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Assessing the Cancun Conference and Developing Country Representation Issues in the Doha Development Agenda

Summary of Trade and WTO Group Meeting (13 November 2003)

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Following its meeting in October to discuss the failure of Cancun and implications for the ongoing Doha Development Agenda (DDA) negotiations, the Trade and WTO Group met to continue its discussion of these and related topics. The meeting focused on two broad issue areas: (1) the reasons for collapse at Cancun and (2) the 'development' focus of the DDA and the representation of developing country interests in the current WTO framework.

Collapse at Cancun

In response to the previous discussion in October, an additional assessment of the reasons for Cancun's failure was put forward and discussed. According to this assessment, the root of disagreement at Cancun was not over the negotiating modalities in agriculture. Leaving numbers out of formulas and using ambiguous language were just two of the many ways disagreement on these modalities could have been averted or postponed. Instead, this assessment holds that the collapse at Cancun resulted primarily from sharply divergent understandings of the DDA. At one extreme of these understandings, many developing countries perceive the DDA to be the forum in which imbalances of the Uruguay Round will be corrected. That is, for many of these countries, Uruguay Round concessions on TRIPs and GATS, areas of primary interest to developed countries were given with the expectation that concessions on areas of greater interest to developing countries (e.g., textiles, agriculture) would follow in post-Uruguay Round negotiations. Many developing countries perceive the DDA to be the forum in which to obtain such concessions of interest to them and thereby 'balance' representation of developed and developing countries' interests within the WTO. In contrast to this view, developed countries, particular the EC do not perceive rebalancing the Uruguay Round vision as the purpose of the DDA; rather, they see the DDA's aim to be deepening and expanding the Uruguay Round vision to create a comprehensive order of global economic governance and regulation. Due at least in part to the historical context of the Doha Ministerial Conference in the aftermath of September 11, WTO Members chose to 'paper over' these underlying divergent understandings of the DDA, thereby setting the stage, according to this assessment, for the collapse of talks at Cancun.

In this assessment, other factors, including the ebbing of goodwill between the most prominent parties to the negotiations as well as structural aspects of the Ministerial Conference contributed to this collapse. By the time the Conference began in September, goodwill generated by the access to medicines decision had dissipated and developments at Cancun exacerbated this trend. US dismissal of the Cotton Initiative and the developed country preference to include the Singapore Issues on the negotiating agenda were both reflected in the 13 September Draft of the Ministerial Text with little alteration, despite opposition from developing countries. Many developing countries perceived this representation of Members' views as unbalanced and insulting. Aspects of the Conference structure further contributed to the collapse of talks. First, delegations faced an overload of information at the Conference and were not technically prepared to negotiate on the issues before them. In addition, the short timeframe of Ministerial Conferences is not well-suited to certain Members'

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negotiating bureaucracies. In the case of the EU, the necessity of delegates to continually confer with senior officials inhibited the effectiveness of its negotiating strategy at Cancun. Thus, according to this assessment, the 'poisoned atmosphere' and aspects of the Ministerial Conference structure, along with the root cause of divergent understandings of the DDA were responsible for the failure of Cancun.

In further dialogue, participants discussed the ways in which the structure of the Cancun conference potentially contributed to the development of coalitions. The lack of a strong central organizing mechanism, along with the capacity to coordinate with media and NGOs at Cancun provided conditions favorable for small groups with technical and diplomatic capacity to achieve 'disproportionate bang for their buck'.

The DDA and Developing Country Representation Issues at the WTO

Participants discussed the meaning of the Doha 'Development' Agenda and issues related to the representation of developing country interests in the WTO. The discussion focused on the current dispute brought by India against the EC regarding conditionality in its Generalized System of Preferences (GSP) scheme;[1] WTO capacity-building initiatives; the effectiveness of the Dispute Settlement Understanding to represent developing country interests; and the question of whether to separate the scope of WTO negotiations into 'tracks'.

First, participants discussed **the case brought by India against the EC and its implications for administration of GSP schemes in general**. India's 9 December 2002 request to establish a panel on *European Communities – Conditions for the Granting of Tariff Preferences to Developing Countries* challenges the policy of granting different levels of preferences under EC's GSP scheme according to political conditions such as the preference-recipient's policies on drug enforcement. The US has also attached political conditions (e.g., relating to terrorism, communism, and workers' and human rights) to its granting of preferences. Discussion of this case provoked historical comparisons between the GSP originally envisioned by the New International Economic Order (NIEO) and UNCTAD and the 'voluntary' GSP authorized by the GATT Enabling Clause. Discussants questioned the benefits conferred to developing countries by this voluntary GSP, as well as the benefits conferred to these countries by a systematic GSP scheme (see, for example, 'The Perversity of Preferences: GSP and Developing Country Trade Policies, 1976-2000' Çaglar Özden and Eric Reinhardt). They also discussed the political implications in developed countries if the Dispute were settled in favor of India and the general ability of countries to attach political conditions to administration of their GSP scheme came into question. Although this case seems to originally have been initiated as an outgrowth of rivalry with Pakistan, the initiation of this case has, in one view, created potential unintended consequences for the feasibility of the GSP scheme in general.

Second, participants discussed **the meaning of the 'development' round**. One view presented the vision of the EC as projecting the European project onto a global level. The idea behind this vision would be to support transition from market access agreements to a broader regulatory political framework able to enhance social justice through rule-making. Participants discussed the gap between the current system and this vision, including issues related to the current developed-developing country imbalance and how to increase equality and prosperity and strengthen political institutions and protection of human rights. An alternative view held that such 'development' visions are rhetorical devices that do not reflect developed country priorities in practice. Insistence on inclusion of the Singapore Issues at Cancun as well as ongoing developed country-led negotiations to expand market access for services were offered as evidence to support this view.

Third, participants identified several **issues facing developing countries**. In the context of **demands for greater liberalization in services**, developing countries face the questions of how to protect the residual autonomy of their regulatory regimes and how to develop emergency safeguard provisions through the ongoing services negotiations. In response, one participant's proposal to address both developing and developed country interests was to roll back TRIPs and parts of the GATS and push for concessions on the remaining two Singapore issues. This proposal provoked consideration of the problem, as illustrated by the Uruguay Round, that linkages may result in outcomes that are not beneficial to all negotiating parties. One view held that the Doha Round may be different than preceding rounds, however, in that issues must be justified on their own merit (i.e., in terms of 'development') rather than in terms of a 'grand bargain' between countries. This difference

[1] see Robert House, 'India's WTO Challenge to Drug Enforcement Conditions in the European Community Generalized System of Preferences: A Little Known Case with Major Repercussions for "Political" Conditionality in US Trade Policy', *Chicago Journal of International Law*, Vol. 4 No. 2, pp. 385-405.

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from preceding rounds relates to the proclaimed purpose of the DDA and the 'imbalance' created by the Uruguay Round. Another view held that even given these proclaimed development purposes, in practice trade negotiations consist of bargaining and tradeoffs.

Participants also discussed **the limited scope of current WTO capacity-building programs**. There is a tendency to train developing countries how to implement current and potential WTO rules rather than how to become rule-setters. Developing countries are also receiving the message that they are more constrained than they actually are under the rules, particularly in the case of TRIPs. Further, trade facilitation tends to concentrate on developing countries' imports rather than their exports. These examples of conservatism and biases toward developed country interests on the part of WTO officials administering capacity-building programs may be in part symptomatic of the culture of the WTO as an organization. That is, in the view of many, ascendancy within the institution is linked with avoiding controversial actions. The prospect of losing one's place in the organization due to retaliation by a delegation potentially leads to conservatism on the part of the WTO Secretariat.

A final major issue for discussion was **developing countries and dispute settlement**. One view held that dispute settlement favors developing countries less than developed countries due to the smaller market size of the developing country in the event of retaliation by that country. Another view held that despite disparities in market size, cross-retaliation may be effective as in the case of Costa Rica's withdrawal of US TRIPs protection. Another participant pointed out that even if market size represents one limitation to developing country retaliation, noncompliance with a DSB ruling by a developed country, for example, would lead to normative damage to that country's reputation that would decrease its clout in the WTO and undermine its popular support as a breaker of the rule of law.[2]

Discussion also covered potential reforms of the DSB to better represent the interests of developing countries. One view put forward the possibility for the introduction of a prosecutorial capacity in the WTO organization and an institutional mechanism to bring 'class action lawsuits' on behalf of developing countries. Such new capacities would work to overcome the fear of repercussions that inhibits many developing countries from bringing dispute settlement cases. Another view highlighted the potential decline in enthusiasm for such a strengthened DSB given the successful cases brought by individual investors against Canada and the US within the NAFTA framework. The small sense of security in the WTO Secretariat was also pointed out as a potential obstacle to invoking any such prosecutorial mechanism. The possibility of seeking advisory legal opinions from the DSB was also discussed as a means for developing countries not to have to be seen pushing an issue. Although the Trade Policy Review Mechanism (TPRM) does provide for period review of a country's trade regime, a need for increased density and preciseness of compliance with WTO disciplines was stressed in the discussion. In addition, given the contributions of the TRPM in its current state to discerning the merits of bringing a case to the DSB, there is still a gap between these contributions and the kinds of countries that pursue cases, alluding to the political and other dimensions to bringing a case already mentioned.

Last, the participants touched on the possibility of a WTO differentiated into 'tracks'. One such structure could be the separation of market access negotiations and rules-based commitments. The place of investment and competition as part of 'trade rules' was also called into question.

Next Meeting

The participants agreed that the meeting was intellectually stimulating and provided many new areas for further discussion. The next meeting will be held in Hilary Term 2004.

Summary by Marshall Mattera, Researcher on Trade and Development and M.Phil. International Relations Candidate

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[2] For two more views on the debate on Developing Countries and Dispute Settlement, see also: (1) Marc L. Busch and Eric Reinhardt, 'Developing Countries and General Agreement on Tariffs and Trade/World Trade Organization Dispute Settlement', Journal of World Trade 37(4): 719–735, 2003 and (2) Christina L. Davis, 'Do WTO Rules Create a Level Playing Field for Developing Countries?', Working Paper presented at the Annual Meeting of the American Political Science Association.

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