

# Systemic Research Questions Raised by the Failure of the WTO Ministerial Meeting in Cancun

By Simon J. Evenett\*

## 1. Introduction

The September meeting of WTO Ministers in Cancun ended without reaching a consensus on a number of issues central to progress on the Doha Development Round. Many have argued that the apparent and proximate cause of the Ministerial's collapse was a failure to agree on launching formal negotiations on the so-called Singapore Issues.<sup>1</sup> Others, however, have cited alternative explanations for the meeting's failure including poor chairmanship of the Ministerial meeting by Mexico's Foreign Minister, Mr. Luis Ernesto Derbez; a failure to agree on the modalities for negotiations on agricultural trade barriers, export subsidies, and domestic support policies; the inability of many WTO members to negotiate or discuss many issues simultaneously during and before the Cancun Ministerial meeting;<sup>2</sup> and a perception that some national representatives in Cancun were not prepared to go beyond pre-determined demands

\* University Lecturer at the Saïd Business School and Fellow of Corpus Christi College, University of Oxford, CEPR, moderator of the Brookings-George Washington University Roundtable on Trade and Investment Policy. Please send any comments to [simon.evenett@sbs.ox.ac.uk](mailto:simon.evenett@sbs.ox.ac.uk). A related treatment developing a number of different economic points, has been published in CESifo Forum, vol. 4, no. 3 (pp. 11-17), under the title: 'The Failure of the WTO Ministerial Meeting in Cancun: What Implications for Future Research on the World Trading System?'

1. The Singapore Issues are currently taken to include four matters relating to international commerce, namely, the relationship between trade and investment policy, the interaction between trade and competition policies, transparency in government procurement practices, and trade facilitation practices (such as more efficient customs procedures). It is worth pointing out that some WTO members, including the European Communities and its Member States, took the view before the Cancun Ministerial meeting that an agreement to launch the Singapore Issues had been taken at the Doha Ministerial Meeting in 2001 and that at the Cancun meeting WTO members would determine the modalities for those negotiations. Other WTO members – notably from Africa – had argued that no such decision was taken at the Doha Ministerial meeting and that the Singapore Issues should be addressed *after* (not at) the Cancun Ministerial.
2. This argument is often put differently; that the negotiating agenda for the Doha Development Round is 'overloaded' and beyond the capacity of many developing countries to negotiate effectively.

of others and showed little propensity to ‘negotiate seriously’ with other delegations.

It should be noted, however, that at Cancun the WTO members set themselves a December 15th 2003 deadline to agree on the terms upon which the Doha Development Round would go forward. At this time, leading delegations appear to be showing flexibility on some of the sticking points at Cancun. For example, on the Singapore Issues there has been a softening of positions by the African Union countries (to accepting negotiations on trade facilitation and, if push, on government procurement), the European Commission (to unbundling the four issues and arguing for plurilateral negotiations), and Japan (signalling some interest in plurilateral negotiations). Furthermore, the European Commission has indicated a willingness to revisit its proposal for geographical indications.

The purpose of this essay is not to dissect precisely why the Cancun Ministerial is said to have failed. Nor is the goal here to offer predictions about the World Trade Organisation’s (WTO’s) future, although some of the factors discussed here must surely be relevant. Instead, the objective of this short essay is to identify some questions that in my view ought to receive more attention from the scholarly community. This is not to say that the questions identified here are necessarily novel or to suggest that there are not thoughtful perspectives on them in the existing legal, economic, historical, and political science literatures on the evolution of the world trading system. Rather it is that I doubt we have adequately answered some of these questions and that revisiting them may be a worthwhile endeavour – especially as, after the Cancun Ministerial, many feel that the world trading system is at a ‘cross roads’. This affords an excellent opportunity for scholars – some of whom may not have focused on policy-oriented matters before – to contribute to the debate over the future course of what is no less than an important element in the governance of international economic relations. If this essay persuades a few more scholars to enter this debate then my efforts will not have been in vain.

## **2. What are the boundaries of the WTO?**

One response to failure in Cancun has been to call for a reduction in the number of subjects that are on the negotiating table in the Doha Round. The principal target is typically the Singapore Issues and, since the collapse of the Cancun Ministerial meeting, calls for their removal have intensified (see, for example, Hoekman 2003). Without in any way denying the importance of the policies associated with the Singapore Issues for economic developments, those supporting the removal of these topics from WTO trade negotiations make two arguments. The first is that the Singapore Issues are not related – or not sufficiently related – to the market access-core of the world trading system, and therefore do not adhere to the tried-and-tested formula of improving eco-

conomic welfare through trade negotiations that result in reciprocal reductions to impediments to international commerce. And, second, that negotiating and implementing any WTO agreement on the Singapore Issues would be both too complex and too expensive.

In my view, these criticisms miss a far larger point. That is, to answer the question of what areas of policy have characteristics such that they can and should be subject to binding international commitments at the WTO?<sup>3</sup> Are the only legitimate pre-requisites for including a policy instrument in the WTO that there be some discernable impact on market access and that there be some impediment to domestic reform that prevents the optimal policy being chosen unilaterally? (These two characteristics of tariffs and quotas are said to account for the success of reciprocal bargaining on border measures in successive GATT and WTO rounds.) Or are there other characteristics of a policy that make it suitable for inclusion in the WTO? Presumably, the latter question would say something about the potential desirable trajectory for the WTO and its relationship to other international organisations and agreements that impinge on economic policy matters. Alternatively put, tackling this latter question would help in thinking through whether the WTO should become a more important forum for international economic governance, as has been suggested by some European scholars and policymakers. Just as economists have long worried about the boundaries of the firm, what are the boundaries of the WTO?

I do not propose to answer this question in its entirety in this short essay, however I would like to develop some ideas that might take the discussion forward. The starting point of my argument is the long-recognised idea that a case for international collective action can be constructed when the effects of a state's policy decisions (including decisions not to take actions) 'spillover' national borders and affect the welfare of inhabitants or economic entities in another jurisdiction. One type of decision that creates such spillovers are the numerous recent prosecutions by the European Commission and by the United States' Department of Justice of international cartels. These decisions are likely to have had positive knock-on effects outside Europe and the United States, where other nations' purchasers are likely to have benefited from the break-up of these international conspiracies. Another example of cross-border spillovers created by national policy choices is in environmental policy (see the analysis in Bhagwati and Srinivasan 1996, section 4.5).

But is demonstrating the existence of spillovers enough to warrant the inclusion of a policy instrument in the WTO? Arguably not. It seems to be that whatever collective action is proposed must also satisfy the following five criteria, listed in no particular order of importance:

3. I do not pretend that this is a novel question, as the debates over 'shallow' and 'deep' integration in the early 1990s can attest. Rather, in my view, this question has yet to be answered satisfactorily.

- there must be a discernable positive welfare impact to undertaking the collective action;
- at least one domestic constituency in each of the major trading partners must support the negotiation of the initiative at the WTO;
- reasons must be advanced as to why the proposed multilateral obligations must be binding (i.e., as to why hortatory language expressing best intentions is insufficient),
- the obligations must be codified precisely, their implementation observable, and where the collective action at issue permits some discretion for national policymaking, the latter must be relatively transparent;
- the obligations created must be amenable to enforcement through the WTO's dispute settlement understanding.

It would be useful to assess whether each of the policies proposed for inclusion in the Doha Development Round meets these five criteria and whether the cross-border spillovers associated with those issues are of sufficient magnitude to warrant negotiating an international initiative. The fact that few, if any, such comprehensive assessments have been conducted to date may be because many skills are probably needed to undertake them (including economic, empirical, legal, and political science analyses). Perhaps this is an area where some serious inter-disciplinary research could be initiated.

### 3. What is meant by the Doha *Development* Round?

Given the failure of the Cancun Ministerial meeting I feel it is incumbent on analysts of the world trading system, and of the international institutions more generally, to pose another potentially controversial question: What have been the consequences of putting development considerations at the centre of the Doha Round and, therefore, at the heart of the current operation of the multilateral trading system?<sup>4</sup> Just as it is perfectly acceptable to question whether the so-called Singapore issues have 'overburdened' the new round, so it is legitimate to ask whether the new developmental focus of the WTO has unnecessarily complicated the completion of the Doha Round and whether it contributed to the collapse of the Cancun Ministerial meeting? A related but distinct question is whether the new development mandate for the WTO is consistent with its long-standing role as an institution where agreements on certain trade-related matters are negotiated and where compliance with those

4. It is widely accepted that the Doha Ministerial Declaration marked the official acceptance of a greater focus on development considerations in the deliberations of the World Trade Organization. Having said that, I know of no clear and precise statement of what in practical terms is meant by this enhanced commitment to development. There is a sense among some observers and trade negotiators that the developmental focus in the Doha Ministerial Declaration means 'all things to all men'.

agreements is monitored and assessed? If not, then it strikes me that some serious thought is needed as to the purpose of the WTO.

One response to the questions posed above is to argue that the development mandate agreed on at the Doha Ministerial meeting is unimportant window dressing that does not affect the substance of the WTO's activities, or the status of its previous agreements. It seems to this (potentially misinformed) observer that few trade negotiators from developing countries would see the matter in this way. Moreover, even if so-called development mandate is merely talk, it has added a degree of smoke and mirrors to negotiations in Geneva and elsewhere that one can see little obvious benefit from. In contrast, it is quite likely that the development mandate has raised the expectations of some trade officials from developing countries, emboldening them to make new and perhaps more ambitious proposals – some of which call into question the very status of previously agreed trade accords. Overall, I am not sure that all this window dressing or this WTO-equivalent of political correctness has been cost free.

Another response might be to argue that by encouraging the opening of markets the WTO (and its predecessor the GATT) has, by and large, promoted economic development; therefore, adding a formal development mandate to an institution which has been promoting it all along may not be problematic. While I tend to agree with the first claim made, I am doubtful of the conclusion. There are a number of objections to this argument, especially when one appreciates that there is no explicit statement that the new development mandate for the WTO refers only to traditional economic variables such as exports, employment, or the growth of national income. Others are therefore perfectly within their rights to interpret the new mandate as meaning that other dimensions of development (for example, the environment) are important and should not receive due attention in trade negotiations. And so I contend that the questions posed at the beginning of this section are important and cannot be dismissed out of hand.

In considering the consequences of adopting a greater development focus at the WTO, I wonder if the matter can be broken down into the following questions.<sup>5</sup> First, what do we mean by a greater developmental focus or developmental mandate?<sup>6</sup> Is the intention that the WTO's activities should be directed towards certain agreed outcomes that will benefit (in some, perhaps observable, way) developing countries? Or is the intention that the agenda and decision-making processes of the WTO should better reflect the interests of developing countries?<sup>7</sup> Second, to what extent does the development mandate (whatever that may be!) replace or augment the existing principal institutional

5. This is almost certainly a non-exhaustive list of the questions that might be asked.

6. For the sake of clarity, I use the expressions enhanced development focus and development mandate synonymously.

7. To use management-speak, is the intention to alter the metrics or processes of the WTO?

objective of the WTO, which is to facilitate the negotiation and implementation of trade-related agreements between sovereign states? Thirdly, does the development mandate only relate to the WTO's activities after the Doha Ministerial meeting? If not, then to what extent can previous WTO and GATT agreements be reinterpreted, scrapped, or rewritten in light of the new development focus? Fourth, in what ways (if at all) will the adjudication of disputes between WTO members change as a result of greater sensitivity to developmental concerns? Fifth, in what ways (if at all) will the accession of new members to the WTO be influenced by the new development mandate?

I do not want to give the impression that no thinking has gone into these – and similar – questions. For example, Hoekman, Michalopoulos, and Winters (2003) have made some suggestions for intelligently implementing special and differential treatment for developing countries. In addition, Cottier and Takenoshita (2003) have considered the implications of moving away from a consensus-based decision-making rule at the WTO. Finally, Abbott (2003) offers an interesting treatment of some of the issues raised above. Yet, I know of no systematic treatment of the implications of adopting a greater focus on development considerations at the WTO – and worse still, precious little evidence that much thought went into these matters before the Doha Ministerial Declaration was adopted.

In concluding this short essay I hope that I have provoked readers into a little more thinking about what are the appropriate boundaries for the WTO. Moreover, further consideration of the consequences of adopting a greater focus on development-related concerns in the WTO seem warranted – especially if policymakers are serious about making progress in negotiating the Doha Development Round.

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