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# The Doha Round: “Death-Defying Agenda” or “Don’t Do it Again”?

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## ABSTRACT

ALMOST EIGHT YEARS after the launch of the Doha Round, the WTO negotiations remain mired in a swamp of detail, with many participants unwilling or unable to make the hard decisions which would bring the Round to a conclusion. Meanwhile, the world has changed dramatically with the onset of a global economic crisis of proportions seldom, if ever, seen before. This has radically changed the context within which the Round is placed and may lead to fundamental rethinking of its future.

This paper examines the origins of the Round and concludes that, at the time, its launch was well-founded. It traces the twists and turns in the negotiations since then and finds that, while progress has been incremental, it has also been painfully slow. Decisive action has been avoided. It addresses three issues: whether, in current economic circumstances and given the long but inconclusive history of the negotiations, it is important to complete the Doha Round and if so, how this could be achieved; whether there are alternative approaches to WTO negotiations that could be explored for the future; and what a future negotiating agenda might look like. It concludes with some reflections on the prospects for the WTO at the present juncture in its short history.



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## 1. INTRODUCTION\*

ALMOST EIGHT YEARS after the launch of the Doha Round in November 2001, the WTO negotiations remain mired in a swamp of detail, with many participants unwilling or unable to make the hard decisions which would bring the Round to a conclusion.

Meanwhile, the world has changed dramatically with the onset of a global economic crisis of proportions seldom, if ever, seen before. This has radically changed the context within which the Round is placed and may lead to fundamental rethinking of its future.

This article examines the origins of the Round and concludes that, at the time, its launch was well-founded. It traces the twists and turns in the negotiations since then and finds that, while progress has been incremental, it has also been painfully slow. Decisive action has been avoided.

It then addresses three issues: whether, in current economic circumstances and given the long but inconclusive history of the negotiations, it is important to complete the Doha Round and if so, how this could be achieved; whether there are alternative approaches to WTO negotiations that could be explored for the future; and what a future negotiating agenda might look like. It concludes with some reflections on the prospects for the WTO at the present juncture in its short history.

## 2. ORIGINS OF THE DOHA ROUND

IT HAS BECOME conventional to ascribe the launch of the Round to a political knee-jerk reaction to the tumultuous events of September 2001. According to this theory, the launch was purely or largely a token, intended to demonstrate that international economic cooperation was alive and well in the aftermath of the terrorist attack on New York. There was little substantive commitment to the substance of the negotiating agenda. Seen in this light, it was predictable that the negotiations would run into the sand.

This theory overlooks the long and tortuous road which led, eventually, to the launch of the Doha Round.

The WTO came into existence in 1995 very much as a reflection of the deliberate design of the membership. It is clear from the *WTO Agreement* and the early emphasis on the “Member-driven” nature of the Organization that it would not dispense trade rule-making and liberalization in a “top down” manner but proceed at a deliberate pace to be set and closely monitored by the Members.

The list of significant outcomes of WTO negotiations in the early years following the establishment of the Organization, though short, is certainly meaningful. It includes:

- the Fourth Protocol to the GATS relating to basic telecommunications (1997);<sup>2</sup>
- the Fifth Protocol to the GATS relating to financial services (1999);<sup>3</sup>
- the *Agreement on Information Technology* (1997);<sup>4</sup>
- the accessions of China (2001)<sup>5</sup> and Chinese Taipei (2001)<sup>6</sup>;
- the Declaration on the TRIPS Agreement and Public Health (2001).<sup>7</sup>

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In contrast to these positive examples of the WTO's ability to move forward in its early years, negotiations were launched in 2000 in agriculture and trade in services under the "built-in agenda" of the Uruguay Round. These negotiations were mandated as part of the outcome of the Uruguay Round and reflected the view of many participants that there was unfinished business to conduct. Although a large number of submissions were made, in agriculture the discussions were largely confined over a period of nearly two years to a process of analysis, information exchange and stock taking. Much useful preparatory work was undertaken, but the negotiations in both agriculture and services made little progress in 2000-2001.

Following the WTO's First and Second Ministerial Conferences in Singapore and Geneva in 1996 and 1998 respectively (the latter marking the 50<sup>th</sup> Anniversary of the GATT), pressure had begun to build up among certain sectors of the membership for the launch of a new round. The European Commission, perhaps conscious of the attention that would continue to be paid to agriculture through the "built-in agenda" negotiations and of its own internal reform processes, began to flag the idea of a comprehensive "Millennium Round". In 1998 an informal group of 15 "medium-sized" WTO Members<sup>8</sup>, comprising both developed and developing economies, began to meet as "The Friends of a New Round". In May 1999, an informal ministerial meeting of the "Friends" took place in Budapest, to which the European Union, the United States, Japan, Canada, Brazil, India and the serving Chair of the General Council were invited.

At this stage, some other Members resisted the idea of a comprehensive new round on the general grounds that, for many developing countries in particular, more time was needed to digest the results of the Uruguay Round. In 1999, an informal "Like-Minded Group"<sup>9</sup> was formed focusing on the need to address "implementation" concerns related to the Uruguay Round, to resist the inclusion of the four so-called "Singapore issues"<sup>10</sup> in any new negotiating agenda, to argue for greater transparency in WTO negotiating processes and to promote special and differential treatment for developing countries.

The launch of a new round was nevertheless well on the agenda by the time of the unsuccessful Third Ministerial Conference held in Seattle between 30 November and 3 December 1999. Despite the inauspicious atmosphere surrounding the Conference, Director-General Mike Moore declared: "All of us recognize, deep down, that a broad and balanced new trade remit is in our shared interest..."<sup>11</sup> Draft texts circulated around the time of the Conference clearly indicate that the launch of a round was a possible outcome. In the end, the Conference failed for a complex variety of reasons, including inadequate or ineffective preparation in Geneva and Seattle, the difficulty which the host government had in differentiating between its roles as neutral chair and national champion, the re-emergence of the controversy surrounding the issue of trade and labour standards, the failure to provide inclusive processes through which all Members could make their views known, and the hostile external environment.

There followed a period of confidence-rebuilding in 2000. Initiatives were launched to address some of the difficulties facing least-developed countries in the WTO, to reassess technical cooperation and capacity building measures, to improve outreach to Members lacking representation in Geneva, to establish WTO reference centres in developing and least-developed countries, to devise a mechanism to look into implementation-related concerns and, last but not least, to improve WTO procedures in order to ensure greater inclusiveness and more effective participation of all Members<sup>12</sup>. Taken together, these measures had a considerable positive effect on morale and confidence among delegations.

Commencing in April 2001, and in contrast with experience before Seattle, preparations for Doha took the form of an informal "bottom up" process in which the ministerial declaration

would emerge from intensive consultations based on an initial checklist of issues circulated by the General Council Chairman.<sup>13</sup> This approach was widely supported by Members and discouraged formal proposals such as those which had been tabled before Seattle. The broad understanding among Geneva-based Representatives was that at Doha their Ministers should be presented with a manageable text and that, to this end, the General Council Chairman would, at a certain stage in the preparatory process, need to be given some room for manoeuvre.

A further feature of the “bottom up” approach was a so-called “proponent-driven” process. In order to promote the inclusion of items on the negotiating agenda, WTO Members undertook initiatives outside the formal WTO structure in an attempt to build consensus or narrow differences before discussion at General Council level.

Members also spent considerable time on an Implementation Review Mechanism. Indeed, due to the importance of this to many developing countries and the fact that many of the points were politically sensitive, no issue required more attention and effort during this period.

In late July 2001 in advance of an informal General Council meeting the Chairman, in cooperation with the Director-General, circulated a report on the considerable work which had been undertaken in the preparatory process. It noted that, while the tone of consultations had been constructive and progress had been made, substantial differences remained. Nevertheless, “For many delegations, it is clear that the launch of a wider negotiating programme is effectively the working hypothesis”.<sup>14</sup>

Director-General Moore, speaking at the meeting on 30 July 2001, said: “The questions facing ministers will be the same as at Seattle: are they ready to launch a wider process of negotiations – a new round in fact – and if so what should its content be. I have made no secret of my conviction that a new round is necessary. . . . . The arguments in favour of launching a new round have been recognized by an increasing number of international institutions, notably by the Secretary-General of the UN himself and by a succession of ministerial and leaders’ summits.”<sup>15</sup>

The pace quickened in early September 2001. Signs of flexibility on a number of issues began to emerge at a “mini-ministerial” meeting in Mexico City on 1 September 2001. With one major exception, none of those present appeared to challenge the premise that Doha would see the launch of a round. Nevertheless, important differences persisted in a number of areas such as agriculture, implementation and “Singapore issues”. Back in Geneva, an informal General Council meeting took place on 4 September at which the Chairman indicated that, following further intensive discussions, he would issue a first draft ministerial text.

On 26 September 2001, two draft texts were released – a draft ministerial declaration<sup>16</sup> and a draft decision on implementation-related issues and concerns.<sup>17</sup> The draft ministerial declaration clearly foresaw the launch of a round but its parameters were still unclear. Following further intensive consultations, revised versions were issued on 27 October 2001<sup>18</sup>, along with a new draft decision on intellectual property and access to essential medicines.<sup>19</sup> The revised draft ministerial declaration no longer contained options on key issues like investment and competition but instead sought to find middle ground that might be the basis for consensus on launch of a round. Although the absence of options caused some controversy, the text was forwarded to ministers by the Chairman and Director-General under their own responsibility, not as an agreed text but as the best basis on which to build at Doha.<sup>20</sup>

Just prior to the release of the revised texts for Doha, there had been a “mini-ministerial” meeting in Singapore at which some ministers, including EU Trade Commissioner Lamy and US Trade

Representative Zoellick, had referred to christening the new negotiations as a “development and growth agenda”. This term – or the Doha Development Agenda (DDA) as it became widely known – was never used in official documents, whether formal or informal, at the time.

The outcome of the Doha Ministerial Conference was primarily the launch of a round. However the foregoing account of the lengthy preparatory process in Geneva demonstrates that this had its substantive roots in the earlier debate about the need for a new round of trade negotiations; and that the preparatory process itself represented a continuum starting in early 2001 and finishing in Geneva in early November 2001.

It is also worth recalling that, throughout the preparatory process, two major developing countries - Brazil and South Africa - played hugely important roles in promoting the launch of a round, both in Geneva and at the ministerial level. These countries were not primarily motivated by the political considerations relating to “9/11”. They consistently saw the round as a development objective.

Taking all this into account, it cannot seriously be argued that the Doha Round was simply foisted on the membership at the last moment in the light of “9/11”. Its launch was the culmination of a process which had been ongoing for at least three years, during which there was exhaustive debate on the elements to be included and the specific terms of reference for each of the elements, as well as considerable refinement of relevant WTO consultative procedures.

It would of course also be hard to deny that the terrible events of 11 September 2001 did not play any role. At a late stage in the process they may well have convinced some governments that sacrifices had to be made in the cause of international economic cooperation. In that sense they may, late in the day, have tipped the balance in favour of launching the round.

### **3. MECHANICS, SCOPE AND PURPOSE OF THE ROUND**

IF, AS ARGUED above, the parentage of the Doha Round is respectable, it is legitimate to ask why the negotiations have taken so long without reaching a conclusion. Part of the answer can be found in an examination of the mechanics and scope of the Round.

According to the Doha Ministerial Declaration, the Round was to be completed in three years, “not later than 1 January 2005”.<sup>21</sup> No great reflection was given to this timetable, either in the run-up to or at Doha. The main focus of attention at that stage was whether or not a round would be launched. However, many of those Members in favour of launching a round wanted a short duration with clear intermediate benchmarks.

It was clear from the outset that agriculture would be the main driving force for the negotiations. Agriculture lagged behind other sectors of trade in terms of both liberalization and rule-making. Indeed the main accomplishment of the Uruguay Round Agreement on Agriculture was to bring the trade within the scope of GATT/WTO disciplines for the first time. But, as a price for that, little was achieved in terms of liberalization through Uruguay Round commitments, and rule-making was basic. Further steps would have to be taken, which was one of the reasons underlying the “built-in agenda” approach. While agriculture accounted for only a small portion of international trade, it was – and is – politically sensitive in both exporting and importing countries.

It was an integral part of the agreement reached at Doha that the agriculture negotiations would proceed through the establishment of “modalities” for further commitments in market access, export subsidies and domestic support. These modalities were to be established “no later than 31

March 2003”. Comprehensive draft schedules of commitments based on these modalities were to be submitted by the date of the Fifth Ministerial Conference (which theoretically would be within two years of the Fourth Conference at Doha, in other words by November 2003). The negotiations were to be concluded as part and at the date of conclusion of the negotiating agenda as a whole (i.e. by 1 January 2005).<sup>22</sup>

Thus, it would take a little over a year to establish modalities, between six and nine months for participants to table their draft schedules based on these modalities, and a year or slightly more to finalise everything (including rules and disciplines).

Although the agriculture negotiations did not have a standing start (as discussions had been ongoing since 2000 under the “built-in agenda”), this scenario outpaced political preparedness to face change. The work programme on “modalities” was so squeezed that it inevitably led to a “top down” process in which Members stuck to their original negotiating positions in the comfortable knowledge that the burden of crafting compromises was transferred to the Chairman. Progress was further inhibited by delay in the European Union’s timetable for reform of the Common Agriculture Policy. In the United States, the Farm Security and Rural Investment Act of 2002 authorized additional expenditure, sending an unwelcome signal to Geneva negotiators.

The timetable for the Round was further undermined by lack of clarity as to the scope of the negotiations arising from certain messy compromises which had been necessary to get it off the ground.

First in this connection was the thorny question of the Singapore issues. The formulation agreed at Doha with respect to Trade and Investment, Trade and Competition, Transparency in Government Procurement and Trade Facilitation was: “we 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 for negotiations”.<sup>23</sup>

It was thus envisaged that, at the Fifth Session of the Ministerial Conference, which under the WTO constitution was due to be held by November 2003, Members would have already tabled their draft schedules of concessions in agriculture and would then go on to make a decision “by explicit consensus” on the modalities for negotiations in the four Singapore issues. It can be seen in retrospect as unlikely that the agriculture negotiations would have progressed so far by the time of the Fifth Ministerial Conference while the future of the Singapore issues was still uncertain.

Secondly in terms of lack of clarity as to the scope of negotiations, was the equally thorny question of outstanding implementation issues. Under paragraph 12 of the Doha Ministerial Declaration it had been agreed that “negotiations” on outstanding issues would be an integral part of the post-Doha work programme. Some issues, with respect to which specific negotiating mandates had been agreed (such as agriculture), would be rolled into the relevant negotiating groups. Those issues which however were not covered by specific negotiating mandates were to be addressed as a matter of priority by relevant WTO bodies which would report to the Trade Negotiations Committee by the end of 2002 “for appropriate action”.

This formulation left it unclear whether the latter category of outstanding implementation issues was part of the Round or not. Some participants argued that the reference to “negotiations” and the Trade Negotiations Committee made it clear that these issues were included in the Round. Others felt that this was not explicit and that the reference to “appropriate action” meant that there was no commitment to negotiate. Nor were some of the issues minor, for example the question of the extension of additional protection for geographical indications to products other than wines and spirits, and the relationship between the TRIPS Agreement and the Convention on Biological Diversity.



Understandable as it was at the time that these grey areas should form part of the Doha Ministerial Declaration, this did not bode well for a quick round. Indeed the controversy over Singapore issues was not resolved until July 2004.

Further confusion was created by the labelling of the Round as the “Doha Development Agenda”. Those taking the lead in doing so after Doha – the European Union Trade Commissioner, the United States Trade Representative and the WTO Director-General – did so from genuine motives, wishing to demonstrate that multilateral trade negotiations could respond effectively to the very real concerns articulated by both developing countries themselves and development advocates in civil society. An impression was created that the Round was designed for and devoted to these concerns. This was simply not the case. The Ministerial Declaration constituted a carefully constructed balance of interests between economies at all stages of development. Both the European Union and the United States, and indeed other developed countries, consistently made it clear to all participants that any negotiating agenda would need to address their own interests as well as those of developing countries. The progress of the Round has clearly borne that out. But it was entirely predictable and very understandable that developing countries should take the meaning of the words “Doha Development Agenda” at their face value. The ensuing lack of clarity as to the purpose of the Round was responsible for many subsequent rhetorical skirmishes, blurring any focus on substantive progress.

#### 4. DEVELOPMENTS SINCE DOHA

IT HAS BEEN a long slog. Taking an historical perspective, there has been considerable progress, but it has been too slow. To some extent this can be ascribed to the elements mentioned above relating to the mechanics, scope and purpose of the Round. But clearly these were not insurmountable in the right conditions. The fact remains that there are substantive differences in many of the complex issues confronting the participants and that negotiators have not so far been given the flexibility to make the necessary hard compromises in key areas.

Expansion in WTO membership since 1995 has also been cited as a reason for slow progress. Again, this may have been a complicating factor but the main difficulties have emanated from established players. It is true that the continuing economic rise of major developing countries has resulted in a dynamic geopolitical background against which the negotiations have been played out. Undoubtedly beneficial for the multilateral trading system in the long run, this trend has meant that a continuous process of adjustment has been necessary over the course of the negotiations. The political and economic landscape is not the same now as it was in 2001.

Following the failure to establish detailed modalities by the envisaged date of March 2003, the European Union and the United States advocated an intermediate “framework”, to be agreed at Cancun, as a stepping stone to the full modalities. In retrospect, it is possible that the decision to deviate from the objective of full modalities at this stage of the Round may have been a crucial turning point. In any case, in July 2003, at a “mini-ministerial” meeting in Montreal, the EU and US were asked by a number of other major participants to “provide leadership” to the negotiations by agreeing between them such a framework. After intensive bilateral exchanges, a paper was produced and circulated the following month.

Scenting the danger of being presented with a *fait accompli*, other Members, including a large number of important developing countries, were galvanized into forming new groupings in order to counter the EU-US alliance which was seen as focused mainly on reconciling the views of the two parties concerned. The most prominent of these new groupings was the “G20”, which



submitted its own version of a possible framework in advance of the September Cancun meeting and has played a very significant part in negotiations ever since.

Strenuous, if not heroic efforts, were made at the Cancun Ministerial Conference to reach agreement on a framework for modalities in agriculture as well as to resolve the Singapore issues. Some agriculture negotiators felt indeed that a deal was within reach when the Conference came to an abrupt halt. The failure at Cancun can be ascribed in part to poor communications. The European Union delayed showing flexibility on Singapore issues until too late. The Chairman of the Conference did not signal sufficiently clearly in advance his intention to call a halt to proceedings. In addition to poor communications, there were many substantive issues still open at the end of the Conference, not least the question of cotton.

In retrospect it seems clear that Cancun came at a time when not only the negotiations, but also the wider geopolitical context, were undergoing a period of dynamic change. Finding a static point of equilibrium across a range of complex issues was a virtually impossible task. Nevertheless, considerable progress was made which would pay off in the coming months.

Journalistic accounts of the WTO's brief history commonly refer to the "breakdowns" or "collapses" at Seattle and Cancun. Such remarks ignore the qualitative differences between the results of the two Conferences (it should be recalled that the Seattle meeting was never even concluded but was suspended without any outcome). Furthermore, bracketing these two meetings together conveniently ignores the intervening, successful Doha meeting.

Building on the progress that had been made in Cancun in a number of areas, negotiators returned to the charge in 2004. In agriculture, for the first time a viable cross-cutting forum for direct negotiations between major (though not all) groups was formed in the so-called "Five Interested Parties" (FIPs) – the US, EU, Brazil and India representing the G20, and Australia representing the Cairns Group. Through intensive meetings and a process of reaching out to others, a Framework for Establishing Modalities in Agriculture was forged and agreed by consensus in the early hours of 1 August 2004, part of what became known (typically for the WTO) as the "July package".<sup>24</sup>

The July 2004 package also clarified a number of other areas. It was established that the cotton issue would be pursued along two parallel tracks – the trade aspects through a sub-committee "ambitiously, expeditiously and specifically"<sup>25</sup> as part of the agriculture negotiations, and the development assistance aspects through consultations by the Director-General. A Framework for Modalities in non-agricultural market access was agreed. A target date was set for revised services offers. And the Singapore issues controversy was finally settled with negotiations launched on Trade Facilitation while the other three issues were dropped from the work programme.

By the time of a "mini-ministerial" meeting in Davos in January 2005, key ministers felt able to set out the objectives for the Sixth Ministerial Conference which was to take place in Hong Kong in December: agreement on full modalities in both agriculture and non-agricultural market access; a critical mass of market opening offers in services; good progress in the negotiations on WTO rules and trade facilitation; and a "proper reflection" of the development dimension of the Round. But, despite intensive consultations in Geneva, further "mini-ministerial" gatherings in Paris and Dalian, and strong endorsement from the G8 meeting in Gleneagles, Director-General Supachai Panitchpakdi was only able to paint a gloomy picture at a stock-taking meeting of the Trade Negotiations Committee in July 2005: "My warning in February and my subsequent warnings about the slow pace of negotiations do not seem to have been well heeded. . . . I regret that the negative side of the ledger outweighs the positive".<sup>26</sup> Expectations for Hong Kong were downgraded.

Results from the Sixth Session of the Ministerial Conference in Hong Kong in December 2005 were predictably modest, and even these were only just achieved. Some further gains were registered in agriculture and non-agricultural market access but these fell well short of the original objective of the establishment of full modalities.<sup>27</sup> Revised target dates were set, for full modalities by 30 April 2006 and for draft schedules of commitments by 31 July 2006.

Again, some progress was made but it was insufficient. Director-General Pascal Lamy consulted very intensively in a new configuration with the “G6” at its core (US, EU, Brazil, India, Japan, Australia), concentrating on a “triangle” of issues – market access and domestic support in agriculture plus non-agricultural market access. But by late July he had to report to the Trade Negotiations Committee that “the gap in level of ambition between market access and domestic support remained too wide to bridge. . . . . Faced with this persistent impasse, I believe that the only course of action I can recommend is to suspend the negotiations across the Round as a whole to enable the serious reflection by participants which is clearly necessary”.<sup>28</sup>

Efforts resumed in early 2007, leading to the production of new draft modalities texts in July. These reflected incremental progress and identified areas of convergence as well as areas where gaps still needed to be bridged. Further intensive consultations led to the Chairmen of the agriculture and non-agricultural market access negotiating groups to produce yet further revisions and refinements of their texts in February, May and July 2008.

A major exercise was then undertaken to finalize modalities in July 2008. Director-General Pascal Lamy orchestrated intensive meetings in “concentric circles” from 21 to 30 July. At the core was the “G7” comprising Australia, Brazil, China, the EU, India, Japan, and the US. In addition, there were ministerial-level “green room” meetings comprising up to 40 participants. Regular informal meetings of the Trade Negotiations Committee kept the whole membership involved. Billed as a last chance to save the Doha Round, the meetings at various stages looked doomed, then very positive, with a clear chance for a breakthrough, before becoming stalemated. Lamy proposed a compromise on key sticking points on 25 July but it proved impossible to resolve one crucial element – a special safeguard mechanism (SSM) which would protect developing country farmers against import surges or significant price drops. The talks collapsed over the SSM but some participants felt that other issues still in the background would also have proved insuperable, notably the level of tariff cuts in industrial products proposed for developing countries and participation in industry sectoral liberalization initiatives.

Commentators were quick to write the obituary of the Doha Round. But many WTO Members immediately professed profound disappointment and a willingness to continue the struggle. The International Centre for Trade and Sustainable Development dubbed Doha “The Trade Round That Refuses to Die”.<sup>29</sup> And so it proved. A week after the collapse, USTR Susan Schwab was on the telephone to ministerial colleagues testing the waters for a possible resumption and Pascal Lamy visited key capitals shortly afterwards. The onset of the financial crisis then breathed new life into the Round when in November 2008 the G20 – not the WTO group but world leaders meeting in Washington to discuss the financial crisis – called for a conclusion to the Round as a means of restoring confidence in the global economic system.

On 6 December 2008, revised texts in agriculture and non-agricultural market access were issued. Shortly thereafter, Director-General Lamy reported to the General Council that “those texts reflected the real progress we have made over the past months, and they were generally well received and brought us closer to our objective”. However, he had no alternative but to conclude that “we have not detected the political drive to make the moves which would give the final push to the establishment of modalities”.<sup>30</sup> There has been little, if any, progress since.

## 5. LESSONS AND QUESTIONS

THE EIGHT YEAR route march by negotiators has been characterized by incremental but slow, sometimes glacial, progress. Opportunity has followed opportunity, including through regular contacts between key groups of Ministers, to achieve breakthroughs and conclude the negotiations. All have ultimately been spurned. The Round may refuse to die but it also apparently refuses to haul itself over the finishing line. It is hard to avoid a feeling that an elaborate dance is being performed. Commitment after commitment has been made to bring the dance to a conclusion, but the music plays endlessly on.

This is an opportune moment to take stock of the protracted and intricate story of the Round, and to pose a series of questions relating to the future of multilateral trade negotiations.

First, is it important to complete the Doha Round? If so, how can this best be accomplished given the context of a global economic crisis? Should Members work with what is on the table despite its mind-boggling complexity, or should they change tack and aim for something modest and simple?

Secondly, in the light of the Doha experience, are there alternative approaches to WTO negotiations and decision-making which could offer better prospects for delivering more timely results in future?

Thirdly, what might a post-Doha negotiating agenda look like in terms of substance? In the light of experience, what might be the balance between rules and market access?

### *a) Is it important to complete Doha? How can this be accomplished?*

ABANDONING DOHA WOULD mean abandoning the huge investment in terms of time and effort over the past eight years, and the considerable if slow progress which has been achieved, and maintaining an outdated baseline. The “default option” would be the results of the Uruguay Round, reflecting a negotiating agenda which is at least twenty years old.

This is simply not acceptable. First, serious imbalances remain in the system, particularly in relation to the trade of developing and least-developed countries. The most egregious examples are to be found in agricultural subsidies and in agricultural and non-agricultural market access through tariff peaks and escalation. Secondly, the expansion of international trade and the globalization of production (with attendant overall benefits for development) are being distorted through myriad preferential trade agreements and the misuse of rules for protectionist purposes. Thirdly, now more than ever, in the midst of the worst economic crisis in decades, WTO Members need to demonstrate in practice their commitment to positive international economic cooperation and their rejection of protectionism.

Furthermore, in the light of experience between 1998 and 2001 with respect to the launch of the Doha Round, how long might it take to agree on the parameters of a new negotiating agenda amidst the ashes of Doha, and how long then to complete it? Can it seriously be imagined that the problems associated with agricultural trade can be overcome by simply turning the page and starting with a blank sheet of paper? These problems must be confronted; they cannot be circumvented.

Some controversy has raged as to the potential economic benefits of the Round. Some developing countries feel that the benefits of trade liberalization have been overstated in the past. National governments, whether of developing or developed countries, focus on the specific advantages or

disadvantages as they perceive them. A recent overall study by the Peterson Institute for International Economics<sup>31</sup> estimates that over \$65 billion of additional world exports and nearly \$100 billion in annual world GDP gains can come just from the agriculture and NAMA negotiations, based on the current draft modalities. The projected benefits rise significantly if substantive results are achieved in trade in services and trade facilitation.

But how to complete the Round? Analysts have criticized the complexity of the “modalities” being pursued through Doha, particularly with respect to agriculture. Some have cautioned that the multiplicity of flexibilities, deviations and exceptions embodied in the current draft modalities text makes the outcome at best incapable of being decided, and at worst negative or harmful in terms of the professed objective of “substantial improvements” in market access. An alternative, simpler but still flexible, approach such as that used in the Uruguay Round has, for example, been canvassed.

It would seem to be risky to start re-engineering the round in any substantial way at this stage. If the eight years of work to date on agriculture were thrown overboard, there might be demands for similar adjustments in other areas of the negotiations. The resultant scenario could be protracted wrangling over the revised form of the round, with no guarantee that a new consensus would be found. Whatever private thoughts Members may harbour on this subject, they have so far appeared reluctant, despite abundant opportunity, to reopen fundamental aspects of the Round. This is not to rule out marginal changes to the current methodology.

There have been some voices in favour of accelerating a “development package” from the current morass as an “early harvest”. Understandable as this may be, coming for example from frustrated least-developed countries, so far the idea has not found broad-based support and the proponents have not questioned the need to finish Doha as a whole.

Nevertheless, in current circumstances, with a global economic crisis and a contraction in world trade, many governments may take or already are taking the opportunity to reassess Doha. It cannot be taken for granted that negotiations will resume from the point reached at the end of 2008.

External factors clearly enter the equation when considering how the Round can be completed. For example, in the United States, it is far from clear that completing the Round is a priority for the Obama Administration: there are many more pressing issues. United States Trade Representative Ron Kirk has referred to the need to make an “adjustment” in the course of the negotiations. Business groups have expressed dissatisfaction with what is on the table, arguing that this does not offer significant export opportunities. In Congress, some Democrats may wish to put renewed emphasis on labour and environmental issues. A belated attempt to insert such issues, which are highly controversial for many developing countries, would probably deal the Round a mortal blow.

Many other countries have in recent months pointed to a perceived lack of engagement on the part of the United States as the reason why the Round has not made further progress. The United States, it seems almost alone, has balked at the prospect of concluding the Round on the basis of the position reached at the end of 2008.

Elsewhere, Brazil has played a crucial role on the developing country side of the equation. It has been the staunchest of advocates at the highest levels, and the most persistent of the participants, in pursuing closure of the Round. But can this level of commitment be open-ended with a presidential election coming up in 2010?

With the onset of the financial and economic crisis, global governance has also been thrown into

a state of flux. Clearly the old G7/8 paradigm is an inadequate framework within which to address all of the ills affecting the global economy. This has now been acknowledged at the recent Pittsburgh G20 meeting. But it is not yet clear that the G20 is an efficient alternative. We have already had more than enough expressions of high level commitment to completing the round without corresponding action, and these have now lost much credibility.

The G20 London Summit in April 2009 reaffirmed commitment to reaching a balanced and ambitious outcome to the DDA but was short on specifics as to how this would be achieved. Leaders “committed to building on the progress already made, including with regard to modalities”. However, the reference to modalities was vague and no timeframe was mentioned. The G8 backed this up in July at L’Aquila with a broad commitment to conclude the Round in 2010. The G20 meeting in Pittsburgh in September 2009 again expressed Leaders’ determination to seek and ambitious and balanced conclusion to the Round in 2010. However there continued to be underlying differences of opinion on how exactly this was to be achieved.

Economic factors could work for or against completing the Round. On the one hand, a strong collective desire to resist protectionism could provide the missing catalyst for completion. On the other, industrial lobbies are likely to be more resistant to liberalization and to exert counter-pressure on governments.

Overall, explicit abandonment of Doha is still extremely unlikely. Hopes are pinned on conclusion in 2010. However, the more time that elapses without genuine re-engagement and substantial further progress in the negotiations, the more likely it seems that either there will have to be some tinkering with the structure of the Round or that, in the longer term, it will start to fall apart.

### *b) Are there alternative approaches to WTO negotiations and decision-making that could be explored in order to produce more timely results?*

THE CASE AGAINST the WTO is that it has achieved little or nothing of substance since the late 1990s. As the Consultative Board to Director-General Supachai Panitchpakdi put it in 2004:

“In recent years the impression has often been given of a vehicle with a proliferation of backseat drivers, each seeking a different destination, with no map and no intention of asking the way.”<sup>32</sup>

More recently, former US Trade Representative, Susan Schwab, was quoted as saying, following the failure to agree modalities in July 2008: “the complexity of the cathedral that was built for Doha may have been its own worst enemy.”<sup>33</sup> She also suggested that “this grand-scale format that we have been operating under since 1947 needs to be reviewed”.

This section discusses, briefly and non-exhaustively, the issues of “single undertaking” and “variable geometry” as alternative approaches to making the WTO an effective negotiating institution. It does so with one important caveat, namely that there is no procedural panacea which will magically resolve substantive differences over complex issues. Constitutional and procedural refinements at best could ease the path to making decisions and concluding negotiations.

### *i) Single undertaking*

IN 2001, A broad round with a single undertaking was seen as necessary in order to break out of the impasse of the unsuccessful single-issue negotiations on agriculture and services generated by the Uruguay Round built-in agenda. Even after nearly eight years of inconclusive negotiations in a broad package, WTO Members have so far shown little enthusiasm for unbundling the Round.

A main stumbling block to relinquishing the single undertaking approach is agriculture. Given the significant barriers which exist in market access in both developed and developing countries and the high levels of subsidies in developed countries, a stand-alone approach to agriculture negotiations is not immediately attractive. From a developing country perspective, decoupling agriculture from other negotiating issues could weaken their hand. Do they have sufficient leverage within agriculture on its own to force developed country subsidy reductions? Nevertheless some recent research is pointing to the possibility that “non-single-undertaking” approaches such as “critical mass” agreements could become more attractive in future.<sup>34</sup>

Seen from another angle, there is not much evidence so far from the Doha Round that the agriculture negotiations have been positively affected by developments in other areas of the negotiations, which should be part of the rationale for a single undertaking approach (i.e. a mercantilist balancing of “concessions” or “gains” in agriculture against those in other areas of the negotiations). On the contrary it has often seemed that other areas of the negotiations have been frozen pending progress in agriculture.

The single undertaking may actually have hindered progress in some other areas. A prime example is the negotiation on trade facilitation. Seen as a “win-win” negotiation, this may have made even more rapid progress in a stand-alone context. Is it also possible that some other development issues such as duty-free quota-free market access for the exports of the least-developed countries and aid-for-trade could have made more rapid progress in isolation? These issues are not formally part of the Round or the single undertaking but they have been informally linked by some participants to progress in the Round.

Looking elsewhere, it is not easy to see how a balance could be struck in a stand-alone negotiation on non-agricultural market access given the general disparity in tariff levels between developing and developed countries. Given their generally low levels of tariff, some developed countries have tended to see “gains” in reducing higher developing country industrial tariffs as compensation for “losses” in terms of reducing agricultural tariffs and levels of domestic support. There again, domestic political realities often do not conform to the idea of overall balance. Would farmers be any happier to accept, say, lower subsidies simply because another industry was able to improve its ability to export?

Would it be easier to negotiate new rules on anti-dumping in isolation? Views in this context might be mixed: some participants seem to look at the subject on its own while for others, such as Japan, reform of anti-dumping would be an important “offensive” balancing element in a broad package in which they also have “defensive” elements. Fundamental reform in this area would seem difficult either way in the foreseeable future.

Getting new issues on to the negotiating agenda might be more difficult in the absence of a single undertaking approach, unless the issue in question had an in-built balance. Without a broad Doha Round it seems unlikely, for example, that the extension of additional protection for geographical indications to products other than wines and spirits would have been able to make it to the negotiating table.

A further option worthy of detailed study is the “critical mass” type of agreement along the lines of the 1997 *Agreement on Information Technology*. In theory this technique may lend itself not only to product or sector-specific market access agreements but also to rules-related issues such as elements of agricultural subsidies or trade facilitation. A major systemic advantage of this approach is that the results are applied to all on a non-discriminatory basis, provided that the “critical mass” threshold for the issue in question is met. Experience with sectoral-type negotiations under Doha



to date, in both non-agricultural market access and services, has not been particularly good. However this is still in the overall context of a single undertaking.

In the immediate short term it seems unlikely that the single undertaking will be abandoned while the Doha Round still has life. But the “early harvest” provisions in the Doha mandate may at some stage be used to loosen it. For example, it is relatively easy to envisage a situation in which the Round as a whole is effectively dead but negotiations on Trade Facilitation are accelerated to a conclusion.

Looking further ahead, the feasibility of single-issue or small packages of negotiations may have been underestimated and seems worthy of closer examination for the future. The absence of a formal single undertaking would not mean that issues under simultaneous negotiation would not be linked, but this linkage would be more informal in nature. This might provide a more flexible dynamic for the conclusion of single issue negotiations, or for small packages of issues. Meanwhile, negotiations would be ongoing, open-ended in a sense but naturally limited by Members’ capacity and will. The concept of overall balance would not be lost but, without being formally stated, would indeed be integral to making consistent progress over time.

If Members had confidence that the WTO would provide a permanent forum for negotiations in this manner, there would be less pressure to include all issues in a “big bang” round, with the consequent difficulty in obtaining a launch and in concluding negotiations. This more modest, incremental approach could therefore pay dividends.

## *ii) “Variable geometry”*

IT HAS BEEN argued that, if all Members are to move forward at the same pace, this will at best lead to a “lowest” and/or “slowest” common denominator approach. Some have therefore advocated “variable geometry”, by which is generally meant that the willing should be able to move forward at a quicker pace if they so wish.

Underlying this argument seems to be a perception or assumption that there is a broad mass of Members, mostly smaller developing countries, who are acting as a brake on the negotiations. Progress would be quicker if those having a greater or more immediate commercial interest were allowed to proceed on their own. This perception needs to be tested against actual experience in the Doha negotiations. In 2006 the suspension of negotiations resulted mainly from deadlock among the bigger players with the greatest commercial interest. Small developing countries meanwhile expressed disappointment, even disillusion, with the impasse. Again, in 2008, it was not the small players who held the Round up but it was perhaps they who expressed the greatest dismay at the breakdown.

It is also useful to reflect on the extent to which “variable geometry” has already become an accepted feature of multilateral trade negotiations. As the putative outcome of the Doha agriculture negotiations, flexibilities of one type or another would apply with respect to a lower tariff-cutting formula for developing countries; to sensitive products for developed and developing countries; to special products for developing countries; through a special safeguard mechanism for developing countries; in addition to which recently acceded Members and small and vulnerable economies will also have some special flexibility; the erosion of tariff preferences will be taken into account to some extent; and least-developed countries will not be required to make tariff cuts. The geometry here already seems highly variable!

A further consideration is how, if “variable geometry” is taken to include plurilateral approaches,



this would work in practice and what the effect would be. Some developing countries have already expressed reservations. If non-participants in a putative new agreement were excluded from negotiations, any new agreement reached would by definition not have taken their concerns into account. Would these non-participants then be under pressure to accept a *fait accompli* by signing up to the plurilateral agreement at a later stage? If on the other hand, as some have proposed, Members not intending to sign up to a new plurilateral agreement were nevertheless able to participate in negotiations so that their points of view would be made known, their intended non-participation might be prejudiced from the outset.

From a systemic point of view, the evolution of a new raft of plurilateral agreements could lead to fragmentation of the multilateral trading system and undermine the hard-won gains of the Uruguay Round in this respect. It should also be noted that, under Article X.9 of the *WTO Agreement*, a consensus is required in order to add a plurilateral agreement to Annex 4. This hands those who may be excluded from such agreements a potentially powerful weapon. However, a further possible danger then emerges that a new framework outside the WTO might be sought to house such agreements.

Having said this, it could also be argued that the plurilateral approach has some systemic advantages when compared with the “modalities” approach adopted in Doha. The plurilateral approach offers relative uniformity in terms of commitments, at least for participants, with some prospect that this can be extended to new adherents. The “modalities” approach seems to codify exceptions which will consequently be harder to eradicate in the longer term.

The “critical mass” approach as in the *Agreement on Information Technology* offers a systemically palatable alternative in that, while the geometry at the outset of a negotiation can be as variable as necessary, the results would in theory apply and be of benefit to all Members. To this extent the problem of fragmentation of the system would be avoided. However, unlike in a plurilateral approach, the threshold of critical mass would have to be reached before a negotiation could be concluded.

The increasing frustration of many Members at the inability of the WTO to move forward at all over a period of many years, in a rapidly changing world, is certainly not beneficial for the multilateral trading system. While purists might wish to adhere to a comprehensive MFN approach, the reality is likely to be different in the light of the Doha experience. It would thus be useful if variable geometry approaches were looked at in more detail in concrete case studies.

### *c) What might a post-Doha negotiating agenda look like?*

THE MENU FOR possible future multilateral negotiations is a long one. This possibly lends weight to the hypothesis that the days of the “big bang” approach are numbered, since the full menu might be indigestible. A very brief *tour d’horizon* follows.

Perennial favourite *agriculture* would of course top the list as it is certain that there will be unfinished business after Doha in terms of market access (including export restrictions), domestic support and rule-making.

Another traditional favourite would be *non-agricultural market access*. Although developed country industrial tariffs are generally low, tariff peaks and escalation are still problematic in some areas. Developing country tariffs still provide scope for reductions, especially in view of the increasing importance of south-south trade.

The degree of interest in further *services* negotiations might depend partly on how substantive the Doha outcome is, and how that is viewed by the business community. Some might conclude that repeating the effort is not worthwhile. On the other hand there will continue to be pressure from developing countries to upgrade commitments under Mode 4.

*Trade facilitation* negotiations look like being successful and this could engender a widespread will to go further and (since current negotiations are limited in scope) broader, in future. When that might be would depend on the actual Doha outcome and how long would be needed for implementation.

It seems likely that proponents of discarded Singapore issues - the relationship between *trade and investment*, the interaction between *trade and competition policy*, and *transparency in government procurement* - would return to the charge.

Opposition to multilateral negotiations on *investment* may have softened somewhat through the process of gradual de-mystification which has been ongoing outside the WTO. Recent analysis has pointed to the “spaghetti bowl” of international investment agreements with gaps, overlaps and inconsistencies. Developing countries are parties to 77% of all bilateral investment treaties. They are an increasing source of outward investment to both other developing countries and to developed countries. Whether the corner has actually been turned to make negotiations attractive to a sufficiently broad swathe of the WTO membership is still an open question and could depend on the exact parameters of any proposed negotiation. An alternative approach could be to make investment a stand-alone negotiation outside the WTO. This raises the question of possible further fragmentation of global governance.

A host of *non-tariff measures* are causing increasing trade friction. Issues such as voluntary/mandatory labelling and eco-labelling requirements, certification standards and procedures, technical standards, border security measures and food safety requirements mean that regulations relating to *technical barriers to trade* and *sanitary and phytosanitary measures* could come under renewed scrutiny.

In the *energy* sector, there are trade issues in terms of both subsidies and market access connected to the promotion of *biofuels*. The adoption of *energy efficiency standards* affecting production and processing methods may also affect internationally traded goods and lead to calls for elaboration of rules in this area. Energy security is a major concern for some WTO Members, particularly in Europe. The trade issue is whether energy should continue to be somewhat insulated from the normal rules on measures such as subsidies or export restrictions. In connection with this, there is also linkage to ongoing WTO accession negotiations with Russia.

*Trade and the environment* are high on the political agenda in many countries. Again, *environmental health, food safety* and similar standards raise the issue of compliance with private sector standards in order to secure effective market access. The promotion of market access for environmentally-friendly goods, services and technologies, including those mitigating *climate change*, is likely to need further attention.

As regards *climate change* itself, many of the actions which governments may take to implement internationally agreed obligations to limit emissions of greenhouse gases could have considerable trade implications. Examples include the implementation of energy efficiency standards, carbon/energy taxes, subsidies, the use of environmentally sound technologies, eco-labelling, government procurement policies and border tax adjustments to offset competitiveness losses from carbon taxes. The extent to which this may pose problems for the multilateral trading

system could become clearer in the wake of the United Nations Climate Change Conference in Copenhagen in December 2009.

In the *TRIPS* area, the future agenda may depend on the outcome of the Doha Round, which is potentially addressing controversial issues such as the extension of additional protection of geographical indications to products other than wines and spirits and the relationship between *TRIPS* and the Convention on Biological Diversity. It seems likely that there would be some demand for additional work on areas such as the inappropriate exploitation of traditional knowledge.

In *rules*, the current economic and political climate might suggest that *subsidies*, including *fisheries subsidies*, would continue to be a hot topic over the near to medium term. Whether in some cases governments might prefer to clarify existing boundaries through dispute settlement rather than to negotiate additional rules is a pertinent question. Domestic industrial lobbies might be expected to work hard to prevent any meaningful reform of *anti-dumping*. On the other hand, assuming that current economic conditions persist for some time, certain constituencies in developed countries might press for the inclusion of trade and *labour standards* and conceivably also of concepts such as *social dumping*.

It also seems possible that in the prevailing economic climate there could be interest among the membership in looking again at the *Safeguards Agreement* in order to make it more “user-friendly”. The Doha discussions regarding a Special Safeguard Mechanism for agriculture may have whetted appetites in this respect.

It is difficult to draw firm conclusions. It might be argued that there are so many pressing issues in the WTO’s “pending” tray that the sooner it can deal with Doha and move on to a new agenda the better. Indeed it could be said that in some respects Doha has become obsolete - an obstacle which simply has to be overcome immediately so that some of these new and pressing issues can begin to be addressed.

How these issues could be taken on board is another matter. It seems improbable, in the light of experience with Doha, that there would be much appetite for a comprehensive agenda embracing everything in a new single undertaking. In any case, finding the boundaries of such an undertaking could be another mind-bogglingly complex task, taking years just to get to the starting line. Instead of taking the full menu, it might be useful to explore the concept of a “cafeteria” or “buffet” approach under which a smaller selection is made to start with. Of course it is always possible to go back for more at a later stage.

What might the balance be between market access and rules issues in a new phase of negotiations? The Doha outcome on market access may not be as significant as originally hoped and indeed it has been cogently argued that “real” liberalization is more likely to emerge from autonomous domestic reforms than from multilateral negotiations.<sup>35</sup> On the other hand it is evident from the very brief survey above that there are many pressing rules issues to deal with. A balance needs to be struck. While the emphasis may be more on rules than in the recent past, improved market access will need to remain a significant component of the WTO’s future work. The more so now that protectionism has thrown down the gauntlet. Market opening need not be sudden or even necessarily very “real”. It should be seen as a gradual but continuing process, in which tariff building is given due weight.

One further question should be posed. In the light of prevailing economic circumstances, could it be that a future negotiating agenda would essentially be an exercise to create additional flexibilities and exceptions to current rules and commitments? The answer may depend on timing. If new

negotiations were to be launched in the immediate future, it seems quite possible from the survey above that the general direction could be trade-limiting rather than trade-opening, and towards a negative unilateralism rather than multilateralism. However it also seems possible or even probable that, as time goes by and disillusion with unilateral protectionism sets in, governments will put renewed emphasis on economic development, trade expansion and multilateralism in order to generate growth. This could create very fertile conditions for new negotiations.

## 6. CONCLUSION

THE CURRENT CRISIS has given us a clearer understanding of the value of the multilateral trading system represented by the WTO. Some observers have contrasted the lack of global financial rules with the relatively well-regulated, well-developed multilateral trading system. Imperfect as it undoubtedly is, the WTO provides some insurance against a headlong flight into protectionism. Its virtues of transparency and predictability have been underrated. But the insurance cover is by no means comprehensive, as recent trends towards raising trade barriers have shown.

The economic and financial crisis has given rise to a new wave of protectionism with real or potentially damaging effects on the world economy. The WTO has missed several opportunities in recent years to limit the scope for this adverse trend. World trade would have been in better shape to face the effects of the crisis if WTO Members had been content to take one or two modest steps forward over the last few years rather than holding out for the perfect deal – a deal which is an illusion and will never come. With the benefit of hindsight, it may also have been more useful towards the end of 2008 to have focused on a decent standstill agreement than to continue tilting at the modalities windmill.

Have expectations of the Doha Round been unrealistically high? Some participants have criticised the negotiations on the grounds that they will not provide sufficient “new” or “real” market access. This has sometimes been cited as a reason for not concluding a deal but is not really backed up at a global level by the most recent research<sup>36</sup>. In any case, such criticism also undervalues one of the WTO’s greatest attributes – its ability progressively to lower tariff ceilings. If indeed much “real” liberalization takes place autonomously as a result of domestic reform, the WTO should have been able to play a very significant role in transforming this over recent years into multilaterally binding commitments. Now that reverse gear has been engaged, with some economies embracing autonomous closure, the opportunity may have been lost for some time to come.

Be that as it may, against the background of the difficult history of Doha and the bulging portfolio of issues for a possible future negotiating agenda, what realistically are the options for now moving ahead?

One option would be to consign Doha to the dustbin of history and start again. While those who are keen to modernise the WTO’s negotiating agenda might find this superficially attractive, there are at least three reasons why it is not feasible. First is the huge investment in political credibility in completing Doha. Secondly is the certainty that any “new” agenda will also have to address “old” issues like agriculture which have proved to be the stumbling block in Doha and which would similarly inhibit progress in any new round. Thirdly is the difficulty that would arise in trying to define the new negotiating agenda itself – a difficulty which might not be insurmountable but which would undoubtedly take considerable time to overcome.

WTO Members themselves have clearly turned their back on that “option” – at least for the present. The major players have committed themselves to an “ambitious and balanced” outcome

in 2010. These terms are highly subjective and finding the right combination of elements to satisfy everyone is extremely difficult.

A second option would be still to pursue the Round but on a substantially modified basis, for example through radically simplifying the “modalities”. As argued above<sup>37</sup>, any significant re-engineering at this stage would be risky. Nor is there certainty that this would solve the many complex problems at a detailed level. This would possibly be a last or next-to-last resort.

The third option is to have a last attempt to finish the Round more or less in accordance with its current methodology (perhaps with some tinkering at the margins). The objective would still be to agree – or if this is not possible to “establish” (as the mandate says) - detailed modalities in agriculture and NAMA. A common understanding needs however to be reached on how exactly other subjects are to be folded in. This appears to be the option which the G20 is - somewhat fuzzily - embracing in its call at Pittsburgh to complete the Round in 2010.

There is a strong institutional argument for concluding the Round according to its current methodology even if this is seen by some as being at a fairly low level of ambition (“Doha light”). It would give closure, allow all Members to claim some credit and, most importantly, clear the decks for future negotiations. The end of the Doha Round does not mean the end of negotiations. It is clear from Article III of the WTO Agreement that the institution will continue to provide a forum for multilateral negotiations.

If the current last ditch attempt – for that is what it is – fails or is in serious danger of failing at the multilateral level, the possibility cannot be overlooked of the Chairman of the Trade Negotiations Committee (the Director-General) tabling his own version of final modalities and texts. The Director-General would have to make the most careful of assessments before embarking on such a risky course, but it cannot be excluded.

At any rate, all observers who are supportive of the fundamental objectives of the WTO and of the multilateral trading system must hope fervently that the last ditch multilateral efforts succeed. Past records and accounts of countless formal and informal WTO meetings are littered with references to deadlock, crisis, watersheds, continuing commitment and last efforts. This time however, the crisis is real. Too many deadlines have come and gone and the WTO simply cannot afford a repeat. The fundamental credibility of the institution is now at stake.

Some commentators, and even actors who have real commercial interests at stake, have already written off the WTO as a talking shop. Soon, unless there is real movement, a significant number of governments will do likewise. As usual it is the weaker and smaller countries that stand to lose most.

If the last ditch effort which is now underway to conclude the Round fails to pick up momentum, it is still improbable that Members will disown Doha. More likely, it will fade away through neglect as other issues (such as climate change) overtake it on the political agenda. The outlook is atrophy and perhaps, later, dismemberment of the Round. Attempts might be made in due course to resuscitate or excise some elements of the current work programme and to combine these with some new issues. That would take time. In the meantime even more emphasis would be placed on bilateral and regional trade deals.

The consequences for the institution are not palatable. The erosion of the WTO’s credibility would not be limited to its negotiating function. There would be a spill-over effect on the “surveillance” function, which Director-General Lamy has so commendably been at pains to develop, and to its dispute settlement function to some extent as well. If one of the core functions fails, the others cannot be immune from collateral damage.

In conclusion the crunch has come: 2010 is a real deadline. If Doha fails, it seems inevitable that the WTO's slow decline will accelerate. If it succeeds, then victory will have been snatched from the jaws of defeat. Either way, serious thought needs to be given to future methods of negotiation. The world of international trade may have become too complex for traditional "rounds". New negotiating paradigms have to be found.

A possible avenue for exploration could involve a mode of permanent, manageable, non-comprehensive negotiation with subjects under current negotiation being linked together less formally than in the outdated "round" format. Informal balances would have to emerge, with new subjects coming on to the agenda as others are dealt with. Progress should be gradual and incremental. The needs of economies at different stages of development should be taken into account. "Variable geometry", plurilateral and "critical mass" techniques should be considered. WTO Members should attempt to accommodate different perspectives and different speeds while maintaining the overall integrity of the system.

Governments certainly have no monopoly of wisdom in these issues related to the future health of the multilateral trading system. It is also incumbent upon academia, think-tanks, civil society and the private sector to come forward with further analysis and input to enrich and catalyze policy debates on the future of the WTO.

## FOOTNOTES

1. The author is a former Permanent Representative of Hong Kong, China to the WTO (1994-2002), General Council Chairman (2001-2), Chief of Staff and Special Advisor to WTO Directors-General (2002-7). The views expressed in this article are personal.
2. Document reference S/L/20, adopted 30 April 1996, and entered into force 5 February 1998.
3. Document reference S/L/45, adopted 14 November 1997, and entered into force 1 March 1999.
4. Ministerial Declaration on Trade in Information Technology Products, WT/MIN/(96)/16, 13 December 1996.
5. Decision of the Ministerial Conference of 10 November 2001, WT/L/432.
6. Decision of the Ministerial Conference of 11 November 2001, WT/L/433.
7. Adopted on 14 November 2001, WT/MIN(01)/DEC2. Although not definitive in itself, this Declaration paved the way for the Decision on Implementation of Paragraph 6 of the Declaration of 30 August 2003 (WT/L/540 and Corr.1) and eventually the Decision on Amendment of the TRIPS Agreement of 6 December 2005 (WT/L/641).
8. Argentina, Australia, Chile, Costa Rica, Czech Rep., Hong Kong, Korea, Hungary, Mexico, Morocco, New Zealand, Switzerland, Singapore, Thailand and Uruguay.
9. The membership of this group varied somewhat over time. In October 1999 it appeared to include Cuba, the Dominican Republic, Egypt, El Salvador, Honduras, India, Indonesia, Malaysia, Nigeria, Pakistan, Sri Lanka and Uganda; subsequently, Jamaica, Kenya, Tanzania and Zimbabwe were also associated with the group.
10. The relationship between trade and investment, interaction between trade and competition policy, transparency in government procurement and trade facilitation.
11. Opening Address to the Third Ministerial Conference, 30 November 1999.
12. For an interesting account of the development of the WTO decision-making process and internal transparency, see Peter Pedersen's article in *World Trade Review* 2006(1).
13. The author was General Council Chairman during this period.
14. Report by the Chairman of the General Council in cooperation with the Director-General on the Current State of Preparatory Work, JOB(01)/118, 24 July 2001 (informal document).



15. Statement by the Director-General, Informal General Council Meeting, 30 July 2001.
16. Draft Ministerial Declaration, JOB(01)/140, 26 September 2001, informal document.
17. Draft Decision on Implementation-Related Issues and Concerns, JOB(01)/139, 26 September 2001, informal document.
18. See Rev.1 versions of documents noted in footnotes 18 and 19.
19. Draft Declaration on Intellectual Property and [Access to Medicines][Public Health], JOB(01)/155, dated 27 October 2001, informal document.
20. Letter from Chairman of the General Council and the Director-General to H.E. Mr. Yousuf Hussain Kamal, Minister of Finance, Economy and Commerce of Qatar, dated 5 November 2001.
21. Doha Ministerial Declaration, paragraph 45.
22. Doha Ministerial Declaration, paragraph 14.
23. See Doha Ministerial Declaration, paragraphs 20, 23, 26 and 27.
24. Document reference WT/L/579 dated 2 August 2004.
25. Annex A to WT/L/579 dated 2 August 2004
26. Report by the Chairman of the Trade Negotiations Committee to the General Council, document reference TN/C/5 dated 28 July 2005. This report also gives a good overview of the situation in each of the negotiating groups.
27. See Hong Kong Ministerial Declaration, document reference WT/MIN(05)/DEC.
28. Chairman's Introductory Remarks, Informal Trade Negotiations Committee meeting at the level of Heads of Delegation, 24 July 2006, informal document reference JOB(06)231.
29. "Bridges", Year 12, No.4, August 2008.
30. Director-General's statement to the General Council, 18 December 2008.
31. Working Paper 09-6, August 2009.
32. The "Sutherland Report", WTO, 2004
33. The Financial Times, 31 July 2008
34. See Gallagher and Stoler "Alternative Framework for WTO Agriculture Negotiations: Work in Progress", Institute for International Trade, University of Adelaide, December 2008.
35. Razeen Sally, "Trade Policy, New Century", The Institute of Economic Affairs, 2008.
36. See reference to the Peterson Institute Working Paper, August 2009, on page 15.
37. See page 15.