

THE URUGUAY ROUND NORTH-SOUTH GRAND BARGAIN:
IMPLICATIONS FOR FUTURE NEGOTIATIONS

By

Sylvia Ostry

The Political Economy of International Trade Law
University of Minnesota
September, 2000

The Uruguay Round Grand Bargain

Prior to the Uruguay Round developing countries negotiated mainly to secure unreciprocated access to OECD countries' markets. Most lacked the expertise and analytical resources for trade policy-making but that really didn't matter much because the focus of negotiations was on border barriers for industrial products, and also because agriculture was largely excluded. The tried and true GATT model of reciprocity worked well as the negotiations were led by the United States and managed by the transatlantic alliance with the European Community. The Cold War contained severe trade friction eruptions and all was well with the world as trade grew faster than output and each fed the other. True, in the 1970's noises offstage about a New International Economic Order could be faintly heard in Geneva but barely in Washington or Brussels. The so-called Third World was largely ignored as a player in the multilateral trading system.

The Uruguay Round was a watershed in the evolution of that system. For the first time agriculture was at the centre of the negotiations and the European effort to block the launch of the negotiations to avoid coming to grips with the Common Agricultural Policy went on for half a decade. This foot-dragging also spawned a new single-interest coalition—the Australian-led Cairns Group, which included Southern countries from Latin America and Asia determined to ensure that liberalization of agricultural trade would not be relegated to the periphery by the Americans and the Europeans as it always had in the past. A significant event at the 1988 mid-term ministerial meeting in Montreal underlined this change when the Latin American members of the Cairns Group responded to an announcement by the U.S. and E.C. negotiators that, although there was no agreement on agriculture, all the other issues agreed at the meeting could go ahead, by

rejecting all the agreed issues until the agricultural disputes were tackled. The meeting was adjourned, not terminated (this was Montreal, not Seattle) to be followed by another six years of hard slogging.

But the role of a group of developing countries, tagged the G10 hardliners and led by Brazil and India, was in many ways even more important in the Uruguay Round's transformation of the system. The G10 were bitterly opposed to the inclusion of the so-called new issues—trade in services, intellectual property and investment—central to the American negotiating agenda. Without the new issues it is doubtful that the American business community or American politicians would have supported a multilateral negotiation and, indeed, the long delay in launching the Round was the most significant factor in the origins of the U.S. multi-track policy in the 1980's which included bilateralism, unilateralism and – if possible – multilateralism. (1) A major objective for the U.S. in the bilateral negotiation with Canada was to include the new issues (2) and, to amplify the message to the G10, the little-used section 301 of the 1974 Trade Act was activated in 1985. Indeed a new Special 301 of the 1988 Trade and Competitiveness Act was targeted at developing countries with inadequate intellectual property standards and enforcement procedures. As the Uruguay Round negotiations proceeded, the message in Brasilia and New Delhi became clearer: given a choice between American sanctions or a negotiated multilateral arrangement, an agreement on TRIPS (Trade-related intellectual property) began to look better.

Moreover, by the onset of the 1990's a major change in economic policy was underway. The debt crisis of the 1980's, and thus the role of the IMF and the World Bank, plus the fall of the Berlin Wall—a confluence of two unrelated events—ushered in

a major transformation in the economic policy paradigm. Economic reforms—deregulation, privatization, liberalization -- were seen as essential elements for launching and sustaining growth. Economic regulatory reform is at the heart of the concept of trade in services. Even without the thrust from the Uruguay Round, many developing countries began to see reform of key service sectors such as telecommunications as essential building blocks in the soft infrastructure underpinning growth and the GATS as a means to furthering domestic reform. While this changed view did not lead to significant liberalization in trade in services during the Round, acceptance of the GATS opened the way to further developments in the telecommunications and financial services negotiations.

Thus, well before the end of the Round the hardline coalition had disappeared and coalitions of developing countries concentrated on liberalization of agriculture and textiles and clothing, (3) Many undertook unilateral liberalization of tariffs and other trade barriers and at the conclusion in December 1993 were among the strongest supporters of the negotiations they so adamantly opposed in the 1980's. The Grand Bargain was completed and was quite different from old-time GATT reciprocity. It was essentially an implicit deal: the opening of OECD markets to agriculture and labor-intensive manufactured goods, especially textiles and clothing, for the inclusion into the trading system of trade in services (GATS), intellectual property (TRIPS) and (albeit to a lesser extent than originally demanded) investment (TRIMS). And also—as a virtually last minute piece of the deal—the creation of a new institution, the WTO, with the strongest dispute settlement mechanism in the history of international law. Since the WTO consisted of a “single undertaking” (in WTO legal-ese) the deal was pretty much

take it or leave it for the Southern countries. So they took it but, it's safe to say, without a full comprehension of the profoundly transformative implication of this new trading system.

The Northern piece of the bargain consisted of some limited progress in agriculture, with a commitment to go further in new negotiations in 2000; limited progress in textiles and clothing involving a promise to end the Multi Fibre Arrangement in 2005 with most of the restrictions to be eliminated later rather than sooner; a rather significant reduction in tariffs in goods in exchange for deeper cuts and more comprehensive bindings by developing countries (whose tariffs were higher with a smaller percentage of bindings) and with significant tariff peaks remaining on manufactured exports from developing countries; and virtual elimination of the new protectionism of the 1980's—the VER's (voluntary export restraints)—which were mostly relevant to Japan and some of the rapidly growing middle income countries in East Asia. (4) On the whole not great but not bad when compared with previous rounds centred on traditional GATT – type market access negotiations. But this was not a GATT negotiation as the Southern piece of the deal so amply demonstrates.

The essence of the South side of the deal—the inclusion of the new issues and the creation of the new institution—was to transform the multilateral trading system. Indeed the full transformation is still underway and difficult to forecast (especially after Seattle). In the present context the most significant feature of the transformation was the shift in policy focus from the border barriers of the GATT to domestic regulatory and legal systems—the institutional infrastructure of the economy. The barriers to access for service providers stem from laws, regulations, administrative actions which impede

cross-border trade and factor flows. Further, since these laws and administrative actions are for the most part “invisible” to outsiders, a key element in any negotiation is transparency, i.e. the publication of all relevant laws, regulations and administrative procedures—as is common in all Northern societies. Implicit in this shift embodied in the GATS is a move away from GATT negative regulation—what governments must not do—to positive regulation—what governments must do. This aspect is now apparent in the telecommunications reference paper that set out a common framework for the regulation of competition in basic telecommunications. In the case of intellectual property the move to positive regulation is more dramatic since the negotiations covered not only standards for domestic laws but also detailed provisions for enforcement procedures to enforce individual (corporation) property rights. It’s useful to note as well that in the area of social regulation (covering environmental, food safety, etc.) the positive regulatory approach is procedural rather than substantive.

The move from border barriers to domestic policy will require major upgrading and change in the institutional infrastructure of many or most Southern countries: governance; administrative regimes; legal systems; regulatory systems, etc. etc. These changes will take time and cost lots of money, as some recent analyses have shown. (5) The transition periods for implementation for developing countries were arbitrary and not based on any analysis or, indeed on any awareness of this systemic problem. The technical assistance promised by the North was not followed up. As Finger and Schuler aptly note: “the developing countries took a bound commitments to implement in exchange for unbound commitment of assistance”. (6) And a new trade institution with an increasingly litigious and evidentiary-intensive dispute settlement system requiring a

level of legal expertise rare in non-OECD countries and therefore pots of money to purchase Northern legal services. And, lest we forget, all this in return for minimal liberalization in agriculture and textiles and clothing.

How was such a lopsided bargain achieved? It's very important to underline once more that the implication of the transformation of the system were not well understood by either side. Most of the developing countries were unable to participate in the negotiations and lacked the expertise both in Geneva and at their home base. But even the so-called Quad (the U.S, EU, Japan and Canada) had not thought through the consequences of the structural transformation of the shallow integration of the postwar system to a new mode of positive regulation of domestic policies and systems housed in a new institution that could never have even been imagined at Punta del Este. As Rubens Ricupero, an active participant in the Round and now Secretary General of UNCTAD has noted, awareness of the Uruguay Round in most member countries was very limited until the final stages of the negotiations and it is hardly surprising that for many developing countries it could plausibly be seen as "the result of some conspiracy by government in collusion with transnational corporation" (7) A north-south divide among the member countries of the WTO was one of the unintended consequences of the Grand Bargain.

The notion of a north-south divide among the members of the WTO is, of course, an oversimplification since the Southern countries are hardly homogeneous and include the poorest or least developed (perhaps 50-60 members) as well as middle income countries. This heterogeneity was reflected in the pre-Seattle discussions on the Millennium Round agenda with groups such as Asean and agricultural exporters emphasizing market access as a priority while the poorest countries were most concerned

with implementation issues, S & D aspects of the agreements and the need for technical assistance. Yet there was a broad consensus among the Southern countries that the Uruguay Round Agreement was asymmetric and must be “rebalanced” before any new negotiations were launched . There was also a consensus against inclusion of new agenda items such as investment, competition policy, labour and environment in a so-called Millennium Round. What is most interesting about the pre-Seattle discussions, however, was the proactive role of the Southern countries who submitted over half of the more than 250 specific proposals for the Ministerial meeting. (8) And, of course, the Seattle meeting ended with the walkout of virtually all the non-OECD countries. The comparison with the Uruguay Round launch and the negotiations could not be more striking. The political economy of the trade policy-making has been transformed not just because of the seriously flawed Grand Bargain but also because of changes in the policy process of the Southern countries. In the remainder of this paper I will describe the main features of these changes and their implications for future WTO negotiations.

The Proactive South

The proactive stance of the non-OECD countries in the preparation for a new round of WTO negotiations stems from a number of changes in the policy process during the 1990’s. One is the rise of democracy and the growing awareness of trade policy issues in the general public and political institutions and the business community. The role of the business community in trade policy in both Latin America and East Asia has been greatly enhanced by regional initiatives such as NAFTA and the Free Trade Agreement of the Americas (FTAA) and APEC. The initiation of the FTAA in 1994, for example,

spawned the Business Network of Hemispheric Integration (BNHI) with a membership of 400 business organizations from across the hemisphere as well as the Americas Business Forum (ABF) which tracks, through workshops, a comprehensive range of trade issues that mirror the FTAA negotiating groups. Similarly in 1995 the APEC Business Advisory Council (ABAC) was established to advise governments on the trade and investment agenda of the region and to encourage more active participation of business in APEC's activities. Indeed, even the G77 has established a Chamber of Commerce! Another recent development has been the formation of Southern sub-regional groups to enhance the bargaining power of governments and business coalitions.

American multinationals, and to a lesser degree, other multinationals from OECD countries, played an important role in the Round. But business participation in the Uruguay Round from developing countries was virtually non-existent. In the future the opposite may be true since the American business community was most visible by its absence in Seattle! Be that as it may the role of business will engender a more active policy stance in the South and the days when bureaucrats in Geneva ran the shop are clearly over.

But business is not the only new player in the policy arena in Southern countries. Most of us are well aware of the growing prominence over the 1990 's of NGO's in international policy and their role in United Nations activities and, especially after Seattle, their impact on the WTO. (9) But their growing role in shaping the WTO policy agenda of the South is less well known. Many of these NGO's are based in developing countries and were created in the 1990's, usually funded by a combination of government and private foundations. Their focus is on trade policy or trade-related issues, especially

the environment. This new phenomenon is well illustrated by developments in Asia and Africa by citing some of the better-known NGO's (10) (or at least those for whom information is available on the web since there's no other source available at present)

The most prominent and first transnational NGO in Asia is the Third World Network (TWN) with affiliates in many Asian countries and links with activist / advocacy groups in North America and Europe. Other Asian NGO's include Focus on the Global South based in Thailand which is linked with TWN and groups in a number of Asian countries as is the Indian Research Foundation for Science, Technology and Ecology. This network arrangement was extended by the establishment in 1995 of the South Centre in Geneva which is funded by the G77. In Africa the International South Group Network based in Zimbabwe was started in 1994 and Seatini, with three African offices, (funded by UNCTAD and several African governments) was established after the Singapore WTO Ministerial meeting to provide research and analysis for African countries. A link between Asian and African NGO's is provided by CUTS (Consumer Unity and Trust Society), which arose out of the consumer movement of the 1980's but then established CITEE (Centre for International Trade Economics and Environment) and other resource groups in Asia and Africa in the 1990's.

The role of these NGO's is to provide information, ranging from technical research and policy papers to activist policy advocacy. Since the mid-90's most of their output is available on the internet and many of them worked cooperatively with UNCTAD in developing positions for the Seattle meeting (of which more below). And this network of NGO's in the South is also linked to and supported by a wide array of

Northern NGO's with a Southern focus, including research and analyses as well as training and capacity building.

Many of these North / South NGO's also were established in the 1990's although some, which began as development institutions and then shifted to trade, date from the 1970's and 1980's. Some examples are WEED, based in Germany and dedicated to training and consultancy for Southern NGO's; 92 Group (Denmark), a North / South Coalition concerned with the environment; ICTSD (International Centre for Trade and Sustainable Development), established in Geneva in 1996 and jointly funded by Governments & Foundations as well as CUTS and OXFAM. ICTSD publishes Bridges Weekly Trade Digest which provides comprehensive coverage on trade and trade-related issues. CIEL (Centre for International Environmental Law) was established in Geneva in 1995 (CIEL in Washington was established in 1989) and provides training for Southern NGO's as well as information and analyses. Other training and research institutions are RONGEAD of France; INTRAC, ACTION AID and CHRISTIAN AID of the U. K. The list goes on—and is getting longer. Many of these groups receive some funding from governmental or intergovernmental institutions but they are regarded, in respect to their activities, as NGO's. Together with a number of Southern NGO's these institutions provide two key strategic assets: knowledge and capacity-building for the Southern countries. Together they constitute a “virtual secretariat” through the increased use of the internet in the second half of the 1990's. The internet provided the means for knowledge diffusion both before, during, and after the Seattle meeting and facilitated the formulation of a policy agenda and a policy strategy for these countries.

But there is also a “real secretariat” for the South in a reinvigorated UNCTAD. UNCTAD was created in 1964 and was largely a product of the Cold War as was the G77 bloc of developing countries. To undermine Soviet influence in developing countries the, OECD countries agreed to the “internationalization of welfare state principles.” (11) One result was to embed in the GATT the broad concept of non-reciprocity and “special and differential treatment” (S & D) for developing countries. (12) Both S & D, as well as GATT articles allowing for infant industry and balance of payments exceptions, were founded on a development paradigm that stressed the need for domestic industrial policy and protection for import-competing industries and to deal with balance of payments volatility. This paradigm was promoted by UNCTAD until the later 1980’s and evoked the hostility of the OECD countries, most especially the U.S. As stressed earlier, however, by the 1990’s major changes in the world economy and polity eroded and finally all but eliminated the postwar development model and the vague notion of the internationalization of the welfare state passed into history. As a result, UNCTAD also began to adopt and to redefine its role.

The role of UNCTAD is, in the words of its Secretary-General, to assist the Southern countries to develop a “positive agenda” for the developing countries. The term “positive” may not seem positive to some of the OECD countries for whom it may evoke echoes of infant industries and all that sort of thing (old wine in new bottles) but what it is intended to convey is that the Southern countries will become demandeurs in the negotiations: positive means proactive. The quad or the transatlantic alliance can no longer expect to design and steer the negotiations. Indeed, as mentioned earlier, Seattle demonstrated this rather dramatically.

The pre-Seattle meetings of UNCTAD and NGO's – often in cooperation with each other – led to the emphasis on “implementation”, an attempt to rebalance the Uruguay Round grand bargain by, for example, extending transition periods in TRIPS, TRIMS and Customs Valuation; increasing technical assistance; removal of tariffs for the exports of the poorest countries; as well as substantially better access for textiles and clothing. The implementation issue became, in effect, a round-maker or breaker, since the OECD countries were unprepared to accept these proposals except possibly as part of a new negotiation and there was no agreement among them—and especially between the U.S and E.U—on the agenda of the so-called Millennium Round.

Seattle also revealed the North-South divide among NGO's over the so-called “trade and”—issues of labour standards and the environment. Both groups, however, were united in their anti-globalization message, which attacked the WTO as a handmaiden of “corporate globalization”. The slogan “No New Round: Turnaround” implied a unity which, however, may have been no more than a marriage of convenience for the occasion. Nonetheless, it's very interesting to note that of the 1400 plus NGO's, which endorsed the anti WTO manifesto circulated well in advance of Seattle, (13) my preliminary research shows that over 20% were from developing countries. Of these Latin America and the Caribbean accounted for 43%; Asia for 48% and Africa for the remaining 9%. Thus 300 Southern NGO's were linked by the internet and received a constant stream of information on the main issues in the negotiations both before, during and after the Seattle meeting. One clear impact of the internet is to make the market for policy ideas contestible and this innovation will, of course, continue to change the dynamics of the trade policy-making process. But when and how will the North respond?

The new proactive South stemming from striking changes in the policy ambience in the 1990's and by the IT revolution in the latter half of that decade does not seem to have had much impact on the strategies of the OECD countries. After Seattle and talk about the need for reform of the "medieval governance" of the WTO and for confidence building measures as a means of tackling the imbalances in the WTO it was back to business as usual in Geneva. At the UNCTAD X meeting in Bangkok in February 2000, the United States was represented by a junior official from the aid agency. Many NGO's were present and participated in the meetings and the absence of high-level OECD representatives provided another opportunity to attack the "rich countries". The rationale for not sending top-level trade representatives was that UNCTAD X was not a "trade" meeting. Quite true if the concept of "trade" is restricted to negotiating and administering rules. UNCTAD is not a trade institution nor is the OECD. But that "deficiency" can be a great asset—as it was in the case of the OECD and the role it played in the Uruguay Round launch.

The strategic assets of the OECD, the soft power (research capability and links to similar capabilities, governmental and academic, in national capitals that create the means to influence policy decision making) and the diffusion networks of key actors, both governmental and nongovernmental (through meetings, conferences, publications, etc.) are enhanced by the absence of rules or hard power since hard power constrains discussion, debate, and adaptability. The negotiation to launch the Uruguay Round negotiation demonstrated the OECD's role in providing analytic studies on key issues—especially agriculture, trade in services, and the impact of protectionism on growth and inflation—for discussion in OECD committees and were also widely disseminated in

member countries in order to raise public awareness and assist politicians who wanted an external counterweight to protectionist lobbying. The coordination of the overall strategy was, of course, the responsibility of senior officials in national capitals. But the OECD role as a generator of information, a forum for discussion, and the exercise of peer group pressure, was a central element in the design and implementation of the OECD strategy. A reinvigorated UNCTAD could well play the same role for forging a Southern strategy.

This would help to “rebalance” the asymmetry in the Uruguay Round grand bargain. But it could also widen the North South divide if there were no policy forum in the WTO to perform the same function of debate and discussion of contentious issues. An “OECD—UNCTAD” debate could well be a dialogue of the deaf and make consensus more difficult to achieve. In the lead-up to the Uruguay Round the now extinct CG18 (Consultative Group of 18) provided such a forum in the GATT. But it was dominated by the Quad because the developing country members, especially the G10, had only a negative agenda and no soft power to counterbalance that of developed countries. Issues such as the implementation costs of the “new issues” and the like were never mentioned. They were never discussed in national capitals or in the OECD. Trade ministers never met with ministers for development and the OECD trade committees never consulted its Development Directorate. That was how it was and that’s how the grand bargain was finally forged. But one might say so what? As many trade experts often point out, the WTO is not a development agency. That argument is true but irrelevant, because trade is not trade today. And the new focus on domestic policy and institutions creates spillover and linkages among policy domains and international institutions that never existed in the GATT. Thus, the implications of the grand bargain for the evolution of the WTO are

profound and deserve far more analysis than has been provided to date. The remainder of this paper can only highlight a few of the main issues.

North-South Issues: Implications for WTO Negotiations

It will be some time before a new round of negotiations is underway in part because of American domestic politics and also because no WTO member wants to risk another high profile failure. This is probably all to the good if the time is used to begin the process of trying to bridge the North-South divide. The futile debate on the implementation issues is unlikely to be resolved since the Americans are opposed to any across-the-board extension of transition periods demanded by the developing countries. A unilateral elimination of tariffs for the exports of the least developed would be a useful symbolic gesture but the most important issue that needs tackling is that of technical assistance for which the WTO is shockingly ill-equipped. As has been pointed out in a recent article on the WTO and the African countries, at least a doubling of the TA budget is urgently required. (14) There has been no response from the richest countries to the bare fact that the increase in the numbers of developing countries has doubled the number needing assistance while the TA budget has remained at about 2% of the total (which itself equals the travel budget of the IMF!). The reliance on individual donors has created a bias to short-term ad hocery (15) which is totally at variance with the generic and transformational dimensions of capacity building. The lack of interest in this aspect of the new trading system is perhaps best exemplified by the recent, and ultimately successful, effort to establish the Advisory Centre on WTO Law to help assist developing countries

to cope with the new juridified dispute system. The project was supported by a small handful of OECD countries and opposed by, among others, the E.U and the U.S.

In an effort to compensate for the inadequacy of the WTO in training, the former Director General launched a cooperative project with the much better equipped World Bank as well as other intergovernmental institutions including UNCTAD -- the Integrated Framework for Trade-Related Technical Assistance to Least Developed Countries (IF). This initiative, the first of its kind, was described by Renato Ruggiero a “new partnership against marginalization”. Unfortunately the IF has run into some difficulties and is now in process of redesign. In any case, while the IF is a welcome initiative which may help the poorest countries improve their export capabilities it should be regarded as one part of a much broader program of capacity building which the WTO, with enhanced resources, should undertake in cooperation with other institutions, especially UNCTAD.

One might classify the rebalancing initiatives just described as confidence building although the term has been somewhat tarnished because the timid proposals by the Quad after Seattle were termed confidence shattering by one developing country representative. But, as I have argued many times since the end of the Uruguay Round, the present WTO structure is defective because of the lack of a policy forum and the paucity of a research capability to create a knowledge network with other institutions, academics, NGO's etc. This defect is even more serious when seen in the context of a North-South divide or an OECD-UNCTAD dialogue of the deaf. Some of the most contentious issues, which we will briefly note below, will require debate and discussion based on sophisticated and objective policy analysis if any reasonable consensus is to be achieved. Of course, governments will make decisions on political grounds – as Schumpeter wisely

noted, policy is the product of politics. But informed discussion in the WTO, in national capitals (and on the internet) may help to make good policy good politics.

As to the main issues in a new negotiation, probably the most contentious and difficult concerns the TRIPS agreement which must be reviewed as part of the built-in agenda but is unlikely to be discussed except in the context of a broader negotiation. The TRIPS agreement is the most radical example of the shift in policy to positive regulation of both substantive policy and legal procedures and hence institutions. The relationship to trade is minimal and, indeed, often negative so the term Trade Related Intellectual Property is close to being an oxymoron. The proposed “balance of benefits” for developing countries who are importers of technology was that TRIPS was essential to attract investment and foster indigenous innovation. There is a dearth of empirical research on this subject because it is probably too early for an assessment. The evidence that does exist suggests the payoffs thus far have been limited at best. Applying a one-size-fits-all approach to countries at widely differing stages of development and innovation capabilities was not likely to yield the best results. But the TRIPS agreement was a top priority for American multinationals in the pharmaceutical, software and entertainment industries who wanted it in the GATT rather than the UN agency WIPO (World Intellectual Property Organization) which had no enforcement mechanism.

So the TRIPS Agreement was contentious from the outset and indeed a number of trade economists opposed its inclusion in the round. But the law of unintended consequences has been at work and has both heightened and expanded the conflictual aspect of the agreement. What was not really evident in 1994 at the conclusion of the round was the acceleration of the biotechnology revolution. This has, of course, linked

TRIPS with environmental and food safety issues (GMO's and all that) because of the enormous growth of the agribusiness firms, especially in the U.S. In the pharmaceutical industry, where the structure has been transformed by advances in the new technology, a key, unsettled issue in TRIPS concerns Article 27.3 (b) which allows members to exclude from patentability certain plant and animal inventions. This greatly concerns the American drug companies who are by a long distance the leaders in this sector.

While these issues (and others such as parallel imports, compulsory licensing, competition policy aspects of vertical restraints were all, in effect, left open to renewed negotiation) are not only North-South issues and, indeed, are almost as contentious across the Atlantic, there is one element which provides a strategic bargaining advantage for Southern countries. The OECD (mainly the U.S.) generates the technology and know-how for the innovation process in biotechnology but the Southern countries own more than 80% of the world's genetic resources which provide the major input for the innovations. The basics of the new game are likely to include some sort of distributional deal in addition to the detailed legal minutiae that define rights to genetic resources and the protection of traditional rights and knowledge, etc., etc.

In the case of GMO's the issue seems much more complex and confusing. First of all, the Southern countries are divided, with the agricultural exporting countries (Argentina, Chile and Uruguay) siding with the U.S., Canada and Australia in opposing any new restrictions on exports or imports in the WTO, while a large majority of Southern countries, aided by both Southern and Northern NGO's, have joined the anti GMO lobby. It may well be that this group is also engaged in strategic behaviour and sees the opposition to the biggest stakeholders – the agribusiness MNE's – as a useful

first stage bargaining ploy. But since many of these Southern countries have – at least potentially – the most to gain from application of the new technology to satisfy their growing populations and to alleviate a range of nutritional and health problems, the opposition from governments and the southern NGO's is hard to understand. Of course it is true that the MNE's have little incentives to invest in innovations for the poorest countries. But there are other avenues to be explored to achieve these development objectives including subsidization by the OECD governments and/or other international institutions. Once again, however, there is no forum for discussion of these cross-cutting and complex issues. In the WTO, it's unlikely that they can be handled by the CTE (Committee on Trade and Environment) or the Council or TRIPS or as should be the case, both together.

Another one of the “new issues” which is a candidate for rebalancing in a new negotiation is trade in services. In preparing a positive agenda in UNCTAD and business fora it's clear that many developing countries are now aware that trade in services can provide significant export opportunities if there is more liberalization for labour access, or Mode 4, in GATS – parlance. Once again this can be viewed as rebalancing since the (understandable) priority for the OECD countries has been and will likely to continue to be on access for foreign direct investment (Mode3). A number of middle income Southern countries have a comparative advantage in the labour component of service production in sectors such as construction, transport, distribution, and the rapidly growing software sector in which the Indian industry is gaining global eminence. The concept of inter-modal trade-off may, however, be difficult because of the extreme sensitivity of the immigration issue in Europe (17) which will generate pressure to include some form of

labour standards for temporary movement, a rather explosive issue for the WTO (see below). In the U.S. the situation appears somewhat more favorable because of the tight labor market. Indeed skill shortages could generate support for Mode 4 and make some American firms potential allies of Southern firms and this opportunity is already being explored. The danger is that the public at large may not understand the difference between immigration and temporary movement and, once again, informed policy analysis and discussions in both the WTO and in national capitals is essential. Finally, the 40 or 50 poorest countries in the WTO have poorly developed service sectors and will require domestic capacity building to overcome these supply constraints on exports.

With a rebalancing of both the TRIPS and GATS a new negotiation which included industrial tariffs, a more rapid elimination of the MFA, and (perhaps) more constraint on the use of antidumping by both North and South could provide a core agenda of mutual benefit to both North and South. Other issues, such as a redefinition of S & D which is more appropriate to the new development paradigm, is under consideration in UNCTAD and NGO fora (18). The EU proposal to include investment and competition policy has been rejected by almost all Southern countries, and neither item is supported by the U.S., but positions may change once a genuine negotiation on the agenda is underway. The demand for including labor standards by the Americans and (although in a much more moderate form by the Europeans) must be tackled or it could be a round-breaker. It should be pointed out that the same countries opposing the inclusion of labour standards in the WTO are also blocking any initiative in the ILO on voluntary corporate codes. Moreover, the lumping together of labour and environment by both Southern governments and NGO's is not defensible because, of course, environment

is already “in” the WTO and must be part of an informed discussion in both the CTE and a policy forum because the alternative will be to regulate by litigation.

Finally, at Seattle the demand for democratization of the WTO was heard from both the Southern countries and the NGO’s. The term “democracy” had two quite different meanings. A large group of developing countries attacked the “green room” process of small self selected groups and demanded greater participation in the negotiating process. This has been termed internal or I-transparency in Geneva and discussions thus far have yielded no results and are unlikely to except in the context of a new negotiation. The other meaning of democracy espoused by the NGO’s (and, to some extent, supported by the American government) is for greater access to information and more participation in WTO activities (probably short of a seat at the negotiating table). In Geneva this is termed external or E-transparency and is vigorously opposed by all developing countries without exception – by, that is, an overwhelming majority of WTO members.

The word “transparency” has, as already noted, an astonishing variety of meanings. For the U.S. government, largely in response to domestic lobbying, it should include some modification of the dispute settlement arrangements to all for the right to present amicus curiae briefs by NGO’s, business associations and perhaps private individuals (lawyers?). The Southern countries have been united in opposition to the decision of the panel in the 1998 Shrimp-Turtle ruling and the June 2000 Appellate Board decision in the British Steel dispute to permit amicus briefs. These decisions, it is argued, have changed the rules of the game and should have been negotiated not litigated. Since the review of the dispute mechanism mandated by the Uruguay Round built-in agenda

was not completed before Seattle this potentially explosive issue will certainly not go away.

More broadly, the thorny issue of E-transparency (save for more access to WTO publications which is already happening at an impressive pace on the internet) will continue to divide the North and South for the foreseeable future. Various initiatives – such as NGO self-regulation by means of auditable transparency codes – are certainly promising but are at a very early stage of development. (19) And even if such codes became pervasive, one would still have to accept the argument that the WTO is an intergovernmental institution and thus participation in the policy process must start at the national level. The counter argument by the NGO's is that many countries in the WTO do not permit any participation either because they are not democracies or have no pluralist culture or tradition. This debate will go on for sometime but clearly the WTO mandate, expansive as it is, does not and cannot include regulation of political systems! Some comparative analysis of the policy process by an outside agency might be one way of beginning a discussion of this issue, however. The OECD has experience in this field of public management and could perhaps apply its expertise to a broader range of countries. (20) Some pilot projects of a regional nature would also be feasible and well within the overall mandate of, for example, the FTAA (Free Trade Agreement of the Americas). The E-transparency issue will have to be negotiated as part of a new round, and flexibility on both sides – in the context of a rebalanced South-North deal – should produce a workable compromise.

Conclusions

The “bicycle theory” of trade liberalization – combat protectionist pressures by means of regular negotiations – is a metaphor based on the past. The cyclist was the U.S. and perhaps, a bicycle built for two could accommodate the E.U. on the back seat. The WTO today is like a crowded bus full of noisy passengers who can’t (or won’t) agree on the instructions for the poor, beleaguered driver. Yet, as suggested in this paper, it would not be impossible to arrange for a reasoned discussion on the road to take to reach an agreed destination.

The anti globalization NGO’s are a diverse collection who disagree on many things but agree that corporate globalization (as they term it) is the source of the widening income disparity among countries and that the WTO is the main agent of corporate globalization. Clearly the widening disparity is related to differing growth rates and insofar as trade enhances growth – mainly by increasing the dynamic efficiencies from increased competition and access to knowledge – trade liberalization is a necessary, but obviously insufficient condition for improving global equality. It’s the other “sufficients” that are so complex and difficult. To tackle the problem of marginalization and improve the opportunities for convergence in income levels among countries would require an unprecedented degree of international economic policy coordination among intergovernmental institutions. Until that is undertaken, alas, the WTO will continue to be a target for dissent and policy overload

It’s perhaps significant that the 2000 Okinawa G-8 summit was the first in the twenty-five year history of summitry that was largely dedicated to North-South issues. It is perhaps equally significant that the obligatory reference to a new round of WTO

negotiations was so bland as to be meaningless. Indeed, the entire exercise was so debunked by informed critics that the legitimacy of the institution is now under attack.

If the role of the G-8 is simply to produce a communiqué of – in the words of the Economist – “anaesthetizing gunk of globocratese“ (21) the WTO will have to tackle the North-South divide on its own. Perhaps a “positive agenda” in the trading system could act as a catalyst for the broader action required to diminish the growing North-South divide.

FOOTNOTES

-
- (1) Sylvia Ostry, Governments and Corporations in a Shrinking World, Council of Foreign Relations, New York, 1990, p. 23. See also Regional versus Multilateral Trade Strategies,” in ISUA: Canadian Journal of Policy Research, Vol. 1, No. 1, University of Montreal Press, 2000.
 - (2) CUSTA was the first international trade agreement that included services but for a number of reasons related to Canadian domestic policy and politics, intellectual property was not included and limited progress was made on the investment issue. But this was rectified by the NAFTA which improved on the services agreement of CUSTA, included IP and a comprehensive investment agreement.
 - (3) For a comprehensive exposition, and analysis of the role of developing countries in the Round see Gilbert R. Winham, “Explanations of Developing Country Behaviour in the GATT Uruguay Round Negotiation”, World Competition Law and Economics Review, Vol. 21, No.3, March 1998, pp. 109-134.
 - (4) For a comprehensive analysis of the Uruguay Round result from the vantage point of developing countries see J. Michael Finger and Rudger Schuknecht, “Market Access Advances and Retreats: The Uruguay Round and Beyond”, Paper presented at the Annual World Bank Conference on Development Economics, April 1999. See also The World Economy, Volume 23, Issue 4, April 2000 with articles on “Developing Countries and the next Round of WTO Negotiations” and Aaron Lukas, WTO Report Card III, Globalization and Developing Countries, CATO Institute, Washington, D.C., June 28, 2000.
 - (5) J. Michael Finger and Philip Schuler, “Implementation of Uruguay Round Commitment: The Development Challenge”, World Economy, *op. cit.*, pp. 511-525. They provide some estimates of implementation costs for just a few of the Uruguay Round Agreements based on World Bank projects suggesting amounts equal to as much as a year’s development budget for the least developed countries.
 - (6) Ibid, p. 514.
 - (7) Rubens Ricupero, “A Development Round: Converting Rhetoric into Substance”, A note circulated as background to the Conference on Efficiency, Equity and Regitimacy: The Multilateral Trading System at the Millennium, John F. Kennedy School of Government, Harvard University, June 1-2, 2000, p. 1.
 - (8) Ibid, p. 4. See also Constantine Michalopoulos, “Developing Country Strategies for the Millennium Round”, Journal of World Trade 33(5):1-30, 1999.

- (9) See Sylvia Ostry, “WTO: Institutional Design for Better Governance,” Kennedy School Conference, *op. cit.* (preliminary draft).
- (10) There are also, of course, a large number of international NGO’s in Latin America, many of which originate from the internet links established in preparation for the 1992 Rio Conference. The leader in this initiative was the APC (Association for Progressive Communications) of San Francisco. From this initial step which gave the NGO’s access to cheap and rapid communication, networks were established for NAFTA, the MAI, the WTO and other international policy issues. For the origins of the RIO network see Shelley Preston, “Electronic Global Networking and the NGO Movement: The 1992 Rio Summit and Beyond”, Swords and Ploughshares: A Chronicle of International Affairs, Vol. 3, No. 2, Spring, 1994. See also The Zapatista Social Network in Mexico, a study by the Rand Corporation originally prepared for the U.S. Defense Department in 1996 and published in a revised version in 1998. One unexpected consequence of the Rio initiative was to provide the network that made the Chiapas rebellion an issue of major international prominence!
- (11) Abdulqaier A. Jusuf, “Differential and More Favorable Treatment: The GATT Enabling Clause”, Journal of World Trade Law, 13(1980), p. 492.
- (12) For a comprehensive analysis of the evolution of non-reciprocity and S & D and the like see Robert E. Hudec, Developing Countries in the GATT Legal System, Trade Policy Research Centre, London, 1987.
- (13) See Ostry, Kennedy School, *op. cit.* for a discussion of the “mobilization NGO’s” and the new service industry, the protest business.
- (14) R. Blackhurst, B. Lyakura, A. Oyejide, “Options for Improving Africa’s Participation in the WTO”, World Economy, *op. cit.*, pp. 491-510.
- (15) *Ibid*, p. 506.
- (16) The discussion on TRIPS is based on Sylvia Ostry, “Intellectual Property Protection in the World Trade Organization: Major Issues in the Millennium Round”, in Owen Lippert, ed., Competitive Strategies for the Protection of Intellectual Property, The Fraser Institute, Vancouver, 1999, pp. 193-205.
- (17) André Sapir, “Who is Afraid of Globalization? The Challenge of Domestic Adjustment in Europe and America”, Kennedy School Conference, *op. cit.*
- (18) The concept of “the spaces for policies” proposed by Venezuela in preparation for Seattle suggests a new version of development policy centred on innovation policies and building business networks. This would affect TRIMS, TRIPS, the Government Procurement Agreement among others. See World Trade Organization, WT/GC/A/279, July 29, 1999

- (19) Ostry, Kennedy School, op. cit.
- (20) The OECD directorate concerned with public administration is now termed PUMA and has recently launched a project on government-citizen connections, which is different from but not unrelated to the concept of participatory democracy espoused by the NGO's. See OECD, Focus, Public Management Newsletter, Dec. 1990-Feb. 2000 (<http://www.oecd.org/puma/focus>).
- (21) July 29, 2000, p. 19