

Key Challenges Facing the World Trade Organization

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I. Introduction

As the broadening in the scope of its rules and recent rapid rise in membership demonstrate, the World Trade Organization (WTO) arguably has become the most successful international organization dealing with economic relations among nations. This success has, however, been accompanied by an increase in strains within the WTO and in outside pressures that challenge the long-run viability of the institution. This chapter briefly examines the nature of the major challenges that have arisen and discusses various proposals for successfully meeting them, including actions agreed upon at the November 2001 Ministerial Conference in Qatar launching the Doha Development Round.

The discussion focuses on six issues confronting the WTO that require attention by its members to ensure the continued effectiveness of the institution. They are:

- i. The work “overload” on WTO members and the WTO Secretariat brought about by the significant increase in recent years in the number and technical complexity of matters on which WTO rules have been negotiated and are currently being proposed;
- ii. The deep dissatisfaction of the developing countries over the balance of gains and adjustment-costs between developing and developed countries in recent rounds of multilateral negotiations, especially the Uruguay Round;
- iii. The impact of recent WTO rules on domestic economic and social conditions that traditionally have been influenced mainly through domestic political decision-making processes;
- iv. The claim that dispute-settlement panels and the Appellate Body are exceeding the authority granted them under the new dispute-settlement rules adopted in the Uruguay Round and, in effect, are legislating through their interpretations of WTO rules;

- v. The strongly-held differences in viewpoints, especially between some developed and most developing countries, concerning the desirability of extending WTO rules to cover such topics as environmental issues, international investment, labor conditions, and competition policy;
- vi. Pressures from non-governmental organizations (NGOs) that range from increasing the transparency of the WTO decision-making process and providing a greater role for NGOs in this process to transforming the WTO from an organization primarily concerned with trade liberalization to one whose goals also include the promotion of various human rights, the protection of the environment, and the alleviation of poverty.

Since a number of the issues cited above are interrelated and some of the actions planned or proposed for dealing with them are relevant to more than just one of the issues, the nature of each issue is first explained in more detail in Sections II through VI. Section VII discusses those parts of the work program agreed upon at the Doha Ministerial Conference that are aimed at successfully dealing with the challenges associated with the various issues, while Section VIII sets forth the author's views concerning these and other proposals for achieving this goal.

II. The Overload Issue

Participating in periodic rounds of multilateral negotiations and handling day-to-day matters arising under the General Agreement on Tariffs and Trade (GATT) were much simpler tasks for GATT members in the early days of the organization than is the case under the WTO. Far fewer countries were involved in the rounds of negotiations and in settling ongoing trade disputes than today. For example, the number of countries signing the original GATT that took effect on January 1, 1948 was 23 compared to 144 countries that were WTO members in early 2002. Moreover, the five multilateral negotiations from 1947 through the Dillon Round in 1960-61 focussed only on reducing tariffs and, even in this area, a principle followed was that "the developed countries cannot expect to receive reciprocity from the less-developed countries."¹ Negotiations aimed at reducing nontariff barriers to trade (NTBs) did take place in the Kennedy Round from 1962 to 1967, but the accomplishments in this area were very modest.² However,

the successful negotiations on nontariff measures in the Tokyo Round (1973-79) significantly raised the level and depth of expertise required to negotiate and monitor new GATT agreements successfully. Detailed “codes of behavior” were negotiated on such nontariff issues as subsidies and countervailing measures, antidumping measures, government procurement policies, customs valuation procedures and technical barriers to trade. Various committees were established within the organization both to monitor compliance with the new rules and settle disputes arising among members on these matters.

The Uruguay Round (1986-92) resulted in an even greater increase in the scope and complexity of trading rules. The extensions were significant enough to change the name of the GATT to the World Trade Organization (WTO). Among the accomplishments of the Uruguay Round was the negotiation of a General Agreement on Trade in Services (GATS) establishing rules covering not just cross-border trade in services but services supplied by foreign firms within a country to consumers in that country. Another major extension of rules was an agreement on intellectual property rights requiring members to provide copyright, trademark and patent protection to foreign holders of these rights and to establish domestic civil and criminal procedures for enforcing this protection. Rules aimed at eliminating discriminatory trading requirements against foreign investors were also introduced. Other major changes were requiring members to accept all the agreements negotiated during this and earlier rounds (with the main exception of those covering government procurement policies) rather than pick and choose among the various agreements and reforming the dispute settlement mechanism in a manner that greatly strengthened the enforcement process for WTO rules.

The Tokyo and Uruguay Rounds transformed the WTO from an organization concerned mainly with reducing import duties and preventing these reductions from being offset by various nontariff measures to an institution with the goal of reducing a broad variety of (mostly) governmental measures that distort trade among nations from the patterns produced by free competitive markets. In doing so, it has significantly increased the workload and level of

expertise required by governments to promote and defend their economic interests in an effective manner. This has been particularly burdensome for small and less developed countries whose governments find that they do not possess sufficient resources to promote and protect their national interests adequately in the broadened WTO.

In most other international economic organizations, smaller nations can rely on the technical experts within the organization itself to supply useful information and relevant studies for making informed decisions about matters of concern. However, because the initial purpose of the GATT was simply to carry out temporarily the commercial policy role assigned to the much broader International Trade Organization being negotiated at the time, it did not include a formal, well-designed organizational structure. Thus, when the ITO was not accepted by the United States Congress, the GATT began with a very small, low-budgeted Secretariat whose role was mainly to provide housekeeping services required for the meetings associated with the organization's various ongoing committees and its periodic multilateral negotiations. The burden of providing the analysis needed to make informed judgements on substantive issues coming before the delegates fell very much on the countries themselves. Thus, the GATT began as very much of a "member-driven" organization. Moreover, the remarkable success of the early members in transforming an organization designed to last only three years into an institution that was able not only to extend the tariff cuts initially made but to achieve significant further reductions in import duties among the major trading nations over the years strengthened the view of members that they did not need a large bureaucracy of support staff nor a chief executive with considerable decision-making powers. This view is still widely held today and exacerbates the problem of meeting the increased information needs of members as the scope of the WTO has greatly expanded.³

III. The Dissatisfaction of the Developing Countries with the Current WTO System

Not only are the developing countries among those members who find it most difficult to handle the increased and more complex work load associated with the extension of WTO rules

into new economic areas, but, more fundamentally, many of these countries are questioning whether their benefits from the new WTO rules introduced in the Tokyo and Uruguay Rounds exceed the economic and social costs involved in implementing these rule changes.⁴ They point, for example, to the substantial gains by the developed countries in the markets of developing countries from the new agreements on intellectual property rights, trade in service, and trade-related investment policies, while noting that establishing facilities in developed countries to provide services in these countries or seeking the protection of newly created intellectual property are not major economic activities on their part. However, the trade-in-services and intellectual-property-rights agreements have involved such consequences in their own countries as substantial governmental implementation costs, higher prices to consumers for such important products as medicines, a weakening of governments' abilities to preserve traditional cultural activities, and job-displacements for substantial numbers of workers.

In signing the Uruguay Round agreements, the developing countries content that they were led to believe that the agreements on textiles and clothing and on agriculture would result in market-access benefits for the developing countries comparable to the gains to the developed countries from the agreements on trade-related aspects of intellectual property rights and on services. This has not been the outcome, in their view. For example, unlike the developing countries expected, the developed countries have tended to adhere only to the minimum phase-out of import quotas required under the Agreement on Textiles and Clothing over a ten-year period. The developing countries interpret this behavior as making it likely that the removal of import quotas on 49 percent of the total volume of imports of these goods will be delayed until the last day of the ten-year period. Even then, developing-country exporters will face high tariffs on textiles and clothing. The limited extent that agricultural markets have been opened in markets such as the European Union and Japan since the Uruguay Round Agreement on Agriculture has been another major source of disappointment to the developing countries as well as to developed countries who are significant exporters of agricultural products. Furthermore,

despite new Uruguay Round agreements covering antidumping and countervailing-duty measures that they thought would reduce the use of these measures for purely protectionist purposes, the developing countries find themselves facing an increased number of antidumping and countervailing-duty actions on the part of the developed countries that they regard as being based on protectionism rather than unfair trading practices on their part.

If a significant number of developing countries conclude that the WTO system is not providing net benefits, the consequences could be very damaging to the achievement of the basic goals of the WTO. One obvious outcome is the use by these countries of the consensus voting practice to block not only any actions on the so-called “new issues” but liberalization efforts in traditional negotiating areas unless substantive provisions are included that aim at rectifying the imbalances in trading benefits and costs perceived by the developing countries. We also know from past experience that, in the absence of periodic trade-liberalizing multilateral negotiations, the ever-present pressures from protectionists tend to erode the trade-liberalizing gains already achieved.

In addition, an even greater increase in the use of regional trading agreements to achieve countries’ trading goals than has taken place in recent years is likely to occur. Industrial nations, such as the United States and the members of the European Union, have found that the attraction of trade-diverting market-access gains can induce the smaller developing nations to accept provisions in regional agreements on such matters as labor standards and the environment that these countries reject in multilateral trade negotiations. Thus, the developed countries are very likely to move toward the greater use of regional agreements to achieve their trading objectives, if gridlock takes place in the WTO. At the same time, the larger developing countries are likely to seek more regional agreements among themselves and with the smaller developing countries. The economic inefficiencies and political tensions resulting from the many different levels of trade barriers and trade-related rules among countries could seriously undermine the remarkable

accomplishments under the GATT and the WTO both in eliminating discrimination among nations in trade practices and in continuing to liberalize world trade.⁵

IV. Domestic Economic and Social Consequences of New WTO Rules

In successfully negotiating international rules aimed at reducing the trade-distorting effects of various nontariff measures, the WTO has introduced new rules and procedures that significantly affect economic and social matters of concern to various domestic interest groups who did not fully recognize their consequences and were not necessarily consulted in this international decision-making process.⁶ In the view of these groups, a non-elective international organization composed largely of representatives from foreign countries is making decisions significantly affecting domestic economic and social conditions that should properly be handled through domestic political decision-making processes.

An early U.S. example of this problem arose in obtaining the required congressional approval for the nontariff results of the Tokyo Round of negotiations to take effect. In considering the set of negotiated agreements, members of the House Subcommittee on Small Business found that some minority citizens operating small businesses might lose their government procurement contracts as a consequence of the commitments made by the U.S. government under the Tokyo Round code aimed at eliminating discrimination against foreign suppliers in government purchases of non-military goods. When expressions of concern about this possible outcome spread to other members of congress and threatened to derail approval of the entire sets of agreements, the Carter Administration quickly renegotiated the government procurement code so that it does not apply “to set-asides on behalf of small and minority businesses.” The cost of this was an equivalent withdrawal of liberalizing procurement concessions by other countries.

It is significant that the charges of improper interference into countries’ domestic affairs on the part of the WTO is coming not just from those directly affected economically or socially by the new rules but from broad groups of citizens deeply concerned about such matters as

improving the welfare of lower-income and socially-disadvantaged families within their countries, maintaining traditional ways of life, preserving national sovereignty, and protecting the environment. In their view, the current structure of rule making in the WTO unduly favors the economic interests of large corporations and foreign direct investors at the cost of weakening traditional equity-oriented domestic economic and social programs of their governments.

The new WTO agreements on trade in services and trade-related investment measures cover areas where such conflicts can easily arise. For example, permitting foreign-owned firms to supply services freely to domestic consumers from large-scale facilities within the country can displace many small local businesses, such as the “mom and pop” retail stores that many people think are important for maintaining socially-stable local neighborhoods. Or, opening up most sectors to foreign direct investment can eliminate domestic programs aimed at giving desirable preferential treatment to certain social groups.

V. Legislating Through the New Dispute-Settlement System

Charges of sovereignty-threatening influence over domestic economic and social conditions have also arisen as a consequence of the Uruguay-Round modifications in the dispute-settlement process.⁷ To an important extent, these changes were a consequence of the expansion of WTO rule making in the area of nontariff trade measures that took place in the Tokyo Round and were being proposed in the Uruguay Round. New rules in new areas led to more disputes, as might be expected. Moreover, as is characteristic of bodies that establish their rules on the basis of consensus, the new rules were often somewhat vague and open to different interpretations.

Consensus among members was also required under the old system for approval of the findings by dispute-settlement panels. This enabled a member who had been determined to be in violation of its GATT obligations by a dispute-settlement panel to block adoption of the panel’s report. This practice together with the greater number of disputes being brought before such panels caused a number of countries, especially the United States, to become increasingly dissatisfied with the nature of the then-existing dispute settlement system and to urge reform of

the process as part of the Uruguay Round of negotiations. One of the outcomes of the changes implemented in that Round is that panel reports are now automatically adopted unless there is a consensus for *not* doing so. In addition, an Appellate Body was established that decides members' appeals from the decisions of the panels.

These changes have significantly altered the manner in which disputes are settled. Under the old system, even if not formally adopted, the report of a panel still put considerable informal pressure on members to conform to the panel's findings. This encouraged negotiations among affected members to reach a mutually acceptable solution rather than following the route of seeking the imposition of sanctions against an offending member. Now, however, the winner of a case typically demands that the loser fully comply with the findings of the panel and promptly proceeds to the sanctions-imposing stage if the country does not do so.

An awareness of their greater responsibilities for settling disputes also seems to have made panels, along with the Appellate Body, more willing to make clear-cut interpretations of the existing rules rather than saying that some are simply too vague to reach any definite judgements in a case. This has led to charges that they are, in effect, legislating rather than abiding by the language of the Dispute Settlement Understanding that "the panel and Appellate Body cannot add or diminish the rights and obligations provided in the covered agreement." (Article 19.1 of the DSU)

In the well-known tuna/dolphin case, a dispute-settlement panel upheld the contention by Mexico that U.S. restrictions on the importation of tuna caught in nets that do not prevent dolphins from also being caught violated GATT Article III which requires non-discrimination between domestic and foreign products. Mexico contended that the traditional interpretation of Article III should be upheld namely, that "like products" (tuna, in this case) must not be distinguished because of the process by which they are produced. However, in a subsequent case concerning catching shrimp in nets that do not have a special device to protect sea turtles from also being caught, the Appellate Body implied that such restrictions were permissible under the

exceptions to WTO rules permitted under Article XX as being “necessary to protect human, animal or plant life or health,” provided they were not applied in an obviously discriminatory fashion among foreign suppliers.

The uproar from environmentalists that followed the tuna/dolphin decision led to widespread attacks on the WTO not only from this group and various human and animal rights interest-groups but from those concerned with the WTO assuming a legislative role that they believe should be the responsibility of domestic institutions directly responsible to the people through the voting process.

VI. The “New Issues”

A number of countries have urged over the years that the WTO rule-making authority be extended to include trade-related investment, environmental, competition, and labor-rights issues. Several actions have already been taken on these matters. One of the agreements reached in the Uruguay Round, for example, deals with trade-related investment measures and provides that no member shall apply any investment measure that is inconsistent with the national treatment provisions of Article III of the GATT nor with the provisions set forth in Article XI prohibiting quantitative restrictions. An on-going Committee on Trade-Related Investment Measures, open to all members, was also established under the agreement. Article VIII of the General Agreement on Trade in Services (GATS), which was also negotiated in the Uruguay Round and which extends WTO rules from just trade in goods to trade in services, aims to prevent monopolistic behavior on the part of service suppliers. However, the Ministerial Declaration launching the Doha Development Round in January 2002 states that further negotiations on both investment and competition policies will take place after the Doha Round only “on the basis of a decision to be taken, by explicit consensus, . . . on modalities of negotiations.”

There is currently no WTO agreement dealing exclusively with trade and the environment. A Committee on Trade and Environment was established in 1994 at the Marrakesh Ministerial Meeting approving the various agreements reached during the Uruguay Round, but

little progress has been made in the committee in recommending specific rules relating to the environment. However, at the Ministerial Meeting in November of 2001, WTO members agreed to limited negotiations in the Doha Round on the relationship between existing WTO rules and specific trade obligations set out in existing multilateral environmental agreements.

At the Marrakesh ministerial meeting the United States pressed for the creation of a committee on trade and labor standards, but this effort was rejected, with particularly strong opposition coming from the developing countries. A similar effort by the United States at the Singapore Ministerial Conference in 1996 also failed. In the declaration emerging from this conference, ministers renewed their commitment “to the observance of internationally recognized core labor standards” but also stated that “the International Labor Organization (ILO) is the competent body to set and deal with these standards . . .” The Doha Ministerial Declaration explicitly reaffirmed this position.

Opposition to the negotiation of more detailed WTO rules covering the “new issues” is based on several concerns. One is simply the fear that the new rules will be used for market-protecting rather than market-opening purposes. The strong resistance on the part of the developing countries to the introduction of labor standards in the WTO is based on this concern. As the political leaders of these countries are fully aware, the relatively large (and thus relatively inexpensive) supplies of unskilled labor in developing countries is the basis of their comparative advantage in producing and exporting goods that for technological reasons intensively use relatively large numbers of unskilled workers, such as textile and apparel products. They believe that some developed countries, whose textile and apparel industries are currently facing stiff competition from textile and apparel products imported from the developing countries, seek to establish WTO labor standards more stringent than those already in place in the developing countries as a means of reducing imports of these products. The developing countries are similarly apprehensive about environmental rules that can be enforced by imposing sanctions against countries found to be in non-compliance. In their view, the developed countries were able

to establish strong export positions in many industrial markets without having to adhere to strict environmental standards, and now these countries want to slow down the developing countries from doing the same by introducing costly environmental requirements.

Many groups within both developed and developing countries fear that additional WTO rules in the “new issues” area will undermine desirable domestic social and redistributive policies already in place. The further opening of domestic markets to foreigners by means of new rules on foreign investment or through an agreement covering competition policy may, for example, invalidate existing domestic laws providing special economic benefits to disadvantaged social groups or promoting other desirable social and environmental objectives. A third reason for the reluctance of many developing countries to negotiate in such areas as competition and environmental policies is their lack of the expertise required to evaluate carefully the implications of such policies on their own economies. They also point to the scarcity of such studies undertaken by the staffs of the various international economic organizations. Their experience in the Uruguay Round has been particularly important in shaping their views on this matter. They found that they had not appreciated fully either the implementation difficulties or the effects on their economic and social welfare of such agreements as the one covering intellectual property rights at the time they signed these agreements.

VII. Pressures for Change from NGOs

With recent agreements extending the reach of WTO rules into the domestic economy, tensions between the WTO and a wide range of NGOs have increased as a consequence of the very different agenda being pursued by the WTO and the NGOs. As the preamble to the text of the WTO (as well as the original GATT) states, the main activity of the parties to WTO is “entering into mutually advantageous arrangements directed to the substantial reduction of tariffs and other barriers to trade and to the elimination of discriminatory treatment in international trade relations.” These arrangements are aimed at contributing to the objectives of raising living standards, ensuring full employment, and expanding the production and trade in goods and

services, “while allowing for the optimal use of the world’s resources in accordance with the objective of sustainable development and seeking both to protect and preserve the environment.” The WTO preamble also recognizes the “need for positive efforts designed to ensure that developing countries, and especially the least developed among them, secure a share in the growth of international markets commensurate with the needs of their economic development.”

Most NGOs do not so much disagree with these general objectives as with the omission of certain other goals and with the relative efforts that in practice are devoted to the different goals set forth. Many NGOs are, for example, very much concerned with the economic and social conditions faced by particular groups within both developed and developing countries, for example, the poor, women, children, and minority ethnic groups. The reduction of tariffs and other trade barriers may, they argue, contribute to economic efficiency on a national level but, too often, ends up worsening economic and social conditions for the poorest and most disadvantaged domestic groups. The argument by economists and other free-market proponents that these conditions are best addressed through separate government redistribution measures is regarded as politically unrealistic, if not disingenuous. Thus, in the view of these NGOs, the WTO should ensure that trade liberalization does not harm these groups and should even support restrictive trade policies needed to help them. Many NGOs would also make the objective of sustainable development the key goal of the WTO and use trade policy as a tool to promote the protection and preservation of the environment.

An immediate concern of NGOs is a lack of transparency in the WTO decision-making process and its insufficient responsiveness to the views of important sectors of civil society. According to critics holding this view, international bureaucrats with little direct accountability to civil society are making decisions significantly affecting the economic and social well-being of large parts of the population and sometimes arbitrarily overturning domestic policies that NGOs have worked for years to put in place. The 1993-tuna/dolphin case, discussed earlier, is the

example most frequently cited by the NGOs of inappropriate interference by the WTO into countries' domestic affairs.

NGOs are demanding at a minimum that meetings of WTO dispute settlement panels and the Appellate Body be open to the public at the stage at which the various parties present their cases. In addition, they want to the right to submit *amicus* briefs, even if they are not solicited by the panels or the Appellate Body. They are also critical of the manner by which decisions are reached during regular WTO meetings and during the periodic multilateral rounds of negotiations. Basically, they want to be much better informed on just what is being considered in these meetings and negotiations and have an opportunity to provide input into the rule-making process.

Since their protests at the Ministerial Meeting in Seattle in 1999, the NGOs have been very successful in getting the attention of the general public to what they regard as serious deficiencies in WTO rules and its decision-making processes. Initially, the protesters tended to be dismissed as anarchists or selfish protectionist groups more interested in destroying the WTO rather than reforming it and in advancing their own short-term economic interests. Gradually, however, environmentalists and various human-rights groups, who approve of the basic objectives of the WTO but wish to modify these goals, have come to the forefront and garnered considerable public support for a WTO that is more transparent and gives greater consideration to the impact of trade and investment policies on the environment, the distribution of income, and social and human-rights conditions generally.

VIII. Meeting the Challenges

A. The Doha Development Agenda

Ministers were well aware of the issues discussed in the preceding sections and their implications for the future viability of the WTO at the outset of the fourth WTO Ministerial Conference in Doha in November of 2001. Fortunately, they were able to agree on a Work Program that addresses many aspects of the challenges raised by these issues. They focussed, in

particular, on addressing the concerns of the developing countries detailed earlier in the paper, Ministers agreed to make technical cooperation and capacity building core elements of the development dimension of the multilateral trading system, for example. Moreover, this declaration was followed within a month of the Doha conference by the adoption of a new WTO budget that increased technical assistance funds by 80 percent and established a Doha Development Agenda Global Trust fund with a proposed core budget of about 9 million dollars. Ministers also approved some fifty decisions clarifying implementation obligations of the developing countries and agreed to make negotiations on other outstanding implementation issues an integral part of the work programs.

Other parts of the Work Agenda directed at the particular concerns of the developing countries include: (a) agreeing to negotiate on the WTO's antidumping and subsidies rules with the aim of clarifying and improving disciplines under these rules and taking into account the needs of developing and least-developed participants; (b) establishing a Working Group to examine the relationship between trade and the transfer of technology and make possible recommendations to increase flows of technology to developing countries; (c) establishing a Working Group to examine the relationship between trade, debt and finance and enhance the capacity of the multilateral trading system to contribute to a solution to the problem of external indebtedness of developing and least-developed countries; (e) reviewing all special and differential treatment provisions with a view to strengthening them; (f) committing to the objective of duty-free, quota-free market access for products originating in the least developed countries; and (g) agreeing to negotiate to reduce tariffs, including the reduction or elimination of tariff peaks, high tariffs, and tariffs escalation, as well as nontariff barriers on products of export interest to developing countries. Another major accomplishment of interest to many developing as well as developed-country exporters of agricultural products was committing to comprehensive negotiations in the agricultural sector aimed at "substantial improvements in market access;

reductions of, with a view to phasing out, all forms of export subsidies;” and substantial reductions in trade-distorting domestic support.

Establishing a deadline of May of 2003 for the Dispute Settlement Body to reach agreement on improvements and clarifications of the Dispute Settlement Understanding reached in the Uruguay Round represents a positive response to the concerns of many governments and NGOs over the present dispute-settlement system. Moreover, including the statement “that under WTO rules no country should be prevented from taking measures for the protection of human, animal or plant life or health, or of the environment at the levels it considers appropriate, . . .” and adopting a separate declaration on public health permitting countries the right to grant compulsory licenses for medicines on the grounds they determine appropriate should be welcomed by those concerned both about panels and the Appellate Body in effect legislating in rendering their decisions and about the unfavorable social effects of the Uruguay Round agreement on trade-related intellectual property rights. The views of those concerned in general about the domestic implications of expanding the scope of the WTO were also taken into consideration with the decisions to delay negotiations on trade-related foreign investment, on the interaction between trade and competition policy, on transparency in government procurement, and on trade facilitation until after the next ministerial conference in 2003 and, then, only on the basis of a decision taken by explicit consensus.

B. Implementing the Doha Agenda and More

The Doha Agenda consists for the most part of commitments either to undertake negotiations on various topics or conduct examinations and reviews of these topics with the possibility of recommending negotiations. While the breadth of the issues placed on the agenda represents a major accomplishment, especially for the developing countries, the crux of the negotiations involves reaching agreements that all members are willing to sign and that ensure the long-term viability of the WTO by successfully meeting the challenges raised in the introductory section. This part of the paper discusses specific actions for achieving these goals.

i) The Overload Problem

The significant increase in funding for WTO technical assistance and training activities together with the reorganization of the WTO secretariat to better meet the development agenda of the new trade round are important steps in easing the overload problem faced by many developing countries. But, as WTO Director-General Mike Moore and others have stressed, these steps alone are not enough. There must be a much more substantial and coordinated efforts to provide technical assistance on the part of both the major international economic agencies and non-governmental organizations interested in promoting better economic and social conditions in the poor countries. The WTO will never be able by itself to raise sufficient funds to provide the types of training and research programs necessary to make many developing countries fully informed and capable partners in the WTO system. Only the international financial organizations such as the World Bank, the regional development banks, and International Monetary Fund together with private foundations and various advocacy NGOs have the funds and expertise needed to accomplish this task. Moreover, the developing countries themselves must devote more resources toward providing educational and research opportunities for their nationals to gain the knowledge necessary for their countries to participate meaningfully in the globalization process.

ii) Dissatisfaction of the Developing Countries with the WTO

Technical assistance and training efforts by the WTO and other institutions together with the various other provisions in the Doha Declaration directed at promoting growth in the developing countries will also be helpful in overcoming the deep dissatisfaction of the developing countries with certain aspects of the WTO system. However, the key for success in meeting this challenge is providing significant improvements in the access of these countries to the markets of the developed nations. Textiles and clothing are of special importance, since it is clear that many developing countries could quickly and significantly increase their exports of these products if the quantitative restrictions and high tariffs of the developed countries were reduced appreciably.

While members reaffirmed their commitment "to full and faithful implementation of the Agreement on Textiles" in adopting the declaration on implementation-related issues and concerns at Doha, the likely removal of import quotas on about half of the total volume of imports of these goods only at the end of the year 2005 and the lack of serious planning in the developed countries for the adjustment problems the industry will face at that time suggests that many developed countries will utilize the special "transitional safeguard" provisions in the textile agreement. This could delay the elimination of import quotas for up to three more years. Even then, the misuse (as in the recent U.S. action on steel imports) of the traditional safeguard measures of the WTO could continue to deprive the developing countries of meaningful access to the world textiles and clothing markets. The same concerns apply to the liberalization commitments made by the developed countries with regard to agricultural products. Domestic political pressures seem to be resulting in more, rather than less, subsidies in this sector.

Significant and comprehensive reductions in tariffs on the part of developed countries is another essential element for providing increased market access for the products of the developing countries. Besides seeking a deep average cut in import duties, negotiators must focus, in particular, on reducing tariff peaks (such as exist for textiles and clothing area) and correcting the current pattern of tariff escalation that retards industrial growth in developing countries by imposing progressively higher tariffs as the production of goods proceed from the raw material to final processing stage.

Market access is, of course, a two-way relationship. The political economy of the international bargaining process over trade policy is such that the developed countries expect greater access to the markets of the developing countries in return for greater openness of their own markets. A crucial issue members will face in undertaking the review called for in the Doha Agenda of all special and differential treatment provisions in WTO agreements is just how quickly developing countries should be expected to open their markets under existing and new agreements. Presumably, all countries support the view that every WTO agreement should be in

the long-run interests of every member. But, we know that this need not hold in the short term. Some WTO rules constrain members from gaining in the short term at the expense of other members on the grounds that such actions are likely to lead to retaliatory actions that produce a long-run outcome in which all lose. However, due to the lack of the appropriate economic and social institutional framework, there can also be some liberalizing agreements that result in significant adjustment burdens for some countries longer than the current five or ten year maximum adjustment periods given to developing and least developed countries to adhere to WTO agreements. The serious concerns raised by many developing and least developing countries about the inadequacy of the time periods for implementing some of the Uruguay Round, e.g., the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) and the General Agreement on Trade in Services, are indications of the existence of such situations. Frustration and disillusionment with the WTO system on the part of both developing and developed countries has been the result.

One way of dealing with this problem is for members to refrain from trying to negotiate trade agreements that are likely to impose significant adjustment costs on some members for time periods that can turn into decades rather than just five or ten years. Alternatively, more precise special and differential treatment rules could be put in place that recognize the possibility of such long-term adjustment costs and exempt these members from the rules for longer time periods than are typical under current practices. The exemption for these countries would be contingent upon agreeing to take measures to put in place the adjustment measures and establish the institutional framework needed to produce net long-run benefits from the rules. It would seem necessary, however, to permit other members to bring actions under the dispute-settlement process at periodic intervals to determine if the countries had indeed carried out their part of the exemption agreements.

iii) The More Extensive Domestic Impact of WTO Agreements

WTO agreements have always significantly affected some domestic groups. When agreements mainly involved tariff reductions, these groups were mostly the employees and owners of firms in the industries in which domestic or foreign tariffs were reduced. The impact on the welfare of an individual consumer was generally not significant. To deal with the adjustment problems faced by employees and owners, WTO members have adopted such policies as gradually phasing in duty cuts over a period of time, reducing tariffs in some industries less than the average or not at all, and providing various forms of financial and technical assistance to those in the import-competing or export-oriented sectors most affected.

As previously discussed, the agreements on nontariff issues reached in the Tokyo and Uruguay Rounds have considerably enlarged the domestic reach of WTO rules. At the same time, environmentalists and human rights groups have been successful in obtaining domestic legislation that promote their goals but that also sometimes has important trade-policy implications. Unfortunately, both trade negotiators and the private interest groups too often do not fully appreciate the conflicting nature of each other's policy actions. As a consequence, both groups are sometimes frustrated by each other's actions. This has led to sharp condemnations of the policies of some public-interest groups by trade-policy officials and vigorous protests by various NGOs against the WTO and calls for radical changes in, or even the complete elimination of, the organization.

The solution to easing the tensions between these two groups would seem to be quite straightforward. Each group must become more fully aware of the implications on its own objectives of the policies that those in the other group are pursuing. Among the many ways this can be accomplished are by including NGOs on the various trade-policy advisory boards consisting of individuals from the private sector that many governments establish to receive inputs and provide information about current government trade-policy activities, making sure that the WTO, national governments and the NGOs have staff members who are knowledgeable about each other's policy positions, holding more conferences and briefings bringing together NGOs

and government officials from different countries, and working to make the entire WTO process more open and transparent. Domestic political processes must then be used by both NGOs newly concerned about trade policy and the more traditional private-sector groups affected by trade-policy actions to influence the specific trade policies that governments pursue. In a member-driven organization such as the WTO, this will, in turn, enable those NGOs who have felt left out of the decision-making process to help shape the decisions reached in the WTO.

iv) The Dispute-Settlement Process

Thus far, complaints by WTO members that dispute-settlement panels and the Appellate Body are sometimes making new WTO rules rather than simply interpreting existing ones have not been widespread but, instead, mostly confined to a relative small number of issues. Moreover, the instances where widespread concerns have been expressed seem to have been resolved fairly easily through normal WTO procedures. For example, the Doha Ministerial Declaration explicitly states that “no country should be prevented from taking measures for the protection of human, animal or plant life or health, or of the environment at the levels it considers appropriate” subject to such measures not being applied in a discriminatory manner nor being disguised forms of protectionism. Similarly, the Declaration on the TRIPS Agreement and Public Health, adopted by consensus at Doha, should satisfy the those concerned about dispute-settlement decisions infringing on “WTO Members’ right to protect public health and, in particular, to promote access to medicines for all.” However, we should expect and encourage more guidance being given panels and the Appellate Body by greater use of the WTO rule permitting interpretations of any multilateral trade agreement to be adopted by a majority of three-quarters of WTO members.

v) Labor Standards and other “New Issues”

The reaffirmation in Doha of the decision taken in Singapore in 1996 that the International Labor Organization (ILO) is the “competent” body to deal with core labor standards was disappointing for some industrial countries.⁸ As a minimum, they had wanted to establish a

WTO working group to investigate the implications of including labor standards as a part of WTO rules. However, the developing countries strongly opposed even this proposal. To better understand their position, it is important to recognize that rules about labor standards are largely about economic fairness rather than economic efficiency. This in itself does not rule out their introduction into the WTO, however, since there are already a number of WTO rules mainly about fairness. For example, in the labor standards area itself, WTO rules already permit countries to ban imported goods that are produced by prison labor. Existing rules dealing with trade policies that discriminate among countries or that are directed at dumping by foreign firms or government subsidization of economic activities are also motivated by fairness concerns as well as efficiency considerations.

A key feature of these rules is that all WTO members support the concepts of “fairness” embodied in them. Consequently, disputes arising over them do not involve challenges to the “fairness” principle in the rules but rather to such matters as whether the imported goods were actually produced by prison labor or whether the WTO criteria for determining the existence of injurious dumping or subsidization were fully met. The situation is quite different in the case of core labor standards. Developing countries believe they are not yet at the development stage where it would be “fair” to permit other members to ban imports produced under labor conditions where all four core labor standards were not met. In their view, a requirement that all these standards be met would not only slow down their economic growth by reducing their exports but also slow down their progress in meeting these standards in the future. They also suspect that the efforts of some industrial countries to bring core labor standards into the WTO are a disguised form of import protection on their part. Moreover, they believe the high costs of enforcing these standards would require the use of scarce domestic resources that can be better used to promote the economic and social welfare of their people in other ways.

Whatever the social or economic merits of the arguments over this issue, a key requirement for the success of an organization such as the WTO, whose rule-making process on

issues significantly affecting economic and social conditions within member-states does not include inputs from an international legislative body directly responsible to the citizens of the member nations, is that rules must be either reached by consensus or else can be accepted or rejected by individual members. Attempting to force members to accept rules with which they strongly disagree is not only fruitless but endangers the viability of such an organization.

At the present time, greater international efforts to improve working conditions around the world should take place mainly within the framework of the ILO. This organization already has the expertise to provide the sound analysis needed in investigations of alleged unfair labor practices and is widely respected by labor, business and government interests worldwide. There is also an active effort within the ILO to better understand the social implications of globalization and to ensure that workers benefit from this process. This may eventually lead to the adoption of enforcement mechanisms by the ILO that affect WTO rules and require consideration WTO members, but it seems best to let the ILO take the lead on the labor issue at this stage.

Other factors seemed to drive the opposition at Doha from the developing countries to immediate negotiations on such “new” issues as competition and investment policies or more traditional issues such as transparency in government procurement and trade facilitation as well as broad negotiations on environmental matters. These countries did not contend that new rules in these areas would actually reduce their economic or social welfare in the short-term but that they were uncertain about these short-term effects and needed more time to study the issues and put in place the infrastructure necessary for them to be welfare-improving. As mentioned earlier, they greatly underestimated the institutional and social costs of implementing the agreement on intellectual property rights and do not want to make this miscalculation again.

There is considerable merit to this position, in my view. We need many more in-depth studies of just what the economic and social costs have been on individual countries of the lack of common international rules on competition or investment policies, for example. Such studies

were undertaken in advance of efforts to reduce tariffs or establish rules on government subsidies, and they are needed now on the “new” issues. The type of technical assistance and training efforts by public and private organizations mentioned in discussing easing the “overload” issue will be crucial for producing such studies and enabling the developing countries to develop negotiating positions that they feel confident will promote their self-interests.

vi) Expanding the Role of NGOs in the Trade-Policy Decision-Making Process

As the widening impact of WTO rules tends to affect more domestic groups who traditionally had been little impacted by these rules, it is quite understandable and proper that these groups should have greater voice in decision-making in the trade-policy field. As argued in earlier parts of this section, much of the responsibility for achieving this objective rests with these NGOs through their use of domestic political processes. Using a combination of well-reasoned arguments and political lobbying, they must pressure the governments of WTO members for greater access to the decision-making process on trade policy. Environmental and human rights groups should be able to provide inputs through governmental advisory panels and informal consultations just as business and labor groups are able to do in most countries. They should also pressure the governments of WTO members to instruct their delegates to press for greater openness and transparency in the decision-making process at the WTO level. There seem no sound reasons why the initial stage at which governments present their positions before dispute-settlement panel should not be open to the public, for example, or why the Appellate Body should not accept *amicus* briefs if it decides that this will inform their decision-making. Other ways of increasing transparency in decision-making at the national and WTO levels without violating generally accepted legal and legislative standards should also be encouraged.

C. The Bottom Line

The WTO is indeed facing internal and external challenges that threaten its long-run viability. However, these challenges can be met successfully, in my view, by utilizing existing WTO mechanisms and rules for making changes and do not merit the radical reforms advocated

by some. The Doha Ministerial Declaration is a good example of how an agenda for making significant changes can be agreed on by members through traditional WTO processes. Carrying through on the promises in this agenda will be much more difficult than setting the agenda, but the record of past trade rounds provides good reasons to be hopeful also in this regard. In other words, the WTO needs some important fixing, as has been described in this paper, but this can be accomplished without abandoning the existing basic structure of the organization.

References

- Barfield, Claude E. 2001. *Free Trade, Sovereignty, Democracy: The Future of the World Trade Organization*. Washington, D.C.: The AEI Press.
- Bhagwati, Jagdish. 2000. *The Wind of the Hundred Days: How Washington Mismanaged Globalization*. Cambridge, MA: The MIT Press.
- Blackhurst, Richard. 1998. The Capacity of the WTO to Fulfill Its Mandate. In *The WTO as an International Organization*, ed. Anne O. Krueger. Chicago: University of Chicago Press.
- Preeg, Ernest H. 1970. *Traders and Diplomats: An Analysis of the Kennedy Round of Negotiations under the General Agreement on Tariffs and Trade*. Washington, D.C.: The Brookings Institution.
- Rodrik, Dani. 1997. *Has Globalization Gone Too Far?* Washington, D.C.: Institute for International Economics.

¹ See Preeg, p.297

² For example, the United States agreed to abolish the American selling price system that protected benzenoid chemicals by valuing them for duty-assessment purposes at the domestic value of comparable products rather than their imported value. The U.S. Congress rejected a uniform antidumping code negotiated during this round. Many countries also successfully used Article XII of the GATT, which permits restrictions in the quantity or value of merchandise imports to safeguard their external financial positions and their balance of payments, to continue or increase quantitative restrictions on imports.

³ See Blackhurst (1998) for a more detailed discussion of the limited capacity of the WTO to carry out its various mandates.

⁴ Excellent sources that indicate the various concerns of the developing countries over the WTO system are the Doha Ministerial Declaration itself and the Doha decision on implementation-related issues and concerns. These are available on the WTO website, www.wto.org.

⁵ See Bhagwati (2000) for a discussion of the dangers to the WTO system that are associated with regionalism and also for insightful discussions of most of the other challenges to the WTO system covered in this chapter.

⁶ The best-known careful study of the unfavorable domestic economic and social consequences of globalization is Rodrik (1997).

⁷ An important new study of this issue is Barfield (2001).

⁸ The four core labor standards of the ILO are: i) Elimination of all forms of forced or compulsory labor; ii) Effective abolition of child labor; iii) Elimination of discrimination in employment; and iv) Freedom of association and the right to collective bargaining.