalization nowadays is clearly taking place via preferential trading arrangements in the form of bilateral or regional (or even inter-regional) free trade or economic partnership agreements, this in no way diminishes the relevance and importance of the WTO as an institution, but rather only reinforces the need for a robust and viable global referee in a world of increasingly integrated markets.

1 Remembering the Doha Ministerial Conference (MC 4)

The Doha Ministerial Conference was the culmination of almost two years of planning and was a carefully conceived and meticulously scripted event that still contained its fair share of surprises. Perhaps the most surprising thing at all is that many trade negotiators and the WTO's Director General allowed themselves to be blinded by the fact that initiating a round that would ultimately fail could be as disastrous as failing to initiate a round at all, and that of these two scenarios, the latter is arguably easier for the organization to recover from. This section starts by discussing the run up to Doha - especially Seattle - and concludes by discussing some of the inherent inconsistencies in the Doha Ministerial Declaration that have played such an important role in damning the DDA to become a rather unfortunate real-life incarnation of Samuel Beckett's unforgettable play *Waiting for Godot*.

1.1 Seattle, September 11 and Launching the Doha Development Agenda

There were probably two overriding factors that, more than anything else, led to the launch of the Doha Development Agenda in December 2001, neither of which would really have resulted



A law enforcement agent sprays pepper spray at the crowd; source: Wikimedia Commons

in anything if it were not for the personality of the WTO Director General Mike Moore and his willingness to act (for better or worse) on the strength of his own convictions. These two factors were 1) the shock of the really spectacular failure of the Seattle Ministerial Conference in 1999 and the belief by many, including the WTO Director General, that the best way to put Seattle behind the organization was to launch a new Round; and 2) the

September 11 attacks on the United States which compelled many to the (erroneous) conclusion that the best way to show international solidarity in the wake of this terrible tragedy was to launch another round of multilateral trade negotiations.¹

¹ It is Mike Moore who is generally credited – as the Ministerial talks in Doha reached an impasse on whether or not to launch a new round – with addressing delegates and forcefully asking the rhetorical question of whether he needed to remind anyone present as to what had taken place in New York just a few weeks before the Doha meeting. Another account tells of the Director General intervening during a crucial impasse, confronting Members with words to the effect that the multilateral

For anyone who needs reminding about just how dramatic the collapse of the WTO Ministerial Meeting in Seattle (MC 3) was, the easiest thing is probably to search for footage of the debacle on YouTube. Otherwise, a 2007 French film production starring a whole range of well-known Hollywood celebs captures the mood quite nicely.² While commentators disagree about the importance or impact that the street protestors had on the actual WTO meeting, the consensus seems to be that developing country representatives certainly felt empowered by the mood that took hold in Seattle, and decided that politically, they could afford to let the concerted efforts by many developed country Members to launch a new round go down in flames.³ In any event, the months after the failure of Seattle saw a large degree of soul searching by the organization's Director General, who became convinced that not only did the WTO need to launch a new round as soon as possible, but that the organization should be "re-branded" with a new-found focus on development (and the role that trade can play in promoting economic growth).⁴

The sense of doom and gloom after 9/11 was best captured by Singapore Prime Minister Goh Chok Tong, who noted that the September 11 attacks had "probably tipped the world into a global recession"

The economic impact of the devastating attacks on the World Trade Centre in New York on September 11 went beyond those sectors most directly affected, such as insurance, civil aviation, and tourism, and led to a more widely-felt loss of overall consumer confidence, particularly in the United States, but also to a very real extent globally. This was confirmed by a survey done by the IMF immediately after the attacks and published in December 2001.⁵ The sense of doom and gloom hanging over world leaders after 9/11 was perhaps best summarized by Singapore Prime Minister at the time, Goh Chok Tong, who at an October summit meeting in preparation for the Doha talks noted that the September 11 attacks had "probably tipped the world into a global recession".⁶ It was also in the period between the September 11 attacks and the November Ministerial Conference that

trading system and the WTO would not be able to survive yet another failure of a Ministerial Conference to launch a Round, see Paul Blustein, *Misadventures of the Most Favoured Nations*, Public Affairs Publishers, New York 2009, at p. 126.

² *Battle in Seattle*, http://www.imdb.com/title/tt0850253/?ref_=fn_al_tt_5 (visited on 19 July 2013); some of the well-known names that appear in the film include André Benjamin, Woody Harrelson, Ray Liotta, Channing Tatum and Charlize Theron.

³ Gary Horlick and several others, writing in the *Journal of International Economic Law* a few months after Seattle, note that a lot more was actually achieved substantively at the Ministerial Meeting than much of the coverage that documented the meeting's failure to launch a round seem to admit; see Gary Horlick et al, *Reactions to Seattle*, in: *Journal of International Economic Law*, 3(1) March 2000, pp. 167 *et seq.*

⁴ See the account told in Blustein, *op cit.*, at p. 82.

⁵ IMF's *World Economic Outlook: The Global Economy After September 11*, at: <http://www.imf.org/external/pubs/ft/weo/2001/03/> (visited on 25 July 2013).

⁶ Cited by BBC News, "Fight terror with trade, summit told", 13 October, 2001, at: <http://news.bbc.co.uk/2/hi/asia-pacific/1597016.stm> (visited on 25 July 2013).

the narrative started to take hold, that the best way to mitigate the effects of this downturn would be to launch a new round of trade negotiations. One example of this was the testimony provided by Alan Greenspan before the Senate Committee on Banking, Housing, and Urban Affairs on 20 September, who stated, "A successful round would not only significantly enhance world economic growth but also answer terrorism with a firm reaffirmation of our commitment to open and free societies".⁷ But the economic press also took up this call, such as the Financial Times, who in an article entitled "A Round to Steady the Nerves", extolled the "symbolic and psychological" value that launching a new round of trade talks would have.⁸

1.2 Implementation Issues and the Flaws of the Grand Bargain

It should not be forgotten that developing countries on the whole were less than enthusiastic about the prospect of a new round, particularly one that would incorporate yet another set of



Workers sort bananas for export on in Costa Rica; source: Reuters

"new issues", towards which they generally harboured a great deal of suspicion, if not actual hostility, such as trade and the environment, and linkages between trade and labour. However it was specifically with regard to the so-called Singapore Issues, particularly trade and competition, trade and investment and government procurement that developing countries seemed to harbour the greatest enmity.⁹ In fact, many developing countries wished to keep the Organization focused on so-called implementation issues, meaning the

⁷ See Testimony of Chairman Alan Greenspan: The condition of the financial markets, Before the Committee on Banking, Housing, and Urban Affairs, U.S. Senate, September 20, 2001, at: <http://www.federalreserve.gov/boarddocs/testimony/2001/20010920/default.htm> (visited on 25 July 2013).

⁸ Cited in Blustein, op cit., Notes to Chapter 1, at p. 302, note 3.

⁹ The Singapore Issues were a set of four areas, two "old" and two "new", that developed countries, particularly the EU and to a lesser extent the US, wished to include in talks if a new round was successfully launched. These four issues were 1) trade and investment; and 2) trade in competition as noted above (the "new" issues), as well as 3) transparency in government procurement and 4) trade facilitation. These last two issues are labeled with the moniker "old" because WTO rules already included provisions governing these two areas, even if, for government procurement, these rules (under the Government Procurement Agreement or GPA) had not been part of the Uruguay Round single undertaking and thus not been adopted by the entire WTO membership. The other "old" issue of trade facilitation (i.e. anything that affects goods as they physically cross borders) had already been addressed by various GATT articles as early as 1947 (for example in Art. V on freedom of transit, Art. VII on customs valuation, or Art. VIII on fees and formalities levied in connection with importing and exporting), but also the results of the Uruguay Round contain no less than four separate agreements dedicated to different trade facilitation issues (namely agreements on customs valuation, pre-shipment inspection, rules of origin and import licensing). For more on the Singapore Issues, see Simon J. Evenett et al, The Singapore Issues and the World Trading System: The Road to Cancun and Beyond, June 2003, at: <https://www.alexandria.unisg.ch/export/DL/22682.pdf> (visited on 25 July 2013).

challenges Members were still facing in implementing the many new obligations entered into when they signed the Results of the Uruguay Round of Multilateral Trade Negotiations.¹⁰ Developing countries as a whole also wished to address what they perceived to be the glaring asymmetries that had become apparent in the so-called "Grand Bargain" of the Uruguay Round, namely liberalization of trade in textiles and agricultural products in exchange for rules on trade and services and trade-related intellectual property rights (TRIPS).

It was only after the dust of the Uruguay Round had settled that it became apparent to many that the WTO Agreement on Agriculture resulted in little new market access, while leaving the complex web of subsidies for (mostly) developed country agricultural producers largely in place. Moreover, the WTO Agreement on Textiles also left the global system of quotas - the Multifibre Arrangement - that had been in place since 1974 and that was so resented by developing countries, largely intact for another ten years. Compare this to the liberalization commitments made under the WTO's General Agreement on Trade and Services (GATS) and the TRIPS Agreement, most of which came into force on 1 January 1995 (the day the WTO opened for business), and it is easy to see why developing countries were feeling somewhat jilted.¹¹ In any event, most developing country Members felt that implementation issues and the asymmetries in liberalization outcomes resulting from the Uruguay Round were both matters that could and should be addressed outside of the dynamics of a negotiating round *per se*.

1.3 The Doha Ministerial Declaration

At ten pages, the Ministerial Declaration is a relatively short document that lists the areas in which negotiations are to take place, and attempts to elucidate some of the possible outcomes that may or even should ensue from these negotiations, particularly greater trade liberalization and a world trading system that produces more development-friendly outcomes. This second element is, on its face, the most

The frequent use of the terms "developing" or "development" in the Doha Ministerial Declaration is an example of the **law of inverse relevance**, namely the less you intend to do about something, the more you have to keep talking about it.

¹⁰ See Asoke Mukerji, *Developing Countries and the WTO, Issues of Implementation*, in: *Journal of World Trade*, 34(6): 33–74, 2000.

¹¹ Although this narrative does not do justice to the fact that the GATS is a very flexible agreement that allowed many, in fact most developing country Members to largely opt out of sensitive and difficult liberalization commitments during the Uruguay Round, and also ignores the fact that LDCs were given transition period to implement their obligations under TRIPS, this nevertheless is an accurate reflection of how many developing countries (rightly or wrongly) viewed the results of the Uruguay Round.

important. What is most striking upon a first reading of the Ministerial Declaration is the sheer number of times the words "developing" or "development" appear. The numbers are 24 and 39 times respectively, so that, taken together, these two terms appear some 63 times, or, just over 6 times per page on average. This is arguably little more than a real-life example of Sir Humphrey's famous law of inverse relevance, namely "[t]he less you intend to do about something, the more you have to keep talking about it."¹² Over time it has become brazenly obvious that this was sadly the case. In fact this was evident as early as the next meeting of the WTO Ministerial Conference in Cancun in September 2003 (MC5). This is because the WTO was never, is not, and will probably never be a development organization (that is arguably the job of the World Bank or the United Nations Development Program), and those that believed or

advocated otherwise, misconstrued the organization's historical pedigree and indeed its institutional purpose and driving imperative. This is discussed in more detail below.



The plenary session at the Fourth WTO Ministerial Conference in Doha, Qatar from 9 to 14 November 2001; source: WTO.

Even a casual reader of the Doha Declaration will recognize that many, if not all of the so-called "commitments" - if one can even call them that - towards helping developing countries are steeped in aspirational and markedly "woolly" language that "commits" Members, at most, to little more than "best endeavours", if that. One example is in para. 2 of the Doha Ministerial Declaration: "We seek to place their [developing

countries'] needs and interests at the heart of the Work Program adopted in this Declaration". Any developing country representatives present in the room should at least have insisted that the words "seek to" be replaced with either the word "will" or "shall". Another example is paragraph 42 on Least-Developed Countries, which contains a string of "commitments" purportedly intended to promote the interests of LDCs, but which in reality promise little more than "considering" how to do more to help LDCs. Contrast this language with that used to describe potential negotiating outcomes in other areas, primarily of interest to developed countries (like the desire to see negotiations start on trade and investment in para. 20) and the woolly and aspirational language is gone. In this paragraph the Ministerial Declaration states "we agree that negotiations will take place after the Fifth Session of the Ministerial Conference on the basis of a decision to be taken, by explicit consensus, at that Session on modalities of

¹² Jonathan Lynn and Antony Jay, *Yes Minister : Volume 1 :The Diaries of a Cabinet Minister by the Rt Hon. James Hacker MP*, BBC Publishing, 1983, at p. 21

negotiations". Anyone reading that paragraph at the time of Doha (and thus without the benefit of hindsight), could be excused for thinking that negotiations on trade and investment were a matter of "when" and not "if".

To summarize, the WTO Ministerial Declaration that emerged from the Doha talks, although a seemingly ambitious document in terms of envisaging a pivot towards the needs of developing country members, really just confirmed that the WTO was all about business as usual, and that Members would do their best to look like they were taking the concerns of developing countries seriously while in reality doing what they were really sent to the organization to do, namely negotiate the best market access concessions for their own export interests. This is what the WTO, and its predecessor the GATT were designed to do, and this is what the GATT and now the WTO have had a great deal of success in doing. As Aaditya Mattoo and Arvind Subramanian pointed out in a 2008 paper on

"The genius of the [GATT] was to recognize that the politics of trade policy is unavoidably mercantilist and then to harness this very mercantilism to avoid protectionist outcomes"
Aaditya Mattoo and Arvind Subramanian

a totally unrelated issue "[t]he genius of the [GATT] was to recognize that the politics of trade policy is unavoidably mercantilist and then to harness this very mercantilism to avoid protectionist outcomes".¹³ Given the huge gap in terms what the document that launched the Doha Work Program and that also established the negotiation agenda promised and aspired to on the one hand, and the underlying political-economy realities that it was steeped in on the other, is it any wonder that we are currently at such a seemingly insurmountable impasse? This is even less surprising when one considers the many significant changes that have transformed the global economy since the launch of the round.

2 Getting to the Current Impasse

It has admittedly been a long road from the Doha Ministerial Conference in November 2001 to where we are now - at the time of writing - almost 12 years later and with still no end in sight. To put the extraordinary length of time the current round has lasted into context, it should be recalled that even the Uruguay Round only dragged on for some eight years (September 1986 until December 1993), and it was based on an agenda that was much more radical - in terms of

¹³ Aaditya Mattoo and Arvind Subramanian, "Currency Undervaluation and Sovereign Wealth Funds: A New Role for the World Trade Organization", Peterson Institute for International Economics, January 2008, at: <http://www.iie.com/publications/interstitial.cfm?ResearchID=871> (visited on 25 July 2005).

bringing new issues under multilateral disciplines - and much more controversial - in terms of finally subjecting agricultural trade to actionable trade rules - than one could arguably contend is the case for the DDA. This section discusses how the Round got to where it is now, focusing first on Cancun and the July 2004 Package, followed by the Hong Kong Ministerial, the 2008 meeting in Geneva, and the final, and ultimately unsuccessful push to conclude the round, first by the end of 2010, then by the end of 2011, and finally, whenever Members can be roused from their current inertia to do so.

2.1 The Collapse at Cancun (MC 5), and the Round's Subsequent Rescue in July 2004

Two words (actually three) seem to sum up the Ministerial Conference that took place in Cancun Mexico from 10-14 September 2003, namely "cotton" and "explicit consensus". The first issue overshadowed the meeting from the outset and seemed to be the spark that ignited



EU Trade Commissioner Pascal Lamy (L) and USTR Robert Zoellick; source: Associated Press

a mood of militancy among developing country representatives. The explicit consensus language ended up giving these representatives the mechanism by which they could dig in their heels and ultimately bring the meeting to an ignominious collapse.

The cotton issue had slowly but steadily been brewing at the WTO for well over a year before it sparked the collapse of the Cancun Ministerial. As early as January 2001, Mali had explicitly tabled a request in the Special Session of the Committee on Agriculture (established under the so-called inbuilt agenda) for subsidies on this commodity to be drastically reduced.¹⁴ However the issue really began to pick up some traction with the release of a damning report by Oxfam in September 2002 entitled "Cultivating Poverty: The impact of US cotton subsidies

on Africa"¹⁵, and with the initiation of a dispute under the WTO's Dispute Settlement Understanding by Brazil against US cotton subsidies in February 2003.¹⁶ Throughout the course of 2003, the temperature continued to rise on the issue of how damaging US cotton subsidies had been for African cotton farmers, so it is somewhat mystifying why US trade negotiators,

¹⁴ See Malian Proposals for the Future Negotiations on Agriculture (G/AG/NG/W/99), 11 January 2001.

¹⁵ <http://www.oxfamamerica.org/publications/cultivating-poverty> (visited on 26 July 2013).

¹⁶ DS267; For a useful comparison of the two tracks that were taken on the issue of cotton (negotiation versus litigation), see: Philipp Stucki, *Lessons Learned from the Negotiations and Litigations on Cotton*, 2008, at: http://www.ideascentre.ch/documents/2.28_AnnexactionplanWTICottonFINAL.pdf (visited on 26 July 2013).

particularly USTR Robert Zoellick were caught so off-guard in Cancun when this issue threatened to take centre stage and became a *cause célèbre* around which many developing countries could rally.¹⁷ Knowing the political sensitivities, particularly the positions of key members of Congress on this issue, there was little Zoellick could concede in Cancun, which put the US delegation in the unenviable position of fighting a rear-guard action in defence of a collection of subsidies that were manifestly indefensible given their obvious and demonstrated impact on cotton growers in the affected African countries. This caused the US delegation to look insensitive and made the DDA's stated goal of improving development outcomes for the world's poor seem like a cruel and cynical joke. It is no wonder developing countries took the combative stance that they did on what seemed to be the most important issue to developed countries at the talks, namely the Singapore Issues.¹⁸

The "explicit consensus" language that hung over the Singapore Issues was the result of intransigence on the part of India as the last holdout at the Doha meeting to agree to negotiations on the Singapore Issues, so that the Indian representative in Doha (Maran) could reportedly only be prevailed upon to accept this concession if the decision to start negotiations on these issues was to be taken by "explicit consensus" at the Fifth Ministerial Conference (i.e. the one after Doha).¹⁹ Although

nothing in the WTO's charter (the Marrakesh Agreement) suggests that such a thing as explicit consensus exists, over the months leading up to the Cancun meeting, Geneva-based representatives, and then at the Cancun meeting itself, trade ministers from developing

The "explicit consensus" language that had been insisted upon by a single developing country at Doha was presumably a tactical move intended to pre-empt any attempt to isolate a small group or even a single Member in its opposition to start launch negotiations on the Singapore Issues.

countries had actively worked to cultivate the narrative that a decision allowing negotiations on the Singapore Issues to start would only be taken if the entire membership was in agreement (which is what the WTO's principle of consensus means anyway). This was presumably a tactical move intended to pre-empt any attempt to isolate a small group or even a single Member in its opposition to start these negotiations, since under the normal *modus operandi* of the WTO it is

¹⁷ For an interesting expose on how the issue emerged and how it was handled in Cancun and thereafter see the film documentary *The Cotton War*, by TVEAPfilms available for download and viewing at: <http://www.youtube.com/watch?v=l673CWNdGLc> (visited on 26 July 2013).

¹⁸ This is particularly true for the EU and Japan, who were perceived as being some of the most intransigent members in the agriculture talks, which developing countries cared about very passionately.

¹⁹ See the account told in Blustein, *op cit.*, at the bottom of p. 128.

considered very poor form for one Member in particular to dig in its heels and impede progress when everybody else has agreed to move forward. The explicit consensus language obviated the need for a single Member to feel embarrassed about being obstructionist and to allow itself to be strong-armed into going along. As it turns out, India was not alone in its opposition to the Singapore Issues, since the representative for Malaysia (Rafidah Aziz) also took a strong stand at Cancun.²⁰ Thus it was that, after the tempers of developing country delegates had been inflamed over cotton and the impasse over agriculture, many of them chose to vent their anger on the Singapore Issues.

The Cancun Ministerial ultimately collapsed when the Mexican Foreign Minister Luis Ernesto Derbez (in his capacity as chairman of the conference), seeing the lack of progress on the Singapore Issues gavelled the meeting to an unexpected and some would say premature end in a green room meeting on 14 September, after 4 days of conflict-ridden and ultimately fruitless talks. Many blamed the US for its unwillingness to come up with any kind of compromise on cotton besides telling the Cotton 4 to diversify their economies. Others blamed the EU for waiting until the last day to concede on the Singapore Issues, while yet others blamed the militancy of developing countries. Some even saw Derbez's sudden desire to end the meeting over the intractable stance of developing countries vis-à-vis the Singapore issues as a way to do so without allowing the talks to continue and thereby risk the prospect of the US becoming isolated on the cotton issue. Either way, it wasn't until the following summer (2004), that the negotiations got back on track, largely thanks to US and EU leadership. The Cancun talks, if they had provided anything positive (discounting the accession of the first two LDCs to the WTO Nepal and Cambodia), it was the opportunity for developing countries to vent their wrath, and to subsequently return to the negotiating table in Geneva with a chance for cooler heads to prevail.

The July 2004 meeting, which put the Doha Round decidedly back on track - if only temporarily - arguably owed its success more than perhaps any other factor to the ambitions and tenacity of USTR Bob Zoellick, who - working closely with the EU chief trade negotiator at the time Pascal Lamy - managed to achieve a level of productive and constructive progress in the early months of 2004 concerning these two countries' positions on agriculture, that it infected the broader WTO membership and allowed for a sense of momentum to take hold. Thus it was that by the end of July 2004, WTO Members had coalesced around a framework document - the July package - that contained a little bit of something for everyone.²¹ Consensus on the key

²⁰ See Bridges Daily Update, 14 September 2003, at: <http://ictsd.org/i/wto/wto-mc5-cancun-2003/bridges-daily-updates-mc5/161118/> (visited on 26 July 2013).

²¹ See http://www.wto.org/english/tratop_e/dda_e/draft_text_gc_dg_31july04_e.htm.

agriculture text was reportedly achieved thanks largely to the New Zealand ambassador Tim Grosser, who, in his role as the chair of the Special Session on Agriculture, essentially seized the reins from a hapless Superchai Panitchpakdi after a series of indecisive green room meetings with the main protagonists simply repeating their well-known positions.²²

Ultimately, the July package²³ rekindled some hope among developing country members, that their concerns had not simply been forgotten in the scramble to make the round about little more than better market access for agricultural and non-agricultural products, especially by big developed countries and efficient emerging market exporters. Thus, the text on agriculture that emerged from the July 2004 meeting in Geneva specifically provided that developing countries



Superchai Panitchpakdi, WTO Director General from 2002; source: WTO

"must be able to pursue agricultural policies that are supportive of their development goals, poverty reduction strategies, food security and livelihood concerns".²⁴ This commitment was given more operationally effective character in the July package by including language, in the section on market access, subject to which developing countries would be permitted to list a certain number of tariff lines as sensitive products, and to exclude these products to a large degree from any liberalization.²⁵ In addition, and also under market access, developing countries were to be given a special safeguard mechanism by which they would be allowed to raise tariffs on a

number of pre-selected products above bound rates in the event of an import surge.²⁶ On cotton, the July package stated that as a negotiating issue, it would be addressed "ambitiously, expeditiously, and specifically" in the broader framework of the agriculture negotiations, that at least allowed some to hope (as it turns out very forlornly) that a resolution on this issue might come sooner rather than later and might not be held hostage to the Single Undertaking. Finally, the July package put in writing a commitment originally championed by Pascal Lamy that LDCs would be released from any obligation to make reduction commitments, thereby giving them what some participants took to calling "a round for free".²⁷

²² This is at least how Blustein recounts it, see Blustein, op cit., at the bottom of p. 92.

²³ Doha Work Programme, Decision Adopted by the General Council on 1 August 2004 (WT/L/579).

²⁴ Ibid, Annex A, para. 2. It was believed that this language would give cover for excluding politically sensitive agricultural commodities in the production of which economically vulnerable farmers were engaged, from the ambitious tariff cuts that countries like the US, Australia and other Cairns Group countries were seeking.

²⁵ Ibid, Annex A, para. 41.

²⁶ Ibid, Annex A, para. 42.

²⁷ Ibid, Annex A, para. 43.

To sum up, the mood of the WTO Members at the end of the July 2004 negotiations was in stark contrast to the despondency that had prevailed at the end of the Cancun collapse. In press statements after the July 2004 meeting, Pascal Lamy was quoted as saying that the WTO was now "well and running", while developing country representatives such as Kamal Nath of India went on record stating "I think it was recognized here that the developing countries cannot be taken for granted", and Argentina's chief trade negotiator in Geneva for the meeting (Martin Redrado) qualifying the progress made as "a tremendous advance".²⁸

2.2 Hong Kong (MC 6), Aid for Trade and Pork-Barrel Commercial Diplomacy

It was quite early on during the Hong Kong Ministerial Conference (13–18 December 2005) that the jockeying over a flurry of proposals on aid for trade started to pick up serious momentum, beginning with a proposal circulated by Japan.²⁹ The thousands of developing country representatives in Hong Kong rapidly became enthused with a new-found sense of purpose and excitement thanks to the Japanese

aid-for-trade proposal (and the others that would ensue soon after, starting with the EU, followed by the US³⁰), as it became clear to everyone that there was money to be made, and lots of it. One could have been excused for thinking that that the meeting had now been allowed to degenerate to the level

Once the aid-for-trade proposals started, it was clear that the meeting had degenerated to the level of pork-barrel politics, so that henceforth, developing country demands for genuine reform would be bought off in exchange for cash infusions from rich countries unwilling to change the *status quo*

of pork-barrel politics, and that from now on, many developing country demands for genuine reform of the trading system by cutting the highest tariffs and eliminating the most damaging forms of trade-distorting domestic support would likely be considerably blunted (bought off) in exchange for cash infusions from rich countries unwilling to show the necessary leadership to change the *status quo*.³¹

²⁸ All of these quotes taken from a Washington Post article dated 1 August 2004 entitled "Accord Reached On Global Trade; Talks Aim to Cut Farm Aid, Tariffs".

²⁹ Bridges Daily Update on the Sixth WTO Ministerial Conference, at: <http://ictsd.org/i/wto/wto-mc6-hong-kong-2005/bridges-daily-updates-mc6/159002/> (visited on 30 July 2013).

³⁰ See article in the Financial Times dated 14 December 2005 entitled "Little progress at WTO talks despite US aid offer".

³¹ This view was also shared by John Hilary of War on Want who went on record as saying "rich countries are trying to buy off opposition to their trade policies by means of a cynical bribe.", quoted in Bridges Daily Update on the Sixth WTO Ministerial Conference, at: <http://ictsd.org/i/wto/wto-mc6-hong-kong-2005/bridges-daily-updates-mc6/159002/> (visited on 30 July 2013).

It is probably fair to say that, although there was a relatively strong sense of anti-climactic let-down, the Hong Kong meeting brought neither the sense of total despair which followed the collapse in Cancun, nor the euphoria that seemed to have gripped delegates after the July 2004 meeting in Geneva. One important and largely overlooked concession was the EU's offer to eliminate all export subsidies by 2013. One participant at the Hong Kong meeting, a veteran of several trade rounds going back to the Tokyo Round noted that if the EU had made an offer like that back in the 1970s or 1980s, many would have considered it significant enough to conclude negotiations and seal the deal right then and there.³² Unfortunately this was not the sentiment in Hong Kong, and so wrangling continued, particularly between the US and the EU. Also worth noting is that expectations had been severely drummed down in the run up to the meeting, with several negotiators and Pascal Lamy - now appointed as WTO Director General - voicing their opinions that it might be necessary to hold a follow-up meeting to the Hong Kong Ministerial as early as March 2006 in Geneva, just so that some real progress could be achieved away from the limelight, political point-scoring and posturing that inevitably accompanied high-level Ministerial Conference meetings.³³

2.3 Geneva 2008 – Much Ado about Special Safeguard Measures

If at least a dull shimmer of hope had imbued the conclusion of MC6 in Hong Kong, by the summer of 2008, the WTO was back to deadlock and despondency with even Pascal Lamy's optimism seeming to have faded as talks collapsed at the end of a marathon 9-day negotiating session dubbed another mini-ministerial (21 -29 July 2008).³⁴ Lamy had convened the meeting for the purpose of preparing the formal establishment of modalities in agriculture and NAMA.³⁵ It was ultimately the Director General who after 5 days of talks that had seen only modest convergence, seized the initiative and took the rather desperate measure of himself drawing up a framework for compromise on many of the issues that had eluded consensus up to that point, such as the magnitude of cuts in domestic support by developed countries, the scope of tariff cuts and thus market access commitments for both agricultural and industrial goods. Lamy's compromise text received mixed reviews but it was essentially viewed as a basis for continuing talks.³⁶

³² This sentiment was expressed to me by Gary Horlick.

³³ See BBC News Article dated 22 November 2005 entitled "WTO 'won't agree deal in China", available at: <http://news.bbc.co.uk/2/hi/business/4461730.stm> (visited on 30 July 2013).

³⁴ See Blustein at p. 275 who refers to Lamy "chocking up".

³⁵ Bridges Daily Update on the Sixth WTO Ministerial Conference, at: <http://ictsd.org/i/wto/wto-mini-mc-geneva-2008/englishupdates/13365/> (visited on 30 July 2013).

³⁶ See Blustein at p. 264.

Ultimately, the July 2008 talks failed ostensibly over an issue that caused quite a bit of surprise among many commentators, namely a special safeguard measure (SSM) for developing countries that would allow them to temporarily raise tariffs above bound rates in the event of an import surge.³⁷ Article 5 of the WTO Agreement on Agriculture (AoA) already contains a clause that affords the right for some Members to invoke this measure (referred to as an "SSG"), provided they reserved the right to do so during the Uruguay Round.³⁸ Since the conclusion of the Uruguay Round, some countries have been forced to rue their failure to invoke the special safeguard on a number of agricultural tariff lines, thus limiting them in principle, to the regular WTO safeguard action (under the GATT Article XX escape clause) as the only legal option for fending off injurious import surges. This was indeed the oversight that was behind the Korea Dairy dispute with the EU in from 1997-1999, when Korea - unable to invoke the special safeguard under Article 5 of the Agreement on Agriculture - imposed additional duties on imports of skimmed milk powder after its market experienced massive import surges in this product which constituted a significant threat to its own dairy industry (or so it claimed).³⁹ Korea lost that dispute, just like other countries would subsequently lose similar disputes involving their use of safeguards under the WTO escape clause.⁴⁰ Perhaps it was the fact that it had ultimately proven unexpectedly difficult to legally impose safeguard measures under WTO rules that had led developing countries to the conclusion that what they needed was the kind of air-tight policy space that a special safeguard measure very similar to the one set forth in Article 5 AoA afforded. Either way, with the benefit of hindsight after a considerable increase in protectionism during and after the financial crisis and the ensuing global recession, in which countries demonstrated previously unmatched levels of inventiveness in using and abusing existing trade rules to keep out imports to shelter import-competing domestic industries (discussed immediately below), it seems surprising that it was something as mundane as a special safeguard measure that caused the collapse of the July 2008 meeting in Geneva.⁴¹

³⁷ Bridges Daily Update on the Sixth WTO Ministerial Conference, at: <http://ictsd.org/i/wto/geneva2008/englishupdates/15315/> (visited on 30 July 2013).

³⁸ See Yong-Shik Lee, *Safeguard Measures in World Trade: The Legal Analysis*, Kluwer Law International, 2007, at p. 153.

³⁹ See Korea – *Definitive Safeguard Measure on Imports of Certain Dairy Products*, Report of the Panel, (WT/DS98/R) at para. 4.54.

⁴⁰ It is generally recognized that the difficulty in imposing safeguard measures under GATT Art. XX and the Uruguay Round Agreement on Safeguards is due more than anything to the causation and non-attribution requirements set out in Art. 4.2 (b) of the Safeguards Agreement, see: Douglas A. Irwin, Causing problems? The WTO review of causation and injury attribution in US Section 201 cases, in *World Trade Review*, Vol. 2(3), 2003, pp. 297–325, at: <http://www.dartmouth.edu/~dirwin/docs/causal.pdf>, (visited on 30 July 2013).

⁴¹ Meaning it is surprising that what was allowed to bring the talks to an abrupt end was that a country such as India felt that it absolutely and unequivocally needed the extra policy space that a special safeguard would have afforded it; See J. Michael Finger, *A Special Safeguard Mechanism for Agricultural Imports: what experience with other GATT/WTO safeguards tells us about what might work*, in: *World Trade Review*, Vol. 9 (2), 2010, pp. 289–318, Cambridge University Press.

2.4 The Global Economic Crisis and Subsequent Developments for the DDA

Some very traumatic events have rocked and in many ways transformed the global economy since the collapse of the July 2008 mini ministerial meeting in Geneva. Easily the most important of these would have to be the onset of the global financial crisis, which was already starting to take hold before the July 2008 meeting, but which got going in full swing with the collapse of Lehman Brothers on 15 September 2008.

The crisis had a crippling effect on international trade, both because of the collapse in demand as well as because the credit crunch had a chilling effect on trade finance.⁴² The crisis also led to an increase in pressure on governments across both the developed and developing world to flout trade rules in various forms in order to prop up domestic economic interests.⁴³ In developed countries, most measures were part of stimulus packages containing bailout plans with massive cash injections for domestic industries, particularly the auto industry,



US Treasury Secretary Hank Paulson (L) and Federal Reserve Chairman Bernard Bernanke in 2008; source: Wikimedia Commons

but also clean technology, transport infrastructure and various others.⁴⁴ There was also a corresponding rise in contingency protection measures in developed country markets such as the US and the EU, as import-competing industries turned to their governments for import relief.⁴⁵

⁴² See article in *MoneyWeek* dated 24 October 2008, entitled "Is international trade grinding to a halt?" at: <http://moneyweek.com/is-international-trade-grinding-to-a-halt-13909/> (visited on 31 July 2013); Some economists question the role played by the contraction in trade finance, see e.g. Andrei A Levchenko *et al*, *The Collapse of International Trade during the 2008–09 Crisis: In Search of the Smoking Gun*, in "IMF Economic Review" (2010) 58, pp. 214–253, at: <http://www.palgrave-journals.com/imfer/journal/v58/n2/abs/imfer201011a.html> (visited on 31 July 2013).

⁴³ This trend has been documented and analyzed by a number of institutions and individuals, albeit perhaps none with as much focus as Simon Evenett and his Global Trade Alert (<http://www.globaltradealert.org>). For a concise and easily digestible overview of the impact the crisis had on trade policy in a number of countries, see Simon J. Evenett and Martin Wermelinger, *Chapter 1, A snapshot of contemporary protectionism: how important are the murkier forms of trade discrimination*, in: Mia Mikic with Martin Wermelinger (eds), *Rising Non-Tariff Protectionism and Crisis Recovery*, Economic and Social Commission for Asia and the Pacific, 2010, at: <http://www.unescap.org/tid/publication/tipub2587.pdf> (visited on 31 July 2013); See also Crina Viju and William A. Kerr, *Protectionism and Global Recession: Has the Link Been Broken?*, in: *Journal of World Trade* Vol 45 (3), 2011, pp. 605–628, Kluwer Law International BV.

⁴⁴ For an in-depth account of the US auto bailout, see: Steven Rattner, *Overhaul: An Insider's Account of the Obama Administration's Emergency Rescue of the Auto Industry*, Houghton Mifflin Harcourt, September 2010; For a detailed treatment of the 2009 US Stimulus Bill, see Michael Grunwald, *The New New Deal: The Hidden Story of Change in the Obama Era*, Simon & Schuster, August 2012.

⁴⁵ Chad P. Bown, *Assessing the G20 use of antidumping, safeguards and countervailing duties during the 2008-2009 crisis*, in Simon J. Evenett (ed.), *Unequal Compliance: the 6th GTA Report*, London, Centre for Economic Policy Research, pp. 39-47.

In developing countries, as job losses mounted and economic hardship began to be felt, governments also came under pressure to provide import relief from domestic producers of import-competing products, either by using traditional means such as raising applied tariff levels to bound rates, the application of contingency protection measures or by resorting to other protectionist impediments, such as technical barriers to trade, sanitary and phytosanitary measures, import licenses and other similar instruments.⁴⁶ In some developing countries there was also another imperative behind efforts to restrain imports, namely the need to provide relief to deteriorating balance of payments situations, and relieve pressure on already stretched budget deficits.

As the global economic crisis seemed to abate, it was replaced with dogged unemployment and stagnating consumer demand in the US, and the onset of an austerity-induced slowdown in several European countries. Developing markets managed to recover somewhat faster, with India, China and Brazil soon posting healthy growth figures. In any event, although summit meetings during the and after the crisis had regularly seen leaders produce declarations unequivocally calling for a swift conclusion to the Doha Round in order to revive the global economy, these statements were not translated into action by ambassadors or trade ministers In Geneva or elsewhere. In fact, quite the opposite, since it would seem that in terms of domestic political calculus, times of economic hardship, high unemployment and austerity are the worst possible moments in which to conclude sweeping trade deals, the distributional

effects of which must then be "sold" to a sceptical and struggling electorate.⁴⁷

The two Ministerial Conferences that have taken place since the breakdown of the 2008 talks, in December 2009 and December 2011, have both been little more than stocktaking exercise

Since the breakdown of the 2008 talks, there have been two further Ministerial Conferences, both in Geneva (MC 7 from 30 November to 2 December 2009, and MC 8 from 15 to 17 December 2011). It's

hard to say whether it was Pascal Lamy's tireless optimism and unfaltering ambition or just the fact that Article VI.1 of the Marrakesh Agreement mandates these meetings every two years that were the driving dynamic behind these get-togethers. In any event, they both followed a very similar course, which is to say they were both essentially reduced to little more than simple stocktaking exercises, with the DG and Members as a whole keen to avoid even the

⁴⁶ H.L. Kee, *et al*, *Is Protectionism on the Rise? Assessing National Trade Policies during the Crisis of 2008*, *World Bank Policy Research Working Paper 5274*, at: <http://go.worldbank.org/Q2MKLTEINO> (visited on 31 July 2009).

⁴⁷ See Edward John Ray, "Changing Patterns of Protectionism: The Fall in" "Tariffs and the Rise in Non-Tariff Barriers" *Symposium: The Political Economy of International Trade Law and Policy*" in: *Northwestern Journal of International Law & Business*, Vol. 8 (2), 1987, pp. 285 *et seq.*, at p. 16 in particular.

whiff of another high-stakes collapse. Much of the negotiating on the truly troublesome issues of agriculture and NAMA continued, primarily in Geneva but in the months between Ministerial Conference meetings. Thus we have seen the focus shift to more technical issues, such as scheduling approaches in the agriculture talks, and non-tariff barriers in the NAMA negotiations.⁴⁸ The agricultural talks took a new tack in 2012 as the onus moved in response to a submission made on food security by developing countries.⁴⁹ By the middle of 2012, Pascal Lamy joined other WTO Members (particularly the US) that had indicated a strong preference for the Organization to abandon the Single Undertaking and start making progress on any area where positive outcomes might still be achievable, by negotiating in plurilateral groups or "clusters".⁵⁰

There has also been some progress in other areas, seemingly far removed from the squabbles on subsidy and tariff cuts that characterised the agriculture and NAMA negotiations for so many years. This would include most notably trade facilitation⁵¹, which, if anything, promises to be the real deliverable as we head towards Bali. More limited progress has been made recently in talks on services, where again it seems as if the Single Undertaking has been relegated to the history books (where it perhaps belongs in an organization of 155 countries and separate customs territories). Reform of the Dispute Settlement Understanding has also seen limited progress and could possibly be another bunch of low-hanging fruit that the WTO might be able to harvest at the Bali meeting.⁵² As we get closer to the December meeting and with the "last petrol stop on the road to Bali" having been passed in July⁵³ (with reportedly adequate progress⁵⁴), the focus will need to narrow on a few core issues where forward momentum can be maintained. The next section turns away from the histrionics of the Doha Round with the inevitable speculation about what may or may not be achieved at Bali, and asks what to do with the WTO.

⁴⁸ See Bridges Weekly Trade News Digest • Volume 13 • Number 16 • 6th May 2009, at: <http://ictsd.org/i/news/bridgesweekly/46289/> (visited on 31 July 2013).

⁴⁹ See Bridges Weekly Trade News Digest • Volume 16 • Number 39 • 14th November 2012, at: <http://ictsd.org/i/news/bridgesweekly/149960/> (visited on 31 July 2013).

⁵⁰ This was indeed something that had started being advocated as early as 2011, where some members, seeing the progress made using this approach for an updated Government Procurement Agreement, also concluded it would be the best way forward in other areas, including in particular services; See Bridges Weekly Trade News Digest • Volume 16 • Number 29 • 25th July 2012, at: <http://ictsd.org/i/news/bridgesweekly/139026/> (visited on 31 July 2013).

⁵¹ See Bridges Weekly Trade News Digest • Volume 16 • Number 29 • 25th July 2012, at: <http://ictsd.org/i/news/bridgesweekly/67633/> (visited on 31 July 2013).

⁵² See Bridges Weekly Trade News Digest • Volume 16 • Number 29 • 25th July 2012, at: <http://ictsd.org/i/news/bridgesweekly/99586/> (visited on 31 July 2013).

⁵³ This was how Pascal Lamy put it, quoted in *Bridges Weekly Trade News Digest* vol. 17 (20) 6 June 2013, at: <http://ictsd.org/i/news/bridgesweekly/165342/> (visited on 31 July 2013).

⁵⁴ See "Lamy: 'Clearer' Road to Bali Ministerial, Though Work Remains", in *Bridges Weekly Trade News Digest* vol. 17 (27) 25 June 2013, at: <http://ictsd.org/i/news/bridgesweekly/173294/> (visited on 31 July 2013).

3 What to do with the WTO

Since the collapse in July 2008, there has been a fair amount of navel gazing by the WTO itself⁵⁵, as well as helpful advice by outsider commentators on how to get the Organization beyond its current funk.⁵⁶ Not wishing to really add to this debate, this chapter limits itself to making three points, the first being that WTO Members do not necessarily need to be engaged in a perpetual negotiating round for the Organization to survive (consolidation trumps negotiation - at least for a while). This section also discusses the fickleness of attempts to turn the WTO into just another carpet bagger in the global fraternity of economic development organizations (which is totally at odds with its institutional psychology). Finally it discusses a few things that the WTO has managed and is managing to do very well, and which the Organization should be encouraged and supported in doing further.

3.1 Debunking the Bicycle Theory

It seems to be a fairly well rehearsed aphorism these days that the process of trade liberalization is like a bicycle, which, if it ever stops moving forward, will fall over. Fred Bergsten is generally credited with first coining this phrase in the 1970s⁵⁷, and USTR Zoellick also invoked it in an op-ed he wrote for the New York Times a few weeks before the 2001 Doha meeting.⁵⁸ Blustein, in his detailed chronicle of the WTO covering the period from Seattle to July 2008 also makes a compelling case for the need for the legislative function of the WTO, i.e. its



Danish public bicycle: source: Wikimedia Commons

negotiating bodies (like the Trade Negotiations Committee or TNC) to constantly update the WTO agreements so that the Organizations' rules accurately reflect and govern the issues and

⁵⁵ See e.g. Panel on Defining the Future of Trade convened by WTO Director-General Pascal Lamy, *The Future of Trade: The Challenges of Convergence*, World Trade Organization, April 2013, at: http://www.wto.org/english/thewto_e/dg_e/dft_panel_e/future_of_trade_report_e.pdf (visited on 31 July 2013).

⁵⁶ See e.g. Richard Baldwin and Simon Evenett (eds.), *Next Steps: Getting Past the Doha Round Crisis*, Centre for Economic Policy Research (CEPR), 2011, at: <http://www.iadb.org/intal/intalcdi/PE/2011/08348.pdf> (visited on 31 July 2013).

⁵⁷ See Fred Bergsten, *Toward a New International Economic Order*, Lexington Books, 1975, as quoted in Bachus (2003).

⁵⁸ See "The Record Shows It's the Open Traders Who Get Ahead" by Robert B. Zoellick, *New York Times*, 8 November 2001, at: http://www.nytimes.com/2001/11/08/opinion/08iht-edrobert_ed3_.html (visited on 1 August 2013).

tensions confronting the world trading system.⁵⁹ It is almost certainly wrong to assume that because the Doha Round has stalled, worldwide efforts to liberalize international trade have stalled with it. To be sure, efforts at achieving greater market opening and a reduction in trade barriers on a multilateral basis are currently on ice, but the march of trade and investment liberalization is moving on in different forms and *fora*. After all, what is the spaghetti bowl of preferential trading arrangements that has swept up so many WTO Members if not an unprecedented surge of energy towards the reduction of trade barriers (albeit on a discriminatory and thus admittedly "third-best" policy option basis⁶⁰)? Many economists and trade policy commentators view the pivot towards preferentialism as an alarming move in the wrong direction.⁶¹ Others⁶² prefer to take a longer view, since, after all, was not the 1948 GATT first preceded by a slew of bilateral preferential trade agreements entered into by Cordell Hull under the Reciprocal Trade Agreements Act of 1938?⁶³ Taken together, the current two preferential trading arrangements being negotiated under the auspices of the Transpacific Partnership (TPP) and the Transatlantic Trade and Investment Partnership (TTIP) will cover close to 80 per cent of global GDP⁶⁴. The discriminatory side effects of not being part of these agreements will be felt by only a small number of countries, which won't include most of the world's poorest nations, since these countries already benefit from duty free (and largely quota free) access to their main export markets under a variety of frameworks such as Everything But Arms (EBA), the African Growth and Opportunity Act (AGOA), the Generalised System of Preferences (GSP), and preferential access agreements like the EU's extensive network of Economic Partnership Agreements (EPAs).

Even looking beyond the myriad of preferential trading arrangements, it is now possible to detect signs of trade liberalization at the WTO, even in the absence of movement under the Doha Work Program. This has proven true for an expanded agreement on government

⁵⁹ See Blustein's musings in Chapter 14 of *Misadventures of the Most Favored Nations*, op cit.

⁶⁰ The statement in brackets assumes that the "first best" policy option for liberalization is the unilateral lowering or elimination of trade barriers (desirable economically but not always achievable politically); the "second best" policy option is multilateral liberalization under the WTO or a similar framework; and that thus any liberalization undertaken in the form of preferential trading arrangements is little more than a "third best" policy option.

⁶¹ Jagdish Bhagwati and Anne O. Krueger, *The Dangerous Drift to Preferential Trade Agreements*, American Enterprise Institute, 1995.

⁶² Richard Baldwin and Patrick Low, *Multilateralizing Regionalism*, Cambridge University Press, 2009.

⁶³ Kenneth W. Dam, *Cordell Hull, The Reciprocal Trade Agreement Act, and the WTO*, Brookings, 2004, at: <http://www.brookings.edu/research/papers/2004/10/10globaleconomics-dam> (visited on 1 August 2013); for a more historically authentic source, see: Richard N. Gardner, *Sterling Dollar Diplomacy*, Oxford at the Clarendon Press, 1956.

⁶⁴ The TTIP and the TPP are reported as each covering approximately 40 percent and 60 percent of global GDP, see: The Washington Post article dated 8 July 2009 entitled "Talks over a huge U.S.-Europe trade deal start this week. Here's what you need to know" at: <http://www.washingtonpost.com/blogs/wonkblog/wp/2013/07/08/talks-over-a-huge-u-s-europe-trade-deal-start-this-week-heres-what-you-need-to-know/> (visited on 1 August 2013); see also USTR press release dated 25 September 2008 entitled "Trans-Pacific Partners and United States Launch FTA Negotiations", at: <http://www.ustr.gov/trans-pacific-partners-and-united-states-launch-fta-negotiations> (visited on 1 August 2013).

procurement, and is now looking increasingly likely for trade in services. In fact, there are a number of areas where some sort of agreement is looking more than probable outside of the constraints posed by the Single Undertaking, such as trade facilitation, a South-South agreement on duty free and quota free access for LDCs, even reform of the Dispute Settlement Understanding. Members, it seems, have increasingly come to see the Single Undertaking as a debilitating straight jacket that must be thrown off if anything is to be achieved in Geneva.

As a piece of political-economy orthodoxy, the bicycle theory contends that where the process of trade liberalization ceases moving forward, the global trading system inevitably succumbs to a rise in protectionism and a

tendency for those countries that had traditionally shown leadership in trade negotiations, to become increasingly inward-looking. Although we have seen a rise in protectionism over the last few years since the economic crisis, this was

Although a lot of liberalization now happens outside of the WTO there is still forward momentum in Geneva, such as an expanded agreement on government procurement, and possibly also in trade in services. Consensus also looking likely for an agreement on trade facilitation and review of the Dispute Settlement Understanding.

invariably part of a broader, knee-jerk reaction by policymakers and trade ministry officials to the domestic micro- and macroeconomic impacts of the crisis, rather than a symptom of the failure to achieve positive outcomes under the Doha process.

3.2 The WTO is not a Development Organization (at least not directly)

A little over a year after the collapse of the Cancun ministerial meeting in September 2003, when many people's faith in the development-centricity of the Doha Round was starting to fray considerably, a very interesting paper was published by Joseph Stiglitz and Andrew Charlton, entitled "The Development Round of Trade Negotiations In The Aftermath of Cancun".⁶⁵ Although this report contains a number of erroneous assumptions and naïve assertions⁶⁶, its

⁶⁵ Joseph E. Stiglitz and Andrew Charlton, *The Development Round of Trade Negotiations In The Aftermath of Cancun*, Commonwealth Secretariat, 2004, available at: http://www.policyinnovations.org/ideas/policy_library/data/01132 (visited on 2 August 2013).

⁶⁶ For example, the paper asserts that the need to put the interests of developing countries' at the center of the negotiating agenda was the result of "a renewed spirit of collective responsibility for the challenges faced by poor countries, and also as a response to the perceived inequities generated by previous rounds of trade negotiations" (p. 2). As Blustein (op. cit.) has convincingly laid out, the focus on development was both an attempt by Mike Moore to "rebrand" the Organization in the aftermath of Seattle, and a (somewhat cynical) negotiating tactic in order to get reluctant developing countries to abandon their insistence on focusing on implementation issues and agree to the launch of a new round at Doha.

value was and remains the fact that it highlights, in easily understandable terms, what the Doha Work Program would look like if developing countries' interest were truly at the heart of the agenda. By the same token, the paper succeeded in pointing out just how far from such an agenda the emphasis of the Doha round had strayed. Thus it is, they argue, that if Doha were genuinely about the interests of developing countries, then its primary focus would be on reducing trade barriers to exports of labour-intensive goods (particularly textiles and processed foods) as well as agricultural commodities. In the area of services, a development round would logically have to prioritize the movement of workers in lower-skilled vocations such as maritime and construction, and provide easier access to labour markets in developed countries for developing-country workers in professions of obvious export interest to them, such as computer programmers, nurses, etc.⁶⁷ Surely by the time of the cotton fiasco at Cancun and the emptiness of the commitments on this issue that emerged from the July 2004 package, it should have been obvious to everyone that the Doha Round was as little about genuinely addressing the needs of developing countries as previous rounds had been.⁶⁸

This is admittedly not an indictment of the Organization itself, but rather those who continue to misunderstand the true nature of the WTO and the treaty framework that preceded it, the General Agreement on Trade and Tariffs. It is true that both the preamble to the GATT and the Marrakesh Agreement establishing the World Trade Organization explicitly and deliberately mention that one of the objectives pursued by these initiatives was and continues to be "raising standards of living, ensuring full employment and a large and steadily growing volume of real income and effective demand".⁶⁹ It is equally true that the preamble to the Marrakesh Agreement goes even further by stating "there is a need for positive efforts designed to ensure that developing countries and especially the least developed among them, secure a share in the growth of international trade commensurate with the needs of the their economic



Delegates to the Eighth WTO Ministerial Conference in Geneva, Switzerland from 15-17 December 2011; source: WTO

⁶⁷ See Stieglitz and Charlton (op. cit.) at p. 3.

⁶⁸ See for example, Timothy E. Josling, Stefan Tangermann and T.k. Warley, *Agriculture in the GATT*, MacMillan Press, 1996.

⁶⁹ Second recital of the Preamble to the GATT.

development".⁷⁰ Nevertheless, this should in no way be misconstrued by anyone as meaning that the WTO is intrinsically geared towards achieving development outcomes. After all, the preamble to the Marrakesh Agreement also speaks of "allowing for the optimal use of the world's resources in accordance with the objective of sustainable development, seeking both to protect and preserve the environment"⁷¹, but nobody in their right minds would ever contend that the WTO is an environmental organization.⁷² Economic growth was always one of the intended benefits (perhaps even the principle objective) of both the GATT and the WTO, and it was always to be achieved first and foremost by lowering trade barriers and eliminating discrimination in general (and not primarily for the benefit of developing countries). Whether or not this process serves the interests of developing countries was always going to be contingent on developing countries themselves and how well they understood and effectively managed to co-opt the organization's processes and dynamics to suit their own ends.⁷³ This last assertion might sound somewhat callous and probably ignores to a certain extent the distribution of power underlying how the WTO conducts its business, but the haphazard fashion in which many developing countries approach their membership of the WTO in many ways makes them their own worst enemies.

Nobody should mistake the fact that international economic policy and trade negotiations are a contact sport. The WTO is little more than the referee. Those countries that allocate sufficient

Nobody should mistake the fact that international economic policy and trade negotiations are a contact sport. The WTO is little more than the referee.

political capital, personnel, technical expertise and monetary resources to playing this game seriously will do better than those countries that do not. To be sure, many developing countries and LDCs in particular are not in a position - due to considerable resource constraints - to pay proper attention to

what is going on at the WTO, but this is not due to some failure on the part of the WTO as an organization. Rather this is just the nature of the world we live in, where some people and countries are endowed with more and others have less. We do not bemoan the fact that no LDC has ever won the World Cup, we just accept that this is probably due to the fact that other

⁷⁰ Third recital of the Preamble to the Marrakesh Agreement.

⁷¹ First recital of the Preamble to the Marrakesh Agreement.

⁷² In fact many would (incorrectly) contend just the opposite.

⁷³ Some would even argue that the kind of policy constraints imposed by WTO rules are even inimical to the process of development; see for example, Ha-Joon Chang, *Kicking Away the Ladder: Development Strategy in Historical Perspective*, Anthem Press, 2002; or more recently, Joe Studwell, *How Asia Works: Success and Failure in the World's Most Dynamic Region*, Grove Press, 2013.

countries - including large developing countries - are just much better resourced and thus better able to consistently field strong teams.⁷⁴ Do we blame FIFA for this "injustice"? Of course not. Despite their resource constraints, and the myriad of more pressing policy priorities that developing countries and LDCs face, there are arguably many ways for them to be more effective at the WTO than they have been before and during the Doha Round. The haphazard way in which the Cotton 4 approached this issue is a glaring example: If they had pursued a dual track of litigation AND negotiation, they would arguably at least be hundreds of millions of dollars richer by now, rather than just disgruntled.⁷⁵

Having said this, it is important not to conclude that the WTO is an organization that cannot achieve development outcomes, since it can and often does. But it should be borne in mind that development is only likely to become the WTO's primary focus once developing countries start writing the work programs for future negotiating rounds, rather than letting developed countries do this for them (which is what happened at Doha). Whether developed countries will let developing countries do this is another matter entirely, and will of course depend on what developing countries are prepared to give developed countries in return. After all, the WTO is nothing if not a tit-for-tat organization, a *negotiating forum*, a place where countries *exchange* concessions.

3.3 Things the WTO Does Well

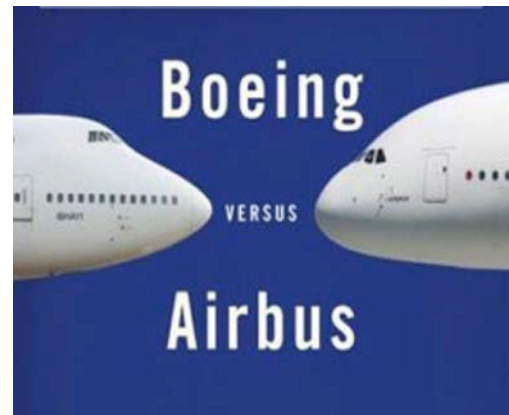
It should be relatively clear to most observers that as the former Director General Mike Moore liked to repeat, the dispute settlement system is undoubtedly the jewel in the Organization's crown. Compared to the gridlock that the GATT system of dispute settlement succumbed to when the US tried (unsuccessfully) to use it in the 1980s to pry open European agricultural markets that had been closed by the Common Agricultural Policy, the WTO's dispute settlement system is a remarkable piece of international treaty making and has served its purpose surprisingly well. Only a limited number of disgruntled elements would probably argue that the dispute settlement system needs a radical shakeup beyond a bit of tinkering at the margins, as is currently going on in the negotiations on DSU reform. Although there have been a small number of cases that have shown what the limits of the dispute settlement system are in forcing countries to make changes that are politically difficult for them, overall, it is probably

⁷⁴ The FIFA World Cup has only ever been won by the following eight national teams: Brazil, Italy, Germany, Argentina, Uruguay, France, Spain, England; LDCs appear to qualify quite infrequently, but have started to do so more commonly over the last 2 decades; see: David Arscott, *The World Cup, A Very Peculiar History*, Salariya, 2012.

⁷⁵ Brazil doggedly litigated against the US cotton subsidies and refused to simply let the US off the hook, so that in the end, the US ended up agreeing to pay USD 147.3 million to Brazilian cotton farmers, a most unusual remedy for the WTO; see: Randy Schnepf, *Brazil's WTO Case Against the U. S. Cotton Program*, Congressional Research Service, 2010, at: www.fas.org/sgp/crs/row/RL32571.pdf (visited on 2 August 2013).

safe to say that the consensus is certainly leaning in favour of preserving and strengthening the dispute settlement function of the WTO.

Another thing that the WTO has proven exceedingly useful for is monitoring how Members are doing in terms of implementing their commitments. This happens under various instruments, the most prominent of which would have to be the Trade Policy Review Mechanism, which subjects all WTO Members to a periodic review of their trade regimes and their compliance with WTO rules. Another more recent innovation in this area has been the trade monitoring reports, one of which is performed by the Secretariat alone and covers "trade-related developments covering the whole WTO membership and observers", the other of which the WTO does in collaboration with the OECD and UNCTAD, and which focuses on "trade and investment measures taken by G-20 economies".⁷⁶ Finally, the various committee meetings that take place under the specific mandates set forth in different WTO agreements are also a very useful forum for Members to monitor and discuss trade related issues. One example of this (among many) is the Committee on Technical Barriers to Trade, which meets regularly by virtue of Art. 13 of the TBT Agreement. At these meetings, representatives from WTO Members can raise trade-related concerns of activities by other Members who have enacted or plan to enact technical regulations, standards or conformity assessment procedures that threaten to have a trade impact on exports of interest to them. Thus it was that at the meeting of the TBT Committee that took place on 27-28 November 2012, Members discussed thirty-six different new and recurring trade concerns, including a proposal to introduce plain packaging for tobacco products in New Zealand, and import permit regulations for horticultural products from the Ministries of Agriculture and Trade in Indonesia.⁷⁷ Thus monitoring is undoubtedly an important function of the WTO that nobody would wish to see abolished.



Boeing vs Airbus; one of the costliest and bitterest commercial rivalries that also culminated in a WTO dispute over subsidies. Rules on subsidization are best negotiated multilaterally rather than in PTAs; source: Vintage Books

Another area where there is arguably a large degree of consensus among economists, trade lawyers and policy wonks is that a number of issues exist where negotiations only really make sense when done at the multilateral level and thus at the WTO, the most important of which

⁷⁶ See: http://www.wto.org/english/tratop_e/tpr_e/trade_monitoring_e.htm (visited on 2 August 2013).

⁷⁷ See Committee on Technical Barriers to Trade, Minutes of the Meeting of 27-28 November 2012 (G/TBT/M/58).

would have to be subsidies. After all, there's no reason to negotiate reductions in subsidies vis-à-vis a single trading partner and to make difficult political-economy cuts to such programs when they will ultimately do little more than improve the market access of another subsidizing country not party to the same reduction commitments. The same is arguably true for rules on intellectual property rights, prudential regulations, currency manipulation, trade-related environmental measures and myriad other economic policy areas that are susceptible to international arbitrage as economic actors seek out jurisdictions with the lowest possible compliance costs. On issues such as these, we need an international organization that can act as a forum for negotiations that delivers enforceable outcomes, and we are in fact lucky to already have one in the form of the WTO (at least for some of these issues).

Finally, the thing that the WTO does well is balancing out (to an admittedly limited albeit very real extent) the power asymmetries that naturally arise when big, economically powerful and well-organized countries come to the same negotiating table as small, economically weaker and less well-organized countries. Think of the miss-match in economic strength and trade policy expertise that is at play when a developing country like the Philippines negotiates an economic partnership agreement with Japan, or Columbia negotiates an FTA with the United States. It is arguably power imbalances such as these that allow the EU to get away with concluding preferential trading arrangements with many smaller trading partners that explicitly carve out important areas like contingency protection from the dispute settlement provisions of these agreements. The "victory" that developing countries scored over the EU at Cancun, ultimately forcing Pascal Lamy to abandon any of the Singapore Issues except the one that developing countries were favourable to would be unthinkable in a more limited setting where one or a handful of developing countries face off against the EU as the sole hegemon in the room. The ability of the WTO to create a more level playing field (an admittedly tired and over-used cliché) for developed and developing countries has been analysed and documented in a number of articles including a very insightful one by Cristina Davis of Princeton in 2005, that compares the differences in outcomes between Vietnamese catfish exporters (when Vietnam was not yet in the WTO) and Peruvian exporters of sardines when faced with trade barriers in rich-country export markets.⁷⁸ The WTO undoubtedly still has its uses in this respect and we cannot afford to do without it.

⁷⁸ Christina I. Davis, Do WTO rules create a level playing field? Lessons from the experience of Peru and Vietnam, in: John S. Odell (ed.), *Negotiating Trade, Developing Countries in the WTO and NAFTA*, Cambridge University Press, 2006, pp. 219 - 256.

Conclusion

As WTO Members shuffle hesitantly towards Bali, we remain unsure as to whether this will finally be the Ministerial Conference that draws a line in the sand and thrusts a stake into the heart of the Doha Round, thus terminating it for good, or whether we are in for more drama-laden histrionics and the frustration of yet another collapse, or whether this meeting will be used to consolidate the progress made up to now and put the Organization back on a path towards achieving some modest albeit still positive outcomes. The truth is that nobody really knows what awaits us at Bali, and the language coming out of Geneva, particularly the statements of the US Ambassador Michael Punke, give one little enough reason for optimism.⁷⁹

It is not yet clear whether it has dawned on the host country that they have unwittingly assumed a very important responsibility in shepherding this very troubled round a little closer



The incoming WTO Director General Roberto Azavêdo of Brazil;
source: Wikimedia Commons

to its conclusion (or at least helping to avoid another damaging collapse). There are probably no more than a very small handful of people at the Ministry of Trade in Indonesia who are able to discuss the draft negotiating texts in much depth and would be able to pronounce themselves authoritatively upon the reasons behind the different square brackets (i.e. the dynamics preventing convergence among WTO Members on the various issues). In any event, those officials that are able to do this are certainly not predominant among the Ministry's senior-level management (at least not for now). This is a lacuna that will need to

be addressed going forward, and one that the MOT is likely to actively and enthusiastically address once everyone has returned to work after Eid (middle of August).

To be sure, the new Director General Roberto Azavêdo is no Supachai Panitchpakdi and if anyone can steer the Bali meeting and ultimately the Doha Round to a positive outcome, it is probably him. It will be interesting to observe how Azavêdo uses the limited time he will have in

⁷⁹ See Statement by U.S. Ambassador to the WTO Michael Punke at a Meeting of the Trade Negotiations Committee at the World Trade Organization dated 11 April 2013 at: <http://www.ustr.gov/about-us/press-office/speeches/transcripts/2013/april/amb-punke-statement-wto-tnc>; this statement was followed a couple of months later with one only slightly more optimistic, see Statement by Ambassador Michael Punke at a Meeting of the World Trade Organization's Trade Negotiations Committee dated 22 July 2013, at: <http://www.ustr.gov/about-us/press-office/speeches/transcripts/2013/july/amb-punke-WTO-tnc> (visited on 3 August 2013).

office before the Bali meeting commences, but it will undoubtedly be a mixture of managing expectations while trying to edge Members towards consensus. In many ways this is slightly reminiscent of the Tokyo Round, which also largely took place through troubled economic times and which failed to achieve outcomes in a few important areas, such as agriculture and safeguards. Nevertheless, GATT Contracting Parties and the GATT Director General Olivier Long were able to snatch victory from the jaws of defeat and conclude the round with some noticeable successes.⁸⁰ It is more than remotely likely that history will repeat itself here, and that Bali may just provide the impetus needed to finally put all of us out of our Doha-related misery.

⁸⁰ See, Gilbert R. Winham, *International Trade and the Tokyo Round Negotiation*, Princeton University Press, 1986.

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