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Book Review

Book Review: The Future of the WTO - Addressing Institutional Challenges in the New Millennium

Aussenwirtschaft

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Suggested Citation: Zimmermann, Thomas A. (2005) : Book Review: The Future of the WTO - Addressing Institutional Challenges in the New Millennium, Aussenwirtschaft, ISSN 0004-8216, Universität St.Gallen, Schweizerisches Institut für Aussenwirtschaft und Angewandte Wirtschaftsforschung (SIAW-HSG), St.Gallen, Vol. 60, Iss. 2, pp. 241-244

This Version is available at:

<https://hdl.handle.net/10419/231079>

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**Consultative Board to the Director-General Supachai Panitchpakdi (ed.) (2004):
The Future of the WTO – Addressing Institutional Challenges in the New Millennium**

World Trade Organization, Geneva, 86 pages, available on the Internet:

http://www.wto.org/english/thewto_e/10anniv_e/10anniv_e.htm#future

At the time when the General Agreement on Tariffs and Trade (GATT) went through a difficult phase in the first half of the 1980s, the then Secretary-General ARTHUR DUNKEL asked a group of seven non-governmental experts “to identify the fundamental causes of the problems afflicting the international trading system and to consider how these may be overcome during the remainder of the 1980s”. This so-called LEUTWILER Group, named after its chairman, came up with an unanimous 50 page report in early 1985 that included both a diagnosis of the current situation and fifteen recommendations for specific, immediate action to meet the crisis present in the trading system.¹ Today, the Group’s proposals are regarded as a major input to the Uruguay Round of Multilateral Trade Negotiations (1986-1994) that ultimately gave birth to the World Trade Organisation (WTO).

Twenty years after the LEUTWILER Group issued its report, the multilateral trading system is once again sailing through rough waters: After the golden years following the creation of the WTO, the Organisation lost its innocence in the streets of Seattle in late 1999, when the Third Ministerial Conference ended in a debacle: Instead of launching the expected Millennium Round of multilateral trade negotiations, the starter’s signal to rounds of public protest against the WTO was given. Gradually, the spirit of this opposition in the streets entered the political and academic debate where it has translated into more finely-tuned criticism – e.g. on the allegedly overreaching dispute settlement mechanism, or on the portrayed inability of the WTO to establish a more equitable trading system that helps eradicate poverty, just to mention a few examples. And while current negotiations under the Doha Development Round have progressed only slowly in recent years, governments are increasingly focussing their trade policy efforts on bilateral and regional trade deals – despite prayer-wheel style lip-service that is paid to the importance of the multilateral trading system.

This gloomy atmosphere may have induced the current WTO Director-General SUPACHAI PANITCHPAKDI to establish, in June 2003, a Consultative Board on the Future of the Multilateral Trading System. Similar to the LEUTWILER Group, the Board was entrusted with the preparation of a “report on how to institutionally strengthen and equip the WTO to respond effectively to future systemic challenges brought about by an increasingly integrated global economy.” The group was chaired by former WTO Director-General PETER SUTHERLAND, and included JAGDISH BHAGWATI, KWESI BOTCHWEY, NIALL FITZGERALD, KOICHI HAMADA, JOHN H. JACKSON, CELSO LAFER, and THIERRY DE MONTBRIAL.

On 17 January 2005, the Consultative Board issued its 90-page report entitled “The future of the WTO – Addressing institutional challenges in the new millennium”. It consists of nine Chapters: Globalisation and the case for liberalising trade (I), the erosion of non-discrimination (II), sovereignty (III), coherence and coordination with intergovernmental organisations (IV), transparency and the dialogue with civil society (V), dispute settlement (VI), decision-making and variable geometry (VII), political reinforcement

¹ Published as *Trade Policies for a Better Future – The ‘Leutwiler Report’, the GATT and the Uruguay Round*; Dordrecht: Martinus Nijhoff (1987).

and efficient process (VIII), as well as the role of the Director-General and the Secretariat (IX). In this review, the focus is laid on the erosion of non-discrimination (II) and on the various institutional issues that are the topic in Chapters VII-IX.

Regarding the erosion of non-discrimination, the authors make it crystal-clear that they perceive the proliferation of preferential trade agreements (PTAs) and of special and differential treatment (S&D) of developing countries as major threats to the multilateral trading system. As far as PTAs are concerned, they deplore that even the relatively weak disciplines of Article XXIV GATT have been enforced only poorly. As too many Members now have interests in regional arrangements, no critical reviews of PTAs take place any more. In addition to trade diversion that is well-known since the times of JACOB VINER, the Consultative Board lists three major disadvantages that result from today's multitude of PTAs: Firstly, the complicated administration of preferential schemes (specifically with regard to rules of origin); secondly, the creation of vested interests through regional agreements that makes meaningful multilateral liberalisation more difficult to attain; thirdly, the injection of particular 'non-trade' objectives into trade agreements. Furthermore, the authors seriously question the doctrine of "competitive trade liberalisation", including the allegedly implausible assumption that the relationship between PTAs and multilateral trade liberalisation was a complimentary one. They refer in particular to the diversion of negotiating resources away from the WTO arena into preferential schemes. With regard to the so-called "WTO-plus" elements of PTAs – rules on regulatory issues that are often regarded as valuable testing grounds for future multilateral disciplines by proponents of PTAs – the authors even hold that "the discretion enjoyed by PTA partners in designing such regulatory regimes can strike a serious WTO minus note for the multilateral trading system."

Mechanisms of special and differential treatment of developing countries (S&D), which are now part of the WTO's legal *acquis*, are equally seen from a highly critical perspective: The authors rebut the two basic assumptions underlying S&D, namely that the economics of trade liberalisation is not valid for developing countries, and that reciprocal trade concessions by developing countries are not "worth the bother" because their markets are allegedly insignificant. The report quotes empirical evidence showing that autarkic, inward-looking policies are harmful to development, that the doctrine of infant industry protection has to be resorted to carefully, and that import protection creates a harmful 'bias against exports'. With regard to the Generalised System of Preferences (GSP) in particular, the authors question the notion of non-reciprocity: Firstly, grantor countries often attach to such schemes burdens that are unrelated to trade. Moreover, GSP preferences can be withdrawn unilaterally at any time. Secondly, grantor rather than grantee country interests determine actual GSP practice. This is reflected by the complexity of the regime with an imposition of caps, the exclusion of many typical developing country products, alterations in local content requirements, and complex rules of origin. Thirdly, little benefit has accrued to developing countries from S&D, as empirical evidence shows. Fourthly, unilateral preferences undermine the ability of developing countries to stand up to their own domestic protectionist pressures. Finally, the authors deplore over-reliance on GSP preferences at the expense of industrial and agricultural diversification.

Given the negative effects of PTAs and S&D, the authors call upon Members to "take into account the damage being done to the multilateral trading system" before embarking on "new discriminatory initiatives". If the motivation were to promote non-trade

agendas or simply a desire to ‘catch up’ with others or follow suit, they should show restraint. They call for an effective reduction of MFN tariffs and non-tariff measures in multilateral negotiations, and for developed countries agreeing to a date by which all their tariffs will move to zero as remedies for the “spaghetti bowl of discriminatory preferences”. Moreover, they call for a clarification of Article XXIV and better-organised means of administering its provisions, including by moving towards some kind of Trade Policy Review Mechanism of individual PTAs.

Chapter VII is dedicated to the mechanics of negotiations and decision-making. Although the Marrakesh Agreement Establishing the World Trade Organization provides for some voting procedures, the practice of decision-making by consensus has so far endured. Advantages of this principle, which could be regarded as the procedural equivalent to the MFN clause, are the leverage given to small countries in negotiations, and the high legitimacy of consensus decisions. Nevertheless, there is a real risk that decisions get blocked. As a consequence, issues which should be referred to a diplomatic or a “legislative rule-making” process are being referred to juridical decision-making in the dispute settlement system. Alternatively, Members “take their business elsewhere” by recurring, in the most general sense, to options of “variable geometry”, including regional integration. According to the authors, alternative decision-making should therefore be explored cautiously. Moreover, the General Council should adopt a declaration that a Member shall only block the consensus on an otherwise broadly-supported decision, if it declares in writing, with reasons included, that the matter is one of vital national interest.

The Consultative Board proposes to discuss various options of variable geometry within the multilateral trading system in order to overcome the problems of reaching consensus. These include plurilateral agreements and the GATS scheduling approach. While the plurilateral approach “would enshrine a multiclass membership structure” and could “take the multilateral trading system backwards rather than forwards” with some Members being or feeling left behind, it could also diminish the attraction of regional and bilateral trade arrangements. Alternatively, a GATS-type scheduling approach would entail a high degree of voluntarism in the concrete commitments made, and it could secure commitments, albeit very heterogeneous ones, where otherwise no commitments would emerge. The disadvantages consist of a complication for traders and investors which results from the multiplicity of individual national commitments, and of the difficulty of applying this approach to certain topics such as the rule-making areas (e.g. anti-dumping and subsidies).

The authors also address implementation difficulties by the WTO’s poorest Members. In order to allow the LDCs to take an active part in the WTO and offer them the full benefits of membership, the authors wish to make technical assistance a contractual entitlement to LDCs, along with the necessary funding arrangements.

Chapters VIII and IX deal with the need for political reinforcement and efficient process in the WTO, as well as with the role of the Secretariat and the Director-General. The starting point of their discussion is the notion of a “Member-driven organization” – an approach which has led, according to the authors, to a diminution in the role of the Secretariat that comes at the expense of the system and of Members themselves. The Consultative Board ironically likens the “Member-driven organization” – as practised in recent years – to “a vehicle with a proliferation of back-seat drivers, each seeking a dif-

ferent destination, with no map and no intention of asking the way.” Specifically, they deplore the lack of a strong and coherent voice from the Secretariat which creates a vacuum that is often filled by mixed or even misleading messages, or by other institutions. Whereas the authors recognise that the Secretariat has a duty of absolute neutrality, its responsibility as “Guardian of the Treaties” should be recognised. They therefore call for “greater intellectual input” from the Secretariat and “a clearer – though always careful – lead on policy issues”. In a similar way, the authors wish to raise the profile of the Director-General.

The authors also call for more political involvement, which becomes necessary due to the politicisation of trade policy. According to the authors, Geneva-based diplomats often have no flexibility to move even on the smallest issue. Three proposals are submitted in particular to remedy the situation: i.) The Director-General should be required to report to Ministers in writing once every six months; ii.) Ministerial Conferences should take place more often, at least once a year, and they should not be overburdened with exaggerated agendas or expectations; iii.) above ministerial level, a WTO summit of heads of governments should take place every five years.

Furthermore, the Consultative Board proposes the establishment of a senior-level “consultative body”. Such a body at the level of ministers or senior officials could also replace the informal mini-Ministerial format which, in the eyes of the authors, is “resented and often ineffective”. The Body’s role would be to provide political guidance to negotiators and to “give a political and economic context to the sometimes-insular proceedings of the WTO in Geneva”. In order to make ministerial meetings more efficient and productive, the authors propose, *inter alia*, that the senior officials’ consultative body should meet prior to the Ministerial meeting to ease the working transition between the diplomatic level of preparations and the ministerial level of the Conference.

As these few examples show, the report of the Consultative Board provides a comprehensive overview on institutional, organisational, and procedural challenges to the multilateral trading system. Quite often, these challenges reach deeply into areas of systemic importance, such as in the case of sovereignty, coherence issues, or decision-making systems. While these systemic aspects are being discussed in-depth, the Consultative Board refrains from giving recommendations on areas of substance under negotiation in the Doha Round, such as agriculture, non-agricultural market access, services, or the “rules” negotiations. The authors probably assumed that embarking upon any of these controversial substantive topics would inevitably expose them to massive, special interest-led criticism that would bury their more systemic concerns and suggestions.

Not everyone will necessarily agree with all the elements of the Board’s diagnosis and recommendations. Nevertheless, the Consultative Board report contains much food for thought and numerous interesting proposals to get the WTO back on track – at least institutionally. It is to be hoped that – to use the words of the authors – the “back-seat drivers” will at least have a look at the precious map which they have now been given.

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* The views expressed in this review are those of the reviewer only and shall not be attributed to any institution with which the author is affiliated.