

A Sustainable Development Roadmap for the WTO

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A Sustainable
Development
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the WTO

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A Sustainable Development Roadmap for the WTO	AB	Appellate Body
	CBD	Convention on Biological Diversity
	CTE	Committee on Trade and Environment
	DSM	dispute settlement mechanism
	DTIS	Diagnostic Trade Integration Studies
	EIF	Enhanced Integrated Framework
	EU	European Union
	FTA	free trade agreement
	GATS	General Agreement on Trade in Services
	GATT	General Agreement on Tariffs and Trade
	GDP	gross domestic product
	GHG	greenhouse gas
	GSP	Generalized System of Preferences
	IGO	intergovernmental organization
	IMF	International Monetary Fund
	IP	intellectual property
	IPCC	Intergovernmental Panel on Climate Change
	IPTSD	Intergovernmental Panel on Trade and Sustainable Development
	LDC	least-developed country
	MEA	multilateral environmental agreement
	MFN	most-favoured nation
	NAFTA	North American Free Trade Agreement
	NGO	non-governmental organization
	ODA	official development assistance
	OECD	Organisation for Economic Co-operation and Development
	PPM	processes and production methods
	RTA	regional trade agreement
	TPRM	Trade Policy Review Mechanism
	SDT	special and differential treatment
	SPS	Agreement on the Application of Sanitary and Phytosanitary Measures
	TBT	Agreement on Technical Barriers to Trade
	TRIMs	Agreement on Trade-Related Investment Measures
	TRIPS	Agreement on Trade-Related Aspects of Intellectual Property Rights
	TRTA	trade-related technical assistance
	UN	United Nations
	UNCTAD	United Nations Conference on Trade and Development
	UNEP	United Nations Environment Programme
	UNFCCC	United Nations Framework Convention on Climate Change
	U.S.	United States
	WTO	World Trade Organization

Whither World Trade?

They go on in strange paradox, decided only to be undecided, resolved to be irresolute, adamant for drift, solid for fluidity, all-powerful to be impotent... Owing to past neglect, in the face of the plainest warnings, we have entered upon a period of danger. The era of procrastination, of half measures, of soothing and baffling expedience of delays, is coming to its close. In its place we are entering a period of consequences ... We cannot avoid this period, we are in it now...

– Winston Churchill

Anyone who remembers the early years of the World Trade Organization (WTO) will remember the controversy that surrounded its creation and first steps. The WTO regularly attracted protesters and its ministerial meetings were magnets for a wide spectrum of discontent. The meeting in Seattle in late 1999 led to massive police action and hundreds of arrests. Even the last ministerial meeting in Hong Kong, in 2005, had protesters swimming across the harbour seeking access to the conference site.

Four years later, the protests have all but disappeared; even the supposedly biennial ministerial meetings have ceased to take place, though a modest one is scheduled for the end of this year. What has happened? Has the trading system lost its self-confidence? Are new and more pressing problems distracting us from the WTO? Has the WTO smoked the peace pipe with the protesters? Has the perception of the pros and cons of trade measurably shifted?

To an extent, all of the above may be answered positively. The failure of the WTO membership to break the negotiating log-jam and to conclude the Doha Round despite announcing endless last chances has damaged the WTO's credibility. The financial crisis of late 2008 and the questioning of the entire economic and social development paradigm that has resulted have put the problems of the trading system in a new and different context. And those who saw trade liberalization as the key front in the struggle against globalization have relaxed on noting that its snail-like pace does not pose much of a threat. Perhaps also a more sober assessment of the advantages and disadvantages of trade has begun to emerge. With trade figures plummeting and the ensuing unemployment skyrocketing, some of the advantages of trade have been remembered.

Everyone is careful to stress that the WTO's next ministerial meeting, scheduled for November 2009 in Geneva, is not designed to relaunch the Doha Round. The WTO has cried "wolf" too often for that to elic-

it any enthusiasm. Instead, it will purportedly focus on how trade can best contribute to putting the global economy back on course, to cement our collective resolve to fight protectionist tendencies emerging in all parts of the world, and to reinject some confidence in the WTO and its ability to contribute to building a robust macro-economic framework at the global level.

Each of these ambitions is worth supporting. Trade is not only an important part of the global economy, the benefits from increased trade could be reaped more quickly than those of other forms of economic intervention. Further, if the temptation to take protectionist measures is great among our short-sighted and populist politicians, there is a considerable consensus among both trade and development experts that, as in the Great Depression, protectionist measures could do enormous damage to economic recovery. And nobody has really benefited from the sorry pass the WTO has been through in the past few years. Failure to complete the Doha Round has not opened policy space or export opportunities in developing countries; it has not meant that political attention has instead been directed at poverty alleviation or environmental stewardship; preferable means have not been implemented to ensure sustainable development of our economies.

So it is worth hoping that the WTO ministerial meeting will be a success and that the trading system will emerge reinforced, reinvigorated and determined to serve as a powerful engine to drag us all forward. But where is it we wish to be dragged? Prior to 2008, while some had real reservations about the direction in which the system was going, the question of alternative destinations was posed by relatively few people. It was clear to most that the role of WTO was principally to expand the global economic pie, to accelerate economic growth and to tie as much of world trade as possible to a set of common rules. The trading system did not question the dominant economic paradigm; instead it served it faithfully.

Two major events have since combined to put those assumptions under strong scrutiny. First, the economic paradigm that WTO and the other elements of the multilateral trading system served lies in pieces on the ground. While millions labour blindly to set it on its feet again and to push it forward, an increasing number of observers have concluded that the paradigm is badly flawed, generates a range of essentially insurmountable problems for society, and is incapable of adequately addressing the growing social and environmental problems facing humanity. Many of these are in fact generated or aggravated by the economic measures that the paradigm dictates.

It is increasingly clear that the economic policy package known as the “Washington Consensus,” adopted by a large number of countries and

forced on a larger number of others by the World Bank and the International Monetary Fund (IMF), is a bust for all except the corporate elites. Unfortunately, the spirit under which trade liberalization has been carried out in the past decade or two can also be deemed to be fully in line with the principles of this consensus. So with the consensus in tatters, to what engine—exactly—do we wish to hitch the trading system? Down what track do we want to send it? And what would constitute a successful outcome for the Doha Round?

The answer to those questions depends on how we approach the other major event referred to above. There can be no doubt now that we are facing an economic crisis of a magnitude not seen since the late 1920s. However, unlike 1929, we are at the same time facing a series of environmental crises that have become impossible to ignore. It is this overlapping of interconnected crises—what Paul Gilding calls “The Great Disruption”—that provides us with the challenge of rethinking our approach to development and to the many processes, trade included, intended to deliver it.

To illustrate this, take only the twin crises of climate change and trade. Our leaders are hoping that trade will kick-start the economic recovery and that a successful conclusion to the Doha Round will put it in high gear. Nobody thinks this can possibly happen without some serious concessions at least to the major developing country exporters—an outcome that might be desirable from a development point of view. And yet, should this occur under a business-as-otherwise-usual scenario, it would lead to a massive increase in greenhouse gas (GHG) emissions (as occurred with the rapid, trade-led growth of China), greatly reducing the chances of stabilizing atmospheric carbon and avoiding catastrophic climate change.

So while it is clear that there is an urgent need to get the world economy back on its feet, and while trade liberalization offers an attractive way to do that, it is far from clear what form of trade liberalization would help us avoid compounding the problem with climate change.

The stalemate at WTO has as many explanations as it has explainers. One, however, has steadily been gaining strength: the Doha negotiations set out to deliver a clear development result, and to correct some of the development difficulties created by the previous (Uruguay) Round. In the course of the negotiations, it has become clear that delivering a genuine development result implies far deeper changes than many of the powerful trade powers are prepared to make. And yet, with several developing countries emerging as significant trade players, an outcome that does not deliver clear positive results at least for them is inconceivable; hence the lack of movement in Geneva to date. The positions taken by the rich trading countries and blocs show no sign

viii that they are prepared to reduce their ambitions in favour of a consensus solution that serves the greater good.

Now that the economic house of cards has collapsed, the challenge to the trading system has expanded even further. The question at present must be: what sort of trading system and what forms of trade liberalization will best contribute to the vital transition toward the sort of economy that will operate efficiently while reducing the gap between rich and poor, generating adequate employment, strengthening social equity and justice, and repairing the damage done to natural resources and essential ecosystem services? With the experience of over seven years of negotiations under the Doha Round, the answer is clearly one that operates quite differently from the present one.

When splashing around merrily in the pool of trade policy it is too easy to forget that trade liberalization—fascinating as it may be within its own confines—is a tool, not an objective. It is a means to an end, not an end in itself. Only when the proper end is agreed and shared by all significant players will it be possible to decide what form of trade liberalization will best set us on a path toward its attainment.

While the image of this desirable end-point varies depending who is doing the imagining, in fact the options are no longer terribly broad. In the long or even medium run, we must achieve sustainability or the planet has no acceptable future. And sustainability must be achieved in all three of its dimensions—economic, social and environmental. With the confluence of crises noted above, achieving sustainability has now become urgent, even critical. Failing to act on the economy means sinking deeper into recession, with massive loss of jobs and social displacement. Failing to act on the environment means missing the narrow window left to avoid catastrophic and irreversible climate change. The looming crises of biodiversity loss, collapsing fisheries, imminent widespread water shortage and many others offer windows almost as narrow. And the social consequences of our failed economic model are already apparent in the rise in civil conflict, large-scale and ever more desperate movement of would-be immigrants, and in our failure to make even a dent in attaining most of the Millennium Development Goals. It should be clear to any honest observer that, if the system is broken, putting it back together on the old foundations and following the same blueprint would be a sorry mistake.

It is increasingly a given that we must move quickly toward a sustainable form of development or face deepening if not irreversible world crisis. And whereas the “great transition” to sustainability was once something that we could wish would eventually happen and that we felt confident would happen because good sense would eventually prevail, what is increasingly clear is that we have entered a critical transition

now. If it is not a transition to sustainability, it is highly likely to be a transition to something markedly worse than what we have known over the past few decades.

If we can take sustainable development as a proxy that represents the centre of gravity of a range of acceptable futures, what sort of trading system will help us get there? The answer, of course, is one that is very different from the present one. We still need a rules-based, multilateral trading system that seeks to apply predictable, equitable norms to world trade. None of the WTO's basic principles needs to be put into question: non-discrimination, transparency and the peaceful settlement of disputes must all be fundamental tenets of a trading system devoted to serving sustainable development. And of course expanding access to rich country markets for developing countries is still an imperative—if only to allow poor countries to offer their citizens an acceptable quality of life.

What would change is the way in which priority is assigned within national and global trade policy. Policy-setting in the trade sphere is now almost thoroughly dominated by narrow commercial considerations and by the key commercial actors. As a result, trade policy advances a very narrow concept of the national interest. There can be no doubt that the interests of national exporters and national producers are a legitimate focus of trade policy; the trouble is that they are today essentially the exclusive focus of this policy. Other areas of national policy priority are largely ignored. Worse still, issues of common global concern receive virtually no attention. Yet in the long run, short-term national commercial interest is often neither in the global interest nor even in the national interest.

Italy, for example, is greatly concerned at the waves of illegal immigrants that wash up (sometimes literally) on its shores and yet little or no consideration is given in Italy's trade policy debate to the need to help developing countries use trade to build economies that might offer an alternative to these same immigrants. Rich countries have put enormous pressure on developing countries to lift obstacles to strict observance of intellectual property (IP) rights, investment and unrestricted repatriation of profits—resulting in investments that offer little or no benefit to national development. Even conditions needed to address social, environmental or climate change challenges nationally are swept aside in defence of investor interests. Policy space is shrunk and eventually disappears in country after country as trade agreements attack anything that can be considered an obstacle to profitable trade. Is this truly in the interest of our nations or of our planet?

We need a trading system that manages trade openness in such a way that it corrects the imbalance between rich and poor countries, reduces

x the problem of exclusion and social marginalization, promotes good governance and the rule of law, and returns the use of natural resources and ecosystems to sustainable levels. In effect, we need to reverse the present priorities—where sustainable development is a desirable outcome provided it does not get in the way of trade liberalization to one in which the imperative is sustainability. Under that scenario, measures to liberalize trade would be welcome provided they could clearly demonstrate how it contributed to sustainable development in all three of its dimensions.

* * *

It is, of course, important not to expect too much of the WTO. Even under the best of scenarios, WTO cannot be expected single-handedly to save the world. And if trade policy relates to an ever-wider set of public policy priorities, getting trade policy right is only one part of the challenge. It is always possible to imagine shimmering castles in the clouds and to state how nice it would be if we could take up residence there. And a compelling case can be made that WTO has, thanks to the sort of pressure that this paper represents, taken on a number of topics they are poorly qualified to deal with and have consequently bungled. Much of the current environmental agenda in WTO could fit that description.

So while calling for a radical rethink of WTO and its priorities, this paper is distinctly not asking WTO to serve as the exclusive forum for redesigning the global economy. Instead, it calls for WTO to rethink its direction and goals and redesign *trade policy and practice* in consequence.

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This is a good time for those who seek to improve the functioning of the multilateral trading system. The current impasse in the Doha negotiations offers us both grounds for concern about the current regime's model, and the breathing space in which to thoughtfully consider how that model might better serve today's needs.

In considering the directions in which the WTO might evolve, we should first consider its origins. It is argued by many that the General Agreement on Tariffs and Trade (GATT) was created as an instrument of *embedded liberalism*. The drafters shared an understanding of the legitimacy, the *necessity* of domestic government intervention to achieve social protection and stability, but they also understood the lessons of the pre-war bout of mutually destructive protectionism. So they embedded the goals of liberalism—non-discrimination and progressive liberalization—within a broader framework designed to allow for domestic interventionism, achieving a careful balance between the two. Ruggie (1982) argues that the deal was based on a shared understanding of the social purposes for which government power may be legitimately exercised at the domestic level.

As the GATT/WTO agenda has progressively moved beyond tariff reduction toward a behind-the-border focus, we have moved away from the balance envisioned at Bretton Woods, toward a regime that focuses primarily on liberalization. This was in line with a changed understanding in most Organization for Economic Co-operation and Development (OECD) countries that the role of government should be less interventionist (though this understanding has come under considerable strain as governments of all ideological stripes are pushed to Keynesian action in light of the current economic crisis).

This history is instructive in several ways. For one thing, it highlights the importance of an internationally agreed social purpose to underlie the trade regime (or *any* successful international regime). The underlying social agreement, struck in the shadow of two world wars, arguably also included a desire for peace and stability of international relations through trade and investment. The specifics of the agreement are not as important as the fact of its very existence; the desire to achieve broader social objectives encompassed a regime pursuing liberalism *as a means*.

This is an important lesson for those who believe that the trade regime is, and must be, founded only on the objective of orthodox liberalism. Other types of open trading regimes are possible. The obvious question

2 to which this analysis leads is: what sort of international agreement on social purpose do we have today, half a century hence? Do we need to re-invent embedded liberalism to reflect modern imperatives?¹

It can be argued that we already have an international agreement, a shared understanding on which to build a trade regime for the 21st century. The broader social objective to which the multilateral trading system should work, and should allow domestic governments to work, is sustainable development. The importance of domestic and international policy space to pursue sustainable development (in developing *and* developed countries) provides the social purpose within which to embed the goals of trade openness and non-discrimination.

It is worth pausing at this point to define what this paper means by “sustainable development.” The most common definition, and that used here, is given by the UN World Commission on Environment and Development in the “Brundtland Report”:

Sustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their own needs. It contains within it two concepts:

- *The concept of ‘needs,’ in particular the essential needs of the world’s poor, to which overriding priority should be given, and;*
- *The idea of limitations imposed by the state of technology and social organization on the environment’s ability to meet present and future needs.*²

Note that the central feature of sustainable development is development, but with the clear proviso that any development must be tenable—sustainable—in the longer term. Most important, development should not be undermined by lack of attention to the environment. Sustainable development is almost universally held to comprise three sets of objectives, or three legs of a metaphoric stool: economic, environmental and social, the most important objective being to find mutual supportiveness among these. Note also the emphasis on the needs of the world’s poor; while sustainable development is a goal for economies at all levels, its most urgent focus is benefiting the impoverished. And note finally what should go without saying: sustainable development is more than just environment. For example, some might wonder, later in this document, how reforming WTO’s dispute settlement mechanism (DSM) relates to sustainable development. If the reforms result in improvements for the poor in developing countries, even if no environmental improvement takes place, then while they do

1 For more in-depth reflection on this question see Ruggie (ed.) (2008); Bernstein and Pauly (eds.) (2007).

2 World Commission on Environment and Development (1987).

not in themselves necessarily constitute sustainable development they move us unmistakably in that direction.³

The argument that we can think of sustainable development as a new internationally agreed social purpose—a purpose within which trade policy-makers might embed the goals of liberalism—gains its strength in the first place from the numerous commitments the nations of the world have made to the goal of sustainable development, beginning with the products of the UN Conference on Environment and Development—Agenda 21 and the Rio Declaration on Environment and Development—which comprehensively laid the basis for other agreements on specific aspects of sustainable development. Practically every multilateral environmental agreement (MEA) signed since then has affirmed sustainable development as an objective, as have key development-centred agreements such as the United Nations Millennium Declaration and the Monterrey Consensus on Financing for Development. Sustainable development has also been affirmed as a goal in an increasing number of economic agreements, including trade agreements, investment treaties, and treaties of bilateral and regional cooperation.

Even aside from the extensive array of legal commitments to sustainable development made by the international community, one could argue normatively that the world has changed significantly since the founding of the GATT in 1947, such that any international economic agreement must aim to contribute to sustainable development or be critically irrelevant.

For example, the impact of climate change on agriculture, rising food prices and food shortages in many parts of the world—leading to social unrest in some places and the very real potential for conflict—would seem to require a fundamental re-think of the ends and means of the agriculture negotiations. Are these simply talks about increasing trade? Or should they be talks about how to improve human welfare sustainably, via agreement on agricultural trade policy?

To continue with climate change as a driver of our new context, we now know that unless we depart dramatically from the baseline in terms of GHG emissions—the product of almost all economic activity—we risk economic damage that will swamp and reverse the hard-fought gains of six decades of trade rule-making and liberalization. Sir Nicolas Stern estimated this damage at some 20 per cent of global gross domestic product (GDP), with most of the burden falling on developing countries.⁴ Just as important from a development perspective are the

3 For an in-depth look at how trade policy relates to sustainable development thus defined, see Cosby (2004a).

4 Stern (2007).

4 significant local human health and economic impacts spawned by unsustainable development. While China has made history by lifting some 400 million people out of poverty in the last 20 years, for example, in the process it has spawned 16 of the world's 20 most polluted cities, and air pollution impacts alone that cost up to seven per cent of GDP.⁵

In this new global context, any economic policy-maker concerned with development must also be concerned with the sustainability of that development. Here, then, is the new international agreement on social purpose, born of the understanding that almost all forms of environmental damage, social ill and inequity will eventually harm us all in a world we now know to be small, and getting ever smaller. From an economic perspective, dense and complex connections of trade and investment mean that, for rich countries, the vitality of developing countries is no longer an altruistic concern, but is in their own self interest. Witness the massive surge in global demand for goods and services created by the rising middle classes of the emerging developing giants. Witness the powerful anti-inflationary impact in the developed world of imports from those same countries. And few observers will have failed to note the speed and power with which a mortgage crisis in the U.S. spread to become the world's first truly global recession.

Environmentally, it has always been a small world but we are only now finding out to what extent, with advances in science, and the pressures of growing global GDP. Coal-fired electricity generation in China is stymieing efforts to reduce mercury loading in North America. Desertification in Africa is killing coral reefs in the Caribbean. And problems such as climate change, ozone depletion and loss of biodiversity affect us all, no matter what their provenance. We need to be concerned about the capacity of all countries to address environmental challenges.

On a broader social level, the same interconnectedness plays out. Failed states are bad news for the whole global village, spawning problems that other states must deal with: contagious political instability, refugees, infectious diseases, war-mongering and international crime. Healthy states, on the other hand, are able to tackle issues of shared concern, and to contribute positively to international efforts toward the greater global good.

This reality—that we are all connected—is why we have the Doha Development Agenda, and not the Doha Round. It is why special and differential treatment (SDT) is a fundamental principle of the trade regime, and why the Doha talks have included discussions on implementation, capacity building, environment and aid for trade.

5 OECD (2007).

What kinds of institutional forms are appropriate to a trade regime in the context of this agreement, this drive for sustainable development? Is there a need to conceive of new principles and norms, new rules and procedures that are more suitable to the task? Only a dedicated and inclusive process can produce authoritative answers, but this paper begins the discussion, suggesting a number of discrete areas in which change might be necessary.

The section that follows this one makes the argument that the multi-lateral system of trade, as embodied in the WTO regime, has *already* identified sustainable development as such a goal, at least on paper. Section 3 then asks how we would know if the WTO were in fact achieving its objectives, exploring the need for some regime of assessment. Section 4 surveys a number of areas of WTO functioning to assess progress against the measuring stick of sustainable development, and speculating as to the elements of an agenda for the WTO, were it to take the objective of sustainable development seriously. As noted above, only a dedicated and inclusive process could produce satisfactory answers to this question, but a number of initial possibilities are discussed in a way that should be useful to those who are interested in a sustainable development roadmap for the WTO. The concluding section summarizes the discussed ways forward, and asks some hard-nosed questions about the challenges and realities of following such a roadmap.

The Objectives of the Multilateral System of Trade

There are few human endeavours that come in for as much sustained criticism as the liberalization of international trade, which is condemned from various angles by environmentalists, development non-governmental organizations (NGOs), labour unions, human rights advocates, developing and developed country farmers, social justice advocates, churches, health advocates and parliamentarians, among others. Trade, and the liberalization of trade, might appear at first blush to share quarters with a dismal collection of human endeavours including war, slavery and imperialism.⁶

For the most part, however, the barrage of criticism consists of complaints that trade and trade liberalization are not living up to their potential—not that they are inherently bad, but rather that they could do much better if rightly conducted. The question is, *do better at what?* What is the potential that has driven over 50 years of efforts at the multilateral level, and created what is arguably the most important system of global economic governance?

The most straightforward way to answer this question is to ask how the trade regime itself has enunciated its goals. The 1947 GATT set its goals as follows:

- Raising standards of living;
- Ensuring full employment and a large and steadily growing volume of real income and effective demand; and
- Developing the full use of the resources of the world and expanding the production and exchange of goods.⁷

The last of these is of course an instrumental objective; it is not reading too much into it to assume that the ultimate goal of the sought-after resource development and trade expansion is increased social welfare. This is very much in line with the first two goals, which focus on economic prosperity.

The Marrakesh Agreement Establishing the WTO, drafted 47 years later in 1994, restates the first two goals verbatim. But it modifies the third goal as follows:

6 To be fair, of course, we can't assume that a large amount of vocal criticism necessarily implies general public dissatisfaction. There may in fact be a quietly contented majority. For an argument that this is so, see Wolfe and Mendelsohn (2005).

7 GATT 1947, preamble.

- Expanding the production of 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, seeking both to protect and preserve the environment and to enhance the means for doing so in a manner consistent with [the Parties'] respective needs and concerns at different levels of economic development.⁸

And it adds the following:

- There is need for positive efforts designed to ensure that developing countries, and especially the least developed among them, secure a share in the growth in international trade commensurate with the needs of their economic development.

Both changes are instructive. The first, informed by decades of experience with global environmental challenges and drafted on the heels of the landmark 1992 Rio Earth Summit, admits that expansion of production and trade is not an unblemished good; conducted improperly, it can actually work against the social welfare improvement that member countries are ultimately seeking. The second, informed by decades of experience with the practice and failures of international development, admits that trade liberalization by itself is not enough to foster the kind of development needed in developing countries. There is also a need for proactive accompanying measures, though it is not clear whether the members consider that to be within the WTO mandate or whether they are expressing their hope that other organizations will carry out these necessary tasks.

More fundamentally, these changes signal a modification of the basic goals enunciated in 1947, when trade and trade liberalization were all about economic prosperity. Economic prosperity is still of great importance, but it is now part of a broader conception of social welfare in which enduring environmental quality is also part. Equitable sharing of the gains from trade is also part of this broader conception.

The Doha Ministerial Declaration, drafted in 2001, is even more definitive on the idea of a broader conception of the goals of the trading system. Paragraph 1 recalls the economic prosperity objectives outlined above, referring to trade's contribution to economic growth, development and employment. Paragraph 2 recalls the Marrakesh objective related to equity, and the need for "positive efforts" focused on developing countries. Paragraph 3 goes further in this same vein, noting the particular challenges faced by least-developed countries (LDCs), and pledging that the WTO will "play its part" in international efforts to address those challenges. Paragraph 6 recalls the

8 Agreement Establishing the WTO, 1994, preamble.

- 8 Marrakesh objective related to the environment, and goes even further to identify sustainable development as an *objective* of the members. It asserts that safeguarding an open non-discriminatory trading system and pursuing sustainable development can, and must, be mutually supportive.

To sum up, according to the written declarations on the subject by WTO Members and GATT contracting parties, the objective of the multilateral system of trade is to contribute to economic prosperity by means of liberalizing trade and ensuring non-discrimination. This is where the GATT objectives begin and end. The revised WTO objectives are more broadly cast, aiming at a conception of social welfare that also values equity: if some are missing out on the benefits of economic prosperity, then that is a matter of concern. It also values the environment, as evidenced by the Members' commitment to have the WTO protect and preserve it. It is not clear, however, where the boundaries are drawn in the broad social welfare landscape between those areas that the Members consider to be the WTO's mandate, and those areas that they consider important to achieving that mandate, but the primary responsibility of others. This question of what's in and what's out has been widely debated in the context of the environment, of development and of human rights. Wolfe (2007:34) offers a list of criteria for determining what the WTO should and should not add to single undertakings in negotiating rounds.

To help answer this question, it is worth noting the similarities between the objective of sustainable development and the objectives of the WTO. Economic prosperity is a necessary (but not sufficient) prerequisite to development that meets the needs of the present, and constitutes the economic leg of the stool. A commitment to the environment corresponds to the Brundtland proviso about sustainability, and constitutes the environmental leg. And the concern for the particular needs of the poor in developing countries corresponds to the Brundtland emphasis on the needs of the poor, and most closely resembles the social leg.

The comparison can be pushed too far, however, particularly in the area of development, where the WTO's objectives centre on economic development and poverty alleviation. While these are fundamental building blocks of development, they are not its entirety. This is easily illustrated by reference to the Millennium Development Goals, the first of which does relate to poverty alleviation and hunger, but the rest of which include such elements as education, gender equality, health and nutrition, and environmental sustainability.

It would thus be too much to say that the WTO was committed to *achieving* sustainable development. On the other hand, it would be per-

fectly defensible to argue that the WTO aims to *contribute* to the achievement of sustainable development through its activities and within its mandate to achieve an open, non-discriminatory international regime of trade in goods and services. This paper tries to set out where the WTO should go from here, were it in fact aimed at achieving that objective.

Halle (2008) and Cosbey (2004a) make the argument that sustainable development is in fact the proper objective of the WTO. But for the present purposes there is no need to consider the normative question of what the WTO's goals *should* be. They are assumed to be as stated in the texts analyzed above.

There is of course room for scepticism about whether the objectives as laid out are in fact the Members' true objectives. Stiglitz and Charlton (2004), for example, make a strong argument that the U.S. interest in the 1990s and throughout the Uruguay Round negotiations was purely domestic, focused on narrow mercantilist goals without concern for the impacts in developing countries. Khor (2006), Smaller and Murphy (2006), Ismail (2005) and others have criticized the current Doha negotiations as failing to live up to their billing as a development-centred exercise, implicitly accusing the OECD countries of pursuing mercantilist agendas under the guise of the nobler objectives elaborated on paper. But at the outset this paper assumes that whatever failings there are in living up to the Members' noble objectives are entirely good effort failures, and that the recommendations contained herein will be gladly received as useful advice. Only in the closing section do we drop this assumption to adopt a pragmatic perspective on this paper's recommendations.

Assessing Progress

Having argued that the WTO's goal is to contribute to the achievement of sustainable development, we can then ask how it knows whether it is succeeding. It is an entirely reasonable demand that an international organization relying on state-level contributions should at some point be accountable to its contributors, assessing its success and failures against its objectives. In the case of the WTO, there should probably be two systems in place for such assessments. First, the WTO should assess the results of its negotiated efforts, measuring them against its objectives. Second, it should assess the proposals under negotiation for their potential impacts, to contribute to the negotiating process and ensure that negotiators understand, as best they can given the methodological complexities and timetable-related limitations, the implications and uncertainties associated with the proposals on the table.

But there are in fact no such systems in place. From a historical perspective this is perhaps understandable. In the early years of the GATT (from 1947 right up until the Tokyo round, 1973–1979) the focus was on achieving non-discrimination and concerted lowering of tariffs. These sorts of efforts were more or less assumed to contribute to making the world better for all involved. That is, a lowering of tariffs by all countries in the end benefits all countries. When this dynamic is assumed and agreed to by all, it is hard to make the case for needing an evaluative framework—if you lower tariffs, you succeed.

There are at least three reasons to question these assumptions.⁹ First, they assume that there is full realization of the potential gains from trade. But not all countries are able to take advantage of the potential gains offered by tariff lowering. The reasons might be any of a long list of usual suspects: poorly developed infrastructure (transportation, energy, communications); a weak financial sector (insurance, banking); corrupt bureaucracy; weak legal regimes (the lack of property rights, environmental regulations, labour law, contract law, IP law or an independent judiciary); anti-export bias in tax regimes; macroeconomic instability (high real interest rates, exchange rate fluctuations or overvaluation); poor public provision of education and health facilities; lack of important domestic institutions (export promotion bureaux, independent regulatory authorities, efficient customs facilities, accredited standards verifiers), and so on.¹⁰ The point is,

9 For critiques of the standard exercises in modelling gains from trade, see Ackerman (1999) and Stiglitz and Charlton (2004).

10 See Hoekman (2002). Also surveyed in Cosby and Mann (2004).

according to the theory of comparative advantage, lowering tariffs leaves all countries better off, but if some countries are unable to exploit their potential comparative advantage, unable to respond to new market access by increasing exports, then their gains may be minimal.

Second, the expected gains from trade liberalization are predicted by models that assume full employment: that there is no unemployment before liberalization, and that after liberalization the economy will adjust such that there is once more full employment, finding the most efficient use for the capital and labourers that were employed in formerly protected sectors. If we remove this rather unrealistic simplifying assumption, then there may be countries where those unemployed by trade liberalization do not find alternate employment, or where the transition period is long and painful. In developing countries, in particular, there is a dearth of social safety nets and government-sponsored retraining systems to look after the inevitable losers from trade liberalization. This again argues against the assumption that tariff lowering automatically benefits all countries, at least in the short to medium term.¹¹

Third, tariff lowering may bring about economic prosperity, but may do so at the expense of the environment.¹² If trade liberalization and the resulting increased market access allow a country to expand its exports, but those exports have a major environmental impact, and if there is an inadequate environmental regulatory regime to address those problems (meaning there are external environmental costs associated with the exports), then the sought-after improvements in social welfare are thereby diminished. If the environmental damage in question is serious enough, they can be entirely cancelled out.¹³

None of these arguments is new. It was for precisely these reasons, as noted above, the WTO's objectives were expanded to take account of the particular challenges faced by developing countries. If tariff liberalization by itself is not enough to guarantee welfare improvements in some countries then the WTO, or some other organization, needs to take "positive efforts" to bring the other prerequisites into being.¹⁴

11 And the short and medium term matter a lot, particularly for countries suffering from acute underdevelopment. As John Maynard Keynes famously noted, in the long run we are all dead.

12 IISD/United Nations Environmental Programme (UNEP) (2005).

13 For a case study of this dynamic in practice, in the context of Argentina's fisheries sector, see Onestini and Palos (2001).

14 The expanded objectives are also the product of a changing membership—in 1947 there was almost an even split between developing and developed countries in the GATT, but today's WTO membership is overwhelmingly the former—and the consequent need to pay more attention to developing country problems.

Likewise, the WTO's objectives include a commitment to ensure that the economic benefits of trade do not simply occur at the expense of the environment. For these same reasons, an assessment framework, by which the WTO can see whether it is achieving its objectives, is arguably important.

It seems obvious that the WTO cannot address all the shortcomings that might prevent a country from exploiting the potential gains from liberalization. This much is clear from the list of possible obstacles presented above. The WTO is ill-placed to advise countries on reforming corrupt bureaucracies, or achieving exchange rate stabilization, for example. Nor can the WTO help establish strong environmental laws and enforcement. The challenge for the WTO, and one of the aims of this paper, is to answer the question that is as yet unanswered by the Members themselves: what pieces of the overall challenge fall rightly within the mandate of the WTO?

While it seems obvious that there is a need for some assessment of the WTO's achievement of its goals, the task becomes even more important as we move from the focus on tariff lowering that characterized the early years of the GATT to the present focus behind the border. That is, today's WTO goes well beyond a focus on tariffs to also address other obstacles to international trade—so-called “non-tariff barriers.” In so doing it lays down rules on how countries should regulate for the protection of the environment, and of human, plant and animal safety. It specifies the manner in which countries should formulate and implement all manner of product standards. It decrees what is fair practice in the process of doling out subsidies and undertaking government procurement of goods and services. And it sets strict guidelines for minimum standards in the protection of IP rights. As well, the modern WTO has expanded its focus from trade in goods to include trade in services—a move that has it governing the barriers to entry of service-related foreign investment, the treatment of that investment once it is established, and the legal regimes covering immigration and employment of foreign service workers. The WTO now also covers investment generally, prohibiting various conditions of entry that governments might impose to ensure that investors contribute to the local economy.

The modern behind-the-border agenda is obviously qualitatively different from the tariff-lowering agenda in a number of ways. For instance, whereas the theory of comparative advantage (some important caveats to which are surveyed above) dictates that lowering tariffs leaves all countries better off, the modern agenda has no such underpinning theory. In fact, many aspects of the modern agenda involve a redistribution of wealth, rather than an unleashing of common benefits.¹⁵ The Agreement on Trade-Related Aspects of Intellectual Property

15 See Stiglitz and Charlton (2004) and Dunoff (1998).

Rights (TRIPS) regime, for example, while it may benefit developing countries at a certain stage of development (i.e., when they are ready to generate their own IP in sufficient quantity that it needs protection), more commonly forces developing countries to shut down imitators that benefited the local population by producing cheap copies of patented goods. In the case of pharmaceuticals, developing countries lose their supply of cheap generics, and lose the industries that might have grown to eventually do their own product development, and developed country firms gain markets and royalties. This might be a “fair” solution, or it might in the longer term be beneficial—though many argue that it is neither—but the point to be made here is that it involves a redistribution of wealth, rather than a common benefit of the type derived from lowering tariffs to allow for the workings of comparative advantage.

All the more need, then, for some sort of assessment framework to ensure that the WTO is meeting its objectives, and all the more surprising the lack of such a system.¹⁶ There is no mechanism for assessing the proposals or the results of trade negotiations, or of trade law or of trade flows, in terms of their sustainable development implications. This is despite the clear mandate provided by the Doha Declaration in paragraph 51 to establish such an assessment regime:¹⁷

The Committee on Trade and Development and the Committee on Trade and Environment shall, within their respective mandates, each act as a forum to identify and debate developmental and environmental aspects of the negotiations, in order to help achieve the objective of having sustainable development appropriately reflected.

This lacuna looks all the more strange when viewed in the context of other international organizations and regimes that are moving increasingly toward fact-based policy-making [e.g., the United Nations Framework Convention on Climate Change’s (UNFCCC’s) IPCC] and indicator-based measurements of progress (e.g., the Millennium Development Goals).

16 At the national level, a number of countries routinely run analyses of what the various proposals will mean for their economic interests, and for those of their negotiating partners, usually expressed in terms of value of trade gained or lost, or of percentage GDP variance from some baseline case. The U.S. and Canada even run assessment of the environmental implications of the talks and of all bilateral/regional trade agreements, but almost purely from a domestic perspective, with results that almost always predict no harm and much good. The EU runs broader sustainability assessments that have a global scope and which also consider development impacts, but there is a tenuous connection between the results and the European Union (EU) negotiating positions. None of these member-led processes, however, reduce the need for a similar regime with a WTO-level mandate.

17 For a detailed argument of what this mandate consists of, and how it should be pursued, see Cosbey (2002).

14 Ideally, the WTO would have regimes established for two types of assessment: one that can perform the paragraph 51 function—evaluating elements of any ongoing negotiations—and one for assessing the overall progress of the organization against the broader roadmap. A serious effort at these sorts of assessment would move the locus of evaluation outside the WTO to an independent base, though the mandate and framework for assessment could be given to such a body by the WTO itself, provided the Organization had elaborated a sustainable development roadmap against which it could be measured.

A Sustainable
Development
Roadmap for
the WTO

As a second best alternative, however, the assessment could be run under the WTO's authority. Wolfe (2007) suggests that the WTO's Trade Policy Review Mechanism (TPRM) might be put to use as an instrument to help integrate commercial and non-commercial objectives in the work of the WTO, to serve as a forum for deliberation and learning about, for example, the WTO's development agenda. Broadened such that it was charged with taking account of the impacts of trade on environment and development, and of environmental and development policies on trade, and opened up to participation by a much wider group of commentators such as NGOs and IGOs, the TPRM might also serve as an excellent vehicle for assessment of progress on the same issues, though this would necessarily be assessment at the national level, as opposed to the WTO level.

For now, the need for effective mechanisms of assessment is simply noted as significant; proposals for meeting that need are outlined below as part of the discussion on reform of the negotiation process.

The Roadmap

Absent any sort of multilaterally agreed assessment framework, this paper tries to briefly weigh the WTO's success at achieving its objectives in six major areas:

- trade and the environment;
- trade and development;
- the negotiation process;
- multilateral governance;
- dispute settlement; and
- the accession process.

In each of these, the analysis assesses progress and lays out a roadmap of areas in which the WTO needs to work—or collaborate with others, as the case may be—in order to achieve its basic objectives, as elaborated above. It does not seek to answer with authority all the questions related to how progress should be made in those areas, but rather seeks to set out clearly what are the challenges, why they are important, and what considerations should guide those who are interested in pursuing them.

4.1

Trade and the environment

It was noted above that the WTO Members have committed, both in the agreement establishing the WTO and in the Doha Declaration, to the objective of sustainable development, which includes the need to make economic development environmentally sustainable. It was also noted that most of those countries have, in the context of agreements such as Agenda 21, various MEAs, agreements on development and trade and investment-related agreements, made similar commitments to sustainable development and environmental protection. In setting out a roadmap for the WTO to follow in pursuing this objective, we must first answer the following questions:

- What areas of need are there? Where are the important linkages between trade and environment, from a WTO perspective?
- Where do the boundaries lie between those efforts that are the mandate of the WTO and those that are the mandate of others?
- In what ways should the WTO collaborate with the institutions that have a mandate to undertake those efforts?

16 Each of these questions is addressed below.

What are the areas of need? In elaborating the areas of relevant linkage between trade and the environment there is, fortunately, no need to start from scratch. The WTO's Committee on Trade and Environment (CTE) was given a 10-point work program (see Box 1) at the time of its establishment in 1995, with an ambitious mandate that included making "appropriate recommendations on whether any modifications of the provisions of the multilateral trading system are required" in light of its analysis and discussions.¹⁸

As well, the Doha Declaration gave negotiators a mandate to negotiate on a number of environmental topics, including some from the CTE's long-standing work, with a view to enhancing the mutual supportiveness of trade and environment. Those topics were:

- "The relationship between existing WTO rules and specific trade obligations set out in multilateral environmental agreements (MEAs). The negotiations shall be limited in scope to the applicability of such existing WTO rules as among parties to the MEA in question. The negotiations shall not prejudice the WTO rights of any Member that is not a party to the MEA in question."¹⁹
- Procedures for regular information exchange between MEA Secretariats and the relevant WTO Committees, and the criteria for the granting of observer status.
- The reduction or, as appropriate, elimination of tariff and non-tariff barriers to environmental goods and services."²⁰
- Fisheries subsidies: "In the context of [the WTO rules] negotiations, participants shall also aim to clarify and improve WTO disciplines on fisheries subsidies, taking into account the importance of this sector to developing countries."²¹
- TRIPS: examining the relationship between the TRIPS Agreement and the Convention on Biological Diversity (CBD).²²

18 Trade Negotiations Committee, "Decision on Trade and Environment." MTN.TNC/W/141, 29 March 1994.

19 As a number of observers have noted, this mandate is so narrow as to be useless. It deals only with the issue of disputes where both members are Party to the MEA in question (see discussion below), and refuses *ex ante* to countenance the possibility of changes in the balance of rights and obligations, meaning in effect no rule changes are possible. See Tarasofsky and Palmer (2007:14ff).

20 Paragraph 31, Doha Declaration.

21 *Ibid*, paragraph 28.

22 *Ibid*, paragraph 19.

Box 1: The CTE's 10-Point Work Plan

1. The relationship between the provisions of the multilateral trading system and trade measures for environmental purposes, including those pursuant to multilateral environmental agreements;
 2. The relationship between environmental policies relevant to trade and environmental measures with significant trade effects and the provisions of the multilateral trading system;
 3. The relationship between the provisions of the multilateral trading system and;
 - (a) charges and taxes for environmental purposes
 - (b) requirements for environmental purposes relating to products, including standards and technical regulations, packaging, labelling and recycling;
 4. The provisions of the multilateral trading system with respect to the transparency of trade measures used for environmental purposes and environmental measures and requirements which have significant trade effects;
 5. The relationship between the dispute settlement mechanisms in the multilateral trading system and those found in multilateral environmental agreements;
 6. The effect of environmental measures on market access, especially in relation to developing countries, in particular to the least developed among them, and environmental benefits of removing trade restrictions and distortions;
 7. The issue of exports of domestically prohibited goods;
 8. The relationship between the environment and the relevant provisions of the Agreement on Trade in Services;
 9. The relationship between environment and the relevant provisions of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS); and
 10. Relations between the WTO and other organizations, both non-governmental and inter-governmental.
-

18 The CTE was also instructed to pay particular attention to three items from its work program, though no negotiations were mandated in these areas:²³

- The effect of environmental measures on market access, especially in relation to developing countries, in particular the least-developed among them, and those situations in which the elimination or reduction of trade restrictions and distortions would benefit trade, the environment and development;
- The relevant provisions of the TRIPS Agreement; and
- Labelling requirements for environmental purposes.

While these mandates are an important backdrop for considering what topics need to be addressed, they should not be considered the final word on the subject. They were cobbled together by negotiated agreement, rather than by a considered process of priority setting, and contain significant omissions and shortcomings. The first item of business in the roadmap for the environment is to more carefully elaborate the full spectrum of relevant linkages. This will demand a process that involves a wider group of actors than trade policy-makers (it should include, among others, UNEP, various relevant MEAs, civil society and business), and should not hesitate to include in its final results topics that are outside the mandate and expertise of the WTO.

While any legitimate list of topics or linkages would have to come from such a process, it is still possible to say a few words about some of the more obvious candidates. It bears repeating that this list is not necessarily a list of items on which the WTO should take a lead, or even necessarily have a role. The question of where to draw the lines of the WTO mandate on trade and environment is addressed in the following subsection.

The Doha mandate:

- The environmental goods and services negotiations have been extremely difficult, faltering on arguments about how to define environmental goods. Most would agree that the list should include clean energy technologies such as wind turbines. It could also include goods that emit less pollution and/or use fewer resources in their end use than their conventional substitutes (e.g., biofuels, energy-efficient appliances). And it could include goods that emit fewer GHGs in the process of production. The second and third categories (clean end use, clean production) are inherently more difficult, since they require agreement on a relative

23 *Ibid*, paragraph 32.

standard—the good or technology in question must be cleaner than some baseline—and the WTO is arguably not expert at such judgments.²⁴ The third category would also possibly face resistance from countries that are opposed to the use of trade restrictions based on processes and production methods (PPMs).²⁵ A focus just on the first category would also face some resistance, however. Exports of low-emission technology tend to concentrate in certain countries (mostly developed), which might be seen as receiving unbalanced benefits from a narrower agreement. In the end, as difficult as they are, these negotiations are potentially useful, and are an obvious way in which trade policy could contribute to environmental objectives.²⁶

- The Doha talks on fisheries subsidies too are potentially valuable. Subsidies in the fisheries sector lower the cost of fishing and lead to overexploitation of the resource—too many fishermen and too many boats chasing too few fish. Government subsidies have been estimated at some 20 per cent of the value of the worldwide fish catch, and have contributed to declining fish stocks and marine environmental damage, particularly in the developing countries where the surplus capacity is often exported. These talks hold perhaps the greatest potential in the Doha work program for environmental good if an ambitious agreement can be reached. Some have also opined that if these talks succeed they may help pave the way for consideration of the next big item on the perverse subsidies agenda: fossil fuel subsidies.²⁷
- The MEA talks on regular information exchange between the WTO Committees and MEA Secretariat should be a straightforward housekeeping exercise. But the question of observer status has made this important item more difficult than it should have been, and observer status for MEAs in WTO bodies is being linked to controversial broader talks on observer status—talks that have stalled over non-trade-related political disputes. Until the two issues are separated, progress will be difficult or impossible.
- The talks related to the relationship between WTO rules and specific trade obligations set out in MEAs, are even more difficult. Arguably, however, there is a need to take a step back and ask whether any such process is even necessary. For disputes between

24 Aguilar, Ashton, Cosby and Ponte (2009).

25 The argument is that such restrictions may offer too much scope for imposing governments to protect domestic industries. See IISD/UNEP (2006), Section 5.1.

26 See Stilwell, 2007; ICTSD, 2008.

27 For a discussion of the potential value from a climate change perspective of reforming these subsidies, see UNEP 2008.

WTO Members that are party to an MEA (which is all the Doha mandate covers), the WTO Members have already agreed that the disputants should first seek remedy within the MEA channels, and the old adage: “if it isn’t broken, don’t fix it,” would seem to apply.²⁸ For disputes between Members that are not both parties to an MEA, there is no easy answer, and any such case will involve a determination of whether the non-Member’s rights have indeed been breached and, if so, whether the measure or measures were justified by the objective of environmental protection. To date, the DSM, and notably the AB, has done a good job of balancing the need to respect Members’ rights and the need to allow Members to enact *bona fide* measures that achieve non-trade objectives in the area of environmental protection.²⁹ One of the key deciding factors has been the question of distinguishing between environmental protection and economic protectionism, with the former favoured and the latter not.³⁰ It is unlikely, perhaps impossible, that the Members could arrive at any negotiated agreement—even given political will—that would substitute for the considered judgement of the panels and AB in such matters.

- The area of the relationship between the TRIPS Agreement and the environment, and specifically between TRIPS and the CBD, is one of the most striking examples in the Doha Agenda of issues where environmental and development objectives come together. The most salient and promising proposal here is for patent applicants to be forced to disclose the provenance of any genetic material used in their innovations. This would help ensure that such material had not been appropriated without the sort of benefit sharing arrangements that are mandated in the CBD. This issue is practically the only surviving negotiating item from the vast developing country implementation agenda (i.e., work items related to the difficulties that developing countries are having in implementing the raft of commitments they undertook as part of the Uruguay Round results) and should be a priority area for action.

28 Agreement was reached in the CTE in 1996 that “While WTO Members have the right to bring disputes to the WTO dispute settlement mechanism, if a dispute arises between WTO Members, Parties to an MEA, over the use of trade measures they are applying between themselves pursuant to the MEA, they should consider trying to resolve it through the dispute settlement mechanisms available under the MEA.” Singapore Report of the Committee on Trade and Environment, 12 November 1996, WT/CTE/1, para. 178.

29 For an overall assessment of the state of trade law and the environment, see Mann and Porter (2003).

30 See, in particular, *U.S.-Shrimp* (WTO Appellate Body Report, *United States – Import Prohibition of Shrimp and Shrimp Products*, WT/DS58/R/AB, and Panel Report as modified by Appellate Body Report, WT/DS58/R, 6 November 1998) and *Brazil-Tyres*. (WTO Appellate Body Report, *Brazil – Retreaded Tyres*, WT/DS332/AB/R, and Panel Report as modified by Appellate Body Report, WT/DS332/R, adopted 17 December 2007.)

Other items from the CTE work plan:

- In the area of market access, and how it may be impeded by environmental standards and labelling, the WTO already offers procedural protection to exporters in the way of opportunities for comment on draft regulations, a preference for reliance on international standards and the need for science-based regulation.³¹ The studies in this area to date seem to indicate that the most significant problems lie in the inability of developing country exporters to meet those standards, rather than in the standards themselves which, provided the process is legitimate, merely reflect consumer preference and promotion of public welfare.³² The need here is for further study of actual difficulties to confirm that the process and the procedural protections under the Technical Barriers to Trade (TBT) and Sanitary and Phytosanitary (SPS) Agreements are adequate, and probably for dedicated capacity building as part of the “aid for trade” efforts that are being pursued by the WTO and other institutions, with a focus on meeting environmental standards in export markets.³³

Items not yet addressed:

- One of the oldest and most intractable items on the trade and environment agenda is the matter of border measures to distinguish between goods that are identical as final products, but which were produced differently, and which therefore have different environmental impacts (the so-called PPMs issue). The AB has rendered fairly detailed guidance, albeit in the specific context of a single case, on how such measures must be implemented to be in line with WTO law.³⁴ But that guidance, while it has some force as precedent, is not binding on future panels,³⁵ and is not definitive in the sense that, while it has wider significance, it was issued with respect to the specifics of the case at hand. Moreover, some Members felt that the AB had gone too far beyond the text of the GATT in its elaboration. As such, a negotiated understanding would clearly be superior. But the very controversy that surrounded the AB

31 See TBT Agreement, Arts. 2.2 and 2.4, and SPS Agreement Art. 2.2.

32 See OECD, 2005 for a synthesis of a number of case studies. Cosby (2004b) also synthesizes a number of cases and finds the same result. See also Jaffee and Henson (2004). Note, however, that there is also an argument that some standards are unnecessarily rigorous, going beyond international standards and scientifically demonstrable need, with damaging results for exporters. See, for example, Otsuki, Wilson and Sewadeh (2001).

33 See OECD (2006) for a good overview of the aid for trade efforts.

34 See *U.S.-Shrimp*, *supra* at 30.

35 While this is technically true, the AB has been quite clear that WTO panels should follow prior AB rulings that deal with the same points of law that they are considering (See WTO Appellate Body Report, *U.S.-Stainless Steel (Mexico)*, WT/DS344/AB/R, 30 April 2008, paragraphs 158–162).

decision also underscores the difficulties that such an effort would face, and in the meantime the AB and the panels will have no choice but to interpret WTO law as best they can. And again, it is not clear that it would be possible to completely substitute negotiated agreement for the necessarily case-specific judgement that any panel would have to apply. Aiming for negotiated *guidance* might be a more pragmatic objective.

- An item that has never made it to the WTO agenda is the broad impacts of trade on the environment. That is, how do trade and trade liberalization actually impact the environment?³⁶ As noted in the previous section, we know that it can bring greater efficiency through specialization and the exploitation of comparative advantage. But is the final result decreased environmental impact? Or is the efficiency gain outweighed by the increased environmental damage that comes with increased wealth, and increased scale of investment? The answers would have to be specific to particular regions and/or sectors.

Which work items should be the responsibility of the WTO? The clearest items of WTO interest, on which the WTO should take the leading role in implementation, are those that involve changes to trade law that will benefit the environment. In this group, for example, would reside:

- The liberalization of environmental goods and services;
- The reduction or elimination of environmentally perverse subsidies; and
- Any amendments to the TRIPS Agreement to make it more compatible with the CBD.

While the WTO would obviously need environmental expert input in such pursuits as defining environmental preferability, and in the technical details involved with reform of sectoral subsidies, it should play the lead implementing role in these areas. The WTO should also, obviously, play a leadership role in undertaking procedural changes such as granting observership to MEAs in WTO Committees, and improving information flow between the WTO and the MEAs.

Another clear area of competence and responsibility for the WTO would be to add clarity to those elements of WTO law that pertain to the environment. In this category would fall such work as negotiating agreement or guidance on the use of PPM-based discrimination. Other possible work in this area could include, for example, negotiated

36 By contrast, this has been a central item in the workplan of the North American Commission for Environmental Cooperation—the secretariat to the environmental side agreement that accompanied the NAFTA.

agreement on the use of the precautionary principle in trade policy.³⁷ While these sorts of undertakings are primarily the responsibility of the WTO, as they involve changes in trade law, they cannot be undertaken by the WTO alone, or at least not by the WTO acting as a council of trade ministers and their functionaries. Such negotiated understandings would involve a *balancing* of economic and non-economic objectives, rather than the sort of win-win opportunities involved in, say, liberalization of environmental goods and services. It would be inappropriate for trade policy-makers in isolation to perform such a balancing.

The WTO is not, however, the appropriate venue for a number of possible items of work. For example, the analysis of trade's impacts on the environment, while it should be of interest to the Members, and while the results should inform trade law-making and trade policy-making, is arguably not within the competence or mandate of the WTO. Nor should the WTO alone take on the job of addressing the cluster of issues that includes market access, standards and labelling. This cluster includes a research component that would assess the difficulties in particular sectors and countries, which is arguably not the WTO's strength. It also includes a capacity building element, once the difficulties are identified. While certain types of capacity building are suitable for the WTO—such as training negotiators and assistance on implementation of trade agreements—broader efforts to improve productive capacity in developing countries are clearly beyond the WTO's expertise and mandate.

4.2

Trade and development

Have the negotiated provisions of the WTO served its development objectives? Arguably in the area of economic prosperity there has been some success. Since 1960 world trade has grown by a factor of 12, propelled at least in part by lowering of average tariffs (though tariff peaks still persist) and the removal of non-tariff barriers such as the protectionist global system of textile quotas. In that same time, world domestic product has quadrupled, in part due to productivity gains but also in part due to trade and investment liberalization.

Have those gains been adequately captured by developing countries in particular? There are a number of reasons to believe they have not, among them:

- Agriculture, a sector in which some 70 per cent of the world's poor earn their living, is the most distorted sector in international trade. Developing country agricultural exporters face protection in

37 Note the caveat expressed above about the significant obstacles that would face any effort to gain consensus on such subjects.

Northern markets seven times as high as exporters of manufactures, with tariff peaks, tariff escalation, high specific duties, quotas and hundreds of billions of dollars of annual subsidies doled out to their Northern competitors.³⁸

- While global average tariffs have come down, the tariffs imposed by the industrialized countries on developing country imports far exceed the tariffs imposed on imports from other industrialized countries. At the same time, tariff levels are higher in absolute terms in developing country markets than they are in developed countries.
- The use and abuse of trade remedies to counter “anti-competitive practices” is increasingly rife, and is disproportionately addressed at developing country exporters,³⁹ but reform efforts are making no headway on the negotiating agenda.
- Liberalization of services trade has ignored the movement of natural persons, particularly in medium- and low-skilled personnel, where developing countries have a major interest estimated at several times the potential of that in merchandise trade. Trade in this mode of service delivery amounts to under two per cent of total international services trade.⁴⁰
- WTO rules on investment and IP rights restrict domestic measures, such as loose IP regimes and performance requirements, that were extensively employed by today’s rich nations as they went through the process of development.⁴¹

In part because of these sorts of problems with the regime of trade law, and in part because of deficiencies at the domestic level, the lion’s share of benefits from world trade has consistently gone to developed countries.⁴²

Generally, while trade law seems to have had a successful run at lowering tariffs, and thereby presumably creating economic prosperity, it has not done as well when it comes to the modern objectives concerned with development.

38 World Bank (2004).

39 This issue demonstrates that the lack of development in the WTO’s achievements is not simply a North-South issue, as an increasing number of trade remedy cases against developing countries are initiated by other developing countries.

40 World Bank (2004).

41 Ha-Joon Chang (2003); Kumar and Gallagher (2007).

42 *Ibid.* Also see World Bank projections of gains from the “likely” Doha Round results scenario, with US\$80 billion gained by developed and US\$16 billion gained by developing countries (Anderson and Martin, 2005). Note that the deficiencies at the domestic level are important, and not simply a side note. Subramanian and Wei (2003) argue that the WTO brings the strongest gains precisely to those countries that take it most seriously.

It has been noted several times above that one of the key challenges facing the WTO in pursuing a sustainable development path relates to the reference to positive efforts in the Agreement Establishing the WTO:

There is need for positive efforts designed to ensure that developing countries, and especially the least developed among them, secure a share in the growth in international trade commensurate with the needs of their economic development.

Section 2 explains why this may be the case: many countries lack the basic prerequisites for exploiting the potential gains from trade liberalization. Until there are efforts to address those lacunae, the WTO system will fail the countries involved in achieving its objective: improving social welfare.

This much is not controversial. The key challenges and disagreements arise from the implications that follow from this understanding:

- What sorts of efforts, exactly, are needed?
- Where do the boundaries lie between those efforts that are the mandate of the WTO and those that are the mandate of others?
- In what ways should the WTO collaborate with the institutions that have a mandate to undertake those efforts?
- In what ways should these efforts be linked to the legal rights and obligations of the WTO?

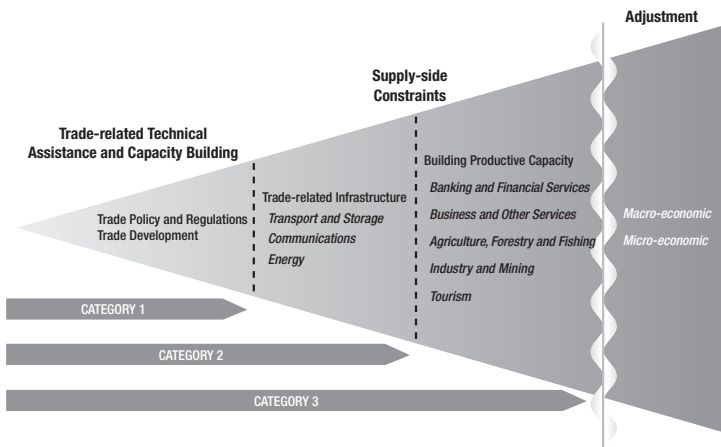
Each of these questions is briefly considered below, not in the hopes of providing a definitive answer, but rather with the intent to help sketch out the roadmap by which the WTO might find its way to answering them.

What sorts of efforts are needed? What is needed is an effective realization of what has come to be called the aid for trade agenda. The WTO's mandate in this area dates back to the 2005 Hong Kong Ministerial Declaration:

Aid for Trade should aim to help developing countries, particularly LDCs, to build the supply-side capacity and trade-related infrastructure that they need to assist them to implement and benefit from WTO Agreements and more broadly to expand their trade.

Since that time the WTO has participated in a broad collaborative process on aid for trade, involving the regional and multilateral banks, UN Agencies and other IGOs. This agenda is defined differently by all involved, but a broad definition would run the gamut from trade-related technical assistance (TRTA) and capacity building, to support for adjustment made necessary by trade liberalization (see Figure 1).

Figure 1: Aid for Trade: The Expanding Agenda



Source: OECD (2006)

The definition used here does not include the sorts of adjustment support that appear at the far right hand end of Figure 1, but does include those elements of the agenda that are necessary for the effective exploitation of the potential gains from trade and trade liberalization:

- **TRTA and capacity building** (focused on capacity building to help countries implement their trade law obligations, but also including training of negotiators and capacity building to help countries utilize the WTO's DSM).
- **Trade facilitation** (this focuses on removing obstacles to trade that might be manifest at the border: helping build the administrative and technical capacity to facilitate the easier movement of goods, helping broker international agreements to that effect, and so on).
- **Trade-related infrastructure** (focused on identifying those forms of infrastructure that might be needed to help fully exploit potential gains from trade opportunities, such as transportation, communications and energy infrastructure).
- **Building productive capacity** (going further to work on supply-side improvements in the areas of banking and financial services, government administration, the legal regime and other elements of the domestic investment climate).

The actions needed will necessarily be particular to each country, and to each sector involved. In some countries, for example, it may be that the presence of a strong financial regulatory system should be in place before the liberalization of financial services. Others will need upgraded transportation infrastructure, others an improved domestic standards

regime or legal reforms. There will, of course, be some common needs across sectors in different countries. The need for a strong financial regulatory system, for example, is likely universal. In each country's case a full assessment would require something along the lines of the Enhanced Integrated Framework's (EIF's) Diagnostic Trade Integration Studies (DTIS), the best of which are excellent at identifying the sorts of measures and domestic institutions needed to exploit potential gains from trade liberalization. Two related questions with respect to the assessments (and of course the implementation that should follow) are: how to ensure significant country ownership, and how to ensure that the agenda is integrated into the countries' broader development agendas. These are challenges on which the current EIF efforts have been criticized in the past, and addressing them successfully is among the central characteristics of any effective aid.⁴³

Which of those efforts should be the responsibility of the WTO? Trade pundits are fond of arguing that the WTO is not a development organization. This does not mean that the WTO is not devoted to development, as its stated objectives clearly show. Rather, it means that the WTO is not expert or mandated to work in non-trade related areas of the development challenge. Clearly we would not want the WTO to take on the challenge of reducing maternal mortality, or increasing public education in its Member countries.⁴⁴ The key is to define those sorts of positive efforts in which the WTO *should* play a role.

As noted above, the WTO's mandate in the area of aid for trade dates back to the 2005 Hong Kong Ministerial Declaration, which commits the process to helping developing countries, and particularly LDCs, to build supply-side capacity and trade-related infrastructure to help them exploit the potential gains from trade liberalization. In fulfilling that mandate, the WTO has helped lead a collaborative process on aid for trade, involving the regional and multilateral banks, UN Agencies and other IGOs. But it has been careful to circumscribe its role and mandate in these efforts. The 2008 Aid for Trade Roadmap clearly shows the WTO as most comfortable in the role of a facilitator of the agenda, involved most directly in the areas of networking, monitoring, evaluation, and decidedly inactive in the areas of assessment and implementation. Together with the OECD, the WTO has been responsible for the elaboration and implementation of a system for monitoring the flow aid for trade funding that functions within the OECD's existing regime for reporting on official development assistance.

43 See the Paris Declaration (2005). There are of course some success stories. Nepal, for example, has adopted its DTIS as its Poverty Reduction Strategy Paper.

44 Though note the links between an educated population and the ability to exploit the potential gains from trade liberalization.

Yet the WTO has in the past given itself a much broader mandate than that. Annex D of the WTO's July 2004 General Council Decision⁴⁵ laid out those areas in which the WTO should be involved in a reasonable and progressive fashion in the context of trade facilitation:

- It should make discreet rules changes to GATT Articles related to border procedures and rules;
- It should pursue technical assistance and capacity building to help developing countries improve the functioning of their customs regimes;
- Developing country Members should identify their trade facilitation needs and priorities;
- Developed country Members should support the efforts of developing countries to do so, and to negotiate generally in this area;
- Developed country Members should support infrastructure development costs that might be implied by developing country commitments in the negotiations;
- The WTO should collaborate with others who have broad mandates in this area [e.g., IMF, OECD, United Nations Conference on Trade and Development (UNCTAD), World Customs Organization and World Bank] to achieve greater effectiveness of its efforts.

Note that the planned commitments to financial support are non-enforceable, though they are listed as pre-conditions for developing countries being held to their commitments, which is an innovative mechanism. A serious commitment in this area would involve a significant and stable funding base.

The question is where to draw the line. Clearly the WTO should be active in the area of TRTA and capacity building, which are matters related to its core expertise. Trade facilitation, which is now part of the negotiating process and treated separately from aid for trade, and which for some countries may harbour much lower hanging fruit than liberalization in terms of exploiting gains from trade, should also be part of the WTO's core mandate. But the WTO clearly has no expertise to go beyond this to direct involvement in assessing supply side constraints and helping to implement programs to address them.

How should the WTO collaborate with others on this agenda? The mandate recommended above still leaves a good portion of the necessary work to others (including IGOs and national governments in the countries involved). It is central to the WTO's mandate to ensure that the necessary efforts are undertaken to make trade liberalization deliver its full potential to developing country Members. Recall the key passage

45 WT/L/579, 2 August 2004

from the Agreement Establishing the WTO, and the discussion on the WTO's mandate from Section 2, on the need for positive efforts.

The WTO arguably has a strong mandate—even an obligation—to ensure that efforts on aid for trade are successful. This may constitute a mandate to spearhead those efforts if others are not doing so, and certainly extends to its current efforts to assess the success of the overall collective effort, looking for gaps. It may be that the need here is for an expanded mandate for the EIF, beyond just least-developed countries, to help manage the process of aid for trade in all developing countries. In considering such a role for the EIF, or for any other such collaboration, the lessons of the current efforts are salient. Two in particular stand out as key:

- There needs to be a stable and adequate funding base to make implementation a reality. Too often the Integrated Framework rendered excellent assessment of the problems, but then was unable to muster donor support to address them. The EIF is somewhat more successful in this regard, but still faces funding constraints and lack of predictability.⁴⁶
- There needs to be much stronger country ownership of the process, and a mainstreaming of the process into existing national processes designed to identify and address development needs.

None of this is particularly new, and none of it is proposed in ignorance of the immense challenges posed by the sort of inter-institutional collaboration that is needed.

In what ways should the agenda on aid for trade be linked to the legal rights and obligations of the WTO? Before the present Doha impasse, in the crush of effort to garner agreement on a package that would satisfy a critical mass of Members, there seemed to be plenty of will on the part of the WTO and some Members to pursue an effective agenda on aid for trade, even if there was not always agreement on what that agenda entails. This may not be the case if and when the Doha talks are concluded. It would be foolish (and ignorant of history) for developing countries to sign up to a deal that entailed hard law commitments within the Doha talks and soft unlinked commitments by developed countries to an agenda on aid for trade.

What sorts of linkages are desirable and feasible? One of the immediately obvious challenges is that many of the elements of the aid for trade agenda lie beyond the responsibility of the WTO. Is it possible to link commitments by, say, the World Bank, to commitments within the WTO?

Arguably it is. The current Aid for Trade roadmap focuses on developing performance indicators and better tools for monitoring the effectiveness

46 WTO/OECD (2009).

and results of aid for trade. Though not easy, it would certainly be possible to devise a system that linked those indicators to developing country obligations in the WTO. It would probably make most sense for obligations to be as closely linked to indicators as possible, for example linking commitments on TRIPS and customs valuation to the provision of effective aid in implementing those agreements. A number of WTO Agreements in fact contain best-effort clauses on implementation-related TRTA to least-developed countries: TRIPS, Customs Valuation, SPS, TBT, Pre-shipment Inspection, General Agreement on Trade in Services (GATS), Agreement on Trade-Related Measures (TRIMs) and the Dispute Settlement Understanding.

But the links could go more broadly than that as well, and would *have* to in the context of programmes to alleviate supply-side constraints, there being no obvious link to any WTO Agreements. There might even be links to developing country commitments on market access. This would be controversial, precisely because of its powerful potential for leverage.

There is some precedent in the WTO for linking commitments to objective assessments of capacity in the committing state. Paragraph 2 of Annex D of the July 2004 framework, on trade facilitation, reads:

The results of the negotiations shall take fully into account the principle of special and differential treatment for developing and least-developed countries. Members recognize that this principle should extend beyond the granting of traditional transition periods for implementing commitments. In particular, the extent and the timing of entering into commitments shall be related to the implementation capacities of developing and least-developed Members. It is further agreed that those Members would not be obliged to undertake investments in infrastructure projects beyond their means (emphasis added).⁴⁷

Beyond the reference in Annex D this sort of linking is an exercise unprecedented in WTO experience. But it may be necessary for two reasons. First, it is clear that achieving the WTO's basic objectives depends on successful "positive efforts" of the type referred to in the preamble of the Agreement Establishing the WTO. Moreover, it is unfair to ask developing countries to enter into a deal that offers benefits that are constrained by their domestic deficiencies, but which will accrue in much greater measure to developed countries that are better able to exploit the opportunities. And second, it is doubtful that best effort commitments on aid for trade (including trade facilitation) will amount to much more than did the many best effort commitments of the Uruguay Round, which is to say: very little.

47 WTO. Doha Work Programme: Decision Adopted by the General Council on 1 August 2004. WT/L/579.

It should be noted that if such an effort is successful, it will constitute a much more effective vehicle for SDT than the current blunt instruments of longer timeframes for implementation and special trade preferences. While there still might be room for differential commitments based on different circumstances,⁴⁸ these would not have to rely on the outmoded and ineffective division between self-declared developing countries and the rest of the WTO Members.

Indeed, an effective aid for trade regime, based on actual circumstances within the recipient countries, would eclipse the central existing problem of making SDT meaningful: that no developed country will commit to doing so as long as Brazil and Botswana both merit the same special treatment. Failing such a regime, however, there is an urgent need to address the problem. The obvious deal, waiting to be consummated until both sides trust each other enough to move towards it simultaneously, is an admission by the self-declared developing countries that differentiation and graduation are necessary, in return for agreement by the developed WTO Members to devote additional and significant resources to supporting those countries that are most in need of assistance, and to allow flexibilities in favour of those countries in the implementation of their negotiated commitments.

4.3

The negotiation process

Analysis of the negotiation process will focus mainly on development concerns. These fall into two main areas. The first is a concern over the inclusiveness of the process of negotiation. In the past, there was extensive use of the Green Room small group negotiations, which involved only a few selected representatives, no clear selection process, and no formal agenda. The results, where they were successful, were presented to the Parties at large who were more or less expected to sign on. Of course such a system disadvantages those who are not in the room— weaker developing countries.⁴⁹

The process is not now as odious as it has been in the past, and in fact has shown signs of marked improvements over the last few years. As recently as the spring of 2007, the critical Doha agricultural negotiations had boiled down to a series of negotiations among the G4 (U.S., EU, India and Brazil) in closed meeting talks. Smaller developing

48 In fact, such differential treatment is the norm in many areas of the negotiations, though the basis for differentiation may not be the division between developed and developing countries. In the current Non-Agricultural Market Access Negotiations negotiations, for example, it is accepted that the depth of demanded tariff cuts will depend on existing tariff levels.

49 Ismail (2005).

countries, for which the stakes could not be higher, were simply not represented. After the breakdown in negotiations in Potsdam in June 2007, the African, Caribbean and Pacific Group; the Africa Group; the LDC Group; Bolivia; and Venezuela issued a joint statement that, among other things, was highly critical of such a process as inadequate to ensure that their development interests were addressed.

A major positive feature of the multilateral trading system is the principle that it allows all trading partners the opportunity to participate in making the rules. The legitimacy of the WTO rests on whether this principle is adhered to. We have been concerned that the recent negotiating process has been less than transparent and participatory. Although it is widely known that important negotiations are taking place in the G4 process, the vast majority of members have little or no knowledge of the progress and content of different stages of the negotiations. ... We are concerned that members may be faced with texts arising from small plurilateral processes and requested to consider them at very short notice and to adopt them for the sake of the system.⁵⁰

As noted, however, there has been a marked improvement of process, led by the strength of groupings such as the G20 and other issue-centred coalitions of countries demanding more meaningful participation. There is still far to go, and the challenges are greatest precisely when the stakes are highest; the failed Ministerial meeting in July of 2008 that was supposed to finally agree on the framework of a Doha deal was marked by the bitter protests of a number of Ministers who, having been summoned to Geneva, ended up sitting on their hands waiting for the results of the small group negotiations.

The other problem with the negotiation process is far more fundamental. It is that the traditional practice of negotiation seems to be incapable of delivering a non-mercantilist result. It was noted above that despite the noble altruistic goals espoused in the Marrakesh Agreement and the Doha Declaration, the Doha negotiations seem to be more or less business as usual—a fierce grab-fest to be won by the powerful, dedicated to the appeasement of narrowly-cast national interests. True, this is no more than business as usual, but the issue is that Doha was not supposed to be business as usual, and that business as usual may not in the end be able to contribute much to sustainable development.

Moreover, business as usual makes no sense in light of the myriad international commitments the international community has made to foster development in the South, the explicit objectives of the trade regime or even, for that matter, in light of the reality that industrialized

50 Declaration on Development Concerns and Issues in the Current Round of WTO Negotiations. Geneva, 21 June 2007.

countries have a vested interest in seeing strong Southern trading partners. As Stiglitz (undated:36) argues:

Political globalization has not kept pace with economic globalization: issues of international trade agreements are seldom looked at through the same kind of lens that we look at domestic legislation. We do not demand that the poor give up an amount commensurate with what they get. Rather, we talk about social justice and equity.

A result that respects the modern elements of the WTO's objectives would have to be based on non-reciprocity in some significant measure, and would need to be informed by the best possible analysis, to allow negotiators to determine which proposals have what impacts in terms of development and the environment. The key challenge is to imagine a process, whether it is a negotiation or some other sort of process for decision-making, that is not driven by mercantilism and the principle of reciprocity. Ultimate progress in negotiations will of course depend on the instructions given to negotiators by their capitals. If those instructions run counter to the WTO objective of sustainable development, then the final result will also run in that direction. The ability of any institutional innovation in the negotiation process to influence these instructions is limited.⁵¹

But at least one possibility offers some promise. It aims to overcome the key problem: that even if all parties agree that trade, trade policy and trade negotiations should support sustainable development, the question remains how best to do so. Can development be fostered, for example, by flexibilities that allow for infant industry protection in developing countries; by soft IP rights regimes in those countries; or by requirements placed on the performance of foreign direct investment, such as joint venture requirements?⁵²

These are empirical questions, the answers to which are fundamentally important to the proper design of the trade rules that comprise the WTO system. Yet in the absence of any definitive empirical guidance, national negotiating positions are free to be determined by national interests rather than the basic objectives to which they should be aiming (according to the agreed social objective of sustainable development). It is not surprising that countries invariably choose to subscribe to the school of policy advice that suits those national objectives.

51 As Robert Wolfe (2007:62) has noted, "If the WTO is medieval, it is because the world is too." Wolfe here is referring to the famous quote by then head of the EU's DG Trade, Pascal Lamy, after the breakdown of talks in Cancun in 2003, on the medieval nature of the organization.

52 Kumar and Gallagher (2007) argue that the answer to all these questions is yes, and that the current rules curtail the ability of developing countries to pursue development by using flexibilities that were in fact used by developed countries on their own paths to development. Ha Joon Chang (2003) and Kwa (2007) make similar arguments.

The situation is one that other international agreements have faced and successfully addressed. There is a need for objective technical advice, that all can agree is authoritative, that can respond to the needs of the negotiation process. Provision of such advice could never substitute for negotiation—technical advice is always merely grist for the mill that is policy-making. But, faced with clear advice on specific questions of relevance, Members would have a harder time reaching agreements that worked against the objectives they are supposed to be achieving. And the very existence of such advice, and of the institution that provided it, would provide a needed focus on the need to achieve those objectives, a reminder that there is a higher purpose than mercantilism supposedly driving the negotiation process.

One of the most successful intergovernmental advisory institutions is the Intergovernmental Panel on Climate Change (IPCC), a body created in 1988 by the World Meteorological Organization and the UNEP to feed into the climate change negotiations with objective information about the causes of climate change, its potential environmental, social and economic impacts, and the options for responding. It is governed by a plenary consisting of representatives of the Parties who, among other things, request that specific studies be carried out and approve all Panel reports. The IPCC's best known products are the regular assessment reports—multi-year collaborations involving Plenary-appointed lead authors coordinating teams of over a thousand scientists, economists and other professionals to deliver authoritative information on the state of the science, the options for mitigation of GHG emissions, and the economic and social impacts of climate change. The most recent assessment report in 2007 arguably laid the basis for agreement on a roadmap to a successor to the Kyoto Protocol, showing in concrete terms what sort of emission reductions need to take place to achieve what targets under various scenarios. The Plenary also regularly commissions special and technical reports on specific subjects of interest (usually in response to requests deriving from the negotiating process). While the IPCC is designed to aid the UNFCCC negotiations, it is completely independent of them and of the Secretariat, and is staffed and run, below the plenary level, by technocrats.

An analogous body in the WTO context—an Intergovernmental Panel on Trade and Sustainable Development (IPTSD)—could be charged, for example, with synthesizing the available peer-reviewed literature, or conducting original research, on any number of questions that have relevance to trade law and trade negotiations. Along the same lines, Ostry (2006) has called for a coalition of middle powers to launch an analysis and discussion, in an exercise completely separated from the negotiations, to get answers to these sorts of basic questions. One could imagine

a large number of such questions, on which synthesized empirical evidence would be of some use:

- How should agricultural liberalization be sequenced, and what flanking policies employed, to minimize the pain of adjustment for small-scale farmers?
- What does the evidence tell us about the potential and pitfalls of the various forms of infant industry protection?
- What domestic institutions are necessary prerequisites to a successful liberalization of services such as telecommunications, financial services, and other services in developing countries? What kinds of sequencing are necessary?
- What can we say from the experience of unilateral liberalization of trade in non-agricultural goods about the results, in terms of economic, social and environmental impacts? What are the key ingredients of success?
- What are the key barriers that need to be addressed by any WTO collaboration aiming to help least developed countries better exploit the potential gains from trade liberalization? That is, what does the evidence tell us about the existing barriers to trade and investment in those countries?
- What does the evidence tell us about the effectiveness of current trade preferences offered under the framework of SDT?

An IPTSD could also be charged with running regular modelling of the impacts of negotiating outcomes for all Members. Of course this is currently done by a number of institutions, including the World Bank and the WTO's own research division, but it would clearly be preferable to have such exercises conducted by a body with no appearance of bias or agenda. It would also be useful to widen the mandate to include social and environmental considerations, to the extent possible.

Some might argue that the sorts of questions posed above are not amenable to easy and definitive answers, and that there will always be differences of opinion on them. The same challenges, and yet in larger measure, face the IPCC, which is charged with answering questions on which there is no consensus among various branches of natural and social science, and often no consensus among the IPCC contributing authors. At the end of the day, while some questions are more straightforward than others, it is always possible to provide useful policy advice. It might also be objected that such an advisory body would slow down the already difficult negotiations, depriving them of the urgency that tends to lead to results. But if we refer to the climate change negotiations—just as fraught with national interest questions

36 and complexity as those in the area of trade—we can see that this is not necessarily the case.

To repeat the argument made earlier in this paper: no institutional innovation will *force* governments to neglect national interests where they diverge from the interests of achieving the WTO's broader objectives. What can be done, though, is to provide an empirical grounding for the negotiations that is currently sorely lacking, one that focuses on helping show publicly and objectively how those negotiations and the WTO as a whole will (or will not) best achieve their stated objectives.

4.4 Multilateral governance

One of the key benefits of the multilateral system of trade, particularly from the perspective of small economies, is the enshrinement of the principle of MFN. That is, any preferences accorded to a Member by another Member must similarly be extended to all Members. This means that even those developing states without the resources to hammer out meaningful bilateral deals on market access and other disciplines are still provided the benefits that might come from such deals, merely by dint of their membership in the multilateral system. Without the benefit of such a principle, smaller states might find themselves left behind as the more powerful trading nations cut deals among themselves that, in their opinion, were not worth the effort to also negotiate with less developed countries. This would, of course, work against the economic prosperity and development objectives described above for the WTO.

How well is the WTO doing at performing this critically important job of multilateral governance? Not well. It is telling that many readers will by now have already understood where this analysis is going, so pervasive is the problem. The web of bilateral and regional trade agreements that has mushroomed since the 1990s has encompassed most of the globe, but has left large geographical areas, such as Africa, out in the relative cold.

WTO (2007:138ff) surveys some of the evidence for the argument that such a phenomenon would harm non-members of regional trade agreements. Bhagwati (2002), writing at a time when the rush to regionalism was in its relative adolescence, argues strongly that this proliferation critically undermines the principle of MFN. Legally, GATT Article XXIV and GATS Article V, which are known as the WTO's preferential trade agreement exception articles, allow for RTAs provided they meet these three criteria: trade barriers with non-signatories are not raised, the free trade area should be fully established within a reasonable transition period, generally interpreted as no more than 10 years, and lastly, the tariffs and regulations should be eliminated for "substantially all sectors." The latter has been subject to various

interpretations, with some debating whether “substantial” should mean sheer trade volume or the most significant traded products.⁵³ Most agreements lean towards the latter; by its subjective nature, this interpretation allows countries greater scope to protect key sectors.

None of these provisions does anything to safeguard the principle of MFN, even if they were widely respected, and many argue that they are not.⁵⁴ To put the problem into the terms under which it has been debated since Viner’s (1950) classic treatise, RTAs might reduce the welfare of non-parties—and even of the parties themselves—by causing RTA consumers (either final consumers or producers consuming inputs) to switch from buying efficiently produced non-RTA partner goods to those produced less efficiently by RTA partners. This switch would occur if the differential between the internal and external tariff barriers were high enough to make the inefficient RTA goods sell more cheaply. Strict rules of origin can also mimic this effect, as can non-tariff barriers imposed externally but resolved among RTA parties. All can cause less efficiently-produced goods from within the RTA to replace non-RTA imports. In a much-cited study, Yeats (1998) found evidence of trade diversion within the Mercosur. A meta-analysis by World Bank (2004) found that of 19 FTAs examined, 10 seemed to create net trade diversion. And Schiff and Winters (2003), surveying the literature, found similar evidence.

Trade diversion is not an automatic result of RTAs. Agreements among economies that are already relatively open will not have much diversionary effect. And it may be that the dynamic effects of restructuring that result from RTAs will increase productivity—a welfare increase that must be counted against the losses from diversion. But even in this case, the benefits and losses are unevenly distributed, with dynamic benefits accruing to the RTA parties and not so directly to non-parties.

Bhagwati and others also object to the creation of a maze of different rules that exporters must know and comply with across their different export markets, the product of different regulatory arrangements among RTA partners. This, they argue, creates difficulties for exporters that the multilateral system was expressly designed to vanquish. This is another aspect of the problem, though perhaps not as fundamental, which again may end up adversely affecting those that are not party to many RTAs and are trying to prise open new markets.

In the final event, if the world is divided into those that are party to many RTAs and those that are not, the latter will be economically worse off. The WTO is the guardian of a system founded on MFN, and is dedicated to equitable sharing of the gains from trade, but seems incapable of doing the job.

53 See Matsushita (2004); Davey (2003); Trachtman (2002).

54 See Cosbey *et al.* (2004).

The WTO, however, cannot be thought of as an institution apart from its constituent Members. If the WTO is failing to address this challenge, it is precisely because the Members do not want to address it. Those enmeshed most heavily in the web of RTAs clearly have no interest in a stricter WTO policing of RTAs. Even those on the periphery of the game may be hesitant to push for rules that might obstruct their plans to become further engaged in the future. As it is, only one of the WTO's Members—Mongolia—is not party to at least one RTA. There will be no strong action within the WTO on this issue until those who are vulnerable to the effects of exclusion, or the affected exporters of various countries from within the spaghetti bowl, come to the conclusion that action is necessary, and push for reform. This is a matter for further research too, aimed at identifying the impacts of the rush to regionalism, and would be an appropriate topic for consideration by the intergovernmental panel proposed above.

4.5 Dispute settlement

The dispute settlement system is widely touted as one of the crowning achievements of the Uruguay Round of negotiations. As a reasonable and predictable body of jurisprudence has been established, there has been a commensurate decline in the percentage of appealed cases. As the bottom line in compliance with a system of rules that puts all countries on a level playing field, the DSM should be one of the most valued features of the regime for small economies.

But in fact the DSM does not work all that well for small states, causing some leading analysts to ask: where are the “missing” developing country cases?⁵⁵ One key problem, as recognized by the Sutherland Report on the future of the WTO,⁵⁶ is that the first recourse in the event of non-compliance—a suspension of previously-granted obligations—is useless or even counter-productive for smaller economies. As a threat that encourages compliance, suspension of obligations may be useful. But the smaller the economy involved the less effective it is, to the point where it constitutes a penalty that non-compliers might readily prefer to upsetting protected domestic interests. And in actual practice, suspension of obligations (which in the context of goods, means raising import tariffs) may simply make a variety of goods more expensive for domestic consumers in the applying state.

There are other problems as well that make the system less valuable for smaller economies. The cost of pursuing dispute settlement is prohibitively high for small economies, which must hire foreign legal experts and pay them at foreign wage levels. Bown and Hoekman (2005) estimate

55 Bown and Hoekman (2005).

56 Sutherland *et al.* 2004:58.

the cost of an average dispute at US\$500,000, not counting pre-litigation groundwork or the post-litigation lobbying and public relations necessary to ensure compliance. For anything less than a predictably winnable case with sizable economic impacts, this puts dispute settlement out of the reach of most less-developed countries.

Another important part of the calculus for such countries is the possibility that even if they win, they may lose. Many such countries are easy prey for retaliation by more powerful countries that grant them GSP or other privileges, and that control substantial ODA flows. The fear of such retaliation again may lower the expected benefits of pursuing litigation.

One suggested solution to these problems is to allow for the possibility that the non-complying Member could pay monetary penalties to the complainant.⁵⁷ For smaller economies, this would avoid the self-penalizing nature of traditional retaliation. It should be stressed, however, that the “first best” result from a dispute is compliance with rulings, the changing or removal of the offending measures. Allowing for monetary payments in the event of non-compliance might eventually lead to an unfortunate level of comfort with the option of non-compliance and payment. Nonetheless, such a system would be an improvement on the status quo. There is, after all, already an increasing level of comfort with non-compliance and traditional retaliation.

Another possibility is cross retaliation. Traditionally if it is a dispute over goods, the successful complainant will be allowed to suspend obligations on goods, increasing import duties on a range of goods imported from the respondent. Similarly if the dispute is over services, then obligations under GATS would be suspended. But if imports under one agreement are so low as to make this an ineffective lever for change, then the complainant might, for example, ask for the right to suspend obligations in a different agreement. This was the case in *U.S.-Gambling*, where Antigua argued that the U.S. had violated its GATS commitments. Antigua argued further that its imports of services from the U.S. made it not practical or effective to suspend obligations under that Agreement, and successfully sought permission to suspend obligations under the TRIPS Agreement instead.⁵⁸ This was the second time such a solution was proposed, and the result seems to go some way toward addressing the problems of ineffectiveness cited above. As a general solution for small economies pitted against large ones, however, it is limited to those cases where the complainant can find some sector that does indeed have some leverage.

57 *Ibid.* paras. 241–243.

58 See *United States – Measures Affecting the Cross-Border Supply of Gambling and Betting Services*. Recourse to Arbitration by the United States under Article 22.6 of the DSU. Decision by the Arbitrator. WT/DS285/ARB, 21 December 2007.

Another problem with the current system of dispute settlement in the WTO is its lack of openness. Basic proceedings under the dispute settlement mechanism are closed to the public, and the arguments of the parties to any dispute are restricted documents. This prevents actors at the domestic level from effectively monitoring how their representatives are arguing, ostensibly on their behalf. Environmental groups in particular worry that the interest of the environment, even when espoused strongly in public by their respective governments, will not be adequately championed in private settings when they it clashes with economic interests.

As well, while procedures have been developed whereby dispute panels and the AB can accept and consider *amicus curiae* (friends of the court) briefs on particular disputes from non-Members, these are operated on a case-by-case basis, and offer no *ex ante* certainty about the prospects of acceptance in any given dispute. Such briefs can add important public interest arguments to those submitted by the Parties to a dispute.

The solutions for this problem are relatively straightforward. The hearings of the panels and AB should be made public, and the submissions of the parties to any dispute should likewise be made public (with provision to withhold any information that is of a confidential commercial nature). And, while there now exists accepted procedure for panels to deal with *amicus curiae* briefs, there should be an explicit set of procedures agreed for doing so on a regular basis.⁵⁹

4.6 Accession

As of this writing, 29 countries are in the process of accession to the WTO.⁶⁰ Another 25 have acceded since the establishment of the WTO in 1995. From the perspective of developing and least-developed countries, the accession process has two major flaws: first, it is complex and far too slow, and second, it involves commitments that are in conflict with the basic goals of the organization.

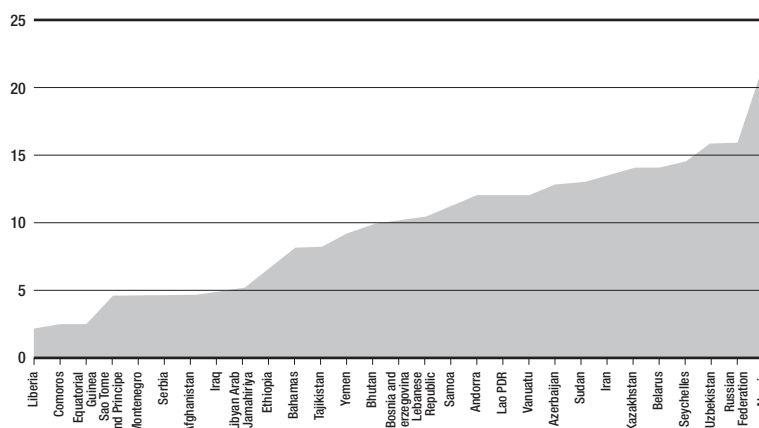
On the first concern, Figure 2 shows the number of years the current batch of accession countries have been in process.⁶¹ By any reasonable standard, many of these negotiations are taking too long, and Evenett and Primo Braga (2005) show that the delay is actually lengthening over time. While some of the delays can undoubtedly be explained by

59 All of these recommendations for openness were made in 2004 by the Consultative Board to the Director-General of the WTO—a highly respected and influential group (though apparently not influential enough to have convinced the members to embrace these particularly sensible suggestions). See Sutherland *et al.* 2004, Chapter VI.

60 Current as of August 2009.

61 The data used in this Figure are taken from the WTO Web site's *Summary Table of Ongoing Accessions* (http://www.wto.org/english/thewto_e/acc_e/status_e.htm) accessed 1 August 2009. The table itself notes, however, that it is current as of April 2009.

Figure 2: Years in Waiting: WTO Accession
(years since application, as of August 1, 2009)



the magnitude of the reform that is necessary in the countries themselves, some of the delay can also undoubtedly be attributed to the process. The requirements span no less than 20 identifiable steps, including the need to negotiate bilaterally with any WTO Member that decides to join the candidate's Working Party on Accession. The burden falls most heavily precisely on those states that are weakest, with the fewest resources available to devote to the process.

The second concern is related. The terms of accession have surprisingly little legal detail, and are laid out in Article XII of the Marrakesh Agreement Establishing the WTO, paragraph 1 of which states:

Any State or separate customs territory possessing full autonomy in the conduct of its external commercial relations and of the other matters provided for in this Agreement and the Multilateral Trade Agreements may accede to this Agreement, on terms to be agreed between it and the WTO. Such accession shall apply to this Agreement and the Multilateral Trade Agreements annexed thereto.

The key problem is the process for determining terms acceptable to the WTO. In practice, among the requirements this entails is consent from each of the Members that have declared they want to be part of the candidate's Working Party on Accession. That consent is negotiated bilaterally, in an exercise that gives inappropriately powerful leverage to any individual Member, and has the proven potential to import tensions and disagreements that have nothing to do with trade relations.

A number of analyses of WTO accessions seem to bear out the general perception that the commitments and concessions that result from this

process are arduous.⁶² As a rule, recently acceded developing and least-developed country Members take on obligations far in excess of those that apply to existing Members at the same level of development. In fact, as Table 1 shows in the context of tariffs, many of the obligations of least-developed accession countries exceed those that apply to *developed* country Members. China, which acceded as a developing country, committed to non-agricultural bound rates much closer to its applied rates than most developed countries.

This sort of treatment is all the more surprising in light of the SDT normally accorded to developing and least-developed countries in the WTO. UNCTAD (2004) looks at the case of the first three LDC accession candidates: Nepal, Cambodia and Vanuatu, and finds that all three fit this pattern. For example, Cambodia and Vanuatu have foregone their right to use export subsidies in agriculture, a right accorded to other LDCs. All three accepted transition periods significantly less than existing LDC Members to comply with Agreements such as TRIPS, TRIMs and Customs Valuation. Razzaque, Ognitvsev and Grynberg (2002) analyzed services sector commitments of accession Members and found them to be significantly higher than those undertaken by existing Members at similar levels of development.

Table 1: Accession Country and Existing Member Tariff Commitments

	Percentage of tariff lines bound	Peak bound rates for agriculture	Peak bound rates, non-agricultural
Accession countries			
Nepal (LDC)	100	200	130
Cambodia (LDC)	100	60	50
Vanuatu (LDC)	100		
WTO Members			
Tanzania, Cameroon (LDCs)	13.3		
Myanmar (LDC)		550	550
Maldives (LDC)			300
Romania (developing)			220
Rep. of Korea (developing)		887.4	
Australia	97		48
Canada	99	238.4	
United States	100	350	

Adapted from UNCTAD (2004:61)

62 See, for example, Kennet, Evennet and Gage (2004); UNCTAD (2004: Part One, Chapter 3); Qin (2003); Razzaque, Ognitvsev and Grynberg (2002); Oxfam (2001).

There is no justification for acceding Members to take on commitments, and forgo rights, in excess of what existing Members, at their level of development, have done. The only tenable justification for any bilateral negotiation on accession is in the services context, where the negotiations and commitments are by nature differentiated by country according to the outcomes of the request and offer process. Even here, however, the objectives of the WTO dictate that concessions demanded should be in line with the development levels of the candidate states—a proposition affirmed by the General Council in 2002 as part of guidance on the accession of LDCs (but arguably never put into practice).⁶³

In summary, the status quo is inequitable, allows for inappropriate political leverage, and may work against the basic objectives of the WTO system in general.⁶⁴ This is a system shockingly unworthy of a central pillar of global economic governance. However, in practice how big a problem is this? The WTO, as of August 2009, had 183 Members and observers, including every major economy and most minor ones. Is the outrage over accession expressed here a concern come too late?

It is not too late for those countries that have not yet acceded. Admittedly these are not many, but as an indication there are 15 countries that are UN members that are not yet Members or observers at the WTO.⁶⁵ Nor is it too late for those among the 29 countries in the process to have the rules changed to their benefit (should they so desire). A practical objection is that this would be unfair to the newly acceded states, which might press to revisit their completed terms of accession. A distinctly unpractical answer is that such revision might in fact be the right thing to do. A more pragmatic answer is that what's done is done (particularly when it involves legal commitments), and the best we can do is to worry about making the future better.⁶⁶

The key requirement is a new protocol on accession that would scrap the current requirement for agreement by each member of the Working Party on Accession—a requirement that leads to the need for bilateral negotiations with each—and replaces it with guidelines that can be evenly applied to all potential acceding Members. These would

63 WTO (2002).

64 Whether this last point is true, or whether deep unilateral liberalization is in fact good for acceding members, is an empirical issue that might be usefully addressed by the advisory body recommended in the previous section.

65 They are: Democratic Republic of Korea, Eritrea, Kiribati, Marshall Islands, Micronesia, Monaco, Nauru, Palau, San Marino, Somalia, Sudan, Syria, Timor-Leste, Turkmenistan and Tuvalu.

66 There might also be increased pressure from newly acceded states to receive SDT with respect to obligations in WTO negotiations on liberalization. Such pressure is already part of the negotiations. To the extent that re-writing the rules for future accession gave greater force to the demands of the newly acceded, it would probably be a good thing from a sustainable development perspective.

need to be able to tailor requirements to the particular circumstances of each accession process, based on the characteristics of the acceding country. Tariff schedules should be determined by reference to those allowed to countries at similar levels of development. Regulatory requirements, such as under the TRIMs Agreement, would similarly be based on requirements made of existing Members at similar levels of development, with boilerplate timelines for implementation after accession. While this sort of cookie-cutter solution would be difficult to formulate, given the unique challenges offered by each country's particular mix of circumstances and history of trade policy development, it could be done without too much effort.

The result would be an accession process that had pre-determined, rather than moving, goalposts, and would not discriminate among countries based on their capacity to drive good bargains, or on their good political relations with potential *demandeurs*. The question of whether any given candidate actually meets those fixed targets would still be the subject of discussions among the members of each Working Party. But final authority to approve or reject any given candidate should be taken out of the hands of Working Party members and vested in a WTO body charged with upholding the rules laid out in the protocol on accession. In a similar way, and in a similar move toward maturity of global governance, the Uruguay Round placed the task of arbitrating the rules of the multilateral trading system in the dispute settlement body, removing the ability of individual Members to block consensus on any given dispute panel ruling.

This reform would deal with both of the problems identified with the current system: the unreasonable amount of time taken in accession (since it would remove the need for multiple bilateral negotiations), and the unreasonable demands made of candidate countries in the process.

Heading Down the Road

This booklet has argued that the GATT, like its institutional descendent the WTO, was carefully crafted to balance the need to allow governments to act in pursuit of domestic social good, and the need to avoid mutually destructive protectionism. The analysis starts from the premise that it is possible to have a multilateral system of trade that is dedicated to the achievement of non-economic public policy goals.

Further, it has argued that the WTO has explicitly enunciated sustainable development as one of the key objectives to which it should contribute, within its own mandate and areas of expertise. It then surveyed a number of areas of WTO operation to assess the degree to which the WTO is indeed contributing to sustainable development. In all but the area of increased incomes—an area to which it can be argued that the WTO is contributing strongly—it finds disappointing results.

The paper then attempts to lay out a roadmap for the WTO, on the premise that the organization takes seriously its explicit objectives, including the need to contribute to sustainable development. Only a dedicated and inclusive process could elaborate such a roadmap with any legitimacy, but a number of areas of promise are explored here as potential elements of a final roadmap. They include:

- **Assessment:** The WTO should create a regime that will assess how well it is doing in achieving its objectives in the area of sustainable development. The regime should perform two basic functions: the “paragraph 51” function of monitoring and commenting on ongoing negotiations, and a broader regular assessment against a roadmap of elements such as the one elaborated above. Ideally both functions would be performed by third parties, that is by a credible, legitimate group with broad expertise on the matters of economy, environment and development and their relationship to trade law.
- **Environment:** The WTO should take the lead in liberalizing trade in environmental goods and services, on reducing or eliminating perverse subsidies (such as fisheries and fossil fuel subsidies), and on any needed amendments to the TRIPS Agreement to make it compatible with obligations under the CBD. It should also grant observership to MEAs in WTO Committees. The WTO should attempt, in an exercise that included *inter alia* environment Ministry officials, to negotiate agreed understandings or guidance on what WTO law says on the subject of PPM-based discrimination, and on the precautionary principle. It should ensure that oth-

ers act to address at least two other items on the trade-environment agenda, but not take a lead role: the cluster of issues that includes market access, standards and labelling; and assessing the broad impacts of trade on the environment.

- **Development:** The WTO should be actively leading in the areas of trade-related technical assistance, capacity building and trade facilitation. It should be spearheading a collaboration that has others going further than this, to efforts designed to build up trade-related infrastructure, to build productive capacity and to strengthen the domestic institutions that are key to a healthy investment climate (bureaucracy, judiciary, regulatory bodies, etc.) The WTO should explore developing a system of indicators that would link successful aid for trade to related trade law commitments.
- **Negotiation:** The WTO should create an independent advisory body staffed by technocrats, modelled along the lines of the IPCC. The body (referred to hypothetically in the text as the IPTSD) would be charged by the Members with delivering advice on a range of empirical questions of relevance for the achievement of sustainable development through trade law and policy. Such a body would improve the quality of the negotiations, which urgently need to find some reliable manner to link to the Organization's objectives, rather than merely to mercantilist national priorities.
- **Multilateral governance:** The WTO should convene research at a level adequate to inform the Members—particularly the least developed among them—whether the rush to regionalism harms their prospects for sustainable development. This is not a methodologically simple question, and much research has already been carried out. But a dedicated effort to advance understanding on this question would nonetheless be welcome.
- **Accession:** The WTO should create a new agreement on accession that lays out objective criteria for deciding what obligations any given acceding Member should undertake. The agreement should contain an approval process that eliminates the need for bilateral negotiations with all interested parties.
- **Dispute settlement:** The WTO should explore the possibility of monetary payment as penalty for non-compliance with DSM rulings, this being an imperfect but superior solution for the problems that smaller economies encounter with the existing system. The WTO should make all submissions public documents, and should open up all dispute settlement proceedings to the public.

This roadmap can hardly be faulted for a lack of ambition. The primary source of that ambition is the underlying assumption adopted at the beginning of this analysis: that the Members took seriously the commitments expressed in the Agreement Establishing the WTO and the Doha Declaration related to sustainable development. At the end of the day, however, it can be argued that the current state of affairs, as well as the history of the negotiations dating back to the GATT, are better explained by reference to quasi-mercantilist tactics aimed primarily at satisfying domestic priorities, and to a predominance of negotiating power vesting in Members with more powerful economies. If this version of reality is more accurate than the version that takes sustainable development seriously, where does that leave us?

It leaves us, first, with a need to identify those areas of the roadmap that are priorities, and are achievable. If the cynical version of reality prevails, the likelihood of the entire roadmap being implemented is close to nil. So which elements of it are important enough, and possible enough (even accepting the cynical version of reality), to deserve the focus of attention? A few suggestions along these lines are made below.

Those items that are already on the WTO agenda are arguably easiest to push for: liberalization of environmental goods and services, fisheries subsidies, MEA observership, TRIPS and CBD, trade-related technical assistance, trade facilitation, capacity building, and collaboration in a revitalized EIF. Of course, it is not enough to simply be on the agenda—what is needed is an ambitious outcome in each of these areas.

A few other items would be within the realm of the conceivable for many Members, and could be placed on the agenda with enough pressure from a few champions: reform of openness in dispute settlement, reform of the accession process.

The remaining items would be a hard sell, and it bears asking which of them would make enough of a difference that they would be worth pushing hard for. The two that stand out here are an independent panel to advise the negotiations (IPTSD), and an assessment framework. If either of these were ever to come into being it would only be as a result of a sustained campaign of advocacy and lobbying. But both would arguably yield important improvements to the WTO from the perspective of achieving its stated goal: contributing to the objective of sustainable development.

In closing, it bears repeating yet again that the roadmap laid out here is described as possible elements in a roadmap constructed by a more legitimate process—one that involved the input of a representative group of stakeholders. A recommendation not made above, but which should be obvious, is for the WTO to convene such a group, as it has convened *ad hoc* advisory groups in the past, to help elaborate a legitimate roadmap for sustainable development for the Organization.

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This is a good time for those who seek to improve the functioning of the multilateral trading system. The impasse in the Doha negotiations offers us both grounds for concern about the current regime's model, and the breathing space in which to thoughtfully consider how that model might better serve today's needs.

This short book argues that the WTO has committed to sustainable development as one of its basic objectives, and asks what the organization would look like if that objective were rigorously pursued. The answers range across areas as diverse as dispute settlement, accession, trade and environment, trade and development, and the negotiation process, trying to identify what needs to be done, and what role the WTO should play.

The result is this timely and incisive roadmap for helping the WTO achieve its full economic, environmental and social potential in a world that urgently needs all the help it can get.



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