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Analysis

Toward a More Effective WTO: the role of Variable Geometry

Robert Z Lawrence*

Since the Uruguay Round, the WTO has become an increasingly controversial institution. On the one hand, it has been assailed for having gone too far. Some critics, typically reflecting the concerns of many developing countries, claim that by making all of its members adopt agreements such as those relating to Trade Related Intellectual Property and Investment Measures (TRIPs and TRIMs), the WTO has strayed beyond its basic trade mission and forced many of its members to accept obligations that are (a) not in their interest; (b) intrusive of their sovereignty; and (c) beyond their implementation capacities. On the other hand, the WTO has also been assailed for not going far enough. Other critics, typically reflecting the concerns of developed countries, have sought to broaden and deepen WTO coverage within the context of a single undertaking by negotiating new disciplines on issues such as investment, labor standards, competition and the environment.

In my view, both sets of concerns are valid. There is compelling evidence of the potential gains from deeper global integration. If the titles of recent studies such as 'The World is Flat', 'Borderless World' and 'The Death of Distance' were to be taken at face value, the process of globalization would be nearly complete.

But these titles entail considerable hyperbole and overlook the many costs that are incurred when goods and services move across international borders. There are large price differences between countries that imply that obstacles to full international integration remain significant. This also indicates the potential for large gains from an increase in trade.

To sure, some of the obstacles are inevitable – distance does increase costs – and some may reflect institutional differences desirable in their own right – but there remains considerable scope for agreements that would overcome many of the man-made barriers to trade in goods and services. And it is also the case that some developing countries desirous of using trade agreements as an anchor for domestic reforms could benefit from participation in binding international agreements that adopt particular rules and institutional obligations.

On the other hand, there is also a case to be made that 'one size does not fit all'. The correct balance needs to be struck between requiring countries to assume some binding liberalization commitments and adherence to rules and providing them sufficient policy flexibility to reflect their unique circumstances. One of the great strengths of the WTO tariff regime is that it does precisely that by allowing members, with few exceptions, to set their own tariff schedules, rather than requiring the use of particular rates. But when it comes to rules, with the exception of the least developed countries, all are required to commit to a single undertaking. Moreover it also needs to be appreciated that the more extensive and intrusive are WTO commitments, the more likely it is that the

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institution's legitimacy will be called into question.

These considerations suggest that a different approach is called for. The diversity among developing countries surely has implications for the rules they should be asked to accept. Increased enforcement of intellectual property rules, for example, could benefit developing countries with the potential to innovate and use them to induce transfers of technologies but it could hurt those who have simply copied foreign technologies in the past. Similarly, agreements to implement new regulatory regimes could boost performance of some, but impose undue burdens on others. Again the correct answer seems not to avoid all obligations that cannot be assumed by all members, but to ensure the rules can accommodate differences.

In the Tokyo Round of GATT (now WTO) negotiations numerous codes were negotiated by all members but only signed by some. Similarly, the current rules still include plurilateral agreements, to which only some members subscribe. What I have in mind is a similar approach in which the core WTO commitments as embodied in the Uruguay Round Agreement, to which all WTO members subscribe, would be supplemented with additional agreements (or clubs) to which only some members would subscribe.

The WTO should have a general protocol governing the negotiation and adoption and rules of operation of these additional agreements that I have spelled out in greater detail in a paper (Lawrence 2006 **). It is important to have such a protocol since the experience with the Uruguay Round and the Singapore Issues in the Doha Round has made developing countries suspicious that these agreements could be foisted upon them .

The specific provisions of such a protocol could require that these Clubs would be chosen where they could help promote the WTO's central missions: lowering barriers to trade; reducing the discriminatory effects of domestic policies and enhancing economic development through trade. All WTO members would participate in negotiating club rules, but members would be free not to join. Clubs might decide to extent benefits to developing countries on a non-reciprocal basis. Clubs would use the DSU to deal with disputes but suspension of concessions in the event of violations would be confined to the provisions of the same club in which the violation occurred.

The club of clubs approach does have some deficiencies. It could reduce the ability of some members to obtain agreements by packaging them in a single undertaking. It could also reduce the power of retaliation as an enforcement mechanism for certain obligations. But the approach could also enhance the legitimacy of the WTO by helping members to avoid undertaking obligations they did not view as in their interest. It would thereby ensure a better alignment between mission, means and legitimacy, the keys to a more effective international organization.

** Lawrence, Robert Z (2006), "Rule making amidst growing diversity:A club of club approach to WTO Reform and new issue selection" *Journal of International Economic Law*, Vol. 9 Number 4

The arguments in this commentary are elaborated in a Pacific Trade and Development Conference book edited by Shiro Armstrong and Vo Tri Tranh on *International Institutions and Development in Asia* later this year.

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EABER is grateful to the Japanese Ministry of Finance and the Australian development agency, AusAID, who provided grants to assist with the establishment of EABER in 2006-7.

EABER would also like to thank the following for their support:



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