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Expanding WTO membership and heterogeneous interests

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In late 2004, the Consultative Board to the WTO Director General issued its report, 'The Future of the WTO: Addressing the Institutional Challenges in the New Millennium'. As noted by the Director General in the foreword, a rationale for the report was that 'there had been too little serious thinking on whether the institutional design and practice that had served the GATT so well would do the same for the WTO'. One of the specific questions raised was 'Could the WTO with an enlarged membership at various levels of development continue to deliver results?' (p. 2). The following reflection on the Consultative Board's report is motivated by the latter question, where 'results' is defined as promoting not just global economic welfare, but the development prospects of poor members.[1]

Trade is clearly important for development – as noted in the first chapter of the report there is a strong association between growth (development) and trade expansion (imports and exports). The WTO promotes trade, and in that sense is pro-development. But a number of weaknesses can also be identified in the WTO as an institution from a development perspective. First, the WTO is driven by mercantilism: the desire by members to improve their terms of trade through better access to the markets of other members. The focus is not on the welfare or growth prospects of members, or on the identification of 'good' policy, but on the spillovers that national policies impose on others. Absent a spillover, the WTO's 'machinery' does little to engage with poor countries beyond the rather limited Trade Policy Review Mechanism (accession being an important exception).

Second, increasingly the ambit of the WTO extends beyond trade policy. Domestic regulatory policies may have a strong economic efficiency rationale even if they entail some negative spillovers on others. Intellectual property protection is an example – there is now much research concluding that limited enforcement may well be first best for poor countries at early stages of

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1 The report addresses many other questions, including the functioning of the DSU, the relationship between the WTO and civil society, the erosion of MFN and the management of WTO meetings and processes. What follows will discuss some of these matters as well, but only through the lens of the 'development dimension' of the WTO.

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development (Maskus, 2000). One size does not fit all – contrary to what is implied in chapter 1 of the report – so that adoption of harmonized substantive disciplines may be inappropriate. Even if appropriate, regulatory disciplines may give rise to asymmetrically high implementation costs, with the burden falling disproportionately on poorer countries (Finger and Schuler, 2000).

Third, there is little effort to help members identify what the preconditions are for benefiting from specific WTO agreements or whether they have been satisfied. Nor is there much attention paid to analysis and monitoring of the effectiveness and impacts of trade policies or to identify alternative instruments that might be more efficient in attaining a *national* objective. Countries are largely left on their own.

Fourth, numerous opt outs and the focus on trade preferences have resulted in significant discrimination *among* developing countries, creating incentives by recipients of preferences to oppose MFN liberalization, and less certainty and predictability of trade policy. As stressed in the report, special and differential treatment provisions have not delivered good development outcomes, while preferential trade has become the norm rather than the exception. In conjunction with the substantial 'space' that exists for all members – including rich ones – to use trade-distorting subsidies in agriculture, antidumping, apply safeguard protection rather than domestic instruments to promote adjustment, etc., the end result is arguably a significant 'development deficit'.

While many elements of this deficit are recognized in the report, the view that is implicit if not always explicit is that the WTO is and should remain a mechanism through which binding rules are negotiated and enforceable commitments are made. It is not and should not become a 'development institution'. The approach proposed in the report on how to recognize the 'development dimension' can be characterized as comprising: (i) continued emphasis on trade liberalization (chapter 1); (ii) moving towards more opt outs, on the basis of negotiations, not pre-set criteria, for developing countries to facilitate new rule making – through (qualified) support for greater use of plurilateral agreements and/or GATS-type positive list scheduling to allow for differentiation across countries (chapter 7); (iii) greater 'coherence' between the WTO and the policies and activities of international organizations, especially the World Bank and the IMF (chapter 4); and (iv) an explicit linkage between implementation of (new) WTO commitments by LDCs and the provision of technical assistance by high-income countries and development institutions.

There is much to be said for the view that the role of the WTO is to address the negative (pecuniary) spillovers that are imposed by governments on each other through reciprocal, enforceable commitments. But this does have implications. One is that reciprocity should continue to drive negotiations – there has to be a *quid pro quo* to motivate a country to take an action that benefits others (in 'mercantilist' terms). Another is that small, poor countries do not matter much for the trading system – they are too small to affect world prices and too small to

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generate serious concerns about free riding. It is only as countries become 'big enough' in economic terms that it begins to matter what they do – that the spill-overs of their behavior become large enough to be worth incurring the cost of negotiation/enforcement.

A corollary of the resulting incentive structure is that there is little downside to the larger traders in allowing small, poor countries that do not wish to play by the rules to opt out. This has been the traditional approach towards 'development' in the GATT/WTO – in effect, most developing countries were ignored. Special and differential treatment and the Enabling Clause provided a variety of holes and loopholes for developing countries, implying less pressure to reciprocate in negotiations and more opportunities to (continue to) use trade policy instruments and discriminate between countries.

The way forward proposed by the report does not go much beyond the status quo. The emphasis is on the need to accept reciprocal commitments, including not just trade liberalization but an erosion of sovereignty in domestic regulation – needed from a 'grand bargain'/issue linkage perspective – with diversity in interests accommodated through greater use of plurilaterals/positive list type scheduling and more technical assistance. Whether and how the institution can ensure that actual or proposed disciplines make good economic sense is not addressed. This is an important lacuna, as one of the reasons the support for the WTO among many civil society groups and developing countries is limited is the perception that it does need to go beyond simply addressing spillovers and/or creating and transferring rents. The TRIPS agreement is highly relevant in this connection, being the major example of a set of disciplines that are skewed in the interests of a subset of members. A fear of a potential repeat of the Uruguay Round experience – where negotiators started with a limited agenda centering on trade in counterfeit goods, but ended up with an agreement that harmonized elements of domestic intellectual property legislation – was arguably a significant factor underlying resistance by many developing countries to launch negotiations on the Singapore issues.

Taking development as an objective – that is, helping to put in place good economic policy at the level of each member – would not necessarily require major institutional changes, although it would entail a major change in approach or 'culture'. More attention and resources would need to be devoted to multilateral engagement on the impacts of prevailing policies and proposed policy disciplines, complemented with a greater focus on *assisting* countries to use trade for development and doing more to facilitate the removal of trade-distorting policies by WTO members, rich, and poor. The mechanics of the WTO – reciprocity – can be effective in delivering the latter, but progress would be greatly facilitated by complementary measures to help affected groups adjust. Absent such mechanisms, it is much more difficult to deliver non-discriminatory, multilateral liberalization. This point is made in chapter 1. While it is very much a national issue, the WTO could help through an institutionalized effort to monitor the

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extent to which members have put in place and use non-trade distorting pro-adjustment instruments. This could be one element of the terms of reference for the Senior Officials group that the report calls to be created.

As far as developing country trade policies and the adjustment costs of reforms are concerned, the report stresses that bodies like the IMF and the World Bank should do more at the country level to address adjustment costs. This raises the question why (whether) they do not already do this – presumably, they stand ready to respond to requests for assistance. One answer may be that countries are unwilling or unable to borrow. Insofar as this is the constraint, part of the solution could be a significant expansion in dedicated grant-based funding: 'aid for trade' (Prowse, 2005) – an idea that was supported by the July 2005 G8 declaration.[2]

The effective use of such aid requires upstream analysis and a process of prioritization of investment needs and complementary policy reforms – a trade integration strategy. Much attention has been devoted in recent years to the need to 'mainstream' trade into development strategies. This requires not just resources (technical and financial assistance), but political commitment and attention. The primary vehicle the WTO has to discuss a country's trade policy and strategy is the Trade Policy Review. This mechanism does not get attention in the report, but it could be transformed to play a much more central role in dealing with the 'development dimension'. I return to this below.

Developing country governments have legitimate objectives that help explain their use of trade policies. Although the latter are often captured by rent-seeking interest groups and are conducive to corruption – points rightly stressed in the report – it is important to take the underlying development objectives seriously. One way to do so would be for WTO members to do more to help governments use non-trade instruments to pursue national development objectives. Additional aid for trade could help: through a concerted effort to complement formal, binding trade agreements with other forms of multilateral cooperation that enhance the ability of members to exploit resulting trade opportunities.

Such an effort must go far beyond the more narrow suggestion made in the report to mobilize assistance for LDCs to help implement WTO rules. The focus would need to be on the objectives of members, analysis of prevailing constraints and priority areas for action, and the 'coherence' of national policies, including those of industrialized countries. From a trading system perspective, the emphasis put in the report on coherence between WTO, IMF, and World Bank is arguably misplaced. Rather, the focus should be on the actions of countries, specifically what could be done to increase support for the desirable end objective – global free

2 'We agree to increase our help to developing countries to build the physical, human, and institutional capacity to trade, including trade facilitation measures. We are committed to granting additional support for trade capacity building to assist LDCs, particularly in Africa, to take advantage of the new opportunities to trade which will result from a positive conclusion of the DDA. We call on the IFIs to submit proposals to the annual meetings for additional assistance to countries to develop their capacity to trade and ease adjustment in their economies' (G8, Gleneagles, 2005, Africa text: paragraph 22(a)).

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trade. Trade preferences granted by rich countries are an example. Given the many distortions these create, and their limited effectiveness in attaining their purported goal of developing exports, it would be better to shift to a more efficient instrument, such as development assistance, while keeping the focus of the WTO on non-discriminatory liberalization of trade. The former is arguably needed to deliver the latter, and could be seen as an example of the need for more coherence in the policies of high-income countries.

An explicit shift away from using trade policy as a tool – 'trade as aid' – is needed. Instead, more 'aid for trade' – dealing with the behind the border supply side agenda, strengthening regulatory capacity for services, etc. – could help achieve free trade and move the system towards achieving MFN in the application of traditional trade policies. This is not to say the WTO should be an implementing agency or provide development assistance – that is not its comparative advantage. Indeed, the point made in the report that the WTO should outsource technical assistance on trade policy makes good sense.

As the WTO membership is confronted with increasing pressures to negotiate disciplines on 'behind the border' regulatory policies, it is important to recognize and accept that there may not be an 'optimal' solution. The argument in the report appears to be that harmonization should be accepted as long as at the end of the day there will be a Pareto improvement – the grand bargain requires giving up some sovereignty in order to get more than offsetting benefits elsewhere. That presupposes a good understanding of the effects of proposals and the preconditions for benefiting from implementation. But, it may not be clear what the implications are or will be. This was illustrated in the discussions on several of the Singapore issues: consensus on substantive policy issues simply may not exist. However, the working group process also led to a better understanding of where there was a commonality of views on what makes for good policies and where national policies (could) create negative spillovers.

This uncertainty and ignorance, both *ex ante* and *ex post*, suggests a need for substantially bolstering the resources that are put into analysis and monitoring, and complementing 'hard' rules with constructive engagement on policy as well as assistance to help attain the objectives of developing country members. This can be characterized as a shift away from the traditional 'Enabling Clause' approach based on exceptions for developing countries towards an 'Enabling Mechanism' that actively assists developing country governments to attain their trade-related objectives. This does *not* imply ceasing to negotiate binding disciplines in areas where governments impose negative spillovers on each other. It might imply the imposition of dispute settlement 'circuit breakers' for developing countries that perceive a need to use instruments that are subject to disciplines, much stronger multilateral monitoring of the effects of WTO disciplines, and linkages to expanded grant-based funding (aid) to address trade capacity needs, enhance productivity and lower transactions and operating costs in developing countries. Hoekman (2005a, b) develops some specific ideas along these lines.

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Any such approaches will require involvement of senior policy makers from the country concerned, as well as development institutions. Building on the existing TPR process might be one way of moving towards such a mechanism in the WTO, with stronger linkages to inputs from other organizations and an explicit focus on assessing impacts of policies, not just documenting their existence – the primary focus of current TPRs.

Introducing mechanisms into the WTO that allow for greater 'flexibility' *ex post* in implementation accompanied with greater transparency of the effects of national policies and engagement to help implement national trade strategies is a qualitatively different approach from the one proposed in the report, although they could be combined. Many will argue that moving down this track has more down sides than up sides. This may well be true, but it is a judgment that should be made by the membership. There is certainly a case to be made that the development of trade capacity, trade policy dialogue, and the identification of complementary reforms should be left to the development banks and bilateral donors, not least because the WTO is much more of a legalistic institution than the GATT, and may be too rigid to be able to engage constructively in helping a country identify policy options to address priority trade needs in a coherent manner. This is a viewpoint that has been argued strongly by Finger (2002). But, if members can agree to accept greater policy flexibility for poorer members, while at the same time increasing their engagement on trade-related policies and moving towards joint accountability for outcomes, the WTO might do much more to build support for trade and related reforms at the national level. After all, the WTO is *the* global trade organization – it has a vested interest in focusing consistently on the trade agenda in a way that development institutions do not.

Whatever approach is taken – hard rules with more options to negotiate opt outs, as proposed in the report, or a more cooperative approach that complements trade agreements with additional and more effective engagement (and assistance) for countries to use trade for development, a necessary input is information and analysis. This is needed at the national and the global levels to inform policy, assess impacts, identify spillovers, and enforce agreements. This in turn requires access to data on applied policies and related trade and investment flows. Such information is a public good that is currently grossly underprovided by the multilateral trading system.

A major theme of the 1985 Leutwiler report was the importance of transparency of trade policy. To a significant extent the creation of the Trade Policy Review can be credited to the recommendations made in that report. Much has been done to enhance the transparency of trade-related policies, but much more is needed. The report by the Consultative Board devotes substantial attention to the importance of transparency, but with the exception of suggesting that the TPR be extended to cover PTAs, the focus is on the operation of the WTO as an institution, not on transparency of member policies and their effects. This is a major lacuna from a systemic and a development perspective – better

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information is a key input into better policy. Comprehensive, timely and freely available data on policies and trade and investment flows that are compiled and disseminated in a usable format is critical to improve the status quo in all areas, whether the effects of regulatory commitments, the impacts of PTAs and contingent protection, the design liberalization strategies, the impacts of reforms, or monitoring of implementation of commitments.

Even in the area where information is the best – applied tariffs – the focus of current data collection is on statutory MFN tariffs and explicit quantitative restrictions on imports or exports. Data on non-tariff measures, such as anti-dumping and safeguard actions or product standards, are not collected on a comprehensive and regular basis. Matters are much worse when it comes to information on policies affecting services trade, foreign investment, and the (temporary) movement of people. One implication of the positive list approach to scheduling of services policy commitments is that GATS schedules provide only a very incomplete picture of applied policies.

An effort to remedy these gaps is urgently needed, as they impede the ability to undertake analysis, compare country 'performance', or assess the direction and magnitude of policy changes on an annual basis. This suggests WTO members should undertake a collective effort to improve data collection, including a concerted effort to compile a comprehensive database of applied policies affecting trade and investment in services. How to do this most efficiently and effectively is something that needs to be determined. A first step could be to commission a group of experts to propose a practical methodology (index) that can be used for descriptive and monitoring purposes[3] and to define the specific information that should be collected. This effort should extend beyond the WTO to include specialized international organizations such as the World Tourism Organization, the ILO, ITU, OECD, EBRD, etc. as well as non-governmental organizations and think tanks with analytical capacity in both high-income and developing countries.

Of particular importance is to ensure timeliness, quality, independence, and open access for all interested users, whether official or non-governmental. In principle, the WTO is the obvious institution to take on this task. However, for it to be able to do so will require significant institutional changes, starting with an unambiguous mandate from the members to the secretariat to take on this task, a commitment to report data on the basis of the criteria determined the expert committee, and the allocation of the resources needed to compile the data.

Experience to date with the GATT/WTO on data collection and public access is not good. Notifications tend to be slow and incomplete, and much data have historically been kept restricted, accessible only to governments. This continues

3 The overall trade restrictiveness index used in World Bank and IMF (2005) is an example of a methodology that can be applied to do this but currently provides only a partial picture due to the absence of solid and comprehensive data on NTBs, services policies, etc.

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to be the case. The TPR has made a difference on a country-by-country basis, but it is relatively infrequent, and not comprehensive when it comes to services policies. There is no cross-country, tariff line level database that is freely accessible on the web that reports all the information collected through the TPRs over time. There is no comprehensive database of antidumping and safeguard activity by members that identifies the HS code(s) of the products concerned, the measure imposed, etc. The same is true for tariff schedules (ceiling bindings), where the notifications are posted, but the internal database that has been created to put all bindings into a common format that is machine readable is not. It is restricted to governments.

The focus of the Board's report is on strengthening the analytical capacity of the secretariat and supporting more research on trade policy issues. Arguably of much greater importance is to provide the world – not just governments – with access to comprehensive and timely data on policies so that anyone could do such analysis. More analysis is important. Indeed, a good case can be made that the secretariat should have a stronger mandate than the one proposed in the report. For example, it would be useful to have a regular quantitative analysis of the incidence of national trade policies (who gains, who pays?) and the extent to which members have put in place policies to facilitate adjustment (safety nets as well as what Richardson (2005) calls opportunity nets). This would help generate greater awareness of what trade policy does: redistributing incomes in a non-transparent manner – both nationally and across countries – and help build the constituencies needed to support further liberalization of global trade. But here also a change in the 'culture' of the institution will be needed, as such analysis is inherently politically 'sensitive'.

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