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The WTO and the post-Doha Agenda

by
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Introduction

The World Trade Organisation (WTO) held its ministerial meeting in Doha in November 2001 against the spectre of the catastrophic events of 11 September, looming global recession and its own 'existential' confusion after the failure of the Seattle ministerial. Doha was thus seen as seminal in restoring the WTO's *raison d'être* as the primary custodian of the global rules-based trade regime. While the final declaration leaves itself open to varying interpretations, Doha has launched a 'broad-based' round of multilateral negotiations on nine topics—eight of which are to conclude in a 'single undertaking' by 2005. The eight topics are implementation, agriculture, services, industrial tariffs, subsidies, anti-dumping, regional trade agreements and the environment. There are, however, ambiguities in virtually all areas including when negotiations will start on the Singapore issues, namely: investment competition policy, trade facilitation and transparency in government procurement.

Many of the ambiguities are a result of negotiating mandates that seem *a priori* to preclude meaningful outcomes, notably through clauses indicating that the negotiations will not change members rights and obligations or diminish the effectiveness of the agreement under negotiation.

A Development Round?

The Doha declaration certainly contains more development friendly language than any of its predecessors, but whether this is adequate to qualify Doha as a 'development round' remains to be seen. Many developing and in particular African countries still see the post-Doha agenda as weighed against their interests and being heavily skewed in favour of developed countries. Indicative of this are the few immediate gains developing countries obtained on their implementation concerns and equally discouraging, no progress was made on market access for textile products.

The declaration is liberally spiced with, and has unusually substantial sections on themes such as technical assistance, capacity-building and least-developed countries. This is particularly the case with the Singapore issues, where many developing countries draw a direct link between effective technical assistance and an eventual agreement to start negotiations. A non-negotiating work programme has also been launched on some priority issues for developing countries, including trade and debt, finance and technology transfer, the special problems of small economies as well as special and differential treatment which 'shall be an integral part of all elements of the negotiations and shall be embodied in the Schedules of concessions and commitments'. Whether all these provisions will prove substantive and substantial will be a key factor in developing countries accepting a single undertaking outcome.

A tour of the main issue areas:

Agriculture: The key concern was what to do with export subsidies which practically pitted the EU against the entire WTO membership. The EU would not accept any draft language which contemplated 'phasing out' of export subsidies. While Doha managed to retain the phrase, it was included with the qualification that talks must be conducted 'without prejudging the outcome of the negotiations'. The coalition of developed and developing country agricultural producers, the Cairns Group, might take some comfort in finally getting a 'commitment' to the elimination of export subsidies but as far as the EU is concerned, their commitment only extends as far as movement towards such elimination without any agreement yet to timelines for reaching that goal. The level and pace of reduction remain a subject for difficult and contentious negotiations.

Services: The interesting features on services trade relate to members' right to regulate its supply and its link to environmental and health concerns and future conduct of the ongoing negotiations to progressively liberalise trade in services. More commitments are needed from both developed and developing countries. The former need to reciprocate with more meaningful commitments in mode four of supply on 'movement of natural persons' (cross-border movement of workers on temporary contracts). This is one key area where developing countries have the export advantage although the post-September 11 environment might complicate the matter. Developing countries need to make substantially more commitments in mode three of supply on 'commercial presence' (inward investment). This would complement autonomous liberalisation of inward investment, particularly in financial and telecom services which have potentially rewarding economy-wide gains.

Market access for non-agricultural products: Industrial tariffs are included in the single undertaking despite deep reservations and outright opposition from African and LDC members. Before and at Doha they made it clear that they were not prepared to take on further liberalisation in goods before impact studies had been conducted. These concerns are not adequately reflected in the Doha declaration. Among gains to developing countries is the promise that negotiations shall aim to reduce or eliminate 'as appropriate' not only tariffs but also tariff peaks and escalation as well as non-tariff barriers on product lines of export interest to developing countries.

The Uruguay Round (UR) made significant progress in increasing the spread of binding and reducing tariffs on industrial products. Almost all the tariffs of developed countries have been bound against further increases and, as a result of the reductions made, average tariff levels of developed countries declined from 6.3 per cent at the beginning of the UR to 3.8 per cent by 2000, a year in which the staged reduction agreed to in the round was completed.

This average level of tariffs does not, however, reveal the high level of tariffs that are applicable in these countries to imports of labour-intensive products, such as textiles and clothing, leather and leather products, and footwear. The US, Canada, Japan and the EU apply duties over three times the average rate for a number of tariff lines in these product groups. Such tariffs – exceeding 12 per cent – are known as tariff peaks. In most cases products subject to such peak most-favoured-nation tariffs are also excluded from the generalised system of preferences or are subject to high preferential rates. Most of the products affected by peak tariffs also reflect tariff escalation according to the degree of processing. Although, as a result of the reductions made in the UR, such escalation has declined significantly in most developed countries, rising tariffs from raw materials to intermediate products and sometimes peaking for finished industrial products continue to restrict export opportunities and thus hamper the development of resource-based processing and manufacturing in developing countries.

Intellectual property rights: While controversy and ambiguity rages around geographical indications for wines and spirits and patentability of life forms, a separate declaration makes provision to protect public health and promote access to medicines. This flexibility includes members right to grant compulsory licences especially where these concern national emergencies or public health crises, particularly with regard to HIV/Aids, tuberculosis, malaria and other epidemics.

Singapore issues: The provisions on investment, competition policy, government procurement and trade facilitation contain the most confusing provisions of the declaration. Members 'agree that negotiations will take place after the fifth Session of the Ministerial Conference on the basis of a decision to be taken, *by explicit consensus*, at that Session on *modalities* of negotiations' (emphasis added). Many developed countries consider this to be a mandate to launch negotiations at the fifth ministerial or shortly thereafter, whereas developing countries maintain that the negotiations may be years off, since the decision to launch them must be taken by *explicit consensus*. Much of this divergence of opinion arises from the (deliberately?) undefined word *modalities*, which members choose to interpret in different ways. While this must still be clarified in the work programme leading up to the fifth ministerial, the Singapore issues negotiating mandates explicitly recognise developing countries' need for technical assistance and capacity building.

Implementation concerns: This is another area where much confusion reigns in the aftermath of Doha. There is little consensus on the relationship or hierarchy between the different levels of implementation-related negotiations and relevant items in the mandates and time lines laid out in the Doha texts. Implementation issues involve concerns raised by developing countries since the coming into force of the Uruguay Round Agreements. On the whole, they address imbalances in the multilateral trading system that conspire against developing countries deriving benefits. After Doha (as before it) the most contentious issues are market access for agricultural goods and textiles, exemptions from subsidy prohibitions and reduction commitments, application of trade remedy measures and technical requirements and impediments. Another bone of contention is special and differential treatment of developing countries. Many provisions in Uruguay Round Agreements that are explicitly meant to benefit developing countries are couched in exhortatory language, and since they are not legally binding, developed country members have mostly ignored these 'best endeavour' provisions. Doha has not provided guidance on any of these concerns.

Trade and environment: For the first time in WTO history environmental issues were included at Doha, bringing the WTO closer to supporting sustainable development. The negotiations will take place as part of a single undertaking. In firm language the declaration stresses that the multilateral trading system and efforts towards environmental protection and sustainable development can and must be mutually supportive. Developing countries, however, have so far strongly resisted negotiations on environment at the WTO and justifiably fear that resulting provisions might be used as protectionist measures. They thus remain wary of references to environment in ministerial texts and that situation has not changed since Doha. While they see a need for clarifying the relationship between multilateral environmental agreements (MEAs) and WTO rules, their view is that MEAs should be the business of the responsible secretariats and not of the WTO.

However, the agreement to initiate negotiations on the environment in the new round opens the door in the WTO for better integration of trade and environmental objectives. The approved areas for negotiation are limited but perhaps could be expanded as the new trade talks proceed. Members agreed to negotiate the reduction of trade barriers to the sale of environmental goods and services, and to clarify and improve WTO disciplines as they pertain to fishing subsidies. They also agreed to negotiate the relationship between WTO rules and the trade obligations in environmental treaties.

Conclusion: Some considerations

What benefits are there for developing countries which flow from the Doha ministerial? Given the diversity of interests, levels of development and composition of developing countries, there is no easy or self-evident answer. The most significant gain perhaps is political. While the Doha declaration delivers few tangible benefits, the inclusion and focus on implementation concerns and more broadly development, moves the WTO towards a new and important threshold of negotiations and signifies a distinct shift in the WTO's political dynamics. This could potentially form the basis for progress on multilateral trade

negotiations.

Another relative gain is that 'development' has moved from a rhetorical objective to a negotiating concern that developed countries will have to face and make significant compromises in meeting developing country concerns. In the pre-Doha process, many developing countries sought a specific 'road map and timeline' on how development issues would be addressed. While much ambiguity remains on the redress requested, the collective Doha texts provide a basis for an interpretation that favours developing countries but the challenge remains on how to fulfill these objectives.

Longer time frames for dealing with the implementation issues might in effect be to the advantage of developing countries. With the WTO agenda being so large and messy, many resource- and capacity-strapped developing countries, especially those of Africa, could use longer timeframes to adequately prepare positions on a dizzying array of new issues while not losing sight of their implementation concerns. More specifically, the Doha texts provide the basis for more operational and enforceable provisions on special and differential treatment which could possibly be the impulse for a framework agreement on special and differential treatment, thus moving away from the voluntarism of 'best endeavour' to a legally binding status.

Despite all these caveats and ambiguities, the fact is that the Doha texts have been adopted by members, both developed and developing. Developing countries realise, however, that if their implementation and other concerns are to be fast-tracked, they will have to make the necessary trade-offs. For developing countries to take advantage of opportunities and avoid potential pitfalls associated with the post-Doha context, they will have to improve their analytical capacity and technical understanding of the issues and devise clear strategies supported by concrete proposals.

****Dr Garth le Pere is Executive Director of the Institute for Global Dialogue***

Suggested Reading

Doha Development Agenda: www.wto.org/english/tratop_e/dda_e/dda_e.htm

Gumisai Mutume, "What Doha means for Africa" *Africa Recovery*, 15(4), December 2001.

Raeen Sally, "Charging the barriers: prospects for the WTO's Doha Round" *Global Dialogue*, 7.1, April 2002.