

Specific Aspects of the WTO Negotiation Process: Problems and Solutions*

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ABSTRACT. This article discusses the reasons for the multiple failures in the negotiations at WTO ministerial conferences. It identifies those aspects that need to be reviewed and changed in order to facilitate such negotiations. In particular, the organizational aspects are analyzed, including strategies for achieving a stronger consensus before the conferences, liberalizing the decision-making process at the conferences and ensuring the participation of developing countries. The feasibility of a package review at negotiations is also examined. The article argues that new issues on which the likelihood of consensus is low must be excluded from the WTO agenda because they not only overload the agenda but hinder the approval of any decisions. It also provides recommendations on negotiation tactics for participating countries.

KEY WORDS. WTO, consensus, Singapore Issues, WTO organizational reform, agenda overload, Development Round, the Fifth WTO Ministerial Conference, multilateral trade system, regionalism, labor standards, environmental protection.

The failure of the World Trade Organization Ministerial Conference, held on 10–14 September 2003 in Cancun, Mexico, puts at risk the objectives of the Development Round initiated in Doha back in 2001 which were supposed to give a new impulse to the multilateral trade system.

An analysis of the reasons for this failure reveals a number of weaknesses in how WTO activities are organized. Unless some action is taken, these weaknesses will not only impede the consideration and resolution of a number of important issues but may also lead to a growing regionalism in the world trade system and the exclusion of a large number of developing countries from the trade liberalization processes.

The collapse of the negotiations were triggered by a very large number and complexity of issues that were proposed for discussion as well as significant discrepancies in the positions of the states. A higher level of consensus appears to be necessary even before ministerial conferences begin, especially since for a number of reasons it is difficult for countries to change radically their positions while al-

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ready in the course of negotiations. Equally important is the creation of conditions that promote consensus at the conferences, particularly by enabling countries to have a say in drafting declarations and final decisions.

Another key factor for successful WTO negotiations relates to the spectrum of issues presented for discussion. More specifically, developing countries negatively perceive a whole chain of new issues that have not even been considered within GATT. Indeed, the developing countries are dissatisfied with the implementation of the Uruguay Round during which they made significant concessions to developed countries and signed a number of agreements that allowed the latter to apply their competitive advantages.

This article is structured as follows. First, it discusses the run-up to and the course of the WTO Ministerial Conference at Cancun. Further, it identifies how the WTO structure can be improved organizationally to facilitate the negotiation process. This is followed by a review of the world trade system, including multilateralism versus bilateralism and subsequent proposals for tactics to be used by delegations participating in conference negotiations. The article concludes with a discussion of issues included in the WTO agenda and identifies an optimum scope of issues to be addressed by the WTO that adequately balances between those issues requiring solution and those the WTO is able to address today.

The Fifth WTO Ministerial Conference, 11–15 September 2003, Cancun, Mexico, was held to review the results of the two year negotiations conducted in the framework of the Doha Round of multilateral trade negotiations. Following the Uruguay Round, the Doha Round (the so-called Development Round) began to complete negotiations by 1 January 2005 on access to markets of agricultural products, markets of industrial goods, intellectual property issues, etc. Because they raised numerous debates among WTO members, a number of issues were singled out for future consultations, including in particular issues from the Agenda of the WTO Ministerial Conference in Singapore (Singapore Issues) such as trade and investment, trade and competition policy, transparency of government procurement, and trade promotion among others. It was also decided to launch a negotiation process at the Fifth Ministerial Conference on these issues, provided there were no objections after detailed consultations and the reconciliation of the positions of WTO member states.

However, by the time of the Cancun conference, it became obvious that the negotiations were falling behind schedule. Negotiations had not been completed on a number of issues, including trade-related aspects of intellectual property rights, special and differenti-

ated regimes for developing countries; trade in agricultural products, services, access to markets of industrial products, and reform of the WTO system of dispute resolution. Issues of access to markets of agricultural products, trade-related aspects of intellectual property rights, and the Singapore Issues were especially contested.

The Uruguay Round of multilateral trade negotiations focused on a number of issues of special concern to developing countries, including agreements on trade and investment, intellectual property rights and trade in services. In previous rounds, developing countries who participated in GATT negotiations normally obtained a net gain because a differentiated regime would often apply to them as they gained access to markets in developed countries even though they themselves were able to keep up their protectionist measures.¹ However, by entering into agreements that regulated areas where they had no competitive privileges, developing countries found themselves in a losing position.

The adoption of a multilateral investment agreement and the proposed scope of obligations would have meant that foreign companies would be offered most-favored-nation status and national treatment. These enable the establishment of companies with 100% foreign ownership and property. At the same time, governments would lose the ability to control the flow of capital into or from the country and to further require the investment of know-how, the use of local skilled labor, local reinvestment of profits, etc. Developing countries believed that this would gradually drive local firms out of business and they would not be able to compete effectively with powerful companies from developed countries.² As a result, it becomes more difficult to control short-term capital, which leads to greater difficulty in regulating the balance of payments and currency reserves and weakens the positions of governments before creditors.³

Yet another area of concern for developing countries was that of government procurement, more specifically the use of non-discrimination principles in government procurement. At the Uruguay Round of negotiations, a limited number of participants entered into an agreement that regulated this issue. Expanding this agreement to include all member states means that developing countries would lose the ability to select vendors for government procurement from among national producers. One can imagine the sig-

¹ Mathur, K. Someth, *Agenda for Future Multilateral Trade Negotiations: Traditional and New Issues*, conference paper (available at <<http://rspas.anu.edu.au/papers/asarc/novcon2001/Mathur.pdf>>)

² Khor, Martin, *Why we should oppose a new WTO Round*, in *The Guardian* (December 1, 1999).

³ Khor, Martin, *The WTO, the Post-Doha Agenda and the Future of the Trade System*. Paper presented at the annual meeting of the Asian Development Bank held in Shanghai, China, 10 May 2002. (available at <www.twinside.org.sg/title/mkadb.htm>).

nificance of this issue for those countries where volumes of government procurement exceed import.⁴ Furthermore, government procurement is a powerful element of a government's fiscal policy, especially in periods of recession, development policy and its support of certain regions and industries.⁵

These issues were formally included in the agenda of negotiations back at the Singapore Ministerial Conference. However, developing countries insisted on only consultations and not the initiation of the negotiation process. The status of these issues remained, as later described in the declaration of Doha Ministerial Conference.⁶ Thus, it was decided that negotiations on them should not begin until these issues are sufficiently prepared and consensus is built.

Developing countries interpreted this clause as giving them the right to veto the inclusion of these issues onto the agenda of the Cancun Ministerial Conference. However, the developed countries, in particular the European Union (EU), largely disregarded this position, maintaining that the prior consultations were sufficient to include Singapore Issues onto the agenda. That the conference chairman, Mexican Foreign Secretary E. Derbez, announced the draft declaration as published by the WTO Secretariat on 24 August 2003, precipitated a negative reaction among developing countries who regarded that he only took into account the interests of developed countries.

A group of 21 countries (the so called G-21), including such influential developing countries as Brazil, India and China, was interested in resolving the agricultural issue and proposed its own text of the declaration, followed by another text drafted by African countries. In order to create the conditions for drafting a compromise text, the chairman suggested dividing into separate groups to negotiate the following issues: access to agricultural markets, development issues, access to markets of industrial products, and other issues. The groups were chaired by so-called facilitators as identified by the Chairman.⁷

The first two days of the conference brought no major changes in the positions of the conflicting sides. Negotiations on market access for agricultural products consisted of looking for allies who could

⁴ Khor, Martin, *Why we should oppose a new WTO Round*, in *The Guardian* (December 1, 1999).

⁵ Khor, Martin, *The WTO, the Post-Doha Agenda and the Future of the Trade System*. Paper presented at the annual meeting of the Asian Development Bank held in Shanghai, China, 10 May 2002. (available at <www.twinside.org.sg/title/mkadb.htm>).

⁶ Ministerial Declaration, Ministerial Conference, Fourth Session, Doha, 9-14 November 2001 WT/MIN(01)/DEC/1.

⁷ Chetaille, Anne; Tavernier, Karine, *Failure of the fifth WTO Ministerial Conference in Cancun: a looming crisis in the multilateral trade system?* Discussion paper, CTA, September 2003. (available at <<http://agritrade.cta.int/cancun-analysis-en3.pdf>>).

help each side maintain its own position rather than a discussion and reconciliation of a compromise text of the agreement. The G-21 tried to gain support from other developing countries, especially countries of the African Union and a group of African, Caribbean and Pacific countries. At the same time, the EU and US tried to weaken the latter group through bilateral contacts with the member-states.

Developing countries were outraged by the revised text of the declaration distributed on 13 September 2003 and called the proposals on access to agricultural and industrial markets unacceptable. They were also unhappy with the Singapore Issues which they did not want to be included in the text of the declaration as was earlier stated by over 70 countries who submitted formal proposals to continue consultation but not launch negotiations.⁸

The heads of delegations from the EU, US, Brazil, China, India, Malaysia, Mexico, South Africa and Kenya met late in the evening on 13 September 2003, and some 30 countries joined them in the morning on 14 September. The developing countries and the EU still could not overcome the lack of willingness to accept each other's positions: the EU did not want to concede on a single point of the Singapore Issues, while the developing countries did not wish to launch negotiations on any of these issues. Finally, the EU agreed to abandon the discussion of some Singapore Issues, including trade and investment and trade and competition policy. However, Japan and Korea, which until that point supported the EU, continued to insist on discussing all issues. The developing countries considered such a step insufficient and continued to demand that all issues should be excluded.⁹ On the same day, the Chairman announced that consensus could not be reached and adjourned the conference.

Thus, the regular WTO Ministerial Conference failed, leaving open not only the issue of finding ways to improve the efficiency of the organization but also the appropriateness of its existence in its present format. Is it necessary to carry out organizational reform in the WTO? Is there a need for both developed and developing countries to change their approaches to negotiations? How appropriate is the existing multilateral format of the trade system and would a bilateral format be more appropriate? What are the issues that need to be discussed in the WTO: should they be broader to include new ar-

⁸ Khor, Martin *Behind the collapse of the Cancun Ministerial*. TWN Report from Cancun, 14 September 2003. (available at <<http://www.twinside.org.sg/title/twninfo76.htm>>).

⁹ Chetaille, Anne; Tavernier, Karine, *Failure of the fifth WTO Ministerial Conference in Cancun: a looming crisis in the multilateral trade system?* Discussion paper, CTA, September 2003. (available at <<http://agritrade.cta.int/cancun-analysis-en3.pdf>>).

as or should the agenda return to the classical list of issues negotiated within GATT?

Only in the last 48 hours of the conference was any progress made in the negotiations, but the rest of the time proved impossible to overcome the misunderstanding that existed in virtually every issue. Until the last day of the conference, 14 September 2003, practically none of the Singapore Issues was discussed in substance.¹⁰ It should be admitted that, however good the preparation and however clear the objectives, the broad scope and importance of the issues under discussion made it impossible for any but the most well organized delegations to analyze and clarify their own positions on these issues within the last couple of hours. The newly created groups of developing countries had neither adequate organization nor methods for effective decision making and at best were able to coordinate their positions on a certain issue and support it. For example, at the meeting on agriculture attended by representatives of the EU, the US and G-21, the latter stated that it could not participate in negotiations and would only consider the positions of the other two participants. The African Union refused to participate in negotiations on Singapore Issues despite the fact that some members did not share such a radical position.¹¹ As a result, one can only hypothesize whether the conference would have been successful if there were fewer disagreements among participants on the discussion issues.

A higher level of consensus is needed even before ministerial conferences begin. The very nature of this forum leaves no place for significant changes to a country's positions, unless consent is reached in advance. At the negotiations in Geneva, delegations have sufficient time and information to discuss the issues at stake; thus, they should spend more time on working through them there so that issues raised at the conference are ready for approval. As at any negotiation, diplomacy and the ability to persuade opponents to accept a decision or reach a consensus by changing the positions of all parties is of great importance. Yet it is quite difficult to review one's position in the several days of the conference, especially for developing countries. The lack of human resources needed to analyze and consider unexpected proposals of other parties and the lack of necessary information (which is often difficult to obtain even during the negotiations in Geneva) on every new issue and the lack of time for effective review reduce the chances for the parties to change their

¹⁰ European Commission Directorate-General for Trade, *The Doha Development Agenda After Cancun*. Brussels, 25 September 2003.

¹¹ European Commission Directorate-General for Trade, *The Doha Development Agenda After Cancun*. Brussels, 25 September 2003.

position at the conferences. Thus, it is necessary to revise the role of ministerial conferences in the WTO negotiation process in favor of negotiations which only approve agreements reached at prior consultations in Geneva.

As to the Cancun conference, none of the deadlines for adoption of the Development Round decisions was met: neither on market access of agricultural products nor on trade in medicines nor on market access of industrial products.¹² The only exception was the decision on licenses for medicines for least-developed countries, although it was adopted with restrictions that displeased developing countries.

Of particular importance is how meetings at WTO Ministerial Conferences are conducted, who influences them and how. At the Ministerial Conference in Seattle, approximately only 25 delegations from over a hundred of those present participated in consultations on the agenda for the new round of trade negotiations.¹³ Likewise approximately only 23 delegations participated in the two so-called mini ministerials held before the Doha Conference and then continued in the format of an unofficial meeting of the heads of delegations.

To increase effectiveness of the negotiation process, decisions are made at WTO meetings with a limited number of delegates. It should be acknowledged that the reality of negotiations is such that the less individuals participate, the more they are productive and focused; the more prepared the participants, the more effective the discussion; and, the more closed the negotiations, the more sincere the participants.¹⁴ However, such a design often leads to a situation when decisions that affect all WTO members are taken only by a small group of states and reflect primarily their interests. This system is frequently criticized for the lack of clarity of the criteria applied to select the meeting participants and for the fact that the meeting minutes are not kept. In addition, attempts by other delegates to modify adopted decisions are blocked under the pretext that there is a lack of time and that a strongly-based consensus will be broken. In this situation, developing countries have virtually no chance to influence decisions adopted at meetings by a limited number of participants. Furthermore, many of them are concerned about possible political and trade sanctions by the US and the EU.¹⁵ How-

¹² House of Commons International Development Committee. *Trade and Development at the WTO: Issues for Cancun* Seventh Report of Session 2002—03: volume 1.

¹³ Kenworthy, Jim, «Reform» of the WTO: *Basic Issues and Concerns*, in *Trade Trends*, edition of *The Washington International Trade Association* (Summer/Fall Issue 2000): p. 2.

¹⁴ Kenworthy, Jim, «Reform» of the WTO: *Basic Issues and Concerns*, in *Trade Trends*, edition of *The Washington International Trade Association* (Summer/Fall Issue 2000): p. 2.

¹⁵ *NGOs Call on Trade Ministers to Reject Exclusive Mini-Ministerials and Green Room Meetings in the Run-Up to, and at, the 5th WTO Ministerial*. Statement by *Friends of Earth International*, 2002 (available at <http://www.foeeurope.org/press/AW_statement_14.11.02_Sydney.htm>).

ever, under present conditions, developing countries feel that their positions are legitimate and that they have public support. Thus, the decision-making procedure should be improved; otherwise negotiations will continue to confront obstacles in the future, as occurred at the two failed ministerial conferences.

At the Singapore Ministerial Conference, developing countries signed the text only after obtaining reassurances that a similar situation would not happen again and that by not adopting decisions on the discussed issues would have a very negative impact on international trade and development prospects.¹⁶ However, a similar approach was used again in Seattle and this time the conference failed. The situation improved somewhat in Doha and all delegations dynamically participated in discussions. An additional day of the conference and a lack of major disagreements among positions of the countries allowed the final document to be signed. Nonetheless, the repetition of this practice and disregarded interests of developing countries led to yet another failure in Cancun. To ensure an efficient decision-making method, it is necessary to devise a formal procedure for selecting participants who would represent not just individual countries but also groups of interested countries, such as by limiting votes to one candidate per delegation for the approval of a list of meeting participants. This could resolve the problem of non-democratic decision-making at ministerial conferences and at the same time preserve the efficiency of the procedure. The selection would be facilitated by developing countries forming groups around issues of their concern.

Consensus-building decision making is another important aspect of conference organization. This is meant to ensure equal rights for each country when final decisions are adopted and which has been used since the signing of GATT back in 1947. At that time, such voting was allowed only as an exception. However, with the growing number of participants in negotiations and the consequent increase in differences of interests, consensus decision making proved to be a complicated practice. On the other hand, the use of the «one member, one vote» rule in the WTO seems unacceptable in the context of the functions of this organization. Only an organization in which each member state plays a role and has a place can regulate the trade system in which different countries have a different impact on world trade and where different aspects of the issues of concern have different impact on each country. At the same time, though

¹⁶ *NGOs Call on Trade Ministers to Reject Exclusive Mini-Ministerial and Green Room Meetings in the Run-Up to, and at, the 5th WTO Ministerial*. Statement by *Friends of Earth International*, 2002 (available at <http://www.foeurope.org/press/AW_statement_14.11.02_Sydney.htm>)

consensus decision-making has yet to be used to block the adoption of decisions, the risk is ever present.¹⁷

The number and degree of complexity of issues certainly have a huge impact on the success of negotiations. The Cancun conference agenda had some 20 issues, most of which were extremely important and technically complicated. Thus, it is quite difficult to conduct effective negotiations on that many issues at the same time. However, from the perspective of negotiation strategies, a large number of issues on the agenda can also be positive whereby they permit an exchange of concessions to help reach consensus.

While package discussions and decision-making existed in GATT, they have become the only structure for negotiations in the WTO. The benefits of such a structure include the adoption of fundamental decisions by offering concessions on certain parts of the package in exchange for advantages on other parts; however, it does not work if controversial issues are involved. Thus, where the package includes issues which are not *a priori* acceptable to all WTO members and only some countries are interested in adopting them, a different scheme should apply where an agreement is reached only among the interested parties, as occurred during GATT and in particular at the recent Uruguay Round. In its report, the European Commission's Trade Committee proposed the following options for considering such issues:

(1) All WTO members participate in negotiations on an issue in question but are not required to sign the text of the agreement after the discussion. Such a scheme will allow all interested parties to modify the agreement to their needs and sign it if appropriate. Members will understand that they will be able to enter into the agreement later, although on less favorable terms and that would stimulate them to participate in the discussion and sign it.

(2) Another option is that only interested sides participate in negotiations from the outset while others may step into the negotiations at any point as they find it appropriate. The advantage of this scheme is the possibility of interested parties to reach an agreement with a suitable level of obligations.

However, such negotiation structures for the WTO are not without their shortcomings. In particular, a situation may result whereby member states who are not originally part of the discussions but support the proposals in general and have a number of comments would have to sign the agreement which was drafted without their comments being taken into account. As a result, many trade issues

¹⁷ Kenworthy, Jim, "Reform" of the WTO: Basic Issues and Concerns, in *Trade Trends*, edition of *The Washington International Trade Association* (Summer/Fall Issue 2000): p.2.

which might have obtained consensus among members would be excluded from the international trade system.

The positions of key states, especially the US and EU, have the greatest impact on decision making in the WTO as with most international organizations today. Indeed, decision-making becomes relatively prompt when their views on issues under discussion coincide with common interests. However, over the last several years the role of developing countries in the WTO has significantly increased (an advantage of an organization which ensures relatively equal rights and opportunities) and discrepancies between their views and those of the key states no longer result in decisions favoring the latter, as was the case before, but instead result in the obstruction of the negotiation process.

The stronger positions of developing countries at recent conferences has been achieved primarily through the creation of blocks and alliances among these countries based on either the regional principle or their position on certain issues as well as a growing public support. Although such groups began to appear in Seattle, these countries have been able to effectively defend their position only in Cancun where an alliance of the G-21, a group of least-developed countries, African, Caribbean and Pacific countries, and the African Union, some 90 countries in total, and an EU-US alliance were formed.

It should be noted, however, that an alliance of developing countries seemed to be unlikely before the negotiations because the G-21 generally had a more liberal approach than other participants. The alliance was formed after the first draft of the declaration was proposed and it became clear that many provisions in it did not correspond to the interests of the G-21. The unwillingness of the US to concede on the issue of cotton trade or Japan and EU to concede on Singapore Issues evoked a corresponding response from the developing countries.¹⁸

The negotiating parties need to remember that a number of issues may be unacceptable to the other and may need to be excluded from their own package of demands if possible. The declared goals should match the practice. Keeping in mind that the round in question was called the Development Round, the negotiations should not disregard the efforts of poor countries which want to receive support for their own development, especially given the fact that, while their proposals ultimately were adopted, an entire year was lost as was the case with the cotton trade and Singapore Issues when the WTO

¹⁸ Chetaille, Anne; Tavernier, Karine, *Failure of the fifth WTO Ministerial Conference in Cancun: a looming crisis in the multilateral trade system?* Discussion paper, CTA, September 2003. (available at <<http://agritrade.cta.int/cancun-analysis-en3.pdf>>).

General Council took into account the demands of developing countries in its decision of 1 August 2004.

At the same time, developing countries need to acknowledge that the US position on cotton trade was dictated by its domestic political situation, in particular the presidential elections. However, exceptions can be noted here as well: a strong US pharmaceutical lobby was not able to stop the adoption of the Agreement on Trade-Related Aspects of Intellectual Property Rights. Therefore, it would have been more appropriate to address the cotton issue differently, for example to include it in negotiations on agriculture but assign a specific status to it, which is what actually happened one year later and was confirmed in the above-mentioned WTO General Council decision.

Developing countries have managed to change somewhat the format of negotiations in their favor by making alliances; however, the future of these alliance remains questionable. First of all, the countries which have joined them have different levels of economic development. India's position in negotiations on agriculture since 2000 often have not coincided with the position of the Cairn Group. Also, considering the relative weight of Brazil, India and China, the positions of African countries simply may not be taken into account, thereby resulting in the future disintegration of the alliance. Furthermore, China, which has recently joined the WTO, may wish to play an independent game with the EU and US. And they, in their turn, may try to split the alliance by making bilateral contacts and signing agreements with these countries.¹⁹

In any case, the developing countries are noted to have a stronger role today in comparison with the Ministerial Conference in Seattle where they also upheld their positions on a number of issues which were finally included in the Development Round negotiations but not taken into account as we have seen. This time, however, the developing countries have succeeded in pushing through decisions on both cotton trade and Singapore issues acceptable to them, as was demonstrated by the above-mentioned decision of the WTO General Council.

The collapse of the subsequent WTO Ministerial Conference reinforced the positions of those who oppose the multilateral trade system and criticize an extremely time-consuming negotiation process as well as the fact that the number of concessions, to which countries have to finally agree, exceed the benefits achieved by signing the agreements. Such critics instead argue for

¹⁹ Chetaille, Anne; Tavernier, Karine, *Failure of the fifth WTO Ministerial Conference in Cancun: a looming crisis in the multilateral trade system?* Discussion paper, CTA, September 2003. (available at <<http://agritrade.cta.int/cancun-analysis-en3.pdf>>).

bilateral contacts which enable faster and more effective decisions. It appears from the statements of key WTO members, especially the US and the EU, and the traditional practice of making bilateral agreements that the failure in Cancun will most probably strengthen the tendency to bilateral cooperation. Indeed, the US trade representative, Robert Zelik, said that his country will focus its efforts on signing bilateral agreements with interested countries. He reminded that the US recently signed 6 bilateral agreements and negotiated 14 more. Negotiations were conducted primarily with countries of Latin America and Africa. The EU traditionally supported the multilateral trade system; however, Pascal Lamy stated that the EU will revisit its position and come up with proposals on how to reform the WTO. It should also be noted that the EU is negotiating the creation of free trade zones with African, Caribbean and Pacific countries.

Growing tendencies toward bilateral cooperation in international trade will have a number of negative consequences. In this context, developed countries will be able to exert greater pressure on their weaker partners than under conditions of a multilateral trade system. The problems experienced by the Mexican agricultural sector after signing the NAFTA illustrate this tendency well. Furthermore, the provisions of bilateral agreements significantly differ from those in the WTO Agreement; in particular they normally cover far less issues and jeopardize to some extent the efficiency of the trade system. As well, the increasing number of bilateral agreements is an additional burden to developing countries whose organizational capacity is quite limited. Simultaneous participation in several negotiation processes leads to a less careful analysis of each agreement and risks important details being overlooked.²⁰

A number of new issues have been discussed and negotiated in the framework of GATT/WTO since the Uruguay Round besides traditional trade issues. One such issue is the expansion of WTO agreements to cover such areas as trade and investment, trade-related aspects of intellectual property, and government procurement. Indeed, experts note a number of positive effects resulting from the addition of new issues onto the WTO agenda, in particular increasing the margin for mutual concessions on issues of special importance for the parties. Furthermore, the inclusion of new issues would avoid the regionalization trends which have been growing since the 1980–90s and revealing themselves through the signing of agreements outside

²⁰ Chetaille, Anne; Tavernier, Karine, *Failure of the fifth WTO Ministerial Conference in Cancun: a looming crisis in the multilateral trade system?* Discussion paper, CTA, September 2003. (available at <<http://agritrade.cta.int/cancun-analysis-en3.pdf>>).

the jurisdiction of the WTO, for example the liberalization of trade in services under NAFTA. There was even a widespread idea at the time that GATT should be transformed into an organization which would handle a broad range of trade-related issues.²¹ At the Ministerial Conferences in Singapore and Doha, the range of discussed issues was broadened even further to include competition policy, labor standards, and environmental protection. However, as was noted, the majority of them did not win wide support, especially among developing countries who perceived them as attempts by developed countries to find new ways to increase protectionism. The expansion of WTO agreements primarily covers such areas as labor standards, investment, competition policy, environmental protection, government procurement and trade promotion. Most observers argue that such issues as labor standards should be considered by the International Labor Organization and the United Nations Children's Fund (UNICEF), and that the United Nations Environmental Program (UNEP) should deal with environment, while the WTO should focus on traditional trade issues.

Including these issues in the negotiation process today appears unlikely because even developed countries have no common position on them.²² Developing countries are firmly convinced that such agreements would be used by developed countries for protectionist purposes and would lower their competitive advantages due to cheaper labor. Moreover, labor standards in export industries of most developing countries are much higher than in their domestic industries. One can argue that developing countries would not accept an agreement on labor standards which allows trade sanctions against those products of export industries which fail to comply with such standards. The same would be true for an environmental agreement which allows sanctions against a country for any actions which have only a domestic impact and do not affect other countries.²³ The inclusion of these largely vulnerable issues onto the WTO agenda would also jeopardize the trade interests of countries and most likely result in a significant deceleration of the WTO negotiation process. On the contrary, however, the consideration of these issues within the above-mentioned fora and concluding framework agreements, which countries are eager to enter into, would contribute to progress in these areas.

²¹ Mathur, K. Someth, *Agenda for Future Multilateral Trade Negotiations: Traditional and New Issues*, conference paper (available at <<http://rspas.anu.edu.au/papers/asarc/novcon2001/Mathur.pdf>>).

²² World Trade Organization 3rd Ministerial Conference Press Pack, November 28, 1999 (available at <http://www.wto.org/english/thewto_e/minist_e/min99_e/english/about_e/presspack_english.pdf>).

²³ Mathur, K. Someth, *Agenda for Future Multilateral Trade Negotiations: Traditional and New Issues*, conference paper (available at <<http://rspas.anu.edu.au/papers/asarc/novcon2001/Mathur.pdf>>).

However, the WTO should not disregard issues related to labor standards, environment, etc. but expedite solutions through the improvement of welfare standards in developing countries, which will eventually lead to improvements in these areas. By discussing these issues, raising public awareness and studying them, the WTO would help to address the objectives that the ILO, UNICEF and UNEP are facing. For example, as far environmental issues are concerned, WTO agreements touch upon them already today (Article XX of the WTO Founding Agreement, the Agreement on Technical Barriers to Trade, the Agreement on the Application of Sanitary and Phytosanitary Measures, certain chapters of the Agreement on Agriculture, the Agreement on Trade-Related Investment Measures, the Agreement on Government Procurement, and the Agreement on Trade-Related Aspects of Intellectual Property Rights).²⁴ However, despite some issues related to trade and environment being proposed for discussion (for instance, ties between multilateral environmental agreements and WTO regulations, the reduction of tariffs and non-tariff barriers to goods and services that play an important role for the ecosystem or affect it), no success has been achieved. As a result, the less time spent negotiating issues which appear to have poor prospects in the WTO framework, the sooner important problems will be resolved.

Conclusions

The analysis of WTO negotiation failures, in particular at the 5th Ministerial Conference in Cancun in 2003, revealed a number of negative factors, the removal of which would facilitate the implementation of the Development Round's objectives in the future. Recommendations to this end include the following:

- (1) Achieve a higher level of consensus before conferences, without which it would be hardly possible to expect a quick change of positions of conference participants due to a lack of time and scarce human resources;
- (2) Change the principles of discussion at WTO conferences and involve delegations of all member states in the drafting of declarations. This would prevent countries whose positions were not taken into account or even not listened to from blocking final decisions;
- (3) Revise the principle of consensus decision-making which in the long run may considerably hinder the adoption of final decisions

²⁴ Committee for Economic Development. Research and Policy Committee. *From protest to progress: addressing labour and environmental conditions through freer trade*. Statement by the Research and Policy Committee of the Committee for Economic Development, 2001.

with the significant increase in the number of negotiation parties compared with those involved in the GATT and a diversity of interests;

(4) Encourage greater flexibility of member states in negotiations, especially on issues which are known in advance to be unacceptable to some partners, as for instance in the issue of cotton trade between the US and developing countries;

(5) Exclude new issues from the agenda and review them within the relevant international institutions and organizations (ILO, UNISEF), while maintaining the WTO as a forum to raise public awareness of these problems and facilitate the activities of such organizations.

Indeed, the success of negotiations in the year following the conference, as confirmed by the WTO General Council decision of 1 August 2004, was largely possible due to the exclusion of Singapore Issues from the agenda and more flexible positions of both developed and developing countries.

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