

# The Coverage, Form and Content of WTO Policy Bargaining Beyond the Doha Round<sup>1</sup>

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## Abstract

How to proceed after the July 2008 cessation of WTO Doha round negotiations (collapse is the term used in journalistic circles) is an issue that will likely preoccupy trade officials globally for many years, even if subsequent Brazilian efforts to revive negotiation breath new life into them. The negotiation has been one focused on a dated agenda from the mid 1990s, that no party really wanted, but that no one wanted to be seen to walk away from.

In this paper, I argue that there is no quick fix that will simply put the WTO bicycle back on its old tracks and move ahead. But ideas building on the existing focal point of international policy coordination that the WTO charter and agreements

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represent and moving into new areas of trade, after the chance of forward momentum in negotiation being maintained without first trying to resolve Doha Round conflicts. Rather than return to negotiating issues of the past such as trade in industrial and agricultural goods, trade in services and other issues, the paper suggests also exploring potential new uses of WTO principles in unexplored areas. One possible area is trade internal to states and the use of WTO agreements to better regulate interprovincial or interstate trade within large federal states by having sub national entities as well as nation states accede to the WTO. Another to explore is the potential application of WTO principles to emissions trading schemes and non goods and services trade of various types related to global environmental management. Yet another possibility is to view the WTO less as a trade organization and more as a prototype of a World Bargaining Organization for which the experience gained in WTO Rounds can be utilized in much broader global policy bargaining. Put simply, there is no reason why the World Trade Organization should limit itself to trade among nation states in only goods and services and an expanded coverage of WTO negotiation may help in giving enough forward momentum to preserve existing cooperation.

## 1. Introduction

How to proceed after the July 2008 cessation of WTO Doha round negotiations (collapse is the term used in journalistic circles) is an issue that will likely preoccupy trade officials globally for many years, even if subsequent Brazilian efforts to revive negotiation breath new life into them. The negotiation has been one focused on a dated agenda from the mid 1990s, that no party really wanted, but that no one wanted to be seen to walk away from. There is no quick fix that will simply put the WTO bicycle back on its old tracks and move ahead. While the rules and disciplines in the WTO charter and subsequent agreements remain along with WTO dispute settlement it is widely believed that the effectiveness of rule enforcement through dispute settlement rests in part on the prospect of further negotiated cooperation. As a result, this brief discusses some possible directions for future global policy co-ordination beyond the Doha Round and in the medium term - perhaps over a period of 20 to 30 years building on existing WTO agreements.

The central idea is to build on the focal point for international policy coordination that the WTO charter and agreements represent by expanding the coverage of WTO principles. Little debate has taken place on further elaborations on the WTO structure which could prove productive for global economic policy coordination over the next several decades. Rather than only return to negotiating issues of the past such as trade in industrial and agricultural goods, trade in services and other issues, the paper also explores the potential uses of WTO principles in

newer unexplored areas which may provide both fresh benefits and also the forward momentum in negotiation to protect existing agreements.

Put simply, there is no reason why the World Trade Organization should limit itself to trade among nation states in only goods and services, and moving into new areas of trade forward momentum in negotiation might be maintained without first trying to resolve Doha Round conflicts.

One possible new area is trade internal to states and the use of WTO agreements to better regulate interprovincial and interstate trade within large federal states by having sub national entities as well as nation states accede to the WTO. Another to explore is potential application of WTO principles to emissions trading schemes and non goods and services trade of various types related to global environmental management. Yet another is to view the WTO less as a trade organization and more as a prototype of a World Bargaining Organization for which the experience gained in WTO Rounds can be utilized in much broader global policy bargaining.

Both international policy coordination and the global policy bargaining which is needed seems likely to be even more central to the successful performance of the global economy over the next 30 or so years than has been the case in the post war years. This, in part, reflects the growing prominence of issues involving global environmental arrangements and energy. As a result, it may be productive to view the WTO, not narrowly as a world trade organization in the way currently conceived and largely as only covering trade in goods and services between nation states, but as

covering trade more broadly conceived both within countries and in assets and also other policy bargaining. The idea is that the WTO also is viewed as a prototype for global bargaining arrangements beyond trade, covering other areas of international policy.

The present WTO structure is the outcome of complex, at times, and tedious negotiations which now provides a global rule regime platform which would be difficult and time expensive to rebuild and which can be applied more broadly to other issues even with the current Doha Round failure. Given the difficulties and the time delays in de novo negotiation, the present WTO arrangements can act as a starting point for other negotiations to follow.

Two specific areas of potential negotiation are given in the paper by way of example. One is to use the existing WTO rule regime including MFN and national treatment in the charter of the WTO and apply it to areas which go outside the WTO's conventional coverage of goods and services traded internationally. The rule regime of WTO could, for instance, be productively used to also discipline arrangements which apply to sub-national governments and liberalize internal trade within countries.

What could be attempted would be accession of sub national entities (states, provinces) to the WTO and through this the application of WTO rules and disciplines downward to internal trade. States and provinces could then initiate disputes with each other (and also nation states) for violations of WTO rules such as national treatment and MFN. Another benefit of liberalizing interstate or inter provincial trade

in this way could be the consistency of nation to nation (WTO) trade arrangement and internal trade rules. This would obviously be a big change for the WTO, but potentially globally very productive and a way of keeping forward movement in WTO process.

Another idea is to try to discipline emerging trade arrangements in areas outside of international trade in goods and services such as in carbon emissions trading in the environmental area and in global assets trade through the application of WTO rules (MFN national treatment) by broadening the coverage of trade within the WTO. Present country specific trading schemes in emissions rights, which have features which conflict with WTO principles such as limitations to trading within jurisdictions (a violation of MFN).

Another possible direction for the WTO involves viewing the WTO not narrowly as a world trade organization but as a broader world bargaining organization which focuses on using various agreed international rules to discipline policies implemented by countries and achieve policy coordination between them. Trade policy may have been the first area for this bargaining organization to deal with and it can now progress to other policy areas. As such, a world bargaining organization contributing to the new emerging world order focused not only on trade but also on global environmental issues and energy could possibly eventually emerge from the WTO Round process beginning in the 1940s and continuing to Doha and even be dominated by global policy bargaining in new areas such as environment and energy. And, if the WTO thus far is viewed in this way as a form of stepping stone for a prototype

broader global policy bargaining organization, then it may be productive to now try to use it to build global cooperation in other policy areas, such as global environment to again keep forward momentum in global cooperation.

Thus, rather than focusing on the WTO as a narrowly based trade only organization (and with likely continued frustration over limited forward movement in negotiation and with the possible future imperilment of the much discussed WTO bicycle) the idea is to now take the bicycle onto new roads and help keep the prospect of new global cooperation in place so as to under pin and enhance the rule regime we have progressively built for trade since the 1940s.

## **2. The Doha Round and Sequential Negotiation in the WTO**

The cessation of negotiations (termed a collapse in journalistic circles) in the WTO under the Doha round in July 2008 has inevitably focused global attention on whether significant forward movement can be maintained in global negotiation to sustained open and liberal global trade. The WTO and each GATT are generally viewed by economists as not only an international regime of cooperation between countries linking the uses of trade restricting measures, but also as a sequential process of round by round negotiation moving the global economy away from domestic non cooperation (the 1930s) to the global operation of today. From the early GATT Rounds of the late 40s and early 50s, through the Dillon, Kennedy, Tokyo and Uruguay Rounds and with expansion of coverage to agriculture, intellectual property, services, the view has become extreme that forward movement in negotiation (or its prospect) is key to keeping the global economy open and growing.

Various commentators have offered differing assessments of what might have been achievable in the Doha Round (see discussions in Bouët et al (2006), Evenett (2006), Kinnman, Lodefalk (2007)) and the minimalism and datedness of this discussion which is especially striking to me. The consensus thus seems to be that even if negotiation resume over the next year and successful coalition-based agreements are eventually to emerge from Doha, they will likely at best be minimalist as a conclusion to the Round and, importantly, anyway only deal with aptly agenda from the mid 1990s at the end of the Uruguay Round. Climate change, sector measure



sold trade, energy and other issues of today are not on the Doha agenda. None to my knowledge has discussed broad dive that beyond the Round. The Doha Round, in my opinion, is best understood as a continuation of the Uruguay Round, which in turn, was a major departure from previous GATT negotiating rounds. This broadened the bargaining in the WTO beyond the prior bargaining in earlier rounds. These had primarily been concerned with tariffs and the Uruguay Round broadening was toward such issues as agriculture, intellectual property, services, investment and others (see Cordoba et al (2004), Fontagne (2005)). The Doha round was largely a tame echo.

But even though the Doha Round negotiation largely echoed the expanded coverage of the Uruguay Round disciplines (see WTO (2005)), it proved difficult to conclude. Major differences in position in agriculture, trade in industrial goods and conflicts in the negotiation process are varyingly offered to account for this. But the realistic negotiating momentum became dissipated for wider range of reasons. Developing countries convinced that they had activated little in the Uruguay Road more frustrated and distill around by both the process and the institution. Entreated sectoral interests in agriculture in major OECD countries were unwilling to allow liberalization. Liberalization in services (except in telecoms and to a linked degree in racial services) was to benesque and cosmetic

Because of the wider spread belief in trade pliageircles that forward momentum in negotiation is key to preserving and openness, discussion on the future of the WTO post-Doha has primarily focused on preserving the WTO as an institution and centrally on maintaining the agreed system of disciplines of rights and obligations

established initially in the GATT 1947 and elaborated on in various negotiation rounds subsequently up to and including the Uruguay Round.

But this emerging discussion will also likely confront the central issue of whether or not the rule regime emerging from the 1940s is sustainable in future decades, and whether there are realistic prospects for ongoing future multilateral negotiation on trade of a similar type to those which occurred in the past. The Uruguay Round itself was notable for the creation of WTO both through the single undertaking and the various understanding contained both in GATT 1994 and other agreements, including the GATS and agreements in agriculture, textiles and various other less significant areas including pre-shipment inspection. For future negotiations the issue will be whether there is achievable substance in these areas for such negotiations to maintain the existing rule regime if, as many believe, onward forward looking negotiation is critical. Central will be the operation of dispute settlement procedures in the WTO and whether or not the system of WTO panels and dispute settlement can remain as acceptable to WTO members and proves to be functional in useful ways in a post-Doha world.

There is also debate at a political level as to how the triad of Bretton-Woods institutions which emerged in the late 1940s as the World Bank, the IMF and the WTO (from the failed negotiation of the ITO to the GATT and then to the WTO) will evolve. My own view is that these institutions, today, are caught in a time warp of the 1940s. The central issues addressed in the Bretton-Woods conference of 1944 were to try to prevent a return to the Great Depression of 1929-1931 and to avoid the

associated exchange rate instability of the accompanying period. The concerns were manifest in the creation of the IMF and subsequently in the GATT, a temporary arrangement given the negotiating failure of the ITO in 1951. The evolution of the GATT into the WTO occurred subsequently in 1994. The World Bank (originally named the International Bank for Reconstruction and Development) formed part of the post-war triad as a commitment to development by providing concessions of financing for infrastructure expenditures in developing countries.

Whether the WTO part of this structure will prove sustainable in a post-Doha world has been reflected in discussion in the literature of the so-called democratic deficit (the lack of direct formal voter participation in WTO decisions). Another issue raised is the developing countries majority membership in WTO and their general perception of the WTO as a rich man's club.

But this discussion of the future of the WTO is largely negative, in the sense that it focuses on how to preserve the existing institutional structure without a clear focus on the issues of the day that the institution is supposed to address and contribute to. If the problems of the global economy today differ from those of the 1940s, the time may have come for change. And if there is difficulty in establishing a local point for continued negotiations to aid international cooperation and policy co-ordination in trade as conventionally understood, maybe the idea of building onto this established institutional structure so as to use it to address new problems may have merit. Put simply, through new negotiations on fresh topics using the WTO institutional structure, existing arrangements can also be both preserved and built on,

independently of the contribution to the issues themselves.

The approach I map out here is to focus on the preservation of the existing WTO rule regime post-Doha debate by finding new avenues of negotiating dynamism. Major changes have taken place in the global economy since the 1940's and these are now accelerating, and in my view call for an institutional response. The challenge for the WTO should be seen as how to now use the WTO rule experience with negotiations on international policy coordination to respond to these new developments using innovative approaches within existing arrangements, rather than simply preserving the institutional structure as status quo. There are issues of how to craft departures in structure for an existing institution so as to put it into a position where it can contribute to contemporary issues. It may be that for these issues innovative de novo institutional design will be called for, but this seems both slower and probably inefficient.

Thus, in my view there is no reason why WTO should be seen as an arrangement restricted simply to international trade in goods and services. It can deal with a variety of forms of spatial and inter temporal trade, and trade in other things beyond goods and services. One example is internal trade within member states of WTO. Canada is one case in point, where there has been renewed tension of late over issues with inter-provincial trade barriers and barriers to inter-provincial labor mobility. Issues with sub-national jurisdictions and internal trade also arise in Brazil, Russia, Germany, Australia, India, and other federal states. Applying WTO disciplines to such trade through the accession of sub-national entities is thus an avenue of forward momentum

to explore.

The WTO structure could also, in my view, be productively applied to other forms of trade. One which I highlight involves global environmental policy, particularly in the post Kyoto world of 2012 where there are issues surrounding the tradability of emissions permits. There are no international disciplines which guarantee complete international tradability of these permits in a non-discriminatory manner. Evolving arrangements in a number of countries and regions within countries seem to indicate an emergence of restrictions on tradability on a geographic basis and by source of emission, which could be constrained by applying WTO rules to them.

I also discuss issues involving global trade in assets, and especially subsidization and the transparency of such transactions including buyouts of companies by (directly or indirectly) state supported enterprises. These have arisen in a number of areas, including proposed or actual buyouts of various OECD companies by Chinese and Indian enterprises. There have been allegations that the transparency of arrangements involving the acquiring company is inadequate, if there are no listing requirements involved.

This set of examples is but part of an array of possible directions for the future evolution of the WTO while involves expansion in the forms of the trade which might be covered by the World Trade Organization. But the WTO can be viewed in another way and this may also points to an enlargement of WTO related activities. I suggest viewing the WTO as less simply a trade organization, but more as a global policy bargaining organization which, for now, has concentrated on trade policy. Under this

view of the world, the evolution of global arrangements in the environmental area could yield large benefits if the bargaining structure the WTO has spawned could be applied to accommodative global bargaining arrangements in other areas. The argument, therefore, is that the WTO can be viewed as a prototype organization for global policy bargaining rather than just a trade organization. This prototype is manifest in the charter of the WTO and now the experience gained from creating and adapting the WTO can be applied to other areas. I later discuss the potential application of this idea to the global environmental negotiations.

Thus the central issue for WTO negotiation on cooperation is whether they are viewed as having reached their limit in their application to trade policy with the cessation of Doha round negotiation, and the policy focus is to depend what we have. Or whether instead the Doha round cessation points the way forward to yet new bargaining arenas which will in turn provide fresh momentum for cooperation and that generating this momentum is the key to preserving what the WTO rules now embody. The question is whether to keep what we have to keep going forward.

### **3. Applying the Existing Rule Regime of the WTO to Broader Notions of Trade**

#### **Subnational Trade**

I first discuss the possibility of extending WTO disciplines through a downward projection of the WTO charter to sub-national entities within federal states by having them accede to the WTO. This I label as the ‘sub-national WTO approach’ (this concept and the subsequent discussion draws on Whalley (2007)).

The basic idea is to seek agreement both from sub-national entities and WTO members to extend WTO disciplines in this way. This approach would mean that the principles of MFN and national treatment, as well as the WTO dispute settlement mechanism, would apply directly to sub-national trade in goods and business services through GATT 1994. The framework of the GATS would also allow for the mutual scheduling of commitments by subsequent entities, including those relating to labor mobility under mode 4. The WTO agreements on subsidies and countervailing measures and other related disciplines would apply both between sub-national entities and between sub-national and national entities.

This may seem a somewhat radical approach to enlarging the trade coverage of the WTO, but it could offer substantial benefits globally on a number of levels. Firstly, there is seemingly no reason why the WTO should be an organization restricted to

international trade. In a period when the Doha Round seems stymied and there is growing WTO pessimism, injecting this possibility of sub-national extension into global debate could help rejuvenate the global trade liberalization process and, along with it, renew commitment to multilateral institutions. The potential exists for a common approach to be used in a number of countries, such as Canada with the provinces, Switzerland with the Swiss cantons, in India and Brazil with the states, China with the provinces and indeed, in any federal state. One could also conceivably extend the approach further, covering municipal and, in principle, even individual to individual trade, although this would clearly be even further off in any reasonable time frame.

A further attraction of this approach is simplicity in that minimum disciplines for internal trade would be implemented quickly and within an ongoing negotiating framework directly transferable from the WTO. Also, from a national point of view, if there is to be sub-national liberalization, it seems sensible to make it fully compatible with the structure of liberalization arrangements involving higher tiers, since local producers would be subject, in principle at least, to one harmonized world structure of rules. In Canada, for instance, on average, the international trade of sub-national entities can exceed the sub-national entity's internal local trade by a factor of two. This opportunity could also present a chance for WTO members to show new global leadership on trade in the global economy by moving forward with such a proposal.

One could argue, and with some conviction, that, given the blocked liberalization globally between nation states in recent years in the WTO, that a leading edge of



WTO global trade liberalization for the next few decades could be internal trade between the member counties, rather than only nation to nation trade.

A basic scheme for a sub-national extension of WTO disciplines could be to use existing internationally agreed disciplines and extend them to sub-national jurisdictions. This would imply that the international disciplines contained in the charter of the World Trade Organization, and as agreed at the conclusion of the Uruguay Round, would apply equally as a system of rights and obligations to both provinces, sub-national entities and states, as well as to all existing members of the WTO.

What would be involved in such a scheme would be for sub-national entities to proceed individually to accession negotiations towards full membership of the WTO. The issue would first need to be raised with the WTO Council and, presumably, by the national governments of the sub national entities at issue. All members of the WTO would then have to agree to establish a working party to consider each request. The potential benefits to WTO members would need to be established, and if the requests were accepted, negotiations on such accession could commence. This mechanism would likely be strengthened if all provinces (or states) would jointly and simultaneously engage in accession negotiation. A key objective would be to liberalize internal trade, but by proceeding jointly down this route, if there were WTO agreement, it would allow individual members' internal market integration schemes to be made as compatible as possible with international integration arrangements.

Accession negotiations would focus on the terms of individual sub national

accessions, and would likely begin with a minimum condition that all provinces (or states) agree to all the disciplines contained in the WTO Charter of 1994, and as adopted as a single undertaking at the conclusion of the Uruguay Round. These would include GATT 1994, the Agreement on Agriculture, the Agreement on Sanitary and Phyto-Sanitary Measures, the Agreement on Textiles and Clothing, the Agreement on Technical Barriers to Trade, the Agreement on Trade Customs Valuation, the Agreement on Pre-shipment Inspection, the Agreement on Subsidies and Countervailing Measures, the Agreement on Safeguards and the General Agreement on Trade and Services (GATS), the Agreement on Trade Related Aspects of intellectual Property Rights (TRIPS), the Understanding on Dispute Settlement, the Trade Policy Review Mechanism, and the Government Procurement Agreement.

As sub-national entities typically maintain no formal tariffs, and there are typically no sub national border posts at sub national borders, matters related to tariffs and their bindings could presumably be dispensed with, and many of the Uruguay Round agreements even if acceded to would not, de facto, apply (such as rules of origin). But establishing sub-national commitment jointly with WTO members to these disciplines would give sub-national entities rights, independently of their national government, to initiate disputes with members other than their national government where sub-national issues were involved.

Most likely in any such accession negotiations, a range of issues going beyond the agreed 1994 WTO arrangements would be raised by various WTO members. In accession negotiations since 1994, countries such as China and Vietnam have agreed

to added disciplines. China, for instance, accepted a liberalization program over 7 years in key service areas: telecoms, banking, insurance, disciplines over subsidies to state owned enterprises, a phased reduction in tariffs, a designation as a non-market economy and the use of both special and product specific safeguards. Vietnam has accepted fewer additional terms but they are there. Safeguards, for instance, apply effectively for only one year. In the case of sub-national entities, these additional terms would likely be different, since local entities are not seen as a source of surging export growth that the low wage, large population national economies are. However, in the Chinese case, related issues would undoubtedly arise and would likely focus on current trade irritations involving particular member states. In the Canada-US case, negotiations might reopen at provincial level on matters related to softwood lumber and the existence and operation of the Canadian Wheat Board. In negotiations with Brazilian states, regional aircraft financing arrangements and other matters might arise. It would likely be the possible local components of these arrangements which would be the focus of discussion.

This broad ranging scheme, if negotiated and implemented, would mean that, assuming all provinces eventually acceded, key WTO disciplines such as MFN and National Treatment, the WTO procurements and the use of the Trade Policy Review Mechanism, would stand as both rights and obligations for local entities in other local markets and internationally. They would represent joint and common rights and obligations potentially going substantially beyond existing arrangements, and raise the prospect of harnessing gains from increased interregional activity within national

economies.

Beyond the full integration scheme there are targeted and more restricted schemes. These more restricted schemes would yield fewer benefits to sub-national entities but would likely be more easily negotiated and perhaps face less political opposition at home.

One possibility for a restricted scheme would be for local entities to engage in a process of WTO accession without formally involving the WTO. This could be a process through which the national government, rather than the WTO, acts as the body under which such negotiations take place. The starting point for such negotiations would be the joint and common acceptance of WTO 1994 disciplines along with an agreed dispute settlement procedure based on that used by the WTO and going beyond existing and various localized arrangements in various countries such as the 1995 Canadian Agreement on Internal Trade (CIT).

Another restricted scheme option would be for an approach to be made to the WTO for the initiation of a sub-national structure, in which the WTO allowed for sub-national entities simply to accede to subsets of WTO disciplines or individual disciplining arrangements. It could be, for instance, that only GATT 1994, GATS, dispute settlement and possibly the TRPM would apply sub nationally. This would be precedent setting for the WTO in permitting accession of sub national entities on a more restricted basis, but could also be seen as injecting new energy into the WTO process, and hence be acceptable.

Yet another option for a restricted scheme might be for sequential accession of

local entities under the full scheme after initial agreement with the WTO. The first local entity acceding would thus only obtain benefits and have obligations internationally. As subsequent entities acceded, sub national benefits and obligations would be slowly extended throughout the national space. The first and other early sub national states or provinces acceding in this way would then sit on working parties negotiating the accession of sequential entities.

One final issue concerns dispute settlement and the possibility for innovation beyond what is currently used in the WTO in restricted sub-national WTO schemes. In a tiered scheme, sub-national entities could, for instance, mutually commit to the withholding of federal funds from the national government up to some ceiling. In the event of violations being upheld and remaining unresolved by dispute settlement, it is possible in a multi-tiered WTO for WTO dispute settlement to be strengthened. A retaliation mechanism involving mandated retaliation by all but the offending sub-national entities, the so called N-1 retaliation approach, could, for instance, further strengthen the force of retaliation and potentially be of great value to small sub-national entities.

This is all only a sketch out a scheme for the potential development of sub-national disciplines between the sub-national entities using the framework of existing WTO arrangements. But as a disciplining device on actions of sub-national governments it could more fully harness the benefits of freer internal trade within member states and yield global benefits from freer trade.

## **Emissions Trading**

Another area where the use of the WTO rule regime could be usefully applied is in disciplining restraints on trade is the area of carbon emissions trading. The tradable permits, which were the subject of negotiation in the Kyoto Protocol involve commitments by countries to implement mechanisms of various kinds to facilitate their meeting their Kyoto target emission reductions by 2012. Part of the implementation mechanism involves the possibility of trading commitments to restrict emissions of carbon. Tradability operates differently across two groups of Amax A and Amax B countries: one of whom undertook emission commitments, and one did not. But broadly speaking, if there are existing plants which are heavy emitters of carbon, the removal or withdrawal of these plants, which themselves would be depreciating over time, constitutes a commitment to meeting emissions targets, and these commitments can be bought by other entities, which could then continue to emit. The idea is that if there is to be a global limitation placed on emissions, if this global limitation is met in jurisdictions where there is a plant which is taken out of commission, the emission reductions that result from this can be traded and bought by entities including those in richer countries.

What has evolved in light of this emerging system which will be further negotiated on as part of the Post Bali roundmap process in Copenhagen in 2009 for a position would however is that various kinds of schemes are now evolving rapidly and quickly, but are on a country by country basis and are ad hoc. The evolution of these arrangements within national entities has however, thus far resulted in a wide

array of different arrangements with substantial country variability. There are many elements of complexity in these schemes, including the monitoring and incentive mechanisms which exist for the delayed withdrawal of old, heavily emitting plants.

In Canada, for instance, there are proposed schemes at a provincial level which only allow for tradability within provinces. In the EU there are trading schemes which effectively have different arrangements for different types of emissions such as those associated with aircraft and industrial emissions even though the impact of the carbon in the upper atmosphere is the same. These differences reflect the political pressures which come into play in the evolving national schemes and the idea of applying WTO disciplines in this area is to allow for the evolution of carbon emission trading schemes to occur within a framework of international global disciplines. These would be those constrained in the charter of the WTO, specifically national treatment and MFN, and would more fully harness the gains from enhanced global tradability of these schemes.

### **Trade in Assets**

Yet another area where the WTO may be able to enlarge its range of activities in a creative way relates to global trade in assets. This is an area that the WTO thus far has not become centrally involved, even though there are limited WTO disciplines applying in the investment area through the TRIMS agreement in the Uruguay Round, although the coverage of these latter arrangements is limited.

In part, concerns over international trade in assets have been driven by outward foreign investment stemming from rapidly growing, large population entities outside of the OECD, particularly China and India (discussion here draws on Antkiewicz and Whalley (2007)). Part of this reflects questions over the transparency of the acquiring entity but also concerns over subsidization. These issues first emerged following a series of attempted buyouts of OECD entities abroad involving Chinese state owned enterprises in 2005 and 2006. These involved such cases as the attempted buyout of Maytag in the US by Haier, a Chinese enterprise, whose objective seemed to be to acquire a distribution system in the US and a brand name which could be applied to Chinese origin products for sale in the US. Eventually, Haier backed away from this proposed buyout because of local political opposition. There were similar efforts in the energy sector including an attempted buyout by the Chinese Offshore National Oil Company of UNOCAL. There have been other areas of activities involving proposed buyouts of mineral companies in Canada and elsewhere, as well as more recent buyouts involving OECD steel companies bought by Indian entities.

The concerns as stated in the OECD countries by those opposed were that significant amounts of these activities are financed by low interest or even zero interest loans which have been extended by state banks, particularly in the Chinese case. These loans reflect the accumulation of reserves in these countries, which have been rapidly accumulating. A claim by managers of targeted enterprises in the OECD has been that subsidization is involved and, so it is argued, is a form of unfair trade,



which should be restricted by some mechanism comparable to countervailing duty actions in trade.

The counter-argument, which has been made rather forcefully by various commentators in the OECD and elsewhere is that, as a result of these claims of subsidization, a higher price is paid for the asset. It is clear that, for the firms being acquired, the opposition seemingly comes largely from local management who fear for their jobs as a result of these transactions. However, the issue of subsidization is potentially a matter which could be discussed under the institutional framework of the WTO.

The other related matter, and one in which the WTO could also become involved, is the issue of transparency. In some cases, acquiring firms are state owned enterprises and their managerial structure is opaque. Such companies do not formally meet listing requirements of major international stock exchanges. One claim is that, without listing requirements being met, there are uncertainties surrounding these transactions, with implications for national policy for the country whose company is being acquired. A local company may, for instance, be acquired by a foreign entity in situations where there is a fragile financial structure for the acquiring firm and the acquiring firm could potentially become bankrupt relatively quickly. The potential adjustment implications for local employees are the issue. The argument is not necessarily to oppose these transactions, but to provide more transparency and clarity in their execution. This therefore represents another potential area of expansion for WTO activities, by

extending international disciplines in the WTO so as to cover international trade in assets as well as in goods and services.

#### **4. The WTO as a Prototype for a Broader Global Policy Bargaining Organization**

A further possible direction for enlargement of WTO activities is to build on the notion that the WTO can be viewed as a prototype of a global policy bargaining organization, rather than an organization concerned exclusively with international disciplines in trade. The argument is that the WTO is an institutional mechanism whereby accommodation takes place between entities globally in terms of their competing interests in a bargaining framework and it just happens that it has evolved first in the trade area when such bargaining could have happened in other theatres. Under this view, the present WTO has resulted in international disciplines being mutually applied by countries to the ways in which their trade policy initiatives evolve, but one can argue that one should see the WTO as a prototype organizational form which provides experience and institutional richness that can now be applied in other areas outside of trade in goods and services.

The suggestion is thus to use the WTO to enhance prospects for global bargaining on non trade issues and harness the gains from bargaining. This is that the international cooperative arrangements between countries can be supported by trigger mechanisms between countries as represented in the Folk Theorem (Rubenstein 1974). These issues have also been discussed directly in Perroni and Whalley (1996).

Thus if one takes a broader view of international economic negotiations, one can argue that there are different tierings of international commitments and, once placed

in the form of an international treaty with cross-linkage to other treaty arrangements, including military and security arrangements, then viewing global negotiation in international trade as a prototype for other types of global policy bargaining makes more sense.

One can argue, for instance, that in the international environmental area, both with major concerns over global warming and now new global initiatives on carbon limitation, the potential scope for and gains from further international policy bargaining in such areas is large. One can argue that, if the extreme case global warming scenario associated with the earth sciences is taken seriously, we could be looking at major global change in the next few years. If we take, for instance, what James Lovelock (see Lovelock (2006)) has more recently called 'global heating', one immediately notes the major disagreement between earth scientists and econometricians as to what could potentially happen. The earth scientists portray a picture of terrifying gloom, with the Earth surrounded by a Gaia layer with an emerging environmental catastrophe on our hands, partly of our own doing but partly caused by the warming of the Sun. The econometricians look at data on temperature changes and emissions and conclude that the structural break implied is so implausible that its probability is effectively zero.

The Lovelock scenario however, involves Gaia, the control organism of the Earth in a self-regulating environmental layer which is in rapid decay and unable to regenerate itself in the same way it has done for 3 billion years. The scenario is that, within 100 years, civilization as we know it will barely survive, and a few people will

be left at the Antarctic Pole. A temperature change of 5° C will occur with a major sea level rise, desertification and social disruption. Lovelock predicts that 100,000 years will be needed for the regeneration of our civilization.

Lovelock has been working in this area for forty years and is a serious scientist, a fellow of the Royal Society, and has received many international awards. His books are written with care, compassion and thought and these are not radical views among earth scientists. Many prominent earth scientists and environmentalists share these views and they should be taken seriously. But, even if Lovelock has only a 2% probability of being right, this set of issues should clearly dominate global, economic and policy debate and will likely do so for the next 30 or more years. Global arrangements simply have to constructively reflect a significant policy response to these probabilities.

The surprising feature is that global thinking on these matters seems to be rudimentary in that the set of potential international cooperative arrangements which have thus far been both discussed and debated are few. Most are on emission reduction as in the Kyoto 1997 protocol. Now there is a post Bali roundmap negotiation on further emission reduction, and ill specified agreement on adaption and innovation as part of a 2002 post Kyoto world. There are also unilateral proposals on the table from the EU to go to deeper and deeper cuts on emissions: 20% by maybe 2020 and 30% if other countries match. There are to be serious discussions in the G8 on 50% reductions in carbon emissions by 2050. Lovelock has called for the immediate cessation of use of the fossil fuels. There are proposals from Chancellor

Merkel in Germany, for sufficient reductions in carbon emissions to be implemented to constrain temperature change to perhaps no more than 2-3 °C. We also have the Stern report and the latest IPCC reports providing scientific evidence and economic cost estimates.

At a global policy level, we have to decide what we do in light of all this. Do we simply commit to deeper and deeper cuts, but we could also argue that what is needed is a recognition that we should commit today to contingent actions depending on what circumstance arises, rather than commitments to act definitively independently of what happens. The difficulties in carrying out these negotiations are so large and their complexity is such that we need to mutually agree now to act in various ways if things should happen, in the hope that they do not.

In pursuing these possibilities we could then utilize existing institutional structures such as those of the WTO to facilitate speedy negotiations. For instance, we could have commitments now on deeper carbon emission cuts depending upon actual temperature change. While, it could take 50 years for some of these emissions to rise into the upper atmosphere, but we can make joint commitments today based on WTO experience as to what our future actions would be, if needed.

The world might also face widespread desertification in Africa and elsewhere, may potentially need to move millions of people across the borders of small and poor countries with geographical borders running parallel to each other. This may not be easy. None of the countries potentially impacted in West Africa, poor as they are, would likely agree to admit refugees unless there were major commitments from the

OECD and other nations made in advance. Current aid flows from the OECD are small. In the case of the US, these are maybe 0.2% of GDP; in the case of the Scandinavian countries, 1% of GDP. Much of this aid is also tied. It is unknown what the size of aid flows could be if needed to deal with such catastrophic events accompanying significant global warming, but they could potentially be much larger, even in the region of 10-15% of OECD GDP.

Another issue underpinning global climate change negotiation is the threat of significant sea level rise. Bangladesh may no longer exist as a country with a 5 foot sea level rise. Insurance markets as currently organized cannot cope with such contingencies. In some countries there are restrictions that the value of insurance policies issued by local companies, in terms of their liabilities, cannot exceed the local assets of the company. What is involved is major global catastrophic country to country risk, and substantial financial innovation will be needed. Perhaps market mechanisms can cope, but what could be involved would be the substantial issuance of global flooding bonds, where payment is contingent on precise measurements of sea level rise at certain locations on certain dates. We could have global heating bonds, in which global financial markets could be involved. Such arrangements need to centrally reflect ways in which sensible diversification of catastrophic environmental risk is accommodated.

The implementation of such schemes would likely involve major innovation and the institutional experience of the WTO process could again be a major asset in this. Thus, one can argue that major negotiations should start now on dealing with these

contingencies and we can use the structure of the WTO in facilitating such negotiations- global policy bargaining may be the way to proceed and also the whole global structure of finance, redistribution, trade, labor and more may become embroiled.

More generally, the interactions between environment and energy would also suggest an emerging global order in which these concerns come to dominate the trade concerns of the late 20<sup>th</sup> century, and the evolution of the WTO from a trade organization into a world bargaining organization to facilitate these arrangements might occur. In the area of nuclear power, if there is continued reliance on national regulation, where the risks involved of major events comparable to the Chernobyl meltdown exist, large cross-national risks are at stake. The insurance dimensions inevitably involve large dimensions of global policy bargaining. The implications of use of bio-fuels for land degradation and for global poverty could also become central elements in global policy bargaining.

Thus, we may face an evolution into a world order as one different from that of the 1940's where, as in the Bretton-Woods conference of 1944, the world was seen as a series of countries only connected through trade and finance but not connected through physical interaction. In this world to trade and finance are added physical interactions between nations in the form of global environmental issues, as well as energy and securities. This may imply linked policy bargaining in this new global policy order and the potential reach and scope of global bargaining on global policy matters would seem to be a major issue. To forcefully and centrally extend WTO



disciplines and premises into a range of new areas which are not currently covered by the WTO may be one way to proceed. And to extend policy bargaining using WTO experiences may be another. In my view, much can be learned now by discussing and debating how the evolution of the current arrangements in the charter of the WTO, and particularly MFN and how these might national treatment, might apply to other areas.

## 5. Conclusion

This broad-ranging paper deals with global change and how the experiences gained for global policy bargaining in the WTO might be used to refocus new global policy bargaining. It argues that, after the Doha Round and its inconclusive outcome, rather than debate the future of the WTO by focusing on the maintenance of the existing rule order and process related matters, such as the democratic deficit and decision making process within the WTO (including dispute settlement), new directions could be explored. Specifically, it might be useful for debate to focus, as well, on more forward looking issues, problems facing the global structure in the early part of the 21<sup>st</sup> century.

I suggest seeing the rule regime of the WTO as one which has been negotiated with great difficulty over a period of time but one which has established a local point for international corporations which can be used in new ways. How this experience can be constructively applied to other (and now more pressing) issues which face the global economy is thus the issue. Some of the ideas I put forward involve broadening the notion of trade in the coverage of the WTO into such areas as sub-national trade, carbon emissions trading, and assets trading. I also suggest considering the evolution of international policy cooperation beyond trade and finance, moving into such areas as environment and energy, and viewing the World Trade Organization as a prototype global bargaining organization which can be used for non-trade bargaining.

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