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The Doha Round and Alternative Options for Creating a Fair and Market-Oriented Agricultural Trade System

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IPC finds practical solutions that support the more open and equitable trade of food & agricultural products to meet the world's growing needs.

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FOREWORD

The Doha Development Round has suffered a number of setbacks since its launch in 2001, leading to calls to scrap the negotiations altogether. Alternative options are held out as offering the potential for swifter progress in agricultural trade liberalization, among them plurilateral, sectoral and regional trade agreements. IPC formed a working group on “Options for Trade Negotiations,” to examine these options, and held in-depth discussions on this topic at our plenary meetings in Salzburg, Austria (May 2009) and Washington, DC (October/November 2009). Although other options offer some promise and could be tweaked so as to increase their chances for success, IPC members continue to believe that the Single Undertaking — multilateral negotiations across a range of sectors — remains the single best option for achieving ambitious trade liberalization in agriculture.

We believe strongly that WTO members should build on the substantial achievements reached so far in the Doha Negotiations, resolve outstanding issues, and — perhaps most importantly — garner sufficient political will to support a conclusion of the negotiations. Although reforms to the WTO and its decision-making process should be considered, such deliberation is best suited to apply to a post Doha Round WTO. Likewise, in an increasingly complex world, WTO members should consider how they can reach future decisions in the absence of a multilateral round, how trade liberalization can best be supported by other actions geared towards the agricultural sector in developing countries, and how the WTO can work in a more concerted fashion with other international organizations. There is a big agenda for agriculture and trade to be tackled, but the international community will be better able to tackle it after the successful conclusion of the Doha Round.



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EXECUTIVE SUMMARY

The slow pace of the Doha Development Round Negotiations has led to calls for alternative options to pursue trade liberalization. This paper examines the likely effectiveness of a number of options for agricultural trade liberalization in particular.

In light of the difficulties and crises experienced during the Doha Round, it is worth considering whether to return to the original idea of the World Trade Organization (WTO) as a permanent negotiating forum that conducts a series of agreed **sectoral negotiations**. Sectoral negotiations in agriculture may appear an easier task than a Single Undertaking. If sectoral negotiations became a permanent feature of the WTO, there would be no need to establish a parallel institutional negotiating architecture as is done during trade Rounds. Sectoral negotiations, however, do not offer trade-offs across other sectors, which are required in particular for agriculture. Moreover, they risk increasing the number of non-trade concerns being included, as countries with defensive interests are likely to broaden the scope of the negotiations. They also risk seriously putting developing countries at a disadvantage, since developed countries can offer reduced export subsidies and domestic support as bargaining chips, whereas many developing countries are only able to offer concessions in market access. To increase the chances of sectoral negotiations succeeding, a commitment to sequentially pursue negotiations in different areas would help to retain a package approach to the negotiations. They would also require the participation of all WTO members, regardless of whether they have defensive or offensive interests, otherwise they risk not leading to meaningful commitments.

Plurilateral agreements — negotiated by a subset of WTO members, which then go into effect without the agreement of the entire membership — risk changing the fundamental nature of the WTO. In order to be non-discriminatory, any such agreement must extend benefits to non-signatories. For such negotiations to be successful, they must include most of the important trading countries that have an interest in a particular rule or product. The most likely candidates for such negotiations would involve obligations from only a few countries who are competing with each other in the international market, i.e. a plurilateral agreement among key exporters on an export competition issue, and/or an agreement on export restrictions and taxes, or in a few other areas. There is also the possibility of “critical mass” agreements between a limited number of WTO members that account for the bulk of trade in a particular product or commodity. A key question here is how to define “critical mass” — should it refer to the number of participating countries and/or a certain share of trade? It is up to members participating in a plurilateral negotiation to decide whether “critical mass” has been reached.

Bilateral and regional trade agreements have proliferated and are likely to continue, regardless of the outcome of the Doha Round. These agreements historically did not cover agriculture in a meaningful way, but are now leading to significant market access improvements. If agreements link a smaller country with a larger market, the larger country can usually avoid significant policy changes. In order to have a more significant impact on the multilateral trade system, bilateral and regional agreements should be between large trading entities, which would encourage others to join or form other mega-RTAs. Although WTO members have increased the transparency around such agreements through the Committee on Regional Trade Agreements, they still have not sufficiently engaged in improving the quality of such agreements. WTO members should also consider other options to better streamline RTAs in the WTO system, i.e. “multilateralizing” RTAs.

The WTO’s **dispute settlement** offers another important vehicle for clarifying trade obligations in the absence of negotiations. A review of important agricultural and sanitary and phytosanitary (SPS) cases brought before a dispute settlement panel shows that at times, panels have importantly achieved a resolution, which might not have been forthcoming in negotiations. Other cases, however, show that it would not be wise to solely rely on the dispute settlement process as a substitute for negotiations. In the absence of a Doha Round conclusion, the number of disputes is likely to increase and effort should be made to make the dispute settlement process more user friendly, in particular for developing countries.

A successfully concluded **Doha Round** still offers the greatest potential for agricultural trade reform at this time. Although not uniform across all three pillars of the negotiations, the Doha Round has made substantial progress in key areas, in particular on export competition and domestic support. The financial crisis should provide

the momentum to conclude the Round, and the US has a vital role to play. Current modalities are not ideal, but should be used as the basis of ongoing negotiations. Concerns about the significant flexibility included in the market access pillar could be addressed by agreeing on a sunset clause for their expiration or re-negotiation. A sound Aid for Trade program would also greatly facilitate a conclusion of the Round.

Thought should be given to how to facilitate **future multilateral trade rounds**, i.e. by examining the role of the Trade Negotiating Committee, ensuring improved transparency of notifications and increased consultation with non-governmental organizations (NGOs), the private sector and legislative bodies, and/or by broadening the negotiating mandate.

WTO members are also well advised to consider how to **update or re-interpret the WTO's rulebook** without relying solely on multilateral rounds. This will become increasingly important as the pace of technology increases and/or as countries increasingly resort to trade measures for achieving various objectives. Amendments to WTO rules in specific cases based on Article X of the Marrakesh Agreement may be a way forward.

In the meantime, it is crucial for the WTO — rather than embarking on all kinds of negotiations in “new areas” — to pursue **strengthened coordination with other international institutions**. This is particularly important in the realm of international development, given the very serious supply side constraints faced by many developing countries, which hinder their benefits from new market access opportunities. Such coordination will also be important in the context of climate change and other issues.

INTRODUCTION

The Doha Round negotiations were launched in 2001 and were supposed to be concluded by 2005. Despite the agreed timetables, no negotiating deadlines have been met. The successive missed deadlines have undermined the credibility of the WTO negotiating process. In part this is due to the number and diversity of WTO members, which is far greater than during the Uruguay Round. Some commentators point to the proliferation of bilateral and regional trade agreements as a factor that weakens support for the WTO. Others note the proliferation of exceptions and exemptions from the Most Favored Nation clause under discussion in the Doha modalities as evidence of the erosion of support for multilateral trade negotiations. Politicians and economists also may have raised unrealistic expectations about the outcome of the negotiations, making it difficult for the private sector and civil society organizations to be satisfied with any compromise. But perhaps most troubling, the inability of countries to reach a conclusion to the Doha negotiations speaks to a lack of strong political commitment among the major trading nations to a rules-based multilateral trade system. Beyond these concerns, there has been a general unease with the adjustment costs associated with globalization and trade and skepticism about the relationship between trade liberalization and economic development. Until the recent global economic slowdown, trade volumes were growing and projected to continue increasing without new trade agreements; the private sector did not see much benefit in the Doha negotiations, and did not advocate strongly for the Round's conclusion.

Perhaps most troubling, the inability of countries to reach a conclusion to the Doha negotiations speaks to a lack of strong political commitment among the major trading nations to a rules-based multilateral trade system.

The slow pace of the Doha negotiations has led to calls for reforms in the multilateral institutions as well as new approaches to trade negotiations. This paper explores alternative options that have been suggested for reaching a favorable conclusion to the agricultural negotiations. These alternatives include the negotiation of sectoral agreements; the possibility of plurilateral agreements emerging from talks among a self-selected group of countries; the fuller incorporation of bilateral and regional trade agreements into the multilateral process and a greater reliance on the dispute settlement system. The paper finds that the completion of the Doha Round remains the most promising option for achieving greater liberalization in food and agricultural trade at this time. Alternative options may offer prospects for promoting agricultural reforms in the future and may need to serve as fallback options should the Doha Round not be completed.

The completion of the Doha Round remains the most promising option for achieving greater liberalization in food and agricultural trade at this time. Alternative options may offer prospects for promoting agricultural reforms in the future and may need to serve as fallback options should the Doha Round not be completed.

This paper also examines other, longer-term institutional issues WTO members need to consider, such as how to better facilitate potential future multilateral trade rounds. Another important question facing WTO members is how WTO rules can be amended in the absence of a multilateral round. Given the pace of technological change (i.e. development of biofuels) and policymaking (i.e. using climate change related trade measures), greater flexibility in amending or clarifying how WTO rules apply to new technologies or measures — rather than waiting until the next round of negotiations — is required. The WTO would also benefit from increased coordination and interaction with other multilateral agencies that share an interest in the broader trade agenda.

SECTORAL NEGOTIATIONS

When the WTO was created after the Uruguay Round, it was to become a permanent negotiating forum that would successively tackle different issues of interest to the membership. This process was to start with the “mandated negotiations” agreed at the end of the Uruguay Round, on Agriculture and on Services. The resort

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to new Rounds of multilateral trade negotiations was temporarily shelved, in favor of discussions by sector. Some success was achieved with agreements on basic telecommunications and on information technology products, but this approach was short-lived. At the insistence of developed countries and in particular the European Union (EU), it soon became clear that a high level of ambition in the mandated negotiations demanded the launching of a new comprehensive Round of trade negotiations that would incorporate the issues of interest to EU member countries.

In light of the difficulties and crises experienced during the Doha Round, it is worth considering whether to return to the original idea of the WTO as a permanent negotiating forum that conducts a series of agreed sectoral negotiations. Sectoral negotiations in agriculture may appear to be an easier undertaking than a Single Undertaking. Moreover, sectoral negotiations would become a permanent feature of the WTO, so there would be no need to establish a parallel institutional negotiating architecture as is done during trade Rounds. Yet, there are several caveats to this approach:

- A sectoral approach would likely make any ambitious agreement on agriculture more difficult, since there are no trade-offs with other areas. Not all WTO members are interested in agricultural trade and the interests of those who are diverge.
- Given the lack of trade-offs with other areas, countries with defensive interests in agricultural liberalization will seek to introduce issues which are of great importance to them, but which were relegated to a marginal position in the context of a more comprehensive trade Round. As a result, emphasis on non-trade concerns, geographical indications, food safety, food security, animal welfare and many other issues could certainly acquire a greater place in sectoral negotiations than they have had in the Single Undertaking.
- At the national level it is likely that the most defensive groups would favor sectoral negotiations — this may have the perverse result of leaving protection-minded wolves minding the liberal-trade hen house.
- Sectoral negotiations will not reduce the imbalance of power in the current multilateral trade talks; in fact they could exacerbate it. In the traditional multilateral Round negotiations, the possibilities of trade-offs

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between agriculture — of vital interest to developing countries — and other sectors of interest to developed countries has been an important consideration. In a sectoral negotiation, the balance of interests among WTO members will have to be found within the agricultural sector itself. In addition to market access, developed countries can offer to reduce export subsidies and trade distorting domestic support as bargaining chips. Developing countries generally do not have such levels of support bound in WTO schedules. The only ammunition

available to them is concessions on market access, although the inclusion of export restrictions in the negotiating agenda could strengthen the position of developing countries.

If a sectoral approach were chosen, it would be important to consider the following:

- It would be helpful to secure previous agreement to successively tackle a number of other issues within a given time frame, i.e. agriculture, services liberalization and trade related aspects of climate change. This would retain a package approach to negotiations, even though they would be carried out successively rather than in parallel. Since the Single Undertaking would not apply to this package, the negotiating mandates would be more focused, but also possibly less ambitious. Members would tend to pick “low hanging fruit” and could ignore more important and economically meaningful reforms. On the other hand, this would result in shorter and easier negotiations.
- To be effective, sectoral negotiations should include the participation of all WTO members, whether they have offensive or defensive concerns on the subjects under negotiation. This is particularly necessary in the case of agriculture,¹ because a large and growing number of countries, both developed and developing, have protectionist and defensive attitudes. If these Members can “opt out” of sectoral negotiations and participation in sector negotiations becomes voluntary, they will never address important issues such as subsidies (in particular domestic subsidies), whose reduction and eventual elimination is essential for long-term reform of agriculture. Trade-related subsidy issues can only be handled multilaterally, contrary to market access provisions that can be secured through bilateral, regional or preferential trade agreements.

PLURILATERAL AND CRITICAL MASS NEGOTIATIONS

Plurilaterals covering particular aspects of trade rules were tested in the Tokyo Round: a series of Codes were negotiated and countries chose whether to be signatories or not. The results were mixed. On the positive side, experience was gained in several areas where existing General Agreement on Tariffs and Trade (GATT) rules were inadequate — standards, subsidies, anti-dumping, etc. But the weakness of having a “GATT a la carte” lay in the relationship between signatories and non-signatories, the latter having the benefits without the obligations. As several of the Codes were only signed by a handful of countries, there were often costs associated with being a signatory. The Single Undertaking was intended in part to resolve these problems.

The pursuit of plurilateral agreements among various sub-groups of countries has also been suggested, given the slow progress in the Doha Negotiations.

The pursuit of plurilateral agreements among various sub-groups of countries has also been suggested, given the slow progress in the Doha Negotiations. These sub-groups could either share concerns about particular rules or they could be the major trading countries in particular agricultural sectors. This latter approach can lead to what have been called “critical mass” agreements (CMAs) (Gallagher and Stoler, 2008). Among the downsides to this approach are:

- If a stand-alone agreement can be reached by a sub-set of members, which then goes into effect without the agreement of the entire membership, the nature of the WTO is fundamentally changed. This might be worthwhile if the change resolved a significant problem with the present system, but it argues for extreme caution.
- Although the exclusion of non-signatories from the benefits would address the problem of “free riding,” this would clearly be discriminatory and inconsistent with current WTO rules except in the context of regional and bilateral trade agreements.

¹ In this section, sectoral negotiations mean agriculture as a whole, covering all products and issues, rather than a negotiation confined to a specific agricultural product or group of products. Negotiations on specific issues and commodities are discussed below.

If a decision was taken to pursue plurilateral agricultural negotiations, the following points should be considered:

- A successful plurilateral agreement should include most of the important trading countries that have an interest in the rule or product in question. Benefits could be extended to least developed countries (who would not have to take on obligations in any case). The countries that chose not to sign would indeed get a free ride, but would not be significant enough in trade terms to weaken the cohesion of the agreement. Whether the attraction of a free ride would be enough to prompt many countries to stay outside the negotiating room will depend on the circumstances. And if too many countries were at the negotiating table, the advantages of the plurilateral approach would dissipate.

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- The most likely candidates for plurilateral negotiation are those where the obligations would involve only a few countries and where the countries themselves were concerned with the actions of their competitors. Exports of agricultural products are generally more concentrated than imports, and most exporters are concerned with the conditions of competition. A plurilateral agreement among exporters that improved the degree of competition would not necessarily need to include importers in the negotiations.² One such agreement could include export subsidies, export credit guarantees, food aid

and the subsidies offered through the activities of state-trading export agencies, though on some of these issues (e.g. food aid) an understanding with importers may be required (IPC, 2009).

- A plurilateral approach could be equally possible for export restrictions and export taxes. Only a handful of exporters make use of these policies, and even these countries recognize that there is a serious risk of loss of market share and reputation as a reliable supplier. So the main issue is whether constraining such policies, to the advantage of importing countries, would better be included in a deal that involved greater market access by importers. Those exporters with current restrictions may think it better to keep them to bargain for better market access. However, it might still be possible to negotiate limits on export taxes and restrictions in exchange for some assurance of progress on market access issues by a wider group of countries.
- A plurilateral agreement on domestic support might also be possible. When the EU had a significantly larger level of domestic support than the US and Japan (the three WTO members that account for the bulk of trade-distorting domestic support), a stand-alone deal would have been impossible. However, the EU has reduced its level of trade-distorting support rapidly, and would prefer to get some credit at the negotiating table for its actions.³ Under these conditions a stand-alone agreement on domestic support could be possible if the outcome were to limit US trade-distorting farm programs. But whether the US would be able to get domestic political support for an agreement that restricted its own farm payments but did not include opening markets in emerging countries is doubtful.
- There are some areas of market access where plurilaterals might be considered. The issue of safeguards is tied to the level of tariff cuts: developing countries want assurances that if they reduce tariffs, they can guard against import surges or price collapse. But the need for a sensible safeguard is important regardless of tariff reductions. So if the Doha Round continues to be stalled, negotiating a developing country safeguard mechanism as a standalone agreement, perhaps tied to the binding of tariffs at the current ad

² Importers would have to be convinced that exporters were not in effect colluding to raise price or limit supply.

³ Based on a projection of the level of domestic support under current policies, the EU would have an easier task of meeting the constraints of the Doha Round than would the US.

valorem equivalent, could be explored. Such talks would involve developing country importers and major exporters (developed and developing), but many countries that would not be eligible for such a safeguard may choose not to take an active role in the negotiations.

- Other aspects of market access could also be negotiated at the plurilateral level. Tariffs on tropical products could perhaps be separated out from the remainder of the tariff talks. Where such tariffs exist, there is little direct competition from domestic producers. But defining the group of products has already been difficult in the DDA as a result of market links between tropical and non-tropical agricultural products.
- Conversely, plurilaterals would probably not be negotiated for most temperate-zone agricultural products. Such tariff reductions typically need an offsetting agreement including non-agricultural tariffs and services to be politically palatable. But there may be instances where the major trade flows are limited to a small group of countries. This is the premise for CMAs, as has been suggested by some trade experts. The Warwick Commission (2007) argued that the negotiation gridlock in the Doha Round could be eased by the conclusion of “supplemental agreements” between a limited number of WTO members that account for the bulk of trade (a critical mass) in a particular product or commodity. Gallagher and Stoler (2008) develop this notion and apply it to agricultural trade by examining how many countries are required to form a critical mass in several temperate zone farm products. The tentative results of this analysis suggest that for many commodities the number may be quite manageable. The number of economies needed to account for 90 percent of world exports and imports is relatively small; the largest group (refined sugar) comprises 74 economies. Moreover, there are a number of product groups in which there seems to be a potential for the same countries to be on both sides of the trade; that is, as importers and exporters (refined sugar, cheeses, barley, durum wheat, pork meat, poultry).⁴
- Discussion of such agreements parallels the controversy over “sectoral” tariff cuts in non-agricultural market access (NAMA). Some of the same sensitivities would apply. The decision of how to define “critical mass” for any product will inevitably leave some countries dissatisfied. So the question arises as to whether the critical mass defines participation in the negotiations or the share of trade needed to reach an agreement. And the systemic effect of weakening the possibility of a broad tariff reduction package by picking the “low-hanging fruit” is still a major concern.

BILATERAL AND REGIONAL TRADE AGREEMENTS

While the Doha Round has been struggling, several dozen bilateral and regional trade agreements (RTAs) have been negotiated and implemented. These agreements are likely to continue regardless of whether the Doha Round is concluded or not. This requires an honest assessment of the treatment of agriculture in these agreements, as well as deliberation about their relationship to the WTO.

- Until ten years ago, regional and bilateral trade agreements usually did not include sensitive agricultural products in the tariff elimination schedules. Although some specific sectors are still excluded, most agricultural trade now is subject to tariff reductions (IDB, 2009). As many of these products have high tariffs, a significant part of regional trade negotiations focus on how to ease the transition to greater market access. And when one of the partners is a low-cost producer of agricultural goods, the danger of a protected common market is greatly reduced.

Until ten years ago, regional and bilateral trade agreements usually did not include sensitive agricultural products in the tariff elimination schedules. Although some specific sectors are still excluded, most agricultural trade now is subject to tariff reductions.

⁴ Some of these sectors have been suggested for “zero-for-zero” agreements in the DDA, though this route has not been included in the draft modalities.

- It would be useful to have a better understanding of the benefits and costs of RTAs in terms of economies of scale, improved competitiveness, technological and sanitary cooperation, integration of the value chain, etc. It is also not clear whether these so-called “deep” RTAs that go beyond tariffs and negotiate more uniform rules and standards are in opposition to the WTO.
- Many bilateral agreements link a small country with a larger market. Under these conditions, the larger country can usually avoid significant changes in its trade policy for agriculture.
- Agreements among large trading entities are much more significant from the viewpoint of the multilateral trade system. Potential agreements (say) between China and India, between MERCOSUR and the EU, or between the EU and the US could each have systemic impacts. Such agreements would create strong incentives for excluded parties to join or form other mega-RTAs. They would increase the share of agricultural trade flowing under these agreements. They would “internalize” many of the current issues that stall WTO talks, particularly on market access. Moreover, it is not clear that they would be able to avoid some resolution to the issue of domestic support. An EU-US trade agreement could, for instance, include restraints on domestic support.⁵
- The inclusion of agricultural trade in RTAs can be turned into an advantage for the multilateral trade system. At a relatively superficial level it would be useful for the WTO to increase the transparency surrounding how agriculture is treated in such agreements. A new WTO database goes some way in this direction. More

The inclusion of agricultural trade in RTAs can be turned into an advantage for the multilateral trade system. At a relatively superficial level it would be useful for the WTO to increase the transparency surrounding how agriculture is treated in such agreements. ... Of most significance would be the resolution of the decades-old question of what constitutes “substantially all trade” when examining the compliance of a RTA with the WTO rules (Article XXIV).

discussion within the Committee on Agriculture of the actual mix of regional and multilateral trade policies and rules would be of value to members.⁶ The Committee on RTAs is receiving more information about the provision of these agreements, but is still not expected to play an active role in improving their “quality.” Of most significance would be the resolution of the decades-old question of what constitutes “substantially all trade” when examining the compliance of a RTA with the WTO rules (Article XXIV). Improving coherence could also involve issues such as rules of origin, where the range of practices in regional agreements is large.

- There are other ways RTAs might be handled in the multilateral trade system. It might be possible to explore ways to “multilateralize” RTAs after some time period (for example 15 years). Countries could “opt-in” to a RTA, with the appropriate pay-offs. Or, in the case of an agreement among developing countries, there could be a two stage process, where countries open up trade relatively quickly among themselves, but more slowly

to more developed economies. Another option might be to insist on continuing agricultural liberalization among RTA partners.

⁵ It would be even more possible if the DDA were completed, as trade-distorting support would be cut back to low levels by about 2013. The phasing out of both US and EU trade-distorting support could be contemplated over a period of a further ten years in the context of a comprehensive bilateral agreement.

⁶ It would be useful in this regard for the WTO to publish, alongside the bound (MFN) tariff and the applied tariff (or tariff equivalent), the level of the trade-weighted tariff including preferential access. This level is a more complete measure of protection of the domestic producer, though strictly speaking one should assess a protection level on trade flows within the preferential area at the exporter’s MFN tariff level.

MAKING GREATER USE OF DISPUTE SETTLEMENT PROCEDURES

The WTO also has a judicial arm, which can serve to fill in the gap should negotiations not be concluded. When reviewing its record in agricultural and SPS disputes, it becomes clear that although it has at times achieved the resolution of issues that may have been impossible to achieve via negotiations, it would not be wise to rely on it entirely as a substitute for negotiations.

Major dispute settlement cases have been conducted on matters relating to agriculture, including the Canadian Dairy Case, the EU Sugar Case and the US Cotton case. The dairy case is famous because instead of sticking to the text of the Agreement on Agriculture, the Appellate Body (AB) demonstrated “political correctness” and determined that Canada was using export subsidies. A similar determination was made in the EU sugar case when the so-called C-sugar was declared an export subsidy. (It remains to be seen whether the AB would display similar creativity should someone find that US marketing loan payments on exported products were export subsidies.) In the US cotton case, the Panel and the AB clarified that direct payments are not considered to be “Green Box,” if a specific land use (e.g. fruit and vegetable production) is excluded.

The US cotton case illustrates the difficulty of applying the concept of actionable measures under the Agreement on Subsidies and Countervailing Measures (SCM Agreement). What does “serious prejudice” because

of price depression mean in a volatile commodity market? In the “compliance procedure,” the US claimed that serious prejudice had disappeared because of rising prices while Brazil insisted on the elimination of the support for cotton regardless of the absolute level of prices in the market. The Panel and the AB felt that even if the market changes, some action is required — but what exactly should be done was left open. One of the panel reports in the case of EU-bananas is noteworthy because it declared the EU’s unilateral preferences for the African, Caribbean and Pacific (ACP) countries were inconsistent with WTO rules, and triggered the negotiation of free trade agreements (Economic Partnership Agreements) between the EU and the ACP countries. This led to the abolition of these preferences at the end of 2007. A minor case involving a complaint by the US about the EU rules of registering geographical indications resulted in the EU amending its regulation.

There have been a limited number of SPS cases, the most prominent being the hormones dispute between the US and the EU. This dispute gave the AB the opportunity to clarify the interpretation of some basic provisions of the SPS Agreement, in particular on risk assessment. After losing the first panel, the EU changed its approach and proceeded to the risk assessment, which the AB had found wanting. As the US and Canada did not lift their retaliation measures, the EU launched a new procedure against the US and Canada, claiming that these retaliatory measures were not justified anymore. The EU did not prevail, but the AB found that the panel had failed in its review of the EU measures. The new compliance procedure launched by the EU after the AB ruling has now been suspended. The EU and the US have agreed to an interim solution to the dispute that reduces US retaliation in exchange for a tariff quota of 20 thousand tons for hormone free beef, which is to be increased to 45 thousand tons after three years, at which time the US will lift the remaining retaliation measures. A final agreement is expected in the fourth year.

In the so-called “moratorium” case brought by the US and Argentina, criticizing the EU for unduly delaying decisions on the approval of genetically modified organisms (GMOs), the EU lost but did not appeal. It claimed that there was now a new legal basis and the decisions were taken without delay. The panel report is nevertheless relevant, since it clearly stated that approval of GMOs falls under the SPS Agreement. A new transatlantic dispute on anti-microbiological treatment (AMT) of poultry products has been launched by the US against the EU.

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Although some believe that the AB exceeded its authority in the Canadian dairy and the EU sugar cases, their conclusions were nevertheless in line with the spirit of the Agreement on Agriculture. Neither Canada nor the EU would have changed their respective regimes in a multilateral negotiation without the dispute settlement

On SPS matters there is a transatlantic cultural divide on hormones and on GMOs (and perhaps on other food safety issues), that is not well suited to the dispute settlement procedures.

procedure. The dispute settlement system appears to have reached its limits in the US cotton case, however. But here the SCM Agreement and the Understanding on Dispute Settlement are at stake, rather than the Agreement on Agriculture. It shows the limits of applying the SCM Agreement to agricultural basic commodities. It also vindicates the clear-cut approach of the Agreement on Agriculture on restraining domestic support which leaves little doubt on implementation. The case cries for a multilateral negotiation to settle it. A report on the case brought by Canada and Brazil

on the way the US calculates its Aggregate Measure of Support (AMS) should clarify some provisions of the Agreement on Agriculture on domestic support.

On SPS matters there is a transatlantic cultural divide on hormones and on GMOs (and perhaps on other food safety issues), that is not well suited to the dispute settlement procedures. Here too, negotiations are required to find, if possible, pragmatic solutions — as appears to have happened in the hormones case.

The dispute settlement procedure has worked reasonably well on agricultural and SPS matters. But there are limits to what the dispute settlement could achieve, as the cotton and the hormones case demonstrate. Challenges lie ahead on the compatibility of climate change measures with WTO rules. If the Doha negotiations are not brought to conclusion, it might be necessary to actively explore ways to make the Dispute Settlement process more user-friendly.

- Developing countries may feel particularly restrained to utilize the dispute settlement process due to resource constraints, and they may feel that it is politically untenable to bring a major trading partner to dispute settlement and that they may not have enough leverage to demand compliance via retaliation. Article 5 of the Understanding on Dispute Settlement allows for good offices, conciliation and mediation

A mandatory mediation procedure, where one party requests mediation during the consultations or during the implementation stage of a panel or AB report, may further delay the panel procedure. However, a formal mediation process might be helpful for developing countries, which are reluctant to take on full blown dispute settlement cases.

by the Director General during the dispute settlement process if the parties to the dispute agree. Last year, proposals were tabled to set up a mediation procedure for SPS measures and non-tariff barriers. It is worth considering whether a more formalized mediation procedure during dispute settlement would be helpful. A mandatory mediation procedure, where one party requests mediation during the consultations or during the implementation stage of a panel or AB report, may further delay the panel procedure. However, a formal mediation process might be helpful for developing countries, which are reluctant to take on full blown dispute settlement cases.

- It would perhaps improve the dispute settlement process and lessen the recourse to the Dispute Settlement Understanding (DSU) if countries reported on their subsidies and commitments in a more timely and transparent manner. Several important countries delayed their notifications to the WTO on their agricultural subsidy commitments, making it difficult for countries to determine whether their trading partners were complying with their commitments and difficult to negotiate.

The Sutherland Report (WTO, 2004) concluded that the dispute settlement system has been working satisfactorily. The report identified two shortcomings: the exclusion of civil society from the panel and AB proceedings, and the question of compliance. Significant progress has been made on opening up panel and AB proceedings to the public, but further progress may require a revision of the Dispute Settlement Understanding (DSU). On compliance, the AB has clarified that this has to be assessed exclusively within the specific compliance procedure of Article 21 DSU, and not by any other dispute settlement procedure. This is welcome clarification, but does not address the question of remedies. The conclusions of the Sutherland Report met with some criticism, but nobody has put into question the basic tenets of the dispute settlement system. Since the Report came out, the main issue discussed remains the participation of the public in the dispute settlement proceedings.

There is an inherent tension between a rather rigid and judicial dispute settlement procedure and the complex, difficult and politically fraught negotiation process in the WTO. As every trade negotiator knows, ambiguous texts are often the only way to reach an agreement that allows all the participants to save face. Provisions drafted in such a process do not lend themselves easily to a quasi-judicial assessment. The AB has tried to solve the problem by sticking to the wording of the text, in conformity with the Vienna Convention on the Law of the Treaties. But this does not always do justice to the intention of the negotiators, as became obvious in the cotton case. What the panel and the AB read into Article 10 Agreement on Agriculture on export credits was not what negotiators had in mind when drafting it. The cotton decision will put a premium on more precise drafting.

THE DOHA ROUND

Whereas alternative options offer promise of promoting agricultural trade liberalization, they each have their limits. Some of these options may offer longer-term ideas for reform that should be explored, and the WTO may wish to launch a process of reflection, but these approaches are not a substitute for completing the Doha negotiations. Since agriculture has only been included in one Round so far, there is still considerable need for further reforms, and a multilateral Round offers the greatest likelihood of achieving these. Negotiations that encompass a wide range of subjects of interest to all members give the opportunity for trade-offs across sectors, and for Members to find an overall balance in the wide context of the negotiations instead of in a single issue or sector. Members seek ambitious results in areas where they have international comparative advantage and achieve these gains with concessions in areas where other Members have that advantage.

While governments were not able to conclude the Doha Round in 2008, substantial progress was made in the agricultural agenda. Agreement has been reached to completely eliminate all forms of export subsidies and to significantly reduce trade distorting domestic support. These are important improvements over the Uruguay Round Agreement on Agriculture. On market

access the situation is less satisfactory. Hope for sweeping across the board tariff cuts has been replaced by a realization that the outcome will be more complex. A number of flexibilities have been introduced into the negotiating texts.⁷ These “flexibilities” respond to the sensitivities of both developed and developing countries. They will seriously reduce, and in many cases prevent, real improvements in market access both now and in the future if they become permanent fixtures of the Agreement on Agriculture. Moreover, they have compli-

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⁷ The acceptance of sensitive products; special products; special agricultural safeguard; special safeguard mechanism for developing countries as well as “tailor-made” provisions for exemptions for a number of countries, both developed and developing, will allow substantial deviations from the full implementation of the tariff reduction formula.

It would be premature and counter-productive for governments to declare defeat and walk away from the Doha Round negotiations. The stakes are high and better results are unlikely in any other negotiating scenario. On the contrary, declaring defeat risks losing the gains that have been agreed (such as the elimination of export subsidies).

for governments to declare defeat and walk away from the Doha Round negotiations. The stakes are high and better results are unlikely in any other negotiating scenario. On the contrary, declaring defeat risks losing the gains that have been agreed (such as the elimination of export subsidies). Starting from scratch would substantially postpone the benefits of trade reform. Failure to conclude the talks soon will lead to increasing pressures to add new issues to the scope of the talks, further complicating and delaying the conclusion. It will also lead to further disputes and intensified regional trade negotiations, both of which carry risks for the multi-lateral trade system.

Governments are encouraged to summon the political will to enable them to reach compromises with their trading partners and domestic constituencies, which are opposed to further food and agricultural trade reform.

- The financial crisis should provide the additional momentum required to complete the Doha Round. Inward-looking policies, coupled with a sharp decline in trade financing and trade flows, have made politicians and private companies more aware of the importance of open international markets, and indeed WTO members have expressed a strong interest in concluding the Round in 2010. They now need to match this realization with a renewed and active engagement in the negotiations.

Current modalities in the December 6, 2008, text are far from ideal, but need to be used as a basis for resuming the negotiations. This will allow countries to put together initial offers that will provide some specificity to negotiating partners to determine what improvements are needed to finalize a deal. Countries need to move to concrete offers on specific tariff lines. This will help negotiating partners determine which flexibilities really matter in terms of market access.

cated the politics in both developed and developing countries. The developed countries view the flexibilities (including Special and Differential Treatment) as giving the more 'developed' developing countries a break, while the developing countries view flexibilities for developed countries as "special and differential treatment" for the wealthy. The rhetoric on both sides of this debate has complicated resolution of these technical issues.

In spite of the difficulties of reaching agreement on agriculture, and recognizing the shortcomings of the likely final negotiating results from the Doha Round, there is still an urgent need to pursue multilateral negotiations. It would be premature and counterproductive

- Even though the global balance of economic power is shifting, the United States must play a key role in the re-engagement. While the new US administration has many issues on its plate, with the current economic crisis, keeping borders from closing must be a priority.

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- The flexibilities that have been introduced in the text (on behalf of developed and developing countries) are worrisome, as they undermine the multilateral character of the negotiations. The final agreement could provide for a sunset clause (of say 10 years), after which these flexibilities will expire or renegotiated.

- Prospects for a successful conclusion of the agriculture negotiations could be improved with an agreement on export restrictions and firm commitments on Aid for Trade.
- There should be a continuation clause in the Doha Agreement, to ensure that unfinished business is addressed by the WTO in the future.

FUTURE MULTILATERAL ROUNDS

Over time, governments will again appreciate the intrinsic value and legitimacy of a global comprehensive approach (including the Single Undertaking). If the multilateral Round approach remains valid, further thought should be devoted to ensure that the single undertaking works better:

- One suggestion would be to strengthen the role of the Trade Negotiating Committee (TNC). At present, the TNC affords the Chairs of the different Negotiating Committees an opportunity to inform the members about their individual negotiations. There is little discussion or guidance emerging from the TNC regarding the negotiations as a whole. The TNC could take a horizontal approach to negotiations across the various sectors and provide opportunities for periodic discussions on the possible trade off among the different negotiating sectors. This would diminish the current trend of looking at different sectoral negotiations in isolation from each other, and hopefully promote the search for a balanced outcome in the overall context of the Round. The TNC could also play a greater role in setting the negotiating agenda and outlining policy alternatives
- More transparency (in terms of countries' compliance with existing commitments), more consultation with NGOs, the private sector and legislative bodies would reduce distrust in the WTO and improve developing countries' ability to monitor and participate in the negotiations. Identifying "competent organizations," that can provide "impartial" analyses of negotiating options, would also help increase transparency and facilitate participation by developing countries.
- The Uruguay Round had the largest scope of any multilateral trade round so far. This was certainly one of the reasons for its success. The Doha Round has been much more limited. Since the Cancun ministerial, the focus has very much been on agriculture, with NAMA in the background, and services and rules even further behind. It may be useful to consider whether the scope of future negotiations should be broadened. Yet adding issues that fall too far outside the WTO's purview may weaken the institution by overloading it. For the time being, neither investment nor competition seem to be attractive subjects. Trade and investment are two sides of the same coin. Among the Multilateral Agreements on Trade in Goods, there is already the Agreement on Trade-Related Investment Measures (TRIMs) that was concluded in the Uruguay Round. The case for going beyond this agreement in the WTO is not particularly strong. However, as bilateral and regional agreements normally cover investment, abandoning investment inevitably weakens the multilateral trading system as embodied by the WTO. The case for including competition rules into the WTO is much stronger, as the WTO already provides rules on competition, i.e. on state subsidies in the SCM Agreement. It would be consistent to include rules on cartels and mergers. However, a time of financial and economic turmoil triggering unprecedented market intervention by public authorities is perhaps not the right moment to establish rules on competition. That said, now might be a propitious time to lay the groundwork for these negotiations, while the issues are at the forefront of politicians' minds. Given the wave of "buy local" provisions triggered by the crisis, it may be more attractive to strengthen the Plurilateral Agreement on Public Procurement and to enlarge its membership. Restarting the attempt to improve transparency in public procurement as was tried in the Doha Round may be a first step.

THE NEED FOR A MORE AGILE PROCESS

Presently, WTO rules can only be amended if they form part of a successfully concluded formal negotiation. Given the protracted nature of both the Uruguay Round and Doha Negotiations, the WTO might be strengthened if it can amend — or formally clarify — rules in a more expeditious manner. Examples might be the need

Presently, WTO rules can only be amended if they form part of a successfully concluded formal negotiation. Given the protracted nature of both the Uruguay Round and Doha Negotiations, the WTO might be strengthened if it can amend — or formally clarify — rules in a more expeditious manner.

to clarify how WTO rules apply to biofuels and the exact scope of Article XX in relation to trade-related climate change measures.

Article X.3 and 4 of the Marrakesh Agreement allow for amendments to the Multilateral Trade Agreements on Goods, including the Agreement on Agriculture. Any Member or the Council on Goods may submit a proposal to amend a Multilateral Trade Agreement to the Ministerial Conference. The Ministerial Conference decides within 90 days by consensus to submit the amendment to the Members for acceptance. If there is no consensus, the Ministerial Conference decides by a two-thirds majority whether to submit the proposed amendment to the Members. If the amendment alters

the rights and obligations of Members, it must be accepted by two thirds of the Members and it applies only to Members approving the change. The Ministerial Conference may decide by a three-fourths majority that an amendment is so vital that any Member not accepting it must withdraw from the WTO. Amendments that do not alter the rights and obligations of Members become effective for all Members upon acceptance by two thirds of the Members. This provision has never been used. Given the mandated timeframe, this procedure does not seem to be well suited to a renegotiation of a Multilateral Trade Agreement, although it may be used to amend such an agreement on a very specific point.

Amending the consensus rule has also been raised as an option to speed up decision-making. The GATT had no provision on consensus but operated to a large extent by consensus. Although the WTO in Article X of the Marrakesh Agreement provides for voting if no consensus can be reached, decision-making by consensus is even more pervasive in the WTO than it was in GATT. Contrary to GATT practice, accession requires consensus. Decisions on waivers seem to be the only place where voting still takes place. There are two schools of thought on consensus. One argues that a rigid and effective dispute settlement procedure requires rules with the broadest possible support among Members in order to give it legitimacy. This school of thought sees consensus as an indispensable condition to preserve acceptance of the dispute settlement procedure in the WTO (Wolfe). The other school of thought argues that consensus undermines the dispute settlement system since it leads to an imbalance between a strong and powerful dispute settlement and a weak and protracted rule-setting procedure (Jackson, Ehlermann). The former appears to have a stronger point. Whatever the merits of the opposing views, it is not realistic to expect a shift to voting in an organization which has become much more diverse over time. Even those who fear impasse, stalemate and paralysis as a result of the consensus rule are reluctant to recommend voting on non-procedural matters. The Sutherland Report (2004) did not propose voting when Members' rights and obligations are at stake. It pleaded for a written justification that vital national interests are at stake by those who oppose the consensus supported by the overwhelming majority of Members.

INCREASED COORDINATION WITH OTHER INTERNATIONAL INSTITUTIONS

In the course of the last eight years of negotiations under the Doha Development Agenda, several developing countries, many of them least developed nations, have repeatedly stated that obtaining better market access conditions in the agricultural negotiations would only provide them with marginal benefits, since they do not have the capacity to take advantage of new trading opportunities, given their considerable supply side constraints and trade preference erosion. They have also claimed that implementation of certain trade obligations are associated with resource constraints and have administrative and infrastructure implications that strain their capacities to

adjust to these obligations. Although the WTO has played an important role by spearheading the Aid for Trade Initiative, it does not have the competences or the capacity to resolve these problems. However, these issues are very much present in agricultural negotiations and have a direct impact on the attitudes and positions adopted by the countries in the negotiating process.

Organizations such as Food and Agricultural Organization (FAO), the United Nations Industrial Development Organization (UNIDO), the United Nations Conference on Trade and Development (UNCTAD), the United Nations Environment Program (UNEP), the International Trade Centre (ITC), the International Fund for Agricultural Development (IFAD), the World Bank, the International Monetary Fund (IMF), and a large number of other international or regional organizations do have the mandates, human and financial resources and technical capacities to support these countries in the search for solutions to these problems. The issue is that the assistance offered takes place according to their own rules and procedures, which may be quite different to the objectives pursued in international agricultural trade negotiations. The priorities may be different, the development component may be absent, the results are not binding and finally, in some cases, assistance may be linked to conditionalities, that may have additional implications and costs for these countries. What is needed, therefore, is a serious coordinated response and joint actions by several relevant organizations, acting together within a single plan of action and taking advantage of their obvious complementarities.

One proposal in that direction could be called “Coherence between international organizations within the negotiations in WTO” (Perez del Castillo, 2005). The proposal was aimed at taking the concept of coherence and coordination among competent international organizations to a more operational and effective level. The proposal suggested that the agreements reached during the course of agricultural negotiations should not only embody provisions, commitments, obligations and measures for the WTO, but that they be extended to other international organizations that have the competences and capacities to implement them. In other words, under a single internationally negotiated Agriculture on Agreement with clear objectives and guidelines, members would allow and mandate the participation of other international cooperation agencies aside from the WTO in the implementation of the agreed commitments.⁸

These organizations would be responsible for the implementation of the actions and measures that had been agreed upon within the context and framework of the WTO agricultural negotiations. The result of these actions would be periodically reported to the General Council of the WTO, which would maintain a role of coordination and monitoring and would ensure their compatibility with the commitments assumed in the Agreement. Clearly, technical, administrative and above all, bureaucratic complexities would be involved in such a process. However, as difficult or complex as these coordinating problems may appear, they could arguably be overcome if governments have the political will to resolve them.⁹

There are a growing number of global issues and challenges such as climate change, global recession, fisheries depletion, world food security and non-compliance with the agreed Millennium Development Goals needing global solutions through urgent international cooperative action among the various agencies. Rather than enlarging an already complex WTO negotiating agenda, it would be better to strengthen other relevant international organizations with competences on the subjects to do the job, and to establish better coherence, integration and coordination among them and the WTO.

⁸ An alternative approach to the one suggested above would be to agree that in future trade negotiations, complementary negotiations between aid agencies and recipient governments should be initiated once the negotiating modalities are agreed.

⁹ It must be highlighted that, with a few exceptions, the Members of all these organizations are practically the same.

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