

Reforming the World Trade Organization

Developing Countries in the Doha Round



Faizel Ismail

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Foreword

This book helps bring to centre-stage the role that developing countries have played over the decades in the multilateral trading system and makes a number of useful proposals for reforming and strengthening the system.

Faizel Ismail provides well-documented evidence of the active participation of developing countries in the debates that took place in the United Nations Economic and Social Council on the creation of the proposed International Trade Organization (ITO) from the early 1950s onwards. When the proposal was finally shelved in 1955, developing countries continued to fight for their interests to be addressed in the negotiations that had taken place in the General Agreement on Trade and Tariffs (GATT) since 1947.

While their demands for increased opportunities to export products of interest to them, mainly agriculture and textiles, were met with increased protection in the developed countries, they did manage to secure some Special and Differential Treatment (S&DT) provisions in GATT rules. In the current Doha Round, developing countries have put forward 88 proposals to review these provisions, with a view to strengthening them and making them more effective. The author of this publication chaired the Special Session on Trade and Development in the WTO that was tasked to negotiate the proposals and thus brings a highly informed and special perspective to the debate.

Perhaps one of the most significant achievements of the developing countries undergoing decolonization in the early 1960s was the creation of the United Nations Conference on Trade and Development (UNCTAD). Under Part IV of the GATT, parties agreed to “collaborate with the United Nations and its organs and agencies in matters of trade and development policy”. The author states that UNCTAD was to become “the premier international organization that dealt with trade and development policy issues in the 1990’s”. This book calls for strengthening UNCTAD and building greater coherence between it and the WTO – a call to which I fully subscribe – as well as for reforming the WTO. It makes a significant contribution to reviewing the academic literature on the role of developing countries in the GATT and continues the story of the unfolding Doha Round that began in the author’s previous book, on *Mainstreaming Development in the WTO*.

During my term as Director-General of the WTO, I established a consultative board to deliberate on how to address the increasing demands of developing countries – which are now the vast majority of its members – to reform the WTO. The outcome of this

process was a report entitled *The Future of the WTO: Addressing institutional challenges in the new millennium*, which produced a number of interesting ideas on future directions for the organization. In my current role as Secretary-General of UNCTAD, I similarly established a Panel of Eminent Persons to investigate ways of enhancing the development role and impact of this organization. The Panel produced its own report, which has already proven of great use to UNCTAD.

This book engages with several of the issues raised in both these reports. I am confident it will serve as a valuable reference for students and delegates of the WTO and UNCTAD who are interested in strengthening global governance and development.

September 2009
Geneva

Supachai Panitchpakdi
Secretary-General of UNCTAD

Foreword

What kind of outcome did the Uruguay Round of multilateral trade negotiations deliver? What has been behind the repeated failure of the Doha Round negotiations to conclude? These are critical questions that require answers that go to the heart of the relationship between trade and development. Inextricably intertwined are issues of power relations between developed and developing countries, of positions taken by different players in negotiating processes and of the institutional mechanisms and arrangements through which negotiations have been conducted.

When developing countries agreed at the WTO Ministerial held in Doha in 2001 to another round of multilateral trade negotiations, they did so on the condition that the Doha Round would be primarily about re-balancing the global trading system through, as the Doha mandate put it, “placing the needs and interests of developing countries at the heart of [the Round’s] work programme”. The view of many of us involved in the Doha Round negotiations is that imbalances between the rather modest concessions made by developed countries to developmental reforms and the highly ambitious market access demands placed on so-called “advanced developing countries” have been behind the repeated failures to conclude.

Faizel Ismail is extremely well placed to offer critical new insight on these issues. He has been South Africa’s chief Geneva-based negotiator at the WTO since 2002. He chaired the Negotiating Group on Trade and Development and has emerged as a significant scholar and analyst of the multilateral trading system. This is his second book, which appears at a moment when yet another attempt is underway to close the Doha Round. Not only does Ismail offer us a very timely detailed update of the gaps between the negotiating positions of major protagonists, as well as of the gaps between the Doha developmental mandate and the emerging deal, he also provides important original insights on the issue of how negotiating processes have been structured. In particular, he demonstrates that, notwithstanding the reforms made after the 1999 Seattle Ministerial debacle, many elements of the “principal supplier” approach continue to characterise the way in which small working groups are chosen to craft the contours of a deal. This highlights that as far as the quest for greater equity and accountability within the WTO is concerned, it is a case of *aluta continua* – the struggle continues.

This is an important book which I have no hesitation in recommending to all seeking a greater understanding of the crucial issues at stake in the Doha Round negotiations.

Rob Davies

Minister of Trade and Industry, Republic of South Africa

Preface and Acknowledgements

In my previous book, *Mainstreaming Development in the WTO*, I tried to capture the key events in the unfolding Doha Round negotiations up to the collapse of the G4 Potsdam Ministerial meetings in June 2007. This book picks up the story from there. It evaluates the various multilateral texts that have been drafted by the chairs of the agriculture and NAMA negotiations since Potsdam, following the multilateral process initiated by Pascal Lamy in his capacity as chair of the TNC. It explains the processes and events that led to the collapse of the July 2008 Ministerial Meetings and the subsequent failure of the WTO to conclude the modalities negotiations in December 2008. In the conclusion, the book assesses the attempts to resume and re-energise the Doha Round negotiations in 2009 – from the Davos Ministerial Meeting to the end of July 2009 – and assesses the future trajectory of the Doha Round during the course of 2009 and the prospects for conclusion. This book, like the earlier one, is an attempt to document the unfolding story of the Doha Round.

I have attempted to provide an analysis of these events and the outcomes of the processes recorded above from a developing country perspective. In this respect I have drawn on my own particular vantage point as a South African participant in the Doha Round, and an active member of several developing country alliances, such as the Africa Group, the G20, the NAMA 11 and the Cairns Group.

This book is ambitious in its attempt to not only tell a story, but to also draw on the existing academic literature to conceptualise some of the key issues that developing countries have been engaging with in the Doha round. In the previous book I tried to conceptualise the development dimensions of the multilateral trading system, including special and differential treatment for developing countries, an approach to challenges faced by the least developed countries and other small and vulnerable economies, developing a perspective on capacity-building and Aid for Trade in the WTO, and how to mainstream development in the multilateral trading system.

In this book I have attempted to review some of the conventional wisdom in the academic literature about the role of developing countries in the GATT until the launch of the Uruguay Round, providing evidence to rebut the arguments presented by these mainstream writers. I hope this effort will encourage other writers, thinkers and academics to rediscover the more active and influential role that developing countries have played in the development of the GATT and the multilateral trading system than is commonly acknowledged.

This book also begins to build an analysis of the role of developing country alliances in the WTO and provides a conceptual framework to assess the contribution of the stronger developing country groups in the WTO. It also begins to engage with the academic literature on developing country alliances in the WTO to assess their role in particular episodes of the Doha round negotiations. This book is also concerned about the reform of the WTO and its institutions. Several chapters in this book address the need to introduce fundamental changes to the practices and institutions of the WTO in order to address the existing asymmetries inherited from the old GATT, created in 1947 and largely incorporated into the WTO in 1995. The GATT was led and shaped by its principle architects of the time, the US and the EU. The book engages with the academic literature on some key related issues and draws on the experiences of the Doha Round documented in this and the previous book to make some proposals for reforming the WTO.

This book is thus written to share these perspectives that I have gained in the Doha Round with the next generation of trade negotiators, students of the multilateral trading system and civil society organisations who want to see a more fair, balanced, and development-friendly WTO.

I am indebted to many of my colleagues, in the South African government, and the trade unions, businesses and NGOs represented in the National Economic Development and Labour Council (NEDLAC) of South Africa for the insights that I have gained on the WTO whilst serving as a government official and head of the South African Delegation to the WTO based in Geneva. Many of the ideas presented in this book I have discussed with colleagues and friends from other developing country and developed country delegations to the WTO, NGOs and academics, based in Geneva and around the world.

My colleague, Xavier Carim, the Deputy Director General for International Trade in the Department of Trade and Industry (dti), has shared many of the challenging moments that this work draws on and has continued to provide his deep insight and wisdom in support of my efforts. Tshidiso Matona, the Director General of the dti is a constant source of support that has made my work in Geneva possible. In the past few years I have worked under the supervision and political leadership of several Ministers, including; Trevor Manuel, Alec Erwin and Mandisi Mphalwa. I consider it a great privilege to be able to enjoy both the intellectual guidance and political leadership provided by the current Minister of Trade and Industry, Dr Rob Davies, who continues to encourage and support my work in the multilateral trading system.

I am grateful to Rashid S. Kaukab and CUTS International for their enthusiasm in assisting with the editing and publication of this book. Dipankar De Sarkar has once again maintained a punishing schedule to complete the editing. I am also thankful to the Friedrich-Ebert-Stiftung for its generous support and willingness to take up this project at short notice.

Finally, I am immensely indebted to my loving and supportive family, my wife Aase, my two stepsons, Gregory and Thomas, and my four-year-old daughter, Leah, who is a source of great joy in my life.

Chapter Two of the book was written for a presentation made to a conference hosted by the Geneva Graduate Institute and subsequently published in the inaugural publication of *The Law and Development Review*. I thank Dr Y S Lee, the editor of the journal, for his support. A version of this paper was published by the Research and Information System for Developing Countries (RIS) as a Discussion Paper (RIS-DP#141-2008). The inspiration for the book was first acquired by the excellent research undertaken by Rorden Wilkinson who has continued to read my work and encourage my efforts.

Chapter Three was first presented to the Oxford University Global Economic Governance Programme hosted by Professor Ngaire Woods and Carolyn Deere. I thank Carolyn Deere, Mayur Patel and Arunabha Ghosh for reading and commenting on the first drafts. Carolyn Deere subsequently published the final draft as a working paper.

Chapter Four of the book was written whilst preparing for a lecture presentation that I was asked to deliver to a Masters class at the London School of Economics in January 2008. I thank Dr Mathias Koning-Archibugi for inviting me to make this presentation and his very helpful comments on the initial drafts. Thanks also to his students for their many questions and enthusiasm that spurred me on to complete the paper. I thank Jonas Tallberg for his encouragement and for sending me his then unpublished paper on the role of a chair which helped me to develop my own argument in this paper. This chapter also benefited immensely from the comments I received from Dr Manfred Elsig and Dr Rorden Wilkinson on the initial drafts. This chapter was published by the *Journal of World Trade* (2009, Volume 43, No. 5). I thank the editor, Edwin Vermulst for his constant encouragement and support and for including me as an associate editor of this prestigious journal.

Chapters Five and Six were first written for a presentation that I was preparing for at the Institute for Global Dialogue in Pretoria a few days after the collapse of the July 2008 ministerial meetings in Geneva. I thank the participants of the seminar for their many comments. Chapter Five has been published by the *World Trade Review* (2009, 8: 4, 1-27). I thank both the editor of the *World Trade Review*, Alan Winters, and the anonymous referee, for their challenging comments, which contributed to improving the quality of the paper.

Chapter Six was inspired by a presentation made by Amrita Narlikar at the Institute of Global Dialogue (IGD) on developing country alliances and coalitions in the GATT/WTO. I have both engaged and drawn on her salutary efforts to theorise the functioning of these coalitions and draw lessons for developing countries from previous experiences in the GATT/WTO.

Chapter Seven was first presented at a seminar hosted by the Friedrich-Ebert-Stiftung and CUTS International in Geneva. This chapter benefited immensely from the comments made on the initial draft by the participants at this seminar. I subsequently presented another draft of the paper to a seminar hosted by the Institute for Global Dialogue in Midrand, South Africa. I thank all the participants in these seminars for their comments and suggestions.

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September, 2007
Geneva

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Delegation to the WTO

Abbreviations and Acronyms

ACP	African, Caribbean and Pacific
AoA	Agreement on Agriculture
APEC	Asia-Pacific Economic Cooperation
ASCM	Agreement on Subsidies and Countervailing Measures
ASEAN	Association of Southeast Asian Nations,
BRIC	Brazil, Russia, India and China
BTAs	Border Tax Adjustments
CAP	Common Agricultural Policy
CARICOM	Caribbean Community
CBD	Convention on Biological Diversity
COPA	European Farmers Lobby
CUTS	Consumer Unity & Trust Society
DDA	Doha Development Agenda
DFQF	Duty Free Quota Free
DFQFMA	Duty Free Quota Free Market Access
DG	Director General (of the WTO)
EEC	European Economic Community
EU	European Union
FAO	Food and Agriculture Organization
FIPS	Five Interested Parties
FTA	Free Trade Agreement
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade
GSP	Generalized System of Preferences
IGD	Institute of Global Dialogue
ILO	International Labour Organization
IMF	International Monetary Fund
ITC	International Trade Centre
ITO	International Trade Organization
LDCs	Least Developed Countries
LTA	Long Term Arrangement
LTFR	Less Than Full Reciprocity
MDGs	Millennium Development Goals

MFA	Multi-Fibre Agreement
MFN	Most Favoured Nation
NAM	National Association of Manufactures
NAMA	Non-Agricultural Market Access
NEDLAC	National Economic Development and Labour Council
NEPAD	New Partnership for Africa's Development
NFIDCs	Net Food Importing Developing Countries
NGMA	Negotiating Group on Market Access
NTBs	Non-Tariff Barriers
OECD	Organization for Economic Co-operation and Development
OTDS	Overall Trade Distorting Support
QR	Quota Restrictions
RIS	Research and Information System for Developing Countries
RTAs	Regional Trade Agreements
S&D	Special and Differential Provisions
S&DT	Special and Differential Treatment
SACU	Southern Africa Customs Union
SCM	Subsidies and Countervailing Measures Agreement
SP	Special Products
SPS	Agreement on the Application of Sanitary and Phytosanitary Measures
SSG	Special Safeguard Provision
SSM	Special Safeguard Mechanism
SSS	Sensitive products, Special products and Special safeguard mechanism
SVEs	Small and Vulnerable Economies
TBTs	Technical Barriers to Trade
TNC	Trade Negotiating Committee
TRIPS	Agreement on Trade-Related Aspects of Intellectual Property Rights
TRQs	Tariff-Rate Quotas
UK	United Kingdom
UN	United Nations
UNCTAD	United Nations Conference on Trade and Development
UNDP	United Nations Development Programme
UNEP	United Nations Environment Programme
UNFCCC	United Nations Framework Convention on Climate Change
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund
UNIDO	United Nations Industrial Development Organization
US	United States
USTR	United States Trade Representative
VERs	Voluntary Export Restraints
WTO	World Trade Organization

1

Introduction: Developing countries in the GATT and the WTO

1.1 Introduction

The role of developing countries in the current WTO Doha Round is unprecedented. They are more organised, they have gained significant technical capacity, they are engaged in the process of bargaining and exchange of concessions, they are offensive in areas of export interest to them and they have developed powerful alliances in the form of the G20¹ on agriculture and NAMA 11 on industrial tariffs. Smaller developing countries such as the Least Developed Countries (LDCs), the small and vulnerable economies (SVEs) and interest groups that are more defensive on agriculture (the G33) or on cotton (the Cotton Four) have been making proposals and shaping the outcome of the Doha negotiations. Developing countries are shaping not only the content and outcome of the Doha Round, but also shaping the architecture and trajectory of the multilateral trading system.

However, it is argued, developing countries did not play such an active or influential role in the previous eight rounds of the GATT. Most historians of the GATT have pointed out that developing country participation in the GATT has not been as active or decisive in shaping the content and architecture of the GATT. Indeed, it is now widely accepted that the architecture and the content of the GATT were shaped largely by its main founders the US and the EU. It is also widely recognised that these members led the GATT largely in their own interests up to the end of the Uruguay Round. The conventional wisdom amongst most writers also recognises that the results of the Uruguay Round agreements were imbalanced against the interests of developing countries. It is also widely accepted that the interests of developing countries were largely ignored. Attempts were made during the course of the GATT years to address some of the developing country concerns through the special and differential treatment provisions. However these were considered to be largely ineffective by developing countries. The WTO and the GATT before it have thus been criticised by developing countries and civil society groups as being unfair, imbalanced and prejudicial to the interests of developing countries.²

Why has the GATT failed to effectively address the concerns and interests of developing countries? The reasons for this failure have become increasingly controversial in the academic literature of the GATT. There are at least three reasons that a large number of writers on the history of the GATT have ascribed this to: a) the passive and defensive role of developing countries in the GATT; b) the lack of participation of developing countries in the exchange of concessions; and c) the focus of developing countries on special and differential treatment as their main objective. This view has become the conventional wisdom in the academic literature and has shaped the perspectives of contemporary students of the GATT.

1.2 Rediscovering the role of developing countries in the GATT

Chapter Two of this book explores these three themes above and argues that the conventional wisdom will need to be revised. First, it will be argued that the observation made by the conventional wisdom that developing countries played largely a passive and defensive role in the GATT does not do justice to the active role developing countries played in shaping the architecture of the International Trade Organization (ITO) and the GATT by continuing to assert their demands; for increased market access for products of export interest to developing countries, and for the special needs and interests of the developing countries to be provided for in the GATT. This was achieved notwithstanding their export pessimism, and political weakness as they emerged from the ravages of colonialism, in the early period of the GATT.

Second, it will be argued that the assertion made by these writers that developing countries did not participate in the exchange of concessions fails to recognise that in the early rounds of the GATT developing countries were excluded from participation because of the insistence of the US and the EEC on the principal supplier rule, the exclusion of internal taxes and quotas that effectively excluded tropical products from the negotiations, and reciprocity. Developing countries were not unwilling to participate in the negotiations, but were rendered unable to do so.³

Third, the argument put forward by these writers that developing countries were treated poorly due to their exclusive focus on special and differential treatment will be reviewed. It will be argued that these writers fail to problematise the concepts of *most favoured nation* (MFN) and *reciprocity* that the GATT was based on. Debated in the ITO, developing countries argued strongly against the general application of these concepts, which incorrectly assumed that developing countries were economic equals with the developed and industrial world and failed to take into account the different levels of development and special needs of developing countries.

The active role that developing countries are playing in the Doha Round will make the current and future generations of trade negotiators increasingly curious about the role that developing countries played in the GATT. Rediscovering the history of the GATT will become an essential part of their attempts to shape the future architecture and content of the multilateral trading system. This chapter attempts to make a contribution to this process.

1.3 The role of the G20 and the NAMA 11

Chapter Three will focus on the role of the G20 and the NAMA 11 in the WTO Doha Round negotiations. It will evaluate the role of the G20, a developing country coalition that was created to advance the interests of its members in the agriculture negotiations, and the NAMA 11, a coalition created to advance the interests of its members in the NAMA negotiations.

In so doing, it will also discuss the evolving relationship between the G20, the NAMA 11 and the G90 groups of developing countries since the launch of the Doha Round. The chapter will review and evaluate the progress made by the G20 and the NAMA 11 groups in the Doha negotiations. Drawing on the academic concepts developed by the economist and Nobel prize laureate, Amartya Sen, it will be argued that while these groups adopted a ‘welfarist’ approach in the early stages of their development (one focused on “their own well being”) they have increasingly begun to play an “agency” role as “active agents of change”. The “welfarist approach” is a relatively narrow approach to negotiations. It nonetheless represents a significant advance from the mercantilist approach adopted by the major developed countries since the earliest period of the formation of the GATT in 1947 until the current round of negotiations.

It will be argued that the evolution of the role of the G20 and NAMA 11 from a welfarist approach to an ‘agency’ role has been a learning process propelled by their active engagement with other developing country groups and the wider WTO membership. In this latter role the G20 and NAMA 11 have begun to articulate and defend the interests of other developing country groups, even where this would require them to adjust their own narrow self-interest and transcend their narrower welfare interests. This process has laid the basis for the building of common platforms and a united front against attempts by their major trading partners to foist unfair deals on them. It will also be argued that these groups have taken this process a step further in advancing the objective of a fair, balanced and development-oriented multilateral trading system for all, developed and developing, country-members of the WTO. In this second sense the role of agency of these groups is vital for the development of the WTO and the multilateral trading system as global public goods.⁴

1.4 From Potsdam to Geneva

The launch of the Doha Round negotiations in November 2001 in Doha, Qatar, was a significant success for the newly-formed WTO after the dramatic failure of the Seattle Ministerial Conference in December 1999. However, this initial success was to be marred by several subsequent failed ministerial⁵ meetings and missed deadlines. The Doha mandate called for modalities⁶ in agriculture to be agreed by March 2002, and in NAMA (non-agricultural market access or industrial tariffs), by the end of May 2002. By December 2008, the establishment of full modalities in the Agriculture and the NAMA negotiations was still to be achieved by the WTO.

The attempt by WTO members to secure a “framework agreement” by the time of the Cancun Ministerial Conference, in September 2003 was frustrated by the collapse of the Cancun meeting. The limited objective of WTO members to at least agree on a

“framework” for modalities was finally achieved in the July 2004 Framework Agreement. Building on this success and learning from the Cancun collapse the WTO reduced its expectation to achieve full modalities at the next WTO Ministerial Conference held in Hong Kong and merely made some incremental advances on the July 2004 Framework Agreement. However, since then, various attempts to achieve full modalities in Agriculture and NAMA have been unsuccessful. A group of six (G6) WTO members (US, EU, Japan, Australia, Brazil and India) attempted to advance the modalities negotiations among themselves in early 2006, only to result in another failure for the WTO by July 2006. Pascal Lamy, the Director General of the WTO who hosted and chaired the G6 ministerial meetings in July 2006 in Geneva, decided to suspend the Doha negotiations.

In the first half of 2007, a small group of four members (EU, US, India and Brazil – the G4) attempted a process of negotiation amongst themselves in order to try and make a breakthrough on the vexed issues of agriculture and NAMA modalities. This process was to collapse at the ministerial meeting they held in Potsdam, Germany, in June 2007. Expressing his frustration with the lack of progress made in these small group processes, Lamy called on the chairs of the WTO negotiating groups to resume the multilateral negotiating process of the Doha Round.⁷ The chairs of Agriculture and NAMA have produced several draft texts since June 2007, leading to their third draft texts that they produced on the 10th of July, 2008. The end-July, 2008, ministerial meetings called by Lamy were to collapse once again, creating another failure to conclude the Agriculture and NAMA modalities negotiations by the WTO members.

Chapter Four reviews the process of the Doha Round from the collapse of the Potsdam G4 ministerial meetings and the resumption of the multilateral process until the July 2008 ministerial meetings in Geneva.

1.5 The Role of the Chair in the WTO negotiations

There were a number of factors that contributed to the 2008 end-July ministerial meetings, including imbalanced texts, increasing protectionism and collusion of the US and EU to open the markets of developing countries, and the revival of the principal supplier approach of negotiations that excluded the majority of members from decision making. However, these other reasons are discussed more fully in **chapter five**. This chapter focuses on the role of the chair of NAMA in biasing the outcomes against the developing countries and thus creating the basis for inefficient outcomes at each stage of the process. The NAMA chair’s role will be contrasted with that of the Agriculture chair who adopted a more inclusive and bottom-up process, and was able to retain the confidence of the membership throughout the process described above. This analysis is undertaken with a view to increasing the transparency, objectivity and fairness of the WTO chairs.

Whilst the decision-making system (generally one of consensus) and the institutional design of decision making (election and appointment of chairs by members) in the WTO creates more controls and less discretion for the chair to influence the decisions towards his or her own preferences than, for instance, in the EU (majority voting,

rotation of the chair)⁸, it will be argued that there still exists significant room for the WTO chair to influence the negotiations towards inefficient outcomes. Outcomes can be considered to be inefficient if the overwhelming majority of members are dissatisfied, expect to make more losses than gains, and developing countries perceive that they will be required to make a greater contribution than developed countries. In addition outcomes that lead to breakdowns of the negotiations and thus delay the process can be deemed to be inefficient. Such inefficient outcomes could result in imbalanced and unfair agreements and even the collapse of negotiations.

The WTO does not have very clear rules or guidelines on the role of the chairs. John Odell⁹ refers to the only set of guidelines that have ever been formulated as: “chairpersons should continue the tradition of being impartial and objective, ensuring transparency and inclusiveness in decision making and consultative processes; and aiming to facilitate consensus”.¹⁰ The evidence that will be provided in this chapter, whilst supportive of the general theoretical proposition put forward by Tallberg¹¹ of an institutional approach to building controls on the role of the chair, aims to strengthen the selection process with the use of a code of conduct for prospective chairs. It will be argued that the code of conduct should pay attention to the attributes of a prospective chair and his/her willingness to work for the common good of the organisation, with due regard for the broader goals of the WTO and the agreed mandates of the negotiations.

1.6 The December 2008 Collapse of the Doha Round

The chairs of Agriculture and NAMA had produced several draft texts since June 2007 leading to their third draft texts produced on the 10th of July 2008. These texts were to become the basis for the finalisation of the negotiations on Agriculture and NAMA modalities at the end of July 2008. After several missed informal deadlines the chair of the WTO Trade Negotiating Council (TNC), Pascal Lamy, called for a final negotiating process, based on the Chairs’ Texts, to be held from the 21st of July, with about 30-40 government ministers invited to participate in the process. However, the collapse of the G7 (EU, US, Japan, Australia, China, India and Brazil) ministerial meeting signalled the failure of the WTO once again to conclude the negotiations on modalities of Agriculture and NAMA at the end of July 2008. The G7 ministers and several other small groups that met in July produced some incremental but very controversial advances on the Agriculture and NAMA modalities negotiations.

Chapter Five of the book will briefly discuss the so-called ‘Lamy Package’ that emerged out of the G7 ministerial meetings and the subsequent reports of the Chairs of Agriculture and NAMA on the July 2008 modalities negotiations. The chapter will then update the reader on the developments in the WTO negotiations from July 2008 up to the end of December 2008. Attempts by Lamy to invite ministers to Geneva to continue the negotiations that collapsed in July were to fail. There were intense bilateral and trilateral negotiations between the US, India and China that were facilitated by Pascal Lamy in several teleconferences. However, as Lamy intensified his efforts, US Congressional leaders sent letters to President George W Bush urging him not to support a ministerial negotiation in Geneva at the end of December. The US Trade Representative Susan Schwab was to increase the pressure on China, India and Brazil to participate in sectoral

negotiations in the industrial sector and negotiate further market opening for US exporters.

These events were to underline the persistence of the imbalanced texts and the undue pressures exerted by the US to maintain a high level of ambition in areas of interest to the developed countries whilst reducing the ambition in areas of interest to developing countries. Lamy had no option but to cancel his proposed ministerial meetings scheduled for the end of December 2008, thus creating another failure for the WTO.

Chapter Five will discuss the reasons for the failure of the July 2008 ministerial meetings, offering three reasons. The first is the persistent protectionism of the EU and the US, and their attempts to raise the level of ambition for developing countries, particularly the major emerging markets that have been perceived as significant competitors with the EU and US. The second reason is the resurrection of the ‘principal supplier’ approach and power politics of the earlier GATT period that had resulted in the collapse of each phase of the process whenever it had been employed: at the G4 meeting in Potsdam in June 2007; when a failure of G6 ministers in July 2006 led to the suspension of the round by the DG; and at the collapse of the 2003 Cancun ministerial meeting where the majority of members were not represented in the Green Room.¹²

The third reason ascribes the failure to the imbalanced nature of the texts – both within NAMA and between NAMA and agriculture. The promise of the Doha round was that trade distorting subsidies and prohibitive tariff barriers in developed countries – measures that undermined developing country agriculture – would be substantially reduced. However, with each revised set produced by the chairs the agriculture text was perceived to have made only insignificant commitments by developed countries in agriculture, whilst the NAMA text provided for relatively onerous market opening by developing countries, particularly the larger emerging economies. This was partly ascribed to the role of the chair of the NAMA negotiating group who by his own admission decided at the very outset, in his first draft text, to determine the level of ambition himself.¹³ The role of the chair is discussed more fully in **chapter four** above. The chapter makes some recommendations for WTO members to address the underlying causes of the collapse.

1.7 Lessons for developing country coalitions from the July 2008 Ministerial collapse

Chapter Six considers the situation of different developing country groups at the end of the July 2008 ministerial meetings and the challenges that confront these groups on the way forward. The discussion on the lessons that can be learnt from this experience for each developing country group in the WTO is undertaken with reference to the theoretical framework offered by Amrita Narlikar in a recent contribution.¹⁴ The chapter supports the thesis advanced by Narlikar that the basic rationale for the creation of coalitions is captured by the “collective gains hypothesis”. The chapter concludes by calling on developing countries to continue to work in 2009 for a successful conclusion of the Doha Round based on its development mandate.

1.8 Reforming the World Trade Organization

Chapter Seven addresses the need to reform the WTO. It contrasts the views of Pascal Lamy, who acknowledged the need for the WTO to become more development friendly but argues that mere incremental reforms were sufficient as the WTO was largely on track, with the views of an eminent writer on the WTO, Rorden Wilkinson, who argues that the WTO reflects the asymmetry of economic power between developed and developing countries and will require fundamental reforms to make it more equitable and development friendly.

Whilst this chapter agrees with Lamy that there is a need to make the WTO more “development friendly” it does not share the perspective that “no major surgery” is needed. Instead, the chapter supports the thesis advanced by Wilkinson that the WTO requires more fundamental reform. In this regard the chapter argues that there is a need to prioritise development as the overall objective or high-level goal of the WTO.

The chapter briefly sets out the debate on the issues that relate to the objectives, goals and mandate of the WTO; the coherence of the WTO with other global economic institutions, and coherence between aid and trade; and the decision-making process and negotiating methods of the WTO, including the role of the WTO chairs in the negotiations. The chapter discusses the issues that require reform within the more general injunction advanced by Wilkinson (above) that these reforms should not be piecemeal but should lead to a more fundamental refashioning of the trading system towards making it more equitable, balanced, and development oriented, and one that is more inclusive and transparent in its decision making.

This chapter proposes that the WTO undertake a raft of reforms: i) to clarify the objectives and goals of the WTO; ii) to build greater coherence, between the WTO and the Bretton Woods institutions, the UN and its bodies and agencies, especially “UNCTAD”, between aid and trade through the WTO Trade Policy Review Body; and iii) to improve governance of the WTO, by strengthening the consensus method of decision making, avoiding decision making through small exclusive groups that are based on the ‘principal supplier’ principle, and adopting a code of conduct for WTO chairs. The chapter asserts that these reforms would contribute to transforming the WTO from a mercantilist institution to something approaching a global public good or, in the words of Lamy, “more development friendly, more user-friendly and for the benefit of all, rich and poor, large and small.” The WTO Ministerial Conference in Geneva in November/December 2009 provides a good opportunity for ministers of trade to debate and advance these proposals.

1.9 Prospects for the Doha Round in 2009 and beyond

Chapter Eight evaluates the attempts made since January 2009 to revive the Doha Round negotiations. It discusses the prospects for the conclusion of the negotiations on modalities during the course of 2009 and the conclusion of the Round in 2010. The upcoming conference of the WTO at the end of November/December, it is argued, provides an opportunity to debate some the issues raised in chapter seven on reforms required by the WTO. The basis on which real progress can be made towards the

conclusion of the Doha Round is discussed and developing countries are called upon to continue to fight for the successful outcome of the Doha Round on its development promise made in the Doha mandate.

We turn now to a review of the debate in the academic literature on the role of developing countries in the GATT, in Chapter Two.

Notes

- 1 The G20 group of developing countries, the subject of this book, had 23 members at last count: Argentina, Bolivia, Brazil, Chile, China, Cuba, Ecuador, Egypt, Guatemala, India, Indonesia, Mexico, Nigeria, Pakistan, Paraguay, Peru, Philippines, South Africa, Tanzania, Thailand, Uruguay, Venezuela and Zimbabwe. It is this G20 that is the subject of this book. This G20 is not to be confused with the recent meetings the G20 Leaders Summit that has its origins in the G20 Finance Ministers meetings.
- 2 See Stiglitz, J., 'Globalization and its Discontents' (WW Norton and Company, 2002).
- 3 Wilkinson, R. and Scott, J., 'Developing Country Participation in the GATT. A Reassessment,' 7 *World Trade Review* 3 (July 2008), Pg 1-18.
- 4 See Kaul, I., Conceicao, P., Goulven, K.L., Mendoza, R., 'Providing Global Public Goods,' *Managing Globalization*. UNDP (Oxford University Press. Oxford. 2003).
- 5 The WTO has formal Ministerial Conferences that are required to take place at least once in two years. Since its formation at the Marrakech Ministerial Meeting, the WTO has held five Ministerial Conferences, with the last being the 6 th Ministerial Conference held in Hong Kong in December 2005. However, there are other informal ministerial gatherings of the WTO that have taken different forms, including the so-called mini-ministerial meetings that were held to discuss the launch of the Doha Round; small groups of ministers meeting among themselves (G4, G5 and G6) and larger groups of ministers (approximately thirty) convened by the Director General to negotiate breakthroughs in the negotiations, sometimes referred to as the Green Room. These smaller informal ministerial meetings have no legal status and any 'breakthroughs' arrived at in these must be taken to the broader membership for a decision.
- 6 "Modalities" are not clearly defined in the WTO. The concept refers to the technical formulas that are utilised to develop a schedule of commitments (on tariff reductions or subsidy reductions) that members have to finally agree to. A "Framework Agreement" falls short of this objective and develops the architecture for the modalities agreement without fully agreeing the technical formulas that will be used to determine the legal commitments of members.
- 7 See WTO doc, 'Informal TNC Meeting at the level of Head of Delegation', Job (07)/105 22 June 2007.
- 8 Tallberg, J., 'The Power of the Chair: Formal Leadership in International Cooperation', *International Studies Quarterly* (forthcoming).

- 9 Odell, J., 'Chairing A WTO Negotiation,' *Journal of International Economic Law* 8 (2): Pg 425-448.
- 10 See WTO doc WT/L/510, 'Guidelines for Appointment of Officers to WTO Bodies'. Adopted by the General Council on 11 December 2002, Paragraph 2.2. 21 January 2003.
- 11 Tallberg, J., 'The Power of the Chair: Formal Leadership in International Cooperation', *International Studies Quarterly* (forthcoming).
- 12 For a discussion of the Cancun Ministerial Meetings see Ismail, F., 2004. 'Agricultural Trade Liberalisation and the Poor: A Development Perspective on Cancun', *BRIDGES*, January 2004, pg 4-5.
- 13 See WTO doc, 'Chairman's Introduction to the Draft NAMA Modalities', Negotiating Group on Market Access. Job (07)/126 17 July 2007. There are several instances where the Chair reveals his own preference. On page one he states "If I have been invited to propose the modalities it is because Members have been unable to bridge their positions themselves"...."it is almost certain you will be disappointed with my proposed modalities since, by definition they cannot fully reflect any Member's position but rather a compromise between their positions". On page two, after recognising the different views on the definition of "less than full reciprocity", he states: "I am confident that my proposed modalities satisfy the requirement for less than full reciprocity in reduction commitments". He goes on to recognise that there is a strong link between the level of ambition in agriculture with NAMA but nevertheless states,"I have proposed a range of ambition in market access in NAMA that I believe could be consistent with the outcome of the agriculture negotiations which remain a moving target" and then admits..."Of course, some members will disagree and will judge the offer on the agriculture side insufficient."
- 14 Narlikar, A., 'A Theory of Bargaining Coalitions in the WTO', in (ed) Narlikar, A, and Vickers, B. 'Leadership and Change in the Multilateral Trading System: Republic of Letters Publishing Martinus Nijhoff, 2009'.

2

Before Doha: Rediscovering the Role of Developing Countries in GATT

2.1 Introduction

Developing countries have been characterised by some eminent writers on the GATT as having played an essentially defensive role in the GATT, unwilling to make tariff concessions and focused almost exclusively on securing special and differential treatment concessions. This perspective has become part of the conventional wisdom in the academic literature on the GATT. This chapter argues, based on empirical evidence, that this is not an accurate description of the role of developing countries in the ITO and the GATT and that developing countries have played an active role in shaping the agenda of the GATT/WTO.

At the launch of the Doha Round, developing countries were sceptical that the Round would address issues of concern to them. Their scepticism was based on their experience of the past eight rounds of the GATT that had failed to adequately address the interests and concerns of developing countries. Nevertheless, the Doha Round has seen developing countries play an active role through the formation of coalitions such as the G20, NAMA 11 and G33 that are based around specific issues. Regional coalitions, such as the Africa Group, the ACP, and groups that represent the poorer developing countries, e.g., LDCs and SVEs, have also helped developing countries advance their interests. These groups have tended to be relatively organised and articulate in expressing their interests and advancing their negotiating positions. Moreover, some of the major developing country groups such as the G20, NAMA 11 and G33 are technically very competent, and have been able to match the capacity of the major developed countries in the Doha negotiations. The unfolding history of this process has been recorded elsewhere and this chapter does not intend to address this issue here.¹

Ever since the formation of the GATT in 1947, developing countries have been arguing for their particular development situations and interests to be taken into account.² However, the demand by developing countries for increased market access for products of export interest to them, such as agricultural products and textiles, were largely ignored.

Instead, these products faced ever-increasing protection in developed countries for over 50 years after the formation of GATT/WTO. At its inception, the GATT did not recognise the special situation of developing countries. The fundamental principle of the agreement, referred to as the Most Favoured Nation Treatment and provided for in Article 1 of the GATT, was that rights and obligations should apply uniformly to all contracting parties. Thus, in the early period of the GATT (1948 to 1955) developing countries participated in tariff negotiations and other aspects of GATT activities as equal partners. However, the GATT went on to incorporate a number of exceptions to its general principles of Most Favoured Nation (MFN)³ and national treatment,⁴ through the so-called special and differential treatment provisions. These provisions, nonetheless, were considered to be largely ineffective. The WTO and the GATT before it have thus been criticised by developing countries and civil society groups as being unfair, unbalanced and prejudicial to the interests of developing countries.⁵

2.2 Why has the GATT Failed to Address the Development Needs of Developing Countries

There are at least three reasons that a large number of writers on the history of the GATT have ascribed this failure to aid developing nations to: a) the purportedly passive and defensive role of developing countries in the GATT; b) the lack of participation of developing countries in the exchange of concessions; and c) the focus of developing countries on Special and Differential Treatment as their main objective. This perspective has become the conventional wisdom in the academic literature and has shaped the perspectives of contemporary students of the GATT.

On the first assertion, Michael Finger, an eminent writer on the subject, states, “Through GATT’s Tokyo Round, that ended in 1978, developing-country participation in multilateral trade negotiations was either passive or defensive. Developing countries that had joined the GATT had in large part remained by-standers; many had acceded under Article XXVI, which exempted them from having to negotiate concessions in order to enter”.⁶

Finger goes on to state, however, that in “the Uruguay Round things were different. Already in the run-up to the Round, many developing countries took an active role.” Nevertheless, Finger (and other writers) recognised that the Uruguay Round was unbalanced and that “developing countries had given more than they got – a concern that the basic GATT/WTO ethic of reciprocity had been violated”. The main reasons for this outcome have been ascribed to the “lack of assessment of the impacts of the agreement...” and that the Uruguay Round Agreements were “poorly understood and certainly not quantified”.⁷

Similarly, some developing country writers argued that whilst developing countries have had a numerical advantage in the GATT/WTO this has not helped them, and ascribe this to a number of weaknesses.⁸ Developing countries have been described as victims of “traps and pitfalls”, “harassment”, and “indifference”. Furthermore, developing countries are said to have remained silent due to their ignorance of the

issues or fear of developed country response and offered at best, “stiff resistance and sudden collapse”.⁹

Both observations do not do justice to the active role developing countries played in shaping the architecture of the ITO and the GATT. Developing nations have continued to assert their demands for increased market access for products of export interest to them and have advanced their special needs and interests. This was achieved notwithstanding their export pessimism and political weakness as they emerged from the ravages of colonialism in the early period of the GATT. However, developing countries did lack the technical capacity and organisation to build their bargaining power and gain negotiating leverage in the multilateral negotiations. This was only to emerge in the Doha Round from the formation of strong coalitions based on their development interests. Despite this an Uruguayan case against 15 OECD members of the GATT in 1961 illustrates that developing countries were not mere passive participants in the GATT. This argument will be discussed further in section 2.3.

The second reason for the failure of the GATT to address the needs of developing countries has been ascribed to their lack of participation in the exchange of concessions. Will Martin and Patrick Messerlin state that, “The fact that developing countries were not actively participating in the Kennedy and Tokyo Rounds made it much easier for the industrial countries to create mechanisms such as the Multi-Fibre Agreement (MFA) targeted against exports from developing countries, to continue to exclude agriculture, to exclude other labour-intensive products from full formula-based liberalisation, and to offer tariff preferences only at the discretion of the importer”.¹⁰ They argue further that “had emerging and developing countries been active participants in the exchange of market-access concessions in the Kennedy Round, it may have required more time to negotiate, and its measured productivity might have been lower, but it would likely have been much more successful in meeting the needs of developing countries.”

This perspective fails to recognise that in the early rounds of the GATT developing countries were excluded from participation as a result of the insistence of the US and the EEC on the ‘principal supplier’ rule, the exclusion of internal taxes and quotas that effectively excluded tropical products from the negotiations, and the principle of reciprocity. Thus developing countries were willing to participate in the negotiations but were rendered unable to do so.¹¹ However, developing countries still made significant concessions in the early GATT Rounds, including the Tokyo and Kennedy Rounds. These issues will be discussed further.

The third argument that many writers ascribe to the poor treatment of developing countries in the GATT is their apparent focus on special and differential treatment. Martin and Messerlin outline this argument as follows:

“Prior to the Uruguay Round, most developing countries had sought to achieve their objectives primarily through special and differential treatment provisions. This was partly a result of the widespread belief in import substitution as a path to development, and partly to the power of the interest groups in import-substituting firms in developing countries”.¹² These writers go on to assert that “many of these countries resisted the use of key GATT approaches, such as reciprocal liberalization and the principle of

non-discrimination”¹³ and that “the introduction of these provisions reflected a move away from the original GATT objective of providing a forum for exchanging market access towards one of making transfers to developing countries”.¹⁴

These writers fail to consider that the concepts of MFN and reciprocity were debated in the ITO by developing countries, that argued that the different levels of development and special needs of developing countries should be taken into account. In addition, Part IV of the GATT (1965) and the subsequent Enabling Clause (1979) that created the basis for the special and differential treatment provisions of the Tokyo Round were partly a response to the failure of the developed countries to address the key interests of developing countries, due to their own domestic protectionist interests against exports from developing countries, particularly in agriculture and textiles.

This chapter will elaborate on the three themes discussed above by raising three questions on the role of developing countries in the GATT. First, did developing countries play a passive and defensive role in the GATT? Second, did they exchange concessions and, had they offered more concessions, would they have extracted more concessions from the developed countries in return? Third, was special and differential treatment the main objective and focus of developing countries in the GATT? Finally, the chapter will also discuss the perspectives of the writers mentioned above on the role of developing countries in the Uruguay Round. However this discussion will be confined to the role played by developing countries in the process of launching the Uruguay Round.

2.3 Did Developing Countries Play A Passive And Defensive Role in the GATT?

Of the 23 original contracting parties to the GATT, 10 were developing countries.¹⁵ By 1960, of the 37 contracting parties 21 were developed and only 16 were developing countries. However, by 1970 the balance changed significantly when of the 77 contracting parties, 27 were developed and 52 were developing countries. By 1987, of the 95 contracting parties 29 were developed and 66 were developing countries.¹⁶ Thus the participation of developing countries in the GATT Rounds increased progressively from 25 in the Kennedy Round, 68 in the Tokyo Round, 76 in the Uruguay Round and over 70 percent of the 153¹⁷ countries in the Doha Round.¹⁸

At the time of the creation of the GATT, the vast majority of developing countries were still under colonial rule.¹⁹ In some cases their interests were spoken for by the developed countries, or “represented” by their colonisers during the early GATT Rounds. In some other cases they were satellite regimes of their colonial states, as was the case of Southern Rhodesia (now Zimbabwe) and South Africa. In addition, the developed countries, or the colonial countries, were to regard the GATT as their “property” and believed that “they did not have to accommodate the interests of the rest of the world”.²⁰ Thus, even as many developing countries became independent in the late 1950s and early 1960s their attitudes and their perspectives of the particular development needs of their newly independent countries were partly shaped by this experience.

ITO

Notwithstanding the obstacles in their way developing countries did participate actively, both in the GATT negotiations and in the process towards creating the International Trade Organization (ITO). Developing countries were already actively involved in the negotiations on the formation of the ITO, which was abandoned due to the failure of the US Congress to ratify the ITO Charter. Even at the very first negotiations on the ITO charter, developing countries were vigorous in their engagement, and tabled a wide range of proposals. The first draft of the ITO charter proposed by the USA in December 1945 had “no provisions on economic development, nor were there any special rules or exceptions for developing countries”.²¹ Much of the debate about the GATT took place in the negotiations on the creation of the ITO as it was understood that the GATT would be subsumed within the ITO once it was created. Thus the debates about the nature and underlying principles that governed the trading system took place in the ITO negotiations, rather than the GATT. The principle of reciprocity was debated in the ITO negotiations with developing countries raising concerns that they lacked the bargaining power to enable them to extract concessions of value from developed countries on a reciprocal basis. Therefore, developing countries argued that there should be some consideration for the reality that they were not able to grant reciprocal tariff cuts of equal value to that of the more developed countries.²² In spite of these objections, this principle was adopted as a core principle in the GATT and incorporated in the preamble of GATT 1947.

During the first meeting of the negotiations on the ITO Charter, held in London in 1947, the US put forward its proposed Charter (which had been agreed to between the US and the UK much earlier). However, the Brazilian delegation also put forward a “Proposed Charter”. The Brazilian Charter agreed with the US proposal on the MFN principle by stating that this should be adhered to unconditionally only by countries in the advanced stage of development. They both also called for a ban on quantitative restrictions. However the US proposal called for a broad exemption on the ban for any agricultural product.

The Brazilian proposal also called for recognition of the problems faced by less developed countries as well as the need for special measures to assist these countries with their development.²³ During the debate on the ITO Charter in the United Nations Economic and Social Council, developing countries were able to insert an amendment which called for the ITO negotiations to take into account the special conditions which prevail in countries whose manufacturing industry was still in the initial stages of development. The US rejected this proposal, which meant that it did not get into the ITO Charter.

However, on the issue of the voting method, the developing countries were more successful. For decision-making in the ITO the US delegation proposed the same method of weighted voting that was used in the recently-created International Monetary Fund (IMF). A similar proposal was made by the UK, to take into account the economic size of the country in its share of the vote. Developing countries voiced their opposition to such a system as they feared that this would institutionalise their secondary status. A number of developing countries,²⁴ voiced strong opposition to weighted voting and

came out in favour of consensus. As a consequence the ITO did not adopt a system of weighted voting. Thus on this issue developing countries did succeed in shaping the voting procedures of the ITO and the GATT.

Developing countries were active participants in the negotiations on the ITO and did succeed in getting some of their concerns into the final Charter at the Havana Conference in early 1948. It was partly for this reason and partly the fact that the US did not succeed in getting all its narrow interests into the ITO Charter that the Havana ITO Charter was rejected by the US Congress and thus never came into force.²⁵

Uruguayan Case

Developing countries were also not mere passive participants subsequent to the GATT's formation, as is illustrated by the Uruguayan case. In 1961 Uruguay filed a legal complaint against all fifteen developed countries that were members of the GATT listing 576 restrictions in the fifteen markets against its exports. The point of the Uruguayan complaint was to draw attention to the commercial barriers facing exports from developing countries.²⁶ Most of the provisions that Uruguay pointed to were illegal under the GATT and the case pointed to the lack of effectiveness of the GATT in protecting the interests of developing countries at the time. Developing countries did participate and did attempt to shape the architecture of the trading system, succeeding in some cases but failing to make a dent in others. However, their failure to effect changes in the GATT should not be mistaken for a lack of participation and engagement.

2.4 Did Developing Countries Exchange Concessions? Had they provided more Concessions, could they have Extracted more Concessions from Developed Countries in Return?

The discussion below further explores the issue of developing country participation in the GATT in the context of developing country willingness to participate in the exchange of concessions during the early GATT rounds and the later Dillon, Kennedy and Tokyo Rounds.

Early Rounds

In the early period of the GATT there were at least three major obstacles to developing country participation in the process of tariff bargaining or exchange of concessions. These include the principle of reciprocity, the principal supplier rule and the focus on tariffs only in the negotiations.

During the debate on the ITO negotiations the US made it clear that it required the principle of reciprocity to be the foundational principle of the GATT. This required that any tariff cuts that were made by the US would have to be paid for by reciprocal concessions made for US manufactured goods. Developing countries such as India argued that due to the limited size of their domestic market their bargaining power was inadequate to induce concessions from developed countries and moreover they wanted to protect their infant industries which were at an early stage of industrialisation.²⁷

During the negotiations on the ITO many members had preferred a system of bargaining that was formula based – across the board tariff negotiations – but the US Congress indicated that this would be unacceptable to them. The UK supported this method as it would have led to the levelling off of high US tariffs. The US delegation however argued for a system of reciprocal bargaining over specific tariff lines that required a product-by-product, principal supplier method of tariff negotiations by which a country could only be requested to make tariff cuts on a particular product by the principal supplier of that product to that country.²⁸ This meant that for any particular product the importing country would negotiate its tariff rate with only its principal supplier, as opposed to all suppliers of the same product. Developing countries at the time were seldom the principal suppliers of any product, except raw materials that entered industrialised countries duty free. Only at the 4th Geneva Round of GATT in 1956 was this rule modified to allow developing countries to negotiate collectively in requesting concessions. However, they were still effectively prevented from requesting concessions for any products that they did not produce in large quantities. Thus the principal supplier rule had the effect of locking out developing countries from the tariff negotiations.

For those developing countries that exported tropical products the primary impediments to their exports were more often internal taxes in importing markets rather than tariffs. These internal taxes were as high as 500 percent for products such as sugar. However, internal taxes were not on the agenda of the GATT and could not be negotiated. In addition, quotas too were excluded from the early GATT negotiations and, as the GATT evolved, these quotas increased the barriers to entry for the products of interest to developing countries.

Thus Wilkinson²⁹ observes that by the mid-1960s the evolution of the GATT led to two different experiences. For the industrialised countries, “liberalization under the GATT had seen the volume and value of trade in manufactured, semi-manufactured and industrial goods increase significantly”. In addition, “they had also managed to protect their agricultural and textile and clothing sectors through a blend of formal and informal restrictions”. To give effect to this there were a number of GATT waivers to protect developed country agricultural markets and the exclusion of textiles and clothing from liberalisation in developed countries. For developing countries this meant that the products of interest to them were excluded from liberalisation.³⁰ Thus the argument that developing countries were not willing to provide concessions in the early rounds of the GATT must be seen in the context of the many obstacles that prevented developing countries from effective participation in the tariff bargaining process and excluded them from the negotiations. This was to shape the attitude of developing nations during the unfolding rounds of negotiations in the GATT.

Haberler Report

The export interests and demands of developing countries were again clearly articulated in the 1950s (at a ministerial meeting in 1957 and the Harberler Report in 1958) and placed firmly on the agenda of the Kennedy Round in 1964. By the mid 1950s developing countries, whilst still a minority in the GATT, had already asserted the need for market access in developed countries for products in which they had a comparative advantage. Thus a GATT ministerial meeting convened to discuss this

issue in November 1957 noted “...the failure of the trade of less developed countries to develop as rapidly as that of developed countries, excessive short-term fluctuations in prices of primary products, and widespread resort to agricultural protection.”³¹ This meeting led to a study of these issues that produced the Haberler Report in October 1958.

The Haberler Report found that there was some substance in the feelings of disquiet among primary producing countries that the present rules and conventions about commercial policies were relatively unfavourable to them. As a result the contracting parties adopted a Declaration on the Promotion of Trade of Less-developed Countries in December 1961. The Declaration called for action in seven areas: speedy removal of those quantitative restrictions which affect the export trade of developing countries; special attention to tariff reductions of direct and primary benefit to developing countries; removal, or considerable reduction of fiscal duties in developed countries; improved access for developing countries in purchases made by State agencies; preferences in market access for developing countries; limitation of subsidies on production or export of primary products; and careful observance of GATT or UN mandated limitations on disposal of commodity surpluses or strategic stocks. The Declaration also called for a sympathetic attitude to the question of reciprocity by developing countries. Finally, the Declaration called for more attention to be given in developed countries’ technical assistance programmes to efforts by developing countries to improve production and marketing methods, and for the expansion of trade among developing countries themselves.

Dillon Round

The Harberler Report had recommended the inclusion of internal taxes in the GATT negotiations. This together with strong pressure from developing countries, particularly India and Brazil, led to the inclusion of internal taxes in the Dillon Round (1960-61). The inclusion of internal taxes in the Dillon Round was met with fierce opposition from the US and the newly-formed European Economic Community (EEC). The increasing use of non-tariff barriers to protect the agricultural markets of developed countries and the exclusion of agriculture from the negotiations, together with the use of the principal supplier rule, resulted in poor and disappointing results for agricultural exporting developing countries.³² Thus in 1963 a Nigerian-led group of developing countries (G21) proposed a programme of action urging the contracting parties to focus their attention on targeting those barriers to trade identified as directly affecting developing countries. This programme of action was adopted as a resolution at a May 1963 GATT ministerial meeting. The resolution called for a standstill on new tariff and non-tariff barriers. However, the EEC obtained an exception for its emerging common external tariff, Austria and Japan stated that they were not able to meet the deadline of December 1965 and the US stated that its national legislation required its tariffs to be reduced over a five year period and thus it could not comply. Thus the 1963 resolution only resulted in a committee to investigate the revision of the GATT with a view to safeguarding the interests of developing countries in their international and development programmes.³³

Kennedy Round

The Kennedy Round was to remedy some of these deficiencies in the GATT and was “advertised as the long-awaited answer to demands by developing countries for improved access to developed-country markets”.³⁴ The tariff reductions that were required to be made by developed countries on tropical products of export interest to developing countries did not materialise. The Kennedy Round (1963-67), that had promised to prioritise issues of interest to developing countries (agriculture and textiles), thus failed to make any real progress on these issues.

The US Trade Expansion Act passed by the US Congress in 1962 provided the US with the basis to approach across the board formula-based negotiations. However the approach the US chose was a hybrid one that utilised a formula combined with substantial bilateral bargaining over the exceptions list. This bargaining usually took place between the principal suppliers of the product in question to ensure reciprocity. Thus in this process developing countries were still hampered by their lack of bargaining power and the ability to offer reciprocal tariff concessions. The Kennedy round consequently also fell into the previous pattern of achieving far greater concessions for products of export interest to developed countries.

In contrast to the approximately 35 percent average tariff reductions achieved for developed country manufactured goods, tariff cuts on cotton textile products only achieved an 18 percent cut from the US and 22 percent from the EEC. In addition, both the US and the EEC made their textiles sector offers conditional on the renewal of the Long Term Arrangement (LTA), rendering these tariff cuts irrelevant due to the LTA quotas, imposed against the largest supplying developing countries into these developed country markets.³⁵ In addition little progress was made on agriculture as the agriculture support programmes of the US and the EEC remained highly restrictive and developing countries continued to face high tariffs on finished and semi-finished industrial products.³⁶

However, in spite of this, developing countries did participate in the tariff reduction process with at least 23 developing countries having declared themselves as participating countries for the purposes of making a contribution, with 14 of them making tariff bindings or concessions that were included in their GATT schedules.³⁷

Tokyo Round

Again, in the Tokyo Round developing countries did participate, by making proposals for agreement and agreeing to implement restrictions in certain areas. The Tokyo round went beyond tariff cuts and negotiated rules on non-tariff barriers (NTBs). For developing countries one of the most important issues was the so-called Voluntary Export Restraints (VERs). These VERs dominated the cotton sector and several other products of importance to developing countries. By the time of the Tokyo Round there were more than 800-850 NTBs in force. The committee charged with examining Quota Restrictions (QR) with a view to restricting their use produced two reports, with one synthesising the proposals of developing countries, represented by Brazil and the three Chairs, the GATT contracting parties, the Council, and the Committee on Trade and Development. The report called for the gradual liberalisation and elimination of QRs.

The other report was presented by the US which made a distinction between legal and illegal restrictions, with the illegal QRs being subject to negotiations. However, few countries accepted the US distinction or definition of what was legal or illegal. Thus the multilateral approach to the negotiations on QRs was abandoned in favour of a bilateral 'request and offer' approach.

As in the Kennedy Round, developed countries that took part in the Tokyo Round made the extension of the MFA a precondition for any reduction of tariffs on textiles. In addition, the US restricted the growth of its quotas for developing country textiles even further from 6 percent to 1-3 percent a year. The EEC went further and required the major developing country exporters to reduce their textile and clothing exports to below 1976 levels requiring cuts of 9 percent, 7 percent and 25 percent, for Hong Kong, Korea and Taiwan respectively.³⁸

On the issue of safeguards in which the developing countries had a major interest, Brazil and Nigeria, on behalf of the majority of developing countries, presented proposals. However the negotiations broke down because developing countries refused to accept the EEC's demand for each member to have the right to impose unilateral 'safeguards' on individual countries without multilateral approval. Again, in other areas of the negotiations, such as customs valuation, subsidies, countervailing duties, tariffs, NTB (non tariff barrier) codes and agriculture, developing countries played an active role but their views were largely ignored.

The US and the EEC negotiated a mutually acceptable outcome and then included other members of the Quad (Japan and Canada). The rest of the countries involved in GATT were faced with a *fait accompli*, with developing countries lacking the political and economic bargaining power to determine the outcome.³⁹

The Tokyo Round Schedules included concession bindings from several developing countries.⁴⁰ And in the supplementary protocol to the Tokyo Round in November 1979 concessions were made by a large number of other developing countries.⁴¹ Thus the contention that developing countries were not active participants in the Kennedy and Tokyo Rounds and were not willing to make tariff concessions does not take into account the active role that developing countries played in attempting to negotiate agreements in their interest and the tariff concessions that they actually did make.

Whilst these concessions may not have been very significant they should be considered in the light of the refusal of developed countries to fully engage with or to respond in a positive manner to the negotiating proposals put forward by developing countries, and the very poor results achieved by developing countries on both tariff and non-tariff barriers. Given the growing protectionism in the developed countries on agriculture and textiles and clothing products of interest to developing countries, the relatively small markets of developing countries, the principal supplier tariff reduction techniques adopted by developed countries, and the relatively poor political and economic bargaining power of developing countries, it is very unlikely that they could have achieved better results had they made more robust tariff cutting concessions.

2.5 Was Special and Differential Treatment the main objective and focus of developing countries in the GATT?

In this section we will examine the assertion that developing countries sought to achieve their objectives primarily through special and differential treatment provisions prior to the Uruguay Round. As the GATT advanced with each GATT Round developing countries were willing and did in fact contribute to the process of tariff reduction and exchange of concessions. However, developing countries also sought to create provisions in the GATT that addressed their particular development situation and needs. This section will discuss the gradual adoption of these special and differential measures by the GATT, Article XVIII, Part IV of the GATT and the Enabling Clause. This section will further argue that these measures were often not fully responsive to the demands of developing countries and in most cases without legal effect. I will begin by a discussion of the contention that developing countries simply resisted “the use of key GATT approaches, such as reciprocal liberalization and the principle of non-discrimination”⁴² and that “the introduction of these provisions reflected a move away from the original GATT objective of providing a forum for exchanging market access towards one of making transfers to developing countries”⁴³. I argue that this fails to account for these concepts as being inadequate to address the very real differences that existed and still remain today between the levels of development and different development needs of developing countries.

Reciprocity and MFN

The debates about the nature and underlying principles that governed the trading system took place in the ITO negotiations, rather than the GATT. The first draft of the ITO charter proposed by the USA in December 1945 had “no provisions on economic development, nor were there any special rules or exceptions for developing countries”.⁴⁴

The principle of reciprocity was debated in the ITO negotiations, with developing countries arguing that they were unable to negotiate with developed countries on a reciprocal basis due to their lack of bargaining power. Notwithstanding this important objection, this principle was adopted as a core principle in the GATT.⁴⁵

The Brazilian Charter critiqued the US proposal on the most favoured nation (MFN) principle and argued that this arrangement was only appropriate for countries that were at a more advanced stage of development. In addition, an attempt by developing countries to introduce an amendment in the ITO charter that recognised the special situation of developing countries failed because of US rejection.⁴⁶

Thus the principle of reciprocity and MFN were strongly challenged by developing countries during the negotiations in the ITO – indeed they remain a contested arena today. The adoption of these principles by the GATT without the full support of developing countries and without any qualification should be addressed by academic observers of the GATT. These concepts, such as the MFN, were continuously challenged by developing countries in the early period of the GATT’s formation as well as during the early and later rounds of the GATT, and up to and during the Doha Round.

The need to qualify the concepts of reciprocity and MFN to take into account the special needs of developing countries led to the adoption of a number of development provisions in the GATT. In addition, a number of other provisions went beyond this to provide for positive measures to be adopted by developed countries that were parties to the GATT in order to assist developing countries with their development needs, especially with regard to capacity building and technical assistance. These measures were agreed by developed countries partly due to the increasing pressure that developing countries were exerting in the GATT, and partly due to the recognition by developed countries that the prevailing techniques of negotiation, increasing protectionism in developed countries and the outcomes of the early rounds had not resulted in market access gains for developing countries.

Article XVIII

At the review of the GATT in 1954-55 developing countries again criticised the failure of the GATT to meet their needs, particularly with regard to the exclusion of agriculture from the ambit of the GATT and the exemption of agricultural products from the ban on quantitative restrictions. Developing countries argued that they needed to be afforded the use of trade restricting measures to protect their infant industries. Thus Article XVIII of the GATT was revised to provide developing countries additional flexibility with regard to their obligations. It enabled developing countries to raise their bound tariffs for the purposes of economic development and with certain conditions, to use any measure that was not consistent with other provisions of the GATT for the purpose of promoting a particular industry.

Part IV of the GATT

It was in response to this criticism of the GATT and its failure to address the concerns of developing countries that at a special session of the GATT in Geneva in November 1964, the contracting parties drew up a protocol to amend the GATT and introduced a fourth protocol – known as Part IV – that dealt with trade and development issues. Part IV was the result of significant negotiations by developing countries that had submitted a large number of proposals. However, the outcome was a significantly diluted version of the provisions submitted by developing countries. Part IV of the GATT committed developed countries to: a) give high priority to the reduction and elimination of trade barriers towards goods of export interest to developing countries, b) refrain from introducing or increasing tariffs or non-tariff barriers on these products, c) remove the requirement for reciprocity, and d) create a Committee on Trade and Development to monitor progress being made in these areas.

Part IV also created the basis for preferences for developing countries, both between developed and developing countries and among developing countries themselves. Developing countries took advantage of the latter provision and on December 8, 1971 a protocol relating to trade negotiations between developing countries was finalised along with some trade concessions between developing countries. Developed countries used the former provision to introduce GSP (generalised system of preferences) schemes in favour of developing countries. Developing countries had created the pressure for a

firmer legal basis for the above legal arrangements than the GATT waiver that had been used for this purpose.

Enabling Clause

During the Tokyo Round, both the above preferential arrangements were provided with a firmer legal basis through the adoption of a GATT decision promulgated on 28 November 1979 (the Enabling Clause).⁴⁷ The agreement by the US⁴⁸ to expand the preference system – the European countries had brought their colonial preferences into the GATT at its formation – led to the formal legal recognition of such derogations from the MFN principle of the GATT. The Enabling Clause gave permanent legal authorisation for the GSP preferences, preferences between developing countries, special treatment for developing countries from GATT rules and special treatment for least developed countries. Developing countries had refused to sign any of the agreements or ‘codes’ reached in the Tokyo Round until agreement was reached to include special and differential treatment provisions for developing countries. This was therefore agreed by the US and the other developed countries in the GATT and took the form of non-binding assurances of technical assistance to help developing countries comply with the new rules or exemptions from the new obligations.

Part IV of the GATT (1965), and the subsequent Enabling Clause (1979) that created the basis for the special and differential treatment provisions of the Tokyo round were a direct response to the failure of the developed countries to address the key interests of developing countries in their markets due to the ever-increasing protection in their markets against the products of interest to developing countries. Attempts by developing countries to negotiate the opening of developed country markets were blocked. In addition, developing countries were willing and did in fact contribute to the process of tariff reduction and exchange of concessions. Developing countries thus could not be said to have “sought to achieve their objectives primarily through special and differential treatment provisions” prior to the Uruguay Round.

Developing countries tried to introduce provisions in the GATT that addressed their particular development situation and needs. The special and differential measures that were gradually adopted by the GATT were often not fully responsive to the demands of developing countries and, in most cases, dressed up in best endeavour language, without legal effect.⁴⁹ Thus the assertion that developing countries simply resisted “the use of key GATT approaches, such as reciprocal liberalization and the principle of non-discrimination”⁵⁰ does not recognise that these concepts do not address the real issues of the different levels of development and needs of developing countries.

The failure of the GATT during the first eight rounds to address the issues of the appropriate balance between the principles of reciprocity and MFN, on the one hand, and the special development needs of developing countries, on the other, continues to haunt members of the WTO in the Doha Round.⁵¹

2.6 Launching the Uruguay Round

Whilst many writers ascribe a passive and defensive role to developing countries in previous rounds of the GATT, they acknowledge that in “the Uruguay Round things were different. Already in the run-up to the Round, many developing countries took an active role”.⁵² However, these writers recognised that the Uruguay Round was unbalanced and that “developing countries had given more than they got...”,⁵³ an outcome ascribed to their lack of technical capacity.⁵⁴ Some developing country writers also take a pessimistic view of the role of developing countries in the GATT. These writers have argued that the lack of success of developing countries was due to their lack of capacity and fear of developed countries.⁵⁵

The rest of this chapter will discuss the role of developing countries during the attempts to launch the Uruguay Round to illustrate that this description is not entirely accurate. Developing countries did understand the dangers posed by the new issues that were proposed by the US for inclusion into the new round. This is why they opposed the inclusion of these issues in the agenda of the negotiations. In addition, the description of the role of developing countries as “stiff resistance and sudden collapse”⁵⁶ is not accurate. Developing countries were engaged in the negotiations until the last minute and did secure some gains in shaping the agenda of the launch of the Uruguay Round.

Two years after the end of the Tokyo Round, the US initiated the process towards a new round. The majority of developing countries were opposed to the proposed extension of the GATT into services, intellectual property and investment. Developing countries such as India and Brazil argued that previous rounds had not yielded gains for developing countries and that action should first be taken to remove voluntary export restrictions (VER), the MFA and restrictions in agriculture.⁵⁷ This opposition was a major factor in the collapse of the November 1982 ministerial meeting that was called to launch the round.

The US pursued the objective of launching a new round with threats of unilateral sanctions under section 301 of the US Trade Act. The US also introduced new export subsidies to challenge the EEC.⁵⁸ The support for a new round grew to include all the developed countries and a number of developing countries by 1985. However, a group of 24 developing countries⁵⁹ were firmly opposed to the agenda of the Round. They insisted on progress being made first on the removal of the GATT-inconsistent measures and the MFA. They opposed the new agenda of services, TRIPS and investment, and instead called for a round that was confined to industrial products and agriculture, together with a stand-still and roll-back of protectionist measures that were inconsistent with the GATT.⁶⁰

The group of 24 developing countries that opposed the Round was reduced to a group of 10.⁶¹ However, the group of ten eventually agreed to the launch of the Round with the new agenda after securing agreement that these new issues will be pursued on a separate track from the negotiations on goods. Croome⁶² records that the new issues involved long negotiations, at Punta del Este, in which the US, India and Brazil were the principal participants. The main outcome was a detailed procedural agreement that

ensured coverage of all three subjects but separated sufficiently from the traditional areas of GATT negotiations to be acceptable to Brazil, India and their allies.

Thus whilst the developing countries did not succeed in pushing the new issues off the agenda of the GATT, they did succeed in shaping the agenda to some extent. Nevertheless, the fact that the Uruguay Round was only launched in 1986, at Punta del Este, Uruguay, about five years later than the US had wanted, was the result of the opposition that developing countries had waged, and their insistence that the issues of interest to them should be adequately addressed. Thus developing countries played an active role in the launching of the Uruguay Round, and the shaping of the agenda of the Round. The fact that they had not succeeded in removing the new issues from the negotiating agenda of the Round was due to a lack of technical capacity but the superior negotiating power of the US (and other developed members of the GATT), reflected in its threats to impose its section 301. Developing countries were, however, engaged and were negotiating until the last moment in shaping the agenda of the Uruguay Round. The characterisation of developing country participation as “stiff resistance and sudden collapse”⁶³ is thus not an accurate description of the role of developing countries in launching the Uruguay Round.

2.7 Conclusion

At the launch of the Doha Round it was widely accepted that the results of the Uruguay Round were skewed. There was also recognition that the products of interest to developing countries, especially in agriculture, were not adequately addressed in the previous rounds. Even in the area of special and differential provisions for developing countries the complaint of developing countries that these provisions did not adequately address their purpose was acknowledged and thus the Doha Round mandate agreed to review these provisions with a view to making these special and differential treatment provisions, “precise, effective, and operational”.⁶⁴

However the issues that this paper has sought to explore are the explanations provided for this imbalance in the GATT, and in particular why the GATT failed to address the development interests of developing countries. There are some standard explanations for this outcome that have been provided in the academic history the GATT. This paper has identified three major themes in the literature that have been forwarded as reasons for developing countries’ failure to advance their interests in the GATT. The three main reasons are: a) that developing countries did not play an active role in the GATT until the Uruguay Round, and this participation was characterised as passive and defensive; b) that developing countries were unwilling and failed to make concessions to their developed country negotiating partners in the exchange of tariff reduction bargaining, and; c) that developing countries’ main objective and focus in the GATT negotiations was on special and differential provisions.

This chapter has explored each of these themes and argued that these assertions do not constitute an accurate description of the role that developing countries played both in the ITO negotiations and in the GATT. First, developing countries played an active role in the negotiations on the ITO, within which the GATT was located. Despite the

superior negotiating power of the US and the other developed countries in these negotiations, developing countries made some significant advances in having their interests included in the ITO Charter. It is partly for this reason that the US Congress refused to adopt the Charter, thus torpedoing the creation of the ITO. The chapter illustrates the active role that developing countries played in the early years of the GATT with the Uruguayan case that was filed in the GATT against 15 developed countries.

Second, the argument as to the participation of developing countries in the GATT is explored further in the context of developing country participation in tariff concessions in the early period of the GATT, and in the later Rounds of negotiations, including the Dillon Round, the Kennedy Round and the Tokyo Round. In each case the evidence that emerges is that developing countries were excluded from the negotiation process by the negotiating techniques and approach adopted by the GATT (principal supplier and reciprocity) and by the reluctance of the US and EEC to negotiate on issues of interest to developing countries (such as agriculture, clothing and textiles and internal taxes and restrictions).

Third, the argument that developing countries focused on special and differential treatment and that this was their main objective in the GATT is also not accurate as the above discussion points to the active role that developing countries played in asserting their demands for greater market access for their exports throughout the history of the GATT.

Developing countries did, however, call for provisions in the GATT that took account of their special situations. In this regard they debated the concepts of reciprocity and MFN during the ITO negotiations and argued for these concepts to be balanced against the different levels of development of developing countries and their special development needs. Despite this call, developing countries were treated as equals in the early GATT years and required to reciprocate with tariff concessions of their own. However, they continued to campaign for provisions to be included in the GATT that addressed their particular development needs. A series of special and differential provisions were gradually included in the GATT providing for derogations from the above GATT principles, in Article XVIII, Part IV of the GATT, and the Enabling Clause.

However these provisions did not fully take on board the proposals of developing countries. They were at best non-binding attempts by developed countries to mitigate for the high and ever increasing levels of protection in developed countries against exports from developing countries. Mounting frustration among developing countries resulted in the Doha mandate to review these provisions with a view to making them “more precise, effective and operational”.⁶⁵ Thus the argument that these S&D provisions “reflected a move away from the original GATT objective of providing a forum for exchanging market access towards one of making transfers to developing countries”⁶⁶ does not resonate with the experience of developing countries.

Most writers on the Uruguay Round now also recognise that the results of the Uruguay Round were unbalanced and that developing countries did not play an active role in the negotiations. However, these writers also argue that developing countries lacked the technical capacity to assess the results of the Round and that their opposition was characterised by “stiff resistance and sudden collapse”.⁶⁷ Contrary to these assertions, the negotiating history leading up to the launch of the Uruguay Round at Punta del Este in 1986 suggests that developing countries, while not successful in removing the new issues that the US and other developed countries insisted on to be part of the agenda of the Uruguay Round, did succeed in shaping the agenda of the Round and were engaged in the negotiations until the last moments of the launch of the Uruguay Round in Punta del Este.

The role played by developing countries in the current Doha Round is unprecedented. They are more organised, have gained significant technical capacity, are engaged in the process of bargaining and exchange of concessions, are on the offensive in areas of export interest to them and have developed powerful alliances in the form of the G20 on agriculture and NAMA 11 on industrial tariffs. Even the smaller developing countries such as the LDCs and small and vulnerable economies (SVEs) and interest groups that are more defensive on agriculture (the G33) or on cotton (the Cotton Four) have been making proposals and shaping the outcome of the Doha negotiations. Thus developing countries in the Doha Round are shaping not only the content of the Doha Round and its outcome, but are also the architecture and trajectory of the multilateral trading system. The current and future generations of developing country trade negotiators will become increasingly curious about the role that developing countries played in the GATT since its inception. Rediscovering the history of the GATT will become essential to their attempts to shape the future architecture and content of the multilateral trading system.

In the next chapter we proceed to the current Doha Round of negotiations and evaluate the role of two major developing country coalitions, the G20 and the NAMA 11, from the launch of the Doha Round up to the end of July 2007.

Notes

- 1 See, Ismail, F., 'Mainstreaming Development in the WTO: Developing Countries in the Doha Round' (CUTS International and Friedrich Ebert Stiftung, 2007).
- 2 Robert Hudec records that the proposal of developing countries in the ITO negotiations to include a provision to "take into account the special conditions which prevail in countries whose manufacturing industry is still in the initial stages of development" was ignored by the United States. See Hudec, R., 'Developing Countries in the GATT Legal System' (Brookfield, VT: Gower, 1987).
- 3 Article I of the GATT provides that "any advantage, favour, privilege or immunity granted by any contracting party to any product originating in or destined for any other country shall be accorded immediately and unconditionally to the like product originating in or destined for the territories of all other contracting parties". This rule prohibits members from discriminating against imports according to their source.
- 4 Article III.i provides: "The contracting parties recognize that internal taxes and other internal charges, and laws, regulations and requirements affecting the internal sale, offering for sale, purchase transportation, distribution or use of products, and internal quantitative regulations requiring the mixture, processing or use of products in specified amounts or proportions, should not be applied to imported or domestic products so as to afford protection to domestic production". This national treatment provision requires members to accord non-discriminatory treatment to imports vis-à-vis domestic products once they have passed through customs.
- 5 See Stiglitz, J., 'Globalization and Its Discontents' (WW Norton and Company, 2002).
- 6 See Finger, J.M., 'Implication and Imbalance: Dealing with Hangover from the Uruguay Round', *Oxford Review of Economic Policy* 3 (2007), 440-460.
- 7 See Ostry, S., 'The Uruguay Round North – South Grand Bargain: Implications for Future Generations', in D.M. Kennedy and J. D. South wick (eds), 'The Political Economy of International Trade Law: Essays in Honour of Robert E. Hudec' (Cambridge University Press, 2002).
- 8 See Das, B.L., 'The WTO and the Multilateral Trading System: Past, Present and Future ' (Third World Networks and Zed Books, 2003).
- 9 See Jawara, F. and Kwa, A., 'Behind the Scenes at the WTO: The Real World of International Trade Negotiations' (Zed Books, 2003).
- 10 Martin, W. and Messerlin, P., 'Why Is It So Difficult? Trade Liberalization under the Doha Agenda', *23 Oxford Review of Economic Policy* 3 (2007), Pgs 347-366.
- 11 See Wilkinson, R. and Scott, J., 'Developing Country Participation in the GATT. A Reassessment', *7 World Trade Review* 3 (July 2008), Pgs 1-18.
- 12 Martin and Messerlin (2007), *supra* note 10.
- 13 *Ibid.*
- 14 *Ibid.*
- 15 See Hudec (1987), *supra* note 2. The countries were: Brazil, Chile, Cuba, China, India, Lebanon, Myanmar, Pakistan, Sri Lanka, and Syria. However, China, Syria and Lebanon withdrew after the first few years. At the time some countries such as Australia, New Zealand and South Africa were also regarded as developing countries. The latter two were to be regarded as developed countries much later. And South Africa, until the Uruguay Round, was still regarded as a developed country in the GATT.

- 16 By early 1995 the GATT had 128 members.
- 17 As of June 2007, the Kingdom of Tonga became the 151st member of the WTO.
- 18 See WTO, Annual Report 2001.
- 19 See Annex A, B, C, D, of the Havana Charter for the list of territories of the UK, France, Belgium, Luxembourg, the Netherlands and the USA.
- 20 Hudec, R., 'The GATT Legal System and World Trade Diplomacy' (2nd ed., 1990).
- 21 WTO, 'Background Document, High Level Symposium on Trade and Development' (Geneva, 17-18 March 1999).
- 22 See Wilkinson and Scott (2008), *supra* note 11.
- 23 *Ibid.*
- 24 Countries such as Czechoslovakia, Turkey, Lebanon, Iraq, El Salvador, Venezuela and Mexico.
- 25 See WTO (1999), *supra* note 21.
- 26 See Hudec (1987), *supra* note 2, pp. 46-47.
- 27 See Wilkinson and Scott (2008), *supra* note 11.
- 28 *Ibid.*
- 29 Wilkinson, R., 'The WTO. Crisis and Governance of Global Trade' (Routledge, 2006).
- 30 *Ibid.*
- 31 WTO (1999), *supra* note 21.
- 32 See Wilkinson and Scott (2008), *supra* note 11.
- 33 *Ibid.*
- 34 WTO (1999), *supra* note 21.
- 35 See Wilkinson and Scott (2008), *supra* note 11.
- 36 *Ibid.*
- 37 *Ibid.*
- 38 *Ibid.*
- 39 *Ibid.*
- 40 Czechoslovakia, Yugoslavia, Argentina, Jamaica, Romania and Hungary.
- 41 Brazil, Chile, the Dominican Republic, Egypt, Haiti, India, Indonesia, Ivory Coast, Korea, Malaysia, Pakistan, Peru, Singapore, Uruguay and Zaire.
- 42 Martin and Messerlin (2007), *supra* note 10.
- 43 *Ibid.*
- 44 WTO (1999), *supra* note 21.
- 45 See Wilkinson and Scott (2008), *supra* note 11.
- 46 *Ibid.*
- 47 See 'Decision on Differential and More Favorable Treatment and Reciprocity and Fuller Participation of Developing Countries', L/4903, 28 November 1979.
- 48 Hudec notes that the US agreed in 1969 to expand the GSP system and to create its own GSP for developing countries that the EC already had in place. See Hudec, R., (1987), *supra* note 2, pp.46-47.

- 49 Prof. TN Srinivasan, a well-known economist, is quoted as stating that under Part IV the “less developed countries achieved little by way of precise commitments, but a lot in terms of verbiage”, quoted in Wilkinson and Scott (2008), *supra* note 11.
- 50 Martin and Messerlin (2007), *supra* note 10.
- 51 See Ismail, F., ‘How Can Least Developed Countries and Other Small, Weak and Vulnerable Economies Also Gain from the WTO Doha Development Agenda on the Road to Hong Kong?’ 40 *Journal of World Trade* 1 (2006), Pgs 37-68.
- 52 Finger (2007), *supra* note 6.
- 53 *Ibid.*
- 54 *Ibid.*
- 55 See Jawara and Kwa (2003), *supra* note 9.
- 56 *Ibid.*
- 57 See Croome, C., ‘Reshaping the World Trading System. A History of the Uruguay Round’ (2nd edn, Kluwer Law International, 1999).
- 58 The US raised its export subsidies from zero in 1984 to \$256 million dollars in 1986. The EEC already had export subsidies amounting to \$47,094 million. See Wilkinson and Scott (2008), *supra* note 11.
- 59 They included Argentina, Bangladesh, Brazil, Burma, Cameroon, Columbia, Cote d’Ivoire, Cuba, Cyprus, Egypt, Ghana, India, Jamaica, Nicaragua, Nigeria, Pakistan, Peru, Romania, Sri Lanka, Tanzania, Trinidad and Tobago, Uruguay, Yugoslavia and Zaire.
- 60 See Croome (1999), *supra* note 57.
- 61 Argentina, Brazil, Cuba, Egypt, India, Nicaragua, Nigeria, Peru, Tanzania and Yugoslavia.
- 62 See Croome (1999), *supra* note 57, p. 24.
- 63 See Jawara and Kwa (2003), *supra* note 9.
- 64 See WTO, Ministerial Declaration, WT/MIN(10)/DEC/1 (adopted 14 November 2001), paras 12 and 44.
- 65 See WTO (2001), *supra* note 64.
- 66 See Martin and Messerlin (2007), *supra* note 10.
- 67 See Jawara and Kwa (2003), *supra* note 9.

G20 and the NAMA 11: Developing Countries in the Doha Round

3.1 Introduction

Since the 5th WTO Ministerial Meeting in Cancun, Mexico, in September 2003, the G20 alliance of developing countries has become a formidable and well known coalition in the WTO Doha round negotiations. The NAMA 11 group of developing countries which was formed at the 6th Ministerial Meeting in Hong Kong is less well known.¹ However, in the period since Hong Kong, the NAMA 11 has become a significant group in the Doha Round negotiations on industrial tariffs (non-agricultural market access), similar to the role played by the G20 in the Doha Round agriculture negotiations. Other developing country groups have also played an increasingly assertive role in the WTO Doha Round, including the LDCs, Small and Vulnerable Economies (SVEs), the ACP, and the Africa Group. These groups have jointly become known as the G90 group of developing countries. The G33 group of developing countries, representing countries with predominantly small farms, and keen to protect their rural development, livelihood and food security needs was formed on the eve of the Cancun meeting.²

The economist Amartya Sen, in his analyses of the role of women in society, argues that in the early stages of their development the women's movements concentrated mainly on women's *well being*. However, this gradually evolved and broadened from this welfarist focus to an active role of women's *agency*. In this latter role women are seen as "active agents of change; the dynamic promoters of social transformations that can alter the lives of both women and men".³ Sen uses the example of the Grameen Bank, started by another Nobel Prize winner, Muhammed Yunus, in Bangladesh. The Bank began a microcredit movement aimed at providing credit to women borrowers – a welfarist role. However, this movement, he states, also went on to play a greater role in helping make other major changes in society – the role of agency. Similarly, my experience in the Trade Union movement in South Africa in the 1980s saw the trade unions initially being created to address their own well being or welfare interests. However, in the context of Apartheid South Africa, they soon became involved in the struggle for their political rights as well as the rights of other groups that were

discriminated against for their race, gender or sexuality. Today the trade union movement has become a pillar of South Africa's new democracy that it helped bring about.

This chapter will evaluate the role of the G20, a group that was created to advance the interests of its members in the agriculture negotiations, and the NAMA 11, a coalition created to advance the interests of its members in the NAMA negotiations, with reference to the aforementioned analytical framework. It will be argued that while these groups adopted a 'welfarist' approach in the early stages of their development (that is, one focused on their own well being) they have increasingly begun to play an 'agency' role as active agents of change. The 'welfarist approach' is a relatively narrow approach to negotiations. It nonetheless represents a significant advance from the mercantilist approach adopted by the major developed countries from the earliest period of the formation of the GATT in 1947 until today. Further, the evolution of the role of the G20 and NAMA 11 from a welfarist approach to an agency role has been a learning process propelled by their active engagement with other developing country groups and the wider WTO membership. In this latter role the G20 and NAMA 11 have begun to articulate and defend the interests of other developing country groups, even where this would require them to adjust their own narrow self-interest and transcend their narrower welfare interests. This process has laid the basis for the building of common platforms and a united front against attempts by the major trading partners to foist unfair deals on them. It will also be argued that these groups have taken this process one step further in advancing the objective of a fair, balanced and development oriented multilateral trading system for all, developed and developing country members of the WTO. In this second sense the role of agency of these groups is vital for the development of the WTO and the multilateral trading system as global public goods.⁴

This chapter will focus on the role of the G20 and the NAMA 11 developing country groups in the WTO Doha round of negotiations. In so doing, it will also discuss the evolving relationship between the G20, the NAMA 11 and the G90 group of developing countries since the launch of the Doha Round. Section 1 will review and evaluate the progress made by the G20 and the NAMA 11 groups in the Doha negotiations. The role of these groups in advancing the interests of their members will be discussed i.e., their welfarist role. This assessment will also extend to the agency roles of these groups, especially in advancing the interests of the majority of developing countries in the WTO, namely, the SVEs and LDCs. The next section will provide an overall assessment of both the welfarist and agency roles of the G20 and the NAMA 11 in the context of the unfolding Doha negotiations.

3.2 From Doha to Cancun

The Doha Round was launched in November 2001 in the shadow of the September 11 terrorist attack on the US, and the threat to global security focussed the minds of the major players to unite in a common effort to build a more secure and peaceful world. The Doha Round thus promised to focus on the needs and interests of developing countries. It was to build on and contribute to the decision of world leaders at the UN Millennium Summit, held in 2000, to launch the Millennium Development Goals that aimed to halve world poverty by 2015.⁵

The Doha Ministerial Conference had launched a broad-based round of multilateral trade negotiations that included agriculture, services, intellectual property rights (TRIPS), industrial tariffs, rules (anti-dumping, subsidies), and the environment. In addition, four other areas were to be included in the negotiations if WTO members agreed at Cancun: investment, competition, transparency in government procurement, and trade facilitation. All negotiations were to be concluded by December 2004.

Three key issues of great interest to developing countries – public health and TRIPS, special and differential treatment, and other problems with existing agreements (the so-called ‘implementation issues’) – had interim deadlines in December 2002. These were missed. Consensus was finally reached on TRIPS and public health in August 2003 – on establishing a mechanism that would allow countries with no or insufficient manufacturing capacity to import medicines for public health reasons under compulsory licence. But two other deadlines were missed. There was agreement in Doha that a range of provisions on special and differential treatment in favour of developing countries would need to be made operational and effective by December 2002. This deadline passed. Lastly, a range of problems with existing WTO agreements (implementation issues) facing developing countries were also to be resolved by December 2002. Again, no progress was made on these issues.

The central issue of the Doha Round was agriculture. The built-in agenda of the Uruguay Round had failed to make any real progress on agricultural liberalisation. The EU demanded a broad round, including several issues that could serve as trade-offs for the concessions that they would need to make in agriculture.

The EU rejects the Harbinson Text

The Doha Declaration had decided that modalities on Agriculture must be agreed by March 2003. The Chair of the Agriculture negotiating group, Stewart Harbinson, the Permanent Representative of Hong Kong, was in a very difficult position as he began to write his first draft text. There was very little engagement amongst the members. The EC only presented its proposal on the 16th of December which was described as ‘too little too late’ by the Cairns Group. The work programme agreed to call on the Chairperson to prepare an overview paper by the end of the year and provide a first draft of modalities in February 2003, which was to be finalised by the end of March 2003. The text produced by the chair – ‘the Harbinson Text’ – was roundly criticised by all sides.⁶ The Cairns Group⁷ and the US were prepared to use the text as a basis to continue the negotiations. However the EU refused to work with the text as a basis for negotiations and it gradually fell by the wayside.

The Cairns Group

At the time of the launch of the Doha Round the main demandeur for agricultural liberalisation was the Cairns Group, which had had a long history of fighting for the cause of agriculture liberalisation. It combined the long struggle of developing countries to gain access to world markets for their exports of agricultural commodities, particularly tropical products, with that of some developed countries including Australia, New Zealand, Canada and Hungary. The Cairns Group worked closely with the United

States during the Uruguay Round until the EU-US Blair House agreement in November 1992 settled for a lower level of ambition in agriculture.⁸ In the Doha Round, the Cairns Group worked closely once again with the US, especially in the first year of the negotiations.

The Cairns Group in its efforts to gain greater access to developed country markets was supported by a significant number of developing countries. The majority of developing countries also wanted to reduce the high levels of trade distorting subsidies of the developed countries as this impacted negatively on their development prospects. India and the ACP (African, Caribbean and Pacific) group of countries were, however, concerned about some short-term negative effects of an ambitious multilateral liberalisation agenda. The ACP countries feared that faster multilateral liberalisation by the EU may erode ACP preferences, with negative consequences for their access to EU markets. India, for its part, was cautious about the liberalisation of its market, arguing that its small-scale farmers and rural population of 650 million people will need to be protected from subsidised EU imports.

The EU had been campaigning amongst the ACP countries to support its approach to gradual liberalisation and reform of its protection with the argument that this will favour the ACP countries by stemming the erosion of their preferences. Thus at a March 2003 Trade Negotiation Committee meeting the EU gained the support of almost 70 countries, including India, in favour of a gradual approach to liberalisation on the basis of the Uruguay Round tariff reduction formula. These developing countries were afraid of the potential negative effect of the more aggressive liberalisation approach of the Cairns Group and the US on their small farmers, rural development and food security.⁹ Developing countries were thus divided and in a flux on the agriculture negotiations at this stage of the Doha Round.

Opposition to EU-US Text – the Genesis of the G20

The EU-US joint text tabled on the 13th of August 2003 galvanised developing countries into action to prevent another Blair House type agreement that would accommodate the interests of the EU and the US and reduce the ambition of the round once again. In addition the joint text agreed by the EU and the US on agriculture took the negotiating process further back by agreeing to a mere ‘framework’ for the agriculture negotiations just a few weeks (August 13th 2003) from the Cancún Ministerial. The Doha mandate envisaged agreement on ‘modalities’ for the agriculture negotiations by March 2003. Brazil and India, developed a draft framework proposal that gained the support of other developing countries very quickly, including China, South Africa, Indonesia, Philippines, and Argentina. The group, which was later to become known as the G20, was based on the need for developing countries to advance liberalisation and reform of agriculture in the developed world, with social justice and development in developing countries.¹⁰

The first draft¹¹ text of the G20 combined the need to be aggressive on the reduction of trade distorting domestic support and the elimination of export subsidies, and enhanced market access in developed countries, with sufficient flexibilities for developing countries to enhance their rural development, livelihood and food security needs. The

text spoke of the need to address the issue of preference erosion, which was a concern for ACP countries, and supported the demand for duty free quota free (DFQF) market access for LDCs in developed countries. The G20 took a pragmatic approach on the achievement of modalities and its text spoke of a “framework”, rather than full modalities, to be agreed in Cancun. The text thus combined the interests of the more competitive agricultural exporting Cairns Group members, such as Brazil, Argentina, Uruguay, Thailand, and the more cautious and less competitive agricultural producers such as Indonesia, India and China.

The Cancun Ministerial

The Cancun Ministerial Meeting was intended to be a review of progress made in the Doha Development Agenda. The Chair, Minister Ernesto Derbez of Mexico, released his second draft Ministerial text on day 4 of the 5-day meeting. In the formal meeting that followed, developing countries in the G20 formation, and the numerically large Africa, ACP and LDC groups criticised the Chair’s text as an unacceptable basis for negotiations. These countries believed that the text was imbalanced and did not adequately reflect their interests and concerns. Alarmed at the reaction to his text and the attendant possibility of the failure of the Ministerial, the Chair decided to call the entire conference to a halt, to the surprise of all involved.

Assessment – the failure of Cancun and the role of the G20

The seeds of the unsuccessful outcome at the 5th WTO Ministerial Conference, the first Ministerial Conference since the launch of the Round in Doha were sown many months before the event. Agriculture was recognised to be at the heart of the Doha Development Agenda. It was generally understood that progress in the agricultural negotiations would catalyse movement in – and set the pace for – all other areas of the Doha Agenda.

The EU is the world’s largest subsidiser of agriculture and thus causes the greatest harm to the livelihoods of the world’s poorest people in developing countries. In the lead up to Cancun, however, the EU failed to table any proposal that would meaningfully meet its Doha commitment. The March 2003 deadline for the establishment of a methodology for agriculture negotiations was thus missed. The United States – the world’s second largest agricultural subsidiser – had developed an aggressive liberalisation posture long before Cancun. Despite having moved in the opposite direction by increasing its own trade-distorting support to its farmers early in 2002, the US continued to urge the EU to meet its Doha commitments and worked closely with a large group of agriculture-exporting countries led by Australia, Brazil and the Cairns Group.

As the Cancun Ministerial drew closer, the US shifted to a strategy of bilateral engagement with the EU. The product of this intense bilateral discussions between the EU and the US was an accommodation of each other’s trade-distorting farm support policies. In return for protecting domestic subsidies under its Farm Bill, the US reduced its ambition to open EU markets and fully eliminate the EU’s destructive export subsidies.

The unexpected closure of the meeting was a particularly great disappointment to the G20. The proximate cause of the breakdown of the Cancun Ministerial Meeting was the so-called Singapore issues. With more time an acceptable compromise could have been found on the Singapore issues. However, on the more fundamental issues of agriculture (including cotton subsidies), the political conditions were not in place to overcome the divide. This was the real cause of the breakdown in the negotiations.

The pressure on the G20 members from the developed countries was severe. At Cancun, the Minister of Trade of El Salvador announced his country's withdrawal from the G20. The pressure grew and soon after the conference, Colombia and Peru withdrew – followed within weeks by Costa Rica, Guatemala and Ecuador. However, the G20 did not fall apart. More countries joined. By November 2003, Zimbabwe and Tanzania joined the G20 bringing the membership from Africa to five (with South Africa, Egypt and Nigeria). The silver lining was that developing country negotiators had come of age – they had galvanised a formidable group and skillfully forged a common negotiating position that had captured the attention and sympathy of the world. This was indeed a sound platform for the G20 and other developing countries to continue to negotiate for a fair and freer global market for agriculture. Thus the G20 had begun to play a welfarist role in defending and advancing the interests of its members in the agriculture negotiations.

However, the G20 had also begun to play a broader Agency role by providing leadership to the Round in its engagement with the major players and by striving to build convergence with other developing country groups. In the period subsequent to the Cancun Ministerial, the G20 held a Ministerial Meeting in Brasilia on the 11th and 12th of December 2003 and invited Pascal Lamy, the then Commissioner of the EU, in an attempt to re-engage and reignite the negotiations.¹² The G20 Ministerial Communiqué asserted the inclusive approach and consensus building role of the G20 by pointing to the diversity of its membership. It recognised the concerns of some developing countries with regard to the vexed issue of preference erosion and supported the need to address the special concerns of LDCs. The G20 Communiqué noted that the Cairo Mini-Ministerial Meeting held in November had stated that there was a large degree of convergence between the G20 and the Africa Group.

3.3 The July 2004 Framework Agreement

In the post-Cancun period the Chairman of the WTO General Council, Carlos Castillo, decided to focus on the issues that were critical to put the Doha negotiations back on track. These were: agriculture, cotton, NAMA, the Singapore Issues and the Development issues. He had hoped to conclude this process by Mid-December 2003. But there was little substantive movement by the major countries in this period – the EU participated in a protracted internal process of reflection on Cancun and the US waited for the EU to revive the process. By the end of the year, the EU agreed to meet with G20 Ministers in Brasilia, and the USTR Bob Zoellick sent a letter to all WTO ministers in the first week of January 2004, changing the tone from rebuke and criticism to constructive dialogue.

Thus began the ‘Pascal and Bob roadshow’,¹³ with both Pascal Lamy and Bob Zoellick travelling to several capitals to discuss the re-launch of the negotiations. With the election on 11 February 2004 of new chairs of the General Council and the various negotiating groups, the negotiations re-commenced in earnest. The EU and the US began negotiating meetings with the G20. It became clear early in the process that agriculture was the fulcrum of the negotiations and movement on all other issues was linked to it. Thus the US initiated an agriculture negotiating group of 5 countries in the third week of March, 2004 with the EU, Australia, India and Brazil, which began to meet regularly (almost 7 or 8 such meetings were held) in the next few months until the end of July 2004. In addition, the group began to meet at the ministerial level to stimulate the process. Mini-ministerial meetings (mainly between these five countries) were held in London (1st May), Paris (on the margins of the OECD Ministerial Meetings), in São Paulo (on the margins of the UNCTAD XI Ministerial Conference), in Paris (before the Mauritius G90 Ministerial Meeting), and then finally in Geneva (in the week before the July 2004 General Council Meeting).

The Agreement was based on the 5 issues referred to above.¹⁴ In the overall evaluation below of the July Framework Agreement we will discuss the progress made by developing countries in the G20 in advancing their welfarist interests and their agency role in advancing the interests of other developing countries.

The Welfare role

The commitment to the elimination of export subsidies and substantial reductions in domestic support, together with the promise of substantial market opening, even for sensitive products, had built the foundations for a potentially ambitious result for the removal of protection and distortions in agricultural markets. Developing countries were successful in ensuring that the principle of ‘proportionality’ and of ‘lesser reductions’ was applied to their commitments. The text had a number of provisions which went beyond the traditional special and differential treatment provisions. The market access section agreed to allow developing country members to designate an appropriate number of products as Special Products, based on the criteria of food security, livelihood security and rural development needs.

With a promise to ensure that the issue of cotton would be dealt with “ambitiously, expeditiously and specifically”¹⁵, the July General Council decided to negotiate the cotton issue within the context of the agriculture negotiations and not as a stand-alone issue that would be fast-tracked as West African countries had initially demanded. However, this decision was a platform that the developing countries affected by the cotton issues could build on. The July General Council decision recognised the “complementarity between the trade and development” aspects of the cotton issue. The secretariat was urged to work with the “development community,” viz, multilateral and bilateral agencies.

Thus the G20 played a significant welfarist role in advancing the interests of its members. These decisions also marked an important break towards more balanced and fairer rules in the WTO.

The role of Agency

While the G20 and the other smaller economies had begun to forge closer relationships there was still some tension among developing countries on preference erosion and the specific needs of SVEs. Here the EU stole a march on the G20 with Pascal Lamy, the then Commissioner of the EU, calling for SVEs to be granted a “round for free”. However, the text did reflect an emerging compromise as these small and vulnerable economies were becoming increasingly assertive and organised in the G90 group of developing countries (comprising ACP, the Africa Group and the LDCs). The G20 had played a role in forging this compromise but had yet to meaningfully engage with these issues of concern to the smaller developing countries.

The agriculture negotiations, despite being largely successful in the final week of the July General Council meeting in building a compromise, was criticised for not having been conducted in a transparent manner. The most intense part of the negotiations was conducted amongst a small group of 5 countries. Although Brazil and India represented the G20, the detail and complexity of the negotiations and the differences in interest amongst the members of the G20 required greater transparency and inclusiveness. In addition, the other major groups were largely left out of these negotiations. These included the Africa Group, ACP and LDCs. A more inclusive process would need to be found for the continuation of the negotiations post-July.

NAMA

In the area of industrial products or non-agricultural market access the Doha mandate agreed to “reduce or as appropriate eliminate tariffs...in particular of export interest to developing countries”.

The WTO agreed that the deadline for modalities for NAMA should be at the end of May 2003, after the modalities on Agriculture that was agreed in the Doha mandate to be the end of March 2004. Thus the chair of the NAMA negotiating group prior to Cancún, Ambassador Girard, began work on developing these modalities. A number of countries put forward proposals for tariff-cutting formulae. The chair modified these proposals and advanced his own compromise formula and proposal – “Elements of Modalities for Negotiations on Non-Agricultural Products,”¹⁶ – known as the Girard Proposal. The Girard Proposal contained a number of elements including a formula for tariff reductions, a sectoral approach, special and differential treatment provisions, recognition of the particular situation of newly acceded countries, a supplementary approach that included zero for zero, sectoral harmonisation and request and offer approaches, negotiations to reduce non-tariff barriers and the provision of technical assistance to developing countries during the negotiations.

Despite being roundly criticised by both developed and developing countries, the Girard formula succeeded in providing a basis for the negotiations on modalities for non-agricultural market access. However, as the process of developing modalities was diverted both by the failure to reach agreement on agricultural modalities at the end of May 2003 and the EU-US Joint Text agreed on the 13th of August 2003, the WTO

decided to also produce a “Framework Agreement” for the Cancún Ministerial Meeting to be in line with the Agriculture negotiations.

Annex B of the Cancún Text “Framework for Establishing Modalities in Market Access for Non-Agricultural Products”¹⁷ was criticised by developing countries before, and at Cancún, for being biased in favour of developed countries and not paying sufficient attention to the principle of “less than full reciprocity” called for by the Doha mandate. In particular the Cancún Text was criticised by developing countries for calling for a “non-linear formula”¹⁸ and mandatory sectoral tariff reductions.¹⁹ The Cancún Text was not adopted due to these criticisms and the collapse of the meeting.

In the period up to the July 2004 Ministerial Meeting some of the major delegations began to display flexibility in their approach to the NAMA Framework. Bob Zoellick in his conciliatory letter to WTO ministers in January 2004 called for both ambition and flexibility. However, in the negotiations in the months before the July GC meeting developed countries²⁰ began to insist that the Cancún Text – or the Derbez Text as it is referred to – should not be amended but accepted as is, in spite of the criticisms and objections of developing countries.

At this stage the only possibility that remained for developing countries was to ensure that the Derbez Text remained open to negotiation and that the views and perspectives of developing countries could be included in the Post July negotiations for the development of Modalities. Thus Annex B of the July Package on NAMA called for additional negotiations on the elements of the Derbez Text. These issues would relate to the issues concerning the treatment of unbound tariffs, the flexibilities for developing countries, participation in sectoral negotiations and the issue of preference erosion.²¹

An Evaluation of the NAMA text

Developing countries succeeded in ensuring that the Derbez text which was perceived to be biased in favour of developed countries was not imposed on them. The July Framework agreement on NAMA made it possible for the elements of the Derbez text to be further negotiated, ensure that the outcome of the negotiations on modalities would be more balanced and take into account the interests of developing countries. The debate on the substance of the “framework” was postponed. Developing countries were fragmented at the time of the July Framework Agreement on the approach to the formula for tariff cuts. However, they did succeed in ensuring that the opportunity to further negotiate the modalities was not foreclosed.

3.4 Hong Kong Ministerial Conference

The Road to Hong Kong...

WTO members began preparations for the Hong Kong Ministerial Conference at several informal ministerial meetings early in 2007, at Davos in January 2005, Mombasa, Kenya on the 13th and 14th of March and in Dalian, China, on the 12th and 13th of July, 2005. The G20 held preparatory meetings at the ministerial level in New Delhi, India on the 18th and 19th of March and then again in Bhurban, Pakistan on the 9th and 10th of

September 2005. Meanwhile, in the period before the July Framework Agreement, the US and the EU had constituted a group of Five Interested Parties (FIPS) with Brazil, India and Australia. This group again began to engage on the substantive issues in the agriculture negotiations from the beginning of 2005. However, several meetings of this group at both the level of senior officials and ministers failed to make much progress towards the development of modalities in Agriculture.

The FIPS group was further rationalised to a Group of four – the G4 (EU, US, India and Brazil). A ministerial level meeting was held in London on the 8th of July. The Group of four discussed issues of interest to these members across the negotiations and how a balance could be struck in the overall Doha deal. The new “trade Quad” – Ministers Celso Amorim from Brazil, Kamal Nath from India, Commissioner Peter Mandelson of the EU and Ambassador Robert Portman of the USTR – met in Paris on the 23rd of September to discuss the Hong Kong Ministerial Meeting. This meeting was followed by a meeting of the FIPS (the above four plus Minister Mark Vaile from Australia). This group was expanded to include Ministers from Japan, Switzerland, Korea, China and Argentina – the FIPS Plus. A series of ministerial meetings held thereafter between the 10th and 13th of October in Zurich of the FIPS and FIPS Plus groups did help to break the stalemate in the DDA negotiations.

A US move on domestic support on the 10th of October (60 percent cut on the Amber Box), whilst falling short of G20 demands, was seen as a positive contribution by most members. The focus thus shifted to the EU to make a commensurate move on Market Access. The EU made a comprehensive offer on the 28th of October, 2005. On Agricultural Market Access for developed countries, the offer proposed a 39 percent average cut in Agriculture and wide ranging flexibilities, whilst the average tariff cuts proposed for developing countries with a far more severe Swiss Formula (Swiss 15), was an average of 70 percent, with restrained flexibilities. These proposals were widely criticised for falling short of the Doha mandate (see evaluation below). The EU was perceived to have made the least effort and Mandelson came under enormous pressure to improve the offer.

In the period leading up to the Hong Kong Ministerial Meeting, the WTO Director General, Pascal Lamy called for the expectations of the conference to be lowered. One of the main players, the EU, had been unable to make a proposal that could be a basis to negotiate a successful outcome on agriculture modalities. The July 2004 WTO General Council decision had reduced the target of reaching full modalities to a “Framework Agreement” instead. The Hong Kong Ministerial Meeting had as its objective to make some additional incremental advances on the July 2004 Framework Agreement. Once again this would fall short of the objective of concluding the negotiations on full modalities in Agriculture and NAMA.

What happened in Hong Kong?

After six days of intense negotiations in Hong Kong (13th to the 18th of December), ministers managed to cobble together an agreement late on Sunday night, the 18th of December, several hours past the agreed deadline.

For the major developing countries in the G20 the agreement was no major breakthrough²², but a small and significant step forward in the Doha Round. For LDCs and other small, weak and vulnerable developing countries, there were some incremental gains made in the Hong Kong Declaration, but no breakthrough emerged on their major demands. We briefly evaluate the results of the negotiations in Hong Kong below.

Agriculture – the G20 plays a Welfare and Agency role

Whilst there was no substantial advance in Hong Kong, there were some significant gains made by developing countries, for example in the agreement to eliminate export subsidies. The G33 won the right to have its development concerns addressed. The SVEs were recognised in the text as a developing country group that had special concerns that needed to be addressed. The LDCs had fought a very significant struggle for DFQFMA and succeeded in maintaining their unity despite many attempts to divide the African LDCs from the Asian LDCs. The Cotton 4 stood firm and were able to secure some significant recognition of their concerns, including an undertaking to eliminate export subsidies on cotton. In all these efforts the G20 supported the respective groups.

Thus there was a spontaneous move by the G90 group of developing countries to adopt a joint statement with the G20 in Hong Kong. Whilst the G20 had not made major advances in its welfare interests at the Hong Kong Ministerial meeting, it had succeeded in making great strides in building alliances with other developing countries. The spontaneous move by the major developing country groups in Hong Kong to unite in a G110 Ministerial Meeting was a significant achievement for the G20 and NAMA 11. Indeed this was no accident but a product of continuing engagement amongst developing country groupings since the Cancun Ministerial meeting.

An Evaluation of the NAMA text and the formation of the NAMA 11

Whilst there was some fragmentation in developing country positions on the formula to be adopted by the WTO on NAMA in the period before Hong Kong, the approach taken by the EU in its October 28 submission led these countries to unite on the need to defend the flexibilities that developing countries had succeeded in obtaining in the July 2004 Framework Agreement.²³ This united front was further consolidated in Hong Kong where ministers of the so-called NAMA 11 presented joint proposals in the negotiations on NAMA.²⁴ However, developing countries did make some significant concessions, including the commitment to the application of a non-linear formula. Due to their increased bargaining power in the NAMA 11, these developing countries were able to confirm that the principle of ‘less than full reciprocity’ would be adhered to when making reduction commitments and appropriate flexibilities would be provided to them. This group was able to also establish a strong link in the final text of the Hong Kong Ministerial Declaration between the level of ambition in NAMA and the level of ambition in Agriculture.²⁵

While there were no significant gains made in Hong Kong on NAMA, the formation of the NAMA 11 (representing the more advanced developing countries that were required to make formula cuts), had ensured that the developing countries were able to defend

themselves against agreeing to more onerous obligations in NAMA. Most importantly, the NAMA 11 was to become an important platform to build stronger links with other developing country groupings in the WTO and thus also play an agency role similar to that of the G20 in the agriculture negotiations.

3.5 From Hong Kong to the Suspension of the DDA in July 2006

This section will briefly set out the process of the negotiations up to the end of April 2006 deadline for modalities and then proceed to set out the process to the end of June and end of July 2006. The suspension of the negotiations at the end of July 2006 will be briefly evaluated.

From Hong Kong to the missed April 2006 Deadline

A month after the Hong Kong Ministerial Conference, on the 28th of January 2006, Ministers of Trade who met on the margins of the Davos World Economic Forum proposed a work plan for the year.²⁶ The first crucial deadline on which ministers had agreed to in Hong Kong was that modalities on Agriculture and NAMA should be concluded by the 30th April 2006. On Services, the ministers agreed that plurilateral requests should be submitted by the 28th of February, and the second round of revised offers were to be submitted by the 31st of July. Ministers agreed the deadline for the conclusion of the Round as end-2006. This work plan was agreed by the WTO General Council Meeting that met on the 7th and 8th of February 2006.

The 2006 March G6 Ministerial Meeting in London

The period before April 2006 was dominated by the meetings of the G6. Senior officials meetings of the group took place in Paris (25th and 26th February) and in London (7th and 9th March). This process culminated in a ministerial meeting of the G6 in London on the 10th and 11th of March, attended by ministers of the EU, US, India, Brazil, Australia and Japan. The meeting focussed on all the main issues of the DDA, including Agriculture, NAMA, Services, Rules and Development issues. Reports of the meetings indicate that both the EU and the US hardened their positions and showed very little flexibility.

The EU, represented by Commissioners Peter Mandelson and Marianne Fisher Boel, argued that it had already made substantial movement in reforming and opening the EU market through the recent CAP reforms. The EU continued to call on the US to increase its commitments on Domestic Support beyond the US offer made on the 10th of October 2005 (of a 60 percent cut of its Amber Box trade distorting support). The US argued that its offer had been significant but that there was nothing on the table to justify keeping that offer on the table. The USTR, Bob Portman, and the Secretary of Agriculture, Mike Johanns, stated that they had consulted all the major commodity groups and chairs of the relevant committees in the US Congress before coming to the London meeting. These groups had stated that the US should take its offer off the table if the EU and the major developing countries did not make significant offers on Market Access.

At the same meeting, the US was reported to have criticised the G33 positions on Special Products (SP) and the Special Safeguard Mechanism (SSM) in the Agriculture negotiations and also to have joined the EU in criticising the paragraph 8 flexibilities²⁷ called for by the NAMA 11 in the NAMA negotiations. The EU and US made no concessions on these issues, and instead questioned the need for such flexibilities. In the discussion on NAMA, the EU, US, Japan and Australia argued that they were looking for real and effective market access in NAMA and this would mean that they would evaluate the cuts from any formula on the *applied rates* of developing countries, such as India and Brazil.

April 2006 Deadline Missed

At the beginning of April, Pascal Lamy was determined to ensure that the WTO did not miss the April deadline again, at least not without considerable effort. He suggested that negotiating the deal on Modalities would require movement on all three angles of the 'Triangle,' i.e agricultural market access, agricultural domestic support and industrial market access (NAMA). However, by the third week of April there was insufficient progress and movement on any of these sides of the triangle.

In the WTO, Pascal Lamy called an informal TNC meeting on the 21st of April and stated that he did not think it wise to hold the proposed ministerial meeting at the end of April.²⁸ He called for the process to shift to Geneva as the ministerial meetings of the G4 and G6 had not delivered. He called for the negotiations to be text-based and, with an intensive bottom-up process, to continue in Geneva. This would be co-ordinated by the Chairs of the Agriculture and NAMA negotiating groups. He appealed to members to desist from a blame game and to ensure that negotiations on modalities were concluded well before the end of July. Thus, the April deadline was missed and the moment of truth that Pascal was hoping for at the end of April had been allowed to be postponed once again.

Another Failed Attempt in June/July 2006

At the TNC meeting of the 30th of May, Lamy set out his vision of a three-phased process: first, the drafting of texts by the chairs of Agriculture and NAMA by the 19th of June; second, consultation on these texts (with possible green rooms) and; third, ministerial engagement at the end of June. He suggested that the ministerial meeting be held over four days, proposed the dates 29th and 30th of June and 1st and 2nd of July.

The Chairs presented the first drafts of their reports/texts on modalities on the 22nd of June²⁹ with the NAMA Chair revising his text on the 26th of June.³⁰ Lamy began a process of consultations on these texts on the 26th of June with separate informal meetings of Ambassadors and the TNC. The text on agriculture produced by the Chair, Crawford Falconer, followed the same structure of his earlier reference papers; market access, domestic support and export competition and other issues. The Chair simply reflected members' views, setting out the divergences in about 740 brackets! The G20 produced detailed commentary on the text and was of the view that the Chairs text was a fair representation of the position of members.

The G6 and the Informal Ministerial Meeting of the TNC, end-June 2006

The Ministerial Meetings of the G6 set the pace and tone of the proceedings at the end of the June TNC meetings. Ministerial meetings of this Group were held on the 29th of June, the 30th of June and the 1st of July. These were preceded by an unsuccessful meeting of G6 Senior Officials that was held on the 14th of June.

The G6 met on several occasions at the ministerial level at the end of June in Geneva. The discussions were both on process and substance. Lamy was present at these meetings. During the first of such meetings held on the 29th of June, the discussion focussed on the three sides of the triangle – Agricultural Market Access, Agricultural Domestic Support and Non-Agricultural Market Access. This sub-section will discuss the deliberations.

On Market Access: Peter Mandelson stated that he was willing to move towards the G20 proposal of a 54 percent cut in the Agricultural market access negotiations. He did not specify what his new proposals on sensitive products and their treatment were. The G33 had called for 20 percent of tariff lines to be designated by developing countries as Special Products. The US had called for these to be limited to 5 tariff lines per country. In addition, the G33 called for a Special Safeguard Mechanism (SSM) that would enable these countries to act against sudden and rapid increases in cheap imports. The Ministers of Trade of Indonesia and India argued that these flexibilities required by the G33 had already been agreed to in principle by the Hong Kong Ministerial Meeting. The US argued that these flexibilities – the so-called SSS (sensitive products, special products and special safeguard mechanism) – would block its exports. It said 94 percent of its exports to these countries could be prevented if the proposals of the EU, G10 and G33 were accepted.

On Domestic Support: Peter Mandelson tested the willingness of the US to move on domestic support cuts in the G6 Ministerial meeting. The US had made an offer of a 53 percent cut in overall trade distorting domestic support in its 10th of October offer (a 60 percent cut in its Amber Box support). The G20 proposal had called for a 75 percent cut in the overall trade distorting support of the US. Celso Amorim indicated that current US spending on trade distorting support was around \$19 billion. The G20 proposal would bring current US spending down to \$12.5 billion. Amorim reported that in an earlier offer, made by Bob Portman at a ministerial meeting with Peter Mandelson in Brazil, the US had proposed cutting its overall trade distorting support down to \$14 to \$13 billion. The offer the US made in October 2005 would have allowed it to increase its spending by between \$2-\$3 billion to almost \$23 billion and above its current level of spending.³¹

On the NAMA side of the ‘triangle’, Ministers Amorim and Kamal Nath reported to the NAMA 11 Ministerial Meeting held on the 29th of June that in the G6 Ministerial Meeting the EU, US, Japan and Australia insisted that the NAMA 11 countries undertake tariff cuts adopting a Simple Swiss formula with a coefficient of 15. They had rejected this proposal, Amorim and Nath reported, as it was unreasonable, too onerous and against the mandate.³² The NAMA 11 Ministerial Meeting adopted a communiqué³³ that called for a 25 point difference between developed and developing countries. The

NAMA 11 emphasised that its approach was based on the two main principles³⁴ of Less Than Full Reciprocity, and the need for a comparable level of ambition in Agriculture and NAMA negotiations as agreed in paragraph 24 of the Hong Kong Declaration.

About 55 ministers gathered in Geneva at the end of June to participate in the WTO TNC meeting to conclude the negotiations on modalities. Lamy first invited some 33 ministers to an informal meeting on the 30th of June and then began a plenary informal TNC meeting with ministerial participation. This group met against informally on the 1st of July. The TNC was called that afternoon to announce the end of the process as the DG recognised that ministers had failed to make any significant progress, with the gaps in their positions being too wide to be bridged in the next few days.

However, as a result of the St Petersburg G8 discussions on the Doha Round on the 15th of July, the ministers of the G6 (except Australia, which was not present) met again in Geneva on the evening of the 17th of July. They agreed to attempt to translate the indications of flexibility of their leaders into negotiating positions, after consulting with their constituencies. They also agreed to a programme of further meetings, on the 23rd and 24th of July and again on the 28th and 29th of July.

The G6 Ministerial Meeting in July 2006

The G6 Ministerial Meeting, chaired by Lamy, held on the 23rd and 24th of July in Geneva, met for 14 hours, but failed to make progress on the substance of the negotiations. Lamy convened an urgent TNC meeting on the 24th of July to report back to the membership. Lamy stated that the only course now was to suspend the negotiations across the Round, providing everybody time-out to review positions. The deadlines for the other issues in the Round would now need to be revised.

Evaluation of the Suspension of the Doha round

There are three broad trends that can be identified in the positions of the EU and the US during the end of June 2006 TNC Ministerial Meeting and end of July G6 Ministerial Meetings. First, the EU having learnt from the Hong Kong experience, where it was isolated, now shifted its stance indicating more flexibility in its defensive positions on agricultural market access. Peter Mandelson had indicated that he could move from their current offer of a 39 percent average cut to a 47 or 48 percent cut.³⁵ He did not specify any willingness to move on sensitive products (the EU demand was for 8 percent of tariff lines) or the extent to which they would deviate from the formula on these sensitive products.³⁶ Nor did the EU indicate any movement on the treatment of these sensitive products (i.e., the formula for quota expansion and extent to which the tariff cuts will deviate from the average cut).

Secondly, the US was increasingly isolated in its negotiating posture at the end of June TNC meeting. The USTR was constrained by an increasingly protectionist US Congress, facing a mid-term election in November 2006. Thus the end of June TNC meeting in Geneva saw a shift in the focus of the WTO members from the EU's recalcitrance and

inability to make further improvements in market access to the US reluctance and lack of political will to make cuts in its trade distorting domestic support.

Third, the EU and the US remained united in their common front calling upon the larger developing countries to open their markets in NAMA. Peter Mandelson called for the outcome of the negotiations to produce “effective cuts and real trade flows”. In NAMA he stated that the EU required “real cuts that cut through the water and cut flesh”. He stated that this could be done with a Swiss 15 formula for developing countries. On NAMA, the USTR stated that developing countries need to cut their current (applied tariff) rates to provide increased market access for inputs from their trading partners.

G20 and NAMA 11 Continue to Play Welfare and Agency Roles

Although Brazil and India did not formally represent the G20 and NAMA 11, they defended and argued the positions of the G20 and NAMA 11 in the G6 and reported back repeatedly to the G20 and the NAMA 11 Ambassadors and Ministers. The strength of their negotiating positions was based on the strong technical back-up and united positions of these groups. In the period up to the suspension of the negotiations, they were able to effectively defend and advance the welfarist interests of these groups.

The G20 and the NAMA 11 continued to play a broader agency role too. Once again the G20, after the suspension of the negotiations by the DG, took the initiative to attempt to resume the Doha Negotiations and held a ministerial meeting in Rio de Janeiro, Brazil on the 9th and 10th of September. The G20 also invited the co-ordinators of the G33, ACP, LDCs, the African Group, SVEs, Cotton 4 and NAMA 11.³⁷ The G20 and Developing Country Co-ordinators then met with Peter Mandelson, the EU Commissioner; Shoichi Nakagawa, the Japanese Minister of Agriculture, Forestry and Fisheries and Susan Schwab, the US Trade Representative, and called on these Ministers to help resume the negotiations as soon as possible.

3.6 The collapse of the G4 in Potsdam and the July 2007 Agriculture and NAMA Texts (first drafts)

There was a flurry of bilateral activity in early January 2007 between the EU and the US on the Doha round, with high level visits to the US by senior EU representatives, including a meeting at the White House between President Bush and the President of the European Commission, Manuel Barroso on the 8th of January, 2007. Bush and Barroso were reported to have instructed Susan Schwab and Mandelson to produce a deal “as soon as possible.”³⁸

The Geneva Process

An informal WTO TNC meeting held on the 31st of January, 2007 provided a mandate to the chairs of the negotiating groups to begin the process of negotiations across all areas of the DDA. The Chair of the Agriculture Negotiations, Crawford Falconer, called small informal “fireside chats” with a cross section of members; the Chair of the NAMA

negotiations, Don Stephenson, called his meetings, “caucuses” and the Mexican Chair of the Services negotiations called his meetings “enchiladas”.

G4 and G6 Ministerials, New Delhi, April 2007

In March 2007, a process of bilateral discussions between the G4 and then G6 began at the senior official and ministerial level. The ministerial meetings of the G4 and the G6 that were held in Delhi on the 11th and 12th of April were the first such since the failed July 2006 ministerials in Geneva. The meetings did not reach any agreement on the substance but did make some progress on the process. In the words of Peter Mandelson, there was a “course correction”. They agreed to meet again in a series of meetings that would culminate in a final negotiating meeting on modalities in Potsdam, Germany on the 21st of June 2007.

Collapse in Potsdam

The G4 ministerial meeting in Potsdam from the 19th to 23rd of June collapsed on the third day of the scheduled 4-5 day meeting. All four ministers (Susan Schwab, Peter Mandelson, Kamal Nath and Celso Amorim) went to Geneva the next day to meet with Pascal Lamy, and report to him separately. Each of them explained to him their version of the breakdown. Celso Amorim, the Foreign Minister of Brazil, reported back to the G20 Ambassadors on the 22nd of June and Lamy called a TNC meeting that afternoon to report to the full membership of the WTO.

Amorim dispelled the rumour that Brazil and India had walked out of the meeting. He explained that after the first day’s discussions, it became clear that the US and EU could not move significantly from their October 2005 proposals. Amorim compared the situation in Potsdam with that in the period before Cancun, where both the EU and the US (in the EU-US Joint Text) forged an agreement between themselves based on an accommodation of their own concerns and comfort levels. According to Amorim, the EU and the US did not confront each other on either the reductions needed in domestic support or tariff cuts on market access in agriculture, but instead were eager to shift the discussion to NAMA and to jointly confront Brazil and India.

The US & Domestic Support

On the issue of Overall Trade Distorting Support (OTDS), Mike Johanns, the US Secretary of Agriculture, offered a reduction in US spending to slightly below \$17 billion. Mandelson suggested that the US had some further flexibility. This figure, according to Amorim, was still 60 percent more than the US spent in 2006 (about \$10.8 billion). Amorim stated that this fell far short of an effective reduction. The G20 required a reduction in the US OTDS that was significantly below the 10 year average of \$15.6 billion and close to the G20 proposal of \$12.9 billion. Even this would allow the US sufficient “headroom,” according to Amorim. The EU would then need to make a cut that was 10 percent more than the US percentage reduction. The reform of the CAP allowed the EU to do more than this. On the need for product specific caps in the Amber and Blue boxes, Amorim stated that the G20 only agreed to the new blue box in July 2004 on the condition that there would be disciplines that prevented product and box shifting by the US.

The EU & Market Access

Amorim said that he found it surprising that when the discussion moved to the need for the EU to move on market access, the US sat back and left Brazil to argue the case alone. There was a need to clarify the final percentage cut of the EU's sensitive products and their treatment. In the case of Brazil about 47 percent of its exports would be affected by the products the EU deemed to be sensitive. The EU did not want to discuss the cuts and treatment of sensitive products. Amorim was left with a distinct impression that the EU and US may have reached a bilateral agreement on the level of TRQs that the US would obtain. On the issue of the special safeguard for developed countries (the SSG), which the G20 wanted to have eliminated, the US did not put any pressure on the EU. In addition, both the EU and the US argued for the extension of the Peace Clause. There was some discussion on Special Products, but this was left to the US officials and India to negotiate bilaterally. There was some progress in the G4 Potsdam meeting on the issue of export competition. Here there was convergence between the EU and the US on food aid and export credits. However, there was no progress on the need for the EU to eliminate substantially all export subsidies, by 2010, in volume terms.

Pressure on NAMA!

Amorim reported that the pressure then moved to India and Brazil on NAMA. Both the EU and the US demanded a Swiss 18 formula cut for developing countries. Brazil and India argued that with the numbers that the US and the EU were offering on agriculture they were not willing to accept a formula cut greater than Swiss 30. In any event, Amorim argued that research undertaken by Brazil revealed that a cut of Swiss 30 in developing country tariffs would yield more market access for developed countries than a cut of Swiss 8 provided to developing countries in developed country markets. Amorim stated that Brazil was willing to be flexible if the US and the EU moved from their current offers in agriculture.

The July 2007 Agriculture and NAMA Chairs texts

The day after the collapse of the Potsdam meeting, Lamy called on the chairs to continue with the drafting process. WTO members had become frustrated some time ago with the G4 process and Pascal had been calling for the multilateral process to be intensified since April 2007. The chairs began to draft after consultations with members and produced draft texts on Agriculture³⁹ and NAMA⁴⁰ on the 17th of July, 2007.

First Draft Agriculture Text

The G20 reaction to the agriculture text has been largely positive. Amorim, who attended the G20 meeting in Geneva on the 19th of July, stated that the text has moved in the direction of the G20's objectives. However, the Chair also took great pains to be inclusive and accommodate the concerns of all the members, especially the developed countries so that they did not reject the text at the outset. On some issues, such as special products, tropical products, preference erosion etc, the text remains incomplete but nonetheless represents a building block that can facilitate negotiations. On the central negotiating issues of domestic support and market access, the chair has sought

to provide room both for the G20, and the EU, US and the G10 (a more defensive group led by Japan) to negotiate from positions that are not so far from their proposals.

On OTDS the Chair's text provides a range between a 66 percent and 73 percent cut (\$16.4 billion and \$13 billion) from the US initial bound OTDS of \$48.2. Thus the starting point is slightly lower than the US proposed cut in Potsdam (slightly below \$17 billion dollars). The US 10 year average (1995-2004) was \$15.9 billion whilst its 2006 level was \$10.8 billion. The G20 had proposed a cut that would bring the US down to \$12.5 billion dollars.

On market access, the Chair's text is more specific on formula cuts. However, in the flexibilities provided to developed countries, the deviation in the formula cuts for sensitive products and the provision of market access through quotas (TRQs) are unclear. In addition, the Chair's text makes provision for the retention of the Special Safeguard (SSG) for certain products required by developed countries. For Japan and other G10 countries that have refused a tariff cap and which have more than 5 percent of tariff lines that are over 100 percent, the text seeks to accommodate them provided they contribute increased quotas. The chair's text also adopts formula cuts in bands that are close to those proposed by the G20 and which provide a range of between 52.3 percent and 56.8 percent cut. However, he leaves open the possibility of a deviation from the formula cuts in the top band (highest tariffs over 70 percent) of between one third and two thirds.

In the formal negotiating session on agriculture the Chair's draft text was generally felt to be a good basis for negotiations. The G20 called for the gaps and imbalances in the text to be addressed in the next revised draft.⁴¹ The need for the US to make effective cuts in the "very low teens" and the EU and Japan to cut the very considerable "water" in their domestic support commitments was stressed. The G20 stated that the chairs proposed cut in the EU OTDS would not remove all the "water" in the EC's commitments and will still fall short of binding the EU CAP reform. On market access the text was criticised for a lack of clarity on the results to be achieved for sensitive products and TRQ treatment, and the lack of proposed tariff cap for developed countries. The G33 criticised the text for putting greater pressure on developing country tariffs than developed country tariffs, and for not specifying in more detail the modalities for SP and the SSM.

The EU stated that they would accept the text as a working basis. However, they wanted a greater percentage of tariffs to be declared as sensitive and the lines to be designated at the 8 digit level. The EC also emphasised its need for the continuation of the SSG for a limited number of products and linked their willingness to accept a cut in the top tier of OTDS with the level of ambition developing countries demonstrate in the NAMA negotiations. The EU also stated that they will not agree to agriculture or NAMA modalities without some positive outcome in the negotiations on GI extension and a GI register. The US criticised the market access pillar for being too underdeveloped and only conceptual at best. The US objected to the chair's proposals to apply the Hong Kong ministerial decision on modalities for cotton. The US argued that it would wait for the outcome of the negotiations on OTDS, before deciding on the level of

ambition for cotton. The US was also not prepared to agree to the middle of the chairs range of 13-6.5 billion dollars. The US stated that they would only be able to move further on domestic support when they can “secure significant real increases in market access”. The US argued for the extension of the Peace Clause, and called for the elimination of the SSG.

An evaluation of the first Draft NAMA Text

The NAMA text provides a range with coefficients in the Swiss formula, of between 19 and 23 for developing countries, and between 8 and 9 for developed countries. This amounts to average cuts of between 62 and 57 percent for developing countries, and between 31 and 33 percent for developed countries. On the flexibilities for developing countries the text opens the brackets of paragraph 8. For countries that did not want to use paragraph 8 flexibilities such as Mexico, the text provides a flexibility that provides for a reduced percentage cut (b plus 3). However, on the need expressed by South Africa and SACU for additional flexibilities, the chair says that he is “unable to conclude on this issue without further consultation”.⁴²

The NAMA 11 made statements both in the NGMA⁴³ and the TNC that criticised the Chairs draft text for being imbalanced in prescribing a level of ambition for developing countries that is disproportionate to that provided for developed countries; and for jumping ahead of the Agriculture negotiations by proposing narrow ranges, whilst the agriculture text provides wide room for further negotiations. The statements of the NAMA 11 both in the NGMA and the TNC discredited the chairs text for its many biases and for prejudicing the outcome of the negotiations for developing countries.

The NAMA 11 in its statement to the NGMA stated that “the hallmark of a good text is one that has the potential to build genuine engagement, negotiation and ultimately consensus” and asserted that “from the point of view of the majority of developing countries in the WTO, this text does not meet this objective.” The ACP, the SVEs, the Africa Group and the LDCs (the G90) also made statements in the NGMA and the TNC criticising the text in the strongest terms. The ACP considered the chair’s text only as “an input into the process.” The LDCs stated that the Chair’s draft could be seen only as a “baseline” for engaging. In the TNC meeting, the Ambassador of Jamaica read a statement on behalf of the G90 and the NAMA 11 calling for a genuine bottom-up process in September to correct the substantial imbalances in the Chair’s draft text.⁴⁴ Paraphrasing the Chair’s assertions in his draft text, the NAMA 11 statement in the TNC emphasised that: “Today a clear majority of the members of the WTO have spoken with one voice and with absolute clarity. They have stated that they are the makers of their own history. They have demanded the right to participate in the process of decision making that will determine the course of their economic development and the lives of their people.”⁴⁵

The welfare and agency roles of the G20 and NAMA 11

The G20 was successful once again in influencing the first draft text of the chair in the agriculture negotiations towards the G20 proposals. Thus the welfarist interest of the G20 was advanced. The agency role of the G20 would be tested when the many issues

that impact on the smaller developing countries, such as preference erosion, tropical products and tariff escalation, are addressed in the next draft. Indeed, the capacity of the G20 to negotiate complex issues among its own diverse membership will also be tested when the issues of Special Products and the proposed Special Safeguard Mechanism are elaborated in the revised Chair's text.

The united front presented by the G90 and NAMA 11 in their joint statement on the Chair's draft text was a great achievement for the NAMA 11 and developing countries in the WTO. It was a testimony to the progress made in forging deeper alliances between developing countries, notwithstanding their different levels of development and interests in the WTO. This was achieved against the very strong pressure emanating from the EU and the US to prevent such unity and strong criticism of the NAMA draft text. The united response of the G90 and the NAMA 11 succeeded in pushing back the efforts of the EU and the US to foist an unfair text on developing countries. However, here too the need to maintain a common approach on the issues of the coefficient and flexibilities will continue to test the unity of the NAMA 11. Its agency role in defending the interests of developing countries will depend on its capacity to build convergence on issues such as preference erosion where the interests of its own members for greater market access in developed markets will have to be compromised.

3.7 Conclusion: Assessing the Evolution of G20 and NAMA 11

At the launch of the WTO Doha Development Round in 2001, developing countries succeeded in negotiating a mandate that held out the promise of delivering a development outcome. They did this through a high level of participation in the negotiations. Since then, developing countries have formed powerful coalitions. They have stuck together notwithstanding their divergent interests as was observed at the WTO Ministerial Meeting in Hong Kong in December 2005, the G-110 Ministerial Meeting in Geneva in June 2006 and the G20 Ministerial Meeting in Rio de Janeiro, in September 2006, and again at the end of July 2007 against an unfair NAMA text.

The current impasse in the WTO is a reflection of the strength of developing countries, not their indifference. Today, developing countries are a force to reckon with. They can negotiate, they are technically competent and they are organised. Whilst there have been – and continue to remain – many threats of an unfair deal being imposed on developing countries, these should not cause them to renounce their legitimate claims to a fair and balanced outcome of the Doha Round. They have insisted on the fulfillment of the promise that the Doha Round will be a development round.

Thus the major developing country coalitions in the WTO, the G20 and the NAMA 11, are doing more than effectively defending their welfare interests or "their own well-being". The G20 – itself a complex set of countries including Brazil, Egypt, India, Paraguay and Tanzania – has negotiated and put forward a set of proposals on almost every issue in the Agriculture negotiations. The G20 has become the centre of gravity in the Doha negotiations. Both the European Union and the United States now acknowledge (the latter more reluctantly) that they have to move towards the G20 to achieve a final deal in the DDA. The NAMA 11 has also, since its formation at the

Hong Kong Ministerial meeting, presented a raft of proposals on each of the issues in the NAMA negotiations, after intense negotiations amongst its members. There is no doubt that the NAMA 11 has become the main interlocutor with the EU and the US in the NAMA negotiations, and has been able to use its collective leverage to advance the welfare interests of its members.

The larger developing countries have taken on board their responsibility towards the poorer members, especially the LDCs. In Hong Kong, these “developing countries in a position to do so” pledged to provide Duty Free Quota Free Market Access (DFQFMA) to all LDCs. This was a historic breakthrough. What was less visible was the growing understanding among the developing countries on the plight of the small, weak and vulnerable countries. These countries, which remain an undefined category, have been urging WTO members to recognise their special situation, and for WTO rules and market access ambitions to be mindful of their different development needs and capabilities. The G20 has recognised these, and the NAMA 11 has agreed that they should be treated differently and provided with greater flexibilities.

South-South trade is an important part of global trade today and an important aspiration of developing countries, especially in the area of agriculture, where developing country markets now constitute more than 50 percent of world trade. Thus the issue of Special Products (SP) and the Special Safeguard Mechanism (SSM) are of greater interest and concern to the members of the G33 and half the membership of the G20 than to the US. It will most certainly be resolved within the G20. It will be resolved in much the same way as the G20 agreed on a formula for market access for developed and developing countries within the G20 – i.e. with a great deal of internal negotiation, through a moderation of the mercantilist market access interests of the more competitive countries and with solidarity with the poor and vulnerable agricultural producers.

There are still some difficult issues among developing countries that will need more work as the negotiation advances. In this regard, the G20 has pledged to address the issues of preference erosion, tropical products and tariff escalation in a fair and balanced manner, both amongst its own members and with other smaller developing country groups. The NAMA 11 has agreed to address the issue of preference erosion by moderating its own market access interests in developed country markets and providing developed countries longer phase-down periods for a limited number of tariff lines.

Developing Countries in the G20 and the NAMA 11 have thus gone beyond a mere welfarist role in the WTO. They have begun to play a broader agency role. In the absence of leadership by the EU and the US, the G20 has played a leadership role in re-engaging and reigniting the negotiations in the post-Cancun period and again in the period after the suspension of the Doha round in July 2006. The G20 and the NAMA 11 have succeeded in building convergence amongst their own diverse members and have forged deeper relationships and mutual trust with other developing country groupings representing the least developed and small and vulnerable countries. In advancing this process they themselves have been undergoing a process of learning on how to build fair trading arrangements with more balanced rules that will create the opportunities for development for all developing countries. In the words of the Foreign

Trade Minister of Brazil, Celso Amorim, they have been learning how to “combine development with social justice”. This is a sound platform from which to build a more legitimate and sustainable rules-based trading system in the interests of all, developing and developed countries.

We now proceed to discuss the next phase in the Doha Round negotiations since the failed G4 ministerial meetings in Potsdam and the drafting of multilateral texts by the chairs of the WTO negotiations until the July 2008 ministerial meetings. The chapter will focus on the role of the NAMA chair in producing imbalanced negotiating texts.

Notes

- 1 The NAMA 11 Group of developing countries was formed in the period shortly before the Hong Kong Ministerial Conference in December 2006. Its members are; Argentina, Brazil, Egypt, India, Indonesia, South Africa, Philippines, Namibia, Tunisia and Venezuela.
- 2 Initially formed with some 23 members, the G33 group had grown to about 45 members by July 2007.
- 3 Sen, A., ‘Development as Freedom’, 1999, (Anchor Books, USA).
- 4 See Kaul, I, Conceicao, P., Goulven, K.L., Mendoza, R. ‘Providing Global Public Goods. Managing Globalisation.’ UNDP (Oxford University Press. Oxford. 2003).
- 5 Zedillo, E. et al, ‘Trade for Development’, UN Millennium Project, Task Force on Trade, 2005. See also Sachs, J., ‘The End of Poverty. How We Can Make It Happen In Our Lifetime’, Penguin Books, 2005.
- 6 The text was criticised most severely by Ministers at the Tokyo Mini-Ministerial Meeting held in February 2003. See Harbinson, S., ‘The Agriculture Negotiations: The Road from Doha and How to keep the Negotiations on a Positive Track’, in Petersman, E. U., See also Shitori, M., et al, ‘The EC’s Proposal for the WTO Agriculture Negotiations’. 12 December 2002. (UNCTAD 2002)
- 7 A group of 3 developed and 14 developing countries that are relatively competitive agricultural exporters. Pakistan became a member in 2006.
- 8 During the Uruguay Round, the Cairns Groups was a coalition of 14 countries, including: Argentina, Australia, Brazil, Canada, Chile, Colombia, Fiji, Hungary, Indonesia, Malaysia, New Zealand, the Philippines, Thailand and Uruguay. See Hoekman, B., and Kostecki, M., ‘The Political Economy of the World Trading System. From GATT to WTO.’ (Oxford University Press, Oxford).
- 9 See Ricupero, R. ‘Overcoming the Fear Factor’, *Finance and Development*, March 2005.
- 10 Amorim, C., Statement to the 60th Session of the UN General Assembly, 17th September 2005. http://www.mre.gov.br/ingles/politica_externa/discursos/discurso_detalhe3.as
- 11 See WTO doc, ‘Agriculture Framework Proposal’, Joint Proposal by Argentina, Bolivia, Brazil, Chile, China, Colombia, Costa Rica, Cuba, Ecuador, El Salvador, Guatemala, India, Mexico, Pakistan, Paraguay, Peru, Philippines, South Africa, Thailand and Venezuela. WT/ MIN(03)/W/6 4th September 2003.
- 12 See G20 Ministerial Communique. Brasilia, 12 December, 2003.

- 13 Zoellick travelled to nine countries in ten days, including India, China, Indonesia (ASEAN), Pakistan, South Africa, Mombasa, and Kenya. He also attended a CAIRNS Group meeting in Costa Rica.
- 14 See Ismail, F. 'A Development Perspective on the WTO July 2004 General Council Decision', *Journal of International Economic Law* Vol. 8 (2), 377-404.
- 15 See WTO WT/L/579 2 August 2004.
- 16 See WTO TN/MA/W/35 16 May 2003.
- 17 See WTO JOB (03)/150/Rev.2.
- 18 See paragraph 3 of Annex B. Some developing countries argued that when this is applied to their own tariff reductions, it would create relatively significant adjustment burdens compared to that of developed countries whose tariffs were relatively low already.
- 19 Some developing countries were willing to entertain the possibility of sectoral negotiations but only if this were decided on a voluntary basis. They feared that the burden of adjustment for them would be relatively large, especially if the most sensitive of their sectors were targeted for sectoral tariff reductions.
- 20 20 Developed Countries created an informal negotiating group to support the Derbez Text called 'Friends of Ambition'.
- 21 See paragraph 1 of Annex B. WT/L/579. 2 August 2004.
- 22 Celso Amorim, the Brazilian Minister of Foreign Affairs and Trade and the co-ordinator of the G20 was quoted in the FT (19/12/2005) as saying that the decisions reached in the Hong Kong Declaration were "modest but not insignificant".
- 23 See TN/MA/W/65 'Market Access for Non-Agricultural Products. Flexibilities for Developing Countries', Communication from Argentina, Bolivarian Republic of Venezuela, Brazil, China, Egypt, India, Indonesia, Namibia, Pakistan, Philippines and South Africa. 8th November 2005.
- 24 See letter by the above countries, and Tunisia, sent to the Chairman of the Conference and the Director General at the Hong Kong Ministerial Conference.
- 25 See WT/MIN (05)/DEC. Para 24 of the Ministerial Declaration. Doha Work Programme. 22 December 2005.
- 26 Financial Times, *Ministers promise to accelerate pace of Doha talks*, 30th January 2006.
- 27 The WTO July 2004 Framework Agreement agreed to provide developing countries with a small percentage of flexibility to protect some tariff lines from increased cuts or to reduce these lines by a smaller percentage than the average cut specified in the agreed formula.
- 28 International Herald Tribune, *Trade talks to miss key April 30th deadline*, 25th April 2006.
- 29 WTO Job (06)/199 *Draft Possible Modalities on Agriculture* 22nd June 2006. and WTO Job (06)/199/Corr.1 *Draft Possible Modalities on Agriculture* 29th June 2006.
- 30 WTO, Job (06)/200/Rev.1 *Towards NAMA Modalities* Revision. 26th June 2006.
- 31 Peter Mandelson reportedly asked Susan Schwab in the G6 Ministerial meeting that if the EU moved to above the G20 proposal of a 60 percent average cut in market access, would the US be prepared to move towards the G20 on its domestic support offer. Susan Schwab indicated that the US was unable to move. She was reported in the press as saying that she would not respond to a hypothetical question.
- 32 'Hopes for Modalities Deal Diminish As G-6 Meeting Ends Without Progress', *WTO Reporter*, 30th June 2006.

- 33 WTO doc. NAMA 11 Ministerial Communiqué. 29th June 2006, Geneva.
- 34 The WTO Hong Kong Declaration agreed that developing countries shall reduce their tariffs by a lesser margin than developed countries (Less Than Full Reciprocity) and that the depth of the tariff cuts in NAMA shall be comparable to that in Agriculture (paragraph 24).
- 35 The Wall Street Journal, *EU hints at farm-tariff flexibility*, 24th May 2006. See also International Herald Tribune, 31st May 2006.
- 36 Sensitive Products refers to the decision agreed in the WTO July 2004 Framework that developed countries will be allowed to reduce the tariffs that they deem sensitive and that they wish to protect by a smaller percentage of tariff cut than the average tariff cuts agreed in the formula.
- 37 See WTO doc Job (06)243 G-20 'High Level Meeting with Co-ordinators of Developing Country Groups', Press Statement, Rio de Janeiro, 9th September 2006. 10 October 2006.
- 38 Financial Times, January 9, 2007.
- 39 See WTO doc, 'Draft Modalities for Agriculture'. Job (07)/128 17 July 2007.
- 40 See WTO doc, 'Draft NAMA Modalities'. Job (07)/126 17 July 2007.
- 41 WTO doc, "G20 Speaking Notes", Special Session of the Committee on Agriculture, 24th July 2007.
- 42 See WTO doc, 'Statement by South Africa to the NGMA on the Chairs Text of 17th July 2007' Job(07)/131 31 July 2007. See also Communication from the Southern African Customs Union (SACU) compromising Botswana, Lesotho, Namibia, South Africa and Swaziland. TN/MA/W/92 29th October 2007.
- 43 WTO doc, 'Statement of the NAMA 11 to the NGMA-25 July 2007'. Job (07)/132 31 July 2007.
- 44 WTO doc, 'Joint Statement of the G90 and NAMA 11 – 26 July 2007'.
- 45 WTO doc 'Statement of the NAMA 11 to the TNC – 26 July 2007'.

4

The Role of the Chair in WTO Negotiations from June 2007 to July 2008

4.1 Introduction

Since the launch of the Doha Round in November 2001 in Doha, Qatar, the WTO negotiations have been characterised by several failed ministerial¹ meetings and missed deadlines. The establishment of full modalities,² in the Agriculture and NAMA (non-agricultural market access or industrial tariff) negotiations,³ eluded WTO members at the end of July 2008, and again at the end of December 2008.⁴ Rorden Wilkinson⁵ has argued that the collapse of these ministerial meetings and missed deadlines are part of a deeper crisis in the multilateral trading system. The underlying cause of this crisis, Wilkinson asserts, is that the GATT and the WTO subsequently, have evolved in the service of their main architects (the US and the EU), thus creating an “asymmetry of opportunity” for the majority of developing country members.

I have also argued elsewhere that the collapse of the WTO Cancun Ministerial Conference in September 2003 was mainly due to the attempts by the EU and US to foist their bilateral agreement on agriculture that sought to accommodate each other’s interests on the majority of WTO members.⁶ Another reason offered for the collapse of the Cancun Ministerial Conference was declared to be the “medieval” system of decision-making that was not transparent and excluded the majority of members.⁷

However, there have been some partial successes since the Doha Round began. Learning from the experience of the failed Cancun Ministerial Conference, WTO members were to subsequently adopt a more inclusive multilateral process of negotiations in Geneva that led to the agreement on a ‘framework’ for modalities, in the July 2004 Framework Agreement. Again a more inclusive ‘green room’ negotiating process adopted at the Hong Kong Ministerial Conference in December 2005 was to achieve some incremental advances on the July 2004 Framework Agreement. However, since then the various attempts to make a breakthrough in the negotiations towards full modalities in Agriculture and NAMA, that have been conducted in small informal groups of members, have been unsuccessful.

The major players in the WTO were to forget the early lessons of the Doha Round too quickly. In early 2006 the US and the EU created a group of six (G6) WTO members (US, EU, Japan, Australia, Brazil, India) in an attempt to advance the modalities negotiations among themselves, only to result in another failure for the WTO by July 2006. This prompted Pascal Lamy, the Director General of the WTO, who hosted and chaired the G6 ministerial meetings in July 2006 in Geneva, to suspend the Doha negotiations. Again, in the first half of 2007, a smaller group of four members (EU, US, India and Brazil – the G4) attempted a similar process of negotiation amongst themselves to try and make a breakthrough on the vexed issues of agriculture and NAMA modalities, but the attempt collapsed at their ministerial meeting in Potsdam, Germany, in June 2007.

Expressing his frustration with the lack of progress made in these small group processes, Lamy called on the chairs of the WTO negotiating groups to resume the multilateral negotiating process of the Doha Round.⁸ The chairs of Agriculture and NAMA have written several draft texts since June 2007, leading to their third draft texts produced on the 10th of July 2008. The July-end 2008 ministerial meetings called by Lamy were also to collapse – one more failure to conclude the Agriculture and NAMA modalities negotiations by the WTO members.

This chapter argues that there were two main factors that contributed to the failure of the ministerial meetings at the end of July. The first is the imbalanced nature of the texts – both within NAMA and between NAMA and agriculture. This is partly ascribed to the role of the chair of the NAMA negotiating group, who, by his own admission, decided at the very outset, in his first draft text, to determine the level of ambition himself.⁹ The criticism of the NAMA 11 group of developing countries¹⁰ was that these views, reflected in the first draft NAMA text, coincided closely with those of the major developed countries. In sharp contrast, the Agriculture chair consistently maintained a bottom-up process that included the views of the different groups of members in his draft texts.

The second factor is the increasing protectionism within the EU and the US, and their attempts to raise the level of ambition for developing countries, seeking greater market access in Agriculture, NAMA and Services, particularly from the major emerging markets that have increasingly been perceived as their competitors. This is well documented: several writers have pointed to the asymmetric outcome of previous GATT/WTO negotiations and the tendency of the two major players to drive the process of negotiations in their own interests.¹¹ The Uruguay Round was described as being imbalanced with developing countries bearing the greater burden and developed countries making significant gains.¹² The EU and the US ensured that they first accommodated their own interests in the Blair House Agreement¹³ before driving the process towards its final conclusion. A more recent analysis of the WTO suggests more fatalistically that the outcomes of the WTO Hong Kong Ministerial Conference “makes more likely the completion of a round that will be uneven in its bargain and deeply asymmetrical in its distribution of economic opportunity”.¹⁴

However, the formation of significant developing country coalitions in the Doha Round, including the G20, NAMA 11, G33 and even of smaller economies such as the SVEs, LDCs, Africa Group, the ACP and the Cotton Four have for the first time in the history of GATT/WTO Rounds created significant countervailing power that hold out the prospects of a more balanced and development-friendly outcome.¹⁵ The evidence provided in this chapter suggests that these coalitions are capable of providing a strong countervailing force to the power and influence of the EU/US. However, the bias or incorrect weighting of the power of the EU/US by the chair could undermine the efforts of developing country coalitions to sustain their efforts to achieve a more balanced, fair and development-friendly outcome.

This chapter will focus on the role of the NAMA chair in biasing the outcomes against the interests of developing countries and thus contributing to the collapse of the ministerial meetings at the end of July 2008. The focus will be on the process of the negotiations since the onset of the first draft multilateral texts in July 2007 up to July 2008. There were a number of factors that contributed to the end of July 2008 ministerial meetings, including imbalanced texts, increasing protectionism, collusion of the US and EU to open up the markets of developing countries and the resuscitation of the principal supplier approach of negotiations that excluded the majority of members from decision making (however, these other reasons are discussed more fully elsewhere.¹⁶). The NAMA chair's role will be contrasted with that of the Agriculture chair who adopted a more inclusive and bottom-up process, and was able to retain the confidence of the membership throughout the process described above. This analysis is undertaken with a view to increasing the transparency, objectivity and fairness of WTO chairs. In this regard the paper will offer some tentative proposals in the concluding section that could foster a more efficient and balanced outcome in future WTO negotiations.

Below, we discuss two recent attempts to develop a theory to analyse the role of the chair in international negotiations, and consider their validity to the WTO negotiations. The paper will describe the reaction of the main players – the G20, the NAMA 11, the other developing country groups, and the EU and US, to each of the draft Agriculture and NAMA texts, namely the first draft texts tabled on the 17th of July; the first revised draft texts tabled on the 8th of February; the second revised draft texts tabled on the 22nd of May; and the third draft texts tabled on the 10th of July 2008. In addition, the chapter will assess the state of play at each stage of the process and discuss the two main factors, discussed above, that were to contribute to the failure of the ministerial meetings at the end of July. In the concluding section we will evaluate the value and validity of the theoretical concepts and put forward some proposals to advance the debate.

4.2 Theoretical Concepts on the Role of the Chair

This section will briefly review the theoretical propositions advanced by two significant recent studies on the role of the chair in multilateral and regional negotiations, and in the WTO, more specifically. These propositions will be applied to the study below of

the role of the NAMA chair in the WTO negotiations during the period July 2007 to July 2008.

A well-researched analysis¹⁷ of the role of the chair in the GATT/WTO negotiations argues that chairs have limited, but significant, capacity to influence the efficiency of consensus building and the resulting distribution of gains and losses and its legitimacy. In his seminal paper John Odell argues that chairs employ three types of mediation tactics to assist members to overcome deadlocks. He describes these three “mediation tactics” as: a) observation, diagnosis and communication; b) formulation tactics; and c) manipulation tactics. In a more recent paper, Jonas Tallberg¹⁸ studies the role of the chair in three sets of institutions, the EU, WTO and the multilateral environmental negotiations. Tallberg develops a different typology to describe the role of the chair in these negotiations. He argues that overcrowded agendas, unwillingness of parties to reveal their true preferences in international negotiations, and the need for multilateral bodies to engage with non-members creates the need for a chair to play the role of a) agenda management; b) brokerage and; c) representation. Tallberg attempts to develop a “rational institutionalist theory” of the role of the chair in international negotiations and describes this role as “formal leadership”. In his consideration of these three roles of the chair in WTO negotiations, he argues that the role of representation is seldom required.

Thus the role of the chair in the WTO negotiations is adequately described as that of agenda management and brokerage. Tallbert argues that the chairs that play these roles are vested with “asymmetric” power to influence the negotiations. This power comes from their privileged access to information about the real preferences of members and the support of the secretariat, and their control over the negotiating process. However, this asymmetric power is conditioned by the rules governing decision-making and the design of the chairmanship. He argues that the chair’s scope to influence the negotiations is much wider if the method of decision-making is that of majority voting than the tougher methods of consensus or unanimity, where the interests of all parties have to be considered. In addition, he argues that the institutional design of the chairmanship affects the discretion of formal leaders. In this regard he sets out three institutional models, namely, rotation of the chair between states, election of a chair from one of the member states, and appointment of a supranational official as chair. He argues that the rotation system provides for less extensive controls and a greater margin of manoeuvre to the chair.

In his application of this theory to the three different institutional settings of the EU, the WTO and the multilateral environmental agreements, Tallberg argues that in the latter two cases, formal leaders positively enhanced the efficiency of the negotiations by transforming competing proposals into single texts and thereby forging agreements. In addition, in these cases he argues that there was “no evidence of the chairs having systematically biased outcomes...” However, he argues that this was not the case in the EU, where there was “evidence of chairs systematically shifting distributional outcomes to their national advantage” and goes on to provide evidence of this practice in several instances. Tallberg ascribes these contrasting roles to the less restrictive rotational system of decision-making in the EU and the more restrictive consensus rule

or supranational representation (of the Director General and Secretariat) in the WTO. He argues, “existing accounts provide limited evidence of chairs systematically favoring some parties at the expense of others” in the WTO.

This chapter will argue that whilst the decision-making system (generally of consensus) and the institutional design of decision-making (election and appointment of chairs by members) in the WTO creates more controls and less discretion for the chair to influence the decisions towards his or her own preferences than in the EU, there still exists significant room for the chair to influence the negotiations towards inefficient outcomes that result in imbalanced and unfair agreements or the collapse of the negotiations. The outcome could be considered inefficient if the overwhelming majority of members are dissatisfied with the results, expect to make more losses than gains from the results, and developing countries perceive that they will make a greater contribution than developed countries. In addition, outcomes that lead to breakdowns of the negotiations only serve to delay the process further and can be deemed to be inefficient.

There are a number of attributes that a chair requires in order to be competent to contribute to efficient outcomes in the WTO negotiations. First, the chair must be willing to rise above their national interests and provide a fair and unbiased judgement of the compromises that would be required to build convergence in the negotiations, with due regard to the development dimensions and mandate of the negotiations. Second, they must be capable of listening carefully to the members, without being unduly influenced by the more powerful groups (usually the major developed countries), in a bottom-up process, building confidence and ownership of the process amongst the members. Third, the chair must be capable of offering solutions to the blockages in the negotiations in a step-by-step manner using a variety of negotiating tools (tools of brokerage) available to the chair.

The extensive research undertaken by Odell of decision-making in the GATT/WTO provides several examples of sub-optimal or inefficient outcomes as a result of injudicious use of the brokerage methods or the bias of the Chair. Several methods are often used by the Chairs to build convergence, including the drafting of texts by the chair that attempts to approximate the zone of agreement of the members. A more cautious approach could offer two or three options for each issue for members’ consideration, whilst a more bold and risky approach could be to offer only one option in a single text. Odell also argues that the timing of a bolder approach is also important and is usually attempted later in the negotiations, just before the final deal is concluded.

Odell provides the examples of the Harbinson¹⁹ draft single text produced just before the WTO Doha Ministerial Conference held in November 2001. Harbinson had followed a careful approach beginning with a checklist of issues in April 2001, and consulting on this before producing a more comprehensive draft text with few brackets just before the Doha Ministerial Conference. The Harbinson draft text succeeded in becoming a basis for a final Doha Ministerial Declaration. In sharp contrast, the draft prepared by Carlos Perez del Castillo, the Chair of the General Council before the Cancun Ministerial Conference, and a bolder revised version produced by the conference Chair. Minister Luis Ernesto Derbez of Mexico, was criticised severely by developing country groups

and contributed to the collapse of the Cancun Ministerial Conference. Odell suggests that there are several risks and errors of judgement that the Cancun Chair could have made: drafting a bolder version of the text too early; failure to use brackets to signify lack of consensus; a misunderstanding of the reservation values ('bottom lines') of members; or providing too much weight to the preferences of the EU and US in assessing the zone of potential compromise. Odell points out that one of the reasons for the collapse of the WTO 1999 Seattle Ministerial Conference has been ascribed to the failure of the chair of the meeting, Ambassador Charlene Barshefsky, the USTR, to listen objectively to the members. She was said to have been unable to formulate any issue outside US interests. Similarly, the chair at Cancun failed to listen to a significant number of members who were expecting the negotiations to continue when he abruptly closed the conference "before a plenary had taken place to discuss agriculture or any other issue".²⁰

The discussion above points to significant evidence of inefficient outcomes in the GATT/WTO negotiations as a result of the failure of the chairs to listen carefully to members, their inability to act in an objective manner due to their loyalty to national interests, their poor judgment of the use and timing of the tools available to them to build consensus (two or three options, single draft text), and their incorrect weighting of the views of the different groups of members (e.g., the EU, US and developing country groups).

The study below of the role of the chair in the WTO negotiations provides evidence for several of the above errors that a chair can make, and thus lead a negotiation towards either unfair and unbalanced outcomes or collapse. Indeed, the role of the NAMA chair, Ambassador Don Stephenson of Canada, in the NAMA negotiations reflects all the above errors. His failure to provide efficient formal leadership is contrasted with that of the chair of the Agriculture negotiations, Ambassador Crawford Falconer of New Zealand. Falconer displayed a capacity to listen carefully to the views of different members, to act in an objective manner, to make judicious use of the tools of brokerage and the appropriate timing of single texts, and a fierce independence from the influence of any of the major developed or developing country groups.

The discussion below will set out the reactions of the main players in the WTO – representing the developed country players (the US and EU), the larger developing country coalitions (the G20 and NAMA 11) and the smaller developing country coalitions (the Africa Group, ACP and LDCs) – to each of the draft Agriculture and NAMA texts from July 2007 to July 2008, before the collapse of the negotiations at the end of July 2008. In the assessment of each of the draft texts the main reasons discussed in the introduction for the failure of the end July 2008 ministerial meetings will be discussed. These reasons include the dominance of the US and EU interests in the negotiations and their increasing protectionism, the resistance of developing country coalitions to attempts to obtain their agreement to these imbalanced texts, and the role of the NAMA chair. This role will be contrasted with that of the Agriculture chair who consistently adopted a more inclusive 'bottom-up' process.

4.3 The First Draft Texts

The chairs began to draft after consultations with members and produced draft texts on Agriculture²¹ and NAMA²² on the 17th of July, 2007.

EU/US Reaction

The EU and US both welcomed the Chair's texts on Agriculture and NAMA and were prepared to work with them as a basis to build convergence. The EU stated that it had shown significant flexibilities from its initial positions in the agriculture negotiations.²³ The EU supported the NAMA text and the proposed numbers and ranges for developing countries. However, the EU warned that they "will have real concerns if there were any attempts to sequence the negotiations in such a way that results are sought first on agriculture before moving on to NAMA". The US stressed that they needed a result in NAMA that "provides new market access for our workers and manufacturers" and equated this with a pro-development outcome by stating that, "without such a result we would be kidding ourselves that we have concluded a pro-development Round".²⁴

G20 on First Draft Agriculture Text

On Domestic Support (subsidies), or overall trade distorting support measure (OTDS) the chair's text provided a range of between a 66 percent and 73 percent cut (\$13 billion and \$16.4 billion) for the United States, from the US initial bound OTDS of \$48.2. Thus the starting point was slightly lower than the US proposed cut in Potsdam (slightly below \$17 billion). The US 10-year-average (1995-2004) was \$15.9 billion whilst their 2006 level was \$10.8 billion. The G20 had proposed a cut that would bring the US down to \$12.5 billion dollars.

On Market Access, the chair's text, was clearer on the formula cuts. However, the flexibilities provided to developed countries, the deviation in the formula cuts for Sensitive Products and the provision of market access through quotas (TRQs) was unclear. In addition the text provided for the retention of the Special Safeguard (SSG) for certain products required by developed countries. For Japan and other G10 countries that refused a tariff cap, the text provides for those countries with more than 5 percent of tariff lines over 100 percent to be accommodated, provided they contribute increased quotas. On the formula cuts the chair adopted the bands that were close to that of the G20 and provided a range for the tariff cut of between 52.3 percent and 56.8 percent. However, he left open the possibility of a deviation (of between one-third and two-thirds) from the formula cuts in the top band (highest tariffs over 70 percent).

The G20 reaction to the first draft agriculture text was largely positive. The Foreign Trade Minister of Brazil, Celso Amorim, who attended the G20 meeting in Geneva on the 19th of July, stated that the text had moved in the direction of the G20's objectives.²⁵ However, the chair had taken great pains to be inclusive and accommodate the concerns of all the members, especially the developed countries so that they did not reject the text at the very outset. On some issues, such as Special Products, Tropical Products, Preference Erosion, etc, the text was incomplete. However, the G20 believed that the text was a building block that could facilitate negotiations. On the central negotiating issues of Domestic Support and Market Access, the chair sought to provide room for

the G20, and EU, US, and G10 (a more defensive group led by Japan) to negotiate from positions that were not too far from their original positions.

NAMA 11 Response to First Draft NAMA Text

The NAMA text provided a range in the coefficients of 19 to 23 for developing countries and 8 to 9 for developed countries. This is an average cut of between 57 and 62 percent for bound rates for developing countries and an average cut of between 31 and 33 percent for developed countries. On the flexibilities for developing countries the text opens the brackets of paragraph 8. For countries (such as Mexico) that did not want to use paragraph 8 flexibilities, the text included a flexibility that provided for a reduced percentage cut (of b plus 3).

The NAMA 11 made statements both in the NGMA (NAMA negotiating group)²⁶ and the Trade Negotiating Council (TNC)²⁷ that criticised the chair's draft text for being imbalanced in prescribing a level of ambition for developing countries that was disproportionate to that provided for developed countries; and for jumping ahead of the agriculture negotiations by proposing narrow ranges (Swiss coefficients of 19 to 23 for developing countries), whilst the agriculture text provided relatively wide room for further negotiations. The statements of the NAMA 11 both in the NGMA and the TNC criticised the text for its many biases and for prejudicing the outcome of the negotiations for developing countries.

In response to this pressure and in an attempt to prevent the imbalanced chair's text being imposed on developing countries, the NAMA 11 submitted a 'members' text' (on the 9th of October at the WTO General Council Meeting) that included the elements and principles that should guide a NAMA text. The EU and US made statements immediately after the meeting. The US stated that "the proposal could signal the end of the Doha Round" and the EU stated that "alternative texts (to the current chair's text) are not needed".²⁸

Other Developing Country Groups

The African Group, the ACP, and the Small and Vulnerable Economies (SVEs) were critical of the NAMA text as the text also increased pressure on them. For the paragraph 6 countries (those that had low binding levels in the Uruguay Round) the text had increased the binding level to 90 percent from their preferred 70 percent. For SVEs, the text required these members to bind their tariffs at 14, 18 or 22 percent, increasing the burden of reduction.

The NAMA 11 made a joint statement together with the Africa Group, the ACP and the LDC Group (the G90) on the chair's first draft NAMA text at the TNC on the 26th of July, 2007.²⁹ The joint statement called for "the substantial imbalances" in the chair's text to be addressed. These imbalances were stated to include an attempt to "presuppose the outcome in NAMA while the negotiating positions of developed countries were still preserved in Agriculture"; "making developing countries pay first in NAMA and pay more than developed countries in Agriculture"; "turning the principle of less than

full reciprocity on its head” by requiring developing countries to make greater commitments than developed members and; “undermining the agreement reached in Hong Kong to ensure that the level of ambition in NAMA was comparable to Agriculture”.

Assessment of the First Draft Texts

In the assessment below we argue that the US and the EU views and interests appeared to be largely reflected and accommodated by the chair’s texts, particularly on NAMA. However, the developing countries were dissatisfied with the NAMA chair’s text. The NAMA chair’s text appeared to increase the pressure on developing countries to open their markets further than developed countries were willing to open theirs in agriculture. The sustained pressure on developing countries by the US and EU to accept the NAMA chair’s efforts to continuously raise the level of ambition was immense. However, developing countries continued to resist this pressure through their coalitions. Thus at each stage of the process the NAMA chair produced imbalanced texts against the interests of the majority of developing countries. The Agriculture chair on the other hand included the views of the majority of WTO members, developed and developing countries, in a ‘bottom-up’ process.

In what seemed like a carefully orchestrated move the US Chief Agriculture Negotiator declared at an Agriculture negotiating meeting that the US was prepared to work on the basis of the ranges proposed by the Agriculture chair on overall trade distorting support (OTDS).³⁰ Soon after, the Ambassador of the USTR in Geneva, Peter Allgeier, stated that he hoped Washington’s commitment to negotiating within the ranges proposed by the Agriculture chair (\$13 to 16.4 billion dollars on OTDS) would prompt Argentina, Brazil, India and other members to make a similar commitment on the proposal made by the NAMA chair to cut industrial tariffs.³¹ Thus it was not surprising that President George W. Bush, at the New York UN General Assembly a few days later, repeated that the US would like to see the “G20 countries cut import tariffs on manufactured goods to levels proposed in July”, as the US was prepared to cut its OTDS within levels proposed by the Chair of Agriculture.³² USTR Susan Schwab also placed an op-ed in the Financial Times a week later³³ that called on Brazil, India, China, Argentina and South Africa to “negotiate both agriculture and industrial tariff reductions within the ranges specified for advanced developing countries by the chairmen of those negotiating groups”.

The EU too began to place similar pressure on the NAMA 11 as Peter Mandelson signaled his support for the NAMA text. At the EU General Affairs and External Relations Council meeting held on the 23rd of July 2007, Mandelson commented on the draft texts: “We need to continue to push hard on industrial tariffs. There is no reason to assume that the landing point will not move further in our favour, given the emergence of a more ambitious and vocal group amongst the developing countries”.³⁴

The EU and the US built a high level of co-ordination that enabled them to maintain a united front in pressurising the major developing countries to raise the level of ambition in market access in the Doha round NAMA, Services, and Environment negotiations.³⁵ On agriculture the EU and US appeared to maintain the basic compromise

they reached in Cancun,³⁶ in the EU/US Joint Text to accommodate each other's concerns in agriculture. So the EU did not apply significant pressure on the US to reduce its trade distorting support and the US did not apply much pressure on the EU to open its markets further. Thus, the joint target of the EU and US to satisfy their market access needs became the major developing countries.

This joint effort of the US and the EU produced enormous pressure on developing countries to accept the NAMA text. However, developing countries built strong alliances to resist this pressure and assert their own demands and interests. The Joint Statement of the NAMA 11 and the G90 at the end of July 2007 TNC meeting was not expected by the developed countries. They did not expect the G90 Group of developing countries (the ACP, Africa Group and the LDCs) and NAMA 11 to make a joint statement. They underestimated the strength of opposition by the G90 to the NAMA text. Susan Schwab began the blame game at the APEC Meeting in Sydney on the 6th of September 2007 when she accused South Africa, Argentina, India and Brazil as being part of a small group of countries who were capable of destroying the Doha Round.³⁷ Again when she returned to Washington she stated that "there are some obstructionists who don't want the round to succeed".³⁸ The united front presented by the G90 and NAMA 11 in their joint statement on the chair's draft text was a great achievement for the NAMA 11 and developing countries in the WTO.³⁹ It was a testimony to the progress made in forging deeper alliances between developing countries, notwithstanding their different levels of development and interests in the WTO. This was achieved against the very strong pressure emanating from the EU and the US to prevent such unity and strong criticism of the NAMA draft text.

In sharp contrast to the NAMA chair's approach the Agriculture chair took great pains to be inclusive and accommodate the concerns of all the members, especially the developed countries so that they did not reject the text at the outset (the text thus included about 740 brackets!). On some issues such as Special Products, Tropical Products, Preference Erosion etc, the text was incomplete but nonetheless represented a building block that could facilitate negotiations. On the central negotiating issues of Domestic Support and Market Access, the chair sought to provide room both for the different groups including the G20, EU, US and G10 group to negotiate from positions that are not so far from their proposals.

The difference between the reactions of the members to the Agriculture and the NAMA texts was to begin a continuing theme in the negotiations. This was due to the very different approaches of the chairs of the negotiating groups. The Agriculture chair chose a "bottom-up" process that included the views of all the different groups in the WTO and created processes that built incremental convergences, whilst the NAMA chair chose to take the risk setting the level of ambition based on his assessment of where the consensus could be built. In doing so he ignored the views of at least one of the major negotiating groups in the NAMA 11. Thus, the NAMA chair's first text created the basis for an imbalanced process, with the Agriculture text moving incrementally in the direction of building convergence and the NAMA text setting the end point and hoping to build convergence towards this.

The discussion above provides significant evidence that the WTO chair can use the asymmetrical power bestowed on the chair to influence the outcome of the negotiations towards his or her preferences and thus create an inefficient outcome. Thus Tallberg's theoretical proposition that the institutional controls of the WTO create the mechanisms for a more efficient outcome in the negotiations and offer sufficient safeguards against abuse by the Chair will need to be revised.

4.4 First Revision

The First Revised texts on Agriculture (TN/AG/W/4/Rev.1) and NAMA were tabled on the 8th of February.

US/EU reaction

In a statement made to the Peterson Institute for International Economics, Susan Schwab stated that "the new draft texts have moved in the right direction". She indicated, however, that the US Administration was more comfortable with the agriculture text than the NAMA text.⁴⁰ In statements made to the NGMA on the 20th of February, the EU and US argued that the percentages reflected in the first draft text on paragraph 8 flexibilities (10 and 5) should be brought back. The USTR stated that the NAMA text represented a "diminution of ambition and creates new uncertainty by dropping the numbers for developing country flexibilities contained in the original draft. The USTR suggested providing developing countries credit for participation in sectoral negotiations."⁴¹

In the discussions on the Agriculture chair's revised draft text, the EU and the G10 countries had begun to harden their positions on the formula for tariff reductions and 'sensitive products'. The EU delegation stated that the EU Council of Ministers had warned the Commission that it could not accept the proposed 54 percent as the minimum average cut. The members of the G10 had also delayed the provision of domestic consumption data to enable the members to calculate tariff rate quota expansion.⁴²

G20 response

There were a large number of issues that remain unresolved and placed in about 170 brackets in the first revised agriculture text. The biggest changes in the first revised text include a minimum average cut of 54 percent for developed countries and a maximum overall average cut of 36 percent for developing countries. The chair of the agriculture negotiating group stated that the two numbers correspond to the numbers that the G20 group of developing countries had proposed.⁴³ The G20 discussed the text and presented its response at the open-ended informal negotiating group on agriculture on the 15th of February.⁴⁴ The G20 believed that the text was a fair reflection of the negotiations amongst the members and that it was a comprehensive text on modalities, with some areas still needing further development, namely, Special Products, SSM, Tariff Escalation and Tropical Products. The G20 members stated that whilst the text was a good basis to work on, the proposals of the chair reflected a lower level of ambition in favour of developed country members.

The level of ambition remained unclear in all three pillars. In the Market Access pillar, whilst the chair had proposed an average tariff cut of 54 percent for developed countries, there was still no clarity on the impact of Sensitive Products, the degree of tariff quota expansion, the degree of tariff simplification, additional cuts of tariff escalation and tropical products, on the market access opportunities that would be available to developing country exporters. The ambition was further lowered by the chair's removal of tariff capping for developed countries and the text's proposed continuation of the Special Safeguard (SSG) for developed countries. On the Domestic Support pillar the disciplines for product-specific caps needed further strengthening and the cuts on OTDS remained the same (\$13 to 16.4 billion). On cotton, the chair retained the Cotton 4 proposal as the US had refused to engage on this.

The NAMA 11 response

For the NAMA 11 there were two critical issues: the formula and the flexibilities. The range in the formula (19-23) that the chair had inserted in his first draft text remained the same. In his first draft text, the chair had removed the brackets from the paragraph 8 flexibilities that were provided in the NAMA July 2004 Framework Agreement. In his first revised text he decided to re-introduce the brackets, but remove the numbers altogether, for the percentage of tariffs that should take less than formula cuts, and for the volume of trade. In a press conference subsequent to the release of the first revised text, the NAMA chair stated that he dropped the numbers in paragraph 8 due to pressure from members and that a new paragraph 8 proposal will be negotiated. He cited the proposal of some members for a sliding scale under which developing countries seeking more flexibilities can have either a lower co-efficient or conversely limited flexibilities with a higher coefficient.⁴⁵

The NAMA 11 criticised the chair's first revised text for once again ignoring the proposals of the NAMA 11 on both the range of coefficients and the flexibilities.⁴⁶ The NAMA 11 pointed out that the chair in his first draft text acknowledged that the range of coefficients reflected his own view. In the second draft text, however, he still insisted on retaining his range. The NAMA 11 argued that its views must be incorporated in the chair's modalities text so that ministers can determine whether they meet the mandates of LTFR (Less Than Full Reciprocity) and paragraph 24 of the Hong Kong Ministerial Declaration.⁴⁷

Other Developing Countries

The ACP re-acted to the NAMA text in the NGMA by stating that although most ACP states will not be applying the formula, "the impact of the formula will be felt by all ACP states". The statement also raised their concerns with regard to the possible adverse impact of sectoral negotiations on the further erosion of preferences.⁴⁸ Indonesia made a statement on behalf of the G33 indicating that they are still gravely concerned about the treatment of Special Products (SP) and indicated that a zero cut must apply for 8 percent of tariff lines indicated as Special Products. The G33 went on to state that the maximum cut for SP should be 12 percent and that there should not be any TRQ creation or expansion, and no tariff capping for SP products.

On the SSM (Special Safeguard Mechanism for developing countries) they indicated that the SSM should be more flexible than the existing SSG. The SSM should not have layers of restrictions on its use. They concluded by indicating that the current SSM text did not adequately accommodate the needs of developing countries and LDCs.

Assessment

The US and the EU continued to maintain the pressure on developing countries to open their markets disproportionately in the Agriculture, NAMA and Services negotiations. However, the EU had again begun to reflect signs of increasing protectionism in Agriculture. Developing Countries continued to criticise the differences in the levels of ambition (imbalances) reflected in the chairs texts and the different approaches of the Agriculture and NAMA chairs.

Susan Schwab made a comprehensive statement on the state of play of the Doha negotiations on the 13th of February.⁴⁹ Schwab criticised the chair's removal of the numbers on flexibilities for creating instability but stated that members should not "duke it out on whether there should be more or less flexibility than the original draft". She also insisted that no agreement would be reached on Agriculture and NAMA without clarity on the "realm of ambition in the services negotiations" where members must make commitments to "maintain the current levels of market access and create new market access".

The negotiations took another dramatic turn when the 133 Committee of the EU and the General Affairs Ministers, meeting on the 18th of February in Brussels, criticised the Agriculture and NAMA texts for a lack of balance. The French Minister, Michel Barnier, after a meeting with 20 EU member-states said that "we prefer no agreement to a bad agreement". He went on to say that "the last (agriculture) paper is unacceptable".⁵⁰ The EU Commission was therefore forced to take a more cautious approach to the negotiations in agriculture, causing them to hold back the discussions in Room E (a smaller informal negotiating group of about 40 members) that the chair of the agriculture negotiations had begun on Monday the 18th of February.

The major developing countries began to complain of two significant imbalances between the Agriculture and NAMA texts. The first related to the substantive difference in the level of ambition, and the second related to the differences in the approach of the chairs to the drafting process. Brazil's senior official, Roberto Azevedo, made a statement that compared the difference in the level of ambition between Agriculture and NAMA. He argued that developed countries were calling for a large amount of policy space in agriculture and refusing to consider the same in NAMA for developing countries. He called for a balance between ambition and feasibility.⁵¹

The NAMA chair continued to ignore the views of the NAMA 11 members in his draft text, particularly with regard to the ranges of the formula and requirements for additional flexibilities. In sharp contrast, the chair of the Agriculture negotiations was at pains to include the views and concerns of all the members. He had designed negotiating processes to build convergence and accommodate the needs and interests of both the

developed and developing countries. Tallberg's theory thus needs to take into account the fact that notwithstanding the controls on the chair's role in the WTO, the chair still retains wide scope to influence the text of the negotiations in the direction of his or her own preferences. The need to strengthen the disciplines and controls on the chair will be discussed further in the conclusion below.

4.5 The Second Revised Texts

The second revised texts on Agriculture and NAMA were published on the 22nd of May, 2008.

EU and US statements

In the open-ended NGMA meeting, the US stated that it felt that developing countries were negotiating for "exceptions and not for ambition".⁵² The US stated that sectorals were a mirror image of flexibilities and must be an explicit element of the modalities. The EU argued that this should not be seen as an open season for flexibilities. The risk they stated was that there would be no market access at all and no new South-South trade. For the EU some outcome on anti-concentration was a 'must-have'.

At the informal open-ended session of the Agriculture negotiating group, the United States argued that the chair's second revised text reflected that the Domestic Support and Export Competition pillars were stabilised, with the brackets in these pillars reflecting the important decisions that need to be taken. The US, however, believed that the market access pillar was lagging behind, indicating that the text provided for very little or no new market access in developing countries. The European Communities stated that they did not agree with chair's removal of several brackets, particularly in the area of market access. They stated that no additional concessions should be expected from the EU. The EU argued for the negotiations to move to a horizontal level as soon as possible.

G20 response

The Agriculture chair reduced the number of brackets from 170 in his first revised text to about 30 in the second. This was partly due to the fact that the text provided a number of options on various issues that were not in brackets.

In a statement made to the informal open-ended meeting of the Agriculture Negotiating Group, the G-20 responded positively to the new 'Revised Draft Modalities for Agriculture'. The G20 statement appreciated that "the new draft builds on the previous one and reflects the intensive discussions we had in the past months. The document is the product of a truly multilateral, transparent and bottom-up process conducted by you. It covers almost all issues and tries to incorporate member's positions".⁵³ Generally, the G20 agreed that the text provided a good basis to build on. However, the G20 highlighted the fact that the ongoing food crises and the high prices of commodities had made the current range of OTDS (\$13 to 16.5 billion) in the chair's text irrelevant.

NAMA 11 response

The NAMA chair's second revised text retained essentially the same set of coefficients, i.e., 7-9, for developed countries (the previous text had 8-9) and for developing countries (a range of 21-23). However, the text introduced a "sliding scale" concept for developing countries. This provided an opportunity for a trade-off for developing countries that could now choose greater tariff reductions with a greater set of flexibilities to deviate from the full formula cuts.

In its statement to the NGMA on the 27th of May, the NAMA 11 recognised the positive aspects of the second revised text that attempted "to create an architecture that responds to the various proposals of developing countries". However, the statement criticised the chair's text for having once again chosen to maintain a narrow range of coefficients for developing countries that predetermines the level of ambition in NAMA and ignores the positions of the NAMA 11 on the issue of the range".⁵⁴

The NAMA 11 statement also criticised the chair's second revised text for introducing the proposed anti-concentration clause demanded by the EU and US, whilst these proposals (contained in paragraph 7f) did not enjoy the support of the majority of developing countries. Similarly, the NAMA 11 states that the "bracketed paragraph in 7i of the chair's text attempted to draw a link between the formula and the sectorals" whilst the chair's text later states that "participation in sectoral initiatives is on a non-mandatory basis".

Other Developing Country Groups

The Africa Group, in its statement to the NGMA, reflected its concern that the NAMA chairs revised text had more brackets than the previous one. The statement raised a number of concerns, including on the ranges of coefficients for developing countries, the binding coverage for paragraph 6 countries, the attempts to link sectorals with the formula and the need for more adequate treatment of preference erosion.⁵⁵

The Africa Group welcomed the agriculture chair's second revised text, and acknowledged that some of its positions have been reflected in it. However, the statement did criticise the flexibilities in the text as being "imbalanced in some respects" and said that "there are still some key outstanding issues of interest to the Group". The Africa Group statement reflected its concern that the "options proposed for the SSM will constrain our ability to use this instrument effectively as a development tool" and that the issues related to long-standing preferences should be "duly reflected in the modalities prior to any cross cutting negotiating process". With regard to the cotton issue, the group said that it "cannot foresee any conclusion of the round without a satisfactory and lasting solution on cotton. In this regard, we urge positive engagement of developed countries on this crucial issue".

The G33 made a statement on the 30th of May stating that the text did "not faithfully reflect the state of play of the agriculture negotiations, particularly as regards SPs and SSM." The statement argued that on SPs the G33's position of the minimum entitlement of 12 percent is not reflected in the second revision of the draft modalities text and that

the G33 position that 8 percent of tariff lines should qualify for no cut (contained in the first revised draft text) should remain. On the SSM the G33 argued that the chair's proposal (also contained in his first revision) that the SSM cannot be invoked for more than 3 to 8 products entailing a maximum of 4 to 8 tariff lines per product in any 12-month period was "very restrictive". The G33 went on to state that it was "unacceptable for their members to simply accept the package of triggers and remedies suggested by other members as they render the mechanism useless". In addition, it argued that the condition of pre-Doha bound rates to constitute a limit for the price-based remedy is not acceptable to the Group as this would make the SSM highly inaccessible and toothless in addressing emergency situations".⁵⁶

Assessment

At this stage of the process, both the US and the EU continued to demand increased market access into the major developing countries. They called for an anti-concentration clause that would limit the flexibilities that were provided to developing countries and they demanded that the major developing countries should participate in negotiations on sectors of interest to them. Although the major developing country groups continued to resist the pressure to accept onerous cuts in their tariffs as demanded by the EU and US, the Chair of NAMA ignored their views.

An OECD Meeting in Paris on the DDA, held on the 5th of June, provided an opportunity for some of the major players in the Doha Round to engage on the current revised texts of the chairs. Minister Doris Leuthard of Switzerland, who chaired the OECD session on the Doha Round, stated that the main outstanding issue in the negotiations was NAMA. This view was echoed by Peter Mandelson, who stated that "domestic pressures" in the EU believed that the EU could not provide greater market access in Agriculture and that they required greater market opening in NAMA from the major developing country markets. Together with Susan Schwab, the EU called for an anti-concentration clause (a further restrictions of developing country flexibilities) for the paragraph 8 flexibilities of developing countries and a "top-up" in sectoral negotiations.⁵⁷ This demand was resisted by a number of developing country ministers, including Celso Amorim of Brazil and Kamal Nath of India, who disagreed that NAMA was the main problem in the negotiations.

The NAMA chair continued to raise the level of ambition in the NAMA text in the direction of the EU/US. Whilst he made some improvements to accommodate the need for additional flexibility for developing countries, he included the need for an anti-concentration clause that would limit this flexibility, notwithstanding the general opposition by developing countries to this clause. Similarly, he drew a link between the sectorals and the formula as demanded by the US and EU, even though there was no support for this amongst developing countries. At this stage the NAMA chair was seen to be utilising the asymmetrical power of the chair to bias the negotiations in the direction of the preferences of the EU and US and other developed countries. Tallberg's theory will need to engage with this reality.

4.6 The Third Revised Texts

The Chairs of Agriculture and NAMA released their draft third revised texts on the 10th of July, 2008.

EU/US Response

The United States was reasonably satisfied with the balance of the third revised Agriculture text. It stated that the text was clear on the range with regard to domestic support and was almost complete on export competition. However, on market access it expressed some concerns to do with the special safeguard mechanism and the possible breach of pre-Doha bound rates. The European Union too was generally comfortable with the third draft of the agriculture draft modalities text. However, it did have some concerns, including on the issues of TRQ expansion, bananas, tropical products, and preferences, which would require them to make some significant concessions.

G20 response

The G20 viewed this revision in a positive light and believed that the text broadly reflected the discussions in the small negotiating group (“walk in the woods”) established by the chair, and in the Room D consultations (of about 40 members). On domestic support the modification made to the green box included several issues in favour of developing countries, e.g. policies of developing countries and public stockholding. On market access some further progress had been made on tariff capping, quota tariff rates, special products and the special safeguard mechanism. On tariff capping the chairman provided an alternative of additional tariff quota expansion for the treatment of sensitive products with bound rates above 100 percent. The G20 recognised that with regard to the tiered formula the chair changed the minimum cut of 54 percent to ‘at least a minimum cut of 54 percent’ as proposed by the G20 and the proposal of the G20 and Cairns Group on monitoring and surveillance was maintained in the revised text.

NAMA 11 response

The NAMA 11 made a statement on the 11th of July to the NAMA negotiating group in which it observed some progress in the attempts of the chair to capture the complexity of the issues in the NAMA modalities architecture. However, the NAMA 11 criticised this third revision for “once again” maintaining “a narrow range of coefficients for developing countries that predetermines the level of ambition in NAMA and ignores the stated positions of the NAMA 11 on the issue of the range”. The NAMA 11 also “rejected any attempt to further constrain the already limited flexibilities provided in the modalities text”, with reference to the so-called anti-concentration clause proposed by the EU/US. The NAMA 11 statement stressed the need for the modalities in NAMA to adhere to the mandate of Less Than Full Reciprocity and Paragraph 24 of the Hong Kong Declaration, which called for comparability in the level of ambition between Agriculture and NAMA.

The G20 and the other developing country groups, including the G33, the NAMA 11, the ACP Group, the LDCs, the African Group, the Small Vulnerable Economies (SVEs), the CARICOM and the COTTON-4 also met on the 20th of July, 2008⁵⁸ and issued a joint statement. The statement re-iterated the developing country commitment to remain united and their common objective to ensure that the Doha Round delivers a development outcome. The groups called for a number of issues of interest to developing countries to be addressed in a positive manner during the course of the end-July ministerial meetings, including the distortions in agricultural trade caused by developed country subsidies, a proportionate level of ambition between Agriculture and NAMA, and the development issues related to TRIPS, CBD, Services and Rules. In addition, the statement called for the issues of interest to a large number of developing countries, including SP, SSM, Tropical Products, NFIDCs, Preference Erosion, SVEs, Cotton and Duty Free Quota Free Market Access for LDCs.

Assessment of the Third Draft Texts

The reactions of the US and the EU to the chair's third revised draft texts again follow a similar theme of very aggressive insistence of increased market access for their exporters, particularly in the major emerging markets, whilst their farm lobbies again display a protectionist stance towards further reforms to reduce the distortions in global farm trade caused by the farm policies of the major developed countries. Ministers of the G20 and the NAMA 11 who met in Geneva in preparation for the ministerial meetings at the end of July were confronted with a set of texts that were imbalanced. On the one hand the Agriculture chair provided for significant flexibilities to both developed and developing country members to address their sensitivities and development concerns. On the other, the NAMA text increased the ambition for developing countries and provided a narrow range of flexibilities to protect developing country development concerns that were further constrained by the anti-concentration clause.

EU/US political statements

The USTR, Susan Schwab, criticised developing countries for requiring more political space in the Agriculture and NAMA third draft texts. She opposed any attempt to create provisions in the special safeguard mechanism for developing countries that would allow tariffs to climb above the Uruguay Round bound rates. She also criticised developing countries for requesting more flexibility in NAMA.⁵⁹ The EU spokesman stated that the EU also required "serious efforts from our negotiating partners to reach a balanced deal".⁶⁰

Meanwhile, the US farm lobbies sent a letter to President Bush stating that "whilst we continue to support a Doha agreement that reforms trade distorting agricultural practices and opens world markets to expanded agricultural trade, we urge you to reject any agreement that does not deliver real market access gains in agriculture commensurate with out domestic support commitments". In particular, the letter criticised the exceptions that were to be provided to sensitive products, special products and the so-called RAMs (recently acceded members) as being "clearly excessive".⁶¹

Similarly, the European farmers lobby COPA warned in a press statement that the proposals for talks could cost the EU farming sector some 30 billion Euros every year and at least half a million jobs. The President of COPA, Jean-Michel Lemetayer, stated that “No deal is better than a bad deal, and the deal currently on the table is very bad”.⁶² The French Chair of the EU Council of Agriculture Ministers, Michel Barnier, stated after a meeting of the Council on the 15th of July that “a large group of EU ministers insisted that the current proposals in Geneva would seriously harm already fragile parts of the EU farm industry including in the beef, fruit, and vegetable sectors”.⁶³

The G20 and NAMA 11 Ministerial Meetings

Ministers of the G20 met on the 20th of July, before the formal WTO negotiations that were to begin on the 21st of July. The G20 communiqué⁶⁴ stressed the importance of “effective cuts in overall trade distorting support, credible and effective product specific disciplines to avoid concentration of expenditures, with deeper and more expeditious commitments for cotton”. On market access, the Ministers re-iterated the G20 position for “substantial improvements in market access and a balance between agriculture and NAMA” (as was called for in paragraph 24 of the Hong Kong mandate). And on export competition, the G20 communiqué called for the end period (that was agreed in Hong Kong) for the elimination of all forms of export subsidies to be respected. On the issues of SP and SSM the G20 merely recalled the role of Special Products and the SSM in addressing the food security, rural development and livelihood concerns of developing countries. The Ministerial communiqué⁶⁵ of the NAMA 11 reaffirmed the statement of the NAMA 11 (see above) with ministers viewing the third revised text of the chair as being “seriously imbalanced”.

Thus once again the third revised agriculture text reflected the basic approach taken by the chairman to attempt to build convergence, whilst also reflecting the specific positions of members. However, the large number of unresolved issues in the third revised agriculture text left a challenging task for the ministers that were to attend the ministerial meeting at the end of July. In sharp contrast, the chair of NAMA once again chose to ignore the views of the NAMA 11 members on the ranges of coefficients and decided to retain his original range of 19-23 for developing countries that were required to make formula cuts. In addition, the NAMA chair’s third draft text once again included the developed members’ insistence on an anti-concentration clause and the need to link the sectorals to the formula. The latter two issues had been opposed by the majority of developing countries during the negotiations leading up to the third draft text.

The NAMA chair thus acted in a consistently biased manner by failing to listen to the views of a significant number of the developing countries. The WTO will need to find ways of ensuring that the chairs of the negotiating groups are unable to consistently bias negotiations despite negative feedback from a large part of the developing countries in the WTO. Tallberg’s ‘rational institutional theory’ will need to be complemented by some clear code of conduct for the chairs in the WTO. We discuss this issue further in the concluding section below.

4.7 Conclusion

This chapter has evaluated the progress of the WTO Doha Round negotiations since the onset of the multilateral process after the collapse of the G4 Ministerial meetings in Potsdam. Each of the draft texts submitted by the chairs of the Agriculture and NAMA negotiating groups have been discussed in turn.

The chapter has argued that one of the important factors that was to contribute to the failure of the end July Ministerial meetings was the persistence of imbalanced drafts texts, particularly between Agriculture and NAMA, with the NAMA text failing to reflect adequately the views of all members. This is partly ascribed to the role of the chair of the negotiating group who, by his own admission, decided at the very outset, in his first draft text, to determine the level of ambition himself. The second factor, we have argued, was the increasing protectionism within the EU and the US. As the negotiations developed both the EU and US, working closely together, increased the pressure on developing countries, particularly the major emerging markets, to open their markets in Agriculture, NAMA and Services, whilst ensuring that they (developed countries) accommodated their own particular sensitivities. Except on the Rules issues, (AD and Fishing Subsidies), and Geographic Indicators, the EU and the US built a high level of co-ordination that enabled them to maintain a united front in pressurising the major developing countries to raise the level of ambition in market access in the NAMA, Services and Environment negotiations.

The developing countries represented in the different groups and alliances continued to defend and advance their negotiating positions, notwithstanding the differences between the approaches of the different chairs and the persistent pressure from the developed countries for increased market access. In Agriculture, the US, EU and the other developed countries represented in the G10 continued to negotiate for increased flexibilities to protect their sensitive products and retain policy space, particularly after the Agriculture chair's first revised text in February 2008.

Developing countries continued to accommodate the sensitivities of developed countries in the Agriculture negotiations. The members of the G20 developing country coalition reacted positively to the chair's draft texts but began to complain that with each draft text the proposals of the chair reflected a decreasing level of ambition with regard to the commitments of developed countries. This prompted Brazil's senior official, Roberto Azevedo, to argue that developed countries were demanding a large amount of policy space in Agriculture whilst refusing to consider the same in NAMA for developing countries. This basic inequity between the Agriculture and NAMA texts were to galvanise the developing countries after each of the draft texts.

Thus the G20 and the NAMA 11 were to unite in protest against the attempt of the NAMA chair to establish a high level of ambition in NAMA in favour of developed countries, whilst ignoring the views of developing countries. The united front presented by the G90 and NAMA 11 in response to the NAMA chair's first draft was a great achievement for the NAMA 11 and developing countries in the WTO.⁶⁶ Developing countries were to maintain their unity notwithstanding their different levels of development.

Notwithstanding the validity of Wilkinson's assertion⁶⁷ that all previous GATT rounds were "uneven in its bargain and deeply asymmetrical in [their] distribution of economic activity", his prediction that the current round may take a similar course may be too fatalistic given the more active role that developing countries have begun to play and the very significant countervailing power that these coalitions have provided to the developed countries in the current Doha negotiations. However, this countervailing power of developing country coalitions can be severely undermined if the chairs play an inefficient role in the WTO negotiations.

The role of the NAMA chair, Ambassador Don Stephenson of Canada, provides significant evidence of inefficient outcomes in the GATT/WTO negotiations as a result of his failure to listen carefully to members, his inability to act in an objective manner, his poor use and timing of the tools available to him to build convergence (two or three options, brackets, single draft text, etc), and his inappropriate weighting of the views of the different groups of members (EU, US, NAMA 11 and other developing country groups). His failure to provide efficient formal leadership was contrasted with that of the chair of Agriculture negotiations, who displayed a capacity to listen carefully to the views of different members, to act in an objective manner, to make judicious use of the tools of brokerage, to time these appropriately, and maintain a fierce independence from the influence of any of the major developed or developing country groups in the WTO.

Tallberg argues⁶⁸ that the decision-making system (generally of consensus) and the institutional design of decision-making (election and appointment of chairs by members) in the WTO create more controls and less discretion for the chair to influence the decisions towards his or her own preferences, than that which obtain in the EU (majority voting, rotation of the chair). However, this study has found that there still exists significant room for the WTO chair to influence the negotiations towards inefficient outcomes. Outcomes can be considered to be inefficient if the overwhelming majority of members are dissatisfied with the results, expect to make more losses than gains from the results, and developing countries perceive that they will make a greater contribution than developed countries. In addition outcomes that lead to breakdowns of the negotiations and thus delay the process can be deemed to be inefficient. These inefficient outcomes could result in unbalanced and unfair agreements or the collapse of the negotiations. The study above of the role of the NAMA chair reflects the existing weaknesses in the system that allow for inefficient outcomes to arise.

The WTO does not have very clear rules on the role of the chairs. Odell⁶⁹ refers to the only set of guidelines that have been formulated as: "chairpersons should continue the tradition of being impartial and objective, ensuring transparency and inclusiveness in decision making and consultative processes; and aiming to facilitate consensus".⁷⁰ The evidence provided in this chapter whilst supportive of the general theoretical proposition put forward by Tallberg⁷¹ of an institutional approach to building controls on the role of the chair, proposes to strengthen the selection process with the use of a code of conduct for prospective chairs. The code of conduct should pay attention to the attributes of a prospective chair and his/her willingness to work for the common

good of the organisation, with due regard for the broader goals of the WTO and the agreed mandates of the negotiations.

There are a number of attributes that a chair requires in order to be competent to contribute to efficient outcomes in the WTO negotiations. These include, first, the capacity and willingness to rise above his or her national interests and provide a fair and unbiased judgement of the compromises that would be required to build convergence in the negotiations, with due regard to the development dimensions and mandate of the negotiations. Second, the chair must be capable of listening carefully to the members without being influenced by the more powerful groups (usually the major developed countries), in a bottom-up process, building confidence and ownership of the process amongst the members. Third, the chair must be capable of offering solutions to the blockages in the negotiations in a step-by-step manner, using the variety of negotiating tools (tools of brokerage) available to the chair in the negotiating process.

The code of conduct should require chairs to make an explicit undertaking to subordinate their national interests to that of the general good of the organisation (WTO) and to exercise a fierce independence from the influence of the major developed or developing country groups. The development of such a code of conduct would raise awareness of the role of the chair, create greater pressure on chairs to be objective and fair, and empower the membership to seek greater commitments from prospective chairs during the selection process to abide by the code. This would help check the pressures of the *real politik* of negotiations, that is the dominant interests of the major powers and the tendency of the system to strike a compromise in their favour.

The WTO should also consider the use of supranational chairs drawn from the ranks of the secretariat where a suitable chair is unavailable from amongst the members. It is often the case that WTO members have to choose from a limited number of available candidates. Developing countries are often unable to field candidates due to their limited capacity and staff levels. Thus the members are forced to choose from a small pool of members that may not satisfy all the criteria for a suitable chair discussed above. However, the WTO secretariat itself must build greater confidence amongst the membership about the secretariat's own capacity and the necessary objectivity to play an efficient role in the chair.

The next chapter will discuss and evaluate the collapse of the end-July 2008 ministerial meetings, held in Geneva, and the subsequent failure of the WTO to conclude the modalities negotiations on agriculture and NAMA at the end of December 2008.

Notes

- 1 The WTO has formal Ministerial Conferences that are required to take place at least once in two years. Since its formation at the Marrakech Ministerial Meeting, the WTO has held five Ministerial Conferences, with the last being the 6th Ministerial Conference held in Hong Kong, in December 2005. However, there are other informal ministerial gatherings of the WTO that have taken different forms, including so-called mini-ministerial meetings, that were held to discuss the launch of the Doha Round; small groups of ministers meeting among themselves (G4, G5 and G6) and larger groups of ministers (approximately thirty) convened by the DG to negotiate breakthroughs in the negotiations, sometimes referred to as the “green room”. These smaller informal ministerial meetings have no legal status and any “breakthroughs” arrived at in these must be taken to the broader membership for a decision.
- 2 “Modalities” are not clearly defined in the WTO. The concept refers to the technical formulas that are utilised to develop a schedule of commitments (on tariff reductions or subsidy reductions) that members have to finally agree to. A “Framework Agreement” falls short of this objective and develops the architecture for the modalities agreement without fully agreeing the technical formulas that will be used to determine the legal commitments of members
- 3 “Modalities” are not clearly defined in the WTO. The concept refers to the technical formulas that are utilised to develop a schedule of commitments (on tariff reductions or subsidy reductions) that members have to finally agree to. A “Framework Agreement” falls short of this objective and develops the architecture for the modalities agreement without fully agreeing the technical formulas that will be used to determine the legal commitments of members.
- 4 The Doha mandate set an original deadline for the modalities on Agriculture to be agreed by the end of March 2002, and on NAMA at the end of May 2002.
- 5 Wilkinson, R., *The WTO: Crisis and the Governance of Global Trade*, Routledge. London, 2006.
- 6 Ismail, F., ‘Agricultural Trade Liberalisation and the Poor: A Development Perspective on Cancun’, *BRIDGES*, January 2004.
- 7 Pascal Lamy, the then Commissioner of Trade of the EU, was widely quoted as saying that one of the reasons for the failure of the Cancun Ministerial Meeting was the “medieval” process of decision-making in the WTO.
- 8 See WTO doc, ‘Informal TNC Meeting at the level of Head of Delegation’, Job (07)/105 22 June 2007.
- 9 See WTO doc, ‘Draft NAMA Modalities’, Job (07)/126 17 July 2007.
- 10 The NAMA 11 was formed in the period shortly before the Hong Kong Ministerial Conference in December 2005 and comprises Argentina, Brazil, Egypt, India, Indonesia, South Africa, Philippines, Namibia, Tunisia and Venezuela.
- 11 Wilkinson, R., ‘The WTO: Crisis and the Governance of Global Trade’, Routledge. London, 2006. See also Ostry, S., ‘The Post-Cold War Trading System,’ University of Chicago Press, London, 1997.
- 12 Finger, J. M., ‘Implication and Imbalance: Dealing with Hangover from the Uruguay Round’, 23 *Oxford Review of Economic Policy* 3 (2007), pp 440-460.

- 13 Croome, C., 'Reshaping the World Trading System. A History of the Uruguay Round'. 2nd edition, Kluwer Law International, 1999.
- 14 Wilkinson, R., 'The WTO in Hong Kong: What it Really Means for the Doha Development Agenda', *New Political Economy*, Vol 11, No.2, June 2006.
- 15 See Narlikar, A., and Tussie, D., 'The G20 at the Cancun Ministerial: Developing Countries and their Evolving Coalitions in the WTO', *The World Economy*, 27 (7), pp 947-966.
- 16 Ismail, F., 'Reflections on the WTO July 2008 Collapse. Lessons for Developing Country Coalitions', in (eds) Narlikar, A., and Vickers, B., *Leadership and Change in the Multilateral Trading System*, Leiden: Republic of Letters Publishing/ Martinus Nijhoff, 2009.
- 17 Odell, J., 'Chairing A WTO Negotiation.' *Journal of International Economic Law* 8 (2): pp 425-448.
- 18 Tallberg, J., 'The Power of the Chair: Formal Leadership in International Cooperation', *International Studies Quarterly* (forthcoming).
- 19 Stuart Harbinson, the Head of Delegation of Hong Kong to the WTO, was the Chair of the General Council in the period before the WTO Doha Ministerial Conference held in November 2001.
- 20 Odell, J., 'Chairing A WTO Negotiation.' *Journal of International Economic Law* 8 (2). pp 425-448. See also Ismail, F. 2004. 'Agricultural Trade Liberalisation and the Poor: A Development Perspective on Cancun', *BRIDGES*, January 2004.
- 21 See WTO doc, 'Draft Modalities for Agriculture'. Job (07)/128, 17 July 2007.
- 22 See WTO doc, 'Draft NAMA Modalities'. Job (07)/126, 17 July 2007.
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An Assessment of the WTO Doha Round, July-December 2008

5.1 Introduction

As discussed in chapter four, the collapse of the Potsdam G4 Ministerial meeting spurred the WTO Director General, Pascal Lamy, to call on the Chairs of the WTO negotiating groups to resume the multilateral negotiating process of the Doha Round.¹

The chairs of Agriculture and NAMA had produced several draft texts since June 2007, leading to a third draft on the 10th of July 2008. These texts were to become the basis for the finalisation of the negotiations on Agriculture and NAMA modalities at the end of July 2008. After several missed informal deadlines Lamy, who is also the chair of the WTO Trade Negotiating Council (TNC), called for a final negotiating process, based on the Chairs' Texts, to be held from the 21st of July with about 30-40 ministers invited to participate.² However, this attempt to conclude the negotiations on Agriculture and NAMA was to fail again with the collapse of a G7 ministerial meeting (all G6 members plus China) and consequent failure of the WTO to conclude the negotiations on modalities of Agriculture and NAMA at the end of July 2008. The G7 ministers and several other small groups that met in July produced some incremental but very controversial advances on the Agriculture and NAMA modalities negotiations.³

Section 5.2 will briefly discuss the 'Lamy Package' that emerged out of the G7 ministerial meetings and the subsequent reports of the Chairs of Agriculture and NAMA on the July 2008 modalities negotiations. The chapter will then update the reader himself⁴ on the developments in the WTO negotiations post-July 2008 up to the end of December 2008. Attempts by Pascal Lamy to invite ministers to Geneva to continue the negotiations that collapsed in July were to fail. There were intense bilateral and trilateral negotiations between the US, India and China that were facilitated by Lamy in several teleconferences. However, even as Lamy intensified his efforts US Congressional leaders urged President Bush not to support ministerial negotiations in Geneva at the end of December. The USTR Susan Schwab was to increase the pressure on China, India and Brazil to participate in sectoral negotiations (i.e., on specific sectors such as chemicals, industrial machinery, health care products, etc.) in the industrial sector and negotiate further market opening for US exporters. At the same time several

developed countries, including Japan and Canada, were seeking greater exemptions from the July Agriculture texts for their sensitive farming sectors.

These events were to underline the persistence of the imbalanced texts and the undue pressures exerted by the US (the EU, Japan, and Canada continued to support the US demand for a high level of ambition in sectorals) to maintain a high level of ambition in areas of interest to the developed countries whilst reducing the ambition in areas of interest to developing countries. Lamy had no option but to cancel his proposed ministerial meetings scheduled for the end of December 2008, thus creating another failure for the WTO.

Section 5.3 will discuss the reasons for the failure of the July 2008 ministerial meetings. This chapter offers three reasons for the failure of the ministerial meetings at the end of July. The first is the imbalanced nature of the Chair's texts, both within NAMA and between NAMA and agriculture. The promise of the Doha round was that the trade distorting subsidies and prohibitive tariff barriers in developed countries, that undermined developing country agriculture, would be substantially reduced. In NAMA, the industrial tariffs of developed countries still retained high peaks and tariff escalation. However, developed country bound tariffs were relatively low, whilst developing countries had relatively high bound tariffs. Developed countries were thus expected to make a major contribution by reducing their agriculture subsidies and opening their agriculture markets and developing countries were expected to reciprocate in a proportionate manner by reducing their relatively higher bound tariffs in NAMA. However, with each revised set of texts produced by the chairs the agriculture text was perceived to have made only insignificant commitments by the developed countries in agriculture, whilst the NAMA text provided for relatively onerous market opening into developing countries, particularly the larger emerging economies.

This was partly ascribed to the role of the chair of the NAMA negotiating group who by his own admission decided at the very outset, in his first draft text, to determine the level of ambition himself. For a detailed discussion on this issue see Chapter 4.

The second reason offered for the failure is the increasing protectionism within the EU and the US, and their attempts to raise the bar of the level of ambition for developing countries, particularly the major emerging markets that have been perceived as significant competitors with the EU and US. Several writers have argued that the history of the GATT reflects the marginalization of developing country interests; the assertion of the major economic powers of their own market access interests in foreign markets; and the persistence of protectionism in the major developed country markets.⁵ This has resulted in an "asymmetry of economic opportunity" against developing countries and the persistence of unbalanced texts in favour of developed countries in the GATT up to the Uruguay Round.⁶ This paper evaluates the validity of this theme during the Doha Round and during the period leading up to and including the July 2008 ministerial meetings. This paper argues that there has been a continuity in the tendency of protectionism in the EU and the US since the onset of the Doha Round. In addition, the EU and US have increased the collaboration between them, accommodating each others interests, and pursuing an aggressive market opening agenda vis-à-vis the major

emerging markets that have been perceived to be their competitors in global markets. This chapter contributes to the thesis advanced by several writers of the persistence of “asymmetry of economic opportunity” in favour of developed countries in the WTO.

The third reason that is offered for the failure is the resurrection of the ‘principal supplier’ approach and power politics of the earlier GATT period that resulted in the collapse of each phase of the process in the past, when it was employed: at Potsdam in June 2007 (G4); in July 2006 when the failure of the G6 ministers led to the suspension of the round by the DG; and at the collapse of the Cancun ministerial meeting where the majority of members were not represented in the Green Room.⁷ The moving deadlines for the date of the ministerial meetings from before Easter to after Easter, to the third week of May, to mid-June and then end July 2008 created a great deal of uncertainty. In contrast the July 2004 Framework Agreement was negotiated in a more inclusive multilateral process resulting in a successful outcome. Similarly, the Green Rooms chaired by Pascal Lamy at the Hong Kong ministerial meeting in 2005 were able to make some incremental advances on the July 2004 Framework Agreement, due to the inclusiveness of the meetings.

This chapter will situate the current debate in the WTO on inclusiveness of the decision-making process during the July 2008 ministerial meetings to the earliest debates in the International Trade Organization (ITO) and GATT. During the debate on decision-making in the ITO developing countries had voiced strong opposition to weighted voting that was favoured by the US and came out in favour of the more inclusive consensus method of decision-making. However, the principal supplier method of tariff negotiations by which a country could only be requested to make tariff cuts on a particular product by the principal supplier of that product to that country, which the US insisted upon, locked out developing countries from most of the GATT negotiations.⁸ This chapter will thus review the debate in the recent Warwick Commission and the earlier Sutherland Report on the decision-making procedures and the inclusiveness of WTO negotiations. It will be argued that the formation of the G7 group of members by the Chairman of the WTO Trade Negotiating Committee (TNC) during the July 2008 ministerial meetings was a return to the principal supplier method favoured by the US in the earliest days of the GATT.

The chapter will argue that the principal supplier method is an obsolete (or “medieval”) method of decision-making, and was a contributory factor to the failure of the WTO ministerial meetings in July 2008. The G7 ministerial meetings called by the Chairman of the TNC, Pascal Lamy, during the July 2008 ministerial meetings failed to achieve the objective of negotiating the breakthrough in the agriculture and NAMA modalities negotiations that WTO members had hoped for. Some agreements reached in the G7 on elements of the modalities – the so-called “Lamy Package” – did not have the support of all the members of the G7,⁹ and the G7 did not enjoy the support of the majority of WTO members that felt that their issues were marginalised in the negotiations (discussed below). The writer thus calls for a more inclusive method of decision-making that recognises the role of the many developing country coalitions that have been created during the Doha Round.

Section 5.3 will thus undertake an assessment of the collapse of the July-end ministerial meetings and advance three main reasons for the collapse with reference to the theoretical and conceptual debates in the academic literature.

Section 5.4 concludes the discussion on the analysis of the collapse and makes recommendations for WTO members to address the underlying causes.

5.2 The WTO July Ministerial Meetings and the ‘Lamy Package’

What happened during the 9 days of the July 2008 (19th to the 29th) modalities negotiations?

After two days of opening statements, in the TNC and Green Room, Pascal Lamy constituted the G7 Ministerial, which was to dominate the negotiations until their collapse on the 29th of July. The negotiations were held in different formats. They began with the TNC, then Green Rooms (about 31 members), and then the creation of the G7 on the 23rd of July. The TNC and the Green Rooms were held every day. However, on the 28th members waited all day and night for a Green Room meeting which did not materialise. The G7 had been meeting throughout the night. And when the G7 convened again the next day (Tuesday the 29th), it finally collapsed over its inability to agree on the Special Safeguard Mechanism.¹⁰

The last TNC meeting after the collapse of the ministerial meetings was held on the 30th of July. Lamy reported on the failure of the negotiations to reach full modalities.¹¹ He argued that the G7 was unable to find convergence on the SSM and thus unable to get to the next set of issues which would have begun with the Cotton issue. He stated that the failure was a collective responsibility and that the progress made in all groups needed to be maintained. In this regard, he stated that the chairs of the negotiating groups would be submitting their reports.

The Lamy Package!

The Lamy Package¹² that was submitted to the Green Room on Friday night (the 25th of July) proposed compromise numbers in several elements of the Agriculture and NAMA modalities texts.

On the overall trade distorting support (OTDS) for the US, three developing countries – Brazil, India, and China – had proposed the US should go to the bottom of the range (\$13 billion). The US offered \$15 billion and then later \$14.5 (about the middle of the range). In exchange the US called for a “peace clause” (assurances that their programmes should not be subject to legal challenges) and significant market access in agriculture, NAMA and Services.¹³ Brazil accepted the US offer.

On NAMA, the Lamy Package proposed coefficients in the middle of the NAMA Chair’s ranges.¹⁴ The package proposed a coefficient of 8 for developed countries. For developing countries it proposed a coefficient of 20 for the first group of developing countries that opt for a lower coefficient and higher flexibilities; 22 for the second group that take the normal flexibilities and; a coefficient of 25 for the third group that

opt to take no flexibilities. Brazil negotiated hard in the G7 for the flexibilities that were provided to the first group to be extended from 14 percent of lines and volume to an extra 2 percent of trade volume. This was included in the Lamy package.

On anti-concentration, the EU and US (together with Japan and Australia) insisted on 30 percent of lines per chapter to be exempted from flexibilities, whilst Brazil, India and China were only prepared to accept a 10 percent exclusion.¹⁵ The Lamy text proposed that 20 percent of lines be excluded or 9 percent of value per Chapter.

On sectorals, the Lamy Package changed the language from the July 10th NAMA Draft Text that called for sectorals to help “balance the overall results of the negotiations on NAMA.” The package dangled the carrot of increased coefficients for those that participate in sectorals and called for these countries to commit to participate in at least two sectoral initiatives. This proposal was opposed by both India and China and thus re-negotiated.¹⁶ The new language restates the non-mandatory nature of sectorals and states that participation in the negotiations of the terms of at least two sectorals of their choosing shall not prejudice the decision of the member to participate in such a sectoral. The resistance of India and China to make sectorals mandatory succeeded in preventing the attempts by the US and the EU to create a mandatory linkage between the participation of developing countries in sectorals and the core NAMA modality (formula and flexibilities).

The Agriculture and NAMA Chairs Report on the Collapse

The Chairs of the Agriculture and NAMA negotiations submitted their reports of the July 2008 modalities negotiations on the 12th of August. The Chair of Agriculture in his report¹⁷ stated that whilst there was a credible basis for conclusion of many issues, there was disagreement on other very significant issues. He went on to state that he was not in a position to record the convergences in precise textual language as the circumstances had changed. Therefore he states that the existing texts remained. Throughout his report he refers to the G7 and Green Room discussions and package that were reported on without attempting to convert any of this into textual language.

The Chair of NAMA in contrast stated that convergence was reached on the NAMA modalities by the G7 and that “the majority of members meeting in Green Room format indicated that, while they had reservations over particular issues, they could live with the proposed compromise outcomes on these elements of the NAMA modalities”.¹⁸ However, he stated that some members did not provide explicit support to all NAMA elements of the package, citing three members - South Africa, Argentina and Venezuela. He then went on to state the numbers in the Lamy Package on all the issues, including the coefficients, flexibilities, anti-concentration and sectorals in textual form. On the sectorals the new negotiated language after the first Lamy text was negotiated with India and China is included.

After the collapse of the July 2008 ministerial meetings, Lamy was to relentlessly pursue the objective of concluding the modalities negotiations. However, his efforts failed to persuade some of the major players to narrow their differences on the remaining

issues and return to Geneva to conclude the negotiations on Agriculture and NAMA modalities.

We briefly discuss these efforts below to give the reader an update.

Another failure in December 2008

The G20 Leaders meeting in Washington on the 15th of November 2008, instructed their Trade Ministers to conclude modalities by the end of the year.¹⁹ Pascal Lamy sent a fax²⁰ to all delegations on the 1st of December urging them to keep trying to conclude the modalities negotiations by the end of the year. He called for members “to have ministers in town in a window of time somewhere around the 13-14-15 December 2008. Later Lamy postponed the proposed ministerial meeting to the 17th-19th of December.”²¹

The Chairs of Agriculture and NAMA released draft modalities texts on the 6th of December 2008.²² The Chairman of the Agriculture Negotiations also submitted three working documents²³ on issues where significant differences remained between members, namely the SSM, designation of Sensitive Products and the creation of new TRQs. Lamy explained that significant differences still remained on the key issues of Sectorals, SSM and Cotton, and including some country-specific issues in NAMA, on Argentina, South Africa and Venezuela.

Lamy then began a series of video conferences with ministers from the US (Susan Schwab), India (Kamal Nath) and China (Chen Deming). In a series of teleconferences held between the US and China, and US and India on the issues of sectorals, SSM, and Cotton, Schwab demanded that China participate in at least two sectors of interest to the US, of which at least one had to be chemicals. She required the participants not to leave the sectoral negotiations until zero for zero modalities had been agreed.²⁴ She also demanded a safe harbour or “peace clause” (a commitment not to raise subsidy disputes against on product-specific commitments during the implementation period) for the US in agriculture. A new demand by the US for a price cross-check mechanism for the SSM was rejected by India. The US was also reported to have had no new proposals to make on reducing its trade distorting cotton subsidies. By Friday the 13th of December, all efforts to make movement in these bilateral and trilateral video conferences had failed to narrow the gaps between the major players and Lamy cancelled the proposed ministerial meeting.²⁵

5.3 Assessment of the Collapse

The Lamy text (produced on the night of 25th July) proposed a 140 percent trigger on the Special Safeguard Mechanism (SSM) for developing countries – allowing these countries to exceed their current bound rates only if imports on a product increased by 40 percent or more. Developing countries could exceed their bound rates by 15 percent.²⁶ India rejected this proposal and insisted on a 115 percent trigger.

Another compromise text tabled on the morning of 29th July proposed a 115-120 percent trigger for India with 33 percent increase in bound tariffs and another trigger of between

130 percent and 140 percent and a 50 percent increase in tariffs. India was prepared to accept the 120 percent trigger. But China could not accept the compromise. The US refused to move from the 140 percent trigger. Pascal could take the process no further and the meeting collapsed. The US stated that “any safeguard must distinguish between the legitimate need to address exceptional situations involving sudden and extreme import surges and a mechanism that can be abused”.²⁷

The proximate cause of the collapse was the SSM but the negotiations could have broken on several other issues, including, Cotton, NAMA, New Tariff Quota creation, Tariff Simplification, Bananas, GIs, TRIPS and CBD, Fishery Subsidies, Rules (Anti-Dumping), Preference Erosion, Tropical Products or DFQFMA for LDCs!

So what was the real cause of the breakdown? There wasn't just one cause. We offer three main reasons for the failure of the July Ministerial meeting: the imbalanced nature of the texts and the role of the chair; the increasing protectionism within the EU and the US, and their attempts to raise the bar of the level of ambition for developing countries and; the resurrection of the ‘principal supplier’ approach and power politics of the earlier GATT period. In the discussion below we discuss the theoretical issues and concepts that have emerged in the academic literature to describe each of these concerns and then discuss them in the context of the failed July ministerial meetings.

Reason 1: Imbalanced Texts and the role of the Chairs: Theory and Practice

In a recent comprehensive study of the role of the chair in international negotiations, Jonas Tallberg²⁸ attempts to develop a “rational institutionalist theory” of the role of the chair in international negotiations and describes this role as “formal leadership”. In his consideration of these three roles of the chair in WTO negotiations he argues that the role of representation is seldom required. Thus the role of the chair in the WTO negotiations is adequately described as that of agenda management and brokerage. He argues that the chairs that play these roles are vested with “asymmetric” power to influence the negotiations. This power comes from their privileged access to information about the real preferences of members and the support of the secretariat, and their control over the negotiating process. However, this asymmetric power is conditioned by the rules governing decision-making and the design of the chairmanship. He argues that the chair's scope to influence the negotiations is much wider if the method of decision-making is that of majority voting, than the tougher methods of consensus or unanimity, where the interests of all parties have to be considered.

After applying his theory to the three different institutional settings of the EU, the WTO, and the multilateral environmental agreements, Tallberg argues that in both the latter cases, formal leaders positively enhanced the efficiency of the negotiations by transforming competing proposals into single texts and forging agreements. In addition, in these cases he argues that there was “no evidence of the chairs having systematically biased outcomes...”.²⁹ However, extensive research undertaken by Odell³⁰ of decision-making in the GATT/WTO provides several examples of sub-optimal or inefficient outcomes as a result of injudicious use of the brokerage methods or the bias of the chair.

In a study³¹ undertaken of the role of the NAMA chair, Ambassador Don Stephenson of Canada, in the negotiations between the Potsdam G4 ministerial meeting in June 2007 and the July 2008 ministerial meeting, it was argued that his role reflected all the above errors. His failure to provide efficient formal leadership was contrasted with that of the chair of Agriculture, Ambassador Crawford Falconer of New Zealand, in the agriculture negotiations who displayed a capacity to listen carefully to the views of different members, to act in an objective manner, to make judicious use of the tools of brokerage (providing alternative options, single texts, etc) and the appropriate timing of single texts, and a fierce independence from the influence of any of the major developed or developing country groups in the WTO.

Thus we have argued that contrary to Tallberg's findings, this study supports the evidence provided by Odell discussed above that there is significant evidence of inefficient outcomes in the GATT/WTO negotiations as a result of the failure of the chairs to listen carefully to members, their inability to act in an objective manner due to their loyalty to national interests, their poor judgement of the use and timing of the tools available to them to build consensus (two or three options, single draft text), and their incorrect weighting of the views of the different groups of members (EU, US, developing country groups).

An Evaluation of the role of the Chairs in the July 2008 meetings

The NAMA 11 group of developing countries that represented a significant group of emerging market economies have criticised the various draft texts of the NAMA chair that emerged in the period before the July 2008 ministerial meeting for ignoring their views and reflecting the preferences of the chair. This position was enunciated as follows by the South African Statement to the TNC on the 22nd of July: "Our experience in the NAMA negotiations over the last two years is that the texts that have emerged at various points have consistently ignored the positions and views we have expressed as the NAMA 11." Furthermore the statement notes that whilst the "the agricultural negotiations have been conducted through a carefully constructed "bottom-up" process through which the positions of all WTO Members are found in the agricultural modalities text, the NAMA modalities text is highly circumscribed and prescriptive. The text sets out a narrow range of coefficients, and offers flexibilities that have a double constraint in terms of the percentage of tariff lines and trade volumes that can be covered." The statement goes on to state that "we have witnessed a range of demands that would result in an outcome where many developing countries that are required to reduce their tariffs are being required to accept reduction commitments that are deep and in excess of the cuts to be borne by developed countries. These demands are inconsistent with the Doha development mandate and cannot be a basis for concluding the Round."³²

In a statement made to the TNC on the 26th of July, Argentina stated that without significant changes to the Lamy Package it would be very difficult for Argentina to support it. Argentina argued that the package was "poor in agriculture and substantially unbalanced in NAMA". Argentina argued that the implications of the proposed formula in NAMA would mean Less Than Full Reciprocity in reverse as the formula required developing countries to make a deeper cut in their tariffs than developed countries.³³

Minister Amorim of Brazil also criticised the texts. Summing up Brazil's views on the agriculture text, he argued³⁴ that it was “built on a logic of accommodating exceptions rather than seeking ambition, with almost 30 paragraphs in the text establishing specific carve-outs for specific countries”. In contrast, he argued, “the NAMA text was built on the logic of forcing countries, especially developing ones, out of comfort zones.” He referred to attempts to extract an “additional price” in the NAMA negotiations from developing countries through the anti-concentration clause and “disguised mandatory sectorals which would overload the negotiations and make a conclusion impossible”.³⁵

Thus, the statements above point to significant dissatisfaction³⁶ amongst some major developing countries and developing country groups on the lack of balance between the agriculture and NAMA texts and in particular the “additional price” or increased level of ambition that developing countries in NAMA were being asked to pay in the negotiations, than the relatively lower level of obligations that developed countries were willing to commit to in the agriculture negotiations. In NAMA, the chair was seen to have taken sides with the developed country demandeurs by setting the level of ambition in NAMA even before the level of ambition in agriculture had been agreed and by adding the anti-concentration clause and “disguised mandatory sectorals”, when the Doha mandate called for sectorals to be voluntary.

The Lamy package was seen by many developing countries to be attempting to reinforce the basic imbalances contained in the agriculture and NAMA texts as the Argentinean statement suggests. In a memorandum³⁷ written to trade ministers earlier in July, Pascal Lamy attempted to equate the contributions that were being asked of developed countries in agriculture with that of developing countries in NAMA. Referring to the commitments of developed countries to cut their farm subsidies by 70 percent (this is misleading as the much lower actual spending of developed countries than their bound rates will mean insignificant or no real cuts in subsidies) and farm tariff cuts of about 50 percent (this is also misleading as a significant part of developed country tariffs will be allowed to remain prohibitive due to the many exceptions and flexibilities that have been provided in the agriculture text), Lamy urges developing countries to make a contribution by opening their markets “in exchange for greater market opportunities” that will be provided to them by the developed countries. This view should be contrasted with the views of a large body of developing countries that believed that the balance between the two texts was against developing countries.

The discussion above suggests that the perception amongst a large number of developing countries was that the texts were imbalanced against the interests of developing countries and that the chairs of NAMA and the TNC suffered from some errors of judgement that would bias the outcomes in favour of the developed countries.

Reason 2: Protectionism and Aggressive Demands by US and EU

The history of the GATT suggests that the interests of developing countries were largely ignored leading to imbalanced texts that reflected the interests of the dominant economic powers. The original GATT 1947 was based on the principle of MFN (most favoured nation treatment, i.e., all members shall be treated equally), and thus made no special provisions for the different levels of economic development of developing countries.

Developing countries however had raised these concerns during the negotiations on the ITO Charter that was later rejected by the US Congress.³⁸ Developing countries continued to urge developed countries to address their particular development concerns in the GATT. This was to lead to a study of these issues that produced the Haberler Report in October 1958.³⁹ The Haberler Report found that there was some substance in the feeling of disquiet among primary producing countries that the present rules and conventions about commercial policies are relatively unfavourable to them.

Wilkinson⁴⁰ observes that by the mid-1960s the evolution of the GATT led to two different sets of experiences. For the industrialised countries, “liberalization under the GATT had seen the volume and value of trade in manufactured, semi-manufactured and industrial goods increase significantly”. In addition, “they had also managed to protect their agricultural and textile and clothing sectors through a blend of formal and informal restrictions”. To give effect to this there were a number of GATT waivers to protect developed country agricultural markets and the exclusion of textiles and clothing from liberalisation in developed countries. For developing countries this meant that the products of interest to them were excluded from liberalisation.⁴¹

US perceptions of the increasing competitiveness of the European Union, Japan and East Asia, and their economic “convergence” with the US, were to lead to increasing US protectionism in the 1970s and the 1980s. Sylvia Ostry⁴² calls the arsenal of non-tariff measures that were put in place in the 1970s mainly against Japan, but which had the effect of blocking other developing country exports into the US and the EU, the “new protectionism”. The 1980s saw increasing use of trade remedy laws in the US and the EU and increasing resort to unilateral trade measures by the US. By the time of the Uruguay Round the US and the EU had begun to establish a common agenda, vis-à-vis the rest of the world. During the Uruguay Round the US and EU were able to find an accommodation of each other’s interests in the Blair House Accord⁴³ that was agreed between them on the 20th of November 1992. Even in the final stages of the Uruguay Round negotiations, during the first week of December 2003, the EU and the US continued to negotiate among themselves in Brussels, prompting the then Director General of the GATT Peter Sutherland to urge the EU and US to report to the other “over 100 participants” in Geneva “whose interests must also be assured and accommodated”.⁴⁴ As the US and EU continued to negotiate between them almost until the day the Director General gavelled the end of the negotiations of the Uruguay Round on the 15th of December 1993, many other members, especially the developing countries expressed their dissatisfaction. They complained they were not in a position to assess the offers the EU and US were making against their own and that the agreements reached between the two continued to reduce the ambition in many issues of interest to developing countries, including agriculture, textiles, leather, cotton and tropical products.⁴⁵

Another close observer of the Uruguay Round argued that the lack of real market access gains for developing countries in developed country agriculture markets and the onerous commitments they had made in the TRIPS agreement on intellectual property had led to the perception that developing countries “had given more than they got.” Therefore the Uruguay Round Agreements were imbalanced in favour of developed

countries.⁴⁶ Wilkinson has argued that this imbalance has been endemic to the GATT system, and with each ministerial conference of the WTO since the Doha Round was launched, this asymmetry of economic opportunity in favour of the major developed countries has been reinforced.⁴⁷ Thus failed ministerial conferences and missed deadlines are perceived to be a symptom of this basic asymmetry of economic power that is embedded in the institutions of the system.⁴⁸ We now turn to an evaluation of the Doha Round negotiations up to the period July 2008 and evaluate the validity of the above trends in the GATT of US/EU protectionism and the dominance of their narrow mercantilist interests.

The Doha Round to the WTO July-December 2008 ministerial meetings

Since the 2001 launch of the Doha Round and the lead up to the 2003 Cancun Ministerial Conference, WTO members have missed the deadlines to agree on the modalities in the Agriculture and NAMA negotiations. This was mainly due to their failure to meet the demands of the mandate to substantially reduce agricultural protection. As the Cancun Ministerial Conference approached the EU and US began to negotiate a bilateral agreement to accommodate each other's interests that was to result in a EU-US joint text.

The EU-US joint text tabled on the 13th of August 2003 galvanised developing countries into action to prevent another Blair House type agreement that would accommodate the interests of the EU and the US and reduce the ambition of the round once again. In addition, the joint text agreed by the EU and US on agriculture took the negotiating process further back by agreeing to a mere 'framework' for the agriculture negotiations just a few weeks prior to the Cancun Ministerial. The EU-US joint text on agriculture was strongly challenged by a range of countries, including Australia, Brazil, Argentina, South Africa and many other former US allies who had coalesced around the common objective of securing freer global agriculture markets. Developing countries, led by Brazil, China, India, South Africa and some others, established a broad-based alliance that grew into the G20 group of developing countries coalition on agriculture.

In addition, a group of developing countries⁴⁹ argued that the real danger of a joint push by the EU and other developed countries (notably the US)⁵⁰ to seek additional extensive concessions from developing countries in the NAMA and Services negotiations was that the development content of the Round would be turned on its head, with developed countries making more inroads into developing country markets and with developing countries still facing high levels of protection and distortions in global markets for products of export interest to them. This united front was further consolidated in Hong Kong where ministers of the NAMA 11 group presented joint proposals in the negotiations on NAMA.⁵¹ This group was able to also establish a strong link between the levels of ambition in NAMA with that in agriculture in the final text of the Hong Kong Declaration.⁵²

The closing of ranks by the EU and the US was to become more visible again in the Potsdam G4 (EU, US, Brazil, India) ministerial meeting held on 19-21 June 2007), both to accommodate each other's concerns, and to jointly apply pressure on Brazil

and India. Reflecting on the collapse of the negotiations after Potsdam, the Foreign Trade Minister of Brazil, Celso Amorim, was to remark that the collaboration of the EU and US during the Potsdam meeting reminded him of the EU-US Joint text in the pre-Cancun period. He went on to refer to the collaboration of the EU and US in Potsdam as “Cancun II”.⁵³

After Potsdam the EU and US intensified the coordination of their positions on Agriculture, NAMA, Services⁵⁴ and Environment⁵⁵. On Agriculture, the EU began to work more closely with the US bilaterally to build convergence in their positions on specific issues. On NAMA, the EU and US presented two new proposals on the 5th of December 2007. The first⁵⁶ called for a high level of ambition for developing countries. The second proposal, by the EU and US, called for restricting the existing flexibilities for developing countries in paragraph 8 even further.⁵⁷

The second reason for the collapse of the ministerial meetings stems from the lack of political support in the EU and the US (and other developed countries) for agricultural reform and the rise of protectionism. To this must be added their perceptions of the increased economic power of the emerging markets, which gave rise to increased collusion between them to raise the level of ambition for developing countries in NAMA and Services. Part of this was due an increasing clash of paradigms between the developed and developing countries, namely, the increased assertion of commercial interests (the reality) or the need for “new trade flows” against the livelihoods of farmers in developing countries and the industrial development prospects and jobs of workers in developing countries.

There are many factors that have contributed to the increasing protectionism within the EU and the US, including the dwindling political fortunes of the leadership in the major capitals; and fears of increased competition from the new emerging economies. Messerlin⁵⁸ explains this phenomenon as the result of “increasingly thinner governing majorities, creating difficulties for governments resisting vested interests”.

In the United States the failure of President Bush to veto the 2008 US Farm Bill and to re-new the Trade Promotion Authority after its expiration on the 1st of July 2007, and the rejection of the fast track procedures by the US Congress demanded by Bush, on the Columbia FTA, has been argued to have “destroyed the credibility of the United States as a negotiating partner in the eyes of the rest of the world”.⁵⁹ The strong anti-trade rhetoric of the presidential candidates had also not helped to restore confidence in the ability of the US Administration to provide leadership and deliver on its Doha obligations.⁶⁰

An additional factor for the current tension in the Doha negotiations stems from the perceived threat to the competitive positions of the traditional industrial economies from the newly emerging economies as symbolised most powerfully by the rise of the so-called BRIC nations (Brazil, Russia, India and China). To these economies could be added several more, including Mexico, South Africa, Argentina and Malaysia. At the UNCTAD XII conference, held in Accra, Ghana, the Secretary General of the UN, Ban Ki Moon, stated that the developing country share of world exports have risen

from 30 to nearly 40 percent. A recent report by Goldman Sachs⁶¹ stated that since 2001, the US share of world gross domestic product has fallen from 34 percent to 28 percent whilst the BRIC countries' share has risen from 8 percent to 16 percent. In this same period China's reserves have rocketed from \$200 billion to \$1,800 billion; Brazil's from \$35 billion to \$200 billion; and India's from \$50 billion to \$300 billion.

In a rare display of public frustration with the US negotiating position, Mandelson stated on his blog that when negotiations resumed the day before the final collapse of the talks, and Pascal Lamy presented a new compromise proposal on the SSM, "the Indians and Chinese express reservations and the US rejects the proposals outright, much to Lamy's understandable frustration". He went on to criticise the US approach in the negotiations, saying: "in a development round a dollar-for-dollar approach is never going to add up".⁶² The USTR was clearly under pressure from the US business lobbies that were to reject the compromise on sectorals that was finally agreed by the G7 ministers and recorded as such by the Chair of the NAMA negotiations in his report on the July ministerial meetings. The National Association of Manufactures of the US (NAM) criticised the report of the NAMA chair for weakening the level of ambition on sectorals and urged the USTR to refuse to accept the report as a basis for negotiations. The NAM stated that "given the weakness of the present across the board industrial tariff cutting proposal balance is only possible if the key countries of Brazil, China and India were to participate in negotiating sectoral agreements that would eliminate duties in major industrial sectors".⁶³

Again, in the period July 2008 to December 2008, the USTR Susan Schwab did not seem to have much room to manoeuvre. Even as Lamy tried to get ministerial meeting going to resolve the outstanding issues in the negotiations, the US Congress worked against this initiative. On the 2nd of December, the Chairs of two US Congressional Committees, from both the House and the Senate wrote a letter to President Bush, which stated that: "In July of this year we commended your administration for walking away from a lopsided WTO package that we in Congress would not have been able to support... We strongly urge you not to allow the calendar to drive the negotiations through efforts to hastily schedule a ministerial meeting..".⁶⁴ US lawmakers from both sides of the aisle applauded the cancellation of the proposed ministerial meeting by Lamy and stated that they will work with the incoming Obama Administration in the New Year to seek solutions to the many "issues that have so far remained elusive".⁶⁵

The discussion above points to continuing and increasing protectionism by both the US and the EU that was re-invigorated in the current Doha Round by perceptions of increasing competitiveness of the emerging economies. The attempts by the US and the EU to co-ordinate their positions, accommodating their own interests between themselves and then seeking aggressive gains from other economies, especially the emerging economies, have been a strong feature of the Doha Round negotiations since Cancun and must be regarded as a major contributing factor to the collapse of the WTO July 2008 ministerial meetings. Thus Wilkinson's observation of the persistence of asymmetry of economic opportunity in the GATT/WTO since the early GATT rounds continues to retain its validity up to the end of July 2008 ministerial meetings. We now turn to the third reason for the collapse of the July 2008 ministerial meetings.

Reason 3: The Principal Supplier Principle

A recent evaluation of the state of the WTO undertaken by the Warwick Commission⁶⁶ called for greater flexibility in the voting system. The Commission called for the concept of “variable geometry” to replace the more rigid “single undertaking” concept that was deployed in the Uruguay Round, and that has since become the conventional approach in the Doha Round. The Warwick Commission points to the earlier practices in the Tokyo Round where various agreements were reached on the codes on standards, import licencing, anti-dumping, subsidies and countervailing measures and customs valuation”. The Commission urges WTO members to seriously consider “critical mass as part of the decision-making procedures for delineating the WTO agenda”.

However, an earlier report,⁶⁷ established by the previous director-general of the WTO, Dr. Supachai Panitchpakdi, supported the consensus approach to decision-making that is generally followed by the WTO, and suggests ways in which this could be improved. The Sutherland Report recommended that in an attempt to reduce the resort to blocking measures (such as a veto by a single country to prevent consensus) by some countries, there should be a responsibility by the country seeking to block a decision, to declare in writing that the matter is one of vital national interest to it. This recommendation if implemented could help the WTO strengthen the consensus approach to decision-making and help the critics who have felt frustrated by the efforts of large members to block consensus, where the underlying reasons are extraneous to trade.

The Sutherland Report also addressed the call by some members to develop a differentiated (plurilateral) approach to those issues on which only a subset of members are able and willing to deepen liberalisation and rule-making. The report took a cautious approach to this possibility, suggesting further deliberation. It was judicious in taking this approach, as WTO members are currently divided on this issue and many are suspicious that this would create a two-speed and two-track system, compromising the principle of inclusiveness. The previous Director General was concerned about the serious criticisms that the WTO faced as a result of the perception amongst civil society and developing country groups about its lack of transparency and inclusiveness in its decision-making and imbalanced outcomes.⁶⁸

The issue of voting method is an old debate in the GATT and has its origins in the early negotiations on the proposed International Trade Organization (ITO) that was to be part of the Bretton Woods institutions after the Second World War. During the negotiations, the issue of the voting method was one of the few issues on which the developing countries were more successful. For decision-making in the ITO the US delegation proposed the same method of weighted voting that was used in the recently-created International Monetary Fund (IMF). A similar proposal was made by the UK, to take into account the economic size of the country in its share of the vote – a system of weighted voting. Developing countries voiced their opposition to such a system of voting, as they feared that this would institutionalise their secondary status. A number of developing countries,⁶⁹ voiced strong opposition to weighted voting and came out in favour of consensus. As a consequence the ITO did not adopt a system of weighted voting. This decision was to be adopted by the GATT that adopted the consensus approach to its decision-making.

The principal supplier approach also had its origins in the early ITO/GATT debates. During the negotiations on the ITO many members had preferred a system of bargaining that was formula-based – across the board tariff negotiations – but the US Congress indicated that this would be unacceptable to it. The UK supported this method, as it would have led to the levelling of high US tariffs. The US delegation however argued for a system of reciprocal bargaining over specific tariff lines that required a product-by-product, principal supplier method of tariff negotiations by which a country could only be requested to make tariff cuts on a particular product by the principal supplier of that product to that country.⁷⁰ This meant that for any particular product the importing country negotiates its tariff rate with its principal supplier and not with all suppliers of the same product. Developing countries at the time seldom were principal suppliers of any product, except raw materials that entered industrialised countries duty free. Only at the 4th Geneva Round of GATT in 1956 was this rule modified to allow developing countries to negotiate collectively in requesting concessions. However, they were still effectively prevented from requesting concessions in any products that they did not produce in large quantities. Thus the principal supplier rule had the effect of locking out developing countries from the tariff cutting negotiations.

The GATT debate has a significant resonance in the current WTO debate on the formation of small informal groups that become the main decision-making forums or that shape the main content of the deals. The negotiating method employed in July 2008 harked back to the principal supplier approach utilised in the old GATT.

An Evaluation: the G7 in the July 2008 Ministerial Meetings

The third reason for the collapse of the ministerial meetings owes its origin to the “medieval process”⁷¹ that saw the EU/US stick to old habits of setting up imbalanced small groups that cut the main deals without consideration for the smaller players, and the marginalisation of their issues in the negotiations. The G7 was a surprise after the failure of the G4 (and earlier G5 and G6 informal ministerial groups) in Potsdam. The package that emerged on the night of the 25th of July, 2008 (see discussion above) was not agreed and did not address the issues of interest to the majority of members. It was not supported by India and China and gained no legitimacy amongst the majority of members.

The African ministers who were not represented in the Group of 7 expressed their concerns in a statement made in July by stating that, “we are deeply concerned that in the Group of Seven (G7) not one African country was represented in a round that purports to be about development” and that “most of the issues of importance to the African continent were not even discussed, especially cotton”.⁷² Reflecting their dissatisfaction with the G7 process the G33 group of developing countries, whilst they continued to support the positions that India and China expressed on the SSM in the G7, they called for the issue of SSM to be returned to the WTO Agriculture Negotiating Group, chaired by Crawford Falconer, as soon as possible.⁷³

Thus the G7 ministerial meetings called by Pascal Lamy during the July 2008 ministerial meetings failed to achieve the objective of negotiating the breakthrough in the agriculture and NAMA modalities negotiations that Lamy had hoped for. Some agreements reached

in the G7 on elements of the modalities – the so-called Lamy Package – did not have the support of all the members of the G7,⁷⁴ and the G7 did not enjoy the support of the majority of members that felt that their issues were marginalised in the negotiations. In addition, Lamy did not succeed in resolving any of the issues of interest to the smaller developing countries in smaller side meetings that were on his so-called “to do” list!⁷⁵ Cotton did not get onto the agenda at all. The banana negotiations unraveled. The issue of Duty Free Quota Free Market Access (DFQFMA) for LDCs was not addressed. There were several more difficult issues on NAMA that concerned South Africa, Argentina, and Venezuela that also remained unresolved. In the conclusion below we will summarise the three reasons advanced in this paper for the collapse of the July 2008 ministerial meetings and then make some policy recommendations for WTO members.

5.4 Conclusion and Policy Recommendations

This chapter has argued that one of the important reasons for the failure of the end July ministerial meetings was the persistence of imbalanced draft texts, particularly between agriculture and NAMA, with the NAMA text failing to reflect adequately the views of all the members. This is partly ascribed to the role of the chair of the negotiating group who by his own admission decided at the very outset to determine the level of ambition himself.

The second reason offered for the failure was the increasing protectionism within the EU and the US. As the negotiating process continued both the EU and US, working closely together, increased the pressure on developing countries, particularly the major emerging markets, to open their markets in Agriculture, NAMA and Services, whilst ensuring that they accommodated their particular sensitivities. The third reason was the return to a small group approach (the G7) reflecting power politics, and the “principle supplier” approach of the past. The G7 Ministers failed to agree to the Lamy Package, and Lamy declared at the TNC on the 29th of July that the G7 ministers had failed to reach agreement on modalities on Agriculture and NAMA. But Lamy stated that he was not “throwing in the towel” and called for the progress made during the course of the Ministerial Meetings to be “preserved” and for the membership to begin a process of reflection.⁷⁶

We make three recommendations to address the underlying causes of the collapse of the July 2008 ministerial meetings:

1. Both Tallberg’s and Odell’s studies of the role of the chairs suggest that formal leaders can positively enhance the efficiency of the negotiations by transforming competing proposals into single texts and forging agreements. This positive and efficient role of the chairs in WTO negotiations can be restored in the WTO by studying the more successful efforts of previous chairs that have enjoyed wide support amongst the membership, such as that of the chair of the Agriculture negotiations. In addition, the WTO could develop a code of conduct for the chairs of the negotiating groups, based on its own rich experience of the performance of previous WTO chairs.

2. The success of the next attempt to advance the Doha negotiations will also require that the EU and US take account of the development interests of the large and smaller developing countries and not simply try to advance their own commercial interests. Fairness and balance in the negotiations will require that the large numbers of exemptions the developed countries have demanded to accommodate their agriculture sensitivities are reciprocated in providing similar flexibilities to developing countries to protect their poor farmers and industrial workers.

3. The WTO would need to think carefully about how it constitutes small groups in the future to advance the negotiations. China, India, the US and the EU can claim to be part of any small group that is created to broker a deal because of their size but the interests of the rest of the membership have to be represented too. The model of small groups which includes members simply on the basis of their economic and political weight or “principle supplier approach” is an anachronism, given members’ diversity, economic interests, and political expectation to be represented and included at every stage of the negotiating process.

The WTO since the onset of the Doha round, and particularly after Cancun, has evolved a rich tapestry of alliances or groups, especially amongst the majority of developing countries. These groups can play a constitute role in building joint negotiating positions and convergence among the membership. Pascal Lamy, the then Commissioner of the EU, had acknowledged the positive role of developing country groups in the WTO – after Cancun, when he compared the G20 to a trade union legitimately representing its members and in Hong Kong, where the deal was brokered in the “Green Room” that included representatives of the G33, the ACP, Africa Group and the LDCs. It is only fair that the ACP, Africa Group, the G33, the NAMA 11, the Cotton 4 and the LDCs are also represented in any future negotiating group.

We turn now to a consideration of the lessons of the collapse of the July 2008 ministerial meetings for the various developing country coalitions. Chapter six will set out the theoretical framework that is employed to evaluate the role of these coalitions. The chapter will consider the situation of different developing country groups at the end of the ministerial meetings and the challenges that confront these groups on the way forward.

Annex 1

Seattle: 3 rd WTO Ministerial Conference fails to launch Doha	- Dec 1999
Doha: 4 th WTO Ministerial Conference succeeds: launches the DDA	- Nov 2001
• Deadlines for Modalities in Agriculture	- end March 2003
• Deadlines for Modalities in NAMA	- end May 2003
Cancun: 5 th WTO Ministerial Conference collapses	- September 2003
WTO July 2004 General Council succeeds: “Framework Agreement”	-July 2004
Hong Kong: WTO 6 th Ministerial Conference: incremental progress	-December 2005
Failure of G6 ministerials results in suspension	- July 2006
Failure of G4 ministerial at Potsdam	- June 2007
Failure of the G7 ministerial in Geneva	- July 2008
Cancellation of proposed ministerial	- December 2008

Notes

- 1 See WTO doc, 'Informal TNC Meeting at the level of Head of Delegation', Job (07)/105 22 June 2007.
- 2 The WTO has formal Ministerial Conferences that are required to take place at least once in two years. Since its formation at the Marrakech Ministerial Meeting, the WTO has held five Ministerial Conferences, with the last being the 6th Ministerial Conference held in Hong Kong in December 2005. However, there are other informal ministerial gatherings of the WTO that have taken different forms, including so-called mini-ministerial meetings that were held to discuss the launch of the Doha Round; small groups of ministers meeting among themselves (G4, G5 and G6) and larger groups of ministers (approximately thirty) convened by the DG to negotiate breakthroughs in the negotiations, sometimes referred to as the Green Room. These informal ministerial meetings have no legal status and any breakthroughs arrived at in these for a must be taken to the broader membership for decision.
- 3 'Modalities' are not clearly defined in the WTO. The concept refers to the technical formulas that are utilised to develop a schedule of commitments (on tariff reductions or subsidy reductions) that members have to finally agree to. A Framework Agreement falls short of this objective and develops the architecture for the modalities agreement without fully agreeing the technical formulas that will be used to determine the legal commitments of members.
- 4 See WTO doc, 'Draft NAMA Modalities' Job (07)/126 17 July 2007.
- 5 Wilkinson, R., 'The WTO. Crisis and Governance of Global Trade' (Routledge, 2006) See also Finger, M., 'Implementation and the imbalance: dealing with hangover from the Uruguay Round', *Oxford Review of Economic Policy*, Volume 23, Number 3, 2007, pp. 440-460.
- 6 See Wilkinson, R., 'The WTO in Hong Kong: What it Really Means for the Doha Development Agenda', *New Political Economy*, Vol 11, No 2, June 2006.
- 7 See Annexure 1. For a discussion of the Cancun Ministerial Meetings see Ismail, F., 2004. 'Agricultural Trade Liberalisation and the Poor: A Development Perspective on Cancun', *BRIDGES*, January 2004.
- 8 Wilkinson, R., and Scott, J., 'Developing Country Participation in the GATT', A Re-assessment, 7 *World Trade Review* 3 (July 2008), pp 1-18.
- 9 See Letters by Kamal Nath, Minister of Commerce of India, to Pascal Lamy, dated 24th September 2008 and 17th October 2008.
- 10 The SSM is a mechanism that was agreed to be created for poor farmers in developing countries to protect their domestic markets from import surges (particularly from highly subsidised US and other developed country exports).
- 11 WTD, 31st July, 2008.
- 12 See WTD, 28th July, 2008.
- 13 See Kaushik, A., Kaukab, R., and Kumar, P., 'A Brief Analysis of the July 2008 Lamy Package', CUTS International.
- 14 The Lamy Package adopted the proposed middle ground of the NAMA Chairs 10th July 2008 Draft Text.
- 15 See WTD, 4/08/2008.
- 16 See WTO doc, Job(08)/96 12 August 2008.

- 17 WTO doc, Job (08)/95 12 August 2008.
- 18 WTO doc, Job (08)/96 12 August 2008.
- 19 See 'The G20 Summit Declaration 16 November, 2008. www.sofiaecho.com/article/the-g20-summit.
- 20 WTO doc, Information to delegations, Fax from Pascal Lamy to all Heads of Delegations, 1st December 2008.
- 21 Washington Trade Daily, 9th December 2008.
- 22 WTO doc, 'Fourth Revision of Draft Modalities For Non-Agricultural Market Access'. Negotiating Group on Market Access. TN/MA/ W/103/Rev.3 6th December 2008. See also 'Revised Draft Modalities For Agriculture', Committee on Agriculture Special Session. TN/AG/W/4/Rev.4 6th December 2008.
- 23 See WTO docs, 'Revised Draft Modalities For Agriculture. Sensitive Products: Designation', Committee on Agriculture Special Session. TN/AG/W/5 6th December 2008. 'Revised Draft Modalities For Agriculture. Sensitive Products: Tariff Quota Creation', Committee on Agriculture Special Session. TN/AG/W/6 6th December 2008. 'Revised Draft Modalities For Agriculture. Special Safeguard Mechanism', Committee on Agriculture Special Session. TN/AG/W/7 6th December 2008.
- 24 See Washington Trade Daily, 12th December 2008.
- 25 See Washington Trade Daily, 15th December 2008.
- 26 A report by the WTD (WTD 07/08/2008) states that India and China wanted a trigger of 110 whilst the US demanded 155 and Australia 165. The report states that Lamy's first proposal put forward on the 24th night proposed a figure of 120 percent of imports, but on the 25th morning the Lamy package changed this figure to 140 percent. This prompted Kamal Nath to state that he would not be party to the package and he threatened to walk out of the talks. However the DG left the figure of 140 in the text, which was then presented, to the Green Room for consideration the same night.
- 27 WTD, 30 July 2008 and WTO Reporter, 'Negotiations, Doha Talks Collapse Over US-India Dispute on Ag Safeguards; Future of Round in Doubt', 30 July 2008.
- 28 Tallberg, J., 'The Power of the Chair: Formal Leadership in International Cooperation', *International Studies Quarterly* (forthcoming).
- 29 Ibid.
- 30 Odell, J., 'Chairing A WTO Negotiation.' *Journal of International Economic Law* 8 (2): pp 425-448
- 31 Ismail, F., 'The Role of the Chair in the WTO Negotiations. From the Potsdam Collapse in June 2007 to July 2008' Unpublished paper.
- 32 WTO doc, 'South African Statement to the WTO TNC, 22nd July 2008'.
- 33 See WTO doc, 'Statement of Argentina to the TNC, 26th July 2008'.
- 34 See WTO doc, 'Statement by Minister Celso Amorim to the Informal TNC 21 July 2008', As delivered.
- 35 See also 'G20 statement on the State of Play, 20th June 2008 and G20 statement to the WTO Committee on agriculture – special session. Open-Ended Informal Meeting, 26th May 2008', in G20, Five Years of Activities of the G20: Moving Forward the Doha Round, July 2008, Brazilian Permanent Mission to the UN and WTO.

- 36 South Africa represents the NAMA 11 in the WTO and Brazil is the co-ordinator of the G20. Whilst the ministers made the above statements in their own country names, their views largely reflect the views of the NAMA 11 and the G20 respectively.
- 37 Lamy, P. 'The moment of truth', *International Herald Tribune*. 3rd July 2008.
- 38 WTO, *Background Document, High Level Symposium on Trade and Development* (Geneva, 17-18 March 1999).
- 39 See Annex 2 for further elaboration.
- 40 Wilkinson, R., 'The WTO. Crisis and Governance of Global Trade' (Routledge, 2006).
- 41 Ibid.
- 42 The increasing use of Section 301 of the 1974 Trade Act, which sanctioned unilateral action against unfair trade, practices by foreign trade partners. See Ostry, S., 'The Post-Cold War Trading System. Who's on first?' University of Chicago Press. London and Chicago. 1997.
- 43 See Croome, J., 'Reshaping the World Trading System. A History of the Uruguay Round'. Second and Revised Edition. Kluwer Law International, The Hague, London, Boston, 1999. Blair House was the name of the US President's Guest House in Washington for foreign dignitaries.
- 44 See Croome, J., 'Reshaping the World Trading System. A History of the Uruguay Round.' Second and Revised Edition. Kluwer Law International, The Hague, London, Boston, 1999. p.321.
- 45 Ibid. p.325.
- 46 Finger, M., 'Implementation and the imbalance: dealing with hangover from the Uruguay Round', *Oxford Review of Economic Policy*, Volume 23, Number 3, 2007, pp. 440-460.
- 47 See Wilkinson, R., 'The WTO in Hong Kong: What it Really Means for the Doha Development Agenda.' Commentary, *New Political Economy*, Vol 11, No 2, June 2006.
- 48 Wilkinson, R., 'The WTO. Crisis and Governance of Global Trade'. Routledge, 2006.
- 49 See Statement by South Africa to the 55th session of the Committee on Trade and Development on behalf of Argentina, Brazil, India, Indonesia, Namibia, the Philippines and Venezuela. 28 November, 2005.
- 50 WTD, DDA 'Do-able - USTR Schwab, 17th July, 2008
- 51 See letter by the above countries and Tunisia, sent to the Chairman of the Conference and the Director General at the Hong Kong Ministerial Meeting.
- 52 See WT/MIN (05)/DEC, Para 24 of the 'Ministerial Declaration', Doha Work Programme. 22 December, 2005.
- 53 Washington Trade Daily, 22nd June, 2007.
- 54 See WTO Doc, Job (08)/5 12th February 2008.
- 55 See WTO doc, CTESS Job (07)/193, 3rd of December, 2007.
- 56 WTO doc, A communication by Canada, the European Communities, Iceland, Japan, New Zealand, Norway, Switzerland, and the United States titled 'Joint Paper on Revised Draft Modalities for Non-Agricultural Market Access'. 5th December 2007.
- 57 By prohibiting more than half of six digit subheadings to be excluded from any four digit sub-heading subject to a full formula cut or any combination of six-digit sub-headings (under a four digit) representing more than 50 percent of the total value of imports.

- 58 Messerlin, P., 'How Much Further Can the WTO Go? Developed Countries Issues', Trade Policy Monitoring Centre (CEPR and Kiel Institute), mimeo, available at <http://gem.sciences-po.fr>.
- 59 Bergsten, C. Fred, 'World Trade at Risk', Peterson Institute for International Economics, May 2008.
- 60 The Financial Times, 'Obama Aims to calm fears over free trade, 27th June 2008
- 61 Golman Sachs, BRICS and Beyond, (Goldman Sachs Global Economics Group, 2007).
- 62 Reuters, 'EU's Mandelson points at US after WTO collapse'.
- 63 WTD, 15/18th August 2008.
- 64 Letter addressed to President Bush from the Congress of the United States, signed by Charles Rangel, Chairman, Committee on Ways and Means, Max Baucus, Chairman, Committee on Finance, Jim McCrery, Ranking Member, Committee on Ways and Means, Charles Grassley, Ranking Member Committee on Finance.
- 65 Washington Trade Daily, 15th December 2008.
- 66 The Warwick Commission, 'The Multilateral Trading Regime: Which Way Forward?' The University of Warwick. December 2007.
- 67 Report by the Consultative Board to the Director-General Supachai Panitchpakdi, 'The Future of the WTO. Addressing Institutional Challenges in the New Millennium. WTO. 2004.
- 68 See Jawara, F. and Kwa, A., 'Behind the Scenes at the WTO. The Real World of International Trade Negotiations. Zed Books, 2003.
- 69 Such as Czechoslovakia, Turkey, Lebanon, Iraq, El Salvador, Venezuela and Mexico.
- 70 Ibid.
- 71 Pascal Lamy, after the collapse of the WTO Cancun Ministerial meeting in 2003 blamed this on the "medieval process" of the negotiations.
- 72 Press Statement issued by the Deputy Prime Minister and Minister for Trade of Kenya, 30th July 2008.
- 73 See WTD, 15 September, 2008.
- 74 See Letters by Kamal Nath, Minister of Commerce of India, to the WTO Director General, Pascal Lamy, dated 24th September 2008 and 17th October 2008.
- 75 Pascal Lamy's "to do list" included the issues that were not in the Lamy Package, such as cotton, bananas, DFQFMA, preference erosion, etc.
- 76 See WTO Doc, TNC, Statement by the Chairman, Job (08)/94 30 July 2008.

6

July-Dec 2008 Collapse: Lessons for Developing Country Coalitions

6.1 Introduction

The WTO since the onset of the Doha round, and particularly after Cancun, has seen the evolution of a rich tapestry of alliances or Groups, especially amongst the majority of developing countries. These groups can play a constructive role in building joint negotiating positions and convergence among the membership. Pascal Lamy, as Commissioner of the EU, had acknowledged the positive role of developing country groups in the WTO; after Cancun, when he compared the G20 to a trade union legitimately representing its members; and subsequently in Hong Kong, where the deal was brokered in the “Green Room” that included representatives of the different groups such as the G33, ACP, Africa Group and LDCs. Thus, it is only fair that the ACP, Africa Group, G33, NAMA 11, Cotton 4 and LDCs are also represented in any future negotiating group.

This chapter considers the situation of different developing country groups at the end of the July 2008 ministerial meetings and the challenges that confront these groups on the way forward. A discussion on the lessons that can be learnt from this experience for each developing country group in the WTO is undertaken with reference to the theoretical framework offered by Amrita Narlikar in a recent contribution.¹ The chapter supports the thesis advanced by Narlikar that the basic rationale for the creation of coalitions is captured by the “collective gains hypothesis”. The chapter concludes by calling on developing countries to continue to work in 2009 for a successful conclusion of the Doha Round based on its development mandate.

To facilitate the discussion below on the lessons of the July 2008 ministerial meetings for developing country coalitions, we begin by outlining the theoretical framework developed by an academic writer on coalitions.

6.2 Theoretical Contributions to the Debate on Coalitions

In a recent contribution to the theory of bargaining coalitions in the WTO, Amrita Narlikar¹ distinguishes between two types of coalitions in the WTO – issue-based alliances (formed around concerns on a particular issue) and bloc-type coalitions (with shared ideas on multiple concerns). She considers two possible hypotheses for the creation of coalitions: the “defection hypothesis” and the “collective gains hypothesis”. The former rationale for coalition formation is based on narrow individual interests where countries join a coalition to first establish their power and then to be bought off by the outside party in the form of side payments. In this scenario each member of the coalition is fearful of being isolated in the end game where it could be the only member left adhering to the collective position after the collapse of the coalition – thus generating the “sucker’s payoff”.

Narlikar asserts three arguments against the “defection hypothesis” as an explanation for the primary logic of coalition formation. She argues that countries will not cooperate if they all are aware that everyone else is driven by this logic; the outside party too will not take the coalition seriously; and repeated defections by a member will in any event result in a lack of credibility of a coalition member. Instead, she argues that a more convincing rationale for coalition formation is captured by the concept of the “stag hunt,” where parties recognise that their collective interests are more likely to be achieved if they cooperate.

Narlikar provides at least three recommendations to strengthen developing country coalitions and to reduce the temptation of members of the coalition to defect: a) effective agenda setting that addresses the concerns of all the members; b) larger members making side payments to smaller members such as increased market access and; c) the building of a large coalition with large and smaller members that increases the reliability of such a coalition achieving its goals and providing reassurance to its own members.

Narlikar also suggests that a negotiating posture that displays a willingness to negotiate is more likely to generate concessions from the other side and prevent defections and collapse of the coalition, rather than a negotiating posture of simply standing firm, (“strict distributive strategy”).² In the section below we discuss the lessons of the July 2008 ministerial collapse for developing country coalitions with reference to the theoretical framework and recommendations for developing country coalitions provided by Narlikar above.

6.3 Lessons for Developing Country Groupings

The G20

There are three important lessons to be drawn from the July 2008 ministerial meetings for the G20 group of developing countries. First, the G20 has been the main force that has shaped the architecture of the Agriculture modalities text. Whilst this has been partly due to its willingness to compromise and offer pragmatic solutions to accommodate developed country protectionist needs, these concessions have largely been “pocketed” by the developed countries. These concessions have not been meaningfully reciprocated by the developed countries, both in the Agriculture and in

the NAMA negotiations, when developing countries have sought flexibilities to accommodate their development needs.³

Thus, a negotiating posture that is too pragmatic, and too early, without gaining reciprocal concessions from the developed countries will risk being unreciprocated by the developed country partners. Second, the failure of the G20 to find a solution on Special Products (SP) and the Special Safeguard Mechanism (SSM), leaving the deal to emerge at the end between the G33 and the US (and Cairns Group) clash of interests was probably unwise. More efforts will be required to balance commercial and development issues within the G20 in the future. The G20 will need more effective agenda setting to address issues within itself and trade-offs between its members. A failure to address the need for trade-offs between its own members early enough could have a high cost for the capacity of the group to maintain its unity during an intense negotiating process. Thus Narlikar's second recommendation of negotiating internal trade-offs to strengthen the G20 coalition is relevant.

Third, the unity of the G20 was tested when it met during the July ministerial meetings to discuss the Lamy Package. Brazil, as the co-ordinator of the G20 had accepted the Friday night Lamy package, which included a 14.5 billion dollar offer on OTDS for the US.⁴ The G20 was divided on this issue, with some members arguing that the package was imbalanced. The G20 will need to reflect on how the coordinator of the group should behave, balancing its own interests and the interests of the Group. In addition, making concessions too early, without consultations or support of the group would be perceived as a 'defection' to obtain 'side payments' and lead to divisions and collapse of the group. There has to be greater discipline in reporting back and consulting with the members before any decisions are taken by its coordinator.

The NAMA 11

The NAMA 11 too suffered from exclusion from the negotiations. South Africa is the coordinator and was not included in the G7 negotiations and neither was it consulted on the Lamy Package. Whilst Brazil was willing to accept the compromise language in the Lamy Package, India had some reservations. Other members of the NAMA 11 were not consulted and were faced with a take it or leave it offer. Argentina, Venezuela and South Africa continued to negotiate for a better deal. The group will need to reflect on how to maintain its solidarity in spite of the different negotiating positions and interests of its members. Thus an early compromise by a major member of a coalition could be perceived to be a "defection" to obtain a "side payment", weakening the coalition and leading to its collapse. This puts pressure on the remaining members of the coalition to ensure that they do not end up with what Narlikar refers to as a "suckers' pay-off".

The G33

The G33 coordinator, Minister Marie Perguestu of Indonesia, was not represented in the G7 negotiating group. However, India and China, both members of the G33 maintained close links and consultations with the group. Notwithstanding the exclusion, the G33 continued to support the positions of India and China in the G7 on the SSM. The G33 called for the issue of SSM to be returned to the WTO Agriculture Negotiating Group, chaired by Crawford Falconer as soon as possible.⁵ The Group also maintained

a posture of negotiation and maintained the unity of a large group that was composed of large and small members. This group has clearly emerged as the most united and powerful of the developing country coalitions. There are lessons here for both the G20 and the NAMA 11 on how to maintain the cohesion and unity of a coalition.

The Cotton 4

The Cotton 4 (Burkina Faso, Benin, Chad, and Mali) were not involved in the negotiations with their issue lined up next on the agenda of the G7 after the resolution of the SSM. The Minister of Burkina Faso, Mamadou Sanou, lamented the failure of the Ministerial Meeting stating that if there were no respite from the negative impact of US trade distorting subsidies, the cotton farmers in his country “would soon disappear in the next couple of years because of global cotton subsidies”. At the press conference on the 29th of July, the Director General admitted that the cotton issue was not taken up because it was linked to product-specific caps in the amber and blue boxes of farm spending as well as the reference period and the size of the blue box.⁶ WTO members will have to reflect on how an issue of vital interest to some of the poorest countries could have been left till the end of the agenda and not addressed during the ministerial meetings.

The African Group

The African Group ministers made several statements during the end July Ministerial meetings. The ministers (from Burkina Faso, Cameroon, Egypt, Gabon, Lesotho, Mauritius, South Africa and Kenya) present in Geneva, issued a press statement on the 20th of July⁷, and on the 25th of July to signal their concern that issues of interest to Africa should be addressed in the ministerial meeting.⁸ The ministers expressed their frustration at being left out of the Group of 7, stating that, “we are deeply concerned that in the Group of Seven (G7) not one African country was represented in a round that purports to be about development. This does not augur well for the future of global governance”. On the 30th of July, the Deputy Prime Minister and Minister for Trade of Kenya, speaking on behalf of the African ministers present, stated that “taking into consideration the two weeks we have been here in Geneva... we are deeply disappointed with the stalling of the negotiations. It should be known that most of the issues of importance to the African continent were not even discussed, especially cotton”.⁹ Whilst the African Group could easily have objected to the process and outcome of the G7 at the end of the July 2008 ministerial meetings, they instead showed their goodwill by calling upon the membership to “capture the progress made” and “consider resumption as soon as is feasible and continue with the negotiations”.

However, the African Group will need to strengthen its alliances with the major developing country coalitions so that it does not become marginalised and excluded from the negotiating process. It will do well to heed the third recommendation made by Narlikar on the need to increase the size of developing country coalitions so as to increase its bargaining power vis-à-vis the major developed countries.

LDCs

The Minister of Trade and Industry of Lesotho, speaking on behalf of the LDCs at the TNC held on the 29th of July, expressed disappointment that the issues of interest to

LDCs were not addressed. These, he said, included the operationalisation of Duty Free Quota Free Market Access and accompanying Rules of Origin in a manner that is commercially meaningful; capacity building to address supply side concerns; a “simple and accessible” Special Safeguard Mechanism; and a “fair and balanced outcome on cotton”. These issues will need to be prioritised by the membership to ensure that the development mandate of the Doha Round is adhered to. In addition the LDCs will need to address the issue of how the differences between the Asian LDCs (that do not receive preferences in the US) and African LDCs that benefit from AGOA preferences are dealt with in the modalities on preference erosion.

The LDCs had succeeded in securing an agreement in the Hong Kong Ministerial Conference for LDCs to be provided with Duty Free Quota Free Market Access. They achieved this due to their internal unity (between the Asian and African LDCs) and the alliances they formed with the larger developing countries that had a common interest to build a larger coalition. They were able to persuade the larger developing countries, “in a position to do so”, to provide them with DFQFMA as well. This internal bargain or “trade off” between developing countries Narlikar suggests is also crucial to strengthening the bargaining power and leverage of developing countries in the WTO negotiations.

Bananas and Tropical Products

Pascal Lamy used his offices to mediate between the Tropical Products (mainly Latin American Producers) banana producers, the ACP banana producers and the EC. The DG’s initial proposal made on the 16th of July was rejected by both the Latin American producers and the ACP. Although several negotiating meetings were held by the DG and the parties concerned during end of July in an attempt to resolve the issue, these did not result in an agreement. The EC thus announced that there will be no agreement on bananas outside the Doha round. Here too developing country groups will do well to heed the second and third recommendations made by Narlikar to strengthen their bargaining power vis-à-vis the EC. There have been many calls for the bananas issue to be resolved as an early harvest in the Doha round, together with the issues of interest to the LDCs (DFQFMA, Cotton and Aid for Trade). Succeeding in including the Banana issue as an early harvest will require the tropical products group (mainly Latin American producers) and the ACP group of developing countries (concerned about preference erosion) to make “trade-offs” between themselves and negotiating more effectively with the EC.

Developing Countries should continue to strive to conclude the Doha Round on its development mandate. As the CUTS conference held on the 21st of August in New Delhi concluded, “The Doha Round is not dead, it has simply paused”.¹⁰ Developing countries must again pick up the pieces of the failed ministerial meetings at the end of July 2008 and the failure again at the end of December – just as they have done at each stage of the round: after the collapse in Cancun, then again after the suspension of the Round in July 2006, and once more after the G4 Potsdam collapse in June 2007.

They must reflect and learn from their experiences. They must rebuild their technical and organisational capacity and strengthen their alliances. And they must march on to the next phase of the struggle to achieve a fair, balanced, inclusive, and development

oriented outcome in the Doha Development Round. They should not rest until the promises of development in the Doha mandate have been fulfilled.

In the next chapter we review some of the fundamental asymmetries, imbalances, and weaknesses in the WTO as an institution and its practices that were discussed in this and earlier chapters. Based on this analysis Chapter seven will make proposals to reform the WTO.

Notes

- 1 Narlikar, A., 'A Theory of Bargaining Coalitions', in (ed) Narlikar, A., and Vickers B., *Leadership and Change in the Multilateral Trading System* Leiden: Republic of Letters Publishing/ Martinus Nijhoff, 2009.
- 2 For a discussion of a "strict distributive strategy" see Narlikar, A., and Odell J., 'The Strict Distributive Strategy for a Bargaining Coalition: the Like Minded Group in the World Trade Organization', in Odell, J. (editor) 'Negotiating Trade. Developing Countries in the WTO and NAFTA'. Cambridge University Press, 2006.
- 3 Celso Amorim, the Foreign Trade Minister of Brazil submitted a long list of flexibilities in Agriculture where the G20 had accommodated the needs of the developed countries for additional flexibilities to accommodate their sensitivities. The list included 6 specific flexibilities for the US, 2 for the EC and 4 for the G10 countries in the Domestic Support Pillar. Similarly, the US had obtained 3 specific flexibilities, the EC 4 and the G10 countries had obtain 11 flexibilities in the Market Access Pillar. In the Export Competition pillar the EC and US had each obtained 1 specific flexibility.
- 4 See WTD, 28th July 2008. The WTD reported that Brazil was canvassing support for the Lamy package although this was opposed by India, South Africa and Argentina and Minister Amorim was reported to have stated that Brazil was willing to press ahead notwithstanding the differences within the G20 ad Mercusor on the Lamy Package
- 5 See WTD, 15 September, 2008.
- 6 See WTD, 30th July 2008
- 7 See Declaration of the African Group on the WTO Mini-Ministerial, Geneva, 20 July 2008
- 8 See Press Statement issued by the Deputy Prime Minister and Minister for Trade of Kenya, 25th July 2008. These issues included, real and effective substantial reduction of trade distorting support by the developed countries in agriculture, agreement on a Special Safeguard Mechanism that will effectively address import surges, a more ambitious outcome on cotton, a solution of bananas that does not impact negatively on African banana exporting countries, sufficient flexibilities for African countries in the NAMA negotiations, the need to address the negative impact of preference erosion, the TRIPS Agreement to accommodate issues related to the Convention on Biodiversity, and the development aspects of geographical indications.
- 9 Press Statement issued by the Deputy Prime Minister and Minister for Trade of Kenya, 30th July 2008
- 10 See CUTS International, 'Cuts-FICCI Conference on Global Partnership for Development. Where do we stand and where do we go?' New Delhi, August 12-13, 2008. A Report of the Proceedings.

7 | *Reforming the WTO*

7.1. Introduction

On his re-appointment for a second term, the Director General of the WTO, Pascal Lamy, recognized that there was a need to “make the WTO more development- friendly, more user-friendly, so that its benefits are felt by all, large and small, rich and poor, strong and weak”.¹ He went on to make some proposals for incremental reform in four areas: negotiations, implementation, coherence and outreach. He concluded by stating that “no major surgery” was needed in the WTO and that “no major overhaul of the system is in my view required, but rather a long to- do list to strengthen the global trading system”. In sharp contrast to this view of the reforms required, a recent critique of the GATT/WTO, by Rorden Wilkinson² makes a cogent argument for a more fundamental reform of the WTO. Wilkinson argues that the architects of the GATT created the system in their own interests and that the initial rounds of GATT addressed the interests of the major developed countries – the US and the EU. With each new round the basic asymmetry that was created in the GATT system was perpetuated in favour of the developed countries. In addition, newcomers to the system thus had to also accede to the GATT (and later the WTO) in a disadvantageous manner.³

Wilkinson argues that the normative preference for free trade articulated by some of the key proponents of the GATT (from the US and the UK) and the “bicycle theory” that perpetuated the notion that trade liberalization needed to be in perpetual motion to prevent economic crisis became the narrative of the GATT. This narrative complemented the inequity of the above system of negotiations to produce a deeply asymmetrical system that benefited those at the core of it offering limited benefits to those that were on the periphery. Moreover, Wilkinson argues that this narrative has been perpetuated by the system of policy and ideological coherence that included the GATT/WTO, World Bank and the IMF that “reinforces the logic of the system”. He argues that although UNCTAD was created to provide an alternative vision to that of GATT/WTO – and the Bretton Woods Institutions (the IMF and World Bank), the institution has been “effectively neutered” by being only able to make recommendations on policy.

In addition, the main players insisted on the “principal supplier method” of negotiation that included the main economic powers only and thus marginalized the developing countries from the main table of the negotiations. More broadly, he argues that these negotiations took place within “trade rounds” that created a “pressure cooker” atmosphere that favoured the stronger economic powers. Wilkinson thus calls for a

reform of the GATT that is not piecemeal, but that recognizes these underlying inequities in the system and seeks to “substantially refashion the trading system” so that trade opportunities can be made available to all on a more equitable basis.

The imbalances of the current trading system have been a subject of critique by many academic writers and WTO members.⁴ Indeed Wilkinson’s assertions are part of a growing literature that has called for the inequities of the GATT/ WTO to be addressed.⁵ The role of developing countries in the current Doha Round has been unprecedented, with the building of powerful developing country groupings or alliances such as the G20, the NAMA 11, the G33 and the ACP, LDC and Africa Group amongst others. NGOs and other civil society groups too have played an important part in the unfolding critique of the past practices and inequities of the WTO rules.⁶ These criticisms have highlighted the legitimacy crisis of the WTO.⁷ The upcoming Ministerial Conference of the WTO in December 2009 presents an opportunity to review these inequities in the system and develop proposals to address them.

In addition to the issues of: the objectives and goals of the WTO; coherence between the WTO, the Bretton Woods institutions, and the UN and its bodies; coherence between aid and trade; and decision making in the WTO, there are at least two other issues that will require careful assessment by WTO members with a view to making some reforms. These include; a review of the current guidelines and practices of the WTO accessions process with a view to their reform and; the review of the functioning of the WTO bodies responsible for monitoring, notification and transparency with a view to their strengthening. The latter issues will not be discussed here and will require more careful consideration elsewhere.

This chapter will briefly set out the debate on the issues, that relate to the objectives, goals and mandate of the WTO (in section two); the coherence of the WTO with other global economic institutions, and coherence between aid and trade (in section three); and the decision making process and negotiating methods of the WTO, including the role of the WTO chairs in the negotiations (in section four). The chapter will then tease out the issues that require reform within the more general injunction advanced by Wilkinson (above) that these reforms should not be piecemeal but should lead to a more fundamental refashioning of the trading system towards making it more equitable, balanced, and development oriented, and that is more inclusive and transparent in its decision making.

7.2. Prioritizing “Development” as a goal of the WTO (from mercantilist ad hoc organization to global public good institution)

The argument that the WTO’s objectives, goals and mandate should require it to play a role in facilitating and advancing the development objectives of developing countries has been intensely debated by WTO members⁸ in the current Doha Round negotiations and in the literature in recent years.⁹ This has been particularly topical since the WTO Doha Round has been named the “Doha Development Agenda”. Some theorists have argued that calling the Doha Round a development round was probably unwise as it has created too many expectations of the WTO that it cannot fulfill.¹⁰ Hoekman and

Vines argue that “presumptions that an “equitable and fair” round would (could) address the development concerns expressed by many during 1997-2001 implied a misunderstanding of both the role and the institutional capacity of the WTO”. Other theorists have made a strong case for the development dimension of the WTO to be recognized.¹¹ The latter analysis has argued that a constitutional analysis of the WTO does not make it clear that the WTO is a development institution or that it is not. This assessment thus calls for a “negotiated clarification of the goals of the WTO that more transparently prioritizes development as a goal of the institution”.

The debate on the development objectives of the WTO must begin with the GATT that preceded its creation. Indeed the debate really began, perhaps most rigorously in the ITO that was to become part of the triad of the Bretton Woods institutions, and to house the GATT. We will thus briefly outline some aspects of the earlier debate in the ITO on trade and development and then set out how the GATT and the WTO have dealt with this question in their guiding documents. The ideology or narrative of the GATT was that of free trade as a good in itself. This narrative or ideology has become a subject of rigorous critique in recent years and an alternative vision is being born. This section will evaluate this trend below. This section will then argue that the need to prioritize development as an overriding goal of the WTO, as distinct from its core functions, is overdue and necessary. In considering this question it is important to first clarify what is meant by “development” and in particular what this means in the context of the WTO.

i) The Development Dimension of the WTO: What is meant by Development in the context of the WTO?

The debate about development in the WTO is often assumed to be about increasing the effectiveness of special and differential treatment for developing countries in the WTO. Development is thus regarded as an afterthought, as a “nice to do” or at worst an “optional extra”. This perception of the development dimension is misconceived. We have argued that developing countries have fundamental interests in the WTO that are at the core of the trading system and its functioning.¹² These fundamental interests are described below in the four elements of the development dimension of the multilateral trading system: Fair Trade; Capacity Building; Balanced Rules; and Good Governance.

The above conceptual framework, draws on the work of Amartya Sen who defines development as ..” the removal of unfreedom:...”¹³. Development in the view of Sen is the process of expanding human freedoms. These substantive freedoms include elementary capabilities like being able to avoid such deprivations as starvation, and enjoy political participation. Human freedom is seen as the pre-eminent objective of development. It is also seen as the means of achieving development. The focus on rights, opportunities and entitlements, he argues, contribute to the expansion of human freedom and promotion of development. Thus, for Sen, Development is understood as the process of removing these unfreedoms.

We have identified four types of unfreedoms or deprivations, in Sens’ work, that are relevant to our discussion of development and the multilateral trading system. Firstly, Sen argues that deprivations can result when people are denied the economic

opportunities and favourable consequences that markets offer and support. Secondly, Sen argues that poverty should be understood not so much as low incomes but as a deprivation of basic capabilities. Thirdly, whilst Sen argues for government regulation to enable markets to work more effectively, he states that a system of ethics is required to build vision and trust for the successful use of the market mechanism. Sen urges policy makers to base these values on social justice as the bases and objective of public policy. Sen recognizes that individuals would assert their “prudent and material concerns” but argues that policy makers can balance these concerns with the values of social justice through public discussion. Fourthly, Sen argues against the view that the denial of political liberty and basic civil rights is “good” for rapid economic development and states that the deprivation of the opportunity to participate in crucial decisions regarding public affairs is to deny people the right to develop and strengthen a democratic system. The latter is seen as an essential part of the process of development.

In applying the above definition of Development to the trading system, it could be argued that fair trade would remove the obstacles that developing countries experience in exporting their products to developed country markets and create opportunities for them to advance their development. Secondly, increasing the capacity of developing countries, especially the poorest and most marginalized, to develop their comparative advantage to produce and export would provide the necessary, human, institutional, productive and export capabilities, needed by these countries to level the playing field in the trading system. Thirdly, establishing rules that ensure a fair balance between; the costs and the benefits of new agreements, the values and interests of developed and developing countries, appropriate flexibility for developing countries to implement development policies and the need to strengthen the rules based system, would ensure both the legitimacy and sustainability of these rules. Fourthly, by building a transparent and inclusive system of decision making in the WTO, members will be contributing to the capacity of developing countries to participate effectively in the making of decisions that are both democratic and consistent with the above three dimensions of development.

Advancing the development dimension in the WTO is of systemic interest to all - including developed and developing countries – who seek to build and advance a legitimate and strengthened multilateral rules based trading system. In developing the above approach to development and the multilateral trading system, it is recognized that the WTO is essentially a trade negotiating body and not a development institution. However, it is argued that the WTO cannot be understood in simple mercantilist terms. This tension between mercantilism and development has been present in the multilateral trading system since the earliest days of the GATT. We proceed to discuss the objectives, goals and mandates of the WTO and the GATT that preceded it below.

ii) Objectives, Goals and Mandate of the GATT and WTO

Trade negotiators did not set out to create a World Trade Organization when they began to negotiate the Uruguay Round at Punta Del Este in 1986.¹⁴ However, at the end of Uruguay Round the WTO had been created and it came into being on the 1st of January 1995. This was largely a pragmatic decision that was made as part of the consideration for the more efficient functioning of the GATT system and to house the new agreements of the Uruguay Round that included Services and Intellectual Property

Rights and that created a new dispute settlement system and Trade Policy Review Mechanism.¹⁵ However the new WTO was not intended to be an “ITO” – the organization that was created in 1948 by the Havana Charter and that never came into force as the US Congress decided to abandon it in 1951.

The ITO

Developing Countries were active in the negotiations on the ITO Charter as it was understood that the GATT would be subsumed within the ITO once it was created. Thus the debates about the nature and underlying principles that governed the trading system took place in the ITO negotiations, rather than the GATT.

During the first meeting of the negotiations on the ITO Charter, held in London in 1947, the US put forward its proposed Charter (which had been agreed between the US and the UK much earlier). However, the Brazilian delegation had also put forward a “Proposed Charter”. The first draft of the ITO charter proposed by the USA in December 1945 had ‘no provisions on economic development, nor were there any special rules or exceptions for developing countries’.¹⁶ The Brazilian Charter engaged with the US proposal on the most favoured nation (MFN) principle by stating that this should be adhered to unconditionally only by countries in the advanced stage of development. They both also called for a ban on quantitative restrictions. However the US proposal called for a broad exemption on the ban for any agricultural product.

The principle of reciprocity was debated in the ITO negotiations with developing countries raising concerns that they lacked the bargaining power to enable them to extract concessions of value from developed countries on a reciprocal basis and therefore there should be some consideration for the reality that developing countries were not able to grant reciprocal tariff cuts of equal value to that of the more advanced developing countries.¹⁷ In spite of these objections this principle was adopted as a core principle in the GATT and incorporated in the preamble of GATT 1947.

The Brazilian proposal also called for a recognition of the problems faced by less developed countries as well as the need for special measures to assist these countries with their development.¹⁸ During the debate on the ITO Charter in the United Nations Economic and Social Council, developing countries were able to insert an amendment which called for the ITO negotiations to ‘take into account the special conditions which prevail in countries whose manufacturing industry is still in the initial stages of development’. The US rejected this proposal, so it did not get into the ITO Charter.

However, notwithstanding these failures of the developing countries in the negotiations on the ITO, the Havana Charter that emerged from the UN Conference on Trade and Employment set a high standard for the ITO. It set as the overall guideline the need to attain “higher standards of living, full employment and conditions of social progress and development” as set forth in the Charter of the United Nations. It also set as one of its aims to “foster and assist industrial and general economic development, particularly of those countries that are in the earliest stages of development...”. Chapter two of the Charter deals with the need for members to cooperate to address issues of unemployment

and to develop policies for full employment and fair labour standards and chapter three commits members to cooperate on matters related to economic development and re-construction.

The GATT

Developing countries have since the formation of the GATT been arguing for their particular development situations and interests need to be taken into account.¹⁹ However, the demand by developing countries for increased market access for products of export interest to them, such as agricultural products and textiles, were largely ignored. Instead these products faced ever increasing protection in developed countries for over 50 years since the formation of GATT/WTO. At its inception in 1947, the newly formed GATT did not recognize the special situation of developing countries. The fundamental principle of the agreement, referred to as the Most-Favoured-Nation Treatment and provided for in Article One of the GATT, was that rights and obligations should apply uniformly to all contracting parties. Thus, in the early period of the GATT (1948 to 1955) developing countries participated in tariff negotiations and other aspects of GATT activities as equal partners. However the GATT did go on to incorporate a number of exceptions to its general principles of most favoured nation (MFN)²⁰ and national treatment,²¹ through the so-called special and differential treatment provisions. However, these provisions were considered to be largely ineffective. The WTO and the GATT before it has thus been criticized by developing countries, and civil society groups as being unfair, unbalanced, and prejudicial to the interests of developing countries.²² By the time of the Doha Round developing countries succeeded in obtaining as part of the mandate of the round the need to make these special and differential treatment provisions, “precise, effective, and operational”.²³

However we have argued elsewhere that the focus on special and differential treatment as the main development concept has sidetracked the developing countries from their core development needs in the multilateral trading system. These core development needs or dimensions of development have been argued to be: fair trade, capacity building, balanced rules and good governance.²⁴

Whilst several GATT provisions did attempt to address the special situation of developing countries, these provisions were largely negated by the persistent increases in protection in developed countries of products of interest to developing countries. In addition, these development provisions were increasingly eroded in the later GATT Rounds, particularly the Uruguay Round. These trends can be summarized as follows:

Firstly, whilst a number of positive provisions, in favour of developing countries, were included in the GATT Framework during the period 1955 to 1979, there was a steady increase in the protection and support for temperate zone agricultural products in industrialized countries. To a large extent this was also due to the existing rules of GATT which, either permitted these protective and trade distorting measures, or contained disciplines which were not clearly defined in the GATT. In the area of Textiles and Clothing, a multilateral framework was adopted, in derogation of GATT rules for imposition of discriminatory restrictions on low-wage or low-cost imports causing

market disruption. This began in 1961 as the Short-Term Arrangement Regarding International Trade in Cotton Textiles and was followed in 1962 by the “Long-Term Arrangement Regarding International Trade in Cotton Textiles”. The Long-Term Arrangement which lasted twelve years, was replaced by the Multi-Fibre Arrangement (MFA) in 1974 and extended to man made fibres and wool.

This trend of continued protection by developed countries of the products of interest to developing countries was to continue during and after the Uruguay Round. In the area of Agriculture, protection levels in developed countries remained extremely high providing a barrier to developing country exports. And high levels of export and domestic support subsidies in developed countries continued to distort global agricultural prices and trade. Even in the area of Textiles and Clothing, the agreement reached in the Uruguay Round to eliminate quotas was backloaded to the end of the phase out period in 2005, reducing its commercial significance for developing countries.

Secondly, by the time of the Uruguay Round there was a significant shift in the nature of special and differential treatment for developing countries. The single undertaking required that they had to accept all the agreements reached in the round even if they did not participate in the negotiations on all of them. Thus the concept of non-reciprocity became restricted to longer implementation periods and lower tariff reductions.²⁵

Thirdly, the trade related technical assistance needs of developing countries were explicitly recognized by the GATT Contracting Parties as early as 1961, encouraging developed countries to address the production and marketing needs of developing countries in their technical assistance programmes. These measures were largely of a best endeavor nature in that they did not impose mandatory obligations on the industrialized countries, but instead encouraged their implementation of these provisions.²⁶

The WTO

In 1994 the preamble of the Marrakesh Agreement establishing the WTO set out the objective of “sustainable development” and expressly referred to the need for “positive efforts to ensure that developing countries secure a share in the growth of international trade commensurate with the needs of their economic development”. This was delivered through some S&D provisions which were largely hortatory.²⁷

The Doha Declaration, launching the Doha Round in November 2001 states:

Paragraph 2 of the Doha Declaration states: “The majority of WTO Members are developing countries. We seek to place their needs and interests at the heart of the Work Programme adopted in this Declaration”.

The Doha declaration recalled the preamble of the Marrakesh Agreement and went on to state that “In this context, enhanced market access, balanced rules, and well targeted, sustainably financed technical assistance and capacity- building programmes have important roles to play”.

This tension between the mercantilist and the development objectives of the GATT/WTO has been based not only in the different interests of developed and developing countries but also in the theoretical perspectives that sought to defend and advance the above interests. In the section below we turn to the discussion on these different theoretical perspectives.

iii) Developments in Trade Theory: What is the new narrative?

The 1990s has witnessed a continuation of the processes of globalization, characterized by increased flows of trade, investment and technology in the global economy. However, these flows have continued to be uneven and inequitable, with a concentration in developed countries. Whilst Globalization has however provided increased opportunities for the development prospects of some developing countries, the vast majority (mainly from Africa) have failed to take advantage of these opportunities, resulting in their increased marginalisation in the world economy.

The response to these processes has been unprecedented mass action by civil society groups, as witnessed by the demonstrations seen in Seattle, Genoa and other World Bank/IMF, G8 and WTO conferences. The civil society critique of free markets and unbridled capitalism is a continuation of the debate about the balance between markets and state. In the 1980s, the influence of Reagan-omics and Thatcher-ism permeated the policies of the multilateral institutions, especially the World Bank and IMF, and saw the development of “one size fits all” remedies for the problems of all developing countries. This so-called “Washington consensus” was critiqued by many who argued that this “consensus” was in stark contrast with the successful development experiences of East Asian economies including Japan, and the first and second generation newly industrialised countries (NICs). In these experiences the state played a leading role in guiding the market²⁸.

In his book²⁹, entitled “The Roaring Nineties”, Joseph Stiglitz critiques the policies of the United States during the last decade of the 20th Century and argues that in its domestic policy, the United States got the balance between state and markets wrong. More importantly, the United States continued to advance this free-market “Washington consensus” internationally, calling for free trade, de-regulated financial markets and the privatisation of state enterprises. These policies were advanced both bilaterally and through their influence in the Bretton Woods institutions and the WTO. Stiglitz, who was the economic adviser to Clinton, and then Chief Economist of the World Bank during the 90s, points to the lack of coherence in U.S. policy when he states that while “we pushed the ideology of free market...we did not think about the impact of our policies on the poor in developing countries, but on job creation in America”. In the area of trade, more specifically, he argues that “the completion of the Uruguay Round turned out to be one of our greatest failures”... “the U.S. pushed other countries to open up their markets to areas of our strength...but resisted efforts to reciprocate”.

Gordon Brown signaled a few days before the London G20 Summit that the Washington consensus was dead!³⁰ He was not alone in placing part of the blame for the current economic crisis on the prescriptions of the Washington Consensus. Indeed, Alan Greenspan himself stated in a Financial Times oped that he erred in believing in the

self-regulating capacity of the market. Martin Wolf led a long line of commentators of the Financial Times in stressing the need to move away from a belief in unfettered free markets and for a healthier relationship between the state and the markets.³¹ Indeed another long line of celebrated economists, including some Nobel prize winners such as Stiglitz,³² Paul Krugman and Amartya Sen have been making this case for some time.

Many other development economists such as Robert Wade, David Evans, Adrian Wood and Hans Singer, amongst others, were writing critiques of the Washington Consensus theoretical claims, before and after the 1990s.³³ They warned against adopting the potentially negative development impact of its policies. Yet the World Bank and the IMF went ahead and made these policies part of their conditions for concessional lending to developing countries.

Unsurprisingly, an internal World Bank report³⁴ commissioned by the previous bank President James Wolfenson, found that the trade policy advice given by the Bank to a large number of African, Asian and Latin American countries “underestimated the complexity of complementary reforms in the investment climate, paid inadequate attention to external factors, and gave insufficient attention to analyzing the poverty distributional outcomes”. The damage of course had already been done. In many countries too rapid liberalization unsupported by complementary policy to build supporting institutions, appropriate regulatory framework, infrastructure and supply side support led to the destruction of existing industries and employment, reduced growth and increased levels of poverty and inequality.

Thus the recent OECD study on Emerging Economies that explicitly prefers the Washington Consensus beliefs on free trade and takes a dim view of industrial policies in developing countries is somewhat anachronistic.³⁵ The fear expressed by the authors of a shift towards more selective industrial policies suggests that this has no place in their preferred trade policies. The dichotomy between free trade and protectionism or globalization and industrial policies is a false one. Indeed the notion that free trade is a good in itself cannot be subscribed to. It is ideological. The notion that free trade, or trade liberalization, will deliver on growth and development, without the necessary supporting and complementary set of policies, and without the appropriate sequencing and timing, is supported neither by economic theory nor empirical evidence. Therefore the authors’ continued claims in this regard is ideological.

Trade liberalization must serve a purpose. In our view this has to be that of increased growth, economic development, decent work, the reduction of poverty and the raising of living standards. Industrial policies have long been a legitimate tool for economic development in developed countries. Prof Ha-Joon Chang, a Korean Professor at Cambridge University, has provided an economic history perspective that has shown how developed countries have used these tools including trade policies and tariffs to advance their own industrial development.³⁶ More recently Erik Reinert, has contributed a massive study arguing a similar case.³⁷ The experience of East Asia has been attributed largely to their judicious use of these policy tools.³⁸

In his assessment of the emergence of a post-Washington Consensus, Stiglitz argues that there is a consensus that international economic institutions have created unfair rules of the game, especially in the case of trade. He argues that there is no consensus that rapid liberalization, especially in a country of high unemployment, will lead to faster economic growth. This may lead to more unemployment. He states that “the usual argument that liberalization frees resources to move from unproductive, protected sectors into more productive export sectors is unconvincing when there are ample unutilized resources already available. In these cases, there is an emerging consensus: countries should be given room to experiment, to use their own judgement, and to explore what might work best for them”.³⁹

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Dani Rodrik⁴¹ has thus called for “the notion of policy space to be enshrined in the constitution of the WTO”. He argues that the goal of this would be to enable developing countries “to employ the kind of trade and industrial policies needed to restructure and diversify their economies and set the stage for economic growth”. Re-inforcing the arguments of the writers cited above he argues that countries that have successfully globalized have used policies that are currently not available to other developing countries due to WTO rules on subsidies, domestic content rules and reverse engineering of patented products. He argues that policy space is also required to ensure that social and political goals such as food security are compatible with the WTO rules. These changes in his view would contribute to making the WTO stronger, not weaker.

In the section below we discuss the policy implications of this changing narrative on trade policy.

iv) Conclusion: Development should be the objective, and goal of the WTO.

Since the onset of the Doha round there have been increasing pressures and demands by developing country delegates, NGOs and academic writers for the development dimension of the WTO to be recognized⁴² and indeed mainstreamed into the WTO.⁴³ The GATT 1947 did not commit the WTO to development objectives although it did attempt to address some concerns of developing countries. Whilst several GATT provisions did attempt to address the special situation of developing countries, these provisions were largely negated by the persistent increases in protection in developed countries of products of interest to developing countries. In addition, these development provisions were increasingly eroded in the latter GATT Rounds, particularly the Uruguay Round.

In 1994 the preamble of the Marrakesh Agreement establishing the WTO set out the objective of “sustainable development” and expressly referred to the need for “positive efforts to ensure that developing countries secure a share in the growth of international trade commensurate with the needs of their economic development”. This was delivered through some S&D provisions which were largely hortatory.⁴⁴ The Doha Declaration that launched the current Doha Round went further by stating in Paragraph 2 of the Doha Declaration: “The majority of WTO Members are developing countries. We seek to place their needs and interests at the heart of the Work Programme adopted in this Declaration”. The Doha declaration recalled the preamble of the Marrakesh Agreement and went on to state that “In this context, enhanced market access, balanced rules, and well targeted, sustainably financed technical assistance and capacity- building programmes have important roles to play”. However, the WTO still lacks clarity as to its main goals and objectives which are often confused with its main functions of trade opening and rules creation. Further clarification of the mandate of the WTO will help to build clarity of purpose and transform it from an ad hoc mercantilist institution to a global public good.⁴⁵

A clarification of the WTO’s objectives, goals and mandate will thus align the institution with the developments in both the changing dynamics amongst its members with developing countries demanding greater clarity in its development goals and theoretical insights gained from the new post Washington consensus. It will also address the legacy of an imbalanced institution that was created for its principle architects in the post war era. Given that the majority of members are developing countries the institution should be aligned with their needs as the Doha Round states in its declaration.

It is for these reasons that the upcoming conference of the WTO provides WTO members with the opportunity to undertake a “negotiated clarification of the goals of the WTO that more transparently prioritize development as a goal of the institution”. The section below will proceed to discuss how greater coherence between the WTO, the Bretton Woods institutions, and the UN and its Agencies can build coherence on the basis of development as an overriding or high level goal.

7.3 The WTO and Coherence

From the time of its creation the GATT or the aborted ITO that was to house the GATT, were part of the triad with the other two Bretton Woods institutions, the IMF and the World Bank. The GATT thus expected these institutions to co-ordinate their activities and work together. Art III of the Marrakesh Agreement refers to achieving greater coherence in global economic policy making between the IMF and the World Bank and affiliated agencies. The WTO Hong Kong Ministerial Conference expanded this mandate.⁴⁶ At least two of the agreements on the LDC Special and Differential Treatment proposals addressed the issue of coherence. The first agreement called for donors, multilateral agencies and international financial institutions to ensure greater policy coherence with WTO agreements in the conditionalities that they often impose on developing country members. A second agreement re-affirmed that LDCs will only be required to undertake commitments and concessions to the extent consistent with their development needs and capabilities and directed the WTO to co-ordinate its efforts

with donors to “significantly increase aid for trade related technical assistance and capacity building”.

This section will argue, firstly, that there is a need to strengthen the WTO mandate on coherence between the WTO and the Bretton Woods Institutions, and the WTO and the UN Bodies and Agencies. However it will be argued that this coherence of policy needs to be guided by the high level goal of development. The section above has argued that the neo-liberal philosophy and Washington Consensus which argued for trade liberalization as a good in itself have become obsolete and discredited.⁴⁷ This section will argue that several global summits of global leaders have re-affirmed the overriding global imperative to prioritize development as the overall high level goal of international global economic organizations and the WTO’s coherence mandate requires that this change is acknowledged and recognized in its guiding principles (in sub-section i). Secondly, it will be argued that the WTO mandate on coherence requires it to strengthen its relationship with the UN institutions, in particular, with UNCTAD (in sub-section iii). Thirdly, this section will also explore how the WTO programme on Aid for Trade can be further advanced within the WTO in the context of its coherence mandate (in sub-section iii).

i) Coherence in trade policy: the WTO and the Bretton Woods institutions and the WTO and the UN bodies and agencies

In a recent analysis of the coherence between the WTO, the other Bretton Woods institutions and the UN agencies, Alan Winters⁴⁸ argues that the WTO and the other two Bretton Woods Institutions are already coherent and “incoherence is only a matter of detail”. Winters is thus deeply sceptical of the need for greater coherence between the WTO and the IMF and the WB and indeed with the UN bodies. However, he states that when one includes the other UN agencies such as UNCTAD, UNDP, ILO etc the coherence gap widens. Winters observation is correct in that the Bretton Woods institutions have generally shared a similar perspective on the role of markets and trade liberalization in development. These ideas or policies that bound the GATT and the two Bretton Woods institutions became accentuated during the 1980s and 1990’s and articulated as the Washington Consensus and also popularly known as neo-liberal policies.⁴⁹ The basic policies that they propagated included: macro-economic stability, liberalization and privatization.

Several writers have criticized the loan conditionalities of the World Bank and the IMF that relate to trade. These policies, it is argued, have led many developing countries to sharply reduce their applied tariff rates for agriculture and industrial products. Many of these countries were thus not allowed to raise their applied rates up to their bound rates, when cheaper imports adversely affect local production, even though WTO rules allow them to do so.⁵⁰ Martin Khor cites a FAO study on the impact of liberalization in agriculture on small farmers and food security in 14 developing countries. The study finds that liberalization had an adverse impact on these countries and that this was due to the loan conditionalities applied by the WB and IMF although these countries had relatively high bound rates that could have been raised to protect their domestic agriculture.

The current economic crisis has unleashed a furious debate on the philosophical underpinnings of the so-called “Washington Consensus”, that was based on market fundamentalism and free trade.⁵¹ Thus the basic underpinnings of the theory and philosophical basis of these institutions is under review (see discussion above) and the debate on coherence with the Bretton Woods institutions and the WTO or the WTO and the UN agencies such as UNCTAD and the UNDP must take place in the context of this new debate. In this context the philosophical underpinnings and goals of the WTO perhaps do require greater clarification. The reforms of the WTO must therefore re-consider the philosophical basis of the existing relationships with these institutions as well as the agenda and modalities for cooperation and coordination.

Indeed Winters does acknowledge the need for “consistency of policy objectives from a higher level and achieving a shared understanding of how policy affects the world”.⁵² He argues that the OECD pioneered the idea of “policy coherence for development” since 1991. He argues that this concept included the need for mutually supportive policies to support development not only in agriculture, trade and finance but also on environment and migration.

Moreover, the goal of Development has increasingly become the overall goal of the world's leaders and thus the WTO mandate on coherence too requires it to adopt this goal. In 1993 the Vienna Declaration adopted by the Vienna World Human Rights Conference proclaimed the “duty of the international community to support the development process in poor countries” and called for the establishment of “equitable economic relations and a favourable economic environment at the international level” in order to foster development.⁵³ World leaders at the UN Millennium Summit in September 2000, in committing the world to reduce poverty by half by 2015, included as one of the goals, that of developing “an open, rules based, predictable, non-discriminatory trading and financial system”. At the 2002 Monterrey Conference on financing for Development” these same world leaders agreed to forge a partnership between developed and developing countries” – to advance the Millennium Development Goals - the Millennium Development Compact. The Doha Development Agenda, agreed by WTO members in November 2001, should be seen in this context, as the WTO is an essential part of the global effort needed to achieve these aims.

Thus the further strengthening of the relationship between the WTO and the Bretton Woods Institutions, and the WTO and the UN bodies and agencies, in accordance with the Marrakesh and Hong Kong mandates must be based on the high level goal of development and the emerging post-Washington consensus discussed above. We now turn to a discussion of how to build greater coherence between the WTO and the UN and its agencies focusing particularly on the need to strengthen the relationship between the WTO and UNCTAD.

ii) Coherence between the WTO and UN bodies and agencies: Restoring the Role of UNCTAD

The popular stereo-typed characteristic of a development institution is that it is quintessentially concerned with imparting aid or development finance.⁵⁴ It is for this reason that Hoekman and Vines argue that “calling the Doha Round the Doha

Development Agenda probably raised unrealistic expectations regarding what the trading system is capable of doing for development”. The United Nations Development Group comprises some twenty-eight agencies (and five observers) working on development including UNHCR, ILO UNCTAD, UNEP UNICEF, etc, and the WB as an observer. These agencies engage in the development process in their respective spheres through financial aid, technical assistance, standard setting, by providing a forum for discussion etc. Thus although all these agencies and bodies of the UN and Bretton Woods have different core functions, they contribute to the high level development objective and goal.

Thus it is argued that the above claim by Hoekman and Vines that the WTOs adoption of a development agenda is probably a mistake is both misplaced and suffers from an erroneous conception of development and an ideological belief in market access as a goal in itself. Thus Hoekman and Vines assert that WTO members should accept that “the WTO has a specific task – enabling market access – that it should not be asked to go beyond”.⁵⁵ Indeed market access does not even describe the functions of the WTO adequately as the WTO and the GATT before it were equally concerned with negotiating trade rules. In addition we have argued above that the WTO and the GATT before it were always concerned with capacity building and aid. The formal adoption by the WTO of a work programme on Aid for Trade in Hong Kong has now placed the issue of aid (and not its delivery) on the agenda of the WTO.

It is also a clear recognition that market access in itself is inadequate for many developing countries and that capacity building efforts including supply side support is necessary to enable these countries to take advantage of market access opportunities in global markets. Many market access issues require a better appreciation of the needs of developing countries, and the WTO would do well to strengthen its relationship with these institutions. The market access negotiations in the WTO could benefit from debate in the FAO on food security, the debate on policy space and industrial development in UNIDO and the discussion on movement of natural persons in UNHCR. In addition, the ILO is well placed to share its analysis of the social impact of trade agreements. The current debate on climate change in the UNFCCC will no doubt draw in the WTO in its discussion on trade and climate change as the negotiations for reductions in carbon emissions intensifies on the road to Copenhagen (in December 2009).

The WTO already has a formal working relationship with several of these institutions. The WTO should participate in the UN Development Group and jointly contribute to the high level objective of Development set by the UN in its UN Millennium Declaration and the affirmation of this objective by several subsequent global summits (discussed above). However, the principle institution that the WTO should strengthen its relationship with and with which the WTO shares the greatest common interests and a complementary work programme is UNCTAD. Strengthening this relationship will help the WTO to develop its analytical capacity and strengthen its contribution to the overall goal of development. Indeed UNCTAD was created to serve this very purpose.

In the United Nations the influence of newly independent developing countries, led by the process of decolonization in Asia, Africa and the Caribbean, gave rise to the creation

of the United Nations Conference on Trade and Development (UNCTAD) in 1964. Part IV of the GATT also agreed to establish institutional arrangements ... “to collaborate with the United Nations and its organs and agencies in matters of trade and development policy...”. In this context, the International Trade Centre (ITC) was established (later to become an agency of UNCTAD and the GATT)..

However, notwithstanding its success in the earlier years UNCTAD had begun to lose its status as the premier international organization that dealt with trade and development issues in the 1990s. In addition, during the past few years many countries of the North have been perceived to want to weaken UNCTAD. The Secretary General of UNCTAD Dr Supachai established a Panel of Eminent Persons to advise on the how to enhance the development role of UNCTAD.⁵⁶ The Panel argued that UNCTAD should retain its role as a think tank on development issues and that its role in policy analysis, intergovernmental deliberations on development issues and the provision of technical assistance and capacity building to developing countries should be re-invigorated. The Panel also underscored the complementary role of UNCTAD with the WTO arguing that whilst “the WTO concentrates on rule-making and rule-enforcing in the area of trade, while UNCTAD deals with trade-related development issues”.

Thus the challenge for both the WTO and UNCTAD in the next few years is how to strengthen this complementary role, each building on its own comparative advantages and different but complementary roles in the field of trade and development and both contributing to the overall goal of development. Developed countries would need to reverse some of their earlier efforts to weaken UNCTAD and together with developing countries adopt the recommendations of the Panel to re-energize UNCTAD's role. As Yash Tandon has argued both the North and the South have an interest to strengthen UNCTAD and not to weaken it.⁵⁷

We now turn to the discussion on strengthening the coherence between Aid and Trade below.

iii) Coherence: The WTO and Aid for Trade

Since the WTO Hong Kong Ministerial Conference the issue of Aid for Trade has become part of the agenda of the WTO. The Hong Kong Ministerial Declaration⁵⁸ recognized the importance of “Aid for Trade” and called on the Director General of the WTO to a) create a Task Force that “shall provide recommendations on how to operationalize Aid for Trade” to the General Council by July 2006 and b) to consult with members as well as the IMF and World Bank and other relevant international organizations “with a view to reporting to the General Council on appropriate mechanisms to secure additional financial resources for Aid for Trade”. This Task Force⁵⁹ was constituted by the WTO General Council in February 2006 and has submitted its recommendations to the General Council at the end of July 2006.⁶⁰ Since then the WTO secretariat has developed a monitoring system to track aid flows and has attempted to monitor the implementation of the mainstreaming of aid for trade in national development frameworks. To review the implementation of the above processes the WTO secretariat has held various regional conferences in Africa, Asia and Latin

America and two Global Review Conferences in Geneva, with the second one held on the 6th and 7th of July 2009.

The challenge for WTO members is to ensure that Aid for Trade is not utilized as an instrument to “buy off” the poorer developing countries or as a “sweetener” for imbalanced and unfair trade deals. The WTO needs to focus on its mandate to increase Aid for Trade and WTO members should use the concept as a negotiating lever to achieve this objective for the poorest members. The mandate on operationalizing Aid for Trade needs to build coherence between the donor and the recipient countries in a manner that ensures mutual accountability, ownership and transparency as the Paris principles have called for. To advance the latter objective the discussion below will draw on the experience of the Trade Policy Review Body and the writers recommendations made during the East African Community Trade Policy Review.⁶¹

Increased Trade *and* Aid are both essential to enhance the development of many developing countries. Several global summits since the millennium summit have reinforced the commitment of world leaders to increase overall ODA levels to meet the Millennium Development Goals. The Doha Development Agenda and the call for increased “Aid for Trade” that has gained momentum in 2005/2006 must be seen in this context. The Commission for Africa, initiated by the UK prior to the Gleneagles G8 Summit, and the decisions of the Gleneagles Summit provided the momentum for commitments by developed countries to increase overall levels of ODA, and increased Aid for Trade. The WTO Aid for Trade task force which was established in February 2006, as a consequence of the Hong Kong ministerial conference, reported to the WTO General Council in July 2006. The report has taken a broad approach to the scope of Aid for Trade incorporating support for supply side issues and infrastructure. The report does take on board the proposals of developing countries for Aid for Trade to be additional, predictable and effective.

It has sometimes been misconstrued that developing countries that have called for the WTO to be re-balanced from its current bias against developing countries are attempting to make the WTO a development institution, and thus departing from its essential function which is to be an effective rule based trading system. However, in the various debates in the WTO, developing countries have not made any proposals to make the WTO a delivery mechanism for aid, but have attempted to utilize the WTO as a point of leverage to increase Aid for Trade; to build coherence between WTO and the aid agencies; and to build transparency and mutual accountability.

Developing countries have called for increased coherence between the WTO and other aid agencies (as the second LDC proposal referred to above states). This is line with developments elsewhere in the multilateral system. Goal 8 of the Millennium Development Goals (MDGs), agreed by the UN Millennium Summit in 2000, called for a global partnership between developed and developing countries to address the reduction of poverty, increased development, and the integration of developing countries in the world economy. At the same time African leaders were building their own vision to address the challenges of poverty eradication, peace and security and their effective

integration into the world economy. The New Partnership for Africa's Development (NEPAD) agreed by the Implementation Committee of Heads of State in October 2001, called for a new partnership between Africa and the international community, and committed itself to build democracy and good economic governance as preconditions for development and poverty eradication.⁶² The Paris Declaration⁶³ on aid effectiveness, agreed in March 2005, by ministers from developed and developing countries and heads of multilateral and bilateral development institutions, and its commitment to ownership, harmonisation, alignment, results and mutual accountability, is also an important milestone in strengthening the concept of partnership between donor countries and developing country partners.

The East African Community Trade Policy Review

Faced with the development situation of the poorest countries in the world, it would be interesting to ask the membership of the WTO how to apply the above-stated concepts to the multilateral trading system in general and to the Trade Policy Review Mechanism in particular? The approach could be to define the responsibilities of both the developing countries and their developed country partners about how to address these development challenges. In the last trade policy review of the East African Community (Kenya, Uganda, and Tanzania) the writer proposed the following responsibilities for developing and developed countries.⁶⁴

What are the responsibilities of the developing countries?

Developing countries can be said to have responsibilities in at least three levels. First, they must provide leadership in developing their own national economic development vision and implementation plans and develop transparent systems of economic governance and accountability. Secondly, developing countries must make every effort within their means to implement their obligations to the multilateral trading system thereby contributing to an effective rules based system. Thirdly, developing countries must make every effort within their means to participate in the multilateral trading system.

What are the responsibilities of the developed countries?

Their responsibilities can be described in a four-fold manner to:⁶⁵

- provide a fair opportunity for developing country exports to gain access into developed country markets (and not stifle the development of developing countries through the use of trade distorting policies);
- build sufficient capacity in developing countries that are in need to enable their effective participation in the global trading system (the recent Aid for Trade initiative is a step in the right direction);
- ensure that the rules of the trading system are balanced and do not impose more burdens than benefits to developing countries; and
- facilitate the effective participation of developing countries in the WTO by ensuring that the WTO is inclusive and transparent.

Thus, the writer argued⁶⁶ that in a review of this nature it is not only the policies of the countries in question that are under review but also the policies and actions of the partner countries in achieving the objectives of poverty reduction, development and more effective global integration. A related question that could be asked is what is the responsibility of the more advanced developing country neighbours and trading partner of these developing countries?

The approach called for is thus to leverage Aid for Trade to increase overall ODA, and Aid for Trade in particular. It is to sharpen the focus on the need for increased trade solutions and aid to advance the development of developing countries. The WTO Aid for Trade work programme should encourage ownership, transparency and accountability as the Paris Principles have agreed. However, Aid should not become a substitute for trade solutions but a necessary complement.

We now turn to the discussion of how to strengthen the governance of the WTO with a particular focus on decision making. In the section below we discuss how to strengthen the consensus principle, the need to move away from small group decision making and to strengthen the guidelines for WTO chairs.

7.4 WTO Governance and Decision Making

This section will firstly, discuss the decision making and the tendency towards negotiating in the WTO in a historical context. It will discuss the views of the Sutherland Report and the Warwick Commission on the consensus principle and variable geometry. We will argue that the consensus principle was one of the few victories of developing countries in the ITO that was carried into the GATT and has since distinguished the WTO as a more democratic organization than its Bretton Woods counterparts. The Sutherland Reports recommendation to strengthen this principle should be adopted. Secondly, this section will also argue that the small group approach to negotiations harks back to the principal supplier approach adopted by the US and the EU during the earlier GATT period and the recent attempt to conclude deals in the G4/5/6 and G7 have all failed to make significant progress in the WTO multilateral negotiations. We argue that this is an obsolete and “medieval” approach to WTO negotiations and should be abandoned in favour of genuinely multilateral approaches. Thirdly, we consider the role of the chairs in WTO negotiations. The discussion below will argue that based on a case study undertaken by the author that compared the role of the agriculture and NAMA chairs, the WTO would do well to address the inefficiencies that could result from ineffective chairing of negotiations and we thus call for a code of conduct to be adopted by the WTO for its chairs.

i) Decision Making: the consensus principle

Since the creation of the GATT in 1947 and the creation of the WTO in 1995, the multilateral trading system has been recognized as a vital part of the architecture of global governance – together with the other Bretton Woods institutions. The WTO has been relatively more successful than its Bretton Woods counterparts in building a more democratic decision making system. However, this has been a slow and painful growth

process. Propelled by some major setbacks (Seattle and Cancún) the WTO has continued to learn and improve its decision making system. The failure of Cancún propelled the Commissioner of Trade of the EU, Pascal Lamy, to argue that the WTO decision making system was “medieval” and needed major reforms.

A recent evaluation of the state of the WTO undertaken by the Warwick Commission⁶⁷ called for greater flexibility in the voting system. The Commission called for the concept of “variable geometry” to replace the more rigid “single undertaking” concept that was deployed in the Uruguay Round, and that has since become the conventional approach in the Doha Round. The Warwick Commission points to the earlier practices in the Tokyo Round where various agreements were reached on the codes on standards, import licensing, anti-dumping, subsidies and countervailing measures and customs valuation”. The Commission urges WTO members to seriously consider “critical mass as part of the decision-making procedures for delineating the WTO agenda”.

However, an earlier report,⁶⁸ established by the previous director-general of the WTO, Dr. Supachai Panitchpakdi, supported the consensus approach to decision making that is generally followed by the WTO, and suggests ways in which this could be improved. The Sutherland Report recommended that in an attempt to reduce the resort to blocking measures (such as a veto by a single country to prevent consensus) by some countries, there should be a responsibility by the country seeking to block a decision, to declare in writing that the matter is one of vital national interest to it. This recommendation if implemented could help the WTO to strengthen the consensus approach to decision making and help the critics who have felt frustrated by the efforts of large members to block consensus, where the underlying reasons are extraneous to trade issues.

The Sutherland Report also addressed the call by some members to develop a differentiated (plurilateral) approach to those issues on which only a subset of members are able and willing to deepen liberalization and rule-making. The Report took a cautious approach to this possibility, suggesting further deliberation. It was judicious in taking this approach, as WTO members are currently divided on this issue and many are suspicious that this would create a two speed and two track system, compromising the principle of inclusiveness. The previous Director General was concerned about the serious criticisms that the WTO faced as a result of the perception amongst civil society and developing country groups about its lack of transparency and inclusiveness in its decision making and imbalanced outcomes.⁶⁹

The issue of voting method is an old debate in the GATT and has its origins in the early negotiations on the proposed International Trade Organization (ITO) that was to be part of the Bretton Woods institutions after the War. During the negotiations on the proposed ITO after the Second World War, the issue of the voting method was one of the few issues on which the developing countries were more successful. For decision making in the ITO the US delegation proposed the same method of weighted voting that was used in the recently created International Monetary Fund (IMF). A similar proposal was made by the UK, to take into account the economic size of the country in its share of the vote – a system of weighted voting. Developing countries voiced their opposition to such a system of voting as they feared that this would institutionalize

their secondary status. A number of developing countries,⁷⁰ voiced strong opposition to weighted voting and came out in favour of consensus. As a consequence the ITO did not adopt a system of weighted voting. This decision was to be adopted by the GATT that adopted the consensus approach to its decision making.

ii) Decision Making: the principal supplier principle and small group negotiations

The issue of small groups (Green Rooms or Mini-Ministerials) has been a subject of intense debate and criticism by NGOs and other civil society critics of the WTO during the past decade. With the rise a more assertive and organized set of developing country alliances in the WTO with the onset of the Doha Round, there have been some piecemeal reforms that have appeased some of the critics. However, the small group approach to negotiations and “pressure cooker” method of negotiations has been perpetuated in new forms in the WTO negotiations: the G4, G5, G6 and recently the G7 Ministerial meeting held in Geneva in July 2008. Almost all these efforts have resulted in collapse or failure. The continuation of this form of negotiation will need to be reviewed and a more inclusive and democratic method of negotiations discussed. It will be argued that these reforms will go a long way in building the WTO as a “global public good”.

The principal supplier approach also had its origins in the early ITO/GATT debates. During the negotiations on the ITO many members had preferred a system of bargaining that was formula based – across the board tariff negotiations - but the US Congress indicated that this would be unacceptable to them. The UK supported this method as it would have led to the levelling of high US tariffs. The US delegation however argued for a system of reciprocal bargaining over specific tariff lines that required a product-by-product, principal supplier method of tariff negotiations by which a country could only be requested to make tariff cuts on a particular product by the principal supplier of that product to that country.⁷¹ This meant that for any particular product the importing country negotiates its tariff rate with its principal supplier and not with all suppliers of the same product. Developing countries at the time were seldom principal suppliers of any product, except raw materials that entered industrialized countries duty free. Only at the 4th Geneva Round of GATT in 1956 was this rule modified to allow developing countries to negotiate collectively in requesting concessions. However, they were still effectively prevented from requesting concessions in any products that they did not produce in large quantities. Thus the principal supplier rule had the effect of locking out developing countries from the tariff cutting negotiations.

The G7 ministerial meetings called by Pascal Lamy during the July 2008 ministerial meetings failed to achieve the objective of negotiating the breakthrough in the agriculture and NAMA modalities negotiations that the Director General, Pascal Lamy, had hoped for. Some agreements reached in the G7 on elements of the modalities – the so-called “Lamy Package” – did not have the support of all the members of the G7,⁷² and the G7 did not enjoy the support of the majority of members that felt that their issues were marginalized in the negotiations. In addition, the DG, Pascal Lamy, did not succeed in resolving any of the issues of interest to the smaller developing countries in smaller side meetings that were on his so-called “to do” list!⁷³ Cotton did not get onto the agenda at all. The banana negotiations unraveled. The issue of Duty Free Quota Free Market Access (DFQFMA) for LDCs was not addressed. There were several more

difficult issues on NAMA that included South Africa, Argentina, and Venezuela that also remained unresolved.

The WTO would need to think carefully about how it constitutes small groups in the future to advance the negotiations. China, India, the US and the EU can claim to be part of any small group that is created to broker a deal because of their size but the interests of the rest of the membership have to be represented in any negotiating group. The model of small groups which includes members simply on the basis of their economic and political weight or “principal supplier approach” is not suited to the diversity of economic interests and the political expectations of members to be represented and included at every stage of the negotiating process.

The WTO since the onset of the Doha round, and particularly after Cancun, has evolved a rich tapestry of alliances or Groups, especially amongst the majority of developing countries. These groups can play a constitute role in building joint negotiating positions and convergence among the membership. Pascal Lamy, the then Commissioner of the EU, had acknowledged the positive role of developing country groups in the WTO; after Cancun, when he compared the G20 to a Trade Union legitimately representing its members; and subsequently in Hong Kong, where the deal was brokered in the “Green Room” that included representatives of the different groups, including the G33, the ACP, Africa Group and the LDCs. Thus, it is only fair that the ACP, Africa Group, the G33, the NAMA 11, the Cotton 4 and the LDCs are also represented in any future negotiating group.

In the discussion below we discuss the role of the WTO chairs in decision making and advance some proposals for reform of the existing rules that guide the WTO chairs.

iii) Decision making: The role of the Chair in WTO negotiations

Wilkinsons’ assertion⁷⁴ that all previous GATT rounds were “uneven in its bargain and deeply asymmetrical in its distribution of economic activity”, his prediction that the current round may take a similar course may be too fatalistic given the more active role that developing countries have begun to play and the very significant countervailing power that these coalitions have provided to the developed countries in the current Doha negotiations. However, this countervailing power of developing country coalitions can be severely undermined by the inefficient role of the chairs in the WTO negotiations.

A study of the role of the chairs in the agriculture and NAMA modalities negotiations in the period before the July 2008 Ministerial Meetings reveals significant weaknesses in the WTO system of chairing negotiations. During the course of the negotiations in June and July 2007 the G20 and the NAMA 11 were to unite in protest against the attempt of the NAMA chair to establish a high level of ambition in NAMA in favour of developed countries, whilst ignoring the views of the developing countries. Developing countries were to unite and present a united front in the G90 and NAMA 11 in response to the NAMA chairs first draft.⁷⁵

Comparing the roles of both the chairs of NAMA and agriculture in the NAMA and Agriculture negotiations, a recent study⁷⁶ found that there was significant evidence of

inefficient outcomes in the GATT/WTO negotiations as a result of NAMA chairs' failure to listen carefully to members, his inability to act in an objective manner, his poor use and timing of the tools available to him to build convergence (two or three options, brackets, single draft text, etc), and his inappropriate weighting of the views of the different groups of members (EU, US, NAMA 11, and other developing country groups). His failure to provide efficient formal leadership was contrasted with that of the chair of Agriculture negotiations, who displayed a capacity to listen carefully to the views of different members, to act in an objective manner, to make judicious use of the tools of brokerage, to time these appropriately, and a fierce independence from the influence of any of the major developed or developing country groups in the WTO.

Whilst the decision making system (generally of consensus) and the institutional design of the decision making (election and appointment of chairs by members) in the WTO creates more controls and less discretion for the chair to influence the decisions towards his or her own preferences, than that which obtain in the EU (majority voting, rotation of the chair), as Tallberg argues,⁷⁷ this study has found that there still exists significant room for the WTO chair to influence the negotiations towards inefficient outcomes. Outcomes can be considered to be inefficient if the overwhelming majority of members; are dissatisfied with the results, expect to make more losses than gains from the results, and developing countries perceive that they will make a greater contribution than the developed countries. In addition outcomes that lead to breakdowns of the negotiations and thus delay the process can be deemed to be inefficient. These inefficient outcomes could result in unbalanced and unfair agreements or the collapse of the negotiations. The study above of the role of the NAMA chair reflects the existing weaknesses in the system that allow for inefficient outcomes to arise.

The WTO does not have very clear rules on the role of the chairs. Odell⁷⁸ refers to the only set of guidelines that have been formulated as: "chairpersons should continue the tradition of being impartial and objective, ensuring transparency and inclusiveness in decision making and consultative processes; and aiming to facilitate consensus".⁷⁹ The evidence provided in the above study whilst supportive of the general theoretical proposition put forward by Tallberg⁸⁰ of an institutional approach to building controls on the role of the chair, proposes to strengthen the selection process with the use of a code of conduct for prospective chairs. The code of conduct should pay attention to the attributes of a prospective chair and his/her willingness to work for the common good of the organization, with due regard for the broader goals of the WTO and the agreed mandates of the negotiations.

There are a number of attributes that a chair requires to be competent to contribute to efficient outcomes in the WTO negotiations. This includes, firstly, the willingness to rise above his or her national interests and provide a fair and unbiased judgement of the compromises that would be required to build convergence in the negotiations, with due regard to the development dimensions and mandate of the negotiations. Secondly, the chair must be capable of listening carefully to the members, without being unduly influenced by the more powerful groups (usually the major developed countries), in a bottom-up process, building confidence and ownership of the process amongst the members. Thirdly, the chair must be capable of offering solutions to the blockages in

the negotiations in a step by step manner using a variety of negotiating tools (tools of brokerage) available to the chair in the negotiating process.

The code of conduct should require chairs to make an explicit undertaking to subordinate their national interests to that of the general good of the organization and to exercise a fierce independence from the influence of the major developed or developing country groups. The development of such a code of conduct would raise awareness of the role of the chair, create greater pressure on chairs to be objective and fair, and empower the membership to seek greater commitments from prospective chairs during the selection process to abide by such a code of conduct. This would reduce the tendency of chairs to be influenced by the *real politik* of the negotiations, that is, the dominant interests of the major powers and the tendency of the system to strike a compromise in their favour.

The WTO should also consider the use of supranational chairs drawn from the ranks of the secretariat where a suitable chair is unavailable from amongst the members. It is often the case that WTO members have to choose from a limited number of available candidates. Developing countries are often unable to field candidates due to their limited capacity and staff levels. Thus the members are bound to choose from a small pool of members that may not satisfy all the criteria for a suitable chair discussed above. However, the WTO secretariat itself must build greater confidence amongst the membership about its own capacity and objectivity to play an efficient role in the chair.

7.5 Conclusion

Whilst this chapter agrees with the Director General of the WTO, Pascal Lamy that there is a need to make the WTO more “development friendly” it does not share the perspective that “no major surgery” is needed. Instead, the paper supports the thesis advanced by Wilkinson that the WTO requires more fundamental reform. In this regard the chapter has argued that there is a need to prioritize development as the overall objective or high level goal of the WTO.

Whilst the debate in the aborted ITO did attempt to address some of the concerns of developing countries and supported the objective of “higher living standards, full employment and conditions of social progress” the GATT maintained a narrower and more mercantilist focus that reflected the interests of its main architects, the US, UK and other industrialized economies. This tension between the interests of developed and developing countries reflected itself in the narrative or theoretical perspective adopted that became known as the Washington perspective or neo-liberal perspective. This perspective elevated free trade as a good in itself and that the GATT was an instrument to achieve free trade through continuous rounds of negotiations (the bicycle theory). The current global economic crisis has highlighted the erroneous assumptions and assertions of the Washington consensus prompting Gordon Brown, the British Prime Minister to assert that the Washington Consensus is dead!

The chapter thus argued that the WTO needs to adopt a more nuanced approach to trade liberalization. Trade liberalization, it is argued, cannot become an objective in

itself. It should be a tool to advance the broad goal of development. Indeed global leaders have asserted this perspective in the Millennium Development Goals that has recognized the role of trade as one instrument to advance the overall goal of development. Thus the paper agrees with some writers that the concept of development should be asserted as the overall goal of the WTO and calls for this to be debated at the upcoming WTO Ministerial Conference in November/December 2009.

The chapter also discusses the need for coherence between the WTO and the Bretton Woods institutions, and the WTO and the United Nations and its various bodies and agencies, based on the high level goal of development. This would require an explicit shift from the prevailing theoretical perspective of the Washington perspective that became the basis of the coherence between the WTO and the Bretton Woods institutions. The paper also argues the need to strengthen the relationship between the WTO and UNCTAD and restore the role of UNCTAD as the forum for building policy coherence with the high level goal of development that binds the United Nations and its bodies together. In this context the paper also argues the need to strengthen the coherence between aid and trade. While Aid for Trade has been incorporated into the WTO agenda at the Hong Kong Ministerial Conference, there is a danger that it can be used to “buy off” poorer developing countries to support unfair and imbalanced trade deals. Thus the paper calls for the principles of mutual accountability, ownership and transparency, adopted by the Paris Principles, to be implemented by donor and recipient countries. The writer proposes the Trade Policy Review Body of the WTO as one instrument to implement this objective. Based on the writer's experience as a discussant in the Trade Policy Review of the East African Community, the paper proposes that the mutual responsibilities of developed and developing countries are discussed in the Trade Policy Review Body to implement the coherence mandate on Aid for Trade.

The chapter then proceeds to discuss the need to strengthen governance in the WTO and focuses on three areas. Firstly, it is argued that the WTO should not deviate or abandon the consensus method of decision making in favour of other concepts such as weighted voting or variable geometry as proposed by the Warwick Commission. The paper argues that the consensus principle should be strengthened as the Sutherland Report has called for. Secondly, the paper discussed the small group approach to decision making or the principle supplier method used in the early GATT rounds and that resurfaced in the form of the G4, G5, G6, and G7 in the current Doha round. The paper argues that this method of decision making is inefficient, exclusive, untransparent and inappropriate for the WTO to adopt. It calls for the rich tapestry of developing country coalitions (and developed countries) that have been created during the Doha round to be represented in the decision making of the WTO. Thirdly, the paper discussed the role of the chairs in the WTO negotiations and argues that the current rules that guide the negotiating chairs are insufficient and require to be strengthened. Reflecting on a study undertaken by the writer on the role of WTO chairs in the Doha Round agriculture and NAMA negotiations during 2007 and 2008, it is argued that the role of the NAMA chair was both inefficient and biased reflecting his own views and perspectives. To avoid such an outcome, the writer calls for the development of a code of conduct by the WTO to provide clearer guidance to WTO chairs.

Thus this chapter has proposed that the WTO undertake a raft of reforms; to clarify the objectives and goals of the WTO; to build greater coherence, between the WTO and the Bretton Woods institutions, the UN and its bodies and agencies, especially UNCTAD, between aid and trade through the WTO Trade Policy Review Body and; to improve governance of the WTO, by strengthening the consensus method of decision making, avoiding decision making through small exclusive groups that are based on the principal supplier principle, and adopting a code of conduct for WTO chairs. These reforms would contribute to transforming the WTO from a mercantilist institution towards a global public good or in the words of the Director General of the WTO, Pascal Lamy, “ more development friendly, more user-friendly and for the benefit of all, rich and poor, large and small”. The upcoming WTO Ministerial Conference to be held in Geneva in November/December 2009 provides a good opportunity for Ministers of Trade to debate and advance these proposals.

In the concluding chapter we assess the attempts made since January 2009 to re-energize and resume the Doha Round negotiations until the end of July 2009. Chapter Eight will also discuss the possible trajectory and outcome of the Doha Round.

Notes

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- 21 Article III.i of GATT 1947 provides: " The contracting parties recognize that internal taxes and other internal charges, and laws, regulations and requirements affecting the internal sale, offering for sale, purchase transportation, distribution or use of products, and internal quantitative regulations requiring the mixture, processing or use of products in specified amounts or proportions, should not be applied to imported or domestic products so as to afford protection to domestic production". This national treatment provision requires members to accord non-discriminatory treatment to imports vis-à-vis domestic products once they have passed through customs.
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8

Prospects for Concluding the Doha Round in 2010

8.1 Introduction

This chapter summarises the reasons for the collapse of the July-December 2008 ministerial meetings and discusses the state of play of the Doha Round in the first half of 2009. It assesses the various attempts made in the first half of 2009 to re-energise and restart the Doha Round. The Doha Round and the WTO have been significantly challenged by the current economic crisis. A brief outline of the current economic crisis will be provided with an assessment of the various attempts to stem the tide of increased protectionism and economic nationalism, including by the recent G8 and G20 Summits. The WTO will hold its seventh Ministerial Meeting in Geneva at the end of 2009. The objectives and agenda of this conference will be discussed. In addition, this chapter will outline the issues related to trade and climate change and the potential impact of the Climate Change Conference to be held in Copenhagen, in December 2009, on the Doha Round. Finally, we discuss the prospects for the conclusion of the Doha Round in 2010.

8.2 Doha Round: The State of Play

Since the launch of the Doha Round in November 2001, the WTO negotiations have been characterised by several failed ministerial meetings and missed deadlines. These events have been described in my previous book¹ and in several chapters of this book. We have argued in chapter three that the collapse of the WTO Cancun Ministerial Meeting in September 2003, was mainly due to the attempts by the EU and US to foist their bilateral agreement on agriculture, that sought to accommodate each other's interests, on the majority of WTO members.² Another reason offered for the collapse of the Cancun meeting was declared to be the "medieval" system of decision-making that was opaque and excluded the majority of members.³

However, there have been some partial successes since the Doha Round. Learning from the experience of the Cancun meeting, WTO members were to subsequently adopt a more inclusive multilateral process of negotiations in Geneva, that led to the agreement on a framework for modalities in the July 2004 Framework Agreement. Again, a more

inclusive green room negotiating process adopted at the Hong Kong Ministerial Meeting in December 2005 was to achieve some incremental advances on the July 2004 Framework Agreement. However, since then the various attempts to make a breakthrough in the negotiations towards full modalities in Agriculture and NAMA that have been conducted in small informal groups of members have been unsuccessful.

In my previous book I have discussed how the major players in the WTO were to forget the early lessons of the Doha Round too quickly. In early 2006 the US and the EU created a group of six (G6) WTO members (US, EU, Japan, Australia, Brazil, India) in an attempt to advance the modalities negotiations among themselves, only to result in another failure for the WTO by July 2006. This prompted Pascal Lamy, the Director General of the WTO, who hosted and chaired the G6 ministerial meetings in July 2006 in Geneva, to suspend the Doha negotiations. Again, in the first half of 2007, a smaller group of four members (EU, US, India and Brazil – G4) attempted a similar process of negotiation in an attempt to make a breakthrough on the vexed issues of agriculture and NAMA modalities, but their attempts finally collapsed at a ministerial meeting at Potsdam, Germany, in June 2007.

Expressing his frustration with the lack of progress made in these small group processes, Lamy called on the chairs of the WTO negotiating groups to resume the multilateral negotiating process of the Doha Round.⁴ The chairs of Agriculture and NAMA produced several draft texts since June 2007 leading to their third draft texts that they produced on the 10th of July 2008.

The July-December 2008 Collapse

The Ministerial Meeting that was convened by Lamy in Geneva met for 11 days, only to collapse on the 29th of July after ministers of the G7 (US, EC, Japan, Australia, Brazil, India and China) failed to agree on the details of the SSM (Special Safeguard Mechanism).

Some agreements reached in the G7 on elements of the modalities – the so-called ‘Lamy Package’ – did not have the support of all the members of the G7. In addition, the Package did not enjoy the support of the majority of members that felt that their issues had been marginalised in the negotiations. In addition, Lamy did not succeed in resolving any of the issues of interest to the smaller developing countries that were on his so-called “to do” list. Cotton did not get onto the agenda at all. The banana negotiations unraveled. The issue of Duty Free Quota Free Market Access (DFQFMA) for LDCs was not addressed. There were several more difficult issues on NAMA that included South Africa, Argentina and Venezuela that also remained unresolved.

Notwithstanding the instructions of the G20 leaders, meeting in Washington on the 15th of November 2008, to conclude modalities by the end of the year the series of telephone conferences held by Lamy with ministers from the US (Susan Schwab), India (Kamal Nath) and China (Chen Deming) on the issues of sectorals, SSM and cotton failed to make progress and Lamy cancelled the proposed ministerial meeting that was to have been held at the end of December 2008.

Chapter Five discussed the three main reasons for the collapse of the July ministerial meetings and the failure of the WTO to resolve the modalities issues again in December 2008.

The first reason is the lack of domestic political support in the US and the EC (and other developed countries) for agricultural reform and the persistence of protectionism. To this must be added their perceptions of the increased economic power of the emerging economies, which gave rise to increased collusion between them to raise the level of ambition for developing countries in NAMA and Services. Part of this was due to a growing clash of paradigms between the developed and developing countries, namely, the assertion of commercial interests or the need for “new trade flows” against the livelihoods of farmers in developing countries and the industrial development prospects and jobs of workers in developing countries.

The second reason is the old habit of the EU and US of setting up imbalanced small groups to cut the main deals at the cost of the smaller players (the ACP, Africa Group and the LDCs) in the negotiations. The G7 was a surprise after the failure of the G4 (and earlier G5 and G6 informal ministerial groups) in Potsdam (June 2006). The package that emerged on the 25th of July, 2008 was not agreed and did not address the issues of interest to the majority of members. It was not supported by India and China and gained no legitimacy amongst the majority of members. The WTO, since the onset of the Doha round, and particularly after Cancun, has evolved a rich tapestry of alliances or Groups, especially amongst the majority of developing countries, the G33, the ACP, Africa Group and the LDCs. However, even the G20 (co-ordinated by Brazil) and the NAMA 11 (co-ordinated by South Africa) were not represented in the July G7 ministerial meetings. Brazil was in the G7 in its individual capacity and not as the co-ordinator of the G20.

There was a high cost too of this small group approach to developing country unity in July and December. The G20 and the NAMA 11 failed to meet and consult as India, Brazil and China were locked in the small group negotiations. Brazil was particularly criticised for failing to consult before agreeing to some elements of the Lamy Package. The other developing country groups that relied on the leadership of the G20 felt isolated and marginalised from the process. The lessons to be drawn from this experience for developing country coalitions were discussed in chapter six.

The third reason for the failure is the imbalanced draft texts, particularly between agriculture and NAMA, with the NAMA text failing to reflect adequately the views of the members, especially the NAMA 11. This is partly ascribed to the role of the chair of the negotiating group (discussed more fully in chapter four) who set the level of ambition in the formulas close to that demanded by the developed countries, added the anti-concentration clause and “disguised mandatory sectorals”, when these issues were not mandated by the Doha declaration and were opposed by the majority of developing countries. On the other hand, there was a continuous reduction of the level of ambition in Agriculture with layers of exceptions added for developed countries; in preserving high levels of “water” in domestic support entitlements; in increasing the number of sensitive products; in avoiding tariff capping and full and fair tariff simplification; and

in creating new TRQs (trade related quotas that further limit access to developed country markets).

The role of the US

In Chapter five we assessed the role of the US in the July-December ministerial meetings. It was argued that in that period the USTR, Susan Schwab, did not seem to have much room to manoeuvre. Even as Lamy worked for a ministerial meeting to resolve the outstanding issues in the negotiations, the US Congress worked against this initiative. On the 2nd of December, the Chairs of two Congressional Committees from both the House and the Senate wrote a letter to President Bush, which stated that: “In July of this year we commended your administration for walking away from a lopsided WTO package that we in Congress would not have been able to support... We strongly urge you not to allow the calendar to drive the negotiations through efforts to hastily schedule a ministerial meeting.” US lawmakers from both sides of the aisle applauded the cancellation of the proposed ministerial meeting by Lamy, and stated that they will work with the incoming Obama Administration in the New Year to seek solutions to “issues that have so far remained elusive”.⁵

Although the USTR had negotiated the deal on sectorals that was reflected in the Chair’s Text in August 2008 the National Association of Manufactures of the US (NAM) criticised the report of the NAMA chair for weakening the level of ambition on sectorals and urged the USTR to reject the deal. Similarly, the US Farm Bureau and the US Services Coalition supported the decision of the USTR to criticise the package that was emerging as lacking in ambition and not delivering sufficient market access for US exporters. The role of the US in the attempts to resume the round in 2009 will be discussed further below. We proceed to discuss the impact the global economic crisis on the Doha Round.

8.3 The Global Economic Crisis

It is now widely known that the current economic crisis was precipitated by the banking crisis in the US that began with the collapse of housing prices and the subprime mortgage market in the US beginning in mid-2007. The crisis escalated by September 2008 with the collapse of several major US banks (led by Lehman Brothers) and was transported to the banks in Europe (UK, France, Holland, Belgium and Iceland).⁶ The real economy became affected as credit and liquidity dried up and global consumption, production and investment plummeted. This was to become a more general economic crisis that not only extended to almost all the major developed economies but also gradually engulfed the emerging developing country markets (although to a lesser degree) and the entire developing world.

The magnitude of the crisis has now been compared to that of the great depression of the 1930s. The IMF has revised its projections for global growth in 2009 several times in the past few months. In its last report⁷ the IMF revised its projections for global growth to 1.4 percent in 2009. Output in developed country economies are expected to fall by 3.8 percent (the first annual contraction since the Second World War) in 2009 and recover to only 0.6 percent in 2010. The OECD has made an even more pessimistic

estimate with its Director General, Angel Gurría, expecting advanced countries to contract by 4.3 percent in 2009.⁸

The IMF expects growth in developing countries to fall from 6 percent in 2008 to 1.4 percent in 2009 and 4.7 percent in 2010. In Africa, growth rates will fall from 5.2 percent in 2008 to 1.8 percent in 2009 and 4.1 percent in 2010. China's growth rate is expected to fall from 9.0 percent in 2008 to 7.5 percent in 2009 and rise to 8.5 in 2010. India's growth is predicted to fall from 7.3 in 2008 to 5.4 percent in 2009 and to 6.5 percent in 2010. The WTO estimates world trade growth to shrink from an average growth of 6 percent in 2007 and 2 percent in 2008 to negative growth of 10 percent in 2009.⁹ The OECD has made an even gloomier assessment of global trade and estimates it to decline by 12.3 percent in 2009.¹⁰

In addition, Angel Gurría has argued that the economic crisis is rapidly turning into a "jobs and social crisis" with the number of unemployed in OECD countries to grow to 25 million and the percentage of unemployed to rise to 10 percent. Unemployment is expected to increase to 10 percent in the US and UK, and 11.6 percent in Germany in 2010, according to the OECD. Remittances to developing countries, which reached \$283 billion in 2008, are also expected to fall in 2009. About 20 million rural migrant workers in China had lost their jobs and 60,000 small enterprises had closed down.

The ILO estimates that about 50 million more people will lose their jobs if "the situation continues to deteriorate" bringing the total number of unemployed up to 230 million or 7.1 percent of the world's labour force.¹¹ A United Nations report has warned that the food, fuel and financial crisis experienced in 2006/07 that has culminated in the global economic crisis of 2009 will see a deterioration in poverty reduction in developing countries and efforts to meet the Millennium Development Goals.¹²

By the time G20 leaders met for their summit in Washington in November 2008, the crisis had become global. World leaders recognised the gravity of the situation and pledged to act together to restore growth and rebuild the financial system. They agreed to meet again on the 2nd of April 2009 in London with some European leaders talking about the need for a new global governance architecture to replace the obsolete and discredited IMF and World Bank system that came into being after the second world war to provide stability to the world economy – in other words, a Bretton Woods II.

The Rise of Protectionism and Economic Nationalism

In tandem with the sweeping economic crisis there have been growing pressures in developed countries to increase protection. The WTO produced three reports by July 2009 that have documented a long list of protectionist measures taken by WTO members since the onset of the recession in 2008.¹³ Notwithstanding the commitments made to avert protection and reverse measures already taken, in G20 Summits held in Washington (November 15th 2008) and London (2nd April 2009), and again at the G8 meeting in L'Aquila, Italy (8-10 July 2009), the major economies have continued to adopt protectionist measures (see relevant Declarations in Annex below).

In an attempt to prevent the systemic collapse of the financial sector several developed countries have provided support to their banking and financial services sectors through recapitalisation and expanded government guarantees for banks' liabilities, promoting private takeovers and nationalisation.¹⁴ Whilst there are no disciplines on subsidies in the WTO Agreement on GATS (General Agreement on Trade in Services) the national treatment provision in the GATS does require these subsidies not to be limited to domestic suppliers to the exclusion of foreign-owned financial services suppliers. However, some countries such as the UK have encouraged their banks to redirect their lending towards the home market, leading to concerns about "financial mercantilism".¹⁵

State aid to the automobile industry by a large number of developed countries included provision of credit, tax cuts and direct loans. Several of these bailout provisions required the automakers to make commitments not to relocate automobile production outside of their home countries.¹⁶ It is estimated that these bailouts packages amount to a total of \$48 billion dollars worldwide with about \$42.7 billion in high-income countries (US, Canada, France, Germany, United Kingdom, Sweden, Italy, Australia).¹⁷ Several provisions of these packages have caused concern by many developing countries that have argued that these provisions distort global trade in the auto industry. Under the WTO SCM (Subsidies and Countervailing Measures Agreement) Agreement state aid could give rise to actionable or prohibited subsidies if they cause adverse effects to the interests of other countries.^{18 19}

The US Congress has passed "Buy America" provisions (in March and April 2009) that require any project funded with stimulus money to use only US made steel, iron and manufactured goods.²⁰ In addition the current bailout packages in several OECD financial sectors have unwritten agreements by the governments to pick local producers and for auto companies to recall production from the periphery to the home countries of the parent companies. The latter is a more elusive form of protectionism for the WTO to rule against. In the past few months both the EU and the US have openly violated the prescriptions of the G20 Washington and London Summits against protectionism by re-introducing their dairy export subsidies, perhaps the most harmful of all protectionist measures to developing countries.²¹

Jeff Frieden, of Harvard University,²² defines protectionism broadly, not so much as traditional trade barriers but rather as nationally-specific policies that impose costs on others and impede international cooperation. He argues that attempts to reverse the crisis by countries may affect other countries where measures that address domestic concerns impose costs on others (beggar-thy-neighbour policies). These could include "banking sector guarantees sucking funds out of neighbours, to uncoordinated fiscal stimuli that lead to an import surge, and bailouts that sustain national champions at the expense of foreign competitors". At the discussion on protectionist measures held in the WTO, Trade Policy Review Body on the 9th of February 2009,²³ Brazil and India both argued for a broad definition of protectionist measures. Brazil argued that "protectionist measures" should include any measures that tilt the balance towards domestic firms.

They argued that the bailout packages leave economic imbalances and have distorting effects. The subsidies of developed countries crowd out non-subsidised exports from developing countries. Brazil argued that the protectionism measures being adopted by several developed countries as a response to the crisis could spark retaliatory measures.

Thus Argentina and other developing countries have called for greater transparency and monitoring of the various bailout measures being adopted in OECD countries and an assessment of their impact on the long-term competitiveness of developing countries.²⁴ They have argued that measures taken in the OECD countries that distort trade must be distinguished from measures being taken in developing countries to address their development situation, support industries in distress and manage job losses.

Developing countries have been affected differently and have taken actions based on their own economic situation. Some have reduced tariffs on a range of inputs to lower the cost of production and reduce the prices of consumer goods and others have increased tariffs on some goods to protect farmers and jobs.²⁵ At this stage these measures appear to be within their current binding levels. Except for China, most developing countries do not have large fiscal resources to take fiscal measures.

8.4 Efforts to resume the Doha Round in 2009

The Doha Round has begun to gain some momentum since the G20 London Summit in April this year renewed the commitment of world leaders to conclude the Round. However, the declaration (see Annex below) did not set a clear roadmap for the conclusion of the round. At the time the new US Administration had just taken office and was still to appoint a USTR. India too was still distracted by its national elections scheduled for the weeks of May 2009. Both the new USTR, Ron Kirk, and the new Indian Commerce Minister, Anand Sharma, met for the first time on the margins of the Cairns Group Ministerial Meeting in Bali, Indonesia on the 7th of June. They pledged to work together to re-energise the Doha Round. Subsequently, about 20 Ministers of Trade gathered on the margins of the OECD Ministerial Meeting in Paris (25th of June), at a meeting convened by the Australian Minister, Simon Crean to discuss the way forward in the Doha Round.²⁶

In the above meetings, Ron Kirk, the new USTR, argued that the current flexibilities in the modalities needed to be clarified so that the US could assess what they were getting in the round.²⁷ He argued that it was the view of the US stakeholders (business groups mainly) that the US was not going to make any real gains in new market access through the current modalities that were drafted by the chairs of agriculture and NAMA. He thus called for a way around the current modalities negotiations through intense bilateral engagements to assess these flexibilities that have been granted to the major developing countries in agriculture and NAMA, with a view to negotiating how to improve market access commitments from these countries.²⁸ The US insisted on the negotiations on NAMA to include sectoral negotiations in sectors of interest to United States exporters.²⁹

In these engagements China, India, Brazil and South Africa stated that the US business community (NAM, Farm Bureau, and US Services Coalition) were misleading the

USTR into believing that they got a bad deal in the modalities that were on the table in the third and fourth revised (July and December 2008) Agriculture and NAMA texts and the offers made on Services in the July 2008 Services Signaling Conference (discussed in chapter five). These coalitions, they argued, wanted two bites at the cherry. They had already participated in the process of the negotiations leading up to July 2008 on NAMA, Agriculture and Services. In NAMA they had extracted a high price from developing countries through the formula and coefficients that were included in the Lamy Package (a menu of Swiss 20, 22 and 24). This formula and menu of coefficients and flexibilities will have the effect of making very significant cuts in the bound tariffs of the major developing country emerging economies and also cut into their applied rates, creating “new trade flows”.

An eminent trade economist, Patrick Messerlin, argues that “the benefits of binding in the Doha Round stem from the elimination of the possibility that the emerging economies, that constitute about 40 percent of the GDP of the rich countries, could increase their tariffs on average by 3.5 times (roughly, from 8 to 28 percent for industrial goods, and from 19 to 66 percent for agricultural products) at any time and without providing compensation to their WTO partners”.³⁰

On the other hand the US negotiated significant flexibilities in the Agriculture modalities for its own producers (the new Blue Box and limited cuts in OTDS), in NAMA (longer implementation periods in Clothing and Textiles as part of the solution for developing country preference erosion) and Services (where it made minimal new commitments and retained a large number of MFN exemptions). In addition, the US complaint that more transparency was needed on, “what they were getting”, was not credible, as US negotiators traded off the concept of self-designation of flexibilities for Special Products for the new Blue Box they obtained in Agriculture.³¹

Messerlin argues that if the Doha Round package is accepted, it would hugely improve certainty. In the industrial sector, he argues, the emerging economies would cut their average bound tariffs to roughly 13-15 percent, with very few tariffs remaining above 20 percent. In agriculture, the “pacifying impact” of the Doha Round would have a much greater effect, as the uncertainty in agriculture is much worse. This assessment is supported by a more recent study undertaken by the Peterson Institute of the value of the current texts “on the table”. The authors of this study conclude that, “our analysis reveals large potential gains from proposals now on the table”.³² This assessment thus refutes the arguments being put forward by the US stakeholders and negotiators who have undervalued the contribution being made by other trading partners in the WTO, particularly the emerging developing countries.

The role of the US

Why has the Obama Administration failed to provide leadership in the Doha Round thus far? Three main reasons could be provided for the US adopting this negotiating posture.

First, the new USTR has inherited the pressures and influence of the major US lobbies, namely, the National Association of Manufacturers, the Services Coalition and the

Farm Bureau. These lobbies have continued to argue, as they did during the last stages of the Bush Administration in July-December 2008, that they are not gaining sufficient market access. These coalitions wrote to President Bush last year complaining about lack of market access for US exporters in the current modalities. There is also pressure against reform from the powerful defensive lobbies in US Agriculture (cotton, sugar, dairy, etc), and now in NAMA (trade unions). The new US administration will need to temper these demands and protectionist pressures.

Second, the new administration had come into government with a protectionist political agenda, a critical attitude to the Bush Administration trade policies and deep divisions within the Democratic Party on trade issues.³³ The Obama Administration had also not been able to make progress on the bilateral trade agreements (Panama, Columbia and Korea) by July 2008. It will need a great deal of political work and internal debate to turn around the existing reluctance of the Democrats to re-engage on trade.

Third, the current global economic crisis is still a major concern of the Administration, with bank failures, auto sector collapse, construction and housing still in crisis, and unemployment set to reach 10 percent by 2010. In this context it is extremely difficult for any President to think seriously about making trade concessions. Therefore it is to be expected that the Obama administration will be trying to buy time before it could really get to think about the Doha Round and trade policy more generally.

The new administration is clearly trying to deal with the tension between the demands of big business lobbies and the Administration's broader commitment to a more progressive multilateral approach to global economic issues. The Obama Administration has had to grapple with the need to balance its current emphases on increased market access with that of the need to adopt a fair, balanced, development-friendly and multilateral approach to the Doha negotiations. President Obama is yet to make his much awaited trade policy speech. The President however had already provided some leadership in resisting the protectionist pressures of his constituencies on the "Buy America" provisions by calling for these provisions to be "consistent with WTO rules" and to soften the trade provisions on the US climate change bill (American Clean Energy and Security Act) on trade by stating that there may be other ways of levelling the playing field for US firms than a "tariff approach".³⁴

However, as Fred Bergsten has cautioned, President Obama has to go beyond damage avoidance and act to revive and strengthen the multilateral trading system.³⁵ The President will have to remind the American people that the US is already a major beneficiary of a more open rules-based multilateral trading system. Indeed Ron Kirk was to make this point in Georgetown University when he stated that, "One in six American manufacturing jobs is already supported by trade" and that "jobs supported by exports of goods pay 13 to 18 percent more than the national average".³⁶ The President will also have to remind people that developed countries, led by the US, have gained from every other trade round since 1947, whilst the interests of developing countries have mostly been ignored (discussed in chapter two). It is for this reason that the Doha Round made the promise to restore some balance in the trading system and

ensure that the interests of developing countries are prioritised this time in the Doha Development Agenda.

The Role of Developing Countries

A large number of developing countries led by China, Brazil, India and South Africa have opposed the attempts by the US to undermine the multilateral process by entering into bilateral engagements to increase market access for US exporters beyond the agreements reached in the current modalities that are already skewed against developing countries.³⁷ Celso Amorim, the Foreign Trade Minister of Brazil stated that “this pre-selection of some countries to make some concessions is unfair”.³⁸ In their communiqué issued on the margins of the Paris OECD Ministerial meetings on the 25th of June, Ministers Amorim, Rob Davies and Anand Sharma warned the major developed countries that “it would be unrealistic to assume that further unilateral concessions from developing countries will be forthcoming, especially in the context of the current economic crisis”.³⁹

Developing countries have argued that the agriculture and NAMA modalities captured in the Chairs’ draft texts (July and December 2008) are imbalanced. The level of ambition in agriculture, they argued, was reduced for developing countries and the level of ambition in NAMA has increased considerably with deep cuts to be made in developing country tariffs through the Swiss formula and a further reduction of the flexibilities granted to developing countries through the anti-concentration clause.⁴⁰ Thus the current attempts by the US to obtain increased market access in the major developing country markets, through bilateral negotiations and sectoral negotiations, is unfair and contrary to the Doha mandate that has prioritised exports of interest to developing countries.

These countries have argued that the EU, US and other developed countries have sought and already obtained huge flexibilities and specific carve-outs for their sensitive products in Agriculture and have as a consequence lowered the ambition of the round. These carve-outs have limited developing country access to developed country markets and reduced the possibility of reforms of developed country trade distorting subsidies that have impeded the development of Africa for decades. In addition, a proposal to address the plight of the cotton producers, particularly the 4 African cotton producers (Benin, Burkina Faso, Chad and Mali), has yet to emerge from the US.

The US has obtained specific flexibilities in the agriculture negotiations for the Blue Box, to address its specific situation, and has demanded a different base period. On the OTDS (overall trade distorting support) the numbers emerging out of the July meetings will not require the US to make any cuts in its applied rates. In the Agriculture negotiations most developed countries are also demanding no tariff caps for their tariffs that are above 100 percent, even for products that are not sensitive. They are also demanding an increased number of sensitive products than agreed in the July 2008 Lamy Package and additional TRQs (quotas) that will further limit market access into their markets by developing countries. The balance struck in the July 2008 Draft Texts on Agriculture and NAMA was thus being further skewed against developing countries.

Thus the key question for developing countries is not *when* the Round should be concluded but *how* it is concluded. The need for the Obama Administration to embrace the development dimensions of the Round and strive to conclude it on its development mandate will be crucial. Developing countries will need to engage the Administration on the overall coherence of its multilateral engagement and support for development.

If the Obama administration is unable to withstand the pressures of protectionist lobbies that are campaigning for greater market access in an attempt to delay and frustrate the conclusion of the Round, or to temper the ambitions of the major export lobbies that aim to make huge gains in market access at the expense of some of the major developing countries in the WTO, developing countries will need to strengthen their alliances and defend themselves from the efforts to secure an imbalanced outcome in the Doha Round.

8.5 The Seventh WTO Ministerial Conference

The WTO is required to hold a Ministerial Conference at least once in two years.⁴¹ The last WTO Ministerial Conference (Sixth WTO Ministerial Conference) was held in Hong Kong, China, in December 2005. Since Hong Kong, the uncertainty of the Doha negotiations created by its various collapses has delayed the scheduling of the next conference. At the General Council meeting of the WTO on the 28th of July, WTO members decided to hold the next Ministerial Conference from the 30th of November to 2nd of December 2009, in Geneva. The Chairman of the General Council, Mario Matus, the Ambassador of Chile, after various consultations put forward the following agreed general theme of the conference: “The WTO, the Multilateral Trading System and the Current Global Economic Environment”.⁴² He stated that there would be two sub-themes that would guide the two working sessions of Ministers at the conference. These are: “Review of the WTO activities, including the Doha Work Programme” and “the WTO’s contribution to recovery, growth and development”. The first sub-theme will provide scope for an assessment of the state of play of the Doha Round and the effectiveness of the WTO and its institutions. The second will allow for discussions on the general economic crisis and the WTO’s response to it.

The Chairman of the General Council made it clear that the Seventh WTO Ministerial Conference “is not intended as a negotiating meeting” as several of the previous Ministerial Conferences were.⁴³ The WTO would focus on its regular business, including the reports that it was directed to provide by the Hong Kong Ministerial Conference on issues such as Aid for Trade and adopting possible accessions of new members (Montenegro, Vanuatu, Samoa). It will also conduct a review of some of its regular activities. At least one delegation (India) has already submitted five proposals for discussion of systemic reforms of the WTO, including a web-based trade information system, the strengthening of WTO Committees, an enhanced work programme on RTAs (regional trade agreements), a comprehensive instrument for LDCs preferences and the clarification of TBTs (technical barriers to trade).

The LDCs have been pointing to the need for a review of the existing rules and practices on accession, especially that of the Least Developed Countries. Acceding countries

have complained that the process and procedures of accession are too onerous and cumbersome. At the July 2009 General Council Meeting, the Informal Group of Developing countries called for greater transparency and monitoring of accessions of developing countries and for this issue to remain an item on the agenda of the General Council.⁴⁴ In this context the reforms proposed in chapter seven could also be discussed by WTO Ministers with a view to making specific changes to WTO rules and practices.

8.6. Trade and Climate Change

Another important issue that could affect the Doha Round is the climate change negotiations slated to be held in Copenhagen in December 2009. The US passed a bill (American Clean Energy and Security Act) on the 26th of July in the House of Representatives that has called for border adjustment taxes to be implemented to compensate its domestic producers from possible loss of competition from mitigation measures to reduce carbon emissions.⁴⁵ The bill (also known as the Waxman-Markey bill) authorises border measures against countries that export carbon-intensive products to the US and do not sign on to international conservation agreements. It also puts a price on carbon dioxide through a cap-and-trade system. This will have the effect of unilaterally raising tariffs in the major developed countries (if adopted by the other developed countries) on the exports of developing countries that do not adopt comparable standards.

Developing countries in the climate change negotiations have criticised the bill as constituting disguised protectionism and being against the rules of the WTO. The Indian Environment Minister, Jairam Ramesh, described the proposed carbon tariffs as “pernicious”, whilst Yao Jian, a spokesperson for China’s Ministry of Commerce, stated that these tariff measures “violate basic WTO rules”. The Chinese statement went on: “To put out carbon tariff policies during the economic crisis and ahead of the annual climate change conference this year is not timely. It doesn’t strengthen faith in the international community’s cooperation against the crisis.”⁴⁶ Although President Obama has criticised the bill by stating “I think we have to be very careful about sending protectionist messages out there. I think there may be other ways of doing it than with a tariff approach”,⁴⁷ the bill will be expected to win the support of the US business community that insists on measures to preserve their competitive edge – needed to pass through the Senate.

The relationship between trade and climate change is a complex issue and the WTO rules on the matter are controversial. The WTO Secretariat issued a joint-report with UNEP on the 26th of July that sets out the different issues and the application of different WTO rules to climate change measures taken by countries at a national level.⁴⁸ WTO members will need to be vigilant and monitor the ongoing climate change negotiations, as “trade measures may very well become the means by which developed countries ultimately circumvent their historical responsibility for climate change, by ‘exporting’ the costs onto developing countries, through the use of trade measures such as Border Tax Adjustments”.⁴⁹

A recent in-depth study⁵⁰ of Border Tax Adjustments (BTAs), finds that whilst BTAs are permitted by trade rules on a consumption tax imposed on a product such as sales tax, or an environmental tax imposed directly on a product, the potential adjustability of environmental taxes levied on the producer – for example, a tax on the energy used or the pollution emitted – remains an uncertain and contested issue in trade law. Whilst a number of GATT articles and WTO Agreements including TBT, SPS (Agreement on the Application of Sanitary and Phytosanitary Measures), TRIPS (Agreement on Trade-Related aspects of Intellectual Property Rights), ASCM (Agreement on Subsidies and Countervailing Measures), GATS (General Agreement on Trade in Services) and AoA (Agreement on Agriculture) impinge on environmental measures, the most relevant provisions on Border Tax Adjustments are contained in Article I, Article III and Article XX of GATT.

Article I, on the Most Favoured Nation principle, holds that any advantage accorded to an imported product has to be accorded to a “like” product from any WTO member country. The article applies to customs duties and charges, imports and export formalities. Article III on national treatment holds that an imported product is to be treated no less favourably than a like domestic product and its purpose is mainly to avoid protectionism in the application of internal tax and regulatory measures. However, a measure violating any provision of the GATT can be excused if it qualifies for an exception under GATT Article XX. There are a list of measures in Article XX that include measures necessary to protect human, animal or plant life or health; and relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption. However, Hufbauer et al, argue that the list does not include measures necessary to avoid adverse competitive impact from environmental laws imposed on the domestic economy.⁵¹

Another study of the impact of border tax adjustments on trade points out that developing countries would argue that it would be unfair if environmental protection is accorded a higher priority than development considerations in the application of the general exceptions accorded by GATT Article XX. Sustainable development, it is argued, is a key objective of the WTO (contained in the WTO preamble) and if there is an exception clause that is granted to environmental concerns, there should also be a general development exception clause in the GATT.⁵² The potential negative impact of border measures on trade, especially on developing countries, is thus deeply divisive and could threaten the success of the Copenhagen Conference and place another obstacle in the conclusion of the Doha Round.

8.7 Prospects for a Successful Conclusion of the Doha Round: What is the Way Forward?

India hosted a meeting of the G20 group of trade ministers in New Delhi in early September in preparation for the G20 Summit in Pittsburgh in the third week of September.

At the Informal Trade Ministers Meeting held in Paris on the 25th of June, Simon Crean, the Australian Trade Minister called for a report back to the G20 Leaders Summit

to be held in Pittsburgh, USA, on the progress made in the Doha Round. Pascal Lamy argued that if the Doha Round is to be concluded by the middle of 2010, ahead of US mid-term elections, then the modalities negotiations will need to be concluded by the end of 2009. Thus he argued that ministers will need to provide some momentum to the negotiations by the middle of October this year. The prospects of any real progress in the Doha Round will depend on the approach taken by the US and its capacity to enter into meaningful negotiations during the course of 2009 and 2010.

Developing Countries should continue to strive to conclude the Doha Round on its development mandate. Developing countries must again pickup the pieces of the failed ministerial meetings at the end of July 2008 and the failure again at the end of December – just as they have done at each stage of the round: after the collapse in Cancun, then again after the suspension of the Round in July 2006, and once more after the G4 Potsdam collapse in June 2007. They must reflect and learn from their experiences. They must rebuild their technical and organisational capacity and strengthen their alliances. And they must march on to the next phase of the struggle to achieve a fair, balanced, inclusive, and development-oriented outcome in the Doha Development Round. They should not rest until the promises of development in the Doha mandate have been fulfilled.

Annex 1

The G20 Washington Summit Declaration – 15th November 2008

The relevant paragraph on Trade is paragraph 13 below:

13. We underscore the critical importance of rejecting protectionism and not turning inward in times of financial uncertainty. In this regard, within the next 12 months, we will refrain from raising new barriers to investment or to trade in goods and services, imposing new export restrictions, or implementing World Trade Organization (WTO) inconsistent measures to stimulate exports.

Further, we shall strive to reach agreement this year on modalities that leads to a successful conclusion to the WTO's Doha Development Agenda with an ambitious and balanced outcome. We instruct our Trade Ministers to achieve this objective and stand ready to assist directly, as necessary. We also agree that our countries have the largest stake in the global trading system and therefore each must make the positive contributions necessary to achieve such an outcome.

G20 London Summit Declaration – 2nd April 2009

Resisting protectionism and promoting global trade and investment

22. World trade growth has underpinned rising prosperity for half a century. But it is now falling for the first time in 25 years. Falling demand is exacerbated by growing protectionist pressures and a withdrawal of trade credit. Reinvigorating world trade and investment is essential for restoring global growth. We will not repeat the historic mistakes of protectionism of previous eras. To this end:

- we reaffirm the commitment made in Washington: to refrain from raising new barriers to investment or to trade in goods and services, imposing new export restrictions, or implementing World Trade Organization (WTO) inconsistent measures to stimulate exports. *In addition we will rectify promptly any such measures. We extend this pledge to the end of 2010;*
- we will minimise any negative impact on trade and investment of our domestic policy actions including fiscal policy and action in support of the financial sector. We will not retreat into financial protectionism, particularly measures that constrain worldwide capital flows, especially to developing countries;
- we will notify promptly the WTO of any such measures and we call on the WTO, together with other international bodies, within their respective mandates, to monitor and report publicly on our adherence to these undertakings on a quarterly basis;
- we will take, at the same time, whatever steps we can to promote and facilitate trade and investment; and

- we will ensure availability of at least \$250 billion over the next two years to support trade finance through our export credit and investment agencies and through the MDBs. We also ask our regulators to make use of available flexibility in capital requirements for trade finance.

23. We remain committed to reaching an ambitious and balanced conclusion to the Doha Development Round, which is urgently needed. This could boost the global economy by at least \$150 billion per annum. *To achieve this we are committed to building on the progress already made, including with regard to modalities.*

24. We will give renewed focus and political attention to this critical issue in the coming period and will use our continuing work and all international meetings that are relevant to drive progress.

The G8 Summit – L’Aquila, Italy, 8-10 July 2009

Promoting the Global Agenda

The most relevant part of the above declaration is the section on: “Supporting open markets and concluding the Doha Round”.

Paragraph 6 repeats the language of the London G20 Summit on rejecting protectionist measures in trade and investment and committing to the standstill to refrain from introducing new measures. Paragraph 7 (below) is the new paragraph.

7. We are committed to reaching an ambitious and balanced conclusion to the Doha Development Round in 2010, consistent with its mandate, building on the progress already made, including with regard to modalities. We regard enhancing the transparency and understanding of the negotiating results to date as a necessary means to facilitate the conclusion of an agreement. In order to fill in the remaining gaps in the negotiations as soon as possible, we instruct our Ministers in charge of trade to explore immediately all possible avenues for direct engagement within the WTO and to meet prior to the Pittsburgh Summit.

Notes

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Consumer Unity & Trust Society (CUTS)

In 1983, CUTS was a small voluntary group of concerned citizens operating out of a garage on a zero budget. In 2009, CUTS operate out of five programme centres and an advocacy centre in India, five overseas resource centres: two in Africa, one in the UK, one in Vietnam and one in Geneva with staff strength of over 100 persons.

CUTS' work is divided into five programme areas:

- Consumer Protection;
- International Trade & Development;
- Competition, Investment & Economic Regulation;
- Human Development; and
- Consumer Safety.

The organisation elects its board/executive committee every fourth year, while the secretariat is headed by the Secretary General. Over 353 individuals and 300 organisations are its members. The organisation is accredited to the UNCTAD and the United Nations Commission on Sustainable Development (UNCSD).

CUTS also works with several national, regional and international organisations, such as Consumers International (CI); the International Centre for Trade and Sustainable Development (ICTSD); South Asia Watch on Trade, Economics & Environment (SAWTEE); the Consumer Coordination Council (CCC) of India, etc. It also serves on several policy-making bodies of the Government of India.

For more information on CUTS, please visit: www.cuts-international.org

The Friedrich-Ebert-Stiftung (FES)

The Friedrich-Ebert-Stiftung is a private cultural non-profit institution and was founded in 1925 as a political legacy of Germany's first democratically elected president, Friedrich Ebert. Committed to the ideas and basic values of social democracy, the FES conducts programs of international cooperation through its representations in almost 100 countries worldwide. With its educational programs, research projects and platforms for dialogue the FES aims at contributing to

- Promoting peace and understanding between people
- Supporting the democratization of states and strengthening civil society
- Improving general political, social and economic conditions
- Reinforcing free trade unions
- Developing independent media structures
- Facilitating regional and global cooperation
- Gaining recognition for human rights

The Geneva Office of the FES together with the offices in New York and Berlin is part of the "Dialogue on Globalization" program which assists partners in developing countries to face challenges of globalization. In collaboration with the Geneva based UN and international organizations and NGOs it works on the economic and social dimensions of globalization, on human rights, global governance and conflict prevention.

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Faizel Ismail is currently the Head of the South African Delegation to the World Trade Organization. He was the Chairman of the regular WTO Committee on Trade and Development (CTD) in 2006/7 and the Chair of the Special Session of the WTO Committee on Trade and Development (CTDSS) from 2004 to 2006. He joined the new democratic government of South Africa in 1994 as it began to re-integrate with the world economy and led South Africa's trade negotiations with the European Union (EU), the Southern African Development Community (SADC), the Southern African Customs Union (SACU), with a number of bilateral trading partners and the WTO. He is married to Åse Ellingsen and has three children: Gregory, Thomas and Leah. This book is written in his personal capacity. His first book, '*Mainstreaming Development in the WTO*' was published in 2007.

This book by Faizel addresses some important issues to improve the functioning of the WTO an organization that can provide the best guarantee against protectionism in times of crisis. Calls for the reform of the WTO have been renewed in the run-up to the 7th Ministerial Conference of the WTO, scheduled for 30 November-2 December 2009 in Geneva, Switzerland. India, supported by a number of developing countries as well as some developed, has also offered some concrete ideas. Analysis and suggestions by Faizel strengthen these calls and ideas. As always, Faizel brings in his intimate knowledge of the issues and combines it with a far-sighted strategic approach. The book is timely, insightful and a must-read for trade ministers as they prepare for the coming WTO Ministerial Conference.

Pradeep S. Mehta

Secretary General CUTS International, Jaipur, India

Faizel Ismail's analysis of the patten of trade negotiations is like few others. Sharp, poignant, insightful, considered. It combines insider knowledge with a critical eye to produce a first rate analysis of the real world of WTO negotiations. This book is among the very best written on the multilateral trading system and a must read for all interested in the WTO.

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