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The WTO, Looking Ahead

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Abstract

In this Essay, I would like to focus simply on some key points which I believe are central to the WTO's present, and also to its future. This Essay begins by discussing the importance of the rule of law to the WTO's work. Part II talks about changes that have come with an expanding membership. Part III concludes with a review of recent events and an optimistic outlook for the WTO.

ESSAYS

THE WTO, LOOKING AHEAD

*Mike Moore**

INTRODUCTION

It hardly seems necessary to justify at length why a reflection on the fundamental issues facing the World Trade Organization¹ (“WTO”), and the multilateral trading system might be a topical subject for this special issue of the *Fordham International Law Journal*. In a little more than five years of existence, the WTO has attracted more attention than the General Agreement on Tariffs and Trade² (“GATT”) ever did in over almost fifty years of activity. The birth and first steps of the WTO have coincided with a time of increased weaving of national economies together, and of intense concern over the impact of this “globalized” economy, which has brought the multilateral trading system to the forefront of numerous public debates. The WTO has become, in the eyes of many, an embodiment of globalization itself, and some of these people seem to hold the view that somehow, if the “problem” of the WTO went away, so would the problems of globalization.

International trade lawyers and experts, of course, were always keen observers of the development of the multilateral trading system as embodied in the GATT and the results of its successive negotiating rounds. As this volume testifies, they continue to have a contribution to make to reflections on the development of the newly established WTO. In this light, I am pleased to have been offered the opportunity to contribute a few introductory thoughts to this theme-book. I see it as a chance to take stock of the achievements of the WTO in its first few years and assess some of the challenges to be faced into the future.

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1. Marrakesh Agreement Establishing the World Trade Organization, THE LEGAL TEXTS—THE RESULTS OF THE URUGUAY ROUND OF MULTILATERAL TRADE NEGOTIATIONS, 1999, World Trade Organization, Cambridge University Press, 1999 [hereinafter WTO Agreement].

2. General Agreement on Tariffs and Trade, Oct. 30, 1947, GATT Secretariat, Geneva, July 1986 [hereinafter GATT].

Building on the progressive development of multilateral trade rules since 1947, the WTO brought together under a single framework an unprecedented set of multilateral rules governing not only trade in goods—including the sensitive sectors of agriculture and textiles—but also trade in services and trade-related aspects of intellectual property. This set of rules is bound together by a strengthened dispute settlement mechanism. The significance of these rules is underlined by ongoing support given by Members to the multilateral trading system and by the number of countries seeking to join the WTO. At the same time, the complex interplay between this comprehensive multilateral trading system and a variety of social policy goals has brought with it many challenges.

The multilateral trading system has recently experienced some trying times, and being the Director-General of the WTO since September 1999 has certainly been a challenging task. It has been a time of learning, but also a time of significant opportunity for the WTO. Let me say this: in the course of its early days, including in the past year, the WTO has delivered on its promises in many ways. You will see this in the pages to follow. But also, as the contributions in this volume will testify, a wide range of legal and policy-related issues deserve our full attention in this evolving environment. Some debates, such as the interpretation of the GATT provisions on regional agreements, have been with the GATT for many years and have reached new dimensions with the entry into force of the WTO. Others, including for example issues relating to civil society's interest in the WTO, have fully revealed themselves more recently in light of increased concerns over the impact of the "globalized" economy. It would not be possible in this short introductory comment to do justice to all of these issues. I would like to focus simply on some key points which I believe are central to the WTO's present, and also to its future.

I. *THE RULE OF LAW AS A CORNERSTONE OF THE WTO*

One of the key achievements of the Uruguay Round was the establishment of the WTO as the permanent institution to oversee the multilateral trade agreements and the forum for further multilateral trade negotiations, thereby bringing the multilateral trading system officially into the universe of legally constituted

intergovernmental organizations. Respect for the agreed rules overseen in this new framework is a key component in maintaining the stability and predictability of trade conditions promoted by the multilateral trading system. Indeed, one of the essential functions of the WTO is to ensure that the rule of law, not force or power, presides over the conditions of international trade. In the WTO, as elsewhere, the rule of law is of fundamental importance in guaranteeing the effectiveness of negotiated results. This is particularly true for less powerful trading partners, who can perhaps benefit most from the protection of a rules-based system.

The importance of the rule of law finds a constant expression in many aspects of the WTO's work, through Members' commitment to abiding by the principles and disciplines negotiated in the WTO framework. But the most visible expression of the rules-based character of the multilateral trading system is probably to be found in its dispute settlement mechanism.³

With the increasing volumes of world trade covered by the WTO Agreements, it is probably inevitable that a significant number of disputes would arise, and indeed, more than 200 cases have already been brought to the WTO for resolution. This is a powerful testimony of the confidence of the Members in the ability of the system to promote a satisfactory resolution of their trade differences. And it is encouraging to note that a great number of these disputes have been settled during the consultation phase. Also, compliance has followed in most instances where Appellate Body and/or panel recommendations were adopted requiring a Member to bring its measures into conformity with the WTO Agreements. Only in a few, albeit high-profile, cases has compliance proven problematic. It is regrettable that some of these complex cases did not find a satisfactory outcome by the end of the time-period foreseen for implementation of the Dispute Settlement Body's recommendations, thus leading to authorizations to impose commercial sanctions. Nevertheless, even then, the overwhelming benefit of

3. Understanding on Rules and Procedures Governing the Settlement of Disputes, THE LEGAL TEXTS—THE RESULTS OF THE URUGUAY ROUND OF MULTILATERAL TRADE NEGOTIATIONS, 1999, World Trade Organization, Cambridge University Press, 1999, p. 354 [hereinafter DSU].

having Members discuss their difficulties in a multilateral framework should not be underestimated.

Overall, one could fairly say that the WTO's dispute settlement record evidences a successful achievement of the goals the Dispute Settlement Understanding set out to achieve. The procedures, which brought increased automaticity and deadlines to the process, have been used successfully by Members, including developing countries, to address a variety of concerns, ranging from safeguards in the textiles sector to discriminatory taxation or the imposition of anti-dumping duties. Within the system, the Appellate Body⁴ has also already made a central contribution to the stability and predictability of the multilateral trading system by clarifying the meaning of a number of WTO rules in the context of specific disputes.

II. MEETING THE CHALLENGES OF AN EXPANDING MEMBERSHIP

The WTO's Membership has continuously expanded since its entry into force. The WTO has welcomed new Members every year, including five in the year 2000: Albania, Croatia, Georgia, Jordan, and Oman. All of these new accessions represent a powerful message that these governments believe freer trade and the rule of law are beneficial for their citizens. The WTO now has 140 Members, two-thirds of which are developing countries. Many more countries, rich and poor, small and large, should soon be joining.

The ever-increasing membership is a dramatic referendum in support of a rules-based WTO, of trade liberalization and of the global trading system. But this expansion of the membership also brings new challenges in the dynamics and operation of the multilateral trading system. An organization comprising 140 countries from the most industrialized to the smallest economies cannot operate in exactly the same manner as a relatively homogeneous group of twenty to thirty countries such as the contracting parties of the GATT in its early days.

It is crucial to the proper functioning of the multilateral trading system that all Members are able to participate effectively in the system and see their interests fully reflected. It has there-

4. *Id.* art. 17.

fore been one of my personal priorities since taking office as the WTO's Director-General to ensure that all Members can reap the full benefits of their participation in the multilateral trading system. We need to ensure our decision-making processes continue to guarantee each Member's full participation and access in decision-making, while retaining the ability to work efficiently. Consultations held in the course of the year 2000 on how to improve internal transparency and effective participation of Members have been constructive. Improving internal transparency must be a continuous task and we share a collective responsibility to keep our practices under close scrutiny.

For some smaller developing economies, just finding the resources to participate in the day-to-day activities of the WTO is a challenge. The Secretariat is doing all it can to assist. We have been assisting the thirty or so countries who do not have missions in Geneva. We are also seeking to enhance access to information by establishing WTO Reference Centers equipped with computers and internet access in developing countries. A group of WTO Members has also initiated an Advisory Center on WTO Law which they hope to make operational very soon to facilitate developing countries' access to dispute settlement.

Members have also worked through an important package to help the world's poorest countries reap greater benefits from the world trading system. This includes offers of better access to twenty-seven rich-country markets, increased technical assistance, and closer co-operation between the WTO and other global institutions that promote development, notably the World Bank.

Also, a number of Members, in particular developing countries, have voiced concerns over difficulties they are encountering in the implementation of the Uruguay Round results. These issues were the source of much of the rancour that prevented the launch of a new round in Seattle. An important achievement in the year 2000 was the establishment of a mechanism to address these concerns, in the framework of the WTO's General Council. These discussions have produced modest but concrete results, and the process is continuing with a commitment from all sides to deal with genuine problems constructively.

All these efforts contributed importantly to confidence-building in the WTO in 2000. As a result, the climate in the

WTO is much better than it was immediately after the 1999 Ministerial Conference, or indeed at any time since the 1998 Ministerial. 2001 will be an exciting year in which we will go forward and build on the positive results already achieved.

III. MAINTAINING THE MOMENTUM FOR FURTHER TRADE LIBERALIZATION

It is a matter of historical fact that it was not possible to launch a new round of negotiations at the Ministerial Conference in 1999. A number of factors contributed to this setback, but the fundamental reason why new negotiations were not started at that time was simply that the issues were not ripe. The differences, transatlantic and North and South, among Members were too deep, too entrenched to overcome. Looking to the present, important differences remain among national positions, particularly on the subjects to be included in the future negotiations. Despite this, however, much has been achieved since 1995. In the area of trade in services, successful negotiations on financial services increased considerably the level of commitments in this sector, and the Fourth Protocol of the General Agreement on Trade in Services⁵ ("GATS") on Basic Telecommunications⁶ and the Information Technologies Agreement⁷ ("ITA") have paved the way for extending the benefits of the new economy.

More recently, as provided under the Marrakesh Agreement's built-in agenda, we launched negotiations on agriculture and services. Together, agriculture and services account for over two-thirds of the world's economic output. The potential gains to both rich and poor countries from further liberalization in these areas are huge. They include cheaper and more bountiful food and clothes, cheaper telephone calls, better financial services and a faster spread of the Internet.

Both sets of negotiations had a successful start in their first year. Indeed, as much progress was probably made during that

5. General Agreement on Trade in Services, THE LEGAL TEXTS—THE RESULTS OF THE URUGUAY ROUND OF MULTILATERAL TRADE NEGOTIATIONS, 1999, World Trade Organization, Cambridge University Press, 1999, p. 284 [hereinafter GATS].

6. Annex on Negotiations on Basic Telecommunications, GATS, Annex, *id.* p. 314.

7. Ministerial Declaration on Trade in Information Technology Products, Dec. 13, 1996, at http://www.wto.org/english/tratop_e/inftec_e/itadec_e.htm [hereinafter ITA].

first year as we would have done within the context of a wider round. In agriculture, numerous negotiating proposals were submitted from, among others, the Cairns group of agricultural exporting countries, Canada, the United States, the European Union, and a group of eleven developing countries. These proposals cover all the main areas at stake in the agricultural sector, from domestic support to levels of protection or export subsidies. The services negotiations also cover some of the key industries of the future, such as telecommunications, computing, finance, and electronic commerce. Indeed, the fact that services, which was one of the most difficult negotiating issues during the Uruguay Round, are now an uncontroversial subject is powerful evidence of the speed with which economic integration has moved over the past ten years.

Although the successful negotiations completed after the Uruguay Round in the services sector are a good indicator that much can be achieved on a sectoral basis outside the broader context of a negotiating Round, a Round allows participants greater scope to pursue benefits across sectors. In both the agriculture and services negotiations, the stakes are high and the interests involved are very important. Too important for us not to reinforce them and maximize their chances of success by setting them in an enlarged negotiating framework that would allow meaningful concessions to fully develop across sectors.

A key task now is to broaden support for further multilateral liberalization. Reaching a consensus to extend the negotiating agenda will call for flexibility and a willingness to compromise on all sides. If a new round is to be started, governments will need to find the political will to reconsider entrenched special interests for the greater good. Some key players have already begun to do this. These differences will have to be bridged if we are to move the trading system forward on a broad and balanced liberalising agenda. The work accomplished in Geneva in 2000 improved the climate in which these issues are addressed, and I am confident that we are now ready to build on our confidence-building efforts towards a broader negotiating agenda. This will call for realism, for difficult choices among priorities, and for political courage. But all participants share an interest in success and, difficult though the process of building consensus may be, it is the only way to agree on a new round to which all WTO members can actively commit themselves.

Free trade should not be a hard sell. Openness of economy has proved to be a major factor in economic growth. Recent studies have confirmed that openness boosts economic growth and that the incomes of the poor rise one for one with overall growth. As was recalled in the World Bank's recent World Development Report, economic growth is a powerful force for poverty reduction. Indeed, economic growth has been sustained at notably high levels, and the continued improvement on global economic activity in 2000 has confirmed a solid recovery from the slowdown experienced in 1997-1998. But the benefits of globalization are still unevenly distributed. And at the same time, a growing number of people fear the consequences of the increased interdependence of economies and a perceived loss of control over their own future. These fears have expressed themselves through a backlash against globalization, and sometimes against liberalism.

So, as we look to the future of the WTO, we must remember the fundamental objectives of its work. By providing the framework for predictable and open conditions for international trade, the WTO has a crucial contribution to make to economic prosperity and development. It is not synonymous with liberalization at all costs. It is an instrument towards lifting standards of living, promoting full employment, and ensuring that developing countries secure an appropriate share in the growth of international trade. I am confident that the essays assembled in this volume will provide thought-provoking and stimulating reflections on how these important objectives can best be met.