



Cordell Hull Institute

Trade Policy Analyses

Vol. 6, No. 9

July 2004



As part of its "pause for reflection" on the troubled Doha Round negotiations, the Cordell Hull Institute, along with the Cornell Law School, convened in Paris on July 9-10, 2004, an international roundtable meeting on the "Role of the WTO System in the World Economy".

The meeting was held at the Centre Panthéon, which houses the faculties of law of the Panthéon and Sorbonne universities, across the place from the Panthéon (pictured above).



Reproduced here is the text of the keynote address by **Agnes van Ardenne** (above) on the "Development Dimension of the Doha Round Negotiations,"

PANTHÉON-SORBONNE MEETING...

Development Dimension of the Doha Round Negotiations

Agnes van Ardenne

ACHIEVING a true "development round" and a strong rules-based multilateral trading system, embodied in an inclusive World Trade Organization (WTO), could be as important as financial aid to developing countries – if not more so – in reducing global poverty. That would also be in the long-term political and economic interests of developed countries. This is *not* to imply that the WTO should become a development organization. Trade and development policies should be mutually supportive: we need trade, we need aid and we also need aid for trade.

Both policy communities have had their backs to each other for far too long. This is changing in the Netherlands where today the Minister for Development Cooperation accompanies the Minister for Economic Affairs (who is responsible for trade policy) to major international trade conferences.¹ And our country's aid policies are now more geared to strengthening supply capacity, and the enabling environment, in developing countries.

Need to Reflect on the WTO System

The eight "millennium development goals" in the United Nations Millennium Declaration of September 2000,² aimed at halving global poverty by 2015, take center stage in the development policies of the Netherlands. Although I believe in specialization and the division of labor among international organizations, in my opinion the making and implementation of economic policies around the world are too fragmented and incoherent, especially at national level. Global policy coherence for development and better international governance begin at home. Only with a coherent set of policies with respect to aid, trade, finance, agriculture, intellectual property *et cetera* in both developed and developing countries can governments seriously hope to achieve the above-mentioned UN goals by 2015.

which was given at the Centre Culturel Irlandais.

About the Author

Agnes van Ardenne has been the Netherlands Minister for Development Cooperation since July 2002.

Previously, Mrs van Ardenne was a member of the Dutch House of Representatives in 1994-2002; and earlier she was a member of the Christian Democratic Alliance's Foreign Affairs Committee (1986-96) and its Advisory Council on Peace and Security (1990-94).

About the Meeting

Thirty five senior officials and independent experts, mainly from European countries, participated in the discussion.

Besides Mrs van Ardenne, they included: **Herwig Schlägl**, deputy secretary-general of the OECD, Paris; **Pierre Defraigne**, deputy director-general of trade in the European Commission; **Karl- Ernst Brauner**, director-general for foreign economic relations in the German Ministry of Economics; and **Claes Ljungdahl**, deputy director-general for foreign economic relations in the Swedish Ministry of Foreign Affairs; as well as **Olivier Cattaneo**, principal trade policy adviser in the Agence Française de Développement.

Also there were: **José Alfredo Graça Lima**, the Brazilian ambassador to the European Union; **Eduardo Perez Motta**, the Mexican ambassador to the WTO, Geneva; and **Nobuo Tanaka**, director-general of the multilateral trade bureau at Japan's

The objective of the UN Millennium Declaration is to develop a global partnership for development, deliver adequate and effective development assistance, ease debt burdens and reduce barriers to international trade. The commitment is to create "an open, rules-based, predictable and non-discriminatory trading and financial system".³ What could be more relevant to the current debate on the state of the WTO system? But what do those lofty objectives mean? How can they be implemented in a practical way?

The negotiations on the Doha Development Agenda, launched in November 2001, were in trouble almost from the outset, with too many WTO member countries at cross-purposes with substantive differences papered over in the Doha Ministerial Declaration. Governments could not agree on the modalities for negotiations on the various items on the agenda, especially on agriculture and implementation issues. After nearly two years, and missing one deadline after another in the agreed negotiating schedule, their endeavors collapsed at the WTO Ministerial Conference in Cancun, Mexico, in September 2003.

Early in 2004, the WTO General Council shifted the focus and decided to seek by the end of July some framework agreements (without detailed negotiating plans), concentrating on agriculture, non-agricultural market access (NAMA) and development. It was clear though that, even if the effort succeeded, a lot of hard work would still lie ahead in the run-up to the sixth WTO Ministerial Conference, to be held in Hong Kong at the end of 2005. After much maneuvering among the majors and the coalitions of smaller countries, the WTO General Council finally agreed a general approach on August 1,⁴ enabling the negotiations to continue. Thus it was hoped the way had been prepared for the Congress of the United States to approve (by June 1, 2005) the extension of U.S. trade-negotiating authority.

The period before the "re-launching" of the Doha Round negotiations, which starts in earnest in the second half of 2005, offers a chance for ministers and senior officials to step back and reflect – with the help of independent experts and others – on the aims, principles and rules of the WTO system. It is important to go back to basics, to look beyond often mind-boggling technical details and to reflect on the underlying purpose of the multilateral trading system, to recognize that the joint administration of the WTO framework of internationally agreed rules by its member countries is indispensable to promoting global economic growth and development. If that multilateral framework ceases to be respected, especially by the leading WTO members, not even the dispute-settlement process will keep the system from drifting into oblivion.

The Marrakech Agreement establishing the WTO states in the preamble that the signatory countries undertake "to enter into reciprocal and mutually advantageous arrangements directed to

Ministry of Economy, Trade and Industry.

Four members of the Institute's board attended: **Jagdish N. Bhagwati**, of the Council on Foreign Relations, New York; **Hugh Corbet**, the Institute's president; **Lorenz Schomerus**, former state secretary of the German Ministry of Economics; and **John M. Weekes**, former Canadian ambassador to the WTO and onetime chairman of the WTO General Council.

Others who took part were: **Jean-François Bellis**, of Van Bael & Bellis, attorneys-at-law, Brussels; **Joan Boer**, Netherlands ambassador to the OECD, Paris; **Larry Bush**, of the Cornell Law School; **Victoria Curzon Price**, of the University of Geneva; **Andreas Freytag**, of the Friedrich Schiller University, Jena; **Otto Th. Genee**, of the Netherlands Ministry of Foreign Affairs; **Bernard Hoekman**, of the World Bank, Washington, DC; **Patrick Messerlin**, of the Fondation Nationale de Sciences Politiques, Paris; **E.U. Petersmann**, of the European University Institute, Florence; **J.F.R. Rollo**, of the University of Sussex, Brighton; **Clive Stanbrook**, of Stanbrook & Hooper, attorneys-at-law, Brussels; **Stefan Tangermann**, of the OECD, Paris; **Bruce Wilson**, of the WTO, Geneva; and **David Woolner**, of the Roosevelt Institute, Hyde Park, NY.



The meeting's opening and concluding sessions took



Agnes van Ardenne, the Netherlands Minister for Development Cooperation, delivering the keynote address at the Centre Culturel Irlandais, near the Panthéon, on July 10, 2005.

the substantial reduction of tariffs and other barriers to trade and to the elimination of discriminatory treatment in international trade relations" (emphasis added).⁵ In explaining the rules of the multilateral system, publications of the WTO Secretariat, and those earlier of the secretariat of the General Agreement on Tariffs and Trade (GATT), put a lot of stress on transparency, predictability and stability as well as non-discrimination. The WTO system itself, it is too often forgotten, provides for the promotion of both institutional stability and trade liberalization with a view to raising standards of living around the world, along with the other objectives laid out in the WTO preamble.

For progress to be made in the Doha Round negotiations and ultimately reach a successful conclusion, a great deal has to be done to build the political base of support to enable the WTO to be recognized as indispensable to promoting a stable institutional environment in today's world economy and to achieve international agreement on many sensitive but necessary reforms. Politicians, including myself, have to step forward and sell to their publics the bigger ideas behind the multilateral trading system that, following the autarkic and discriminatory excesses of the inter-war period, was negotiated in the 1940s by a remarkable group of visionaries, inspired by the American statesman Cordell Hull, President Franklin D. Roosevelt's Secretary of State from 1933 to 1944.

My concern is primarily with the interests of developing countries. Before going into the role of the WTO system, I will address two interrelated preliminary questions. First, what do globalization and diversity imply for developing countries and the multilateral trading system? Second, how are those implications to be

place in the historic Cercle de l'Union Interalliée (pictured above in the days of Marshall Foch).

The meeting was jointly convened and chaired by **John J. Barcelo III**, the Cromwell professor of international and comparative law at Cornell University, Ithaca, NY, and **Hugh Corbet**, president of the Cordell Hull Institute.

The papers prepared for the event are being revised and edited for publication as John J. Barcelo III and Hugh Corbet (eds), *Rethinking the World Trading System* (2005).

Funding for the meeting was provided by the Berger International Legal Studies Program at Cornell University, Ithaca, NY, and the Netherlands Ministry of Foreign Affairs, as well as the international law firms Sidley Austin Brown & Wood, Washington, DC, and Stanbrook & Hooper, Brussels.

About the Series

The first meetings in the Institute's "pause for reflection" on the Doha Round negotiations were held in Washington, DC, on

- November 14, 2003, on getting the Doha Round negotiations back on track;
- May 28, 2004, on the elements of a "framework agreement" on agriculture, with farm leaders from the United States and Cairns Group countries; and
- June 16, 2004, on the ups and downs of the multilateral trading system since it was established after World War II.

The meetings followed the Institute's four *post*

addressed? After answering these questions, I will set out my view of the WTO's basic principles. Then I will briefly address market-access issues, extending the trade-liberalizing process to agriculture and services, and the position of developing countries, plus some key systemic matters such as the WTO's scope, dispute-settlement mechanism and functioning.

Globalization and Diversity

The problem in the world economy, I would argue, is a *shortage* of globalization about which there are too many misconceptions, especially about the omnipotent power of market forces, the role of the private sector and the impotence of the state. International economic integration since World War II has been playing a major role in reducing global poverty and inequality. Yes, globalization places limitations on national policies, but it is delivering more benefits than costs.⁶ Formulating effective *national* policies is more important than ever. And not only because they can moderate the negative side effects of globalization. Institutional and policy reform at a domestic level is crucial to economic development and poverty reduction.

The international economic order and the efficient operation of global markets are also more important than ever. The former is a global public good in which too few resources are being invested. Good governance at international level can facilitate adjustment to change in domestic economies and remove external constraints on economic growth and development – a continuous process of adjustment – in developing countries. All is not well in the international economic order, given the state of the Doha Round negotiations and the growing imbalance between multilateral and bilateral deal making, which is also widening the gap between stronger and weaker countries. As Martin Wolf, of the *Financial Times*, says in his third commandment on globalization, both states and citizens have an interest in participating in rule-based international systems and institutions that deliver open markets, environmental protection, development, health and security.⁷ Relatively speaking, the multilateral trading system stands out as the most successful international regime, but it runs the risk of becoming a victim of its own success. A relevant question is whether it may have strayed too far from its basic purpose to remain effective in the future.

What about diversity? There are significant and growing differences among developing countries. How should this diversity be addressed in political, economic and institutional terms? Both trade liberalization and fair ground rules are needed. The latter ought to take account of the needs and concerns of countries at their different levels of economic development. Many governments of developing countries fear that lower tariffs will lead to lower government revenue and will take their toll on vulnerable producers in sensitive industries. Some are worried about the

mortems on the failure of the WTO ministerial conference in Cancun, Mexico, in September 2003.

What Agnes van Ardenne had to say...

"Developing countries are best served by pressing not only for close adherence to internationally agreed trade rules but also for trade liberalization on an *unconditional* MFN basis, concluded Agnes van Ardenne in her keynote address to the Panthéon-Sorbonne meeting on rethinking the WTO system's role in the international economic order.

Pushing for so-called policy space – unrestricted by WTO rules – in order "to dispense subsidies they can ill afford and measures that make little economic sense" is not the answer to developing countries' problems, Mrs van Ardenne declared. Nor is "going slow on MFN tariff reductions in order to maintain preferences for a selected group of countries."

erosion of preferential access to export markets as a result of MFN tariffs being reduced or eliminated. Others believe they need wide-ranging policy space for measures, unrestricted by WTO disciplines, in order to promote economic development. Many countries are concerned about their producers' competitiveness in the world economy.

These concerns among developing countries underlie their advocacy of rules with provisions written into them for special-and-differential treatment and their appeals for financial support to help them implement negotiated rules and to strengthen the supply-side of their economies in order to take advantage of new trading opportunities. Governments should stop pretending that developing countries are all the same and therefore require the same privileges and/or exemptions from the rules. Going slow on MFN tariff reductions just to maintain preferences for a selected group of beneficiary developing countries is certainly not the answer to their problems.

New political alliances have been emerging in the WTO system. Most prominent of them is the Group of Twenty, led by Brazil, along with India, China and South Africa. These potential power-houses, like the Cairns Group that emerged in the 1980s, are claiming and playing a greater role in multilateral trade negotiations. This has been a positive development, a counter to the dominance of the United States and the European Union, along with other regional groupings. In the WTO system, however, there are no rights without obligations and so developing countries should embrace trade liberalization, the gradual acceptance of WTO obligations and the need to reform domestic policies bearing on the production structures of their economies. They should not do this blindly or because they are being compelled to make reciprocal concessions in unequal bilateral relationships. Following those courses of action in a multilateral context with more checks and balances will serve them well in promoting growth and development.

I would make an exception for the poorest countries. Any society, including the international community, is ultimately judged by how it treats its weakest members. In the WTO system the major developed countries bear a special responsibility – with power, after all, goes responsibility to lead by example. The developed countries should fully open their markets to exports from the least-developed countries and, because those countries are so very small, they should also be prepared to adjust policies in areas and for products such as agriculture that directly affect these countries negatively.

What could have been said to ministers from West and Central Africa when they went to the WTO forum on behalf of their cotton producers? At the WTO ministerial meeting in Cancun they did not ask for handouts, only for the opportunity to compete on a level



In a background note for the Panthéon-Sorbonne meeting, **Hugh Corbet** (above) wrote:

"When the Doha Round negotiations were launched in November 2001, very much on the run and somewhat half-heartedly, there was no inter-governmental consensus on their purpose or, for that matter, on the purpose of the WTO system itself... For governments to come together on the purpose of the negotiations there has to be a closer meeting of minds among them on the WTO's role in the world economy.

"In the United States," he said, "there is a tendency to regard the multilateral trading system only as a device for securing access to foreign markets for American exports, not for promoting trade liberalization as a positive-sum game.

"In the European Union the system is traditionally viewed as the framework within which it handles its relationship with the United States.

"For four decades," he continued, "Japan saw the system as a defense against the bilateral pressures of the United States and the European Union to open its markets, but is turning to bilateral and regional arrangements now there is a multilateral commitment to open

playing field, free of the huge competition-distorting subsidies paid to farmers in rich countries.⁸ Rhetoric on the benefits of globalization, the market economy and WTO membership rang hollow as their pleas were ignored. Adding insult to injury, they were told in Cancún to go away and diversify into textiles and clothing, with the help of bilateral and multilateral donors!

Meaningful special-and-differential treatment is needed for the poorest countries, which are larger in number than the 49 least-developed countries recognized by the United Nations. But, if it is to materialize, differentiation and graduation based on the level of development and ability to compete have to be the other side of the coin. Developing countries in which competitive producers are located should open and bind access to their markets and eventually graduate from temporary exemptions from WTO rules. Richer developing countries should also offer free market access to the least-developed countries.

When it comes to trading with neighbors, South-South trade can create a "new global trade geography", as President Luiz Inácio Lula da Silva of Brazil calls it.⁹ The attempt at the eleventh session of the United Nations Conference on Trade and Development (UNCTAD), held in São Paulo in June 2004, to revive the Global System of Trade Preferences (GSTP) was another welcome development in that it focused attention on reducing barriers to trade among developing countries. Even so, I emphasize the importance of non-discrimination in tariff treatment, or at least discrimination on the basis of objective criteria, so as not to create trade diversion or turn trade preferences into a selective and divisive instrument of foreign policy.

Meaning of a Development Round?

What about the Doha Development Agenda? There are 39 references to development in the Doha Round mandate. Was this expression of a common desire to place development at the heart of the negotiations overdone? Or was it an exercise in political correctness or, worse, an exercise in cynicism providing a cover for business as usual? Whatever the case, the emphasis in the mandate on development raised expectations, suggesting that things had changed since the Uruguay Round negotiations. The trouble is that the notion of a development round means all things to all men. It rolls too easily off the tongue and can become a mantra that obscures the real issues.

Economic studies galore have shown that those who liberalize and reform domestic policies (enabling markets to work more efficiently) are the ones that gain the most from trade in helping to promote economic growth. Most developing countries have come to recognize and accept that, in making demands, they cannot expect guaranteed outcomes from trade-liberalizing negotiations. What they seek is an equal opportunity to participate and compete

markets for agricultural products.

"As for developing countries, many appear to regard the WTO as just another development agency, providing benefits without requiring them to fulfill any obligations of membership.

"It sometimes seems," Mr Corbet mused, "that only China sees the WTO as a framework of internationally agreed rules providing a stable institutional environment for the conduct of international trade and investment, as well as a guide to the development of domestic commercial laws aimed at promoting transparency, stability and predictability – hallmarks of the multi-lateral trading system, along with non-discrimination."

in world markets in accordance with fair rules that take account of their needs related to different levels of development. Special-and-differential treatment based on objective criteria and that preferably also makes economic sense has therefore become an essential part of the Doha Round negotiations.

From a development perspective, however, it may be more important for developing countries to achieve greater discipline in the conduct of developed countries' trade and economic policies in areas and for products of particular interest to them. The WTO system provides a unique forum to pursue this goal because developing countries can team up with developed ones in pressing for more effective disciplines that can then actually be enforced. Three key areas are important to developing countries: market access, agriculture and services.

Securing Improved Market Access

Trade liberalization is the core business of the WTO system. There is much unfinished work to be done on market access for labor-intensive manufactures and agricultural products, which are vital in developing countries to industrial development and poverty reduction. Trade in these products is seriously hampered by trade-distorting policies in both developed and developing countries, operating through tariffs (including tariff escalation), public subsidies and non-tariff barriers. The situation could worsen with the growing abuse of trade-remedy laws. I fear a flood of anti-dumping actions against products from developing countries that compete with sunset industries in developed countries and, also, against imports of textiles and clothing when the remaining quotas under the Multi-fiber Arrangement are abolished (on January 1, 2005) – in keeping with the Agreement on Textiles and Clothing in the Uruguay Round negotiations. But the use of anti-dumping laws is no longer confined to the European Union, the United States, Canada and Australia. Many developing countries have also become active users of them.

It is not only protectionist and politically well connected pockets of resistance in developed countries that are behind high tariffs on products in which developing countries have a comparative advantage. Lack of engagement by many developing countries in past tariff-cutting negotiations is another reason. Accordingly, developing countries have pursued non-reciprocal preferential trade arrangements, but confidence in them is often misplaced. These arrangements rarely offer additional incentives to new investors or new exporters, for they typically exclude sensitive products, are hedged about with ceilings in tariff rate quota and special safeguards and entail cumbersome preferential rules of origin. My advice to developing countries - in the best of the mercantilist GATT tradition- is that if something is worth having, then it is worth giving something up in return. Of course, I still stand behind the promise of less than full reciprocity in reduction

commitments in the Doha Round mandate.¹⁰ But I doubt whether the idea of “a round for free” for most poorer countries is really helpful.¹¹ It may even be seen as misleading given that, in a parallel process, the European Union is negotiating for free access to the markets of the ACP countries – its former colonies in Africa, the Caribbean and the Pacific – through economic partnership agreements (EPAs).

Liberalizing Agricultural Trade

Agriculture is the second area where major concessions by developed countries are critically important, not only on trade-liberalization grounds in general but also, and more specifically, because of the enormous numbers of poor people in rural areas in developing countries who are totally dependent on agriculture and related activities. Extending the multilateral trade-liberalizing process to the agricultural sector has been postponed for almost half a century. That has resulted in huge adjustment problems being stored up in industrialized countries, but it has also resulted in resentment in developing countries, never mind the farm communities of many developed ones. So now the governments of the majors are being obliged to negotiate seriously about:

- (a) abolishing export subsidies by an agreed date, along with similar support to exports through export credits, state-trading agencies and food aid;
- (b) disciplining and significantly reducing or abolishing trade-distorting production subsidies, not just re-labeling and putting them in different boxes;¹²
- (c) offering real market access by substantially reducing border protection through lowering tariffs and enlarging tariff rate quotas; and
- (d) allowing safeguards in all three pillars of the Agreement for a limited number of special products in developing countries.

Major hurdles have to be overcome in the short term in order to get the liberalization of agricultural trade seriously under way – especially in dismantling barriers to market access, which amount to about 60 percent of agricultural protection in developed countries. In the longer term, a third WTO Agreement on Agriculture may finally overcome discrimination against low-cost producers of agricultural products, wherever located, and end the special-and-differential treatment accorded to developed countries in the agricultural sector.

Liberalizing Trade in Services

The third area important to developing countries is liberalizing trade in services where negotiations under the General Agreement

on Trade in Services (GATS) could produce positive outcomes, from a development perspective, by:

- (a) enhancing the efficiency of essential service industries in developing countries by opening their markets while introducing stronger supervisory systems at the same time;
- (b) affording developing countries greater market access in developed countries for their skilled workers under the Mode IV provisions of the GATS¹³ – and not just for the most highly skilled workers in information and communications technologies (ICT); and
- (c) not obstructing the outsourcing of jobs in administrative, ICT and back-office services under Modes I and II.

The debate on outsourcing of white-collar jobs has been heavily politicized in Europe and America, ignoring economics, facts and Ricardo's law of comparative advantage, which is fully applicable to services. The world economy is a dynamic place. Jobs created overseas also generate higher skilled and better paying jobs at home and enhance a company's long-term productivity and profitability. While fully recognizing the sensitivities surrounding migration, the GATS presents opportunities for negotiating win-win solutions, increased labor mobility and the controlled opening of markets that can be beneficial to all concerned.

Defensive Interests of Developing Countries

The above three areas of the Doha Round negotiations are offensive interests of developing countries. If achieved, they could justify the negotiations being called a development round. What about defensive interests?

Question of Re-opening Agreements

Some non-governmental organizations and commentators have insisted that certain agreements in the WTO system should be re-negotiated or even removed from the Uruguay Round *acquis*. The *cause célèbre* is the Agreement on Trade-related Aspects of Intellectual Property Rights, the TRIPs Agreement. This agreement is a classic example, in my view, of a small group of vested interests capturing the general interest, but proposals to reopen it is a political non-starter.

Intellectual property protection is about striking a balance between the private interests of innovators, access to knowledge and other societal objectives. I endorse the lessons that Pascal Lamy, as the European Trade Commissioner, drew from ten years of experience with the TRIPs Agreement.¹⁴ The private/public bargain to be struck in protecting intellectual property rights is not the same for all WTO member countries. A country's level of development and

other public policy objectives, in particular the protection of public health, are relevant factors in this balancing. Therefore all efforts should be geared towards allowing countries to make maximum use of the inherent flexibility in the TRIPs Agreement, as was done with the TRIPs and Public Health Declaration¹⁵ and the subsequent decision to implement paragraph 6 of that Declaration in the form of a compulsory licensing mechanism for export of medicines.¹⁶

In this regard I am worried that developing countries are increasingly being forced in bilateral and regional trade agreements to give up existing flexibility or to sign up to TRIPs-plus provisions that are not appropriate at their present stage of development.¹⁷ The TRIPs Agreement, however, could be broadened and made more balanced by considering options for the protection of rights related to bio-diversity, traditional knowledge and plant genetic resources.

Trade-and-Poverty Debate

On making trade work better for the poor, as the slogan goes, the debate is important, but it is not one primarily for the WTO forum. Apart from the three issues mentioned earlier, trade and poverty is in essence an item for the domestic agenda in the developing countries themselves, one in which they may need assistance from international agencies and donors. Many developing countries acknowledge the need to mainstream trade in national development policy but that mainstreaming needs to be put in practice in their poverty-reduction strategies (PRSPs). Pro-poor trade policies at national level imply a careful sequencing of trade liberalization. In this regard temporary emergency protection and the promotion of infant industries, and back and forward linkages with foreign direct investment, should not be dogmatically rejected out of hand. It also opens up a broad domestic *behind-the-border* policy agenda. Infrastructure and effective institutions are needed to connect the poor to markets and help them with social safety nets.

This broad agenda also covers industrial policies and complementary policies that address macro-economic stability, labor markets, investment and competition. Such policies are the primary responsibility of individual governments. Donors can assist in strengthening supply-side capacity and in creating the right enabling institutional environment for the private sector. In the meantime international agencies and bilateral donors should enhance the effectiveness of their trade-related technical assistance and financial aid programs. Trade-related technical assistance activities have until recently been too scattered and deal with individual impediments in an isolated manner. Joint programs, such as the World Bank's integrated framework for the least-developed countries, have an important role to play, but they need to become operational soon beyond the phase of diagnostic studies. The WTO should be involved, but, given its inherent limitations as a set of contractual agreements, it could never play

a major role. It is not a technical assistance organization with local representation in capitals and it cannot become one.

Back to Basics in the WTO System

On getting back to basics and the original principles of the multi-lateral trading system, what are the strengths of the WTO that should be cherished and enhanced?

Principle of Non-discrimination

Non-discrimination is the system's fundamental norm and, in line with Cordell Hull's vision, it may have done the most to promote stability, peace and prosperity after World War II. The principle of non-discrimination, expressed through *unconditional* most-favored-nation (MFN) treatment, articulated in GATT Articles I and XIII, and national treatment, articulated in GATT Article III, make the institutional environment more predictable, less complex and less politicized – thereby helping to induce stability. It is still the cornerstone of the WTO system.

Bilateral and regional deals can complement but never substitute for the multilateral trading system. The huge and increasing number of bilateral and regional free trade agreements (over 200 now) threatens to exclude less attractive countries, which are often the poorest, from the integration of the world economy. The trend is producing fragmentation and disintegration. To avoid further proliferation, much depends on the Doha Round negotiations beginning to put trade liberalization back on an unconditional MFN basis, with much stricter requirements to satisfy GATT Article XXIV conditions for departures from the principle of non-discrimination to form free trade areas or customs unions. Today, sadly, there is a total *impasse* in the WTO committee on regional trade agreements charged with reviewing each notified agreement, which means no discipline at all is being applied to preferential trading arrangements.

Scope of the WTO System

Generally speaking, the multilateral trading system has been effective, despite the ups and downs of half a century, in promoting trade liberalization and securing adherence to internationally agreed rules. But lack of progress in the Doha Round negotiations, culminating in the failure in Cancún, has raised the question whether the WTO has strayed too far from its mission in promoting trade liberalization and institutional stability. Is the WTO taking up too many *behind the border* issues that are not trade-related and even less suited to reciprocal bargaining than the trade-distorting non-tariff measures with which trade negotiators have been grappling since the new protectionism of the 1970s?

Where exactly the boundaries of the WTO system lie is difficult to

say and may evolve over time. But the WTO is likely to remain – at least for the foreseeable future – a model for shallow integration at global level. The WTO cannot and should not be compared with the European Union’s model of deep integration among its member countries involving the partial transfer of sovereignty.

Like Product Concept

Another fundamental in the WTO edifice that should be left in place is the like-product concept. With a few circumscribed exceptions, it does not allow discrimination in the regulatory or tax treatment of foreign like products on the basis of how they were produced. Certain pressure groups are constantly trying to chip away at this cornerstone in the name of either protecting a non-trade concern or of fair competition on a level playing field. More and more are pressing for mandatory labels based on process standards and traceability requirements. This may evolve further into demands for direct import bans on non-conforming products.

In my view most process standards – unless they address global or cross-border problems – are directly related to a country’s level of development. Developing countries should retain the freedom to make their own choices based on their societal needs. They should not be forced to adopt more stringent process standards than they can afford in order to secure access to a foreign market if public health and safety or the environment of the importing country are not at stake. Societal concerns in developed countries about imported products could be addressed through voluntary labeling schemes. The WTO should not provide legal cover for this form of discrimination or veiled protectionism.

If certain national policies have spillover effects on international trade or other policy areas, this should not automatically imply the need for disciplines in the WTO rulebook for everyone. The seriousness of a spillover problem is in the eye of the beholder and often depends on the power and ability of the proponent to seek multilateral rules. It may also relate to the timing and political ripeness of a topic and the evolution of the WTO system.

Foreign direct investment is such an issue where these questions were raised. Investment can be seen as an alternative to trade, where a firm is interested in a foreign market, and there are many linkages between trade and investment. This was recognized where services are concerned in the GATS, but it has proven difficult and politically sensitive for multilateral negotiations on investment to start, at least for the time being. So it is wise to leave it for the moment and not let it block progress on other items on the WTO agenda.

A Single Undertaking?

Another concept associated with the scope of the WTO system is the single undertaking commitment. In the Uruguay Round nego-

tiations, all GATT member countries had to accept the entire outcome of the negotiations, without exception. In the past this offered a broader range of trade-offs. The WTO may now have reached a stage where its large, diverse and vocal membership simply makes negotiations too complicated. Vague promises about special-and-differential treatment and *best endeavor* commitments to provide technical assistance can no longer get the job done. At the Doha Ministerial Conference, which launched the Doha Development Agenda, the substantive differences of opinion on whether the negotiations on the Singapore issues had actually started, were papered over. The cracks subsequently widened into a complete rupture at the Cancún ministerial meeting and resulted in a reduced agenda as three of the four Singapore issues were dropped – competition, investment and public procurement – leaving only trade facilitation (the streamlining of cross-border and customs administration procedures) as part of the single undertaking.

Maybe governments have to go back to the old GATT model of open-ended, plurilateral agreements on a voluntary basis for those WTO member countries who want to move ahead in a certain area that is not directly trade-related. Here the European Union has some relevant experience with its *géometrie variable*. And the United States is pursuing the option of writing deep integration issues into its bilateral and regional agreements.

Dispute-settlement Process

The WTO's dispute-settlement process sets it apart from other international organizations. It has been the envy of negotiators in other multilateral regimes. The process has attracted pressure groups that would love to borrow its muscle to enforce disciplines in other areas such as the environment and labor standards. After a decade's experience of the process, its functioning is generally considered satisfactory, notwithstanding a few flaws here and there. Procedural improvements and the introduction of a permanent, professional roster of panelists would be helpful.

Separate negotiations on the Dispute Settlement Understanding, reached in the Uruguay Round negotiations, are trying to iron out some of the problems¹⁸. Effective access to the process for developing countries now seems to be less of a problem. The Advisory Centre on WTO Law, established in Geneva in 2001, is providing subsidized legal assistance to those who need it, thereby enhancing the legitimacy of the WTO system.¹⁹

The WTO dispute-settlement process faces two challenges in the medium term. One is to find a workable alternative to trade retaliation, in particular for poorer countries when they win a case. The other is to strengthen the process by giving WTO rules direct effect in national laws and courts.



The **mockingbird** is the state bird of Tennessee. Cordell Hull represented a district of Tennessee in the Congress of the United States, and was elected a senator from there, before becoming U.S. Secretary of State (1933-44).

"The mockingbird is known for fighting for the protection of his home – falling, if need be, in its defense. Mockingbirds are not intimidated by animals larger than themselves and have been known to attack eagles"

– Diana Wells, *100 Birds and How They Got*

Trade retaliation is a poor way of getting satisfaction for the winner when the loser is unwilling to comply with a ruling of the Dispute Settlement Body (DSB). Developing countries, in particular, are more or less forced to shoot themselves in the foot if they have to retaliate by imposing duties on exports from a big country. Governments should seriously consider the option of financial compensation if a losing party does not want to amend its laws for whatever reason and is not willing to offer trade compensation.²⁰ That approach would avoid hurting innocent bystanders, compensate the affected industries and may in the end induce governments to comply with rulings.

In the same sense governments could consider the possibility of retroactive damages, counted from the moment an illegal measure was introduced. At present, countries are not confronted with real consequences if they deliberately take illegal measures, especially in the areas of safeguard measures and government subsidies. Governments can simply buy time and additional protection for domestic industries and only have to withdraw the measures after the final DSB ruling, leaving the complainant with nothing but a hefty lawyer's bill.

On the second challenge, reinforcing adherence to WTO disciplines by allowing private citizens to invoke them in national courts would also give a boost to the multilateral trading system. Yes, it would restrict the freedom of governments to disregard their WTO obligations, but it would enhance the interest of private entrepreneurs in good global governance. The European Union and the United States agreed at the end of the Uruguay Round negotiations not to give WTO disciplines direct effect through their national implementing legislation.²¹ The argument advanced then had to do with a level playing field in terms of opportunities for legal redress. Next time around the leaders in the WTO system could set a good example by giving WTO rules direct effect in their domestic legal systems. At a minimum, affected parties should have the right to claim financial compensation if their government willfully disregards a final WTO ruling.

Functioning of the WTO System

On the functioning of the WTO system, there have been many complaints about lack of transparency and unfair decision-making procedures, some even calling it "a medieval organization". Although further improvements are certainly possible, many criticisms are unfair, unbalanced or simply barking up the wrong tree. Often the problem is a consequence of action or inaction by the WTO membership. Management and decision making in the WTO in negotiating mode will always be complicated. There would be immediate limitations in creating constituency structures similar to those in the Bretton Woods institutions. Very few countries would let others negotiate on their behalf on issues that are regarded as part of their economic sovereignty.

Their Names (Chapel Hill, NC: Algonquin, 2002)

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Governments could nevertheless simplify many administrative procedures and give the Director-General a larger role. For starters, member countries could elect the next Director-General in an open process, rather than appointing him or her behind closed doors. Members sometimes take the member-driven character of the WTO sometimes to extremes. And they are still trying to run the WTO on a very lean budget – a Rolls Royce with a Volkswagen engine. I eagerly await the report of the Director-General's task force on WTO administration, chaired by Peter Sutherland, but no silver bullets can be expected.

Conclusions

The WTO as an institution and the Doha Round negotiations are not in mortal danger, but both could use a little help from their friends. A true development round could be achieved if member countries focus on what the multilateral trading system has done best: securing improved market access on an unconditional MFN basis. Developing countries are best served by pressing for close adherence to internationally agreed trade rules rather than pushing for wide-ranging policy space to dispense subsidies they can ill afford or for measures that make little economic sense. All members should engage in trade liberalization and rule-making taking account of different development levels and the vulnerabilities of specific industries. When it comes to multilateral rule making, I see no benefit in trying to reopen the Uruguay Round agreements. Revealed flaws should be fixed in the course of negotiations. Governments simply need to make the best possible use of the flexibility and provisions for review, where available. This implies that developing countries should not be forced to give this flexibility up in bilateral free trade agreements.

At the eleventh UNCTAD session in São Paulo, the President of Uganda, Yoweri Kaguta Museveni, declared that developing countries should stop seeing themselves as victims of the multilateral trading system and instead liberalize among themselves. I could not agree more.

¹ As Minister for Development Cooperation, I went with Laurens-Jan Brinkhorst, the Netherlands' Minister for Economic Affairs, to the WTO Ministerial Conference in Cancún, Mexico, in September 2003, and to the eleventh session of the United Nations Conference on Trade and Development (UNCTAD) in São Paulo, Brazil, in June 2004; and both ministers will go to the next WTO Ministerial Conference, which is to be held in Hong Kong in December 2005.

²United Nations Millennium Declaration adopted by member states in September 2000.

³ *Ibid.*, MDG 8.

⁴ Doha Work Programme, Decision adopted by the General Council, WT/GC/W/579, World Trade Organization, Geneva, August 1, 2004 (although it is called the July framework agreement).

⁵ Preamble, Marrakesh Agreement Establishing the World Trade Organization, in *The Results of the Uruguay Round of Multilateral Trade Negotiations: the Legal Texts* (Geneva: World Trade Organization, 1995), p. 6.

⁶ For a careful analysis that puts globalization in perspective, see Martin Wolf, *Why Globalization Works* (New Haven, CT: Yale University Press, 2004).

⁷ *Financial Times*, London, May 10, 2004, p. 11; also see Wolf, *op. cit.*, pp. 319-20.

⁸ Joint Proposal by Benin, Burkina Faso, Chad and Mali, "Poverty Reduction: Sectoral Initiative in Favour of Cotton", Committee on Agriculture in Special Session, WTO, TN/AG/GEN/4, May 16, 2003.

⁹ Opening address by Luiz Inácio Lula da Silva, President of Brazil, at UNCTAD XI, June 14-18, 2004, São Paulo, Brazil, http://www.unctadxi.org/templates/Press_539.aspx.

¹⁰ Doha Ministerial Declaration, November 20, 2001, WTO/MIN/(01)/DEC/1, paras 13 and 14 on agriculture and paragraph 16 on non-agricultural market access, covering industrial products and fishery subsidies.

¹¹ As proposed by European Commissioners Pascal Lamy and Franz Fischler in a letter of May 9, 2004, to all WTO members, <http://www.europa/trade.int>

¹² In the WTO Agreement on Agriculture, reached in the Uruguay Round negotiations, government interventions in the market process are categorized in green, blue and amber boxes dependent on the extent of trade-distortion.

¹³ Under the GATS, modes of delivery of services are divided into four categories: Mode I is *cross-border supply* where the service provider remains in one country and the consumer is in another; Mode II is *consumption abroad* where the consumer travels to another country to obtain the service; Mode III is *commercial presence*, where services are provided through the establishment in the other country; and Mode IV is the *presence of natural persons*, where the provider travels from one country to another to produce or deliver a service.

¹⁴ Speech by Pascal Lamy at an International Conference in Brussels, http://www.europa.eu.int/comm/commissioners/lamy/speeches_articles/spla233_en.htm

¹⁵ Ministerial Declaration on the TRIPs Agreement and Public Health, Document WT/MIN(01)/DEC/2, issued in Doha, Qatar, November 20, 2001.

¹⁶ Decision by the WTO General Council, Document WT/L/540, World Trade Organization, Geneva, August 30, 2003,

¹⁷ For an excellent analysis of developments in bilateral and regional free trade agreements, see David Vivas-Egui, "Regional and Bilateral Agreements and a TRIPs-plus World: the Free Trade of the Americas", TRIPS Issues Papers No. 1, Quaker United Nations Office, Geneva (<http://www.quno.org>).

¹⁸ The separate negotiations on the reform of the Dispute Settlement Understanding were – after missing the already extended May 1, 2004, deadline – once again extended in the context of the framework decision reached at the end of July 2004, but without setting a new deadline, Document WTO/L/579, and the report of the Chairman of the Special Session on the Dispute Settlement Body, Document TN/DS/10.

¹⁹ The Agreement Establishing the Advisory Centre on WTO Law was signed in the margins of the WTO Ministerial Conference in Seattle and entered into force on July 15, 2001. The Centre provides legal advice, support in WTO dispute-settlement proceedings and training for its developing-country members and the least-developed countries. For more information, see <http://www.acwl.ch>.

²⁰ Also see Marco Bronckers and Naboth van den Broek, "Trade Retaliation is a Poor Way to Get Even", *Financial Times*, May 21, 2004,.

²¹ For the European Union, see the Preamble to the EC Council Decision of December 22, 1994, on the implementation of the Uruguay Round agreements, which states that, "by its nature, the Agreement establishing the WTO, including the Annexes thereto, is not susceptible to being directly invoked in Community or Member State Courts". See *Official Journal of the European Communities*, No. L336/2, December 23, 1994.

For the United States, see Section 102 of the Uruguay Round Agreements Act of 1994, which states that the U.S. Congress excludes the direct effect of WTO provisions inside the United States *vis-à-vis* inconsistent U.S. rules, as well as direct applicability by individuals of WTO provisions in U.S. courts, 19 USC 3512 (a)(1).