

Cordell Hull Institute

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Developing Countries and the WTO Predicament

Yale University, New Haven, Connecticut
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CHAIRMAN'S STATEMENT

THE global recession has not triggered a strong protectionist reaction. But this should not give rise to complacency. The world economy will go through a long period of adjustment and the risk of countries relying on barriers to international trade and investment remains significant. Consequently it is urgent not only to complete the Doha Round negotiations but also to start envisioning what other actions will be needed to restore the momentum of international trade liberalization while strengthening the multilateral trading system.

At Yale University, New Haven, on May 14-16 last, 25 trade-policy experts from around the world (listed below) reviewed the causes of the prolonged *impasse* in the Doha Round negotiations and initiated a discussion on rethinking the world trade system. The meeting was convened by the Cordell Hull Institute, based in Washington, DC, and hosted by the Yale Center for the Study of Globalization. It was funded by a grant from the Hewlett Foundation in California.

Although the exchange of views was off the record, it was agreed at the outset that, after the meeting, I would issue a “chairman’s statement” on what I perceived to be the salient features of the discussion. The discussion followed the analysis in the draft report of a study group formed for the purpose.

United States Needs to Reconsider Position

To break the *impasse*, the United States needs to reconsider its position in the Doha Round negotiations by offering to further reduce its agricultural-support measures and to make other concessions, thereby enabling the major developing countries to improve their market-access offers – a key objective of American negotiators.

More specifically, the United States could offer to reform its trade-distorting programs for sugar, cotton and certain grains, to reduce its barriers “mode 4” business in the services sector and to abandon its “zeroing” practice in calculating anti-dumping duties.

Most participants in the Yale meeting agreed that the Doha Round drafts of July 2008 would not be ratified by the U.S. Congress. But the negotiations should not be allowed to

fail. If the U.S. offer is improved, however, the result could be a more ambitious Doha Round agreement, rather than the demise of the negotiations. President Obama and the leaders of Britain, Canada, France and Korea urged in a recent letter to fellow G-20 leaders that the terms of the July 2008 drafts must be made “more ambitious” to achieve “real increases in market access”.

The least-developed countries (LDCs) stand to benefit substantially from a Doha Round agreement on trade facilitation, from the duty-free and quota-free treatment of at least 97 percent of their export-product categories, as agreed at the WTO ministerial conference in Hong Kong and potentially from aid-for-trade proposals. Finally, while most of the major developing countries’ bound tariffs would remain above their current applied rates, it has been argued that they should get credit for the substantial tariff reductions made unilaterally since the beginning of the Doha Round negotiations.

On the other hand, the United States has voiced concerns at the state of the drafts on both agriculture and non-agricultural market-access (NAMA), principally meaning industrial products. In both drafts there are no reductions in the applied tariffs of the major developing countries. In agriculture, the United States has pressed for details as to which tariff categories will be wholly or partially treated as exceptions as “special” or “sensitive” products. And the United States and other agricultural-exporting countries have rejected the proposal of India and the Group of 33 developing countries (supported by China) for a “special safeguard mechanism”.

Much more needs to be done before a final Doha Round package of agreements can be reached. The negotiations on services are still at an early stage, while those on environmental goods and services, as well as those on WTO rules, covering anti-dumping actions and fishery subsidies, are near to deadlocked.

Even after the modalities for negotiations on agriculture and NAMA are agreed, there would remain about 18 months of technical work to finalize the agreements. In fact, even under the most favorable scenario, trade experts reckon a final agreement could not be reached until sometime in 2012.

Reasons for the Doha Round Impasse

The unwillingness of the United States, the European Union and a number of the developing countries to make more ambitious proposals is a symptom of the decline in support for trade liberalization. Looking beyond Doha Round itself, the real challenge for the world trading system is to rebuild that support, in both developed and developing countries.

Various reasons are given for the difficulties that quickly developed in the Doha Round negotiations:

- Lack of leadership in the European Union, the United States and other developed countries.
- The negotiations have been driven by defensive interests, bent on maintaining protection of those interests, rather than trade-liberalizing ones.
- Loopholes introduced by the “framework agreements” without modalities in the July 2004 package designed to break an earlier deadlock in the negotiations.
- Free riders account for a large proportion of the WTO membership, namely the least-developed countries, the “recently acceded members” and the ACP countries – the ex-colonies associated with the European Union in Africa, the Caribbean and the Pacific.

As a result many negotiators have been saying “a new approach” to multilateral trade negotiations is required. In fact the Doha Round negotiations are the ninth round of multilateral trade negotiations based on unconditional MFN treatment which, with the tradition of decision making by consensus, has put effective control of the negotiations in the hands of the “least willing participants”.

Growth of Preferential Trade Agreements

The multilateral trading system provided from the beginning, under GATT Article XXIV, for departures from the principle of non-discrimination to form free trade areas or customs unions, provided they cover “substantially all the trade” among the participating countries. But very few such departures from most-favored-nation (MFN) treatment, beginning with those formed by the European Union (nè Community) in the 1950s, have satisfied the requirements of GATT Article XXIV.

More recently, beginning in the 1980s, the departures from MFN treatment have been proliferating and have come to be called “preferential trade agreements”, falling far short of the requirements of GATT Article XXIV. (In WTO documents the neutral term “bilateral and regional trade agreements” is used.) Nearly all leave out agricultural trade.

On the WTO website there is a statement indicating how serious the growth of preferential trade agreements has become:

“If we take into account regional trade agreements that are in force but have not been notified [to the WTO], those signed but not yet in force, those currently being negotiated and those at the proposal stage, we arrive at a figure close to 400 agreements that are scheduled to be implemented by 2010. Of these RTAs, free trade agreements and partial-scope agreements account for over 90 percent, while customs unions account for less than 10 percent.”

The motive for preferential trade agreements varies. Some are frustrated by the difficulty in getting the WTO to address such issues as trade in services and the protection of intellectual property rights. Others believe it is possible to get results more

quickly in preferential trade agreements than in rounds of multilateral trade negotiations. Still others like them because they can embrace a comprehensive package of trade-related

issues, including the movement of labor, investment and intellectual property rights. And some like them because they can accomplish “deep integration”, involving a wide range of behind-the-border measures, or can accomplish political or security objectives.

Even so, preferential trade agreements, being inconsistent with MFN treatment, undermine the multilateral trading system. While they increase trade among members, they usually reduce trade between members and non-members. The trade-diversion effects can be more valuable for protected industries than the multilateral reduction of tariffs. Preferential trade agreements can be WTO-plus in some regards, but they can also overlook other trades, especially agricultural trade.

Despite such drawbacks, the proliferation of preferential trade agreements seems unstoppable, but proposals to tackle them have been advanced. One approach would be to consolidate and harmonize existing agreements. Second, steps could be taken to achieve consistency with MFN treatment through the way that non-trade-related aspects are treated and via the timing for incorporating new rules in agreements under negotiation, in new agreements and even in existing agreements.

Third, another way would be through ambitious tariff reductions in multilateral trade negotiations. Reducing tariffs to very low levels on an MFN basis would eliminate much of the incentive for preferential trade agreements. A variant of this approach would be to negotiate multilateral schedules for phasing down tariffs over time.

Limits of Special-and-Differential Treatment

Proposals to give special-and-differential treatment to developing countries have been subject in the Doha Round negotiations to years of argument. There have been deep divisions in the WTO membership, even among the developing countries, on the scope of S&DT and how to achieve the Doha Round mandate. The discussion has been plagued by procedural and substantive disagreements.

In the Doha Round negotiations, strenuous efforts to make S&DT operational, to write S&DT into WTO rules, have come to nothing. They have verified empirically a point that Robert Hudec, the GATT legal scholar, made analytically in his seminal work, *Developing Countries in the GATT Legal System*, published in 1987. But S&DT can be written into WTO agreements to liberalize trade.

It was observed that S&DT is moving toward being an issue limited to the least developed countries (LDCs). For other developing countries, the negotiating focus is changing from asking for fewer obligations to seeking greater access. In that context, S&DT is a poor bargaining device.

Remaking the Multilateral Trading System

The study group's analysis, on which the Yale meeting was based, concludes that a new approach to trade liberalization is required and should involve a reversion to taking the principle of non-discrimination seriously. In addition, it should involve a revamping of the S&DT provisions in the WTO system, which would have implications for both

developed and developing countries. The developed countries should cease making trade policy an instrument of foreign and development policy and multilateralize the market-access dimensions of their preferential trade agreements.

Moreover, the study-group report argues, the developing countries should also revert back to MFN treatment, using regional agreements to address real trade costs and remove policies that segment their markets, as opposed to providing preferential access to markets.

One possibility is a *conditional* MFN approach under GATT Article XXIV. A comprehensive agreement could be negotiated among a group of interested countries, covering substantially all the trade among those countries, including agriculture. The resulting agreement would be open to any country to join, provided that country was willing to accept the obligations of the agreement. The chief merit of the approach is that it would allow the pace of negotiations to be set by the most willing participants rather than by the most reluctant ones.

While still at the formative stage, the negotiation of the Trans-Pacific Strategic Economic Partnership (TPP), begun in March 2010, may amount to a conditional MFN approach if it satisfies the requirements of GATT Article XXIV.

Another proposal is for a series of plurilateral sectoral agreements, each covering a specific subject. Here again, additional members countries, beyond the original signatories, would be free to join. A variant of this approach has been the proposal for "a club of clubs", permitting the WTO membership as a whole to negotiate an agreement on a trade-related subject, which WTO member countries would be free to sign, but would not be required to do so.

Yet another approach would be to combine and harmonize existing preferential trade agreements, however labeled. The meeting also discussed the idea of multilateralizing regionalism.

Adjustment and the WTO Escape Clauses

In looking ahead, the WTO escape clauses for emergency safeguard measures, anti-dumping actions and countervailing-duty measures need to be coordinated more closely so that they help to promote adjustment to changing circumstances.

In the Doha Round negotiations only anti-dumping actions and countervailing-duty measures are being covered, as part of the negotiations on WTO rules, because safeguard measures were dealt with in the Uruguay Round negotiations. Many participants

in the meeting believe the reform of the anti-dumping and countervailing-duty devices could be addressed more coherently if safeguard measures were a part of the discussion.

The idea of adjustment in the use of escape clauses, however, has been marginalized. Only the safeguard mechanism truly addresses adjustment. The anti-dumping and

countervailing-duty devices have an entirely different rationale. They focus on providing “remedies” for perceived “unfairness”. The concept of unfairness has become politically formidable. As a result, trade-remedy cases now predominate and the concepts of adjustment and discretion in granting relief have almost disappeared, particularly in the United States.

This has largely occurred because a series of rulings in WTO dispute-settlement cases have effectively emasculated the WTO safeguard provision as a device to promote adjustment. Moreover, business executives shy away from safeguard proceedings, viewing them as supplications for help, and as uncertain in effectiveness, due to the high standards for proof of injury combined, in the case of the United States, with the often politicized discretion by the U.S. president not to grant relief. More attractive to those in import-impacted industries are the non-discretionary anti-dumping and countervailing-duty proceedings in which an industry can assert its “right” to relief from an unfair foreign trade practice.

Some suggest safeguard proceedings should be revised to make them more attractive by reducing standards, limiting governmental discretion and strengthening the tie to adjustment. Another suggestion is for the United States to give the President the option to turn anti-dumping and countervailing-duty cases into safeguard cases.

Other trade-remedy systems outside the United States operate with considerably more discretion than the U.S. system. Particularly in the European Union, anti-dumping and countervailing duties are a segment of competition policy, which is complicated and discretionary and embodies the concepts of “lesser duty” rule and a “national interest” test.

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