

The WTO: What happened in Seattle? What's next in Geneva?

by Scott Sinclair

Summary

The World Trade Organization (WTO) Third Ministerial meeting ended in collapse. Ministers and negotiators were unable to reach agreement on a draft declaration that would have set the agenda for a new round of negotiations and work program at the WTO.

As a result of the Seattle impasse, it is now unlikely that a new "millennium round" can be launched before the next US president takes office in Jan. 2001. While anything is possible, the earliest realistic window to give the WTO a new negotiating mandate is probably late 2001 when the new US administration could go to the Congress to seek renewal of fast-track negotiating authority. However, while certainly a setback for the WTO and its supporters, Seattle does not mean that the WTO will stop functioning or that negotiations to expand and extend its rules will not proceed.

In addition to ongoing dispute settlement and implementation of the 1994 Uruguay Round agreements, the WTO will now revert to the very substantial "built-in" negotiating agenda and work program already agreed to during the Uruguay Round. There will be strong pressure on negotiators to achieve results in the built-in agenda to demonstrate that the WTO continues to be a vital international organization. At the same time, member governments, negotiators and the WTO secre-

tariat will try to forge consensus on reforms to WTO decision-making processes and to lay the groundwork for a future, even broader round of trade and investment negotiations.

Discussion

What happened?

The "Battle in Seattle," with its millennial overtones, has already captured the imagination of pundits and now symbolizes the popular reaction against globalization (which is either to be commended or condemned depending on one's perspective). It is too early to say for certain whether Seattle is a temporary setback for the WTO; a permanent weakening of its influence; or an opening to advance progressive reforms in global governance. Certainly, Seattle was a serious challenge to the WTO's legitimacy and the next several years will be a critical period for the organization.

The failure to reach agreement on a ministerial declaration was remarkable considering that, with few exceptions, negotiators were trying to agree on an agenda for further negotiations — not on new rules or legal texts. There are a variety of reasons for this unexpected turn of events.

- The WTO has become a "victim of its own success." The Uruguay Round agreements

moved well beyond the traditional role of the General Agreement on Tariffs and Trade (GATT) to intrude significantly on many important domestic policy areas and to override other bodies of international law. This has provoked a public reaction, evident in the streets of Seattle, that has caused many governments to reassess the costs and benefits of further expanding WTO rules.

- This increased visibility and greater public scrutiny of the WTO has reduced key governments' room to compromise and maneuver, particularly around controversial issues such as food safety, biotechnology, environmental protection, labour standards, trade remedy laws and development issues.
- Developing countries were better prepared, organized and far more assertive than in previous GATT negotiations. There is a growing conviction that the WTO has not delivered the benefits promised to the South during the Uruguay Round.
- European Union (EU) member governments exercised tighter political control over European Commission (EC) negotiators, reducing their ability to make the concessions demanded of them to reach agreement. During the week, the European Council of Ministers overruled EC negotiators twice by rejecting proposed compromises on biotechnology and the overall agriculture text.
- The United States (US) negotiating position was unusually inflexible and United States Trade Representative (USTR) Barshefsky did not assume the role expected of a neutral chair. Domestic electoral considerations, specifically the Gore candidacy, obviously influenced the US administration's negotiating tactics and

media strategy. The US, while striving for success on its own terms, had least to lose from a continuation of the status quo ante.

The public backlash

The "Battle of Seattle" took place both inside and outside the ministerial conference. In the aftermath of Seattle, spokespersons for many member governments have publicly, and in some cases vehemently, denied that the demonstrations or increased involvement of non-governmental organizations (NGOs) affected the outcome. They attribute failure solely to the intractability of the issues dividing governments. This ignores that the intractability among governments is due, at least in part, to the public resonance of concerns visibly expressed by demonstrators and to campaigning by a broad, international range of non-governmental organizations in the run-up to Seattle.

The demonstrations, staged every day of the Ministerial and peaking at over 50,000 on Tuesday, and intense media attention highlighted the WTO's rigid agenda and democratic deficit to Seattle and the world. Largely due to the protests and the police overreaction to them, "WTO" is for the first time a household term in much of the world. Quite tangibly, the non-violent protests delayed the start of the sessions by over a day, intensifying pressure on negotiators and injecting a sense of watchfulness and public drama absent in previous WTO meetings.¹

The success of the demonstrations indicates a significant shift in public opinion toward the WTO and that the concerns expressed by NGOs must be part of any new, viable international trade agenda. The Seattle results also show how the context of international trade and investment negotiations has changed. Through careful preparation, strong arguments, and skilful media strategies, new players — including international and national

non-governmental organizations and smaller government jurisdictions — can influence events.

North-south issues

The protracted and bitter selection process of the WTO's new director-general was an early indication of the new assertiveness of developing countries. The post remained vacant from April 30 until the Sept. 1, 1999 while member governments argued over who should succeed outgoing Director-General Renato Ruggiero. The impasse was resolved only when member governments agreed to an unprecedented split term with Michael Moore to serve from Sept. 1, 1999 to Aug. 31, 2002 and Supachai Panitchpakdi to succeed him from Sept. 1, 2002 to August 31, 2005. Thailand's Supachai was considered the developing countries' candidate, while Moore was viewed as the hand-picked US candidate. This bruising selection process delayed preparations for the Seattle Ministerial, hardened positions, and created ill will on the part of many developing countries toward the United States, other Moore backers, and to Moore himself.²

The negotiating agenda coming into Seattle was clearly overloaded. Geneva-based negotiators were unable to narrow the unresolved issues down to a manageable number prior to the ministerial meeting. The biggest reason for the deadlock in Geneva was the strong position taken by developing countries on so-called "implementation issues," that is, developing country demands for greater benefits from existing WTO agreements.

In the Geneva negotiations preparing for Seattle, key developing countries banded together to demand greater market access benefits (particularly for textiles) and stronger disciplines on anti-dumping rules. Many developing and transition-economy countries

also demanded that the January 1, 2000 deadlines for developing countries to implement the Agreement on Trade-Related Intellectual Property Rights (TRIPS), the Agreement on Trade-Related Investment Measures (TRIMs) and the Customs Valuation Agreement be extended. Some developing countries also argued that they should be permitted to continue the use of certain export subsidies and subsidies to promote the use of local content which are generally prohibited under WTO rules.³ By pushing these controversial items on to the agenda, developing countries prevented Geneva-based negotiators from reaching consensus on a bracketed text that might have reduced the number of outstanding issues confronting ministers in Seattle.

Many developed countries appeared unprepared for this concerted effort on the part of developing countries and uncertain how to respond. The EU and Japan were ready to make only small concessions on market access, but along with Canada shared developing countries' concerns about the application of US anti-dumping rules. The US, for its part, opposed accelerated market access on textiles and refused to negotiate antidumping reforms. The Quad opposed blanket concessions on implementation timetables under TRIPs, offering only to review requests for TRIMs, and customs valuation extensions on a case-by-case basis, as already provided for under those agreements. Even though it was totally isolated on anti-dumping, the US remained intransigent on implementation issues to the bitter end of the meeting.

Trade and core labour standards was another contentious north-south issue where US tactics angered developing countries. Coming into Seattle it was clear that it was going to be very difficult to gain developing country agreement to establish a WTO working group on trade and labour and that this would likely be impossible without significant concessions on implementation issues.⁴ During the week,

Clinton's remarks to a Seattle newspaper linking core labour standards to trade sanctions further inflamed developing country opposition to the US working group proposal.⁵ It is possible that Clinton's remarks were calculated to provoke a reaction that would enable the US administration (sensing defeat, but unwilling to bargain) to argue to its union allies that it had fought hard on labour standards but could not overcome developing country opposition. If so, the developing country backlash was stronger than anticipated and further diminished prospects for overall agreement on a ministerial declaration.

Many developing country governments, especially those representing small economies, were very dissatisfied with the negotiating process. Ministers and negotiators from many smaller countries were deliberately excluded from "green room" and other ad hoc groupings convened by the WTO secretariat and the US chair. These are where the real negotiations took place. Delegations from much of Africa, the Caribbean and some from Latin America were so incensed by this treatment that on the final day of the session they issued media releases threatening to withhold consensus on any ministerial declaration.

This dissatisfaction and frustration with WTO procedures was shared by other more influential members.⁶ However, if agreement could have been reached among developed countries and some key southern governments, it is doubtful that the small economies could have succeeded for long in blocking a declaration. Major developing countries such as Brazil, South Africa, Egypt and even India, while clearly displeased with WTO processes, were not among those actually threatening to block consensus on procedural grounds.⁷ These southern governments' objections to the draft declaration were also substantive and if greater flexibility had been shown by the US on implementation, by the

EU on agricultural export subsidies, and by developed countries as a whole on market access then a deal might have been reached despite the procedural objections of smaller economies representing only a fraction of world trade. Nevertheless, because of the procedural and organizational debacle in Seattle, the clamour for WTO institutional reform is too loud to be ignored and this will now be one of the WTO's highest priorities.

East-west issues

The failure to reach agreement in Seattle resulted from a combination of factors, but the most important was the inability of the major trading powers, particularly the EU and the US, to bridge their differences. Agriculture and agrifood issues proved to be the most contentious and remain the key to unlocking any future overall agreement.

Prior to Seattle the US and the Cairns Group, comprised of agricultural exporting countries (including Canada) from the developed and the developing world,⁸ set themselves on a collision course with the European Union. They agreed to jointly insist that the EU commit itself in the mandate for negotiations to the outright elimination of agricultural export subsidies, strongly reject the EU and Japan's position that WTO rules should recognize the "multifunctional" character of agriculture⁹, and to assert that existing WTO rules (specifically, the Sanitary and Phytosanitary or SPS agreement) compelled Europe and Japan to accept imports of genetically modified food products.

The US and Cairns' Group insistence on an *advance* commitment to eliminate agricultural export subsidies precipitated the collapse. This was a surprisingly selfish, and ultimately ineffective, negotiating tactic. If the EU had acceded to this demand, then the WTO negotiations on export subsidies would not be about whether to reduce or eliminate export

subsidies, but only about timetables for their elimination. This hard line proved unacceptable to the Europeans. On the afternoon of December 3, the final day of the session, the EU delegation announced that, acting on the instructions of the European Council of Ministers, it was placing a “general reserve” on the agriculture text and was not prepared to move further until all other sections of the declaration were close to agreement.¹⁰ This was the fatal blow to the already fading hopes to reach agreement.

While it was export subsidies that precipitated the Seattle breakdown, in the longer term, the role of “non-trade concerns” and food safety issues may prove even more difficult and contentious. There are internal fiscal pressures on the EU member governments to reduce agricultural export subsidies; these pressures will increase as the EU expands its membership to eastern Europe. Moreover, the harmful effects of export subsidies and dumping unite all developing countries — net food importers as well as agricultural exporters. But the so-called non-trade concerns and food safety issues concern entire populations not just the farm sector. A small, but powerful, group of countries including Japan, Korea, Switzerland and Norway as well as the EU is adamant that WTO agriculture rules take account of non-trade concerns.¹¹ And net-food importing developing countries, those seeking greater food security or governments concerned about the impact of increased trade on small producers will not uncritically align themselves with the Cairns Group exporters.

Perhaps the biggest miscalculation in the position of the agricultural exporters¹² is to misjudge the force of European public opinion, and increasingly public opinion in their own home countries, which is deeply concerned about food safety issues and firmly set against the *forced* introduction of hormone-treated beef, genetically modified food, antibiotic-treated livestock and other products with as-

sociated health or environmental risks. Here again, effective campaigning by NGOs and increased public and political scrutiny of the WTO left European negotiators with little room to maneuver.

Before the meeting, the Europeans had reserved their position on a new WTO working group on biotechnology proposed by Canada and the US.¹³ In one of the week’s most dramatic developments, Pascal Lamy, the European trade commissioner, agreed to establish such a group, but was swiftly rebuked first by several European environment ministers and then by a majority of European trade ministers on the European Council of Ministers. European ministers were concerned that the establishment of a biotechnology working group in the WTO would undermine efforts to negotiate the Biosafety Protocol through the United Nations. This reversal had a huge impact on the week’s negotiations. It illustrates the new supercharged atmosphere of WTO negotiations, the effectiveness of NGOs in the struggle for public opinion, and how making negotiators directly accountable to political oversight can alter the dynamics of closed-door negotiations.

There were other less serious east-west divisions. One difference was over the appropriate scope of negotiations with the EU and Japan wanting a broad scope and the US arguing for a focused negotiation. This division is probably bridgeable — with the exception of anti-dumping, where domestic politics leave the US with no room to maneuver — US opposition to the inclusion of new topics, such as investment and procurement is tactical, not substantive.¹⁴ Other more substantive differences included Japanese and Asian resistance to US-backed proposals for accelerated tariff liberalization.¹⁵ Another area where there are significant differences in approach between the Europeans and the US is environmental protection. Beyond defending its own existing regulatory approaches, the US

position tends to be driven by export and foreign investment interests. The Europeans, due to domestic public opinion and EU law, have taken a somewhat more nuanced approach that gives more weight to public interest regulation and the precautionary principle.

No strong supporter of the WTO, such as the US, could be pleased with the Seattle failure and the longer-term threat it poses to the WTO. But of all the major players, the US negotiating objectives entering the meeting were closest to the actual results.

- The built-in agenda on agriculture and services will go ahead (the US sought only to add industrial goods to the agenda)
- Implementation of TRIPS, TRIMS and customs valuation in developing countries must proceed as of Jan. 1, 2000.
- Other time-limited exceptions will expire as scheduled.
- The main US objective on IPR and SPS is to prevent any reopening of the current agreements that might result in the weakening of their market-opening capacity.
- The built-in reviews of TRIPS are adequate to accommodate US demands for further gains.
- Even on biotechnology the US goal is not to negotiate new restrictions but to clarify the current rules and to compel recognition that existing and proposed restrictions on the import of GMOs are likely WTO-inconsistent.¹⁶
- The US had already discounted the possibility of overriding developing country opposition to “state-of the-art” agreements on investment and government procurement.
- Instead it wanted to focus its investment and procurement objectives on the built-in GATS agenda and an incremental code on government procurement that is already under negotiation.

Basically, what this list reflects is how closely the Uruguay Round agreements — especially the new topics concerned with services, intellectual property, and standards — conformed to US government and corporate objectives and laid an acceptable framework for the continued realization of their negotiating aims.

The immediate launch of a broad round might also have saddled the US administration and presidential hopeful Al Gore with a potentially divisive file. The vice-president must rely on blue-collar and union support that has already been strained by the administration’s stand on Chinese accession to the WTO. The Seattle results did not hurt the Gore candidacy. Moreover, any broad round would be certain to include discussion of anti-dumping and trade remedy law reform which is politically a non-starter in a Congress which has yet to renew the president’s fast-track negotiating authority.

The US adopted a high-handed, take-it-or-leave it approach to the negotiations. Participants remarked on the inflexibility of the American negotiating position. Pascal Lamy, for example, remarked that “the United States hardly appeared willing to make any concessions, which is after all a sine qua non for any negotiation.”¹⁷ There was also strong criticism of Barshefsky for failing to differentiate between her roles as neutral chair and as head of the US delegation. And the timing and tone of Clinton’s mid-meeting remarks linking labour standards and sanctions mystified or angered many diplomats. This is not to suggest, as some have charged, that the US wanted or planned for failure. The US strove for success, but strictly on its own terms. In the short term, the US had least to lose from deadlock and it acted accordingly.

Unless the Europeans and Japanese unexpectedly accede to the US position, it appears very unlikely that attempts within the next few

months to resuscitate a new round will succeed. The WTO can not afford another major failure. And even if the US administration agreed to moderate its views, in the midst of a US presidential campaign it could not confidently assure success in advance of any special ministerial meeting this year. The administration already faces a very contentious congressional vote on normalizing trade relations with China. While anything is possible, it is highly unlikely that a new “millenium round” can be launched until after the next US president takes office in Jan. 2001. The earliest realistic window for ministers to give the WTO a new negotiating mandate is probably late 2001 when the new US administration could go to the Congress to seek renewal of fast-track negotiating authority. The one new issue that might bring ministers together, perhaps informally, before then is institutional reform of the WTO (discussed below).

What's next in Geneva?

Overview

Even without a new mandate, the WTO has a very substantial negotiating agenda. The “built-in” agenda includes major negotiations on agriculture and services that will begin shortly in Geneva. Negotiations are already underway on an agreement on transparency in government procurement and the mandated services agenda calls for further negotiations on government procurement of services. While intellectual property is not part of the built-in negotiating agenda, phased-in implementation, built-in reviews of the agreement, and clauses triggering further negotiations on specific matters amount almost to a full-scale negotiation. And while, because of the Seattle result, no new negotiating topics were agreed to, there is a broad consensus that institutional reform and decision-making must now be addressed and Director-General

Moore was directed to consult with member governments on this matter.¹⁸

The big question, yet unanswered, is whether serious negotiations can proceed while the issue of a broad agenda remains unresolved. There will be strong pressure on the WTO and member governments to achieve early results in order to demonstrate its continued vitality. Because of the serious disagreements, agriculture negotiations are unlikely to move beyond the preparatory stages for some time. In services, however, the Quad countries share essentially the same view and developing countries have not engaged strongly. This is a critical area where results could be achieved before the broader agenda issue is resolved. A key variable is whether the EU and Japan, who are pressing a broader agenda in part to increase their bargaining leverage in the agricultural talks, will hold up results in the services talks until other issues are included.

Agriculture

The Uruguay Round Agriculture Agreement requires new negotiations to begin by Jan 1, 2000. These are aimed at the “long-term objective of substantial progressive reductions in support and protection.” The Seattle negotiations were an unsuccessful attempt to refine, add to and, for some parties, to pre-terminate the results of these mandated negotiations. Because of the level of disagreement and having been rejected by the European council of ministers, the Seattle agriculture draft text carries little or no weight.

The negotiations beginning this month in Geneva will proceed on the basis of article 20 which reads,

Article 20 - Continuation of the Reform Process:

“Recognizing that the long-term objective of substantial progressive reductions in support and protection resulting in fundamental reform is an ongoing process, Members agree that negotiations for continuing the process will be initiated one year before the end of the implementation period, taking into account:

- (a) the experience to that date from implementing the reduction commitments;
- (b) the effects of the reduction commitments on world trade in agriculture;
- (c) non-trade concerns, special and differential treatment to developing country Members, and the objective to establish a fair and market-oriented agricultural trading system, and the other objectives and concerns mentioned in the preamble to this Agreement; and
- (d) what further commitments are necessary to achieve the above mentioned long-term objectives.”

These negotiations are likely to be organized, as was the UR Agreement on agriculture, around the issues of market access, domestic support, and export competition. The UR also created for the first time an agreement restricting government health protection measures that affect trade, the Sanitary and Phytosanitary (SPS) Agreement. There are no new negotiations built into the SPS agreement but it could be revisited as part of the agriculture negotiations.

These sectoral negotiations are likely to move only slowly. However, Article 13 of the Agriculture Agreement, which insulates certain domestic support and export subsidies from trade remedy challenge and WTO dispute settlement, expires at the end of 2003.¹⁹ The threat of litigation after this date constitutes an effective deadline for the agriculture negotiations. As noted, agriculture was the principal east-west stumbling block in Seattle. After Seattle, Charlene Barshefsky described agriculture as the defining issue that would

determine whether a new round was possible, stating “If you can’t reach agreement on agriculture text, there’s no reason to move forward.”²⁰ At this point, agriculture is the key to agreement on a new WTO agenda and if a formula can be found that satisfies the major players, then other elements of an overall agreement could fall into place relatively quickly.

Services

Services is the most significant component of the built-in agenda. In sharp contrast to the agriculture negotiations, there is a high degree of consensus on the desirability of broader and deeper liberalization of services though the General Agreement on Trade in Services (GATS). This unity is most evident among the Quad countries, but even among developing countries there is, as yet, no significant opposition to and some support for an expanded services agenda.²¹

The services negotiations are the likeliest candidate to achieve early results. The biggest unknown is whether the EU and Japan would hold up any new services deals until their demands for a broader agenda are met. The EU and Japan favour a comprehensive round, in part, to enable them to make gains in other sectors to trade off against politically sensitive agricultural concessions. Stand-alone services deals would undermine the effectiveness of this tactic.²²

Services negotiations will proceed on the basis of GATS Article XIX.²³ Because it was considered uncontroversial, however, the services section from the draft Seattle declaration indicates the probable direction of negotiations and may even serve as the basis of a formal mandate once negotiations begin in Geneva. The draft ministerial declaration states that “no service sector or mode of supply shall be excluded a priori” from the negotiations (para. 28c). It calls for “horizontal” ap-

proaches to the negotiations (para. 28b), which would produce rules applying to all service sectors and modes of delivery. And it directs an existing committee to complete a comprehensive review of nomenclature for services (para. 28d), which could result in the reclassification of services from an uncovered to a covered sector. All these elements of the draft declaration underscore the extraordinary breadth of the upcoming services negotiations and the need to examine carefully the potential impact of any proposed agreements for Canadian society — including, but not limited to, health, education, social services and cultural programs.

The Seattle services draft also calls for sectoral negotiating approaches. Three sectoral services agreements have been signed since the end of the Uruguay round: the Information Technology Agreement in Dec. 1996, the Basic Telecommunications Agreement in Feb. 1997, and the Financial Services Agreement in Dec. 1997. These sectoral protocols received almost no media attention, were little scrutinized by outsiders, and have been politically uncontroversial. This may suggest sectoral agreements as a low-profile means to extend the scope of the GATS. Potential candidates for sectoral services negotiations include energy services, postal and express services, and maritime transportation services.

There are also ongoing negotiations on “domestic regulation” under Article VI (4) of the GATS. So far this working group has only produced standards for professional regulation in the accountancy sector. But frustrated with slow progress on a sector-by-sector basis, the group has been transformed into the WTO Working Group on Domestic Regulation and given a horizontal mandate to develop rules applying to all sectors. These negotiations aim to develop rules that would permit challenges to general, *non-discriminatory* regulations. Governments could be

obliged to convince a WTO panel that public interest regulations are not more trade restrictive than necessary or to demonstrate that delivering services through the public sector does not stifle foreign competition. This reasoning is similar to the dangerous logic underlying the abused “minimum standards of treatment” and measures “tantamount to expropriation” provisions of NAFTA’s investment chapter and the failed Multilateral Agreement on Investment.

Government procurement

Further negotiations on government procurement in services are part of the built-in agenda of the GATS and talks were scheduled to begin in 1997. These talks may be initiated as part of the broader, mandated negotiations on services. An Agreement on Transparency in Government Procurement is already under negotiation. Some of the proposed elements of this agreement go beyond transparency to ensure market access.

The current WTO Agreement on Government Procurement, unlike other WTO agreements which are part of a “single undertaking,” only applies to those governments that sign on to it. Most developing countries have not done so. Developed countries will try to ensure that the results of further procurement negotiations apply unconditionally as part of a single undertaking to all WTO members. This will be resisted by many developing countries.

Canada has signed the WTO AGP, but it does not apply to provincial or local governments. Any agreement on transparency in government procurement, if it applied to subnational governments, would be a foot in the door on the way to fuller coverage. This could discourage the use of procurement for local economic development, discourage “selective purchasing” policies designed to promote human rights (through boycotts or preferen-

tial purchasing), and impose significant administrative costs, particularly on local governments.

Intellectual property rights

While intellectual property rights are not formally part of the built-in agenda, implementation issues, expiring exceptions, mandated reviews, and clauses triggering further negotiations on specific matters almost amount to a full negotiating agenda in this area. This does not mean that the TRIPS agreement will be reopened as some developing countries might hope, but that there will be considerable scope for developed countries and their corporate lobbies to press for new elements to be added.

The Uruguay Round agreement gave developing and transition-economy countries 5 years to apply TRIPS provisions. This deadline expired on Jan 1, 2000. Developing country demands for an extension was one of the major sticking points in Seattle, but the package of implementation measures proposed in the draft Seattle declaration did not include a TRIPS extension. At the December 17, 1999 WTO General Council meeting, governments agreed to “adjourn and resume the discussion of implementation issues when the Council resumes early next year.” Member governments also pledged to “exercise restraint on the matters under consultation so as not to prejudice further fruitful discussion and decisions on these matters, or the position of other Members.”²⁴ While the US and other developed countries have agreed to delay any dispute settlement proceedings until the General Council meets next in early February, developing countries, as parties to the Uruguay Round agreements, appear to be in a weak bargaining position.

Article 71 of the TRIPS calls for a country-by-country review in 2000 of developing coun-

try members’ implementation of TRIPs and, in 2002, a review of the entire TRIPs agreement based on members implementation experiences. The TRIPs agreement also requires further negotiations on the protection of certain “geographical indications” (such as “champagne” or “port”). Prior to Seattle, the United States argued that the focus should be on full and effective implementation of existing TRIPs obligations, not on renegotiation of the TRIPs agreement.

A 5-year moratorium on so-called “non-violation remedies” has also expired. Article 64 of the Agreement on TRIPs provides for a “non-violation” remedy. Basically this would permit formal complaints and WTO dispute settlement where a country felt that its rights under the TRIPs had been “nullified or impaired” by a government measure that conforms to the letter, but not “the spirit,” of the TRIPs agreement. Many developing countries fear “non-violation” remedies. The US opposed an extension of this deadline, which, having expired, can now only be renewed by consensus or a formal amendment to the TRIPs agreement.

Article 27.3 of the TRIPs agreement allows member governments to exclude plants and animal other than microbiological products and processes from patentable subject matter. TRIPs Article 27.3 requires that this exclusion be reviewed after Jan. 1, 2000. The United States and the global biotechnology industry want to eliminate this exclusion. Some developing countries, such as the Africa Group, are arguing that “the review process (under 27.3) should clarify that plants and animals as well as microorganisms and all other living organisms and their parts cannot be patented, and that natural processes that produce plants, animals and other living organism should also not be patentable.” Other developing countries’ objectives include enhanced IPR protection for traditional and indigenous peoples’ knowledge and

stronger recognition for compulsory licensing schemes, for example for health protection purposes.²⁵

WTO institutional reform

Because of the organizational debacle in Seattle, the view that the institutional structure and decision-making procedures of the WTO are outmoded and must be reformed is widely shared. This is the one “new issue” that is now firmly on the WTO agenda as a result of Seattle. It is also the one issue that might conceivably bring WTO ministers together, perhaps informally, before the next regularly scheduled ministerial meeting in two years.

Currently, the momentum behind the reform concept appears strong. Once governments turn their attention to the actual substance of those reforms, however, any consensus could soon evaporate. Procedural reform could prove as fractious as any of the thorniest substantive issues.²⁶

Small economies will seek to ensure that the lip-service currently given to the practice of consensus is actually made effective and that their participation is meaningful. Newly industrializing countries will be seeking an enhanced role that corresponds to their growing share of international trade and invest-

ment. Developed countries will require, in the spirit of *realpolitik*, that their preponderant weight in the trading system be formally recognised. Indeed what the US, EU and Japan will want, but are unlikely to get, is to streamline the negotiating process by formalizing their long-standing *de facto* hegemony over it.

The keys to a workable reform package may be whether enough of the major developing countries can be brought on-side with the offer of an enhanced role in some form of executive committee and whether developed countries, who have in practical terms always dominated the negotiating process, are willing to cede any formal authority. In the case of the US, any reform proposal that even appears to diminish the power of the US within the WTO system will get a very rough ride in the Congress.²⁷ Moreover, an amendment to the structures of the WTO would require approval by a two-thirds majority of member governments,²⁸ giving small southern countries a veto, and therefore end-game leverage, if they can work together effectively.²⁹

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Endnotes

- ¹ According to some observers, the drama in the streets may also have affected the internal dynamics and psychology of the meeting in less demonstrable ways: bolstering the position of those delegations arguing for reforms to the WTO agenda and stiffening the resolve of those countries resisting the launch of a new round.
- ² In fact, the clearest “loser” after Seattle is Moore himself. He and the secretariat have been criticized for incompetence and for aligning with the major powers rather than playing a neutral role. Moore is now already something of a lame-duck, since any new round, even if it can be launched, could not be completed during his term. By contrast, Supachai’s stock has risen and he could emerge as a key figure in brokering any eventual compromise between developing countries and the major trading powers.
- ³ For a fuller discussion of implementation issues see the “Briefing Paper on The WTO Third Ministerial meeting,” November 24, 1999, pp. 2-3.
- ⁴ A European-sponsored compromise — a joint forum among the WTO, ILO, World Bank, and UNCTAD on trade, globalisation, development and labour issues — did not satisfy the US administration’s needs.
- ⁵ Clinton made the following remarks in an interview with the Seattle Post-Intelligencer that was published on Dec. 1, 1999. “I think that what we ought to do first of all is to adopt the United States’ position on having a working group on labor within the WTO, and then that working group should develop these core labor standards, and then they ought to be a part of every trade agreement, and ultimately I would favor a system in which sanctions would come for violating any provision of a trade agreement, but we’ve got to do this in steps.”
- ⁶ European Commissioner Pascal Lamy, for example, complained that the WTO procedures were “mediaval.”
- ⁷ Malaysia and Indonesia were the only newly industrializing countries rumoured to be close to joining those threatening to block consensus.
- ⁸ The Cairns Group are Argentina, Australia, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Fiji, Guatemala, Indonesia, Malaysia, New Zealand, Paraguay, Philippines, South Africa, Thailand, and Uruguay.
- ⁹ The term “multifunctionality” of agriculture refers to European and Japanese demands that the GATT agriculture rules acknowledge the multiple goals and aspects of agricultural policies such as environmental protection, food security, animal welfare and rural development.
- ¹⁰ A majority of European member states, led by France, and including Germany and Austria, were opposed to the draft language on agriculture.
- ¹¹ In fact, Japan continued to insist to the very end that the proposed Seattle declaration include a direct reference to “multifunctionality.”
- ¹² Of which the Canadian government is one of the most aggressive.
- ¹³ Prior to the meeting Canada and the US had slightly different proposals for the mandate of a working group on biotechnology. During the week the US and Canada adopted a common position.
- ¹⁴ In other words, the US supports strong multilateral restrictions on government regulation of investment. It is simply sceptical that dedicated investment negotiations in the WTO, a proposed by the EU and Japan, would produce a “high standards” agreement. It intends to adopt other tactics, such as broadening and deepening the GATS, to reach the same strategic end as the EU.
- ¹⁵ Japan and East Asian economies deflected a similar US-backed “Early Voluntary Sectoral Liberalization” proposal at the November 1998 Asia Pacific Economic Cooperation forum meeting in Kuala Lumpur.
- ¹⁶ The initial US proposal on biotechnology sought primarily to accelerate the approval processes for agricultural biotechnology products (see *Inside US Trade*, November 19, 1999). Annex C of the WTO SPS agreement requires that approval procedures for new products be “completed without undue delay.” The US and its agrifood industry, concerned about slow European approvals of genetically modified foods, want to specify timelines for approvals that would force the Europeans (and others) to act more quickly. The US government and US agrifood exporters oppose a broader reopening of the SPS agreement for fear that it would “weaken” the agreement.
- ¹⁷ Speech by Pascal Lamy, Commissioner for Trade, European Parliament Plenary Session, Strasbourg, 13 December 1999.
- ¹⁸ In her closing remarks to the WTO plenary session on Dec. 3, Charlene Barshefsky stated that the “Director-General can consult with delegations and discuss creative ways in which we might bridge the remaining areas in which consensus does not yet exist, develop an improved process which is both efficient and fully inclusive, and prepare the way for successful conclusion.” Dec. 3, 1999.
- ¹⁹ Article 13, “Due Restraint,” WTO Agreement on Agriculture, in *The Results of the Uruguay Round of Negotiations: the Legal Texts*, (Geneva, World Trade Organization: 1994), pp. 51-52.
- ²⁰ Source: Reuters, Washington, Dec 17, 1999.
- ²¹ There are several reasons that may explain developing countries’ accommodating position on services: first, in “tradable services” many developing countries have no domestic industries to protect; second, many developing countries lack extensive public services or public services have deteriorated to the point that it is difficult to mobilize public opinion to defend them; third some of the largest developing countries (notably India) have already started to export services. Providing certain services, such as software programming, out of developing nations is more cost effective due to lower labour costs. One services issue that divides

developed and developing countries concerns commitments in GATS mode 4 (the movement of natural persons). Southern demands for greater international movement of labour will be resisted by the north.

- ²² In a recent, post-Seattle joint communiqué the EU and Japan reiterated their demands that a new WTO round go beyond the narrow scope demanded by the U.S., "Both sides affirmed that the agenda for the new round should be sufficiently comprehensive to include not only the built-in agenda (agriculture and services) and market access but also the improvement and reinforcement of existing rules and disciplines such as antidumping, as well as the establishment of additional rules for investment, competition and trade facilitation." "EU-Japan Joint Statement on the WTO," Brussels, January 11, 2000.
- ²³ GATS Article XIX, Negotiation of Specific Commitments, reads:
1. In pursuance of the objectives of this Agreement, Members shall enter into successive rounds of negotiations, beginning not later than five years from the date of entry into force of the WTO Agreement and periodically thereafter, with a view to achieving a progressively higher level of liberalization. Such negotiations shall be directed to the reduction or elimination of the adverse effects on trade in services of measures as a means of providing effective market access. This process shall take place with a view to promoting the interests of all participants on a mutually advantageous basis and to securing an overall balance of rights and obligations.
 2. The process of liberalization shall take place with due respect for national policy objectives and the level of development of individual Members, both overall and in individual sectors. There shall be appropriate flexibility for individual developing country Members for opening fewer sectors, liberalizing fewer types of transactions, progressively extending market access in line with their development situation and, when making access to their markets available to foreign service suppliers, attaching to such access conditions aimed at achieving the objectives referred to in Article IV.
 3. For each round, negotiating guidelines and procedures shall be established. For the purposes of establishing such guidelines, the Council for Trade in Services shall carry out an assessment of trade in services in overall terms and on a sectoral basis with reference to the ob-

jectives of this Agreement, including those set out in paragraph 1 of Article IV. Negotiating guidelines shall establish modalities for the treatment of liberalization undertaken autonomously by Members since previous negotiations, as well as for the special treatment for least-developed country Members under the provisions of paragraph 3 of Article IV.

4. The process of progressive liberalization shall be advanced in each such round through bilateral, plurilateral or multilateral negotiations directed towards increasing the general level of specific commitments undertaken by Members under this Agreement." *The Results of the Uruguay Round of Negotiations: the Legal Texts*, (Geneva, World Trade Organization: 1994), pp. 343-44.
- ²⁴ Statement by the Chairman of the General Council, December 17, 1999. According to *Inside US Trade*, "The due restraint pledge affects developing countries' obligations to protect intellectual property rights, not to impose conditions on investment and to follow rules for customs valuation." *Inside US Trade*, Dec. 24, 1999.
- ²⁵ A compulsory license is an authorization by government to permit someone, upon payment of royalties to the patent owner, to make, use, or sell a patented product or process.
- ²⁶ Canada and Trade Minister Pettigrew are eager to play an active role on the reform issue. Pettigrew has floated the idea of a UN-style structure for the WTO with an executive council analogous to the Security Council. See Robert Russo, "WTO reform may begin in Canada: U.S. initially supportive," *The Canadian Press*, Jan. 11, 2000. UK Trade Minister, Stephen Byers, has also been very active convening meetings with the Indian and South African trade ministers. Byers has also called on DG Moore to make the reform issue his highest priority in the rest of his term as director general. See "Move to Reform WTO," *The Independent*, December 12, 1999.
- ²⁷ It is not yet clear whether an institutional reform package agreed to by the US administration would require formal Congressional approval.
- ²⁸ Article IX, Marrakesh Agreement Establishing The World Trade Organization.
- ²⁹ This assumes that an ambitious institutional reform package would require a formal amendment, which seems probable.