

Crossing the river by feeling the stones: where the WTO is going after Seattle, Doha and Cancun

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ABSTRACT

When we ask where the WTO is going after its debacle in Seattle its success in Doha, and the failure in Cancun, we find neither imminent collapse nor a new grand design. My analysis of the difference between these ministerial meetings separates the inter-linked themes of inadequate WTO procedure, the evolving trade policy agenda, and the changing role of developing countries. The first frame is the effort to make the institution *stronger* by improving internal and external transparency. The second frame is about the demands to *deepen* WTO disciplines in the era of globalization, when the meaning of liberalization moves from border measures to domestic regulations. The third frame is about making the WTO *wider*, where the context includes debates on the meaning of 'development'. After exploring these frames, and their implications for where the WTO is going, I speculate on what the Single Undertaking of the Doha round might contain. I use a metaphor to simplify a complex story about the difference between bargaining in incremental time and negotiating in conjunctural time: the WTO is 'crossing the river by feeling the stones'.

KEYWORDS

WTO; trade policy; negotiations; international organization; transparency; developing countries.

The dominant images of the World Trade Organization's Seattle meeting in December 1999 were of rioters in the streets and disarray in the conference hall. The WTO seemed headed for oblivion, or so its detractors hoped. In contrast, the triumphant proclamation of the 'Doha Development Agenda' was the dominant image of the meeting in Qatar in November 2001. Has Doha then banished the specter of Seattle for the organization's supporters? The answer was ambiguous even before the failure of the September 2003

meeting in Cancun, because the contrast between Seattle and Doha is less marked than it first appears: Seattle may have been a meeting that could not succeed and Doha a meeting that could not fail, but the outcome of one meeting is a poor sign of the health of the institutions of the global trading system. Much of the negotiating work anticipated at the 'failed' Seattle meeting subsequently happened anyway, and many of the initial hopes for the Doha round quickly seemed excessive as the negotiators missed all their own deadlines in preparing for Cancun. When that meeting ended with no agreement on a text, some observers blamed EU and US farmers; others credited a new developing country assertiveness manifested in the prominent role taken by the new G-20. Many thought that this latest failure marked a turning point for the WTO. In this paper I try to articulate a more nuanced sense of where the WTO is going after Cancun by using the contrast between ministerials to look at the evolution of the core agenda and the changing role of developing countries. What I find when I look for a sense of direction is neither imminent collapse nor a new grand design, but a continuation of a long process of evolution. I use a metaphor to simplify a complex story, one that might also apply to other international organizations: the WTO is 'crossing the river by feeling the stones'.¹

Ministerial meetings are an obvious thread running through the history of the trading system, beginning with the Havana conference of 1948 that drafted the ill-fated Charter for an International Trade Organization. In its place, the General Agreement on Tariffs and Trade (GATT) was an 'interim' agreement that codified a century's experience of regulating commercial transactions across borders. Most ministerials since the failed GATT ministerial of 1982 have apparently been near catastrophes, yet the trading system is stronger, deeper and wider now than it was a generation ago. The Punta del Este ministerial of 1986 launched the Uruguay Round, the eighth round of negotiations since GATT entered into force on January 1, 1948. Ministerials were subsequently held in Montreal in 1988 to move the round along, in Brussels in 1990 in an unsuccessful attempt to bring it to an end, and in Marrakech in 1994 to sign its Final Act. The WTO, which began work on January 1, 1995, must hold a ministerial council meeting every 2 years. The first, held in Singapore in 1996, consolidated the elements of a post-Uruguay Round work program into a so-called 'built-in agenda'. Geneva (1998) celebrated the fiftieth anniversary of GATT, and began to structure the built-in agenda into the basis for a ninth round of negotiations. Seattle (1999) was a failed attempt to launch the new round; it floundered on the concerns of developing countries that new negotiations were not possible until the results of the Uruguay Round had been implemented. After intensive discussion of these concerns, the Doha ministerial (2001) succeeded in launching new negotiations by broadening the built-in agenda. The fifth ministerial in Cancun (2003) had been intended to ensure that a balanced but ambitious package is possible so that the round can conclude

at a subsequent ministerial meeting as a Single Undertaking, a task that now falls to the sixth ministerial scheduled for Hong Kong in 2005.

Many journalists, officials, and politicians believe that a successful ministerial is one with an agreed text at the end, in part because they see ministerial meetings as episodic self-contained bargains. In the Doha case, the absence of such a text would have been accounted a failure, and after the debacle in Seattle, such a failure would have been said to have damaged the credibility of the WTO. The general economic uncertainty after the attacks on New York and Washington of September 11, 2001 might have contributed to this fear of failure; moreover, after September 11, such a failure would also have been said, rightly or wrongly, to have damaged the credibility of international organizations generally while handing a victory to the terrorists. In addition to the ministers' fear of failure, however, a number of other epiphenomenal factors were important to the apparent success in agreeing on a text, including the personalities of the key negotiators and the way the issues of public health, and the waiver for the EU's latest agreement with its African, Caribbean and Pacific (ACP) partners, affected coalition building. Epiphenomenal factors may explain the fact of an agreed text, but when we try to discover what the text means, we see that the agreement is not a grand bargain but an ambiguous moment in a lengthy negotiating process.

The Doha text is first a statement of the conclusions ministers drew at the end of their biennial conference from their review of the work of the organization as a whole. The declaration covers large issues and small, current bargaining and long-term analysis. The central declaration was the 'Doha Development Agenda' but ministers also approved declarations sought by developing countries on 'implementation'; on subsidies; and on intellectual property and public health.² Paragraph 11 of the main declaration forms a dividing line. Above this line were statements of principle, including sustainable development, transparency, the right to regulate, and the role of the International Labour Organization (ILO) in respect of core labor standards. Below this line is the agreement to undertake 'the broad and balanced Work Programme' that has two elements. The first is a negotiating agenda expanded beyond the mandated negotiations on agriculture and services then already underway. The second is 'other important decisions and activities' meaning work whose relation to eventual negotiations was at best unclear, not least because of the subsequent statement by the Chairman of the ministerial on the meaning of the 'explicit consensus' needed to move to negotiations on certain new issues. As a result, nobody could be sure what the eventual Single Undertaking must contain, nor could anybody be sure when the round will conclude, the ambitious timetable notwithstanding – as subsequent events in Cancun demonstrated.

In the first section of this paper I discuss some of the theoretical ideas about negotiating in conjunctural time that motivate my central metaphor.

The subsequent sections analyze the difference between the Doha success and the Seattle failure in the frames of institutional health, the core agenda, and the role of developing countries.³ Given the travails in Cancun, I offer no predictions in the conclusion, but I do try to suggest how to think about where the WTO is going.

1. CROSSING THE RIVER IN CONJUNCTURAL TIME

My central metaphor is based on the assumption that policy and law arise in diffuse human interaction; only the details and the timing are determined by explicit bargaining. This assumption implies that the WTO always proceeds in a step-by-step fashion, solving problems as they appear in the daily life of the trading system without itself being able to lead the process of change. Many scholars focus on the dispute settlement system in order to understand this evolution. Adjudication and negotiations are both attempts to codify the results of the underlying process of human interaction, but my second assumption is that a focus on ministerials and 'rounds' is the more useful simplification when asking where the WTO is going. This argument also depends on a particular view of the nature of diplomatic time horizons.

To think of crossing the river is to think of time as continuous not discrete. International relations analysts are accustomed to thinking about whether something can be placed in a territorial, security or economic framework, but John Ruggie has argued that time is also an essential framing device. For illustrative purposes he describes three relevant time frames (Ruggie, 1998: 157). The first is an *incremental* frame in which time is a series of discrete units and the social universe is composed of distinct actors and events. In a *conjunctural* frame, time is represented by cycles and analysts focus on the processes that underlie the social universe. Finally when we think in terms of whole *epochs*, we are thinking in systemic units such as ice ages (see also Haas, 1990: 204–5). Which time frame we use has analytic and policy implications. In incremental time, analysts think we know what is at stake, whereas conjunctural time is marked by uncertainty about cause and effect relationships. In epochal time, actors make decisions with unknowable consequences on the basis of limited information. Business people often make their calculations in incremental time, which increases the gulf of misunderstanding with environmental activists thinking in epochal time. Thinking in incremental time may be largely appropriate for bargaining over well-understood WTO issues like market access for goods. It is more problematic for complex phenomena like the impact on traditional social and economic structures of 'development', or for problems that go beyond the territory of a single state, or that have long-run consequences that go beyond the short-run concerns of any current government.

The assumptions implicit in my metaphor lead me to differentiate negotiating from bargaining, unlike John Odell who sees them as interchangeable terms referring to 'a sequence of actions in which two or more parties address demands and proposals to each other for the ostensible purposes of reaching an agreement and changing the behavior of at least one actor' (Odell, 2000: 4). In contrast, I think that bargaining requires known interests that are seen as exogenous, whereas negotiating is an endogenous process of learning, of constituting the elements out of which a bargain can be constructed. Market conditions obviously have a major influence on determining issues, actors and strategies in international negotiations (Odell, 2000: Chapter 3). If 'traded services' are negligible, states would not create the General Agreement on Trade in Services (GATS); countries that are not large traders of such services may have little interest in such negotiations; countries that have complementary export interests may be allies in a negotiation; and so on. But negotiations also create the idea that 'services' are something that can be traded and thus a subject for bargaining. This process of negotiation can be seen as one during which states gradually articulate shared interpretations of events, where these interpretations come to define the identity of the actors, including who is a legitimate actor (which is part of both the internal and external transparency debates discussed below); and the way actors understand their 'interest' (Haas, 1990: 9). In this sense my view differs from the contractualist view of negotiations as bargaining in which an actor's position may change because of the way negotiations alter the incentive structure, but not because it has learned about its own preferences. It also differs from a realist view that negotiations are simply a mask for the way powerful actors dictate terms to others. Negotiations are like common law adjudication: a process of discovery not creation; a process of trying to move out from the solid ground of current law to incorporate new problems within the existing normative framework. In the next section I begin to illustrate this perspective in analysis of how the difference between Seattle and Doha illuminates the health of the WTO.

2. STRENGTHENING THE INSTITUTION

The WTO is experiencing a tension between two fundamental objectives, keeping up with a rapidly evolving global economy, and becoming more inclusive both of developing countries and of civil society. By the time the Doha negotiations conclude, the WTO will have 170 or more Members, ranging from giant economies run on divergent principles, like the USA, the EU and China; through middle-sized but rich countries like Canada and South Korea; to small poor ones like Uganda and Peru. If the round's ambitions are fulfilled, the WTO legal system will be even more complex than it is now. Will it make sense to have common rights and obligations

applicable to such a large and diverse membership? Since the WTO is a 'Single Undertaking' in which Members must accept all of the associated agreements, or none, how can it be democratic? Many officials worry that the WTO must inevitably become a 'two-tier' organization because it will be impossible both to enhance the apparatus of global governance and to become more universal and inclusive, yet everyone wants to avoid fragmentation as bilateral trade negotiations and regional deals proliferate, and everyone wants to benefit from globalization while preserving domestic autonomy. After Seattle, an external and an internal narrative competed as an institutional explanation of the supposed failure. In this section I use those themes to assess whether Doha showed that the institution was stronger, or just lucky.

The *external* narrative about Seattle was that the demonstration in the streets, a manifestation of the new politics of globalization, stopped the meeting. The claim was flimsy at the time, since the protests were more disruptive for the people of Seattle than for WTO delegates. I do not attribute the Doha success, therefore, to the fact that civil society organizations were more apparently marginal in Doha, perhaps because of the remote location. The action of civil society organizations, especially when it is targeted on health or the environment, has changed the context in which many governments work, but WTO remains an intergovernmental organization where the influence of activists is indirect and the effect of protest is limited.

What has affected the WTO is demands to know what is going on across the full range of meetings. Members discussed this external problem from time to time after Seattle, pushed notably by Canada and the USA whose own domestic practices both accommodate and require more openness at the WTO. The most proponents of more openness could achieve at Doha given general resistance was a statement of principle (as opposed to a commitment to further study or negotiations), on more effective and prompt dissemination of information. Some delegates worry that formal openness could lead to more informal secrecy, if unofficial documents proliferate as governments try to maintain negotiating confidences. Making the dispute settlement system more visible to the public and allowing the submission of *amicus curiae* briefs may unduly privilege northern NGOs and industry associations who have more resources, which could upset the balance between Members.

The *internal* narrative about the Seattle failure begins with procedural problems in the conduct of the meeting. Theories of international relations have little place for the role of individuals, yet everyone involved begins a discussion of the difference between Seattle and Doha by talking about the personalities of the leading participants: the Director-General of the WTO who must coordinate the preparations; the Chairman of the General Council under whose responsibility a draft text must be pulled together; the Chairman of the ministerial itself; the EU trade commissioner, who

represents the largest entity in world trade; and the United States Trade Representative, who represents the world's dominant economy. In 1999, an inexperienced Mike Moore had just taken office as *Director-General* after a protracted and divisive election fight. Two years later in Doha, Moore was a known quantity who had good relations with many Ministers, if not the confidence of their officials. In the year before Seattle, the *Chair of the General Council* fell by rigid agreement to an African, and the African group nominated the Ambassador of Tanzania. In an atmosphere poisoned by the fight over the choice of a Director-General, he was unable to bring parties together and so the draft text that he forwarded to Ministers was festooned with square brackets signaling areas where compromise was yet to be found. In contrast, the chair in 2001 was held by the Ambassador of Hong Kong, a widely respected ex-colonial administrator who took risks, forcing issues farther than some Members wanted in a short text forwarded to ministers with few square brackets. The Qatari *Chairman of the ministerial* was excellent, whereas the American at Seattle was incompetent, and tried to advance US interests from the chair. The *US Trade Representative*, Robert Zoellick, and Pascal Lamy, the *EU Trade Commissioner* were both said to be a significant improvements on their predecessors in their ability to work with each other and with other delegations. In short, personalities made a difference at Doha.⁴ The larger claim, however, is that the WTO's internal weaknesses and the difficulties limiting full developing country participation were the real cause of the debacle in Seattle. Was Doha then an improvement on Seattle?

The decision-making structure behind the Doha texts was complicated and non-hierarchical. In Doha the plenary was for show, as always. The real work was done in meetings convened by the 'Friends of the Chair'. The pre-Doha process had isolated the remaining problems into six groups where consensus was not yet firm. Ministers were appointed (on the basis both of regional balance and personal reputation) to hold extensive consultations with the principal protagonists. Developing countries, the majority of the membership, did not work as a single group in attempting to overcome their difficulty in participation. They organized regionally and by common characteristics, sometimes with developed Members. At the outset, the separate but overlapping groups of African countries; ACP states; and Least-Developed Countries (LDCs) sided with India in resisting the launch of negotiations. These groups had a big interest in the ACP waiver,⁵ which had been added to the agenda at the last minute at the request of the Kenyan minister. At the end, all of the small groups were reduced to one 'Green Room' including the major participants in world trade, the 'Friends of the Chair', leading developing countries, and representatives of LDCs and the ACP states.

The Doha process was more representative and more inclusive than any previous GATT or WTO meeting, yet it could not satisfy all Members, many

of whom still felt excluded. When the revised declarations emerged from the Green Room into the Committee of the Whole on the last morning, Ministers were told that the document was now agreed and changes were not possible. The WTO got a text, but that does not mean that Members who either did not understand or did not agree with the text in Geneva in October had changed by the time they finished in Doha in November, nor that everyone was happy with how agreement was achieved. The declaration on public health was not the crucial issue in Doha, except perhaps for Brazil, but the ACP waiver was vital. When LDCs got it, they went away. The lesson is, Doha is no lesson – developing countries were bought. The process was adroit and intelligent compared to Seattle, but it was not an improvement. Subsequent analysis of the problems centered on proliferating informal meetings and the role of a chairman in crafting draft texts. Developing countries claimed that they were not ‘heard’ in the hundreds of hours of pre-Doha meetings because they could not see their ideas in the text, even in square brackets.

The institutional nature of the WTO reflects its evolution from its origins in the GATT, which was an agreement but not an organization. As an informal association of Contracting Parties, with a secretariat limited merely to serving the committees, the GATT was famously ‘Member-driven’. Much of what happens in and through the WTO is a debate about what the current rules mean, whether new rules are needed, and whether certain new subjects are perhaps within the remit of the trading system. Members submit papers suggesting how a topic might be approached; sometimes the secretariat is requested to prepare a background note. The suggestions often offer contrasting models of how states relate to each other in the WTO – proposals can differ on much more than technical details. Rather than presenting their own proposals, developing countries find that scarce analytic resources are too often devoted to understanding what the words mean in the sophisticated proposals coming from the leading countries.

Although the WTO is now a formal international organization, the various Agreements are interpreted by Members alone, and decisions are taken by consensus. The task of knowing where the consensus is to be found usually falls on the Chairman of the relevant WTO body, who is always an official of a Member country. The Chair listens attentively in formal meetings, but often the real business of learning what matters most to particular Members takes place not in meetings of close to 150 people, but ‘in the corridors’, meaning all of the occasions, social and otherwise, in and out of Geneva, when participants have opportunities to talk to each other. One way to structure such conversations is the practice of holding ‘Friends of the Chair’ and ‘Green Room’ meetings. (In the early days of the GATT, the Director-General would call a meeting of the most-interested parties in his board room, known from its color as the Green Room.) The loose

informality of the Green Room, or of the recent 'mini-ministerials', is endemic in collective life, but the Single Undertaking changes the dynamic because every country is potentially bound by every new rule. The challenge is to make the process of aggregating the work of these groups more transparent. Members who do not understand or who were not engaged are unlikely to be able or willing to reproduce a new rule in their own bureaucratic practices. But the WTO consists of 67 bodies, plus the Trade Negotiations Committee (TNC), the two Doha negotiating groups, and the six Special Negotiating Sessions of existing bodies. In 2001, there were almost 400 formal meetings, plus approximately 500 informal meetings and around 90 other gatherings, such as symposia, workshops and seminars. Informal meetings are inevitable: small groups of the people with the most experience or the most at stake, will always work together on understanding issues and finding a compromise. This diplomatic model is based on the implicit assumption that each Member has a substantial trade policy bureaucracy at home able to analyze its country's interests both in its own and in export markets, and able to advance its positions with sophisticated English-speaking representation in Geneva. These demands are difficult for small delegations, and they are almost impossible for the many Members that lack permanent representation in Geneva. Some officials think a constituency approach is the only way that LDCs can extend their limited resources to all meetings.

The bland term 'internal transparency' covers a vital issue, strengthening the WTO as an institution. In Doha, Members confirmed 'our collective responsibility to ensure internal transparency and the effective participation of all Members', but they did not add the issue to the heavy negotiating agenda, described in the next section.

3. DEEPENING THE TRADE POLICY AGENDA

The Doha round is defined substantively, as was the Uruguay Round, by the triangular tension between the old issues of trade in physical things, the new issues of trade in intangibles, and the needs of developing countries. (For a detailed discussion of most of the issues on the agenda from a developing country perspective, see Hoekman *et al.*, 2002.) A comparison of Seattle with Doha explains less here than one might expect, because much of the substance of what was proposed in the draft declaration in Seattle happened anyway. For example, the distinction in the Seattle draft on 'implementation' between issues for immediate action, and issues to be addressed in the first year of negotiations structured the lengthy process of consultations that took place in Geneva. The central hurdle in the Doha process, as it was at Seattle and Cancun, was the creation of a package big enough to interest everyone. It requires considering and enlarging each pole of the triangle, assessing which issues are ripe for bargaining, and

where negotiations might be possible. This section describes the constellation of issues that made Doha possible.

(a) Trade in things

Strengthening the trading system by removing restrictions on trade in goods hardly sounds like the glamorous basis for twenty-first century trade negotiations, yet after eight previous rounds, the potential gains from further multilateral liberalization remain very large, most of all in agriculture.

Negotiations on agriculture began in early 2000 as mandated by Article 20 of the Uruguay Round Agriculture Agreement, the Seattle setback notwithstanding. Doha puts agriculture in a bigger context, therefore enlarging the potential trade-offs with other issues. As in the Uruguay Round, agriculture has to be a package because measures affect countries differently. Some producers need more 'market access' abroad (1), meaning lower foreign tariffs; others would benefit from not having to compete against foreign export (2) or domestic (3) subsidies. These three pillars of the Agreement on Agriculture rather than real liberalization was the major achievement of the Uruguay Round, since support for farmers in OECD countries remains high. This time, many countries, especially in Latin America, will not be satisfied without substantial liberalization.

Agriculture was contentious at Doha as it had been at Punta and at every subsequent ministerial. The text agreed at Doha hardly changed from the draft prepared in Geneva, despite the high public profile of the disagreements among ministers. The two stumbling blocks illustrate past and future problems. In describing the three pillars, ministers noted in paragraph 13 that they were not 'prejudging the outcome of the negotiations'. They easily agreed to use the word 'substantial' to describe the desired 'improvements in market access' and the 'reductions in trade-distorting domestic support' but it was agonizing to reach the eventual compromise (whose exact meaning remains debatable) of aiming for 'reductions of, with a view to phasing out, all forms of export subsidies'.

The new stumbling block was the so-called 'development box', a form of Special and Differential treatment. Negotiators group classes of policy actions into boxes for convenience. The red box contains export subsidies while trade-distorting domestic subsidies are described in the amber and blue boxes. Supposedly non-trade distorting domestic support when properly placed in the 'green box' is immune to challenge in the dispute settlement system. The difficulty is that the illustrative list of such policies in the Agreement contains policies found in OECD countries, who are the principal users of its provisions. At first developing countries proposed a 'food security' box but that term was both too limiting and open to abuse by developed countries. OECD countries are not enthusiastic about the proposal, but the development box received little support even from some

other developing countries because it runs counter to the long-term objectives of the agriculture negotiations, and might even harm south–south trade.

The biggest potential beneficiaries from the negotiations on non-agricultural market access (known as NAMA) are developing countries, not least because some of the highest remaining tariffs are applied by developing countries on trade with each other. They will also gain from reductions in ‘tariff peaks’, which are relatively high tariffs, usually on ‘sensitive’ products like textiles, and from reductions in ‘tariff escalation’, in which higher import duties are applied on semi-processed products than on raw materials, and higher still on finished products. Average tariffs are now low in OECD countries, but they are skewed so that poor consumers pay high taxes on consumption of goods from the poorest countries (e.g. cotton textiles) while better-off consumers pay low taxes on imports of luxury goods from other rich countries (e.g. silk lingerie). Progress has been good in this area, with considerable analytic work on developing an acceptable tariff cutting formula. The chairman’s modalities paper was not accepted in May 2003, but it provides an interesting basis for negotiations, since it proposes a single formula approach that manages to reduce rates more for developed than for developing countries, thus increasing access for all while not insisting on strict reciprocity.

(b) Trade in Intangibles

Governments mostly regulate trade in goods at the border, but the flow of intangible trade is usually altered by domestic regulation, which leads to worries in conjunctural time about the ability of the state to meet the regulatory objectives of its citizens.

Trade in services was the easy intangibles issue at Doha, despite having been one of the most contentious issues at Punta when some developing countries were apparently not even convinced the topic belonged within the trading system. Since then developing countries have realized that they have much to gain both in more assured access to foreign markets and in benefiting from competitive producer services in their own markets. As mandated by the Uruguay Round, in 2000 Members began negotiations on how to strengthen the rules framework of the GATS, and then extend sectoral liberalization. Developing countries have been active participants making numerous negotiating proposals, especially with respect to ‘movement of natural persons’, or labor migration, the form of increased market access that they are least likely to see, and that would offer them the most potential benefits. After Doha, Members were required to develop requests and offers for the market access part of the services negotiations, but that is easier for the few developing countries that have consultative mechanisms that allow officials to see national interests and trade-offs from the

standpoint of users, exporters and incumbent producers. Over 30 developing countries presented their 'requests' for new services market access in 2002, but none met the March 2003 deadline for making 'offers' of the liberalization they would be willing to undertake.

In contrast to the acceptance of services, the Uruguay Round Agreement on *Trade-Related Aspects of Intellectual Property Rights* (TRIPs) is now one of the most controversial parts of the WTO. The high cost of essential medicines, notably for responding to the AIDS catastrophe, made TRIPs a focal point for civil society lobbying and developing country demands. Ministers stress in the Doha declaration that it is important to implement and interpret the TRIPs Agreement in a way that supports public health by promoting both access to existing medicines and the creation of new medicines. The TRIPs Council struggled for 2 years to find a solution to the problems countries may face in making use of compulsory licensing if they have too little or no pharmaceutical manufacturing capacity. Members only agreed just before Cancun on a form of words that would reassure the mostly American pharmaceutical companies who are nervous that such licenses will be used only for major diseases (AIDS cocktails are acceptable, but not Viagra), and only for countries who otherwise would not have reasonable access to essential medicines. The other big TRIPs issue, protection for Geographical Indications, is of increasing importance to the EU, which their trading partners find surprising – perhaps the EU want to find a new way to protect their most vulnerable farmers? The central ambiguity of TRIPs is not under discussion in the Doha round – why is WTO being asked to enforce monopolies instead of breaking them down?

At the Singapore ministerial in 1996, Members launched preparatory work on four new issues designed to deepen the WTO. After 6 years, when they arrived in Cancun Members were nowhere near a consensus on whether or how to proceed to negotiations on these 'Singapore issues'. The Doha declaration contains largely identical wording for all four, agreeing that analytic work will continue, but a decision to launch negotiations would only be taken later. Inability to agree on these issues was certainly a factor in the breakdown at Cancun.

The most prominent Singapore issue, *investment*, was the centre of an international political drama when civil society organizations tried to disrupt the OECD's attempt to negotiate a Multilateral Agreement on Investment, and the issue remains controversial. The question at WTO is whether a horizontal agreement covering all trade is needed, or whether it would be better to strengthen and perhaps add to the existing vertical agreements like that on Trade-Related Investment Measures (TRIMs) or the GATS provisions on 'commercial presence'. For now developing countries in particular remain wary of a grand design for investment, suspecting that the only reason for wanting to include it in the WTO is the presence of a strong dispute

settlement system. They are also skeptical of the three other Singapore issues. Why, they ask, should WTO dispute settlement apply to the 'good governance' aspects of *competition policy, trade facilitation, or transparency in government procurement*? It is unfortunate that the issues were linked, however, because transparency in government procurement and trade facilitation are easier, and both matter for any manufacturer trying to create complex supply chains.

I include the negotiations on *trade and the environment* under intangibles, even though the measures in question affect trade in goods, because the negotiations turn on the question of appropriate domestic regulation. The advanced economies want to protect so-called 'social regulation', notably environmental and labor standards, but northern social regulations address problems that many developing countries do not yet have. The Doha text does not say much beyond what is in the existing WTO work program, and what it says is cautious. Unlike the Singapore issues, where the intent is to create new WTO disciplines, the environment negotiations mandated by Doha only aim at clarifying how WTO rules fit with those of other international organizations, the Multilateral Environmental Agreements, and it does not propose to link those rules to WTO disciplines.

It should be evident by now that the changing role of developing countries is a major factor affecting the evolution of the WTO core agenda. In the next section I consider this third pole of the triangle directly.

4. WIDENING THE WTO: TRADE AND DEVELOPMENT

Some have argued that former Mike Moore's most important contribution between Seattle and Doha was in reframing what had been called the Millennium Round into the Doha Development Agenda. The original GATT was essentially a contract among industrial economies, and many products of export interest to developing countries were not covered. As a result of the Uruguay Round, developing countries are now in the system, and it has to move at a speed they can manage. Failure to recognize this new reality was part of the Seattle breakdown.

The first difficulty with this set of issues is the meaning of 'developing country', an abstraction that conceals wide variation. Some so-called developing countries are small, but prosperous, like Singapore; others are large, but poor, like Bangladesh. Often the implicit assumption is that a developing country is any WTO Member that is not a Member of the OECD, since the treaty never mentions developing countries except in the Preamble. LDCs are defined in Article XI:2, but only as countries 'recognized as such by the United Nations'. In practice countries designated themselves as developing countries either when the WTO was created, or as part of their accession negotiations. The lack of differentiation troubles OECD countries when claims are made for the same special treatment for all 'developing'

countries, from insignificant traders like Uganda to commercial powerhouses like Brazil.

The second difficulty is the meaning of 'development' at WTO. One aspect of the definition is economic, but there is little intellectual and political consensus on the optimal trade policy for a developing country. Another aspect of 'development' is institutional – how best can developing countries participate in the trading system? But there is no evident consensus here either. The apparently new importance attached to development has actually been present since the Havana conference of 1948. In the 1950s, a panel of experts led by Gottfried Haberler was asked to look at the linked problems of agriculture and the role of developing countries. Article XVIII of the GATT on Government Assistance to Economic Development was drafted during the 1954–55 GATT review session, and the Articles in Part IV on Trade and Development were added to the General Agreement in 1965. In the Tokyo Round, developing countries effectively opted out of the trading system through the provisions for 'special and differential' treatment institutionalized in the 1979 'Enabling Clause'.

The Uruguay Round agreements contain as many as 155 Special and Differential treatment provisions. Some provisions *mandate action* by developed countries; others *permit exceptions* for developing countries. Some provisions demand increased export opportunities for developing countries; others require developed countries to safeguard developing country interests. Some provisions *allow flexibility* under the rules to introduce and maintain trade restrictions and subsidies; others allow longer transition periods in which to implement obligations. Some provisions permit non-reciprocity – that is asymmetric liberalization between developed and developing countries; others recognize trade preferences for certain regional groupings. Finally, many provisions make special allowance for least-developed country Members and for technical assistance.

Ironically, in addition to strengthening the opt-out provisions, for the first time in the Uruguay Round, developing countries tried to influence the outcome directly. In the past they had been free-riders, using the Most-Favoured Nation (MFN) rule to benefit from tariff reductions among developed countries; now they wanted greater and more secure market access in developed countries, and a share in the elaboration of new rules for the system. They believed that the benefit of participating in the Round as a whole was that the potential gains from OECD countries' liberalization of agriculture and textiles would offset the short-term costs of the new rules on services and intellectual property, and from their acceptance of the issues covered by Codes in the Tokyo Round. These hopes may have been unrealistic.

'Implementation' in WTO jargon means both that developing countries find it too hard to meet their Uruguay Round commitments quickly, despite the Special and Differential treatment provisions; and that developed countries have been too slow in meeting their obligations to developing

countries. Implementation may have been the biggest rock on which Seattle foundered, and it consumed hundreds of hours of time in meetings before Doha. The separate Doha declaration on 'implementation' took action on dozens of the 119 proposals, but many more were left for subsequent action in the relevant bodies. So little progress has been made that the decisions left on the table in Cancun appeared hardly worth bothering about to many developing countries.

Much of what developing countries promised in the Uruguay Round in access to their own markets has been delivered. Much of what they hoped to receive in agriculture and textiles either has not arrived, or will have to be negotiated in the current round. In short, they got less than expected, and the new rules are more costly than anticipated, especially since so many of the new rules codify existing rules or practices created in the advanced economies. Developing countries say that they are importers of rules that do not necessarily reflect their needs, and they worry that it will happen again. In paragraph 44 of the Doha declaration, ministers agreed that 'all special and differential treatment provisions shall be reviewed with a view to strengthening them and making them more precise, effective and operational'. Developing countries see the language as requiring efforts to give proper effect to existing provisions. OECD countries resist based on a claim that the proposals would alter the existing balance of obligations and so should be handled within the negotiations.

All of these ideas, and the 'development box' in agriculture, tend to be based on the assumption that the WTO can contribute to development by allowing developing countries to exempt themselves from their obligations as a matter of right. Another mode for helping developing countries adapt to the system is to provide them with technical assistance. What is now known formally as Trade-Related Technical Assistance or TRTA is found throughout the Doha declaration. The underlying idea is that developing countries, but especially the least-developed, have trouble understanding the trading system sufficiently to be able either to implement existing obligations or to participate in new negotiations. A related idea is that they need help to manage their trade relations generally. Developed and developing countries naturally assign a different order to these priorities. The declaration sees a particular problem in the ability of developing countries to participate in negotiations on the four 'Singapore' issues and on the environment – all of these are issues where OECD countries are *demandeurs* and developing countries have trouble seeing the need for negotiations let alone establishing a negotiating position. Many developing country representatives complain, therefore, that TRTA is focused on what developed countries want not what developing countries think they need.

The WTO secretariat had to strengthen its own limited capacity for designing TRTA to meet the Doha promises, but implementation requires coordination of work by donor countries and other international

organizations. This supply-side constraint has been less serious than some feared. Much has been done since Doha to increase the focus on the needs of LDCs both in the work of the secretariat and in TRTA. Whether the missions to each country, the training in Geneva, and the regional seminars on substantive issues will make a difference in developing countries' ability to participate remains to be seen.

The reasonable assumption behind TRTA as with Special and Differential treatment generally is that it is important to help developing countries meet governance standards OECD countries have designed, and to be flexible about how fast they do that. If Members are to avoid a two-tier trading system, however, the real challenge for development is to think about how countries can have comparable obligations that are translated in differing ways into their own governance context.

5. PROSPECTS AFTER CANCUN

The WTO's Fifth Ministerial in Cancun in September 2003 was meant to be a stocktaking on the round, a way station on the road to a promised conclusion by January 1, 2005. The essential objective for the Doha ministerial was not 'launching' a round but enlarging the negotiating agenda already underway. Agriculture and services alone were not enough for a round, and progress in those negotiations seemed unlikely without the possibility of broader trade-offs. The addition of non-agriculture market access plus rules created the basis for a round, along with a political recognition of the requirement to take account of the needs of developing countries both in the texts and in TRTA. The main objective for Cancun, in consequence, was an assessment of the overall level of ambition for the round, but Ministers also had to consider the possibility of negotiations on the environment and the four 'Singapore issues', and assess the ability of developing countries to participate in the negotiations and implement the results.

The Doha success illustrates a curious paradox about the WTO, and perhaps any international organization. Without the prospect of Doha, ambassadors and their staff in Geneva, supported by officials from capitals, would never have advanced their discussions to the point where the draft declaration could have been prepared in October 2001. Without the engagement of ministers in Doha, the Geneva ambassadors would still be debating those draft texts. And yet the texts as agreed by ministers in November 2001 are largely the same as the ones submitted to them, and those texts emerged from the continuous day by day work in hundreds of meetings every year of officials painstakingly trying to understand the needs of the trading system. Since officials missed all their target dates for decisions prior to Cancun, the need to report to Ministers again was important for the dynamism of the process, and yet the failure to come close to agreement in Geneva may have made agreement in Cancun impossible.

When looking forward to Cancun, the list of epiphenomenal factors seemed especially relevant. Would problems in transparency for developing countries be outweighed by coalition dynamics on specific issues? Would sluggish growth in trade flows, even if it continues to outpace world output, dampen interest in further liberalization? Would high profile disputes involving the EU and the USA sour the atmosphere, even if they cover small amounts of trade? Would US credibility suffer from its protectionist safeguard actions on steel, or from the farm bill that massively increased subsidies? Competitive regionalism was also a worry – and is so even more in light of the heated rhetoric after Cancun. Finally, would transatlantic tensions associated with differing views of the US-led war in Iraq spill over to WTO? I think that these questions are valid, but contribute little to an analysis of the problems in Cancun. States do not ‘make’ rules, and they certainly do not make them for *ad hoc* reasons: law arises in human interaction. If that process (negotiations, in my frame) has not happened, the best will in the world will not create a decent agreement. If it has, it would take considerable ill-will to prevent the rules from being written down. A ministerial is an important collective event, but the processes go far beyond Cancun. Ministers can catalyze work and they can crystallize the results, but that is all.

The judgment facing ministers in Cancun was whether the emerging agenda had enough in it for an eventual Single Undertaking. Two questions then: what is the Single Undertaking, and what will it need? At the end of the Uruguay Round, all of the agreements, including all of the revised agreements from the Tokyo Round, were included in the WTO Agreement, which countries could accept or reject only in its entirety. The Single Undertaking may have been introduced at the outset to keep negotiations on services harnessed to those on goods, contra the wishes of Brazil and India, but it served in the end to keep agriculture harnessed to everything else, contra the wishes of the EU and Japan. It increases the hesitation of developing countries about new negotiations because they lack the resources to analyze all the issues in real time, yet they are expected to sign all the results. A small reference to intellectual property at Punta ended in them having to swallow the huge TRIPs agreement at Marrakech. This multilateral principle may make easy issues take longer, but it may also force an earlier resolution to tough issues, and it avoids the fragmentation of the trading system observed after the Tokyo Round. The Single Undertaking only works as a forcing mechanism, however, because of the implicit corollary: nothing is agreed until *everybody* agrees. While the Single Undertaking does not require everybody to be active on all issues, it does mean that the ‘Doha Development Agenda’ is not a disconnected series of negotiations but an integrated ‘round’. A round is the only way to create a package large enough for all participants to see themselves in it, one in which negotiators can see all the trade-offs between issues and countries – indeed in which

negotiators can see the tradeoffs between import-competing and export interests within a given economy. The Doha declaration at a minimum is a recognition that all of the mentioned topics are worthy of discussion, but it is not a guarantee that any of them would necessarily be in the final Single Undertaking. When we look for the heart of a deal that would manage the trick of being interesting to the leading traders as well as to developing countries, we can consider the basis for a package under the same headings of the health of the institution, the evolution of the core agenda, and the changing role of developing countries, or efforts to make the WTO stronger, wider, and deeper.

First, under strengthening the institution, discussions of transparency have hardly advanced since Doha. The stalled review of the dispute settlement system will eventually lead to some procedural improvements at the margins, but it cannot address the imbalance between negotiations and adjudication in the WTO's structure, or the difficulties for developing countries in using the expensive procedures. The institutional weaknesses that contributed to the problems in Seattle are still not on the agenda. Members did discuss internal transparency in December 2002 on the basis of informal proposals from the Chairman of the General Council. The proposals were not agreed, yet the document was an attempt to codify emerging practice. These issues may yet come on to the negotiating agenda – the WTO itself emerged late in the Uruguay Round when participants realized that the existing structures could not support all the new agreements likely to be included in the Final Act. Late in the Doha round, Members may again see the need for institutional reform.

Second, efforts to deepen the core policy agenda are blocked. On *trade in things*, an eventual Single Undertaking will have to include something substantial on agriculture, if not necessarily elimination of export subsidies, although a group of African countries has stressed that the elimination of all cotton subsidies will be their key test for progress. The usual debates between market purists and those who stress 'Non-trade' concerns are not promising, and the slow progress prior to Cancun was an augury of failure. At the end of 2002, the chair of the negotiating group, Stuart Harbinson submitted an overview paper that showed where progress had been made and where work was needed if Members were to agree on negotiating modalities (the means of turning general principles into specific actions). Despite a second draft of the paper after the inevitable criticisms from all sides, agreement on modalities was not possible. All countries could see where they might lose from the proposals, but the biggest difficulty with the Harbinson draft was its inconsistency with the EU's current Common Agricultural Policy (CAP). The modest CAP reforms agreed in June 2003 gave the EU negotiators room to move on agriculture modalities, reinvigorating the agriculture discussions in Geneva before Cancun, but not enough. Ministers could not craft the modalities that had eluded officials; in

consequence they could not agree to extend the 'peace clause' – Article 13, which expires at the end of 2003, exempts the Agriculture Agreement from some challenges under other parts of the GATT. Agreement on the end in view for agriculture remains illusive, making agreement on how to get there rather challenging. But Cancun did help to clarify the issues.

The package will also need significant other market access for goods, notably but not only on textiles. Non-agricultural market access is where the money is, especially in developing countries, most especially in their trade with each other, but movement on NAMA modalities will only come when Members see movement on agriculture. Further promises on trade remedy rules will also be needed, although resort to anti-dumping seems to be diminishing.

On *intangible trade*, the package must have progress on services, if not necessarily any of the other new issues. Services are well understood, in principle, but negotiations are still needed before bargaining as members try to understand all the implications both of stronger rules and of more 'specific commitments' for market access. Developing countries, who will not move at all until they see progress on agriculture, will insist on something on 'Mode 4', allowing unskilled workers to cross borders to offer their services. I remain dubious about the other new issues. The fallout from keeping the Singapore issues linked together seems to outweigh any benefits for the principal demandeurs, the EU, Korea and Japan. Developing country resistance to the package seems to be growing, since these issues are really negotiations about the sort of advanced administrative law regimes they do not have, in many cases. Agreement to negotiating modalities for any of the Singapore issues will depend in part on how developing countries perceive progress on the 'implementation' issues, but even the Americans are skeptical about whether the benefits for investors are worth the political costs given the concerns of civil society organizations. Movement towards negotiations seems possible for trade facilitation, but the other three are likely to be relegated to further study.

The other big issues, the ones where we see civil society not business pressure on governments, concern the relations between domestic standards and trade in the domains of labor rights and the environment. Labor died as a WTO issue at Doha, and is now seen to be in the domain of the ILO. Environment has a clearly defined agenda at WTO but the issue is not vital for the current US administration, and is resisted by developing countries, even if it remains important for the EU.

Third, the rhetorical commitment to development was undiminished at Cancun, but most developed countries have been unwilling to accept any proposals that would either change the language of the WTO Agreements or change the balance of Members' rights and obligations. Without some means of differentiating among 'developing countries' as diverse as China and Uganda, this part of the agenda may remain frozen. How much this

will matter to the outcome will probably depend on whether the development dimension of other issues is sufficiently ambitious. The dance will be complicated. If there is no progress on agriculture, especially from the EU, other countries will not move, but if the process stalls, the agenda cannot be expanded sufficiently to allow a Single Undertaking big enough to make it worthwhile for the EU and the US to buy off the farmers who benefit from the status quo.

6. CONCLUSION: WHERE IS THE WTO GOING?

Cancun proved to be closer to Seattle than WTO proponents might have hoped after Doha, but the key test is whether the process is irretrievably blocked, or whether Members are still picking their way across the stones. Missing deadlines does not matter much in conjunctual time. The comparable ministerial in Montreal in 1988, 2 years after Punta, collapsed because countries had yet to agree on what was at stake on the central issue of agriculture, but 4 months later in Geneva the outstanding issues were agreed and the Uruguay Round still reached a successful conclusion – after yet another failure to agree on time on agriculture in Brussels in 1990.

The draft text forwarded to ministers was full of square brackets. After 5 days together, ministers understood much better what will be needed to fill in the blanks – but they had not done it. Ministers did not fail to agree merely for procedural reasons, or because of grandstanding. Here is the folly of anyone who thinks that they can find some other table at which to negotiate. If states do not agree on the big issues, like ending farm subsidies, changing tables will not suddenly dissolve the difficulties.

After Cancun, therefore, the WTO is still crossing the river, feeling all the sharp stones in its path. If we look at Cancun in an *epochal frame*, the breakdown was not a signal of fundamentally new north–south divisions, signaling an end to international order as we know it. Indeed the role of developing countries was not new. The now famous G-20 is a floating group of countries, many of whom have played similar blocking roles for nearly two decades. In the end, the G-20 was never tested in a Green Room on agriculture. The real test will come not in saying no to the package on offer in Cancun, but ensuring that the package on offer in Hong Kong is one to which they could say yes. Moreover, while they were an effective blocking coalition on agriculture, it is not clear if they can extend that cooperation to other areas. The role of LDCs, in promoting the cotton initiative, was new.

If we then look at Cancun in a *conjunctural frame*, failure was certainly due to the stage of negotiation on some issues. There is no consensus yet that investment rules belong in the WTO, for example, but the level of understanding of many other issues, notably services and the environment, may also impede bargaining. Finally, in an *incremental frame*, the bargaining

dance fell apart in Cancun, partly because of the early stage in the process, and partly because of the complexity of the steps. Was there enough in agriculture to compensate for non-agricultural market access, or vice versa? Is there enough movement on Special and Differential treatment to compensate for new rules on the Singapore issues?

It was never realistic to think that the Doha deal could be done by January 1, 2005 as promised, given the complexity of the agenda, and given that that timetable would require the final bargaining to take place during a US Presidential election campaign in the fall of 2004 when the attentions of US negotiators will be distracted. Fall 2004 may also be too soon for the EU to allow itself to be forced into concessions on agriculture, given the internal reform of farming underway and the debates over how to finance the expansion of the CAP to the new Member states. This inevitable slippage only matters for observers who obsess on deadlines as a sign of the health of an institution, and to EU and US politicians whose current terms expire at the end of 2004. In the end the inevitable EU/US trade off on agriculture, whether it takes the form of Blair House II, will be made in the context of likely developments in 2006 and later, when CAP reform begins to be implemented under a new 6-year budget and with new members of the EU; when the US farm bill must be re-negotiated in Congress. The real deadline, therefore, could be June 2007, when the US President's fast track authority runs out. The major players, in other words, will use the WTO negotiations to signal the direction of change to domestic interests, and they will only agree in WTO to things they know will fit with their new domestic rules, but their own new rules will come out of the long process of negotiation in the WTO.

The results of the Uruguay Round leave developing countries skeptical about this process. Most would benefit from more trade, but what sort of rules would help them, at what cost? If their problems are really in domestic governance, are areas identified by the WTO the ones that should be at the top of their list for policy reform? In contrast, some officials worry that accommodating the needs of developing countries, for example if the Singapore issues are deferred, means that the trading system would have to wait for its slowest Members. They claim that developing country resource constraints do not argue for a limited round because the WTO must be relevant and useful where the trade is done, or it will not be useful at all. But would such a process lead to a two-tier WTO, with two levels of obligation? Some officials argue that a single set of rules is impossible. Is it better to have some formal recognition that a Member's capacity to take on rules is linked to its stage of development? Or would it be better to have a formally unitary set of obligations with opt-outs and 'variable geometry'? Perhaps some rules could be 'soft', meaning subject only to surveillance rather than 'hard' rules subject to the dispute settlement system? Perhaps the surveillance system could also monitor all of a country's requests for

Special and Differential treatment, with participation from other international organizations to ensure 'coherence'. The central question is whether developing countries will use their increasing weight in the trading system to ensure that negotiations in conjunctural time address how to adapt the WTO so that it can flexibly accommodate all its Members, or whether they bargain in incremental time to opt out again. If developing countries exempt themselves from active engagement, they will not be playing their part in the continual evolution of the system. Discussion will then centre on how a developing country can accommodate itself to the trading system, rather than whether the WTO rules make sense for all countries.

The trading system depends on both *equal obligations* to ensure openness and *differential application* to accommodate national public administration. We can find many examples of this kind of embedded liberalism compromise in the WTO – in the Agriculture Agreement, for one example, tariffication and the rules on domestic support allow policy difference; for another example, the GATS is inherently a variable geometry system because 'specific commitments' are scheduled from the bottom up, and the Basic Telecommunications agreement's 'Reference Paper' contains principles whose implementation differs from country to country. The essential task for negotiators living in conjunctural time in the Doha round is to remember that this principle allows the WTO to be a multi-tiered organization. Under a common set of principles, the details can differ for each member.

The Doha Round may yet be a missed opportunity, if Members bargaining in incremental time know their interests yet cannot reach agreement, but Cancun does not prove the case either way. With so much ambiguity, however, what I expect to see is negotiating in conjunctural time as Members try to understand where consensus might be found. This is not a very exciting prospect, but I think it is a fair picture of the grueling work of global negotiations as opposed to the simpler task of bargaining. It is hard, even impossible, for negotiators to know where they are going before they start in this huge diffuse process, one where the goal is never explicit and the means are hard to see. Participants cross the river not with a guidebook and a map, let alone a bridge, but by feeling the stones.

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NOTES

- 1 An article in the *Financial Times* of December 31, 2001 on China's new investment law said that the government typically lets new areas of business develop before it decides whether regulation is needed, which is called 'crossing the river by feeling the stones'.
- 2 The Ministerial documents along with an excellent secretariat gloss on what it all means are available on the WTO website <http://www.wto.org>.
- 3 Research for this paper was completed in June, 2003, but final revisions were only completed in the fall of 2003 allowing judgments and points of detail to be modified after Cancun.
- 4 A similar comparative analysis would not show Cancun in a favourable light.
- 5 EU agreements with the ACP states are derogations from WTO norms because they are preferential; the entire Membership must therefore agree to waive the application of WTO rules. The request for a waiver had been pending since the ACP Cotonu agreement was signed on in 2000.

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