

# Conference Report

The Centre for International Governance Innovation

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*Against the background of last-ditch efforts by the United States, the European Communities, Brazil and India meeting in Potsdam to drive the Doha Round to a timely conclusion prior to the expiry of US trade negotiating authority, an international group of expert analysts of the trade scene gathered from June 17-18, 2007, in Waterloo, Ontario, for an informal discussion of the state of the international trade system in general and the prospects for the Doha Development Agenda in particular. The roundtable discussion was co-sponsored by the Centre for International Governance Innovation, the International Development Research Centre and the Canadian Institute for International Affairs. This note is a thematic summary of the discussions. As these were held under Chatham House rules, no attribution is given.*

## Introduction

The rules-based multilateral trade system is without a doubt one of the major success stories of recent economic history. International trade in goods and services has grown steeply, expanding its share of global economic activity by several times over the course of the last half century. The system has mediated a steep decline in border protection with respect to trade in goods and services, has substantially expanded the scope of matters covered by its rules, and has greatly expanded its membership. Is this system and its flagship institution, the World Trade Organization (WTO), in trouble, as some commentators suggest and as the troubled progress of the WTO's main event, the Doha

**“How is the multilateral trading system performing, amid global trade imbalances, pressures for institutional reform, and shifting economic power?”**

Development Agenda, could be interpreted to indicate?

Since the collapse of the WTO Ministerial in Seattle in 1999, the ability of the international community working within the framework of the WTO to continue dismantling barriers to trade and to address the evolving pressures on the rules-based system has been subject to question. Is there an intersection of interests that would permit a new comprehensive deal to be struck? Had in fact the multilateral system over-reached with the WTO Agreement that concluded the Uruguay

Round? Had the WTO membership grown too large for the organization to be manageable or to move fast enough to be relevant to the fast-changing commercial world? Where would the leadership to construct new deals be found? The least developed economies had by virtue of sheer numbers become the custodians of the system yet were not ready; at the same time, the major emerging markets were doing well and

under no pressure to change while the traditional leaders of the system, the United States and the European Communities, seemed to suffer from an "interest deficit". And, with specific reference to the Doha Round, was the system under such pressure that a deal – ANY deal – was needed for the system to remain viable?

None of these questions is easy to answer. Rounds have been getting steadily longer because issues left over from previous rounds have typically been the less tractable ones and new issues have been ever more

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The views expressed in this paper reflect the roundtable discussion as interpreted by the rapporteur and are not to be attributed to Foreign Affairs and International Trade Canada, the Centre for International Governance Innovation, the International Development Research Centre, the Canadian Institute for International Affairs or institutions affiliated with which the participants.



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complex; by comparison with the previous two Rounds, the Doha Round is still young. Adding to the difficulties of forming a nuanced judgment of the state of the multilateral system, of the WTO and of the Round are the changing contextual factors, including, inter alia: intensifying pressures on national economies from global wage arbitrage and the associated fragmentation of production chains, the shifting geo-economic weight of the major economies, ballooning current account imbalances, and the emergence of new coalitions and new processes within the WTO framework. Old truisms about the role of individual players might not hold true. Countries under pressure might pull-back rather than pushing forward. Whither, then, the trade system, the WTO and the Round?

## Is the Multilateral Rules-based System in Crisis?

*Institutions matter...*

Institutions matter. On that there is broad agreement. Yet institutions are particular to their times. Multilateralism, it was suggested, was an accident of the outcome of World War II, which left the United States with a dominant position in the non-communist world and thus the ability to shape international institutions in line with its views on governance (hence "embedded liberalism" in a rules-based trade system) and to structure international commercial agendas in line with its interests (hence the liberalization of manufactured goods but protection of New Deal-era agricultural policies).

Is this system any longer of any relevance? Does it matter if there are agreed upon international rules? A multi-polar world is taking shape with the shift in the balance of economic power due to the emergence of dynamic, large-population economies. International relations have become more fractious in the war-like state the world has entered. And the consensus on embedded liberalism as the governing principle for the intersection of domestic and international policy has for the most part collapsed – as one participant put it "it is a thing of the past; it is gone." And there has been a weakening of the sense in some countries that the multilateral system serves their interests.

More narrowly, core principles of the multilateral system such as most favoured nation have been relegated to a decidedly second-rate status due to the proliferation of preferential trading arrangements (since 1958, it was noted, some 320 trade agreements have been concluded, with a good number of these still in force).

At the same time, rule-making in new areas is showing little traction in the WTO. To some extent, it was argued, this is due to a general feature of the system: the WTO is unable to correct mistakes. The reluctance to unwrite any laws stems from the fear that the system would unravel if this were allowed. But this serves as a brake on innovation. For example, TRIPs is, in the view of some observers a "disaster", undermining the fundamental principles of the WTO and resulting in the system becoming rife with rents and rent-seeking. Unfortunately, it cannot be just "deleted", as some would wish. Similarly, it was suggested, when the WTO Agreement did not turn out to be good for all Members, and the problems at the root of that outcome were not addressed, countries felt tricked and were resolved not to be taken in again.

In the two areas that are arguably most important for the trade system, investment and labour mobility (or Mode IV in services trade), the problems of moving forward on new rules in the WTO context appear to be more specific and therefore even less tractable.

With regard to foreign direct investment (FDI), most restrictions are in services areas and it not possible to displace Mode III (commercial presence) GATS provisions with horizontal measures in an investment agreement. Moreover, investment protection is meaningless without arbitration and a NAFTA-type investor-state dispute settlement mechanism is not suited to the WTO which does not adjudicate complaints involving private individuals. And looming over the area of investment rule-making are new questions about how to deal with FDI by state-owned enterprises. When the push to liberalize FDI was instigated, the presumption was that corporations were privately owned and operated for profit. The advent of a significant wave of state-owned enterprise FDI and the possibility that FDI might be used not for private profit motives but for foreign policy objectives was simply not envisaged. The WTO is not the place to deal with the issues raised, which are in the domains of corporate governance and broader foreign policy (in the China-US context, there is pressure to expand/clarify the definition of national security to address issues raised by state-owned enterprise FDI). But while investment rule-making is "dead in the water" in the WTO context, it is very much alive in other contexts, where informal arrangements are dominating.

As for labour mobility, it was suggested that we need to recognize that Mode IV (movement of labour) is migration and to "get real" on the possibility of a

multilateral agreement regulating this. Labour mobility is not something that governments want to deal with multilaterally; a more productive approach, it was suggested, would be to work bilaterally on guest worker rules.

And, it was argued, the report card on the Trade Policy Review Mechanism as a discipline on compliance is not good.

However, by and large, the response to questions about the continuing relevance of the system was a resounding "yes":

- (a) The agreements embodied in the extant body of legal texts are holding (for example, during the Asian Crisis of 1997-98, the tariff bindings held, preventing an unravelling of the trading system from shocks stemming from the international monetary system).
- (b) The WTO's key contribution is arguably the set of rules which condition behaviour and "socialize" participants in the trading system; many basic regulatory agreements are not even under discussion in the Round, a testimony to general consensus on the covered subjects. In the absence of the existing rules of the game, it was suggested, we would have a very different set of agreements in place and a very different global atmosphere.
- (c) The dispute settlement system is functioning.
- (d) Accession negotiations continue to be initiated and successfully concluded.

In fact, some see the WTO as sufficiently robust to take on additional challenges in areas such as, for example, the environment, which is the fore in any discussion nowadays and has already "infiltrated" WTO rule-making. Indeed, it was argued the WTO must deal with the environment, not necessarily all of the issues but at least some of them. One suggestion was to have the WTO provide the institutional framework for CO2 trading.

Even developments such as the proliferation of preferential trading arrangements (PTAs) and the withdrawal of commitments (such as the US withdrawal of implied commitments on gambling under the GATS following the WTO decision on Internet gambling) can be seen as strengths not weaknesses of the system. The WTO Agreements provide for PTAs and for the negotiated withdrawal of commitments. Without the flexibility to liberalize more quickly or to experiment more boldly with rule-making than can be agreed with

the general membership, or to pull back when previous commitments prove to be problematic, the system would in fact be too rigid. Moreover, one by-product of regional agreements has been a great deal of learning by doing; the Free Trade Area of the Americas (FTAA) was a failed negotiation but a great training exercise for many of the poorer countries in the hemisphere that has served them well in the Doha Round.

Multilateralism is thus, in the view of many, not dying – it is in fact thriving. What is driving perceptions of loss of relevance, in the view of some, is that the formal system has not caught up with a changing reality: the roles of the various players and institutions are changing and they still need to find their feet. Thus, when we talk about the involvement of the business community in the trade system we need to understand that we now must take into account the business community in developing countries such as, for example, Bangladesh and its interests, not just the business community in the United States and Europe. The multilateral system remains relevant; we simply have to adapt our perceptions to the changing context.

*... but the Round is at risk of unravelling*

However well multilateralism might be entrenched, one of its major exercises – the Doha Round of multilateral trade negotiations – is in critical shape.

From the perspective of some, the Round could still be brought to a close quickly (within 6-9 months in the optimistic view of some observers), if the political will could be mustered. The intensity of the G4 (United States, European Communities, India and Brazil) process in the run-up to and at Potsdam attests to the fact that the window of opportunity to close the deal has not yet slammed shut.

The essential requirement, it was argued, is to connect the various strands of negotiations – the non-agricultural market access (NAMA) talks, those on agriculture and those on services; this would allow an evaluation of the deal and bring the political element fully into play.

Some time could be bought for this process, it was argued, since there might be traction for a limited extension of trade promotion authority (TPA) by the Democrat-controlled US Congress to keep the Doha Round effectively alive. The Democrats (who number amongst themselves pro-trade Clintonite internationalists, social democrats who support trade but with a social charter attached, and pragmatists)

would not want to be tagged with blame for the destruction of the Round going into an election. Moreover, and somewhat paradoxically, the Democratic Party's opposition to PTAs and its support for measures targeting China might gain it the political latitude within its constituency to extend TPA for the Doha Round.

However, others see any optimism about the Doha Round as misplaced.

In the first place, there are already signs of an unravelling. In the United States, the Trade Representative has fewer options every day, it was argued. Deals that could have been had earlier are no longer politically feasible. And in the European Union, expansion to 27 members has widened the balance of votes against agricultural reform to 15-12. National European governments have more important fish to fry than trade-in France, for example, Sarkozy's agenda for the first 100 days does not include trade reform. And reflecting the political realities, the European Communities' chief negotiator has on four separate occasions indicated that Europe is prepared to pull back on its offer.

The most fundamental problem in the Round may be the issue of ambition. The appetite for liberalization is for "convenient liberalization" that goes only into specific areas. In the words of one participant, the Round is thus shaping up as one of "layers of loopholes". There is, it was argued, general distrust accumulating.

While the focus of analysis has centred on what has been dubbed a "Doha Lite" deal (an unhelpful label, in the view of some), there is scepticism that such a deal can be sold by the negotiators within their own political systems. In the US context, for example, the positive results in Doha Lite would not likely have sufficient benefits to US business and labour to win the support of the Democrats in the House of Representatives. Finishing the round for the sake of finishing won't sit well with the US Congress, it was suggested – or with US business for that matter. Moreover, even assuming a "Doha Lite" deal could be cobbled together that suits the activist economies, there are now too many other players/negotiators who have an understanding of market access consequences for an unbalanced deal to be widely accepted. There is a new economic geography taking shape and there are many more players that need to be satisfied with the outcome. If the major developed countries preserve policy space on agriculture, developing countries will keep policy space on NAMA.

For small developing countries, preference erosion is the key issue. There are some economies that need to see progress on services, negotiations on which are simply not moving.

The diversity of interests of WTO members is now a key issue and will remain so in the future. The Round has coincided with shifting centers of gravity in the global economy – this is a relatively new phenomenon and thus difficult for all to "wrap their heads around" in a limited time frame. Put another way, the world is moving from a bipolar to a multi-polar agenda – and that agenda is not easy to comprehend, in part because, while the ambitions of the rising powers (China, India and Brazil in particular) need to be addressed, these countries do not necessarily have a clear sense of where they want to go with their newfound power.

Where, for example, is China in this new agenda? China has used trade as a principal tool to drive industrialization, has used WTO accession to anchor its own internal economic reforms and more broadly has been "socialized" to believe in multilateralism. In the view of some, China has the most to lose from a failure of the Round. If failure of the Round were to diminish the WTO, it was argued, the future of Chinese reform would become murky – China might just go off on its own. But while China has much at stake, China has been relatively quiet in the Round.

China's case, it was argued, is distinct due to the extensive concessions it made to enter into the WTO: China thinks it has already given and that the blockage to progress lies with Europe and the United States. Further, China is undergoing dramatic changes itself, which complicates matters in terms of undertaking new commitments. And, importantly for understanding the change in WTO culture from its expanding membership, for China, being a WTO Member is in part at least simply about being in the club – China is, in the view of one participant, in the WTO to talk.

Other major dynamic emerging markets have their own preoccupations. Asia, overall, is absorbed with regional integration. Brazil and India are taking care of their own interests by engaging in the process; however, they are not taking care of the other developing countries.

All the small economies, meanwhile, are seeking the best deal they can get and there are many reasons, it was suggested, for them to wait for a later round and a bigger outcome. In particular, it was recalled that the less developed countries signed on at Doha on the basis that the imbalances of the Uruguay Round would be

addressed (the WTO after all provides for less than full reciprocity) and that there would be a win-win outcome. And that is significant since these countries have blocking power due to the consensus rule.

### Trading Places

From the perspective of observers from the developing countries, the perceived crisis of the system is in reality an identity crisis of the founders of the system – the powerful rich countries. Developing countries bought into the idea of a rules-based system as a way to insulate themselves from the exercise of power by the major economies and as a way to stimulate growth; they joined the WTO in droves. This inevitably led to pressure to democratize the process within the WTO. There are many symptoms of this. For example, the new G4 attempting to formulate a way to drive the Doha Round to conclusion includes two developing countries, Brazil and India, along with the United States and European Communities. Similarly, trade facilitation, which is part of the agenda of developing countries, was the only one of the Singapore Issues to be retained in the Round; the ones that were dropped – competition policy, investment and government procurement – were developed country issues. And, since democratic processes are necessarily slower (e.g., reflecting the need for increased transparency), the Doha Round has not conformed to the unrealistically tight deadlines set by Ministers or those required by domestic processes of any one Member (the relevant one in this case being the United States and its now-expired Trade Promotion Authority).

Only a little more than a decade ago, there was conflict in the developing countries over whether to join the WTO; now, it was suggested, the conflict is in the developed countries as to whether or not to stay with the current system. The developed and developing can in fact be said to have "traded places" on the issue of the system.

While the irony in the current state of affairs may be savoured, for the sake of the system the important thing is that the changed reality be accepted in the developed countries.

### The Round is Not Just About Trade

Some analysts were of the view that failure of the Doha Round would discredit the system, eroding compliance with its disciplines. This raises fears for some that we seem to be unlearning the value of institutions. There is, it was argued, danger if people see global institutions and organizations as themselves a danger; we ignore

such developments at our peril. If multilateral institutions no longer command legitimacy, we need somehow to re-legitimize them.

Given the doubts about multilateralism, the Doha Round, according to this view, cannot be considered "business as usual". The stakes are in fact higher than the commercial issues at play; the Round is also about comity in the international system, of which the WTO is just one part.

But others argue that worrying about the Round is oldstyle "GATT-think": a reflection of practitioners being locked in their own cultural paradigm – "Rounds are all that matter". The Round is mainly about market access, goes this argument, and market access can be improved through other means such as preferential trade agreements, which are flourishing. Moreover, insofar as countries are looking to trade to advance broader economic policy objectives (i.e., to improve economic welfare), that can be achieved in good measure by unilateral liberalization, which has run well ahead of negotiated reduction in tariff bindings, as evidenced by the large gap between applied and bound tariffs in many developing country tariff schedules.

### Whither the Round?

Options for a Round that might be unravelling but that for larger reasons cannot be allowed to fail would seem to number three:

- A limited deal to harvest what has been achieved to date in the negotiations. Recognizing that if the deal is not ambitious enough it will fail (there needs to be something in it for everyone due to the "single undertaking"), this might be a "heavy" version of Doha Lite. Something along these lines would be a reasonable outcome, not inconsistent with previous GATT rounds.
- Sustained full-fledged negotiations – this would include a reaffirmation of the Doha Declaration, laden with development references as it is, and recognition that development is very much part of the future of the system.
- A suspension or a "recess" ("let's not call it a breakdown") which would buy the time to think through the form and substance of multilateralism suited to the emerging context.

The practical thing to do, it was suggested, is to stay committed to the Doha Round and see it through. There are some negotiating results: get what's on the table, deal with cotton, aid for trade, perhaps change the rules

in the services negotiations to simply allow the 'locking in' of existing rules to make negotiations meaningful to the service sector – and move on to prepare for the next round.

In any event, the basis for a more ambitious outcome is not there at present: the post-9/11 agenda was not thought through carefully enough, the business sector was not involved in its conception and thus is not cooperating with the Round, and it is too late to deal with issues of structure in the present negotiations. These issues should be addressed after the completion of the Round, working with political leaders on the new realities that the trade system faces.

## What Are (or Should Be) the Issues on the Trade Agenda?

Against the background of the uncertainty surrounding the Round and the implications of the outcome, whatever it might be, of the present attempt to advance reforms of the trade system, discussion inevitably turned to the future agenda, including the substantive, procedural and institutional aspects of the WTO system and how the WTO system fits into the broader international economic policy framework

### The Role of the Round

Is it time to think about the culture of the WTO? Should it always be about rounds? Does the round continue to be a workable way to address both issues of substantive rule-making and liberalization as well as of institutional reforms?

Some argue that rounds continue to be needed, since they are the means to forge agreements that are sufficiently large to encompass the cross-issue tradeoffs which, at the present advanced stage of the liberalization agenda, are necessary to put something on the table for all members of the system. In the words of one observer, the WTO thus functions as a "linkage machine".

A corollary of this thesis is that, at the national level, rounds are needed to deal with the domestic politics of trade, providing the political leverage to move entrenched vested interests by providing more scope for internal trade-offs.

In the view of some, however, the issues now at play are too complex for rounds – trade ministers talking about policy space outside of near-trade areas doesn't make sense, it was argued – it is too narrowly based a discussion.

As well, the GATT-style bilateral request – offer approach when applied in the context of the "bottoms-up" architecture of the General Agreement on Trade in Services (GATS) provides for great flexibility but makes progress difficult. It has worked in particular circumstances such as telecoms and financial services. However, it is usually unhelpful, given the political economy of domestic regulatory change, to have pressure for such change to come from foreign requests.

It is also proving difficult to advance agricultural trade liberalization with the "round" approach. The underlying problem in this case, it was argued, lies in gaining traction for the necessary cross-issue linkages within national decision-making frameworks. Agricultural departments lead on the agricultural trade discussion. But, in national governments, it was suggested, agriculture policy committees tend to be insulated from other policy committees. Hence, the single undertaking which in principle integrates agriculture into the NAMA, services and rules discussions has little influence over agriculture. Do we need to break this isolation down? Is it possible? Some are coming to the view that, in the end, it might not be possible to use the WTO method of reciprocal exchange of commitments to move forward effectively on agriculture – ultimately we might have to rely on budgetary pressures and processes.

Nor do all issues fit the trade-off mode of policy making: we should not have to trade-off anything, it was observed, to change WTO procedures, for example.

Even in the core business of rounds, tariff-cutting, there are issues. The proliferation of preferential trade agreements and rapid progress of liberalization on an applied tariff basis are, in effect, a statement to the WTO that countries want to move ahead at their own pace. Insofar as bilateral/regional agreements liberalize the most important markets for the participants, the remaining ones left to be liberalized through the multilateral process necessarily command less leverage over domestic decision-making. Moreover, the resultant gap between bound and applied tariffs creates an issue for negotiators in applying traditional tariff-cutting formulae: should countries "pay" for unilateral liberalization of other members with concessions of their own? Failure to do so, it was argued, undermines negotiators. On the other hand, failure to extract concessions sufficiently large to reduce applied tariffs undermines the practical value of the round for business.

### Decision-making in the WTO: The Single Undertaking and the Consensus Rule

Closely related to the issues of the further utility of the round as an instrument of WTO policy-making are the issues surrounding WTO decision-making, including the device of the single undertaking to pull together the disparate elements that comprise the modern negotiating agenda and the principle of consensus in WTO decision-making.

While consensus decision-making has been a feature of the multilateral system from its inception, the single undertaking was first used in the Uruguay Round. In that context, it served two major purposes:

- (a) First, it brought all Members fully within the ambit of multilateral rules. In this sense, it was a response to the fragmentation of the system that had been the legacy (disastrous in the view of some) of the Tokyo Round which had resulted in a number of plurilateral agreements – the first attempt at a "variable geometry" in the trade system (which reminds that the difficulty of bringing along all GATT Members at the same time on rule-making is not at all a new thing).
- (b) Second, it was a means of pulling together the ambitious forward-looking agenda of the day that included the GATS, TRIPs and the significant amendments to the Dispute Settlement Understanding.

While the device of the single undertaking was successful in its first application, and the principle of consensus has not prevented the development of large body of functional trade rules, there is a question as to how far these approaches can be taken. There is, it was suggested, no analytical way to test this question but some doubt that this framework can continue to be made to work with 150 Members. In the view of some, it has already "hit the wall": the single undertaking scares governments while the consensus rule gives a veto to Members with only fractional shares of global trade. Time to get them both out of the way, it was argued.

One problem appears to be the lack of appealing alternatives: variable geometry is a return to what was considered a disaster; and, in the view of some, it would be dangerous to drop the principle of consensus.

### Asymmetric Power and Equity

The choice of procedural rules for an institution is not unrelated to the objectives of the institution. We used to

know, it was argued, what we were doing in the trade system – it was all about raising the predictability of trade rules. Now there are new issues such as equity which will not go away, not least because the outcome of trade liberalization is not necessarily positive for all.

In this connection, it was noted that the shift during the GATT era from liberalization to rule-making was the first major twist which opened the possibility that outcomes of rounds would not be mutually welfare enhancing. Thus, it was argued, the Uruguay Round had not been consistently good either for development (special and differential treatment, it was argued is not about development) or for many less developed countries – for example, the requirement to revise legal systems to provide for intellectual property rules was a cost for many, while the phasing out of the Agreement on Textiles and Clothing negatively affected some countries such as Egypt which had benefited from quotas.

Is the WTO about guaranteeing outcomes? How is this to be done?

The structure of the multilateral system, it was argued, revolves around asymmetry, an asymmetry founded not on a poverty trap but on a knowledge trap. Because there is an endogeneity of power, the asymmetry only grows with time. The result is an unbalanced system with an inequitable distribution of benefits. And it was suggested, political commitments such as those at the Gleneagles G7 summit notwithstanding, nothing has been done to rebalance the system.

To some, equity has become the most important issue in the trading system today. There are various aspects to this issue: there are inter-country and intra-country considerations; external and internal factors. The first step to dealing with equity is to take it seriously. In the view of one observer, some countries have "got it" on gender equity (for example) but the WTO has not "got it".

Some are of the view that we are moving in the direction of addressing asymmetry at least in terms of the asymmetry in negotiations – imperfectly, perhaps, but we are moving. For example, there has been increased trade-related technical assistance in recent times to poor countries. Moreover, there is another angle to the issue of asymmetry in negotiations: the least developed countries account for only about 2% of world trade, but have veto power. This too is asymmetrical.

The issue of asymmetry of outcomes is, however, more troubling as it is more lasting and, in the view of some,

may be exacerbated by the outcome of the Doha Round. For example, agricultural subsidy reform that is under discussion in the Round would hurt poor food-importing countries. Perhaps, it was suggested, a blue ribbon process should be set up to see if these negotiations are in any given country's interests, including the relevance of negotiations for development. China, it was noted, uses WTO – inconsistent measures to promote development. Measures such as low cost credit, technology exchange and weak property rights allow for high rates of technology diffusion, but the WTO would be hesitant to legitimize such approaches.

## Expanding/Extending the Role of the WTO

The WTO system is, it was suggested, a common good for the global economy (although the use of WTO mechanisms by individual Members is not strictly speaking a public good issue, as that term is understood in economics). Can the benefits of this common good be expanded in some sense through an expansion of WTO rules or extension of its offices?

For example, it was suggested that policy coherence requires that the larger issues of global security and the environment that are impacting on the global economy be linked to the work within the trade system. Such linkage, it was argued, would be to the advantage of the trade system since it would engage the political system. At the same time, such linkage would raise issues of its own. Political leaders are hesitant to sign agreements due to the possible consequences, which are often hard to anticipate. Expanding the complexity of agreements does not make it easier to move forward.

A case in point is provided by the WTO's dispute settlement system. While some see this system as being at risk if the Doha Round fails, others see the system as sufficiently robust even to suggest that it could stand outside the WTO and/or to take on additional adjudication tasks, such as addressing disputes dealing with provisions in regional trade agreements. Since most regional agreements do not have an internal dispute settlement mechanism, the WTO would seem to have a "comparative advantage" in this area. Could the WTO Dispute Settlement Understanding (DSU) be used to address regional issues?

The parties to a dispute, it was noted, can select the court in which it is heard; if they voluntarily choose the WTO system, there would seem to be no issue of principle. The provisions of most FTAs overlap with existing WTO arrangements; thus, in most disputes governments do have a choice of using the WTO

system. Indeed, it was observed, the DSU is already handling many disputes involving regional partners – as an example, some one-tenth of the disputes that come before the WTO are intra-Latin American country cases. Moreover, when recourse is made to the WTO system, there is a sense that countries are better able to sustain political relations (although it was observed that that is not always the case).

However, there are limits to the use of the WTO system to address non-WTO laws – indeed, it was questioned why anyone would turn to the WTO to adjudicate local/regional laws unless these were WTO laws implemented locally. Similarly, from the perspective of the WTO, there is the question of why it would want to regulate matters internal to FTAs? There is no real benefit to the WTO (e.g., in terms of building a body of relevant case law) save when the problem is related to the WTO in some way.

Moreover, there are many practical considerations to take into account. In complex cases, it may be best to have several panels to deal with separate issues. This raises issues about the legal support that would be required for the WTO to handle large numbers of regional disputes and the potentially massive amounts of associated regional empirical data (although it was also observed that for difficult cases, such as those involving the Standards and Phytosanitary Standards (SPS) Agreement or environmental cases, WTO panels always turn to outside experts for help; thus, the system has not been overwhelmed, with only a small number of unresolved cases to date).

It was further observed that there is a potentially tricky issue in that FTAs sometimes have measures which go beyond WTO agreements/obligations. In cases such as this, for example when an issue is brought up in both the WTO and NAFTA dispute settlement processes at same time, a sensible rule would seem to be that WTO panels should apply the provisions of the more recent agreement. But some question whether WTO panels would be able to cope with all the nuances of law between two countries in such circumstances.

The WTO system is also not without its weaknesses; it lacks sustained input from the private sector, including international corporations/groups. Moreover, there remains an unaddressed problem: how well can poor countries use the system given lacking capacity (lawyers etc.)? Notwithstanding some notable successes where developing countries have successfully challenged the major powers (e.g., Brazil vs. the United States in the



cotton case), some observers fear that the so-called 'knowledge trap' was only made worse by the legalization of the system – which ironically was done to address the issues of asymmetry ("to give power to the powerless") and unintended consequences. That being said, it was noted that while there are issues with how the WTO deals with the asymmetry of power, this asymmetry is often much greater in regional agreements, especially those that involve one of the major economies.

A great deal of caution would be required, it was suggested, in any move in the direction of expanding the use of the DSU in this fashion. A first step would be to better monitor how regional agreements function.

In a similar vein, it was suggested that there is a particular case in Africa for greater WTO oversight of its complex web of regional arrangements (an "irrational mess"), which are becoming more complex as the Economic Partnership Agreements (EPAs) with the European Communities introduces a new layer of regulation. There is a wide range of issues that Africa is not prepared to deal with, it was suggested; accordingly, WTO intervention could help.

## Summary and Conclusions

While the WTO is an impressive edifice, it is at the same time hard to expand, to downsize, or even to renovate incrementally in any significant fashion. That perhaps is the most basic point of consensus to which the roundtable discussion tended. Some question the WTO's ongoing credibility if the Doha Round fails, and even its relevance in the new multi-polar world that is taking shape. But, as international institutions go, it is seen as still relatively robust.

The extension of the GATT system, which was so successful in liberalizing industrial goods trade, to the areas of agricultural products, services (including particularly Mode III, commercial presence, and Mode IV, movement of labour), investment and trade-related intellectual property has proved to be problematic. Sui generis reasons complicate matters in each case. Future liberalization in each of these areas might therefore proceed largely through bilateral/regional agreements. That in turn makes problematic achieving significant liberalization in industrial goods trade in the WTO context, since such liberalization now depends heavily on trade-offs that encompass those other areas. This is the basic quandary in which the Doha Round finds itself.

From a practical perspective, a case can be made for harvesting what is on the table in the Doha Round and moving on to address the larger issues facing the system. Whether this will prove to be possible is an open question, with as much depending on the reactions of the many countries looking out for their own interests as on the energy and leadership provided by the most active Members.

The WTO's main benefit to the global economy on an ongoing basis might largely be, as it was argued by one participant, one of providing a rules-based framework. There is an outstanding question whether the culture inherited from the GATT (comprising features such as request – offer reciprocal bargaining, consensus decision-making, rounds and the single undertaking) is ideally suited for this main function. Will WTO culture have to evolve? How best to organize multilateral trade governance for a multi-polar world? How best to start addressing the distributional issues – in particular equity of outcomes – that so far have not figured in the trade process?

The linkages of the trade system to new issues, especially those related to energy, climate change and the environment (and sustainable development more generally), need to be addressed. Whether this might best be done within the WTO, using its existing instruments or adding new ones, or by developing complementary institutions or instruments, is not clear.

There appear to be two streams of work cut out for the epistemic trade community:

- the specifics of the WTO and of the trade system, looking at options other than rounds, alternative decision-making approaches, the functioning of the DSU, increased surveillance of regional agreements, etc.; and
- how the trade system fits in to the broader policy context.

This agenda would seem to be relevant whether the Doha Round is suspended – in which case it becomes part of the process of building the case and strategy for a future relaunch – or whether the Round is concluded in the near term, in which case these larger issues will remain to be addressed in the next Round or through such procedures as might be developed for those tasks.

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