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The WTO from the Perspective of a Developing Country

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Abstract

This Essay starts by laying out the shortcomings of the WTO. In Part II it lays out the issues at stake in the Seattle Conference. Part III is about the effects of the “Seattle fiasco.” Part IV gives the author’s views on what a development round should be. Part V asserts that the WTO should promote fair labor standards. Finally, Part VI discusses the prospects for the WTO to address concerns of developing nations.

THE WTO FROM THE PERSPECTIVE OF A DEVELOPING COUNTRY

*Ambassador Celso L. N. Amorim**

INTRODUCTION

A few decades ago the world trading system was regarded by the developing countries as fundamentally flawed and unfair. Different regimes, irrespective of their professed leanings to the right or the left, followed similar policies based on state intervention and the insulation of the domestic market (to the extent possible) from the pressures of external competition. In many cases, sacrifices were asked from, or even imposed on, populations largely deprived of their political rights.

This panorama has changed dramatically. All but a few developing countries have become thriving democracies. Human rights and sustainable development are prominent on the domestic, as well as the international, agendas of many countries from the South. Illusions of a radical transformation of the world trading system, epitomized in the notion of a new economic order, have given way to a more sober and realistic approach based on the possibility of continuous incremental gains. At the same time, “competitive integration,” and not the quest for self-sufficiency, became the unifying concept driving the decision-making process in developing countries in economic matters. As a consequence, barriers to the importation of foreign goods were either scrapped or dramatically reduced, internal regulations were made investment friendly, and sound macroeconomic policies were actively pursued, sometimes with great success.

In this process, developing countries discovered, or in some cases rediscovered, the value of a rule-based multilateral trading system, which fosters predictability and mitigates the effects of unilateralism. They also realized that it was more convenient to negotiate in a forum where a multiplicity of forces interact and often neutralize each other than on a bilateral basis.

Therefore, not only in rhetoric, but in practice as well, de-

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veloping countries have been adjusting to a system that they rightly feel entitled to influence, at least to a limited degree, even though they did not shape the system.

It is often argued that much of this adjustment was undertaken in their own interest, and this may be true to some extent. But it also would be fair for developing countries to expect that such momentous efforts, brought about in many instances at a high socio-political cost, be matched by concrete actions on the part of developed nations. The way the system is operating, unfortunately, does not allow us to say that this reciprocity has taken place. Not to any significant extent, anyway.

I. *THE SHORTCOMINGS OF THE SYSTEM: THE
"DEVELOPMENT DEFICIT" IN THE WORLD TRADE
ORGANIZATION¹ ("WTO")*

An analysis of recent data demonstrates that the Multilateral Trading System is failing to play a constructive role in terms of global income distribution. As a matter of fact, comparing figures concerning the participation of different groups of countries in the world trade, from 1994 to 1998, one can verify that the volume of total trade of the developed countries increased by about 33%, whereas the volume of total trade of the developing countries increased by only 20%, according to data from the UNCTAD. It is noteworthy that the period in question already reflects, to some extent, the results of the Uruguay Round. This seriously casts doubt on the validity of the argument frequently put forward by developed countries that poor nations have benefited considerably from the negotiations.

This does not mean that there were no positive results for developing countries from the Uruguay Round. One might say that tariff reductions have benefited their exports, even if marginally so. The establishment and/or strengthening of rules, including those concerning dispute settlement, has provided the system with greater predictability. This has brought benefits to all parties.

Developing countries today, however, have a genuine feeling of disproportion between their efforts to liberalize and their

1. Marrakesh Agreement Establishing the World Trade Organization, *LEGAL INSTRUMENTS—RESULTS OF THE URUGUAY ROUND* vol. 1, 33 I.L.M. 1144 (1994) [hereinafter *WTO Agreement*].

efforts to subject their policies to internationally agreed upon rules (mostly inspired by developed countries) in areas such as intellectual property and the lack of commensurate measures on the part of their counterparts in the developed world. There still remains countless examples of tariff barriers and other obstacles applied by developed countries that affect precisely those products in which poor countries would have a chance to compete.

Two sectors illustrate this situation: agriculture and textiles. The case of agriculture shows how traditional barriers can be used, together with new imaginative concepts, to hamper the access of developing countries to the agricultural commodities market. The first consideration that arises, in this respect, is on the "rationale" for agricultural products (and the same argument would be valid for textiles) to be singled out from all the other goods and to be given a distinct treatment. It is easy, but essentially false, to reply to this question by pointing to the "political sensitivity" of this sector. This view is so obviously one-sided that it would seem almost superfluous to state that, in adopting the results of the Uruguay Round, developing countries have accepted disciplines in equally sensitive areas from their point of view, and that industrial policies, as much as agricultural ones, also have social, environmental, and cultural impacts. Nevertheless, most developing countries have acknowledged the notion that those sacrifices constituted the price to be paid in exchange for efficiency gains that would spread throughout the system.

Developing countries have thus undergone a painful adjustment process. It could only be hoped that developed countries would show the same degree of commitment to liberalization in sectors that they deem to be more sensitive. That does not, unfortunately, seem to be the case. Developed countries not only keep on making use of some traditional barriers in these sensitive areas, such as quotas and tariff peaks, but also continue to evolve new concepts to justify their protectionist policies. The notion of "multifunctionality" of agriculture, put forward most notably by the European Union and Japan, is a good example of such tendencies.

The situation of the textile and clothing sector is another outstanding example of the lack of political will of developed countries to allow for free competition in their own markets.

This is a sector in which protectionist measures with the objective of artificially upholding obsolete industries have prevailed for decades. Unfortunately, during the Uruguay Round, it was not possible to negotiate that “normal” provisions for this sector should replace the previous discriminatory arrangements, at the same time as the other WTO agreements were put into force. The current Agreement on Textiles and Clothing² determines the complete integration of the sector in the year 2005, but, based on experience, many developing countries fear that the existing quotas might be replaced by other measures that have a similar impact.

Beyond textiles and agriculture, steel is another sector in which exports from developing countries have been continuously subject to harassment. In this case, the constant abuse of trade remedies, especially anti-dumping measures, has rendered the sector another painful exception to free trade.

Therefore, developing countries have either reaped very small concessions in the areas of their greatest interest or have seen such concessions nullified by restrictive trading practices. In contrast, the results of the negotiations included texts with provisions that incorporated very strong commitments to be observed by developing countries that were not fully prepared to undertake those adjustments so speedily.

The obligations contained in some of the agreements, such as the Agreement on Trade-Related Aspects of Intellectual Property Rights³ (“TRIPs”), the Agreement on Subsidies and Countervailing Duties,⁴ and the Agreement on Trade-Related Investment Measures⁵ (“TRIMs”), entailed the need for changes in domestic laws and regulations and, ultimately, restricted the ability of those countries to pursue industrial policy objectives. Many of the instruments traditionally used, such as subsidies and local content requirements, were either severely restrained or totally prohibited. The fact that there are special and differential treat-

2. See Agreement on Textiles and Clothing, Apr. 15, 1994, WTO Agreement, Annex 1A, at http://www.wto.org/english/docs_e/legal_e/final_e.htm.

3. Agreement on Trade-Related Aspects of Intellectual Property Rights, Apr. 15, 1994, WTO Agreement, Annex 1C, art. 4, *LEGAL INSTRUMENTS—RESULTS OF THE URUGUAY ROUND* vol. 31, 33 *I.L.M.* 1197 (1994) [hereinafter *TRIPS*].

4. Agreement on Subsidies and Countervailing Measures, Apr. 15, 1994, WTO Agreement, Annex 1A, at http://www.wto.org/english/docs_e/legal_e/final_e.htm.

5. Agreement on Trade-Related Investment Measures, Apr. 15, 1994, WTO Agreement, Annex 1A, at http://www.wto.org/english/docs_e/legal_e/final_e.htm.

ment provisions in some of the agreements does not alter this picture, since most of these provisions do not go beyond allowing for additional (frequently short) time periods for the adaptation of developing countries to the new rules.

II. *THE ISSUES AT STAKE IN SEATTLE*

The Seattle Conference ("the Conference") was held in an environment of frustration of developing countries with the results of past negotiations. Although the causes of the failure of the Conference have to be looked for elsewhere, such feeling, together with the activism of certain anti-globalization groups from the developed countries and the inflexible positions of their own governments on a wide array of issues, contributed to create an atmosphere of pessimism, which led to the final deadlock.

If one looks at the background and preparation process of the Conference, the prospects for its success were never bright. The WTO was targeted by all kinds of criticism, ranging from the alleged negative impact of its rules on the macroeconomic performance of Members, mainly with regards to unemployment rates and economic growth, to issues such as its alleged disregard for environment and labor standards and lack of transparency.

The sheer complexity of the agenda of the meeting also played a prominent role in its failure. As the Multilateral Trading System evolved, it became increasingly broader and more complex. Progressively, the agenda of discussions in the old General Agreement on Tariffs and Trade⁶ ("GATT"), and now in the WTO, did not limit itself to traditional market access issues. Whatever one may think of such tendency in terms of "governance" of international economic relations, this diversity of themes multiplied potential divergences among Members.

Basically, the issues at stake in Seattle could be divided into three broad categories. Two of them—the so-called "built-in-agenda" and the implementation issues—are directly related with the results of the Uruguay Round. The third involved the Singapore issues.

The "built-in" agenda covered certain commitments, embodied in the texts of the Round, due for negotiations on a fu-

6. General Agreement on Tariffs and Trade, Oct. 30, 1947, 61 Stat. A-11, T.I.A.S. 1700, 55 U.N.T.S. 194.

ture date. This was the case, most notably, of agriculture and services.

Implementation issues were connected with those agreements of the WTO that, especially from the point of view of developing countries, required revision as a result of perceived shortcomings and imbalances. Suggestions on implementation ranged from proposals to allow for greater flexibility in the use of certain provisions of the Uruguay Round Agreements (first and foremost those related to transition periods) to efforts to reduce the degree of discretion countries, especially the developed ones, enjoy in pursuing trade objectives. Examples of this latter category are the proposals related to anti-dumping and rules of origin.

The third group of issues discussed in Seattle has its inclusion in the WTO agenda traced back to the 1996 Singapore Ministerial. Apart from the traditional negotiations on market access for industrial goods, this category includes themes such as investment, competition policy, transparency in government procurement, and trade facilitation, which gathered variable levels of support among Members. There also was significant discussion related to other new issues, such as E-Commerce, the environment, and the alleged link between trade and labor standards, which proved to be highly controversial.

The well-known course of events postponed all the discussions to a moment in which circumstances would be more favorable.

III. *THE POST-SEATTLE SCENARIO*

The effects of the "Seattle fiasco" on the future of the whole multilateral trading system have been the object of much speculation. Hypotheses about the death of multilateralism have been raised. Following this line of thinking, regional initiatives would play the prominent role in foreign trade relations in the future.

Reality, however, is much more complex, and the system has mustered strength from decades of experience in dealing with crises of all sorts. Although some wounds remain unhealed, the WTO carried out some important activities in the course of 2000. Among those, the launching of the negotiations on agriculture and services (the "built-in agenda") should be singled

out. The ongoing discussions on an "implementation package" also deserve to be highlighted.

The negotiations on agriculture, launched in the beginning of 2000, are based on Article 20 of the Agreement on Agriculture.⁷ This instrument, in reality, constituted the first effort to discipline the trade in agricultural goods multilaterally and to bridge the gap between the treatment of this sector and that of industrial goods. The perception, even then, that the results of these efforts had fallen behind the expectations of exporting countries resulted in the adoption of Article 20, which mandated the continuation of the process of liberalization in the agriculture sector from January 2000.

The proposals of the Cairns Group, which congregates exporting countries (both developing and developed), have been instrumental in giving impulse to this process. These proposals aim at ensuring greater market access as well as improving the conditions for fair trade in agricultural products by eliminating certain forms of subsidies (such as export subsidies) and imposing strict disciplines on other modalities of governmental support to farmers in developed countries.

The other mandated negotiations, also launched in the beginning of 2000, deal with the area of services, which, in general, is not regarded as a priority for most developing countries. There is a perception, however, that some issues, such as liberalization measures leading to freer movement of natural persons, would offer developing countries considerable benefits. In any case, developing countries are assuming a positive and constructive attitude regarding this exercise, which has been translated in the presentation of many proposals.

In parallel with these activities, a great amount of time was dedicated throughout the second semester of 2000 to the so-called implementation issues. In this case, however, the results so far have been frustrating. For substantive as well as tactical reasons, developed countries have not displayed political will to support the adoption of meaningful measures at this stage.

IV. *THE MEANING OF A DEVELOPMENT ROUND*

In spite of all of the problems, the idea of a new round re-

7. Agreement on Agriculture, Apr. 15, 1994, WTO Agreement, Annex 1A, art. 20, at http://www.wto.org/english/docs_e/legal_e/final_e.htm.

mains alive. The prospect of future comprehensive negotiations is still significantly underlying current discussions. Whatever is said for rhetoric or "posturing" purposes, delegates in Geneva are generally aware of the fact that no major progress will be possible in the mandated negotiations or in the area of implementation without the momentum that only a broad round can bring about. So, the question is not so much whether there will be a round, but rather what kind of round. From developing countries' point of view, this is the question that has to be examined.

It is difficult and probably hazardous to define a single position or attitude on the part of developing countries vis-à-vis a new round of trade negotiations. Situations and interests vary considerably. Generally speaking, support for a new round has been greater on the part of countries that are strong agricultural exporters (i.e., Brazil and other members of the Cairns Group) and/or enjoy a greater degree of integration with developed markets (i.e., Mexico). But it is fair to say that, in general, developing countries have mixed feelings about a new round of negotiations.

A round is seen by some as a good opportunity for the correction of the imbalances that resulted from the Uruguay Round and for enhancing market access opportunities in the developed countries. But one has to admit that there also are some perceived risks. Many developing countries fear they will be forced to accept liberalization commitments, in addition to those they have painfully incorporated as a result of previous rounds. In many countries, there is the fear of a "second liberalization shock" for which they would not be prepared. Conversely, in the case of subjects that have not been part of the trade system so far, there is a strong concern that new disciplines would be used to promote protectionist policies (i.e., environment and labor).

In any case, if developing countries are to be attracted to the idea of a new round, the development dimension should play an important role (and not only as rhetorical lip-service) in view of the widespread notion that the Uruguay Round produced a considerable imbalance between rights and obligations of developing countries and those of developed ones, a perception that largely has been supported by existing figures.

In a sense, it is understandable, but not necessarily justifica-

ble, why the results of the Uruguay Round were not balanced. Not only did developing countries have inherently less bargaining power, but their position was aggravated further by the prevailing ideology that placed an emphasis on the need to do away with "outdated" models of development, based on import substitution, state intervention, and import controls. Additionally, most developing countries lacked the experience of operating in an aggressively competitive market. This led to the acceptance of rules, or lack thereof, which later appeared to be either unrealistic or unfair, or both. The Brazilian experience in its dispute with Canada dealing with the inadequacy and lack of transparency of rules on exports credits involving civil aircraft is a case in point. Because the WTO agreements refer this subject to the Organisation for Economic Co-operation and Development ("OECD") arrangements and since those were tailor-made to the needs and practices of developed countries, which dispose of means not available to developing countries, the latter are put in a permanent disadvantage, especially in areas that require large investment, such as products of high technology.

As pointed out earlier, there is also great dissatisfaction with the implementation of the Uruguay Round commitments on the part of developed countries in some more traditional areas, such as textiles and agriculture. In terms of market access, the reality is that the playing field is not level. Tariff and quota restrictions continue to deny access to the exports of developing countries. A development round would have to address tariff peaks and tariff escalation, as well as several aspects of WTO rules. In the context of Seattle, for instance, a coalition of developing countries, known as the "like-minded," put forward a number of proposals ranging from TRIPs to rules of origin.⁸ Brazil, itself, has presented proposals in this respect, namely in the cases of subsidies, anti-dumping,⁹ and TRIMs.

V. *THE NEW ISSUES: THE CASE OF "LABOR STANDARDS"*

In the course of the discussions leading to Seattle, and in

8. See Agreement on Rules of Origin, Apr. 15, 1994, WTO Agreement, Annex 1A, at http://www.wto.org/english/docs_e/legal_e/final_e.htm.

9. See Agreement on the Implementation of Article VI of the General Agreement on Tariffs and Trade 1994, Apr. 15, 1994, WTO Agreement, Annex 1A, at http://www.wto.org/english/docs_e/legal_e/final_e.htm.

Seattle itself, a number of issues appeared to be particularly difficult from the point of view of developing countries. I shall illustrate these concerns with the question of "labor," keeping in mind that much of the argumentation on this issue can also be applied, from a structural point of view, to the subject of the environment.

The promotion of fair and adequate labor standards is a goal that every government should pursue. However, there is a real risk that the ideal of adequate labor standards might be used for protectionist purposes, creating still further barriers for products originating from developing countries.

The concept of labor standards encompasses certain situations, such as the worst forms of child labor and forced or compulsory labor, which should be treated with very strict disciplines, in the proper forum. The International Labor Organization ("ILO") Conventions address these issues. Although it is often claimed that the ILO has no "teeth," the moral and political weight of condemnation or censure by that body should not be underestimated. Recent instances have shown that countries are prepared to go a long way, even in accepting external guidance and monitoring, to avoid such criticism. Other situations that are sometimes implicitly included under the concept of labor standards are not so clear (e.g., low wages). It is a cornerstone of liberal economics, which provides for the conceptual framework in which the WTO operates, that production should be allocated according to the relative price of factors, such as wages. It would not be logical to punish countries that attract investment and can export more because of these comparative advantages. Non-compliance with adequate labor standards is not regarded by developing countries as a development strategy. Social degradation limits development perspectives on the long run. Trade sanctions, however, certainly are not the best way to promote labor standards.

The ILO has developed a new concept: decent work, work carried out in conditions of freedom, equity, security, and human dignity for all women and men. The ILO sees the achievement of this objective of decent work as a synthesis of four strategic objectives: (1) achieving universal respect for fundamental principles and rights at work; (2) the creation of greater employment and income opportunities for women and

men; (3) extending social protection, and; (4) promoting social dialogue.

These are adequate grounds for the discussions. However, one point must be retained: as a rule, enhanced market access opportunities improve labor standards—since they generate more demand for work—and consequently lead to increases in wages and salaries, along with other benefits. That is the correct approach. The mere establishment of multilateral norms in a body meant to discipline trade relations will not ensure any improvement in the situation of workers in developing countries. Indeed, it might have the opposite effect. If producers find themselves prevented from exporting because their labor standards are considered inadequate, the immediate consequence will be increased unemployment and the diversion of resources to other less remunerative activities destined to the internal market. Income levels will fall and workers will be worse off.

Labor conditions also will have more adequate grounds to flourish in tandem with progress in the political system and with the promotion of democracy and related values. In fact, social, economic, and political variables should be taken into account when discussing this issue. The WTO is not the proper forum to hold such discussion.

VI. *PROSPECTS*

The bottom line of the discussion on whether it is convenient for developing countries to engage in a new round of negotiations lies in the fact that the gap between developed and developing countries must be addressed. Some issues could, in principle, be tackled in the implementation discussions now under way. It is unlikely, however, that deeper concerns in sensitive areas such as anti-dumping, subsidies, and agriculture might be properly addressed without the context of broader negotiations. This would justify, from the point of view of developing countries, the quest for a new round, with two provisos: (i) that it takes into account the development needs of developing countries and (ii) that it is well prepared (a second *débat* is not affordable).

There are some realities that cannot be eluded. The world is rapidly changing. Instantaneous communication, business transactions taking place at a very quick pace, and universal

awareness of disparities in standards of living are an essential part of our reality. But as they try to reform and modernize their policies—not only in the area of trade, but in other sectors and activities, extending from the environment to education and from social security to health and culture—developing countries are caught in a double bind: they have to learn how to operate their business competitively in the age of the internet while they struggle to overcome the obstacles to their more traditional exports. In other words, they need to live up to the standards of the 21st century, even as they continue to face the problems of the 19th century. The reply to the first of these challenges lies, to a large extent, with developing countries themselves, although a friendly international environment—one that facilitates and makes more predictable the flow of capital and technology—is also essential. As to the latter—the obstacles to their more traditional exports—the responsibility lies squarely with the international community and, in particular, with the industrialized countries.

A rule-based trading system is essential for that purpose. That is why the “doom and gloom” about the WTO, which followed Seattle, rather than the real impasses of the negotiation, which can in the end be solved on the basis of good-will and enlightened self-interest, may be so pernicious.