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THE WORLD TRADING SYSTEM IN DIRE NEED OF REFORM

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Introduction

Over the decade of the 1990s, the deepening integration of the global economy accelerated as trade, financial flows, and foreign direct investment were liberalised. This deepening integration is, in part, a “natural” phenomenon, fed and now led by technological changes in information, communication and transport and is driving in the direction of a single global market. But, of course, governments have played an important role and international economic policy has facilitated – or perhaps even catalysed – the momentum. And the “natural” and “policy” forces are interrelated in a complex fashion that reflects the nature of the policy process. This process differs in different policy domains – for example trade versus financial or development policy. Yet it’s important to underline that trade policy has indeed played a major catalytic role in fostering global integration.

The catalyst was the Uruguay Round, inter alia, created the first post cold-war institution, the World Trade Organisation. The subject of my talk today is about the aftermath of the Uruguay Round and the dire need for reform of the multilateral rules-based system.

The Uruguay Round and its Aftermath

After twenty-five years in government I learned a great deal but one lesson has proved most resilient – in all significant government policies the unintended consequences overwhelm the original policy objectives. The Uruguay Round is a particularly striking example of this dictum.

The Uruguay Round was the eighth negotiation under the auspices of the GATT (General Agreement on Tariffs and Trade), created in 1948 as part of the post-war international economic architecture. The primary mission of GATT was to reduce or eliminate the border barriers that had been erected in the 1930s and contributed to the Great Depression and its disastrous consequences. The GATT reflected its origins in the post-war world in that it provided rules to buffer or interface between the *international* objective of sustained liberalisation and the objectives of *domestic policy*, primarily the Keynesian consensus of full employment and the creation of the welfare state.

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Before the Uruguay Round, GATT worked very well. Tariffs and non-tariff barriers were significantly reduced and trade grew faster than output as each fed the other. Since the 1960's trade rounds were essentially managed by the U.S. and the European Community. The developing countries were largely ignored as players. Agriculture was virtually excluded from negotiations so the transatlantic alliance, helped by the Cold War's constraint on trade frictions, was the effective manager of the international 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 their heavily subsidised and protected 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 liberalisation of agricultural trade would not be relegated to the periphery by the Americans and the Europeans as it always had in the past.

But the role of a group of developing countries, tagged the G10 hard-liners 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.

Although the "new issues" are not identical – obviously negotiations on telecommunications or financial services differ from intellectual property rights – they do have one common or generic characteristic. Thus, they involve not the border barriers of the original GATT but domestic regulatory and legal systems embedded in the institutional infrastructure of the economy. The degree of intrusiveness into domestic sovereignty bears little resemblance to the shallow integration of the GATT with its focus on border barriers and its buffers to safeguard domestic policy space.

The inclusion of the new issues in the Uruguay Round was an American initiative and this policy agenda was largely driven by American MNEs who were market leaders in the services and high tech sectors. These corporations made it clear to the government that without a fundamental rebalancing of the GATT they would not continue to support a multilateral policy but would prefer a bilateral or regional track. But they didn't just talk the talk, they also walked the walk, organising business coalitions in support of services and intellectual property in Europe and Japan as well as some smaller OECD countries. The activism paid off and it's fair to say that American MNEs played a key – perhaps even *the* key – role in establishing the new global trading system. I'll return to this shortly.

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, privatisation, and liberalisation – 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.

Thus, well before the end of the Round the hard-line coalition had disappeared and coalitions of developing countries concentrated on liberalisation of agriculture and textiles and clothing. Many undertook unilateral liberalisation of tariffs and other trade barriers and by the conclusion in December 1993 were among the strongest supporters of the negotiations they so adamantly opposed in the 1980's. What I have called a North-South Grand Bargain was completed and was quite different from old-time GATT reciprocity – I'll open my market if you'll open yours. It was essentially an implicit deal: the opening of OECD markets to agriculture and labour-intensive manufactured goods, especially textiles and clothing, for the inclusion into the trading system of trade in services, intellectual property and (albeit to a lesser extent than originally demanded) investment. Also – as virtually a 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 legalese) 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 (an incomprehension shared by the Northern negotiators as well I might add).

The Northern piece of the bargain consisted of some limited progress in agriculture, with a commitment to go further in new negotiations in 2000 (although agriculture subsidies have recently *increased*); limited progress in textiles and clothing 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 by developing countries. The essence of the South side of the deal – the inclusion of the new issues – requires major and costly upgrading and change in the institutional infrastructure of many or most Southern countries. What was involved, in effect, was considerable investment with uncertain medium – or long-term returns.

It is also important to note that the Uruguay Round Grand Bargain did not only include *economic* but also *social* regulation. In the OECD countries, but not the

South, social regulation (environment, food, safety, labour, etc.) started in the late 1960's driven in large part by Northern environmental and consumer NGOs, and has been accelerating since then. Since the establishment of the WTO the most high profile and contentious disputes have concerned social regulatory issues (food safety and the environment) which are very sensitive in the OECD countries and has emboldened the NGOs in their attack on the WTO's lack of transparency. And this has also created a serious North-South divide about the incorporation of environmental and labour standards into the WTO.

But the conflict over social regulation is only one part of the much broader issue. The Uruguay Round Grand Bargain produced, albeit unintentionally, a serious North-South divide in the WTO. While the South is hardly homogeneous there is a broad consensus that the Quad (U.S., EU, Canada and Japan) is no longer a "directoire", that the asymmetry of the Uruguay Round must be ameliorated and must never be repeated, and thus Southern countries must play a far more proactive role in all WTO activities. The symbolic importance of words should not be underestimated. The fact that the outcome of the recent WTO Ministerial Meetings at Doha was not a negotiation but a "development agenda" is ample testimony of the new proactivist South. Many of the countries are far better organised and informed, in part because of the rise of democracy and the growing awareness of trade policy issues in the general public and political institutions and the business community. But also because of the role of a number of NGOs created in developing countries during the 1990's to provide information ranging from technical research to policy strategy papers. And since the mid-90's the internet has accelerated the linkages of South NGOs with a number of Northern partners in both Europe and the U.S. These NGOs together act, in effect, as a "virtual secretariat".

The other, and equally important, unintended consequence of the Uruguay Round has been the rise in profile of the MNEs, in part due to their role in the round. For the more paranoid the round was simply a conspiratorial collusion between corporations and the U.S. government. In any case, the global current of deepening integration, accelerated by the Uruguay Round, has evoked a counter-current focused both on the MNEs and the WTO. Let me deal first with the MNEs.

The active role of the corporations in the Uruguay Round certainly raised their profile and made them a magnet for anti-trade advocates. This is evident to anyone who watched on T.V. the battle of Seattle. But the most significant recent example concerns the pharmaceutical industry and the Aids crisis in Africa. As a result of a well-orchestrated campaign led by Oxfam and Médecins sans Frontières, pharmaceutical companies withdrew a lawsuit against South Africa; the US abandoned a dispute against Brazil; and the Doha declaration

included a remarkable political statement concerning the TRIPS agreement and health emergencies.

But the rise in the profile of the MNEs also made the WTO a magnet for what is now called anti-corporate globalisation. Before expounding on the concerted attack on the WTO, I want to make clear that there is no homogeneous set of institutions called NGOs. Even if we separate out the development groups in poor countries from the advocacy NGOs, whose main objective is to shape policy, one has to divide the latter into several categories. For example, I've already noted the new virtual secretariat for Southern countries, and there has been a remarkable proliferation of groups centred on establishing business codes of conduct, and there are groups rich in technical and legal expertise who usually consult "inside" the system, and all of these are rather different from what I've termed the *Mobilisation Networks*, for whom a major objective is to rally support for dissent at a specific event – a WTO ministerial meeting, the Summit of the Americas, a meeting of the World Bank and International Monetary Fund, the G8 Summit and so on.

The main objectives of the mobilisation networks are to heighten public awareness of the target international institution's role in globalisation and, by doing so, to change its agenda and mode of operation – or, in the case of the more extreme members, to shut it down. While these networks are loosely knit coalitions of very disparate groups, an analysis of the networks at Seattle (in 1999), Washington, Bangkok and Prague (in 2000) and Quebec City and Genoa (in 2001) show that there is a core group, mainly North American and European but also including some from developing countries. These NGOs are headed by a new breed of policy entrepreneurs who have very effectively utilised the internet to create what could be termed a new service industry – the business of dissent. It's important to stress that the dissent industry is largely a product of the internet revolution which provides advocacy NGOs with economies of scale and also of scope by linking widely disparate groups with one common theme: anti-corporate globalisation and pro-democracy. The main charge is that the WTO is dominated by the interests of the MNEs and that its rules and procedures are secretive and undemocratic.

Since the objective of mobilisation networks is to influence public opinion and through that route initiate change in the policy processes of the international institutions, has the dissent industry been successful? In the case of the WTO, I would argue that while it's early to tell, there *has* been an impact on the agenda. The emphasis on development as the core of the new Doha round (or rather "development agenda") and the political statement on health emergencies in poor countries, are probably in part due to a shift in emphasis by NGOs to issues with moral resonance, and their consistent and insistent refrain of lack of transparency has, for some, struck at the heart of the institution's legitimacy.

But a shift in NGO strategy was essential for other reasons. While there was destruction of property in Seattle and other meetings there was nothing comparable to Genoa where one protester was killed. A number of mainline NGOs stayed away because they were fearful of being associated with the violence planned by the anarchist Black Bloc and neo-fascists although no one could have foreseen what occurred, including the extraordinary brutality of the police. There is a probably an inevitable tendency for all demonstrations to attract extremists – a free ride is hard to decline. Escalating violence generates the need for more police security, which likewise generates more violence and attracts more extremists. And, of course, Genoa was hardly the end of a story.

The terrorist attack of September 11, 2001 – while unrelated to the anti-globalisation movement per se – has greatly added to the pressure for dissent.com to adopt a new strategy, and changes are underway. So I think the view that the dissent industry died after September 11 – exemplified by a Wall Street Journal editorial headline “Adieu Seattle” – was premature.

In sum, the Uruguay Round transformed the multilateral trading system – a misnomer since the system is less about trade than about domestic policy and institutions, a small step in the creation of a global single market. Yet to undertake this formidable role the Round created a minimalist member-driven institution with extremely weak legislative and executive powers and an extremely strong judicialised dispute system. And the unintended consequences profoundly changed the political economy of policy-making. Clearly, the system is in dire need of reform. Yet at the Ministerial Meeting in Doha reform was the dog that didn't bark. But Doha initiated another potential transformation of the WTO into a “development institution”. This is worth a brief exposition before turning to some suggestions for strengthening the WTO.

As I've already noted, it's more than symbolic that the outcome of Doha was termed a “development agenda” and not a round. While it's true that the Doha Declaration was a masterpiece of creative ambiguity and the devil remains in the details of negotiation, the major objective of the meeting was to avoid a repeat of the Seattle debacle which ended with a walkout of virtually all Southern countries. Thus the great success of Doha was that it didn't fail and this involved convincing developing countries, especially the poorest in Africa, that trade was good for development. Both the US and the EC visited Africa to woo Ministers and the Declaration repeatedly refers to technical assistance and capacity-building now called, only half in jest, the new conditionality. Pushed by the successful NGO campaign about aids in Africa, the Americans were willing to antagonise Big Pharma. The Europeans were most skilful in securing a waiver for their preferential arrangement with the ACP (African, Caribbean, and Pacific) countries by wily deal-making with the Latin American banana exporters. So Doha was unique in its focus on the South and on development.

But Doha, of course, included many other agenda items. Market access for industrial products; agriculture and services; rules such as countervail against subsidies and anti-dumping; as well as the so-called Singapore issues of competition policy, investment, government procurement and trade facilitation. And for the first time in the history of the trading system environment was specifically added to the agenda. Most of these items have a North-South dimension and negotiations will be complex and difficult. Indeed the ambiguous drafting – for example in agriculture and the Singapore issues – leave considerable uncertainty about how the negotiations will proceed and whether the target date of 2005 is feasible or even realistic.

But that uncertainty rests on more than the usual difficulties of complex negotiations: after all the outcome of the Uruguay Round in 1994 could certainly not have been forecast at the launch in Punta del Este in 1986. I would argue that by adding another layer, i.e. development, to the already weak and strained infrastructure of the WTO, there is a significant risk that the system will become marginalised. The alternative to prolonged and contentious negotiations in Geneva are bilateralism, regionalism, and, if necessary, unilateralism. A crazy quilt of preferential trade agreements in an increasingly globalise economy and polity is not a comforting vision of the future.

So what could be done to begin an incremental process of reform to strengthen the WTO? I underline incremental because there's no possibility of major institutional redesign in the foreseeable future despite the endless stream of literature on global governance. Indeed, I acknowledge that even incrementalism may be overreach.

Suggestions for Reform

While the subject of WTO reform has recently evoked some interest in the academic community, as I've said, the same is not true in national capitals. After Seattle there was some desultory discussion on internal and external transparency, WTO – speak for internal reform to make the governance of the institution more open and inclusive and external reform including more access to information and more opportunity for stakeholder participation. After a few meetings of the General Council which revealed strong opposition from many member countries – especially Southern – to even discussing the issues, the subject was dropped. And since then, silence has prevailed.

Nonetheless, if the Doha negotiations flag or if the U.S. steel safeguard measures provoke a wave of tit-for-tat protectionism perhaps there could be some renewed efforts to re-launch a discussion on some modest reforms. Hence, my suggestions which, given the time available, I can only briefly sketch.

The priority should be the establishment of a policy forum, a locus for discussion and debate of basic issues – such as the definition of domestic policy

space to be safeguarded in the international system or the relationship between trade, growth and poverty in developing countries or the linkages between the trading rules and environmental rules to cite a few examples. Then policy options could be proposed and if a consensus is achieved the proposal would be sent to the General Council, the governing arm of the institution. There was, indeed, such a forum in the GATT, called the CG18 (Consultative Group of 18) but an attempt to establish a successor at the end of the Round failed.

Let us briefly review the history of the CG18 in the light of the current apathy of governments.

It was established in July 1975 not by trade ministries but as a result of a recommendation of the Committee of Twenty Finance Ministers after the breakdown of Bretton Woods. (The Committee of Twenty also established the IMF's Interim Committee.) Its purpose was to provide a forum for senior officials from capitals to discuss policy issues and not to, in any way, challenge the authority of the GATT Council. The composition of the membership was based on a combination of economic weight and regional representation but there was provision for other countries to attend as alternates and observers or by invitation. Each meeting was followed by a comprehensive report to the GATT Council.

Because it was a forum for senior officials from national capitals it provided an opportunity to improve coordination of policies at the home base. This is now far more important because of the expansion of subjects under the WTO. Indeed there is no Minister of Trade today but a number of Ministries with concerns covered by the WTO. The CG18 was the only forum for a full, wide-ranging, often contentious debate on the basic issues of the Uruguay Round. There was an opportunity to analyse and explain issues without a commitment to specific negotiating positions. Negotiating committees *inhibit* discussion because rules are at stake. Words matter and might be used, for example, in a dispute settlement ruling as was a report by the Committee on Trade and Environment with a predictable chilling effect on constructive dialogue. Thus the *absence* of direct linkage to rules is essential to the diffusion of knowledge which rests on a degree of informality, flexibility and adaptability.

While establishing the policy forum would be a great step forward, it is unlikely to function effectively without an increase in the WTO's research capability. Analytical papers on key issues are needed to launch serious discussions and to improve the diffusion of knowledge in national capitals. In order to keep up to date and reasonably small in size, the WTO could not possibly generate all its policy analysis in-house. The WTO secretariat would have to establish a research network linked to other institutions. This knowledge networking should include academic, environmental, business, labour and intergovernmental organisations such as the OECD, UNCTAD, Bretton Woods, and environmental

institutions. This becomes even more essential since Doha because the capacity building for developing countries will require complex and extensive coordination with the World Bank and other institutions. Moreover, establishing a research or knowledge network can enhance the ability of the WTO Director-General to play a more effective role leading and guiding the policy debate. This will be politically contentious but is essential. Just imagine what would have happened in the 1980's debt crisis if the head of the IMF had had the authority of the head of the GATT! There would have been a series of meetings to discuss meetings and so on while Latin America went down the drain.

A key difficulty in establishing the forum would be to determine the membership. One formula already exists in the former CG18, which was never officially terminated. But it would probably be necessary to include the policy forum as part of a North-South trade-off. And that would require the big powers to agree that institutional reform was essential to the sustainability of the system. Au fond, the raison d'être of the forum would be to energise and facilitate the rule-making capability of the WTO. Perhaps members should be reminded that there is another route to rule change, i.e. litigation. Faced with that alternative might clarify some minds.

While reform of the dispute settlement system is also a matter of high priority, a number of recent proposals have generated a healthy debate. So I prefer to skip that subject and conclude with my second priority – a proposal for improving external transparency.

At the April 1994 Ministerial Meeting in Marrakesh which concluded the Uruguay Round Article V: 2 of the Agreement stated:

“The General Council may make appropriate arrangements for consultation and co-operation with non-governmental organisations concerned with matters related to those of the WTO.”

In order to clarify the precise legal meaning of this broad directive the General Council on July 18, 1996 spelled out a set of guidelines covering transparency including release of documents, ad hoc informal contracts with NGOs, etc. Guideline 6 is most pertinent in the context of this present discussion:

Members have pointed to the special character of the WTO, which is both a legally binding inter-governmental treaty of rights and obligations among its Members and a forum for negotiation. As a result of extensive discussions, there is currently a broadly held view that it would not be possible for NGOs to be directly involved in the work of the WTO or its meetings. Closer consultation and co-operation with NGOs can also be met constructively through *appropriate processes at the national level where lies primary responsibility for taking into account the different*

elements of public interest which are brought to bear on trade policy-making.

As I noted, at several meetings after the Seattle debacle there was no agreement on either internal or external transparency – even though, interestingly, the US suggested that it would be useful and informative if members provided information on their national policy-making approaches. The same countries that opposed increasing transparency at the WTO level were also opposed to discussing the policy process at the national level. There has been criticism about the more powerful well-financed Northern NGOs demanding two bites of the apple. Fair enough – the charge merits discussion. But how realistic is it, in light of the current state of affairs, to suggest no bite at the apple?

Realism aside, research undertaken at the OECD and the World Bank demonstrates that participatory policy-making processes (now called ownership in Bank/Fund circles) allow governments to tap new sources of policy-relevant ideas, information and resources. Equally important they contribute to building public trust and enhancing credibility of government and hence the legitimacy of the policy. The latter is especially important in international policy because of the anti-globalisation movement, which reflects a broader decline of confidence in government and political institutions since the 1970s. Participatory processes are not costless, of course, which is one reason many countries are wary. They make the process more costly, complex and messy. And most negotiators would prefer operating in secrecy or, at least, with as little interference as possible. But when weighing costs and benefits, it might be wise to factor in the systemic costs from doing nothing, including most importantly the erosion of the multilateral system. This will impact the weaker countries more than the stronger because the only alternative to a rules-based system is one based on power.

What could be done to launch a project on domestic policy-making? One of the outcomes of the Uruguay Round was the creation of the Trade Policy Review Mechanism (TPRM). It was designed to enhance the effectiveness of the domestic policy process through informed public understanding i.e. transparency. Section B spells it out:

Domestic Transparency

Members recognise the inherent value of domestic transparency of government decision-making on trade policy matters for both Members' economies and the multilateral trading system, and agree to encourage and promote greater transparency within their own systems, acknowledging that the implementation of domestic transparency must be on a voluntary basis and take account of each Members' legal and political systems.

The TPRM's origins and objectives clearly embrace the policy-making process and thus seems the logical venue for launching this project - - on a voluntary basis and as a pilot to be assessed after an agreed period. If the pilot took off and a number of developing countries became involved the TPRM secretariat would have to be strengthened and civil society capacity building in some countries would be required. But enhancing capacity to improve and sustain a more transparent trade policy process – which will not be a one-size-fits-all model but will vary according to a country's history, culture, institutions, etc. – sounds like a good investment. It's hardly a new idea. In the 1970s, during the Tokyo Round, an American official remarked to an academic researcher that the advisory committees established under the 1974 Trade Act were working extremely well because “when you let a dog piss all over a fire hydrant he thinks he owns it”. That's a rather less felicitous version of today's concept of ownership.

So there are my two suggestions for WTO reform – both internal and external. What are the chances? Maybe you know the answer, so I'll conclude with the question.