

## THE FAILURE OF THE WTO MINISTERIAL MEETING IN CANCUN: IMPLICATIONS FOR FUTURE RESEARCH

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On September 14th 2003, the meeting of WTO Ministers in Cancun ended without reaching a consensus. According to press reports and subsequent statements by those present at that meeting, the apparent and proximate cause of the Ministerial's collapse was a failure to agree on launching formal negotiations on the so-called Singapore Issues.<sup>1</sup> Others, however, have put forward alternative explanations for the meeting's failure, including poor chairmanship of the Ministerial meeting by Mexico's Foreign Minister, Mr. Luis Ernesto Derbez; a failure to agree on the modalities for negotiations on agricultural trade barriers, export subsidies, and domestic support policies; the inability of many WTO members to negotiate or discuss many issues simultaneously during and before the Cancun Ministerial Conference<sup>2</sup>; and a perception that some national representatives in Cancun were not prepared to go

beyond pre-determined demands of others and showed little propensity to "negotiate seriously" with other delegations.

The purpose of this essay is not to dissect precisely why the Cancun Ministerial is said to have failed. Nor is the goal here to offer predictions about the World Trade Organisation's (WTO's) future, although some of the factors discussed here must surely be relevant. Instead, the objective of this short essay is to identify some questions that in my view ought to receive more attention from the scholarly community. This is not to say that the questions identified here are necessarily novel or to suggest that there are not thoughtful perspectives on them in the existing legal, economic, historical, and political science literatures on the evolution of the world trading system. Rather it is that I doubt we have adequately answered some of these questions and that revisiting them may be a worthwhile endeavour – especially as, after the Cancun Ministerial, many feel that the world trading system is at a "cross roads." This affords an excellent opportunity for scholars – some of whom may not have focused on policy-oriented matters before – to contribute to the debate over the future course of – what is no less than – an important element in the governance of international economic relations. If this essay persuades a few more scholars to enter this debate then my efforts will not have been in vain.



There are questions that ought to receive more attention by the scholarly community

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<sup>1</sup> The Singapore Issues are currently taken to include four matters relating to international commerce namely, the relationship between trade and investment policy, the interaction between trade and competition policies, transparency in government procurement practices, and trade facilitation practices (such as more efficient customs procedures). It is worth pointing out that some WTO members, including the European Union and its Member States, took the view before the Cancun Ministerial meeting that an agreement to launch the Singapore Issues had been taken at the Doha Ministerial Conference in 2001, and that at the Cancun meeting WTO members would determine the modalities for those negotiations. Other WTO members – notably from Africa – had argued that no such decision was taken at the Doha Ministerial Conference and that the Singapore Issues should be addressed *after* (not at) the Cancun Ministerial.

Some other preliminary remarks are in order. First, it is important to note that the failure to reach consensus at the Cancun Ministerial does not mean that previously-agreed commitments by WTO members are no longer binding. (Of course, the degree to which WTO members feel compelled to adhere to those commitments is another matter.) Therefore, the expiry of the so-called "peace clause" on disputes on agricultural subsidies will still go ahead. So will the formal ending of the Multifibre Arrangement on January 1st 2005. Second, the failure to reach consensus at Cancun

<sup>2</sup> This argument is often put differently; that the negotiating agenda for the Doha Development Round is "overloaded" and beyond the capacity of many developing countries to effectively negotiate.

will not result in the shutting down of the WTO's relatively small secretariat in Geneva; nor will it see the end of dispute settlement cases between WTO members. Moreover, ongoing negotiations among WTO members are technically supposed to continue, although the enthusiasm to complete them may well have diminished.<sup>3</sup> The third point to bear in mind is that WTO Ministerial meetings have failed before. According to some observers, of the nine meetings of Ministers from members of the General Agreement on Tariffs and Trade (GATT) and the WTO, four have been branded "failures." Inevitably, some old hands have claimed that "we have been here before." In short, failure to agree is neither uncommon nor will it formally undermine the legal and organisational foundations of the world trading system.

One could, of course, end this essay on such a sanguine note, retreat back into the ivory tower and wait for the next successful WTO Ministerial meeting. (After all, if the old hands are right, then there is over a fifty percent chance that the next Ministerial meeting – which must be held in the next two years – will be successful and so revive the Doha Round of multilateral trade negotiations!) Unfortunately, there are at least two reasons not to be so sanguine. The first is that while waiting for the next successful WTO Ministerial meeting (or other initiative to re-launch this round) market outcomes will continue to be distorted by discriminatory trade barriers and the like. If the World Bank's estimates of hundreds of billions of dollars of gains from the successful completion of the Doha Round are to be believed, then the sooner these welfare-reducing barriers are eliminated the better. The second reason is that past experience with ministerial meetings on trade matters may provide a misleading guide to as to the likely success of future WTO Ministerial meetings. Specifically, in the view of many, the Cancun Ministerial differed from its predecessors in the three following respects: by seeing the active participation of many more developing countries (and perhaps, more importantly, of the engagement of seemingly robust groupings of developing countries); a greater focus on "behind the border" mea-

asures (which, some say, include the Singapore Issues); and the need to complement the traditional goal of enhancing market access with that of promoting development (whatever that may mean.) Indeed, it is an open question as to whether the current system of reciprocal negotiations in trade rounds is suitable in a world trading system which has enlarged along the above dimensions.

### What next? A streamlined agenda for the Doha Round?

One response to this open question has been to call for a reduction in the number of subjects that are on the negotiating table in the Doha Round. The principal target is typically the Singapore Issues and, since the collapse of the Cancun Ministerial meeting, calls for their removal have intensified (see, for example, Hoekman 2003). Without in any way denying the importance of the policies associated with the Singapore Issues for economic developments, those supporting the removal of these topics from WTO trade negotiations make two arguments. The first is that the Singapore Issues are not related – or not sufficiently related – to the market-access core of the world trading system, and therefore do not adhere to the tried-and-tested formula of improving economic welfare through trade negotiations that result in reciprocal reductions to impediments to international commerce.<sup>4</sup> And, second, that negotiating and implementing any WTO agreement on the Singapore Issues would be both too complex and too expensive.

Taken separately or together, I have not been persuaded that these two arguments settle the matter. With respect to the first argument above, one might pose a few questions. Are we sure that the efficiency of a nation's customs procedures has little bearing on the extent to which foreign firms can make good on a nation's market access commit-

<sup>4</sup> I note in passing that some recent estimates of the effects of liberalising certain elements of the traditional market access agenda are surprisingly small, casting the issue of the relative benefits of pursuing some elements of the traditional agenda and the Singapore Issues in a rather different light than is usually represented. Take, for example, the IMF's and World Bank's joint study on market access that was published in 2002 (see International Monetary Fund and World Bank 2002). This study estimated the total increase in non-OECD countries' welfare from liberalisation of OECD countries' agricultural policies at US\$8.7 billion. Interestingly, the same study found that the total welfare cost for non-OECD countries of other non-OECD countries' agricultural policies was US\$21.7 billion, more than twice the amount of harm done by OECD countries. In the light of these numbers, and others, I suspect that future historians of the Doha Round will question why so much prominence was put on agricultural trade reform by developing countries in the run up to, and at, the Cancun Ministerial Conference.

<sup>3</sup> Indeed, to the extent that the failure to reach consensus on the modalities for a number of negotiations in Cancun constrains the ability to make cross-issue trade-offs, then concluding the on-going negotiations may have been made more difficult. Another knock-on effect of the loss of negotiating momentum in the aftermath of the Cancun Ministerial is that WTO members are less likely to refrain from bringing dispute settlement cases if they fear less will be lost in current and future negotiations with "defendant nations."

Should the Singapore Issues be taken off the agenda?

ments? Indeed, doesn't the long history of negotiating rules on customs procedures and the like in the world trading system suggest that the link between trade facilitation and market access has been well established? If the current discussions on the transparency in government procurement did not in fact have a market-access component to them, then how can one explain the numerous remarks made by leading developing countries that current proposals for further international rules in this regard will have consequences for foreign access to their state procurement markets? Nor am I persuaded that securing improvements in market access will necessarily translate into welfare gains unless states take steps to prevent the formation of international cartels and other anti-competitive practices. Moreover I find it difficult to argue that, on the one hand, improving market access for products is essential to the Doha Round while simultaneously contending that improvements to another mode of entering foreign markets – through foreign investments – is unnecessary. Indeed, the latter attitude is a little hard to square with the considerable effort expended on negotiating the General Agreement on Trade in Services during the Uruguay Round. In sum, the view that the Singapore Issues would have little or no bearing on market access seems particularly hard to sustain.<sup>5</sup>

In fact, much of the commentary from academic writers and officials from the international financial institutions on the appropriate scope of the Doha Round is influenced by a few papers that purport to examine the experience of developing countries in implementing the Agreement on the Trade-related Aspects of Intellectual Property Rights and the Agreement on the Application of Sanitary and Phytosanitary Measures, known as the TRIPS and SPS agreements respectively.<sup>6</sup> Even if one is convinced that the latter research is credible, it is quite a different matter to assume that the

effects of signing WTO agreements on the Singapore Issues would be the same. Sometimes reasoning by analogy is convincing, sometimes it is not. I would suggest that a better approach is to conduct separate empirical analyses of the economic consequences of the proposed multilateral provisions on the Singapore Issues. In my view here is a substantial opportunity to advance our knowledge, but to be persuasive a change in research strategy will be needed. It is not enough for trade economists merely to apply first principles to the analysis of some "trade and X" issue (X could be any of the Singapore Issues or indeed any issue that might fall within the remit of the WTO.) Instead, scholarship should at a minimum require a thorough understanding of the proposals advanced at the WTO and of the policy field in question.<sup>7</sup> Hopefully this would see the era of trade economists moonlighting as competition policy experts, trade facilitation experts, and the like.

There is a much deeper question raised by the debates over the Singapore Issues: What areas of policy have characteristics such that they can and should be subject to binding international commitments at the WTO? I do not pretend that this is a novel question, as the debates over "shallow" and "deep" integration in the early 1990s can attest. Rather, in my view, this question has yet to be answered satisfactorily. Are the only legitimate prerequisites for including a policy instrument in the WTO that there be some discernable impact on market access and that there be some impediment to domestic reform that prevents the optimal policy being chosen unilaterally? (These two characteristics of tariffs and quotas are said to account for the success of reciprocal bargaining on border measures in successive GATT and WTO rounds.) Or are there other characteristics of a policy that make it suitable for inclusion in the WTO? Presumably, the latter question would say something about the potential desirable trajectory for the WTO and its relationship to other international organisations and agreements that impinge on economic policy matters. Alternatively put, tackling this latter question would help in thinking through whether the WTO should become a more important forum for international economic governance, as has been suggested by some European scholars and policymakers. Just as economists have

**Which policy areas should be subject to international commitments at the WTO?**

<sup>5</sup> This is all the more so once one appreciates that substitution between discriminatory trade policies is possible. For instance, if a reader thinks that the phasing out of the MFA (which is essentially a system of quotas) in the West will trigger a large number of antidumping and safeguards cases against developing countries, then it would seem that only in the most limited sense can the removal of the MFA actually be thought to have improved market access. Given the discretion available to governments in implementing their unfair and fair trade laws, how can one have any confidence that lowering a discriminatory trade barrier must improve market access? Once one accepts that the consequences for market access of the liberalisation of traditional border barriers can be meagre or nil, then how can one be sure that their liberalisation has a greater effect on market access than some of the initiatives associated with the Singapore Issues?

<sup>6</sup> Finger and Schuler (2000) is perhaps the best known of the very small number of papers of this genre. Hoekman (2003) and Finger (2002) both cite this paper in the manner described in the above paragraph.

<sup>7</sup> Hopefully the chapters in Evenett and SECO (2003) demonstrate some desire to practice what I preach. No doubt subsequent research will remedy the deficiencies and omissions from this volume!

long worried about the boundaries of the firm, what are the boundaries of the WTO?

I do not propose to answer this question in its entirety in this short essay, however I would like to develop some ideas that might take the discussion forward. The starting point of my argument is the long-recognised idea that a case for international collective action can also be constructed when the effects of a state's policy decisions (including decisions not to take action) "spill over" national borders and affect the welfare of inhabitants or economic entities in another jurisdiction. One type of decision that creates such spillovers are the numerous recent prosecutions by the European Commission and by the United States' Department of Justice of international cartels. These decisions are likely to have had positive knock-on effects outside Europe and the United States, where other nations' purchasers are likely to have benefited from the break-up of these international conspiracies. Another example of cross-border spillovers created by national policy choices is in environmental policy (see the analysis in Bhagwati and Srinivasan 1996, section 4.5).

**Collective action  
must satisfy  
five criteria**

But is demonstrating the existence of spillovers enough to warrant the inclusion of a policy instrument in the WTO? Arguably not. It seems to be that whatever collective action is proposed it must also satisfy the following five criteria, listed in no particular order of importance:

- There must be a discernable positive welfare impact to undertaking the collective action,
- At least one domestic constituency in each of the major trading partners must support the negotiation of the initiative at the WTO,
- Reasons must be advanced as to why the proposed multilateral obligations must be binding (ie., as to why hortatory language expressing best intentions is insufficient),
- The obligations must be codified precisely, their implementation observable, and where the collective action at issue permits some discretion for national policymaking, the latter must be relatively transparent,
- The obligations created must be amenable to enforcement through the WTO's dispute settlement understanding.

It would be useful to assess whether each of the policies proposed for inclusion in the Doha

Development Round meet these five criteria and whether the cross-border spillovers associated with those issues are of sufficient magnitude to warrant negotiating an international initiative. The fact that few, if any, such comprehensive assessments have been conducted to date may be because many skills are probably needed to undertake them (including economic, empirical, legal, and political science analyses). Perhaps this is an area where some serious inter-disciplinary research could be initiated.

**Capacity constraints and multilateral trade negotiations**

One often-mentioned and quite distinct objection to broadening the scope of the multilateral trading system is that it places additional demands on the negotiating capacities of developing country members of the WTO. Furthermore, it is also argued that the "newer" subjects for discussion at the WTO are "complex" and "highly technical."<sup>8</sup> My own view is that the latter argument is very unconvincing and the former one is doubtful but is, in principle, potentially subject to empirical investigation. If the complexity of a trade issue alone determined whether it should be included in multilateral trade negotiations, then arguably the last subjects to be discussed in the WTO would be agriculture and anti-dumping. Indeed, on these grounds much of the cherished non-manufacturing market access agenda would be ruled out! Having written a Ph.D. thesis on the U.S. antidumping law and its implementation, I am at a complete loss to understand how following the details of antidumping negotiations is less complex than assessing the proposed multilateral rules on competition policy. Moreover, given that many developing countries have enacted and implemented both antidumping laws and competition laws in the last fifteen years, one cannot argue that they necessarily have more domestic capacity on antidumping to draw upon. The complexity argument is a red herring.

The argument that developing countries simply do not have the talented personnel to negotiate and implement multilateral provisions requires careful assessment. Scarcity of talent at a point in time certainly argues for identifying the most beneficial negotiating priorities; again reinforcing the need

<sup>8</sup> Comments like this can be found in the recent editions of the World Bank's Global Economic Prospects report.

for careful (often country-by-country and not broad brush) studies of the consequences of different types of multilateral provisions. I know of no theorem or body of empirical work that demonstrates that the identified trade liberalisation priorities would be the same for each developing country. (Incidentally, taking the argument a step further, if scarcity of talent is a particular problem for a developing country, it is not clear that the overall policy priorities are trade-related; they could in fact be domestic policy initiatives.) Moreover, even if two trade-related negotiating priorities are expected to have approximately the same potential benefits for a given country, the amount of time needed to prepare for negotiations, to engage in negotiations, and to implement any provisions that are agreed may differ. Exploring these matters carefully would require substantial data collection, empirical analysis, and a precise knowledge of what it takes to prepare for and implement multilateral trade accords; all of which should be undertaken before sweeping statements are made about the implications of capacity constraints for developing countries' negotiating strategies. Indeed, on the basis of the considerations laid out above, I am doubtful that any generic claims about the implications for the scope of the Doha Round, or for developing countries' interests in that Round, that are based on personnel constraints can withstand careful scrutiny.

With respect to the scarcity of trade negotiators, the more significant challenge is probably how to expand their numbers in developing countries over the near to longer term and how to retain such talent. Given the pressing nature of this challenge, it is perhaps a little discouraging that the last "mini-census" of negotiating talent in Geneva was completed five years ago.<sup>9</sup> (Another such "mini-census" is underway.)<sup>10</sup> Moreover, we know little about how much trade-negotiating talent (if any) resides in national capitals. Without this type of information, undertaking a needs assessment is very difficult. Furthermore, it would be useful to understand the pros and cons of developing countries pooling negotiating expertise in regional or other groupings. (While on the subject of regional groupings another interesting, yet unexplored, question is the extent to which preferential trade negotiations "crowd out" or "crowd in" the capacity available to negotiate multilateral trade agreements.<sup>11</sup>) Many of these observa-

tions could be developed empirically as well as evaluating the capacity building implications of entering into different types of trade negotiations. Such a research programme might go a long way to add flesh to the bones of the capacity building question. Again, I suspect that the claims made currently in this regard are far ahead of the data necessary to support them.

### **The so-called development focus of the Doha Round. Where is the pay off to this political correctness?**

Given the failure of the Cancun Ministerial Conference, I feel it is incumbent on analysts of the world trading system, and of the international institutions more generally, to pose another potentially controversial question: What have been the consequences of putting development considerations at the centre of the Doha Round and, therefore, at the heart of the current operation of the multilateral trading system?<sup>12</sup> Just as it is perfectly acceptable to question whether the so-called Singapore Issues have "overburdened" the new round, so it is legitimate to ask whether the new developmental focus of the WTO has unnecessarily complicated the completion of the Doha Round and whether it contributed to the collapse of the Cancun Ministerial Conference? A related but distinct question is whether the new development mandate for the WTO is consistent with its long-standing role as an institution where agreements on certain trade-related matters are negotiated and where compliance with those agreements is monitored and assessed? If not, then it strikes me that some serious thought is needed as to the purpose of the WTO.

Given the partisan – and quite honestly vicious – nature of the trade and development debate in the

Has the development focus of the Doha Round contributed to the failure of the Cancun Ministerial?

<sup>11</sup> The following vignette crystallised this issue for me. Recently the Caribbean nations negotiated the revised Treaty of Chaguaramas, part of which contains provisions for the creation of a "common market" in that region. One of the chapters of this treaty was on competition law and policy, and many of the provisions in that chapter were similar to those being discussed in the WTO's Working Group on the Interaction of Trade and Competition Policy. One wonders if the experience acquired in negotiating this regional trade agreement left the Caribbean nations in a better position to participate in the debate over the benefits of multilateral rules on competition policy? Trinidad and Tobago definitely played their part in these multilateral discussions.

<sup>12</sup> It is widely accepted that the Doha Ministerial Declaration marked the official acceptance of a greater focus on development considerations in the deliberations of the World Trade Organization. Having said that, I know of no clear and precise statement of what in practical terms is meant by this enhanced commitment to development. There is a sense among some observers and trade negotiators that the developmental focus in the Doha Ministerial Declaration means "all things to all men."

<sup>9</sup> See Michalopoulos (1998).

<sup>10</sup> One of my students is completing a masters thesis on this subject, hopefully developing and extending the measures reported in Michalopoulos (1998).

public arena, I should hasten to add that the question being asked here is not whether economic and other forms of development are desirable. I would hope that all well-intentioned readers could conceive of an analyst being firmly pro-development yet at the same time being not wholly convinced of the WTO's new development mandate (in large part because it is not clear what is meant by the latter!)

One response to the questions posed above is to argue that the development mandate agreed on at the Doha Ministerial Conference is unimportant window dressing that does not affect the substance of the WTO's activities, or the status of its previous agreements. It seems to this (potentially misinformed) observer that few trade negotiators from developing countries would see the matter in this way. Moreover, even if the so-called development mandate is merely talk, it has added a degree of smoke and mirrors to negotiations in Geneva and elsewhere that one can see little obvious benefit from. In contrast, it is quite likely that the development mandate has raised the expectations of some trade officials from developing countries, emboldening them to make new and perhaps more ambitious proposals – some of which call into question the very status of previously agreed trade accords. Overall, I am not sure that all this window dressing or this WTO-equivalent of political correctness has been cost-free.

Adding the development mandate raises a number of unanswered questions

Another response might be to argue that by encouraging the opening of markets the WTO (and its predecessor the GATT) have, by and large, promoted economic development; therefore, adding a formal development mandate to an institution which has been promoting it all along may not be problematic. While I tend to agree with the first claim made, I am doubtful of the conclusion. There are a number of objections to this argument, especially when one appreciates that there is no explicit statement that the new development mandate for the WTO refers only to traditional economic variables such as exports, employment, or the growth of national income. Others are therefore perfectly within their rights to interpret the new mandate as meaning that other dimensions of development (for example, the environment) are important and should receive due attention in trade negotiations. And so I contend that the questions posed at the beginning of this section are important and cannot be dismissed out of hand.

In considering the consequences of adopting a greater development focus at the WTO, I wonder if the matter can be broken down into the following questions.<sup>13</sup> First, what do we mean by a greater developmental focus or developmental mandate?<sup>14</sup> Is the intention that the WTO's activities should be directed towards certain agreed outcomes that will benefit (in some, perhaps observable, way) developing countries? Or is the intention that the agenda and decision-making processes of the WTO should better reflect the interests of developing countries?<sup>15</sup> Second, to what extent does the development mandate (whatever that may be!) replace or augment the existing principal institutional objective of the WTO, which is to facilitate the negotiation and implementation of trade-related agreements between sovereign states? Thirdly, does the development mandate only relate to the WTO's activities after the Doha Ministerial Conference? If not, then to what extent can previous WTO and GATT agreements be reinterpreted, scrapped, or rewritten in light of the new development focus? Fourth, in what ways (if at all) will the adjudication of disputes between WTO members change as a result of greater sensitivity to developmental concerns? Fifth, in what ways (if at all) will the accession of new members to the WTO be influenced by the new development mandate?

I do not want to give the impression that no thinking has gone into these – and similar – questions. For example, Hoekman, Michalopoulos, and Winters (2003) have made some suggestions for intelligently implementing special and differential treatment for developing countries. In addition, Cottier and Takenoshita (2003) have considered the implications of moving away from a consensus-based decision-making rule at the WTO. Finally, Abbott (2003) offers an interesting treatment of some of the issues raised above. Yet, I know of no systematic treatment of the implications of adopting a greater focus on development considerations at the WTO – and worse still, precious little evidence that much thought went into these matters before the Doha Ministerial Declaration was adopted.

More constructively, I wonder if there are any lessons from the experiences of other international

<sup>13</sup> This is almost certainly a non-exhaustive list of the questions that might be asked.

<sup>14</sup> For the sake of clarity, I use the expressions enhanced development focus and development mandate synonymously.

<sup>15</sup> To use management speak, is the intention to alter the metrics or processes of the WTO?

organisations that have changed their mandates in significant ways, in particular to adopt new or different objectives or to give greater weight to the interests of a subset of its members. Of particular interest in this regard may be *certain elements* of the recent experience at the World Bank and the IMF.<sup>16</sup> First, towards the end of the 1990s the IMF briefly gave more attention to poverty alleviation and related matters and then soon ended this initiative. It would be useful to learn, what lessons were learned and are transferable to the WTO, and whether any principles for the allocation of responsibilities across international institutions could be deduced. Second, to what extent has the shift away from a primary focus on the economic consequences of development towards other objectives been successfully accomplished at the World Bank? Did this shift introduce new trade-offs between objectives and, if so, how were they resolved? Again, what lessons are there for the WTO? In addition, given the existence of the World Bank, the regional development banks, and the United Nations Development Programme and the United Nations Conference on Trade and Development, one ought to ask whether the WTO is taking on new development-related obligations that might be better accomplished elsewhere?

In concluding this short essay I hope that I have provoked readers into thinking about what are the appropriate boundaries for the WTO and what role scholarly research, informed by discussions with policymakers and other interested parties, can play in addressing some of the more systemic factors that probably underlay the failure of the WTO Ministerial Conference in Cancun. If, as I suspect, we have not appreciated fully the consequences of adopting a greater focus on development-related concerns in the WTO – including the implications for what topics should be on the negotiating table in the Doha Round – then I fear the slide towards unilateral and preferential trade measures will continue, undermining the principle of non-discrimination that has served the world so well since the Second World War.

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<sup>16</sup> This is not to suggest that these two institutions have the same functions or resources as the WTO.