

CanadaWatch

PRACTICAL AND AUTHORITATIVE ANALYSIS OF KEY NATIONAL ISSUES

SPECIAL DOUBLE ISSUE—FROM DOHA TO KANANASKIS: THE FUTURE OF THE WORLD TRADING SYSTEM AND THE CRISIS OF GOVERNANCE

What is the WTO for?

GLOBAL GOVERNANCE

There has been a lot of discussion about two issues: to what extent can or should the WTO contribute to global governance by expanding its rule-making functions into new areas, and can the new multilateral trade round do enough to help lift the WTO's poorest members out of poverty? Does it deserve the title "the Doha Development Agenda"?

With respect to the first issue, many critics of the WTO have demonized the organization as a stealthy conspiracy between multinational companies and unaccountable

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bureaucrats to trample the world into submission. Among other things, they say it stands accused of despoiling the environment, pauperizing entire nations, and even of killing people. Not bad going for an organization with 500 permanent staff and an annual budget of less than \$90 million. World domination never came so cheap.

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Reflections on global economic governance

THE NEED FOR GLOBAL ECONOMIC GOVERNANCE

The emergence of a global economy implies the need for some form of global economic governance. The same functions that governments perform at the national level somehow must be performed at the global level. These include maintaining the supply of "public goods" that markets do not supply—for example, macro-economic management for global economic stability (now imperfectly performed by the IMF (International Monetary Fund), BIS (Bank for Inter-

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national Settlements), and G7 finance ministers; the formulation and policing of rules for economic exchange, both internationally and, to some degree, domestically (now imperfectly performed in the WTO); and the setting of a floor below which levels of human living must not sink (now im-

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be needed. However, experience with the TRIPS agreement has shown how hard it is to change agreed rules in order to re-balance a once agreed upon WTO agreement. Likewise, experience with GATS article I:3 has shown how difficult it is for members to acknowledge the need to clarify a highly ambiguous provision.

A THOROUGH AND COMPREHENSIVE ASSESSMENT AND EVALUATION PROCESS IS CRITICAL

Thus, WTO members should not rush blindfolded into accepting binding specific commitments or agreeing upon new rules and disciplines. Rather, members should precede any negotiations with a thorough and comprehensive assessment and evaluation process, reviewing both positive and negative effects of services liberalization with a view to promoting key environmental, social, and development goals. Only such an assessment will provide negotiators with the much-needed information to achieve a sustainable and well-balanced outcome of negotiations. The need for such an assessment is already acknowledged in the GATS agreement itself, which states in article XIX:3, that for the purpose of establishing negotiating guidelines and procedures, members "shall carry out an assessment of trade in services."

Unfortunately, members have not succeeded in carrying out a satisfactory assessment before the establishment of the negotiating guidelines and, therefore, paragraph 14 of the March 2001 guidelines makes assessment an ongoing activity of the council. More importantly, the guidelines also state that negotiations shall be adjusted in light of the result of the assessment. Indeed, when comprehensively looking at the pros and cons of services trade liberalization as well as at the regulatory challenges arising in that context, GATS assessment could provide valuable input into the negotiating process and assist negotiators to avoid some of the pitfalls and dangers described above. Assessment will become even more crucial with the request/offer phase rapidly approaching.

OPEN, TRANSPARENT NEGOTIATIONS

In addition, both the assessment as well as the negotiating processes should be conducted in an open and transparent way. Unfortunately, this is not yet the case. Both a recent two-day WTO symposium on services trade assessment as well as the ongoing negotiating and working sessions of the CTS (Council for Trade in Services) and its subsidiary bodies are closed to the public. Also, while the WTO Secretariat appears to increase transparency by regularly up-

dating a list of most recent negotiating documents on the WTO web site, many of the equally important background documents, informal "job-" or "non-papers" and the minutes of the relevant meetings remain largely inaccessible for the interested public.

Even greater transparency issues are likely to arise once the next phase of the bilateral request/offer negotiations start. Up until now, many WTO members have agreed to make their initial expressions of interest for the request/offer phase public. However, to date, several WTO members have also indicated that the more detailed requests and offers, as well as initial agreements among negotiating partners will remain secret.

Given the broad implications that a country's GATS commitments have upon its regulatory freedom to enact policies aimed at attaining legitimate objectives, depriving the public of access to a country's negotiating position seems fundamentally undemocratic and thereby raises serious concerns. In that vein, it is crucial that both the June 2002 request and March 2003 offers, as well as any intermediary conclusions, agreements, or changes of negotiating positions are readily communicated and available to the interested public and that WTO members' negotiating positions reflect the concerns of all affected constituencies. 

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Many of the criticisms are based on the mistaken notion that the WTO has autonomous authority that overrides that of its individual members. Of course, in reality, it is a voluntary arrangement for negotiating and implementing contracts between sovereign powers. The WTO as such has no mechanisms of its own to coerce or impose outcomes on governments. It is up to the individual member nations to join, and they are free to pull out—though so far none has done so.

Behind many of the attacks lies resentment at the WTO's binding dispute procedures. Many recent dispute rulings have been castigated as undemocratic intrusions into national sovereignty. However, critics are divided about solutions. Some simply want to demolish the organization. For others, undoubtedly the majority, the problem is less with binding rules as such, than the purposes they are intended to serve. Their chief interest appears to be in getting the rules re-written and interpreted

to uphold priorities other than trade. Indeed, some that assail the WTO as unaccountable and dictatorial appear eager to appropriate its machinery to promote diverse and sometimes conflicting alternative agendas.

At the same time, the role of WTO rules has recently aroused growing controversy among its members. First, there are developing countries' complaints about implementation, above all of the TRIPS (Trade-Related Aspects of Intellectual Property Rights) agree-

ment. And, second, because of demands by the European Union, with Japanese support, for negotiations on rules in “non-trade” areas including investment and competition, and a “clarification” of rules on the environment. More surprisingly, WTO Director General, Mike Moore has recently taken a public position in the debate, saying it is in developing countries’ economic interest to subscribe to agreements on the four Singapore issues.

TRADE RULES: PROSCRIPTION VERSUS PRESCRIPTION

The European Union failed to get its full wish list accepted in Doha. However, it would be premature to conclude it has given up the struggle. Doha ducked tough decisions on whether, and in what form, to proceed with negotiations on the Singapore issues and the environment, remitting them instead to the fifth ministerial. That may have set the stage for a showdown, even a crisis, in Mexico next year.

The most eloquent advocate of expanding WTO rule making is Pascal Lamy the EU’s trade commissioner. He argues that rules on non-trade issues are needed to enable the WTO to “harness” globalization—in the sense of controlling or taming it. That, he suggests, is not only a worthwhile objective in itself, but necessary to make further trade liberalization palatable to skeptical public opinion.

Many outside the EU have dismissed such arguments as a cynical ploy to fend off pressures for agricultural liberalization by tying negotiations up in knots. But the EU’s position is also clearly influenced by its experience in formulating harmonized rules and standards for its internal market, and by a belief that its model should be applied to the wider world. This view is supported not only by France, where political and public opinion is still struggling to come to terms with globalization, but also by countries with such impeccable free trade credentials as Sweden.

Such thinking marks a shift away from the GATT model, in which rules

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were essentially *proscriptive*. Many of the rules the European Union has in mind would be heavily *prescriptive*. They would also not be designed to underpin market access undertakings, but would involve entering into additional commitments.

The WTO has, of course, already moved some way toward the prescriptive approach. It is evident, for instance, in the reference paper on regulatory principles in the telecommunications and SPS agreements (Agreement of Application of Sanitary and Phytosanitary Measures). But its most notorious expression is the TRIPS, which is both prescriptive and enshrines rules only tenuously related to market liberalization.

TRIPS: A CAUTIONARY LESSON

The recent bitter disputes about TRIPS should give grounds for caution, particularly as an object lesson in trade negotiators’ limitations as rule makers. Not only are they poorly equipped to deal with highly technical issues outside trade; but the dynamics of complex multilateral negotiations also tend to breed second- or third-best outcomes. When negotiators cannot agree, they habitually paper over their differences with woolly compromises and semantic ambiguities that leave unclear what, if anything, they really meant.

Such lack of clarity mattered less in

the old GATT, which had more built-in escape valves for avoiding the strict application of rules. But in the WTO, it has increasingly left dispute panels and the appellate body open to damaging charges that they are making, rather than merely *interpreting*, rules. Such accusations are now heard not just from NGOs, but from jurists and sections of the US Congress. Loading the apparatus with yet further layers of poorly thought-out rules would risk heightening, rather than allaying, public resentment and mistrust of the organization.

NON-TRADE ISSUES

In reality, much of the pressure to bring non-trade issues into the WTO arises not because it is institutionally well constituted to deal with them, but simply because other international forums have failed to provide answers acceptable to the petitioners. Labour standards and the environment are cases in point.

Some of these failures arise not because alternative forums do not exist, but because of internal contradictions and conflicts in national policy making. Governments frequently face one way on trade policy and another on other issues. In the negotiations on the Cartagena biodiversity protocol, some countries took positions diametrically opposed to those they have long fought for in the WTO. This incoherence is at the root of the potential conflict between WTO rules and multilateral environmental agreements. While such tensions persist at the national level, the idea that they can be reconciled in the WTO appears fanciful.

Finally, there are questions about how far efforts to impose uniform standards of conduct through more active prescriptive rule making will achieve their advertised purpose. As many commentators have pointed out, imposing minimum labour standards on poor countries would be more likely to rob them of their chief source of comparative advantage—low costs—than to improve their workers’ living standards.

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Then again, perhaps that is the real agenda of some of those calling for such rules in the WTO.

Or take competition policy. While it clearly overlaps in certain areas with trade policy, advocates of WTO competition rules appear less concerned with clarifying the relationship than with strengthening and harmonizing national approaches to anti-trust enforcement. The European Union, for instance, talks of fostering an international “competition culture” by elaborating WTO rules and principles for the conduct of policy.

Surely, this is going about the task the wrong way round. About 80 countries currently have competition laws, and their number is growing steadily. Yet few, even in the industrialized world, have agencies with the resources, experience, and institutional maturity to apply them effectively. Even within the European Union, which has supranational competition laws, quality and standards of implementation vary widely among countries. What likelihood is there that WTO rules would be any more effective in encouraging uniformity?

What is most needed to create a “competition culture” is more education, learning-by-doing, and the gradual development of mutual trust between regulators. That seems more likely to be achieved informally through dialogue and peer pressure in the new international competition network than through the more formal mechanisms of the WTO, in which anti-trust enforcers are not even represented.

If the case for expanded global rule making in the WTO remains to be made, what are the prospects for what many consider its mainstream role, opening markets?

THE NEW DEVELOPMENT AGENDA

Much emphasis in Doha was placed on the development dimensions of the new round. This reflected awareness among richer WTO members that being

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seen to respond to poorer ones’ complaints about inequities in the multilateral trade system was indispensable to winning their support for a round. Indeed, one of the most striking features of Doha was how many members of the WTO’s formerly silent majority discovered they had a voice.

But how, in practice, will the new Development Agenda differ from earlier rounds? Axiomatically, all trade liberalization aims to promote economic development. Making that objective explicit seems to promise more, implicitly fuelling expectations that trade will deliver greater benefits to developing countries than in the past. It has also created an onus on the WTO’s richer members to do what is needed to deliver the goods.

The agreement on reinterpretation of TRIPS, despite strong counterlobbying by western pharmaceutical companies, was one response. US willingness to improve Pakistan’s access to its textiles market, albeit by a niggardly amount, was another. Since Doha, rich countries’ efforts to prove their bona fides have focused largely on the search for “capacity-building” measures, to equip the least developed to negotiate and operate more effectively in the organization.

There is certainly much that could be done. Many least-developed coun-

tries lack even the basic tools of information gathering and analysis needed to participate fully in the WTO. Some cannot even afford permanent Geneva representation.

TRANSLATING TRADE LIBERALIZATION INTO ECONOMIC GROWTH

Nonetheless, whether strengthening negotiating capacity is a sensible use of scarce development resources remains a much-debated question. Not only is it costly, but it does not tackle poor countries’ biggest challenge—how to translate the opportunities offered by trade liberalization into economic growth. This is a huge and unresolved conundrum. Colombia, for instance, has some excellent trade negotiators. Yet all their efforts to win better access to foreign markets have failed to contribute measurably to the performance of its economy.

That in no way excuses rich-country protectionism, and the fact that most OECD (Organisation for Economic Cooperation and Development) members impose much higher tariffs on imports from developing countries than on trade with each other. Nor is it a reason for not lowering their barriers. Politically, without a clear signal that rich countries are decisively ready to open their markets, particularly for agricul-

tural products, textiles, and footwear, the Doha Round risks failure.

It is, however, not clear how far such action will lead to real economic benefits for the very poorest. The 48 least-developed countries account for 0.4 percent of the world exports, and Africa's share has continued to slip since the Uruguay Round, even though developing-countries' exports have grown substantially overall.

The benefits of any such liberalization in the Doha Round may turn out in practice to be very unevenly spread. Brazil's efficient agriculture sector looks likely to profit from better access in the United States and Europe, but what about Tanzania or St. Lucia? Some countries could even end up worse placed than before. China's surge in exports to the United States has been largely at other developing-countries' expense, and it stands to do better still once the multifibre arrangement (MFA) ends. Some competitors, such as Bangladesh, are already talking about trying to extend the MFA in another form; so as to continue benefiting from guaranteed historic market shares.

Of course, removing your own trade barriers is not a favour you do for others. It is a favour you do for yourself. Economic gains from liberalization stem not from increased exports, but from efficiency improvements stimulated by keener competition from imports. On this score, the high levels of border protection in many developing countries suggest they owe themselves a lot of favours.

But, here again, there are big questions. Although an apparent strong correlation has been traced between growth and economic openness among developing countries, cause and effect are still poorly charted. How far open trade regimes produce growth, and how far they result from it, remains an unsettled argument.

THE ROLE OF DOMESTIC POLICIES

What is clear is that an open trade policy cannot substitute for inadequate and flawed domestic policies. And, too

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many poor countries are poor because they lack the domestic conditions needed to support sustained growth. At a minimum, these conditions include political stability, functioning public institutions and the rule of law, sound macroeconomic management, and some basic level of market regulation. Yet, in Africa, as many as a third of that continent's countries have latterly been engaged in ruinous wars. Some are, quite simply, failed states, ruled by corrupt elites concerned solely with preserving their own power.

Of course, there are exceptions. Some, such as Uganda, have made courageous efforts to lay the foundations for growth and open up to the world. Continuing trade liberalization clearly can contribute significantly to their future economic development. But, in too many African nations, a half-century of international development efforts have failed to prevent a downward economic spiral. It is unrealistic to suppose that this trend can be reversed simply by endowing poor countries with better trade negotiating and administrative resources; just as it is plainly wrong to condemn trade liberalization when it fails, because of other factors, to enhance prosperity.

All of this raises serious questions about the prospects for this round. Outside the field of agriculture, achieving the trade-offs necessary for a workable bargain is likely to require more concessions by developing countries than by

developed ones, because the latter have the highest barriers. But without greater assurance that liberalizing trade will bring tangible economic returns, how many will be prepared to move? And even if the round is successfully concluded, if benefits fail to materialize, there is a risk of a relapse into bitter arguments about the alleged inequities of the multilateral system.

THREE LESSONS FOR THE WTO

First, whether in rule making or development matters, realistically knowing what the WTO can and cannot achieve is important. It can no more produce miracles than coerce sovereign governments into taking particular actions. At best, the multilateral system can nudge them further down a path they were already disposed to follow and buttress domestic reforms. But the driving impetus must come from within countries themselves.

Second, as multilateral trade policy extends further "beyond the border," frictions at the interface are likely to become more frequent. How these can be contained, and the extent to which they require reform of the WTO and its disputes settlement mechanisms, is one of the biggest longer-term questions confronting trade policy makers. These frictions risk being made more severe if the response is to try to turn the WTO into an institution for dealing with a range of global governance issues only indirectly related to trade. That could lead to paralysis and further recrimination.

The final lesson is to beware of building up exaggerated expectations. Equipping all the WTO's members to participate in its deliberations is clearly desirable to ensure its proper functioning and management. But giving the impression that it will automatically assure them of the benefits of more open world trade is a formula for disillusionment and disenchantment. Whatever happens on the way from Doha, the WTO cannot afford a return to the corrosive bitterness and resentment that set in after Seattle. 