A U.S. Perspective on the Launch of a New WTO Trade Round at Qatar

By Gary Horlick

The most likely outcome of the fourth biennial World Trade Organization (WTO) Ministerial Conference, to be held in Doha, Qatar, Nov. 9-13, 2001 is the "launch" of a new WTO "Round."

This would be the ninth GATT/WTO trade negotiating Round in the post-war era. The reason for these "rounds" is clear: The multilateral trading system has probably done more to boost living standards and lift people out of poverty than any other government intervention in that period. The 17-fold rise in world trade since 1950 has gone hand-in-hand with a six-fold-rise in world output. This has benefited both developed and developing countries: Living standards have risen three-fold in both. Life expectancy in developing countries has risen from 41 to 62 years, infant mortality has more than halved, while the adult literacy rate is up from 40% to 70%. The countries that have done spectacularly well over the past half-century, such as Japan, South Korea and Singapore, have all been trade-oriented. This is confirmed by a new study, "Trade, Growth, and Poverty," by David Dollar and Aart Kraay of the World Bank. They find that whereas gross domestic product per person fell by 1.1% in the 1990s in non-globalizing developing countries, it rose by 5.1% a year in globalizing ones. Moreover, the incomes of the poor rise in line with overall growth.

It is worth looking at past WTO Ministerials.

1. The first WTO Ministerial, in Singapore in 1996, was very productive, with agreements completed on (a) sweeping reductions in tariffs on non-consumer electronic hardware (the Information Technology Agreement, or "ITA I"), (b) a good framework for liberalization of financial services, (c) consensus reached among all members, including the United States, European Union (EU), Japan and developing countries on the potentially divisive issue of labor rules (i.e., that labor issues would be dealt with in the International Labor Organization (ILO), not WTO), and (d) discussion launched on the role of competition policy within the WTO system. To many observers, this showed that the WTO no longer needed to wait for multi-year Rounds, but rather could reach trade-liberalizing agreements on an ongoing basis, perhaps requiring final agreement at the regularly scheduled biennial Ministerial Conferences. Similar trade liberalizing agreements could happen in Doha, especially if there is no agreement to launch a Round. So far, however, it would appear that the necessary groundwork has not been done for any significant new trade liberalization agreement.

2. The 1998 Geneva Ministerial Conference, if only in retrospect, was a warning of trouble to come. There was considerable street violence – interestingly, including by farmers seeking to maintain protectionist agricultural schemes which raise the price of food to everyone else – and a speech by former President Bill Clinton subtly slipping away from the Singapore consensus on labor by asking that labor be dealt with jointly by the ILO and the WTO. The President also invited the WTO to have the next ministerial conference in the United States in late 1999.

It is worth noting that the violence in the streets in Geneva upset the Swiss governing authorities enough to rule out the obvious solution for ministerial conferences – they should all be held in Geneva, the seat of the WTO, to replace the traveling circus requiring special preparations in each new site. If the Swiss authorities do not agree, the WTO should move to a place that does.

3. The image of the third Ministerial in Seattle in December 1999 is marked by images of street protests and property violence, but the real cause of the failure to launch a Round at Seattle, as intended, must be placed elsewhere.[1]

While there is more than enough blame to go around, the United States (which should never have been in the chair)[2] stood out in at least two respects:

(a) President Clinton's public statement reviving the labor issue (which had been put to bed in Singapore), by stating his intention to seek sanctions with respect to labor rights, and

(b) the U.S. refusal to allow negotiations in a new Round of two topics (anti-dumping reform and textile tariffs), while preaching free trade to the rest of the world. Arguably, Clinton was making the right political choice to support the election campaign of his Vice President, but must shoulder the corresponding responsibility for the failure to launch a new Round.

What does this sequence tell us, if anything, about the forthcoming WTO Ministerial conference in Doha?

- The absence of consensus among the four "Quad" countries – Canada, EU, Japan and the United States – is fatal. Agreement between the EU and the United States is not sufficient – if the EU and the United States cannot even reach agreement with Canada and Japan, it indicates to the other Members the impossibility of reaching agreement with the rest of them.
- Agreement among the Quad, while necessary, is hardly sufficient. Thus, agreement at Singapore required considerable hard work at consensus building by the United States and Europe, as well as agreement by the United States and Europe that labor would be dealt with in the ILO, not WTO.
- The need for consensus should not be overstated, however. There was

much noise at Seattle in 1999 and immediately thereafter about the need to be more inclusive, but in fact, some of the countries complaining about being excluded from the process were "in the room" at the time! And some of the "noise" should be discounted as bargaining tactics intended to extract more substantive concessions. That said, there are at least two real problems here:

(1) There is a challenge in negotiating agreements among 142 countries, but, in the wake of Seattle, proposals for some sort of regional representation, such as in the United Nations Security Council or the World Bank governing structure, were rejected, including by some of the small countries that were intended to be benefited.

(2) There is a far more serious problem of assuring that small entities have the real, as well as theoretical, right to participate fully in negotiations and the rest of the work of the WTO. This requires more than seminars and other short-lived solutions. One interesting approach is the common negotiating mechanism employed by a number of Caribbean countries.

One further factor to bear in mind is the unusually complex U.S. domestic political situation. The Clinton administration since at least 1995 was a self-described supporter of free trade, but in practice was unwilling to make agreements which would require significant liberalization of the U.S. market. In addition, the Clinton administration for its last six years faced a Republican-controlled Congress and a business community which were somewhat suspicious of the administration, in light of the administration's decision after the North America Free Trade Agreement vote in late 1993 to defer to its labor union base for the future. The 2000 elections in the United States radically changed this landscape. The new Bush administration is fully committed to seeking the negotiation of trade liberalization agreements on a multilateral, regional and bilateral basis, and is willing to make the trade-offs necessary in those negotiations (i.e., reduction or elimination of barriers to the U.S. market), both from an intellectual aversion to government interference with trade and an absence of political debts to protectionist labor unions. At the same time, the voters took away the Republican majority in the Senate which would have given the Bush administration a relatively free hand.

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Agriculture will be one of the most difficult issues in the WTO negotiations, especially between the United States, Japan and the EU

Historically, in the GATT/WTO system, progress resulted from leadership, mainly by the United States (but not exclusively – one of the key "deals" on the Uruguay Round was made by the EU and India), with a series of GATT/WTO Directors-General willing to take the initiative at points of deadlock.

The WTO is a "member-driven" organization, but in the Uruguay Round the draft Final Act was pushed ahead by Director-General Arthur Dunkel and the final push in December 1993 was forcefully led by Director-General Peter Sutherland. It appears that both of those ingredients are now present: The EU and Japan in 1999 have been working together to try to draft an agenda (in the long run, an ominous sign for the United States), and the new U.S. administration is eager to participate.

There is still considerable sparring over the agenda for the new round, which is likely to continue right up to and through the ministerial conference in Doha (notwithstanding the best efforts of WTO Director-General Michael Moore to have the draft ministerial declaration wrapped up by the end of July). The interplay here between the various members and the various issues is not simple. There is an obvious attraction to having the broadest possible agenda, because historically this has offered the largest number of trade offs and the greatest possibilities for liberalization. For example, U.S. agricultural groups say that an agenda limited to agriculture and services would not permit sufficient agricultural liberalization, and the European, Japanese, and U.S. service industries issued a statement to the same effect earlier this year. At the same time, nearly everyone is reluctant to endorse a "wide-open" agenda. Developed country business groups do not want any reopening of the SPS (Agreement on the Application of Sanitary and Phytosanitary Measures) or TBT (Agreement on Technical Barriers to Trade) Agreements, fearing a substantial watering down of the requirements of sound science, and replacement by deference to more political agendas of some non-governmental organizations'. Many developing countries certainly do not want any opening of labor and environment issues (nor do most U.S. business groups).

Agriculture

The most difficult negotiation will be in agriculture, especially between the United States, Japan and the EU. The EU presents a special problem. EU agriculture is so cost-inefficient that it requires large amounts of government support to maintain income levels for farmers. The added problem comes from the need to offer subsidies across all of Europe, but subsidy levels which

maintain food self-sufficiency in some parts of Europe (Bavaria, for example, where farms are small and relatively unproductive) generate huge surpluses in more productive areas of France; but the costs are so high that those surpluses can only be exported with the aid of large government export subsidies. The United States and other agricultural exporting countries (the "Cairns Group") need an agreement to reduce or eliminate export subsidies, but that would undermine the entire EU Common Agricultural Policy. Interestingly, Japan does not have the same negotiating problem. Agricultural subsidies in Japan support highly inefficient production of, for example, rice but are not set at levels which require export subsidies. Japan is in a better position than the EU in WTO agricultural negotiations with the United States, because Japan does not need to defend export subsidies and can decide whether to trade off agricultural production and market access to the Japanese market for U.S. products, such as beef, in return for obtaining Japanese goals, such as liberalizing of anti-dumping rules in the United States and around the world.

Tariffs

Some tariffs in developing countries remain quite high, often in the 30-40% range and higher (and "bound" tariffs – the upper limit permitted to countries under the WTO can be much higher, since many countries charge "effective" tariff rates lower than their bound rates because they recognize that the high bound rates would choke their own economies). Developed country tariffs seem to be much lower, as a result of eight rounds of GATT/WTO tariff cutting in which many developing countries did not participate, but developed country tariffs in some areas (often textiles or footwear) can also be quite high. More important, the spread of cross border production, investment and sales, means that, increasingly, tariffs that were erected to protect a local industry are now a tax on those companies as they move components and inputs across borders among their own affiliates. One major European multinational has calculated that a tariff under 7% no longer offers effective protection, even if it remains a nuisance for its competitors, but it also taxes that multinational's own intra-corporate transfers.

As a result, the bargaining alliances with respect to tariffs are quite complex. Many developed country industries now seek the abolition of tariffs (including some companies which were protectionist during the Uruguay Round) with notable exceptions such as aluminum in Europe and textiles in the United States. Many developing countries have an intense dislike for tariff escalation, with zero or low tariffs on raw materials and tariffs increasing with value added (such as on logs and wood products in Japan) – and they are joined by multinational companies who find themselves paying those duties. Finally, many developing countries, especially small ones, rely heavily on tariffs as a major source of government revenue.

From an exporters' prospective, one of the reasons for seeking tariff elimination is the consequent reduction (though not elimination) of Customs paperwork (with a zero tariff, there is at least no possibility of argument over valuation, for example). The success of the EU's program to eliminate internal borders has shown businesses the possibilities for greater efficiency in a just-in-time world. Businesses are much less willing than before to accept the delays, corruption and paperwork required by Customs authorities. Customs facilitation efforts are well underway in both Asia-Pacific Economic Cooperation and the Free Trade Area of the Americas, but it would make sense to achieve globally standardized models through the WTO.

Services

The most important development in the build-up to services negotiations was a joint statement in May 2001 by the European, Japanese and U.S. service industries urging the launch of a new round with a broad agenda. While this may seem obvious, at least some of those industries had previously sought a stand-alone services negotiation, but became convinced that there would not be enough trade-offs without other issues.

Developing countries opposed the inclusion of services within the GATT structure in the Uruguay Round, but the picture is not as clear now as it was then. Many developing countries are realizing that they have comparative advantage in many labor-intensive services, and it turns out that a lot of the "new economy" is more labor intensive than the "old economy." English-speaking developing countries, in particular, have proven adept at developing service industries related to the globalization of business – in an electronic world, much of the work can be done anywhere with a telephone link.

The "Safeguards Complex"

The best possibilities for protectionist industries under the current WTO rules is through a complex of rules: anti-dumping, countervailing duties and safeguards. In practice, these trade remedies (more frankly called "commercial defense" in Europe) are like water: they seek the easiest level. Thus, anti-dumping remains the weapon of choice not because "dumping" as it is classically understood is rampant, but because the current rules are very favorable to industries seeking protection. Specifically, normal business practice, including even selling at the same price in each of two markets, is almost invariably found to be dumped by authorities around the world, and injury can then be found on a subjective basis. WTO decisions (notably Guatemala - Cement, EU - Bed Linen, U.S. - Hot Rolled Steel from Japan, and U.S. - Stainless Steel from Korea) are gradually reining in some of the more abusive practices, but WTO members as a whole have been unwilling to bring cases on a strategic basis. A serious rethink of anti-dumping seems unlikely – that would require an honest definition of what practices are considered unfair in both domestic and international trade – but there are a number of anomalies and contradic-

tions in the current Agreement. Many of them can be fixed through dispute resolution, but it would seem more logical to do this through an orderly negotiation rather than the hazards of WTO panels.

In general, countervailing duties (against subsidies) are less of a threat, if only because the subsidies outside of the agricultural area are decreasing in most countries (except perhaps at a sub-federal level in the United States and elsewhere, where it is less subject to scrutiny). Nevertheless there are some adventurous countervail cases underway in the United States, which if not slapped down by national authorities or in WTO dispute resolution, could make this a more potent tool for protectionist abuse.

Finally, safeguards provide the most logical form of safeguard, and also require the least bureaucratic and legalistic apparatus. Recent WTO Appellate Body opinions have reminded members that they are subject to rules against protectionist abuse with respect to safeguards, but there do not seem to be the same amount of problems in the Safeguards Agreement as in the Antidumping Agreement. The Subsidies Agreement needs considerable work in the area of subsidies discipline, which is virtually non-existent among WTO members with respect to domestic subsidies and somewhat eroded with respect to export subsidies, particularly de facto ones.

SPS/TBT/TRIPS

Many of the improvements meeting basic human needs such as nutrition and health over the past 50 years have been the result of the application of science and technology within a global trading system (which both made available those benefits on a widespread basis, especially in developing countries, and made the innovations more effective by offering greater scale and scope). The SPS and TBT Agreements seek to prevent governments from blocking the use of science and technological innovation on protectionist grounds, while the TRIPS Agreement (Agreement on Trade-Related Aspects of Intellectual Property Rights) seeks to ensure rewards for innovation. None of these agreements are without controversy, as each one balances within it delicate compromises. But many of the claims made against these agreements are demonstrably false (such as the claims that the SPS and TBT Agreements trample on human safety, as can be seen from the decision on permitting the ban on Asbestos), or that they sacrifice human health to global capitalism (the TRIP's provisions on patents balance the need to reward innovation with the needs of countries to offer medical treatment to their citizens). On balance, there is probably more harm to be done by reopening these agreements than the contrary.

Trade and Competition

Japan and the EU have been urging inclusion in the negotiating agenda of investment and competition policy issues.

Developing countries are quite wary of binding commitments on investment issues, as the developing countries historically resist binding agreements to protect foreign investors (even though increasingly they realize the need to attract them), while the United States fears that the WTO negotiation would lead to a "low standard" agreement.

A WTO agreement on competition policy (antitrust or anti-monopoly law in many countries) was originally an EU proposal. Discussion over the past five years has failed to yield much detailed agreement, and U.S. competition policy authorities have been firmly opposed to a negotiation which might lower the ability of U.S. law to deter or punish anti-competitive behavior domestically, while U.S. trade law authorities have opposed any negotiations which would weaken their ability to impose anti-competitive barriers on imports. At the same time, competition policy authorities around the world cooperate increasingly with each other, and there is a good case to be made for harmonization among them (e.g., standardized deadlines and information requests in merger reviews). Much of this can be done outside of formal WTO negotiations, and that is a possible outcome.

Institutional Arrangements

Most of the WTO institutional arrangements, including its dispute settlement system of panels and an Appellate Body, were created in the last few years of the Uruguay Round. The mechanisms have worked very well, but it is unsurprising that some details need revisions. Beyond housekeeping, however, loom such potentially controversial topics as the need to make amendments easier (at present the Appellate Body is like a Supreme Court with no legislature to revise defective laws), and the need for greater transparency in the dispute settlement powers, to maintain public confidence.

Finally, it is impossible to foresee perfectly the outcomes of these negotiations, or even the list of topics (after all, anti-dumping was not in the original list of topics for the Uruguay Round, yet the Round led to substantial reforms now being enforced through dispute settlement). JJTI

Notes

1 Gary Horlick, The Speed Bump at Seattle, *Journal of International Economic Law*, Vol. 3. Mp/1 at 167 (March 2000).

2 Interestingly, and perhaps coincidentally, the United States and EU have each chaired one of these Ministerial meetings – the United States at the debacle in Seattle in 1999, and the EU in the 1990 breakdown of the Uruguay Round negotiations in Brussels.

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