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PROBLEMS?”**

by Pierre Sauvé

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## “THE WTO AFTER CANCUN: CRISIS OR TEETHING PROBLEMS?”

by Pierre Sauvé<sup>1</sup>

### Introduction

The collapse of the 5<sup>th</sup> Ministerial Conference of the WTO in Cancún on 14 September 2003 put an end to any prospect of completing the Doha Round by the end of 2004, and may have hurt both the longer-term chances of a successful conclusion of the Round and the effectiveness of the WTO as a negotiating forum.

It is often said that success breeds many a parent, while failure is usually an orphan. Not so in Cancun, where several forces – of substance, negotiating tactics and procedures – conspired to produce stalemate. This note takes stock of such forces and raises a number of issues relevant both to the short-term urgency of restoring momentum to the Geneva negotiating process and to the longer-term challenge of reflecting on a number of systemic challenges confronting the multilateral trading system and the majority of developing countries it comprises.

Four sources of failure have received greatest attention within the Cancún *post-mortem* industry:

First, the tension and acrimony of the negotiations on agriculture, which were given a strong North-South dimension by the emergence of the “G-21+” group of developing countries.<sup>2</sup> Though far from unproductive (see Section II below), the agriculture negotiations polarized the Conference and contributed to the intransigent mood of some delegations on the final day.

Second, the refusal of the African Caribbean Pacific (ACP) group to negotiate on any one of the four Singapore issues, even after a major concession by the EU, which offered on the last morning to drop investment and competition – the most sensitive issues – from the Doha agenda. The ACP group was heavily influenced by advice from non-governmental organizations, some of which were for the first time intimately involved in the Ministerial negotiating process, with ambiguous results for several developing country clients.

Third, the handling of the cotton subsidies initiative, which had targeted the reduction and elimination of subsidies to cotton growers, became a highly inflammatory and divisive topic, contributing to the North-South polarization of the Conference.

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<sup>2</sup> The G21+ includes Argentina, Brazil, Bolivia, Chile, China, Colombia, Costa Rica, Ecuador, El Salvador (later withdrew), Guatemala, Mexico, Pakistan, Paraguay, Peru, Philippines, South Africa, Thailand and Venezuela. Egypt, Senegal and Turkey joined the group at the start of the Cancún meeting, Indonesia and Nigeria towards the end. It is referred to as the G21 in this text for convenience.

And fourth, the Chairman's controversial decision to end the meeting prematurely, at a time when many delegations were preparing to negotiate through the night and even well into the following day in the belief that agreement was still possible and indeed within reach.

There is, admittedly, a strong element of *déjà vu* to all this. Ministerial meetings have failed before. Indeed, of the nine Ministerial gatherings organized by the General Agreement on Tariffs and Trade (GATT) and the WTO, four were outright failures. As experience teaches us, and much as the incidence of failure appears more frequent and possibly more systemically disturbing, inability to reach agreement on trade matters is not uncommon. Nor will it formally undermine the legal and organisational foundations of the world trading system.

Failure to reach consensus at the Cancun Ministerial does not mean that previously-agreed commitments by WTO members cease to be binding. Thus, the expiry of the peace clause on disputes on agricultural subsidies went ahead at the end of 2003. So too will the formal ending of the Multi-Fibre Arrangement on January 1<sup>st</sup> 2005, paving the way for long-awaited market-opening in the textiles and clothing sector that should bring significant benefits for several developing countries (and perhaps angst to others). Moreover, negotiations foreseen under the Uruguay Round's built-in agenda did resume, notably in services, even as the level of enthusiasm may well have (temporarily) diminished. The status of negotiations on agriculture is, however, decidedly murkier, although the recent EU proposal to place agricultural export subsidies on the table has generated useful, and much needed, forward movement.

One could, accordingly, be fairly sanguine and simply wait for the next successful WTO Ministerial meeting to occur. After all, the law of averages suggests that there is a greater than fifty percent chance that the next Ministerial meeting—which will be held across the bay in Hong Kong at some point in 2005 - will be successful and so revive the Doha Round of multilateral trade negotiations.

There are perhaps a few reasons to temper such optimism. One reason is that while waiting for the next successful WTO Ministerial meeting to occur, market outcomes will continue to be distorted by the maintenance of existing discriminatory trade barriers and the possible introduction of new ones. Several dark clouds of pent-up protectionism can already be seen hovering over the world economy. These include recurring problems of compliance with WTO dispute rulings; lingering uncertainty over the conditions in which the dismantling of quotas in textiles and clothing trade will occur; rising bilateral trade imbalances; mounting anti-dumping actions targeting Chinese exports; as well as heightened fears of blue and white collar job displacement towards low-wage countries.

Meanwhile, the retreat to bilateral deal-making that failure in Cancun portends will further distort trade and investment activity worldwide. In the process, it will most likely further isolate the weakest members of the trade community. What's more, if various estimates of the hundreds of millions of dollars of annual welfare gains from the successful completion of the Doha Round are to be believed, then the sooner these welfare-reducing barriers are eliminated the better (Evenett, 2003).

A further source of caution is that past experience with ministerial meetings may provide few useful clues as to the ingredients of successful future gatherings. The Cancun Ministerial may thus have differed from previous failures in a number of important ways: by engaging the active involvement of a much greater number of developing countries (and, more importantly, of robust groupings of developing

countries); by focusing policy attention more than before on a host of regulatory issues arising deeply behind borders; and, most importantly, by assigning to trade rule-making a central (and direct) role in promoting economic development. We turn to the systemic importance of these issues in the following section.

### **Lessons from Cancun**

An important question confronting the international community today is whether Cancún represents a crisis that will derail multilateral cooperation on trade for some time to come, or whether it represents an opportunity for policymakers to identify a more balanced negotiating agenda that is worthy of pursuit. We investigate various elements of this question by highlighting a number of systemic challenges that failure in Cancun – and in the process leading up to it - brought to the fore

#### **(i) Limits to reciprocal bargaining**

The Cancún Conference showed that realizing the promise of trade reforms through reciprocal bargaining can prove a major challenge in today's trading environment. A successful negotiation requires an agenda that is seen to be relevant and of potential benefit to all participating countries. The Singapore issues clearly failed such a test, even though Ministers never actually got around to discussing the substance of what was (or was not) on the table in Cancun in these new areas.

Many participants saw the Singapore issues as purely a negotiating ploy; others came to the conclusion that they were simply not of significant economic value. Thus, while there is wide consensus over the fact that agriculture remains of critical importance to a successful Doha round, seeking to broaden the negotiating agenda by adding several 'behind the border' issues and linking their fate to that of agriculture proved highly counterproductive. Such a linkage strategy was very divisive, with poor countries in particular concerned that multilateral rules might not be in their interest (compounding perceived Uruguay Round inequities), would do little to promote progress on key market access issues and could give rise to significant implementation burdens (Finger, 2002; Finger and Schuler, 2000).

In the run-up to Cancun, few credible arguments were offered on either development or tactical negotiating grounds for taking up subjects such as investment and competition. The presence of the Singapore issues thus allowed intransigent members to block progress on other subjects on which they had major political problems (Hoekman, 2003). It would have been far wiser to engineer the removal of these issues (in part or in whole) from the table prior to the Ministerial meeting, allowing WTO members to focus fully on the market access agenda.

#### **(ii) Pro-active engagement of developing countries: with voice comes responsibility**

In the past, the positions of many developing countries embodied in joint declarations - G-77, Africa, Least Developed, or regions like SADC or COMESA, or other groupings

like the ACP - tended to be vague statements of what an outsider would consider normal developing country positions (more access, no reciprocity, S&D treatment), not detailed statements of particular interests. Some of these continue to emerge, particularly from groups that are coming together for the first time (for example the Arab countries).

A noteworthy aspect of the Cancún meeting was that developing countries came prepared to push for specific negotiating modalities and targets. Their attention focused primarily on agriculture and the Singapore issues. The former is important not only for middle-income exporters such as Argentina, Brazil, and Thailand, but also for poor countries such as Benin and Burkina Faso. The latter was of particular concern to many low-income African and LDC governments, as well as a number of more advanced countries such as Malaysia. On both subjects, developing countries formed coalitions that were informed, articulate and vocal.

Indeed, Cancun offered the novel display of developing countries leading and maintaining negotiating coalitions even while the specific national interests of coalition partners differed. This was a major new development that can only bode well for the institution and the political legitimacy of negotiated outcomes. However, in many instances, the negotiating stance of developing countries remained largely defensive and inflexible. While resource constraints may provide part of the explanation, the posture on the Singapore issues by countries from the African Union (AU) and African-Caribbean-Pacific (ACP) groups as the meeting entered its final phase was almost certainly sub-optimal in tactical terms.

One lesson to draw is that countries must come to negotiations with a fall-back position, a “plan B”. This will by definition be second-best from a national perspective, but may nonetheless generate an overall Pareto-superior outcome (Hoekman, 2003). Stated differently, a modicum of progress is to be preferred to no agreement, for indignation at global injustice, however justified, does not a trade policy make.

As noted earlier, accepting to discuss trade facilitation as foreseen under the Doha mandate would likely entail few downsides, and might well help to mobilize additional resources over time for much-needed improvements in trade logistics (World Bank, 2003). Such a “concession” might also have allowed progress to be made on far more important agenda items.

To some extent, one may lay blame for such tactical overshooting on the part of developing countries to the genuine sense of frustration that has accumulated in recent years on a range of issues, notably in the area of Uruguay Round implementation (which US posturing on cotton did nothing to appease in Cancun) and to the generally absolutist positions taken by a number of NGO groups playing a significant advisory role for some developing countries. Post-Cancun, cooler heads will have to prevail, and the need for developing countries (and leading NGOs) to assert their collective influence in a more responsible manner is likely to be an important lesson drawn from Cancun’s failure.

### **(iii) Engaging in genuine *quid pro quo* bargaining**

The reciprocity dynamics of the WTO negotiating process and the growing scarcity of “low hanging fruits” (i.e. liberalisation of areas that are less politically sensitive)

requires that developing countries offer “enough” to OECD countries to induce them to take on the interests that benefit from continued trade protection. The main carrot developing countries can dangle in devising such bargains is further reforms and market-opening commitments for goods and services.

Although the negotiating modalities on offer in Cancún would have exempted the least developed countries (LDCs) from any liberalization, and while insistence by other developing countries on maintaining special and differential treatment (limited reciprocity) makes it harder to harness the trading system’s reciprocity dynamics, the larger developing countries are (and have certainly become so since Cancun) well aware of the need to engage in genuine *quid pro quo* bargaining. There is still considerable scope for striking meaningful market access bargains in both goods (agriculture and manufactures) and services trade.

Unlike regulatory issues or demands for the stronger enforcement of rights to intangible assets (intellectual property, geographical indications) that may entail a zero-sum bargain for various categories of developing countries, the WTO’s market access agenda for the most part implies getting rid of economically inefficient policies (Hoekman, 2003; Page 2002). This implies a greater likelihood that all participants can find a balance of benefits at the end of the day. The lack of meaningful signals by the larger developing countries on own-country tariff liberalisation, especially in manufacturing, and the generally poor level of their initial offers in services, are useful reminders of the adage that it takes two to tango.

To be fair, one cannot say that developing countries were unwilling to negotiate on the market access agenda in Cancun - after all, progress was being registered on both agriculture and non-agricultural market access issues and the sudden termination of the Ministerial conference took the great majority of participants by surprise. What is clear however is that the absence of consensus on the Singapore issues implied that countries were not forced to reveal their hands on market access-related modalities (Hoekman, 2003). Just as the Singapore issue proponents (and especially the EU) waited too long to play their hand, so too did the lack of proper signaling prior to and at Cancun on the part of developing countries (especially the larger developing countries) play a part in sealing Cancun’s fate.

#### **(iv) Maintaining the pressure on protectionist strongholds**

Although there is still much scope to harness the traditional reciprocity dynamics of the WTO to move forward on market access in goods and services, Cancún proved once again that determined political pressure and savvy public relations are critical to removing inefficient, trade-distorting policies. Nowhere is this truer than in agriculture. Budget constraints (especially in the EU), advocacy by civil society groups and the development community highlighting the detrimental effects of rich country policies on both developing countries and the environment, and the identification of alternative means of satisfying various non-economic objectives in a way that does not distort trade are all important ingredients to moving a development-friendly agenda forward.

The sight of the US, the EU, Japan or Korea pitted together on the defensive on agriculture in Cancun was a welcome one from this perspective, suggesting that the information campaign waged in recent years on the cost of agricultural protectionism is beginning to pay off. Similar efforts will be needed to build winning coalitions supporting reforms in other sectors subject to strong protectionist forces, such as contingent protection or the downsides of a return to asymmetric bilateralism.

**(v) Reaping the payoffs of capacity-building**

The Cancun Conference offered credible evidence that the significant ratcheting-up of research and capacity-building efforts made in recent years (and especially since the Doha Ministerial) are beginning to pay off. Such investments are clearly enhancing the knowledge of the issues on the table and informing country (and coalition) positions. Much as this may sometimes complicate the task of rich country trade officials, such a development must be welcomed as unambiguously good news. Indeed, it can be seen as a tangible dividend of a development round.

Looking forward, more analysis and advocacy will be required to help identify the costs and benefits of alternative options on a country-by-country and issue-by-issue basis. If governments had had a better understanding and felt more comfortable about an issue like trade facilitation—which as noted earlier is from an economic perspective almost certainly of direct relevance for all countries (even if its WTO dimension may be relatively narrow and span a greater number of agreements than the Doha mandate currently foresees), the meeting might not have broken down on the Singapore issues. The same may be said of the link between investment liberalisation and an improved outcome on labour mobility, where the scope for meaningful, development-enhancing trade-offs (and the implied changes to the WTO's architecture such an outcome would require) were never explored in the Geneva process (Sauvé, 2003).

Additional work will also be needed to assess the effects of specific proposed reforms and to identify the extent to which the poor will gain from them. For example, farmers and NGOs in OECD countries often argue that they are willing to support reforms if it can be shown that this will benefit poor countries, but resist reforms that are perceived to benefit larger, middle-income, countries (Hoekman, 2003). One reason for this is a perception that gains will mostly accrue to intermediaries or developing country elites (as they tend to do in many OECD countries, especially the EU and Japan), and not the poor producers of the products concerned. Additional efforts are also needed to identify complementary (non-trade) policies to ensure that the gains from trade are distributed more equitably in reaching poor producers and consumers.

**(vi) Capacity constraints in negotiating and enforcement: how serious is the problem?**

An often-mentioned objection to broadening the substantive remit of the multilateral trading system is that it places an excessive burden on the analytical and negotiating capacities of developing countries. If the complexity of a trade issue alone determined whether it should be included in multilateral trade negotiations, then arguably the last

subjects one would have expected to see discussed in the WTO would be intellectual property and service-sector regulation. Indeed, on such grounds much of modern-day trade policy – the bulk of which takes places behind national borders - would likely be ruled out. How can one explain the paradoxical proliferation of WTO+, deep integration, agreements entered into at the bilateral and regional level by a large (and growing) number of developing countries in recent years?

As a frequent supplier of trade-related technical assistance, the author of this paper has witnessed first-hand the remarkable growth in technical skills among developing country trade officials achieved in recent years. Much of this knowledge, which is fungible across negotiating settings and was fully on display in Cancun, has been acquired directly at the negotiating table, most often at the regional level (in settings such as those of APEC, ASEAN or FTAA discussions). The knowledge gap argument for turning down a broadening of the WTO's negotiating agenda is almost certainly specious, and the bluff of those advancing such claims should be called more resolutely.

The argument that developing countries simply do not have the depth (and number) of talented personnel to negotiate and implement multilateral provisions, or indeed to negotiate on several concurrent fronts, is more serious and deserves careful assessment. So too is the argument that new rule-making initiatives may carry substantial recurring costs in enforcement and implementation terms. Such costs need to be measured and anticipated in a much more systematic manner than they have to date.

Scarcity of negotiating resources certainly argues for identifying the most beneficial negotiating priorities. This reinforces the need for careful (and typically country-by-country and issue by issue) studies of the impacts of various types of new trade disciplines. Moreover, even if two trade-related negotiating priorities are expected to have approximately the same potential benefit for a given country, the amount of time needed to prepare for negotiations, to engage in them, and the administrative cost of implementing any resulting provisions may differ markedly (Evenett, 2003). Exploring these matters would require careful analysis, and a precise knowledge of what it takes to prepare for and implement trade accords. All of this should preferably be undertaken *prior* to the launch of negotiations (this may be particularly relevant in the context of WTO accession). Such a research programme might go a long way towards informing the ongoing quest for best practice capacity building efforts that is so closely intertwined with the Doha Development Agenda and with many regional trade initiatives.

**(vii) Compensating losers: a new 'new issue'?**

A number of developing countries have already gained significantly from trade liberalisation and are likely to register further gains if the Doha negotiations succeed (Schott, 2003). Other countries, particularly among the least developed countries and some other preference-dependent countries, may have comparatively less to gain from most of the issues discussed above, and face potential tariff losses which can represent a very high percentage of their export revenue. Those whose exports are affected by subsidies in the developed countries will be strongly affected, some positively; others negatively, by any reduction in such subsidies and the price effects this entails. Any gains on services or public health are likely to be smaller than some of the losses, so that there are some countries for which almost any WTO package could prove negative overall. Yet the outcome for the world economy as a whole and for most people living

in developing countries is likely to be strongly positive if the larger developing countries gain. It is in such countries that the bulk of world poverty is concentrated (World Bank 2003).

There is, therefore, an international interest in finding a way of transferring some of these gains to the losers, not only as a matter of equity and to ensure the success of a 'development' round, but to secure the support of all countries as is required by the WTO's dependence on decision by consensus (Page 2003).

Losses as a result of other types of trade policy change have long been recognised as suitable for compensatory action in the WTO. When a regional trade area is formed, for example, non-member countries that lose market access can ask for compensatory tariff reductions in other areas. Similarly, if countries win a dispute, and the 'offending' country does not change its policy, compensatory actions can be requested. Compensation in both of these cases, however, means some other trade action. There is not any provision that allows for monetary compensation, as was envisaged under the West African cotton initiative.

At Cancún, both Bretton Woods institutions (Krueger, 2003; World Bank, 2003) announced initiatives designed to assist countries to adjust to the potentially adverse distributional effects of trade liberalisation. The IMF explicitly recognised that the few countries that feared damage by trade liberalisation needed insurance against potential losses (IMF, 2003). Since Cancun, the Fund has moved forward and established a new lending facility along these lines, offering some measure of coherence-promoting responses linking the WTO process to the activities of the Bretton Woods institutions in the area.

In the EU, compensating (through structural funds and other means) those who stand to lose from measures that increase total welfare has long been recognised as an essential complement of market opening (European Commission, 1988). How such compensatory mechanisms could be made to work in a WTO setting; who should fund them; what would trigger their use; how they should be monitored; whether scope exists for experimenting with such mechanisms on a regional basis (including in the Asia-Pacific region), all are questions worthy of greater analytical scrutiny.

### **(viii) Criteria for new issue selection**

The debate over the Singapore issues raises another major – and hitherto unanswered – question: what areas of policy have characteristics such that they can and should be subject to binding international commitments at the WTO? This question should be a prime candidate for future policy analysis, including among members of the ESCAP region.

Are the only convincing reasons for including a policy instrument in the WTO that there be some observable impact on market access and that there be resistance to domestic reform preventing the optimal policy from being pursued unilaterally? These two political economy characteristics of tariffs and quotas account for much of the success of reciprocal bargaining on border measures in successive GATT and WTO rounds.

Or are there other characteristics of a policy that make it suitable for inclusion in the WTO? Tackling this question would help in thinking through whether the WTO should become a more important forum for international economic governance, as has been suggested by some (mostly European) scholars and policymakers. As one observer

recently put it: “just as economists have long worried about the boundaries of the firm, what are the boundaries of the WTO?” (Evenett, 2003).

The starting point of any serious answer to the above questions is the long-recognised notion that a case for collective action can be made when the effects of a state’s policy decisions (including decisions not to take actions) “spill” over national boundaries and affect the welfare of inhabitants or economic entities in other jurisdictions (Beviglia-Zampetti and Sauvé, 2001).

The recent rise in Transatlantic efforts to prosecute international cartels offers one example of the above trend. Such enforcement activities on the part of US and EU competition officials have almost certainly had positive knock-on effects in third countries, where other nations’ consumers have benefited from the break-up of such international conspiracies (World Bank, 2002). Another prime example of cross-border spillovers created by national policy choices concerns environmental policy (Bhagwati and Srinivasan 1996).

Yet, demonstration of the existence of cross-border spillovers may not suffice to justify the inclusion of a new subject matter in the WTO. Whatever collective action is proposed must also satisfy a number of criteria. Drawing on Evenett (2003), the following are offered for purposes of launching a preliminary discussion and hopefully eliciting subsequent enquiry:

?? There must be a discernable positive welfare impact to undertaking the collective action (since Doha one might add development-enhancing properties).

?? A critical mass of vocal domestic constituencies in each of the major trading partners must support a collective action response at the WTO.

?? Convincing reasons must be advanced as to why the proposed multilateral obligations should be legally binding (i.e. as to why hortatory language expressing best endeavour outcomes is not sufficient as a collective action response).

?? The obligations must be codified precisely, their implementation observable, and where the collective action at issue involves some measure of discretion for national policy-making (likely to be common in regulatory matters, for example so-called “rule of reason” determinations in competition law), the latter must be underpinned by robust procedural transparency.

?? The obligations created must be amenable to enforcement through the WTO’s Dispute Settlement Understanding.

It is not clear whether the new policy issues proposed for inclusion in the Doha Development Round meet the above criteria and whether the cross-border spillovers associated with them are of sufficient magnitude to warrant negotiating binding and enforceable international disciplines in a trade policy setting. Performing such an assessment would require an inter-disciplinary approach combining economics, legal and political economy considerations. Such inter-disciplinary research should be encouraged and ultimately result in the establishment of negotiating or cost-benefit checklists.

**(ix) Reforming the WTO's decision-making process?**

As was the case after the debacle in Seattle, failure in Cancún has raised questions regarding the governance and decision-making procedures of the WTO. Consensus is both a major strength and a weakness of the WTO. It is obviously difficult and cumbersome to negotiate among 148 countries. While significant improvements have been made since Seattle to enhance the transparency of the WTO's consultative process, information costs remain high for many WTO members that have only a weak presence in Geneva (or none at all).

The move towards the creation of negotiating coalitions of groups of countries may facilitate the quest for consensus, but possibly at the cost of greater policy inflexibility and a higher risk of breakdown, especially in a setting (such as a Ministerial meeting) where there is little time to consult. Whether it makes sense to have periodic Ministerial meetings outside Geneva as opposed to strengthening the Geneva process is one question that deserves serious consideration.

There is little doubt that Ministerial meetings tend to set artificial deadlines that both embolden opponents to change and result in a general hardening of positions that can prove ultimately counterproductive. They also become strong focal points for the expression of anti-globalisation sentiments. A return to the *ad hoc* GATT practice of holding Ministerial meetings when issues are ready for prime time (with mini-ministerials on the side to provide momentum or reap occasional harvests when needed) deserves further consideration. The growing sums of money spent by host country governments in the staging and policing of Ministerials could more wisely be spent as development assistance or earmarked for trade-related technical assistance.

Development is not only about economic outcomes, but about effective participation in international systems. This suggests that as well as the outcome criteria, we should be looking at whether the *process* of the Doha Round is orientated towards encouraging, and making effective, participation by developing countries.

The negotiating process leading up to Cancun combined meetings and papers submitted in the formal processes in Geneva with 'mini-ministerial' meetings of 20-30 trade ministers from developed countries plus those developing countries seen as key for their size, for their special interests, or for their active participation in negotiations. There is no official recognition of the mini-ministerial. Attendance is, formally, at the invitation of the host government, and there is no formal report back to the WTO.

Even the formal negotiations still have large elements of uncertain or informal procedures. For example, on both agricultural and non-agricultural market access, the chairs of the negotiating groups initially prepared detailed draft proposals on their own responsibility.

At Cancún, the informal procedures were made as formal as possible, in that the official representatives of the informal groups were treated as their representatives, rather than having the chair choose, as in the past. But the absence of any formal means for the groups to adjust their negotiating positions was an important reason that it was not possible to secure agreement. The presence of a large number of interests, within and among countries, now increasingly clearly asserted, means that if country representatives and then the international organisations are to represent these and be accountable back to them more formal structures may be necessary. The time

compression of the negotiations also made it more difficult for countries to consider the consequences of new offers, analyse their impact on national economies, and rearrange alliances. The structure of the meetings, with consultations on any new positions among groups of up to 60 countries, many with more than one interest represented within the country, requires more formal structures within the groups and certainly more time than the one hour typically available for consultation and consideration of positions.

The WTO's current decision-making procedures would arguably not be considered acceptable by any national governance standard, and can only be justified if it is believed that all countries share the same policy objectives, and that a skilled individual or group can therefore try to find the instruments to achieve these. If there are divergent interests, as is the normal assumption in WTO negotiations, about gains and losses and as is demonstrated by the conflicts of interest on areas like subsidies and preference erosion, this model cannot be assumed to meet development or democratic legitimacy criteria (Page 2003).

But if the WTO forum is no longer able to meet the needs of trade negotiations, it is not clear that there is an effective alternative. The experience of weaker developing countries, for example the ACP with the EU or Central America's negotiations with the US, suggests that developing countries will be at a greater disadvantage in bilateral negotiations than in a multilateral setting. For developed countries, this could be an additional reason for not negotiating seriously in the WTO.

The larger developing countries, however, have shown a greater ability in these negotiations as well. Mexico chose to negotiate NAFTA, and then preserved its access to more diversified markets by negotiating parallel agreements with the EU and (now in progress) Japan. South Africa negotiated first with the EU and is now negotiating with the US. Brazil, with or without the rest of MERCOSUR, is also looking in various directions, as are most countries within the ESCAP region (often in response to the strategic challenge posed by China's rapid ascent to global trade superpower status). The risk is an unstable system of some arrangements imposed by regional hegemonies on their satellites and interlocking agreements with the middle-level countries (with all the disadvantages of trade diversion and overlapping rules of origin).

#### **(x) A return to variable geometry?**

The question has arisen of whether it is possible to pursue any meaningful, comprehensive progress in the WTO only on the basis of consensus or whether one should envisage a structure with the weaker and/or more reluctant members taking on fewer commitments. Simply put, has the time come to reconsider the scope that may exist for restoring doses of variable geometry within the WTO system?

In parallel with a continuation of basic GATT/WTO negotiations on some or all of the "classical" areas, a so-called "WTO I", a number of voices have asked whether one can envisage the negotiation of additional rules to be adopted on an optional, plurilateral, basis, with outcomes binding only on those who accept to subscribe to them and with benefits extended on an MFN basis, as under the GATS and the ITA (a WTO II tier, already in existence), or denied to non-participants, as was the case of the various Codes brokered under the Tokyo Round- a WTO-III tier where tolerance for free-riding may be lower (Wolf, 2003; European Commission, 2003; Cottier and Takenoshita, 2003).

The basic superstructure of the WTO could thus remain the same – one common roof to lodge all agreements - but part of the rulebook would be different, i.e. deeper and wider for those willing to accept such commitments.

Because of the considerable political and legal complexities that revisiting existing rules would entail, a return to variable geometry could perhaps be envisaged solely for new issues. One should not underestimate the difficulty of undoing the WTO's Single Undertaking – doing so would require the formal ascent of 80 percent of WTO Members, a tall order in today's environment. Having just experienced the full extent of the political power and negotiating leverage that the Single Undertaking affords them, developing countries may be reluctant to trade it in for the sake of gaining policy flexibility on issues of lesser importance to them.

**(xi) Is development a proper metric for judging the success of the Doha Agenda (and of any trade agreement)?**

The failure of the Cancun Ministerial begs a final if unambiguously politically incorrect, question: what are the consequences, both substantive and procedural, of having placed development considerations at the core of the Doha Round and, therefore, at the heart of the current (and future) operation of the multilateral trading system?

Just as it is perfectly acceptable – and desirable - to ask whether the Singapore issues may have needlessly “overburdened” the Doha Round, so too is it legitimate to ask whether the new developmental focus of the WTO has unnecessarily complicated the completion of the Doha Round and indirectly contributed to the collapse of the Cancun Ministerial meeting.

A related but distinct question is whether the new development mandate for the WTO is consistent with its long-standing role as an institution where agreements on certain trade-related matters are the by-product of mercantilistic bargaining, the aggregation of which tends to generate a politically acceptable equilibrium (balance of benefits), and where compliance with those agreements is monitored and assessed.

Affirming (as WTO members have since Doha), that the WTO's production function must today internalise a development-promoting function, implies that national negotiators should somehow pursue world welfare objectives and place these above home country objectives and interests. The political sustainability of such a proposition would appear tenuous at best. In pursuing a trade-development nexus, WTO Members run the very serious risk of confusing means and ends.

Indeed, the “WTO equals development” amalgam runs the risk of raising false and excessive expectations, including within civil society organisations that have come to play an influential role in trade negotiations, as well as among developing country governments. The treatment of cotton in Cancun has almost surely rid a number of African countries of any lingering illusions on this front.

More troubling however, the WTO-development nexus lends counterfactual credence to the notion that previous trade negotiating rounds might have somehow been anti-developmental, when in fact trade obligations were highly asymmetrical in nature and effect. It also feeds the concomitant belief that developing countries need not make meaningful commitments in the Doha Round since they are “owed” a round so as to allow rich countries to atone for past sins. Even if this were indeed true (as it most

certainly is in some respects), sterile North-South confrontation and policy immobilism on the part of developing countries are sure-bet recipes for continued stalemate within the trading system. Sadly, but unmistakably, it is the weaker countries that have the highest opportunity costs from a stalled WTO process.

In assessing the consequences of adopting a greater development focus at the WTO, a number of key questions arise (see Evenett 2003):

- First, what does a greater developmental focus or developmental mandate entail? Should WTO activities be directed towards certain agreed *outcomes* that will benefit (in some measurable manner) developing countries (and them only)? Or is the intention that the agenda and decision-making processes of the WTO should better reflect the *interests* of developing countries?

- Second, to what extent does the development mandate replace or augment the existing institutional objective of the WTO, which is to facilitate the negotiation and implementation of reciprocal trade-related agreements between sovereign states?

- Third, does the development mandate only relate to the WTO's activities after the Doha Ministerial meeting? If not, then to what extent can (or should) previous WTO and GATT agreements be reinterpreted or rewritten in light of the new development focus?

- Fourth, in what ways (if at all) will (or should) the adjudication of disputes between WTO members change as a result of greater sensitivity to developmental concerns?

- And fifth, in what ways (if at all) will (or should) the accession of new members to the WTO be influenced by a development mandate?

To date, beyond discussions on capacity building and on special and differential treatment, little analytical attention has been directed to assessing the desirability, implications and operational means of adopting a greater focus on development considerations at the WTO. There is certainly much evidence that little thought went into these matters at the inter-governmental level *before* the Doha Ministerial Declaration was adopted.

Given that the World Bank, the regional development banks, the United Nations Development Programme, the United Nations Conference on Trade and Development, and a host of bilateral donors are already strongly involved in promoting the trade-development nexus, one can legitimately ask whether the WTO is taking on tasks that might best be pursued in other institutional settings and using different policy instruments (i.e. non-binding rules, project-lending development assistance). Simply put, is development the proper metric for judging the success with which the WTO dispenses its core business?

## **Concluding Remarks**

Underlying the collapse of Cancun was a failure – across the spectrum of WTO Members – to exercise genuine self interest and to face up to those resisting change; a failure to recognise – or fully appreciate – the gains on offer from continued multilateral liberalisation and strengthened rules. The more extreme NGOs have claimed victory – and their campaign of misinformation was certainly effective. But as in Seattle, the determining factor was a lack of political will at the level of governments to capitalise on the progress being made in the course of negotiations.

There is little doubt that confidence in the WTO as a viable negotiating forum has been shaken by Cancún. A business as usual attitude towards the Doha Round and a resumption of serious negotiations is accordingly not warranted. Careful nurturing will indeed be needed to get the process back on track. Confidence in the WTO has been shaken not so much because of the emergence of the G21 and the polarization of the agriculture debate. The G21 includes major trading nations that will inevitably be a force in negotiations and agricultural protectionism is a legitimate target, however radical the tactics of its detractors.

The problem which has caused many to question whether the WTO can ever function effectively as a decision-making body is the difficulty of achieving consensus among 148 members at every level of development. Is one-member/one-vote democracy incompatible with progress in the system? More seriously, is universal membership compatible with common legal obligations? There will be discussion of possible new decision-making or management procedures, but any such changes would themselves have to be agreed by consensus.

Although Cancún suggests a change has occurred in the “balance of power” in the WTO—reflecting in turn developments such as the accession of China (a member of the G-21), the increasing share of developing countries in world trade, and investments by countries to participate in the WTO, payoffs from years of capacity-building — the failure to agree on negotiating modalities carries significant opportunity costs, especially for developing countries. A key challenge confronting WTO members is therefore to rapidly resuscitate the talks. This will require leadership, both by the EU and the US of course, but also just as importantly by the major middle-income developing countries.

An effective WTO is critical for developing countries. The alternatives, bilateral and regional agreements (much of which could take the form of “sign here” deals between rich country hegemony and “can-do” - a.k.a. “can’t say no” - developing countries), will give rise to trade and investment diversion and discrimination, and most likely will exclude policies such as agricultural subsidies and anti-dumping, which only the WTO’s critical mass can help to tackle in a meaningful way (a trend which the recent lowering of FTAA ambitions amply confirmed). Developing countries therefore have a strong incentive to put together an agenda that offers potential benefits to OECD countries, as well as to themselves.

The consequences of failure at Cancún should not however be exaggerated. It is not a disaster in the style of Seattle. If it has made conclusion of the Round in 2004 impossible, that is no more than every negotiator already expected, and eventual success may be better served by a realistic timescale and agenda (Hartridge 2003). The initial agreement to conclude in three years has distorted the process and inflated the importance of Cancún. Most governments, and most companies, would prefer to focus on market access in agriculture, services and industrial products and on the other core business of the WTO, which could also include trade facilitation and perhaps a commitment to continue the pedagogical journey begun in the working groups dealing

with the other three Singapore issues at the WTO itself or in the less threatening setting of UNCTAD.

The good news is that, in many respects, the Cancún meeting pointed the way forward—starting with an acceptance to remove investment and competition from the table. This would allow members to focus on what a mountain of research suggests matters most for development—removing trade-distorting policies that hurt the poor disproportionately (Hoekman, 2003; UNCTAD, 2003; World Bank, 2001, 2003). The fact that the EU revealed a willingness to take competition and investment off the WTO table, and that the US is not a strong *demandeur* in these areas, suggests that this should be feasible. The *quid pro quo* will have to be a strong signal to accept lower trade barriers on manufactures and agricultural products in the South, especially in the middle income countries. Taking a constructive, operational approach towards the issue of special and differential treatment, should be an important complement of any such forward movement. In turn, this must entail an acceptance on the part of middle-income developing countries of a move towards greater differentiation *between* developing countries – graduation rules to be precise - based on objective, measurable criteria. Addressing this taboo will certainly not be easy, yet it is a key ingredient of success in an increasingly diverse WTO membership.

The GATT/WTO negotiating process has proven effective in the past in using the exchange of market access concessions to secure the reduction of trade barriers. Both merchandise and services trade barriers remain relatively high in many developing countries, and these countries have also bound only a limited share of past unilateral reforms in the WTO. The Singapore issues are not fundamental to moving forward on the market access agenda. There is much scope to trade “concessions” on tariffs—both applied rates and tariff bindings. The same is true for access to service markets, including important but politically sensitive area of Mode 4 trade (World Bank, 2003). Greater attention needs to be paid to the services agenda, both because of its innate economy-wide importance and because it offers real scope for meaningful bargaining of the type that needed to move the system forward in other areas.

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