

From Doha to Kananaskis: The Future of the World Trading System and the Crisis of Governance*

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Perhaps the most important outcome of the fourth Ministerial Meeting of the World Trade Organization (WTO), which took place at Doha, Qatar, in November 2001, was that it did not fail; it achieved its stated goal, the launching of a new round of multilateral trade negotiations.

Whilst this may sound like damning with faint praise, the launch was, in the context, not insignificant since the ministers

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gathered at Doha bore a burden that transcended their portfolios. The shadow of what many have termed the “debacle at Seattle”, where the third WTO Ministerial Meeting in November/December 1999 collapsed amidst divisiveness, dissent, and disorganization, was still not dispelled as the Doha meetings approached. The steady escalation of violence at the venues of international conferences¹ was giving rise to a sense of a growing crisis of global governance. And the destruction on September 11th 2001 of the World Trade Center was being interpreted symbolically by some as an attack on globalization itself. In this context, the cliché that “failure was not an option” gained fresh life.

By the same token, interpreting the success at Doha from the narrower perspective of its implications for the global trading system and the system of global governance is all the more difficult. To what extent did geopolitical necessity and drafting sophistry simply paper over substantive divides amongst the developed countries, between the developed countries and the developing countries, and perhaps even amongst the developing countries? Moreover, to what extent can it be said that the tempered atmosphere at Doha represented conciliation between governments and civil society, versus the “death of dissent” (or more ominously, as some put it, its criminalization) following September 11th—or simply the deliberately chosen isolation of the venue? And in substantive terms, to what extent did Doha address the issues surrounding the growing reach of WTO rules into domestic governance and the still unrequited desire of civil society for a role in trade negotiations, trade disputes and trade policy more generally?

The discussions at the conference from which this chapter draws its title as well as its substance shed much light on these issues. To bring out what was learned as concisely and cogently as possible, we focus first on the discussion of what happened at Doha, why it happened, and what challenges it poses for governments, for those in the business sector, those in

¹ This escalation was set in sharp relief by the first death of a demonstrator at Genoa, July 2001, while the G7/8 meetings were being held.

environmental, social and other NGOs, and analysts in academia and research institutions. We then briefly consider the next steps in the ongoing process of coming to grips with global governance issues, including the G7/8 conference to be hosted by Canada at Kananaskis in mid-2002. The main part of the paper then focuses on the major themes that were addressed at the conference and that will be dealt with in the multilateral round of trade negotiations launched at Doha, as well as in the upcoming summits and Ministerial meetings.

What Happened at Qatar?

There was much background activity before and during the intensive four days of meetings in Doha – theatre some might say – in the effort to make and characterize the deals that would permit a consensus to be forged: many meetings, much travel and a great deal of political will by all ministers involved. How was the deal forged and what is the nature of the expanded negotiations (outlined in the box below) set in motion at Doha?

The major elements of the Doha Round in brief

General: embedding development issues at the heart of WTO negotiations, including implementation issues, technical assistance and capacity building.

Non-agricultural products: improved market access, with agreement on modalities on tariffs and non-tariff measures (to the extent possible) targeted for end-March 2003.

Agriculture: modalities for further commitments on the three pillars of the Agreement on Agriculture (domestic support, disciplines on export subsidies, and market access) to be established by end-March, 2003.

Services: a firm timetable has been set for services negotiations with tabling of initial requests by end-June, 2002, and initial offers by end-March, 2003.

Trade-Related Intellectual Property: over and above the political declaration on TRIPS and public health, negotiations will be held on a limited number of technical issues (in particular on a wines and spirits registry).

Rules negotiations: negotiations are to address disciplines on subsidies, antidumping and countervailing duties, as well as regional trade agreements.

Systemic issues: improvements to the dispute settlement system, and consideration of the interaction between the WTO and the Multilateral Environmental Agreements (MEAs).

A Round or an Agenda?

The first controversy that emerged after trade ministers declared success at Doha centred on whether: (a) a round had been launched (in the customary meaning of these words); (b) the decision represented a “rolling launch” with the real decisions having been put off until the fifth Ministerial Meeting to be held in Mexico late in 2003; or (c) what had been agreed to was better characterized as an agenda which in large part would be a “development agenda”.

The fact that all of these perspectives could legitimately be put forward was eloquent testimony to the subtlety of the drafting of the final communiqué. At the same time, the need for subtlety reflected the persistence of divisions on substantive and procedural matters between the WTO members present at the Doha meetings.

The Embedded Development Agenda

With developing countries constituting the vast majority of the WTO's 142 members at the time of the Doha meetings, with the major source for remaining gains from trade liberalization being in developing countries, and with developing countries as a group being least committed to proceeding with a new round at any cost, it was inevitable that development issues would be featured prominently in the Doha Declaration.

Many (but not all) developing countries remained convinced that the Uruguay Round had been a one-sided deal, involving commitments for major structural reforms on their part in return for market access that had not been forthcoming,² and that they were not enjoying the benefits from freer trade that had been predicted. At the same time, while many developing countries may have signed onto the agreement at Marrakech that concluded the Uruguay Round without fully appreciating what they were getting into, or realizing the value of the veto that they had thereby acquired, they were much better prepared this time around. And, equally importantly, they were prepared to exercise their new-found clout.³

By the same token, there was little question that the countries primarily in the *demandeur* position at Doha were the industrialized group. The question was whether the industrialized countries would be able to move far enough to keep the developing countries—who were, in the view of some, quite prepared to walk away from Doha without a launch—from doing just that.

As it turned out, there is scarcely a paragraph in the Doha Declaration that does not mention developing country market

² As was pointed out, the timetable for implementation of the WTO's intellectual property rights regime was linked to the phasing out of the quotas on textiles and clothing, reflecting the nature of the trade-offs that had been struck in concluding the Uruguay Round.

³ As was observed, resistance to the idea of altering the consensus-based approach in the WTO reflected to a good extent the interest of developing countries in preserving their effective veto in the consensus-based format.

access, special and differential measures for implementation of WTO agreements, or technical assistance and capacity building.

Flexibility on TRIPS

The ice-breaker in generating movement towards the apparent consensus was, in the estimation of most, the willingness signalled early in the Doha process by the United States—but also by other countries including notably Switzerland and Canada—on the issue of access to essential medicines within the broader context of the WTO’s Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).

This issue was of deep concern to many developing countries and to large sections of the population in the developed countries. Economic analysis provides only qualified support for the technical framing of the TRIPS Agreement; in trade policy terms, the sharp movement towards harmonization and “one size fits all” regulatory structures embodied in this agreement is considered dubious by some observers. Moreover, the battle for the moral high ground on this issue was barely contested given: (a) the acknowledged lack of attention given by the world-wide pharmaceuticals industry to tropical diseases; (b) the highly publicized and apparently effective approaches that appeared to infringe the TRIPS regime taken in recent years by several WTO members to address the spread of HIV-AIDS; and (c) the resort on an urgent basis in late 2001 by some wealthy nations to compulsory licensing of anthrax drugs in the wake of the series of terrorist incidents involving this bacterium. Accordingly, the only question facing ministers at Doha was *how* to move.

In the end, it was not entirely clear whether the question was answered or not. The ministerial declaration on TRIPS and Public Health was characterized as “political” in nature (as opposed to, for example, being described as having “legal” standing). But perhaps this did not matter; if in the course of a dispute the political declaration could be cited as grounds for invoking the flexibility in the TRIPS agreement, as developing countries stated upon emerging from the ministerial discussions,

the distinction was moot. Moreover, there was the declared intent of the parties not to use the WTO's dispute settlement mechanism to deal with cases involving public health. This made the whole issue even less consequential. Accordingly, the "clarification" that the TRIPS agreement *already* provided flexibility to deal with public health emergencies might be interpreted as euphemistic language to describe a real retreat.

At the same time, some parties emerged from the meetings contending that, indeed, nothing really had changed. To the outside observer attempting to discern whether the latter position was face-saving bravado or hard-edged *realpolitik* judgement remained, despite the clarifications, clear as mud.

Anti-dumping

While the show of flexibility on TRIPS got the ball rolling at Doha, a significant boost to the momentum of the process was also provided when United States Trade Representative Robert Zoellick accepted anti-dumping and other elements of trade remedy law being put on the table notwithstanding strong pressures, including letters advising against this move by a large number of U.S. Senators and Representatives.

Coming mid-way through the Doha meetings, this signal of flexibility was extremely helpful in bringing developing countries on side, reflecting the extent to which anti-dumping actions tend to be aimed at them and in light of the pressure on the U.S. administration for safeguards action in areas such as steel and lumber, as recession and a highly valued U.S. dollar combined to squeeze U.S. commodity producers.

Singapore Issues: negotiations definitely or only maybe?

A further important "deal maker" was the European Union's show of flexibility on the so-called "Singapore Issues" investment, competition policy, transparency in government procurement and trade facilitation.

The European Union's insistence on inclusion of these issues in the forthcoming multilateral trade negotiations is a

matter of curiosity to many observers, there being little obvious political pressure within Europe on these issues (with the possible exception of competition policy).

At the same time, many developing countries are decidedly set against inclusion of these issues, preferring instead to deal with an agenda focussed on traditional trade matters most importantly improved market access.

Refined drafting came into play to help resolve the apparent impasse. At Doha, it was agreed that these issues would be studied in working groups, with a decision to be taken at the fifth Ministerial Meeting in Mexico in 2003 as to how to proceed. The question was: would negotiations on these issues automatically be launched at the fifth Ministerial with only modalities to be decided? Or would the decision whether to negotiate also be taken with finality at that Ministerial? The language of the communiqué skilfully glossed over this important difference, allowing different parties to offer varying interpretations following the Doha meeting.

Agriculture

Agreement on language on agricultural trade reform represented a final key area in bridging differences, in particular on two issues that were especially contentious.

First, there was the question of linkage between agriculture and environmental issues. Agreement to separate these issues was a major concession by the European Union, which greatly facilitated the achievement of consensus.

Second, there was the question of how to characterize the strengthening of WTO disciplines on export subsidies in agriculture. It had been agreed coming into Doha that negotiations would involve reductions in export subsidies. The question was whether the eventual end point would be acknowledged to be zero export subsidies, or whether the negotiations would proceed “with a view to” eventual elimination. In the minds of the drafters at least, the distinction carried code language significance.

The multilateralists supported as a matter of course

There remains to mention one group of countries that played a role, apart from the United States, the European Union and the large and heterogeneous group of developing countries. This group might be described as the confirmed multilateralists—countries that tend to see a strong multilateral trade framework as strongly in their interests, over and above the commercial benefits that might flow from a negotiated reduction of trade barriers. These countries include the medium-sized, trade-oriented industrialized members of the OECD, including Canada, that are not part of the European Union.

The domestic and international dynamics were quite different for this group than they were in 1986 when the Uruguay Round negotiations were launched. In good measure, this reflected the way in which the context for trade negotiations had changed. With trade barriers substantially reduced and with trade negotiations taking more time to deal with issues than is tolerable for commercially important business matters, getting

the business sector to pay attention to multilateral issues in the lead-up to Doha was substantially more difficult.⁴ At the same time, new parties within each society were clamouring for greater input into the development of positions for trade negotiations, into the conduct of the negotiations, and into the trade policy agenda more generally. Thus, not only did many of these countries have to conduct a broad-based consultative exercise pre-Doha, some delegations at Doha included representatives of civil society and others. Moreover, during the course of the discussions leading up to and at the Doha meetings, it became abundantly clear that, to sweeten the deal for the developing countries (and especially the least developed), the WTO's richer members would be expected to deliver—and not just trade-related technical assistance but also market access in textiles and clothing and agriculture.

While these richer multilaterally-oriented countries faced a far more complex calculation of how and why they would stand to benefit from a new round than had been the case in previous launches, and with a pledging session for expanded development assistance looming, they behaved in line with expectations as to how confirmed multilateralists would behave.

What is on tap for Kananaskis

Apart from their usual focus on short-term economic growth prospects, meetings of the Group of Seven/Group of Eight (G7/8) also tend to address topical political and economic issues confronting the global community, including multilateral trade issues and systemic issues of international governance.

⁴ For Canada, in particular, this was an important development because the Free Trade Agreement (FTA) and its successor, the North American Free Trade Agreement (NAFTA), had largely dealt with the most pressing issues for Canada's business community, namely more secure access to the U.S. market. From a commercial perspective, the main area of interest in the multilateral trade negotiations context was therefore agriculture with Canada joining other like-minded nations in the so-called "Cairns Group", seeking to improve market access and to strengthen disciplines on export subsidies.

While the WTO and the G7/8 are both important for global governance, the contrasts between them could not be greater.

- Whereas the WTO's institutional power derives from its influence over world trade, the G7/8's economic clout comes from influence over global finance, exercised in good measure through its executing agencies, the IMF and the World Bank, both essentially shareholder-run institutions, as well as other instruments of international finance.
- Whereas the WTO is in some ways a rough equivalent to a global town-hall meeting, in which at least those with some economic clout and vested interest have a voice and an equal vote, the G7/8 is the board meeting of the local bank, both exclusive and with no pretence to the principle of one voice, one vote the Chairman of the Board wields disproportionate influence.
- Whereas the WTO says comparatively little in a positive regulatory sense about the nature of domestic economic management (if already too much in the estimation of some) while providing a well-articulated system of global governance for its area of competence, trade in goods and services, the G7/8 is almost the direct opposite: it tends to support a particular prescription for achieving good economic performance at home⁵ while refraining from engaging in what might be seen as direct management of the global economy, leaving that in effect to the market.

If the WTO provides the legal-technical infrastructure for managing global commerce, as some would argue, the G7/8 might be said to provide the "cabinet" meetings of the system of global economic governance.

Against this background, the agenda for Kananaskis has two major issues planned in addition to the routine consideration of global economic growth prospects: fighting terrorism and a G7/8 Africa Action Plan which is to build and expand on the New Partnership for Africa's Development (NEPAD) unveiled at the 2001 G7/8 summit in Genoa.

⁵ As discussed below, the main elements of this come from the so-called "Washington Consensus" as updated by the G-20's "Montreal Consensus".

More fundamentally, Kananaskis is cast as being about “mainstreaming” governance, both domestic and international. The G7/8 “take” on governance starts with the empirically-based premises that:

- economic growth is key to reducing poverty;
- prudent monetary and fiscal policies and market-friendly reforms are associated with better economic growth;
- open markets for goods and services as well as foreign investment and access to international capital markets constitute essential features of growing economies; and
- investments in education and health care and the creation of adequate social safety nets are needed to provide the basis for equitable sharing of the benefits of growth (and thus to promote political stability and sustainability of reforms).

More recently, attention has been focused on the institutional frameworks that facilitate transactions in a private, contract-based exchange economy the rule of law and enforcement of contracts, sound economic regulation (especially of financial institutions and markets), and transparent and accountable public management (i.e., absence of corruption) that instills confidence in local and potential foreign investors alike.

The substantive content of this prescription, which may be termed the Washington/Montreal Consensus, is married with procedural elements modelled on those in the NEPAD which emphasize ownership of the policy reforms by the country involved. “Coherence” in this framework means that the various international institutions providing financial or technical support to the developing countries co-ordinate their policies with respect to each client economy:

- the IMF in providing macroeconomic advice and assistance;
- the World Bank through its Country Assistance Strategies;
- UNCTAD/UNDP in supporting domestic adjustment; and
- the WTO in providing trade-related technical assistance to help developing countries exercise the rights and meet the obligations of WTO membership.

The intent is that the international institutions have on offer an internally consistent set of policies that prepare developing countries, and especially the least developed, to meet the

domestic and external challenges of development. Coupled with debt relief and inflows of official development assistance, this would pave the way for expanded inflows of private sector capital to sustain growth and economic development.⁶

Complementing this “supranational” governance framework are the so-called “transgovernmental” forums networks of agencies or regulatory authorities of sovereign governments that form to address particular issues confronting the global community.⁷ An advantage of addressing issues in such forums as opposed to international institutions such as the IMF or the World Bank is that the issues are dealt with by representatives of sovereign nations who are likely to be more sensitive to issues of national interest, attenuating therefore charges that responses are being developed by institutionally-driven, unaccountable international bureaucrats.

While it is clear that major efforts are being made to respond to the criticisms that have been levelled at the approach

⁶ One currently favoured vehicle to give effect to this approach is the Poverty Reduction Strategy Paper (PRSP) process. PRSPs are conceived as “blueprints” for development and poverty reduction in the least developed countries, as well as being mechanisms for coordinating donor development assistance. These blueprints join the alphabet soup of other strategies/initiatives/programs to deal with poverty, debt and development, including the World Bank Country Assistance Strategies (CAS), the IMF’s Extended Structural Facility (ESF) programs, the Heavily Indebted Poor Country (HIPC) initiative and as many others as there are agencies or international meetings on the issues.

⁷ One example of a transgovernmental forum is the Group of 20 (G-20), which brings together the Finance Ministers of systemically important countries. The G-20 was formed in the wake of the Asian Crisis to identify policies required to avoid the build-up of financial fragility and to create mechanisms to facilitate working out problems when they do arise. Other examples include the Basle Committee on Banking Supervision that was formed by the Central Bank Governors from the Group of Ten, and the International Organization of Securities Commissions (IOSCO). For a discussion of the role of transgovernmental forums in the system of global governance, see Anne-Marie Slaughter, “Governing the Global Economy through Government Networks” in Michael Byers (Ed.) *The Role of Law in International Politics: Essays in International Relations and International Law* (Oxford: Oxford University Press, 2000).

to global governance, it is substantive success that ultimately confers legitimacy. The fact that there continues to be a sense of crisis concerning global governance thus can be traced to the lack of obvious results from the plethora of action plans, agendas and programs promulgated over the years. In this circumstance, the finger of blame gets pointed everywhere at the developing countries themselves for failing to implement, at the developed countries for inadequate support (including in terms of market access), and at the policy prescription itself.

In this latter regard, it is hard to miss the circularity in the prescription presently on offer: in order to develop, a country must first put in place the institutional framework of an advanced economy. The reason that global governance policy has reached this point is straightforward: while the model is clear—the vibrant, resilient economy of the United States of America—there is no real understanding of “how to get there from here”, where the initial conditions of “here” are often those of a destitute, failed or geographically isolated economy.⁸

The road map of major global governance meetings in 2002

Monterrey, Mexico (18-22 March 2002): a UN conference on *Financing for Development* will consider a draft “Monterrey Consensus” which holds that sustainable development must involve a compact between donor and recipient: donors undertake to mobilize Official Development Assistance and other resource flows and to free domestic resources through debt relief; recipients, meanwhile, commit to “country ownership” of the reforms and “staying the course” on agreed development priorities.

Kananaskis, Canada (26-27 June 2002): in addition to considering economic growth and the struggle against terrorism, G7/8 leaders and finance ministers will consider an Action Plan for Africa.

Johannesburg, South Africa (26 August-4 September 2002): Environment ministers will address questions of sustainable development at the “Rio plus Ten” World Summit on Sustainable Development.

⁸ In this regard, it is apposite to note that the United States reached its current position with a historical institutional framework that only gradually evolved into its current form).

The Crisis in Global Governance: Issues and Issue Linkages

Development

While governments in the industrialized countries jumped on the technical assistance/capacity building bandwagon at Doha to get developing countries onside for a launch, they now face the daunting task, as many have noted, of delivering this in sufficient quantity and quality to have a significant impact by the time of the fifth Ministerial when the outlines of the Doha Round are to be finally decided. The questions are twofold: can support on the scale that is needed to make a difference actually be mobilized, and how to avoid raising excessive expectations regarding what is feasible in terms of end results—which is not an inconsequential issue insofar as the assistance envisaged is intended, in part, to provide the developing countries most in need thereof with the capacity to negotiate effectively in the *course of* the Doha Round. The outcome will hinge, in the view of some, not so much on the availability of money⁹ as on substantive delivery the technical assistance and capacity building that is being discussed may go well beyond what the WTO Secretariat and other international agencies have been providing.¹⁰

⁹ On March 11, 2002, in Geneva, a total of over 30 million Swiss francs (double the initial target) was pledged to what is known as the WTO Trust Fund for Doha-related technical assistance and capacity building.

¹⁰ It is not entirely clear that everyone has the same understanding as to the meaning of the trade-related technical assistance (TRTA) and the broader notion of capacity building that have been widely promised. These terms certainly include advice and training for developing country officials on the interpretation of the WTO agreements of the sort that is routinely provided by the WTO Secretariat (although the WTO has limited capacity of its own to expand this to any great extent). In addition, there is technical assistance in implementing the agreements, which can include for example help in drafting or adapting statutes or regulations (e.g., to implement the TRIPS Agreement) and training for officials in administering these regulations. This type of activity would be more in the province of the World Bank through programs under the Integrated Framework. Some developing

However, for the developing countries that have bought into the program of trade-led development, the key issue is market access. From this perspective, it was argued, the complex agenda that emerged from Doha is taking the WTO away from trade; it needs to get back to this issue front and centre, if the Doha Round is to be a development round as advertised.

The European Union helped build momentum on market access in the period leading up to the Doha meetings with its “Everything But Arms” initiative, which promised quota and duty free access to all developing country products (although, as some have put it, to many developing countries the initiative would have better been titled “Everything but Farms” since the European Union’s farm support programs, including its agricultural export subsidies, were not included).

The United States, for its part, greatly facilitated a launch by moving, as noted above, on some of the major elements of concern to developing countries: showing flexibility on TRIPS against the urging of various domestic interests, including notably the pharmaceutical industry, and taking a chance on opening up negotiations on anti-dumping in the round. At the same time, there was no evident thaw on textiles and clothing, one of the key market access issues.

The dynamic observed at the Doha meetings, with the industrialized countries emphasizing technical assistance and capacity building and the most trade-oriented developing countries emphasizing market opening, poses an important question about how the Doha Round is to be concluded. As was observed, after a good number of years of experience in the WTO, developing countries now “have the trade textbook” and are cognizant of the significance of their vote in a consensus

countries would interpret the meaning of capacity building even more broadly to include the development of physical infrastructure to support trade (e.g., ports facilities etc.). Within the civil society, on the other hand, the term capacity building would be held to include support for developing participatory mechanisms to increase the democratic legitimacy of developing country participation in negotiations.

setting.¹¹ Many of these countries are less interested in “putting development into trade” (which is code language for relaxing WTO implementation requirements for developing countries), and would prefer to take at face value the rhetoric of “putting trade into development”, which means more trade through significantly improved market access. Can the industrialized countries deliver?

Finally, there is a large unknown due to the entry into the WTO of China in late 2001. As one of the world’s largest trading nations, with interests that to some extent coincide with more general developing country interests (although in some ways not), and with geopolitical clout unmatched elsewhere outside the OECD, China’s role in the conduct of the Doha Round remains unclear but potentially of high significance.

TRIPS

In many ways, the pitched intellectual battle that rages about the TRIPS Agreement is at the heart of the debate about global governance more generally in terms of (a) the intrusiveness of international rules into domestic policy space, (b) the pressure for international harmonization, and (c) the implications for democratic processes when rules with domestic distributional consequences are adopted on the basis of, or shaped by, international agreements. It is therefore useful to focus on this particular issue in somewhat greater detail.

There are several general features of the TRIPS Agreement that have put it in the line of fire in terms of governance:

First, the economic literature shows that patent protection as a means of eliciting research is not unambiguously an optimal

¹¹ Moreover, there is now a flood of advice on offer to developing countries from non-official sources (some civil society organizations have been described as constituting a “virtual secretariat” for developing countries) as well as from the official agencies. While some would question how effective or even desired is the support proffered by civil society organizations, others see such organizations as providing analytical support that strengthens the ability of the developing countries to choose effective strategies and to maximize their negotiating leverage.

approach since it gives effect to its purpose by bestowing market power in the form of a temporary monopoly on those holding patents. It is a well-known result of both economic theory and empirical research that monopolies result in economic inefficiencies (e.g., higher prices and reduced output) compared to competitive markets. Accordingly, to justify bestowing market power on particular firms requires not only a good reason for doing so (in this case stimulating additional research and development) but also the absence of a better alternative instrument (e.g., using subsidies or tax incentives to stimulate research).

In a world where governments typically face fiscal pressures, the market distortions resulting from patent protection tend to be seen as the lesser evil.¹² Nonetheless, this still leaves patent protection subject to an empirical test of whether the dynamic gains to society from research and development that is stimulated by the prospect of obtaining a legal monopoly for an extended period (20 years in the case of TRIPS) outweighs the static costs (which include the costs of implementing a regulatory structure to administer the grant and enforcement of the monopoly regime, insofar as the latter are not fully defrayed by user fees).

Given the complex considerations, in order to achieve optimal outcomes, nations must carefully calibrate the length of time for which the ability to obtain monopoly rents is conferred, balancing the potential gains in terms of greater incentives for research against the costs. Since there is no reason to expect that a balance that works for one industry in one country (e.g., health-related products in the United States) will be equally appropriate for other industries or other countries (e.g., food-related products in large population developing countries such as India or China), the deployment of this technique in an

¹² As was pointed out at the conference, the distortions include as well those due to the use of patents to block innovation by others.

internationally standard manner is problematic on *a priori* grounds.¹³

Second, it has been argued that TRIPS was implemented without the type of understanding of its consequential effects that would be desirable in a public policy process. For example, critics now point to the fact that the availability of monopoly rents for certain approaches to problems (e.g., patentable drugs in the case of health problems) distorts the direction of research away from techniques that do not lead to patents, introducing spillover distortions into various areas of economic and social activity. As well, the ability to reap monopoly rents on research into diseases that afflict developed countries distorts research choices vis-à-vis diseases that afflict much larger number of people in the developing world where there is no effective demand to pay the monopoly rents. Doubts about over-emphasizing commercial approaches to research activity are also raised by the evidence of very good returns to non-commercial research and development in agriculture. Finally, there is the fact that sometimes patents are sought for traditional knowledge i.e., in instances where there is no gain in research at all and the purpose of the patent is in effect to enclose an intellectual commons. Such considerations raise the question of what is a socially efficient research framework.

Third, like tariff changes, patent protection redistributes income. However, unlike tariffs cuts, which redistribute income amongst producers based on competitive grounds and more broadly from producers to consumers by reducing producer rents and enlarging consumer surplus, patent protection redistributes income from consumers to producers, enlarging producer rents and reducing consumer surplus. Accordingly, while the population at large (or at least consumer activists) may be willing to cut trade ministers considerable political economy slack for traditional trade policy, which has allowed the presentation of negotiated outcomes of trade rounds to national legislatures as untouchable *faits accomplis*, there is no

¹³ Notwithstanding this point, the Patent Harmonization Treaty, it was pointed out, is moving even faster in this same direction.

such willingness to accommodate the negotiation of rules such as TRIPS.¹⁴

Fourth, there are various problematic aspects to the inclusion of TRIPS in a trade agreement including, *inter alia*, the internationally asymmetric outcomes from the TRIPS agreement (gains for developed countries and costs for developing countries); and regime inconsistency (private rights for genetic resources under TRIPS versus sovereign ownership of the same asserted by the Convention on Biodiversity).¹⁵

For all these reasons, the TRIPS Agreement represents a very dubious salient towards a regime for democratic global governance and this is quite apart from the moral issues raised because of the threat of legal action against compulsory licensing of HIV-AIDS drugs by developing countries, which were put aside (at least to all appearances¹⁶) at Doha.

¹⁴ More generally, it was observed that, insofar as the attack on the WTO stems from the fact that it favours the private interest over the public interest, then something has seriously gone wrong, since the original GATT expressly suppressed private producer interests in favour of expanding the public interest, in particular by reducing producer rents and expanding consumer surplus!

¹⁵ For a fuller discussion of the trade-offs and issues surrounding the TRIPS agreement see Keith E. Maskus, *Intellectual Property Rights in the Global Economy* (Washington DC: Institute for International Economics, 2000).

¹⁶ The extent to which the declaration resolves the issue remains subject to debate. It was observed that, even though TRIPS may not be enforced through the WTO, the fact that most governments, most of the time, will adhere to their formal commitments means that TRIPS will be *de facto* enforced. Moreover, in terms of the scope of the flexibility built into the agreement, it was suggested that those providing technical assistance to developing countries tend to interpret this flexibility narrowly, further increasing the likelihood that it will be applied narrowly. That being said, it was also pointed out that the World Bank has been highlighting the flexibility in the agreement to its developing country clients in its publications. In the end, it may be up to the dispute settlement mechanism to establish what the international regime is in *de facto* terms, in particular with respect to the boundaries that will apply to the flexibility indicated in the political declaration (i.e., when is a health situation an emergency for purposes of TRIPS) and/or in areas where controversies have yet to surface.

At the same time, there is the *realpolitik* issue that the TRIPS Agreement poses: arguably, there would have been no Uruguay Round outcome without it, since it was a major factor in mobilizing U.S. private sector support for the round. The technical analysis of the agreement, or lack thereof, did not enter into the political equation.

As to the narrow question of the future of the TRIPS Agreement itself, it was argued that the array of interests that led to TRIPS being implemented remains to a good extent in play. Indeed, as was observed, at Doha, the TRIPS-related issue that was being actively discussed had to do with *expanding* it to include geographic indicators, with the *demandeurs* being not U.S. multinationals but developing countries seeking to create rents for themselves.¹⁷ While this suggests that TRIPS may be generating new constituencies, which in turn would militate against its demise, some see it at risk of being weakened, unless market access on agriculture and textiles and clothing is forthcoming. At the same time, the fact that the United States is implementing intellectual property in its bilateral free trade agreements points to an alternative *de facto* global regime emerging from a patchwork quilt of bilateral and regional agreements.

Services

The major governance issue posed by trade in services under the GATS derives from the fact that this agreement applies international disciplines to domestic regulations and to services that are delivered by the public sector in some countries. These concerns may be articulated as follows.

¹⁷ It is more than a little alarming that the commentary on this issue has tended to emphasize that this shows that developing countries might indeed find benefits in TRIPS rather than pointing out the Pandora's Box of rent seeking which TRIPS has introduced into the bosom of the international trade regime, including in cases where redeeming benefits in terms of research and development are not even remotely at issue.

Insofar as services trade disciplines rule out regulations that are presently considered to be optimal, constrain movement to regulations that might be optimal in the future (through *de jure* or chilling effect), or prevent the trial and error experimentation that may be required to identify an optimal regulatory regime, their existence is problematic from a theoretical economic welfare perspective.¹⁸ The generally poor state of knowledge concerning the impact of changing regulations in developed countries, and the complexities involved in understanding the effect of the GATS regime,¹⁹ heightens concerns for many about entering into binding commitments; the far greater lack of knowledge about these issues in developing countries escalates these concerns when services trade disciplines are extended beyond the industrialized countries.

Meanwhile, introducing private sector service suppliers into areas where public sector supply has been the norm (sometimes in the form of public monopolies), while in theory welfare enhancing in economic efficiency terms due to demonopolization, might result in trade-offs with non-efficiency-related public objectives that are not considered to be desirable

¹⁸ One observation was that, in some areas, regulatory regimes develop on a “follow the leader” basis. California, for example, tends to play this role in environmental regulation while the U.S. Securities and Exchange Commission tends to play this role in securities regulation. Insofar as the bias within the WTO setting is against outliers in regulatory regimes, it would tend to “stop the leader”, and thus tend to arrest regulatory development.

¹⁹ The GATS applies disciplines in some cases to non-discriminatory measures as well as to discriminatory measures, complicating determination of what is and what is not subject to, or potentially subject to, an international trade in services discipline. In a similar vein, regulations that are nominally non-discriminatory may be subject to disciplines if their effect is more onerous on foreign services suppliers – a *de facto* test. Technical difficulties in interpreting certain drafting within the GATS that have been identified by the WTO secretariat add to this concern. Indeed, the inclusion of tests for regulations such as “not more burdensome than necessary” which have yet to be subjected to jurisprudence make this agreement, in the view of some, a “labyrinth of uncertain language”.

in overall public policy terms.²⁰ While the GATS provides exclusions for government-provided services, how narrow or wide the exclusion is depends on interpretation (since many, if not most, government services involve an admixture of private supply, a narrow interpretation of the exclusions could give the GATS wide application).

Finally, it was argued, the fact that regulatory measures might be subject to dispute resolution could place the Dispute Settlement Body in the position of domestic regulatory oversight in areas that seem quite remote from trade (e.g., domestic water quality measurement, land-use planning and zoning restrictions²¹) and thus well beyond what would appear to be reasonable.

Since a good portion of the basic services provided by local governments might be potentially attractive to private sector service providers, and thus possibly to foreign service providers, the governance issues in these areas are, in the view of some, quite immediate. This concern is heightened by the tight three-year target for completion of the Doha Round negotiations (which in the view of some creates a false sense of necessity that militates against the thorough public policy scrutiny that such commitments require).

Countering these various apprehensions, and indeed in good measure *because* of these apprehensions, there are several features of the current WTO trade in services regime that mitigate concerns:

- the positive list approach in which commitments are made, coupled with the fact that governments, especially in the developing world, have been cautious about entering into commitments;

²⁰ It was noted that, in one instance where water supply was privatized, an international dispute erupted when the foreign investor shut off the supply of water to those who could not pay.

²¹ One example that was cited where a trade dispute could involve zoning regulations would be entry of a “big-box” retailer into a particular neighbourhood.

- the relaxed manner in which the Appellate Body has tended to interpret Article XX grounds for exceptions,²² coupled with the Doha Declaration's affirmation of the right to regulate which strengthens the hand of the Appellate Body in upholding domestic regulation in politically sensitive cases; and
- the fact that retreat from commitments requires negotiations only with principal suppliers, not with the entire WTO membership.

With the trade in services regime still very young and having undergone little development, it remains difficult to foresee how serious the potential problems will turn out to be. Nonetheless, there are sufficient grounds to suspect that movement on services liberalization will be cautious (not least because well-developed sector-specific base cases such as provided by the Telecoms Reference Paper for that sector are lacking in other sectors) and that services disputes will be difficult for the WTO to manage.

Agriculture

Although there is widespread agreement that agriculture is the area in which trade liberalization stands to yield the greatest commercial or economic gains,²³ agriculture also remains probably the most difficult subject for trade policy. Little progress was made between the official launch of renewed multilateral negotiations in 2000 (as had been pre-committed in the conclusion of the Uruguay Round) and the Doha meetings, notwithstanding the fact that over 120 proposals had been put

²² Article XX of the GATT, entitled *General Exceptions*, provides that the Agreement shall not be construed to prevent the adoption or enforcement of measures related to a specific list of grounds, including for example protection of public morals, national cultural treasures or human, animal or plant health or life.

²³ For a review of the literature on this point, see Chapter 3 in this volume, John M. Curtis and Dan Ciuriak, "The Nuanced Case for the Doha Round".

forward. This supports the view that broader trade-offs are essential for forward movement in this area.

From a governance perspective, the agricultural trade negotiations highlight several issues.

First, there is the central role in shaping the Doha outcome played by the European Union's insistence that its own internal reforms to the Common Agricultural Policy *not* be pre-judged in any way by the multilateral trade negotiations.²⁴ The tough negotiations and the sophisticated language used to present the outcome is indicative of the scope for multilateral rules to impinge on domestic rulemaking and the result is indicative of the privileged position of the larger economies in determining the outcome of trade rounds.

Second, there is the complicated issue of "non-trade" concerns.

Third, there is the conflict between the commitment made by the industrialized countries to open up markets for developing country agricultural exports and the entrenched position of agricultural producers in domestic politics within the advanced countries.

Fourth, the pressure on family farm incomes is undermining support for trade liberalization in agriculture even in successful exporting countries. This may have less to do with trade liberalization *per se* than, as was argued at the conference, with the mergers and take-overs that have increased corporate concentration in various links in the agri-food production chain, including upstream equipment/input suppliers and downstream processors/ distributors.

Trade-related Issues

The intersections between trade and other policy issues that are affected by trade and/or in their turn impact on trade policy are the focus of much of the concern about trade policy and especially about further liberalization. The rules that are to

²⁴ This was at the crux of the issue about the interpretation of the words "with a view to" elimination of export subsidies.

govern traffic at these intersections remain to be clearly set out are we talking about an overpass, an underpass, a four-way stop or a two-way stop? While public support for trade is broad (this is the case in Canada but also elsewhere), so is concern about how these intersections are regulated.

Resolving the interaction between the WTO agreements and the Multilateral Environmental Agreements (MEAs) is one important task that will be undertaken in the Doha Round.²⁵ However, for environmentalists, this is but the tip of a much larger iceberg of issues that remain to be adequately addressed.²⁶ And, in the view of some, the attitudes of environmentalists are hardening.

On trade and labour, the International Labour Organization has been pushed to increase its profile on international labour issues in order to relieve the pressure on the WTO. While trade and labour issues thus had little profile at Doha, it was suggested at the conference that the position of labour is also hardening.

²⁵ MEAs are agreements between states which set out principles which parties are to respect when considering actions which affect a particular environmental issue (“soft law”) or which specify legally-binding actions to be taken to work toward an environmental objective (“hard law”). The major MEAs are the Convention on Biological Diversity (CBD), the Framework Convention on Climate Change (FCCC), the Montreal Protocol on Substances that Deplete the Ozone Layer (Montreal Protocol), the Convention on International Trade in Endangered Species of Wild Flora and Fauna (CITES), the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (Basel Convention), and the United Nations Convention on the Law of the Sea (UNCLOS). Some of the important “soft law” agreements include the Rio Declaration on Environment and Development, Agenda 21, and the Forest Principles.

²⁶ These include the larger questions concerning the environment and the economy such as failure to account for resource depletion in measures of economic output, the validity in broader public policy terms of economic theories that underpin trade (e.g., comparative advantage), and the issue of regulation of transnational corporations. This set of issues will get a hearing at the Rio-plus-ten meetings in Johannesburg, the third major leg of the 2002 global governance tour from Doha to Kananaskis to Johannesburg.

Conversely, for the corporate sector, Doha was much less interesting than Punta del Este, where the Uruguay Round was launched. Investment is not that big an issue any more, perhaps because the web of bilateral and regional agreements that contain provisions dealing with investment have effectively dealt with pressing issues. Similarly, the corporate sector has little concern about competition policy within the multilateral framework, provided only that the United States and the European Union can sort out their bilateral concerns.

The Competition from Regionalism

The ongoing activity towards deeper regional economic agreements remains a major issue for the multilateral system. The WTO's disciplines on regional agreements (Article XXIV, which requires most importantly that substantially all trade be covered by a preferential trade regime for it to be consistent with multilateral obligations) remain untested.²⁷ In good measure, it was suggested, this reflects the clouded meaning of Article XXIV: does it cover substantially all of existing trade (which may be quite small) or substantially all potential trade (which might be much broader).

Concern about regional trade agreements has generally been muted because of the general consensus that, on balance, the trade that they create exceeds, often substantially, the trade that they divert. On the other hand, the deepening of trading blocs weakens the apparent significance of the multilateral system to those who actually take part in trade businesses even though multilateral liberalization is vital in minimizing the distortionary effects of regional pacts by squeezing the available margin of preference that they can provide.

Moreover, for developing countries, the jury must remain out on whether regional pacts help or hinder. East Asia, which

²⁷ Many regional trade arrangements have been notified to the WTO in accordance with obligations to which members are subject; however, to date, there has not been a single ruling concerning whether any particular trade arrangement is consistent with Article XXIV.

is the region that has done best in integrating into the global economy through trade, is conspicuous in terms of having far fewer regional trade agreements than Latin America or Africa (which curiously has the most).

Nonetheless, there appears to be considerable interest in developing a bloc in East Asia (for reasons that may have more to do with the Asian Crisis than with trade policy *per se*). Meanwhile, in the Western Hemisphere, the Free Trade of the Americas process is due to conclude at the same time as the Doha Round, in 2005, setting up a horse race of no small consequence for the role of the multilateral system in “delivering the goods” on trade.

The WTO as an Institution of Global Governance

One important strand in the controversial weave of global governance today is the role of supranational institutions.

In the view of some, the WTO is a member-driven organization through which duly constituted governments voluntarily enter into binding international commitments for mutual gain. The WTO is kept deliberately small in order to ensure that a strong role is played in national capitals.

In the view of others, the idea of the WTO as a member-driven consensus organization is a fiction; some who cleave to this view see the WTO as constituting yet another supranational institution with an unelected bureaucracy that wields considerable influence over public policy in many countries through its control over inside information (as reflected by the lack of “external transparency” in WTO affairs), its proactive role in interpreting the agreements,²⁸ its advocacy of liberalization and most importantly through the judicial power of the dispute settlement mechanism. This independent power

²⁸ Developing countries, which tend to be on the receiving end of WTO Secretariat advice and assistance, face some difficulties in this regard. While they may be suspicious of the interpretations of the agreements offered by WTO insiders because the institution’s advocacy has called its objectivity into question, it remains difficult to know what advice one should then trust.

is to some extent negated by the fact that the WTO is a leaky organization (attributed by some to the presence of reasonable people on the inside) and can be pushed back by members.²⁹ Nonetheless, as was argued, since the WTO does not derive its power formally, it is difficult for this power to be transparently subjected to discipline. It was also observed that, in India, the WTO is paid far more attention than is accorded the IMF or the World Bank.

Many of those who see the WTO as inordinately weak argue that it should be strengthened, armed with larger budgets and more personnel, and granted greater executive powers to deal with, at a minimum, lower-level administrative decisions and technical interpretations. Conversely, those who see the WTO as too powerful would like to see its influence cut back to increase its democratic legitimacy. It is not clear that there is a feasible middle ground.

While the WTO of presently 144 members is a radically different organization than the original GATT of 23, its decision-making architecture has not changed. Nor is it likely to change any time soon because the consensus format is a major source of power within the institution for the smaller members. Equally importantly, institutional reform of the WTO is not a high priority for the United States.

The WTO thus remains without a management committee. As well, it lacks a policy forum in which to debate divisive issues, something which it did have prior to the disbandment of the Consultative Group of 18 (CG18). Finally, a way to meet the developing countries' concern about not being fully part of the negotiating process has not yet been sorted out.

At the same time, the proposals put forward at Doha on "external transparency" were greeted with yawns, reflecting perhaps a perception that the anti-globalization demonstrations had passed their peak (a perception which many in civil society

²⁹ The Dispute Settlement Body (DSB) was indeed forced to disinvite *amicus curiae* briefs in the course of a dispute when members called a special session of the General Council to protest what they saw as the DSB deciding an issue that members had left undecided in the Uruguay Round

would argue is false). Moreover, there is no clear response to the concerns that are being raised by the intrusive nature of WTO rules in the services sector (where trade disciplines have the potential to influence the substantive content of domestic regulation and possibly even to result in WTO dispute resolution panels making rulings on substantive domestic regulation, for which many would argue WTO panels have neither the requisite expertise nor, more fundamentally, the legitimacy). A resolution to the broader question of democratic legitimacy that exercises the civil society movement is thus also not yet in sight.

Conclusions

A failure to launch a round at Doha would have been very damaging for global governance. There are alternative avenues that nation-states can take in addressing pressing trade-related problems—the WTO is not after all the only game in town. However, bilateralism and regionalism in the trade policy arena carry their own risks.

While the successful result at Doha was therefore of much importance, it is not clear how properly to characterize this success—a round or an agenda. Indeed, the Doha Declaration has no equal in terms of the skill with which it deployed “constructive ambiguity” to paper over fundamental divides. The work program, regardless of how characterized, will be decided at the fifth Ministerial Meeting of the WTO in Mexico in 2003. Accordingly, it is impossible at present to predict the outcome of the success at Doha.

Nonetheless, there is great significance in the symbolism that is invoked in the Doha Declaration (in particular, the persistent refrain of special and differential treatment for developing countries) and in the fact that the United States and the European Union conspicuously “wooed” Africa before and during the meetings. By contrast, the South played no great role at Punta del Este. The importance of development issues in the current work program cannot, therefore, be emphasized enough.

At the same time, delivery by the industrialized countries will not be easy: the areas where they would like the emphasis to be (technical assistance and capacity building) often involve long-term institutional change and results can be difficult to measure, while the areas which matter most to developed countries (market access on agriculture and textiles and clothing where developing countries face tariff walls that are often prohibitive) are where the economic adjustment and associated political pain in the industrialized world lies. Moreover, there remains a huge gap between the amount of Official Development Assistance that is needed to meet promises and the amount that has been identified.

From the perspective of governance issues *per se*, the future of the WTO appears to be troubled. The erosion of the buffer zone between domestic and international policy space that has been underway since at least the Uruguay Round (and to some extent the earlier Tokyo Round) is to be accelerated through the push for further services trade liberalization in the Doha Round. Whether the WTO, and especially the Dispute Settlement Mechanism, can cope with the added burdens is not clear. Moreover, it remains to be seen how the WTO will function as a negotiating body with a membership of 144 that now includes a wild card of unknown significance in the form of China.

Finally, there is the larger issue of international coherence, including not only the trading system but the international financial regime of exchange rates and capital flows. Insofar as this issue is on governments' radar screens, it is in terms of the institutional linkages and interactions involving the WTO and the Bretton Woods institutions. The substantive aspect (the impact on the trading system of over-shooting exchange rates and volatile capital flows), however, is not being dealt with and indeed, has not been taken up since France voiced concerns about the interaction between exchange rates and the trading regime in the aptly named "FOGS" process (the acronym was for the formally constituted Uruguay Round Negotiating Group on the Functioning of the GATT System, which amongst other goals was to establish better links to the Bretton Woods institutions).

The global economy has changed. The need to change the approach to global economic governance seems apparent to all. Yet how to do it is contested as never before. It seems apt in these circumstances to recall the words of one Niccolo Machiavelli: "...there is nothing more difficult to arrange, more doubtful of success, and more dangerous to carry through than initiating change in a state's constitution."³⁰ The road from Doha to Kananaskis and beyond can well be expected to be bumpy.

³⁰ Niccolo Machiavelli, *The Prince* (Penguin Books, 1973): p. 51.