

The World Trade Organization: System Under Stress

Author(s): Sylvia Ostry, University of Toronto

In the postwar golden decades of the 1950s and 1960s, trade issues hardly made headlines. The General Agreement on Tariffs and Trade (GATT) was described even by policy wonks as "a better soporific than hot milk," and was known as "the General Agreement to Talk and Talk." By the end of the 1990s, however, the World Trade Organization (WTO), the institution created by the Uruguay Round, had become a magnet for dissent, media attention, and outcry over its legitimacy and transparency.

The Uruguay Round was the eighth negotiation held in the context of the GATT, which came into force on 1 January 1995, as part of the postwar international economic architecture. The Round was a watershed in the evolution of the global trading system. The arrived-at "Grand Bargain," as I've termed it in other writings, was completely different from old-time GATT reciprocity. It was essentially an implicit deal: the opening of the Organisation for Economic Co-operation and Development (OECD) markets to agriculture and labour-intensive manufactured goods, especially textiles and clothing, in exchange for the inclusion into the trading system of services, intellectual property, and investment. The deal also entailed, at virtually the last minute, the creation of a new institution, the WTO, with the strongest dispute settlement mechanism in the history of international law and virtually no executive or legislative authority. The Grand Bargain, however, turned out to be a "Bum Deal." While the South is hardly homogeneous, there is a broad consensus that the outcome was seriously unbalanced.

Two aspects of this asymmetry are worth considering as threats to the substantive legitimacy of the WTO. The first is complexity. The need for knowledge, advanced and sophisticated, is essential. Complexity requires knowledge and knowledge enhances power, and, therefore, autonomy. The strong are stronger in the WTO because of their store of knowledge and the weak are weaker because of their poverty of knowledge. The weak lack autonomy in any system, but in the WTO system complexity creates reinforced asymmetry and diminished autonomy. Maybe the concept of the *poverty trap* should be replaced by the *knowledge trap*.

The second aspect of asymmetry relates to the question of whether the paradigm shift from negative regulation (what governments must not do) to positive regulation (what governments must do), and the accompanying juridification of the process, benefits the poorest countries. While the Uruguay Round agreements included some recognition of the need for technical assistance (TA) to poor countries and the Doha Agenda is littered with reference to TA and capacity-building (CB), it has been repeatedly emphasized that the true jewel in the crown was the creation of the WTO and the Dispute Settlement Understanding (DSU). For the first time in international law a truly effective institutional constraint on the powerful had been achieved.

So, is the increased legalization a welcome offset to asymmetry? Not exactly. Studies on disputes settlement and the poorest countries in the WTO, many sponsored by the World Bank, document the absence of African countries in this essential "crown jewel" of the trading system. A lack of government legal services at home and in Geneva, and of sophisticated econometric research and

economic evidence to support claims, along with political costs — threats by richer countries to reduce development aid or remove trade preferences — may account for no cases being initiated by African countries. Another clue to the "missing cases" issue concerns the WTO's institutional arrangements. The WTO rules are self-enforcing. Retaliation (imposition of countermeasures) is, in theory, a means to induce implementation of obligations. But the threat of retaliation by a poor or small country means nothing to most OECD countries. So, it is argued, poor countries are increasingly sceptical about "assured" market access or other rights.

Another feature of the WTO's legitimacy — its *procedural legitimacy* — has been brought into question by the repeated and insistent demands of non-governmental organizations (NGOs) for more *transparency*. In WTO-ese there are two kinds of transparency: internal and external. NGOs have been most active with respect to *external transparency* seeking more access to WTO documents, more participation in WTO activities such as committee and Ministerial meetings, and the right to observer status and to present *amicus curiae* briefs before dispute panels and the Appellate Body. While the WTO has made incremental yet considerable progress on these issues, that of greater citizen participation in the policy-making processes remains largely unaddressed. On the internal front, the main and increasingly contentious issue is negotiating arrangements for Ministerial meetings which involve the exclusion of many member countries.

One proposal for WTO reform to enhance its legitimacy entails enhancing the effectiveness of domestic policy-making processes through informed public understanding (i.e., *transparency*). The Trade Policy Review Mechanism (TPRM) of the WTO offers a vehicle for doing so. If a number of developing countries became involved in the TPRM, the issue of more permanent funding for the body would have to be faced since there would be capacity-building and technical assistance requirements. But these latter costs should clearly come under the arrangements agreed at Doha on capacity-building. The TPRM Reports could be published and a feedback mechanism would begin to operate. Transparency at the domestic level would create pressure for more information from Geneva. And information about one country could encourage stakeholders (especially NGOs) to pressure their governments to participate.

While benefits will accrue from a more participatory process, there are also costs for governments in terms of time, expertise, and financial resources and there are significant differences in resources among stakeholders. The launch of this pilot project could catalyze a very useful discussion on basic policy issues including capacity-building and other aspects of asymmetry. Another proposal for WTO reform — one to tackle asymmetry — borrows the Integrated Framework for Trade-Related Technical Assistance idea of "project as process." The promotion of international coherence by a specific project for Africa that involved the WTO, the World Bank, and the new African institution, The New Partnership for Africa's Development (NEPAD), with the objective of integrating trade and development fits well into a "redefined" concept of technical assistance and capacity-building. Country "ownership" would be paramount. Such a project would require funding both for the WTO secretariat and the physical and intellectual infrastructure of the countries. And some of the problems — governance, for example — may prove insurmountable. But whatever the outcome of the Doha Agenda, it would be feasible and desirable to launch a genuine (not rhetorical) project to reduce poverty and stimulate development.

But tackling asymmetry is a formidable challenge. The construct of the WTO is asymmetrical — judicialized but without real executive or legislative power with a very small secretariat and a very limited budget (about equal to the travel budget of the International Monetary Fund). These structural deficiencies greatly exacerbate the rich-poor asymmetries. Establishing a WTO policy forum would be

a great step forward in addressing this imbalance of power.

This is a pre-print version of **The World Trade Organization: System Under Stress** by **Sylvia Ostry** generated from the *Globalization and Autonomy Online Compendium*. The electronic original is available at http://www.globalautonomy.ca/global1/Summary.jsp?index=RS_Ostry_WTO.xml.