



TRADE AND DEVELOPMENT SYMPOSIUM

Perspectives on the Multilateral Trading System

A Collection of Short Essays

The Shifting Stars: The Rise of China, Emerging Economies and the Future of World Trade Governance

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Introduction

Since its inception, the GATT has been largely a trans-Atlantic scheme, where the most important initiatives and decisions were first brokered between the US and EU and then presented to the rest of the membership for acceptance. Later, this arrangement was expanded to include two more countries, i.e., Canada and Japan. Known as “the Quad” among GATT observers, these four Members controlled the GATT during most of its history.

In the 1980s, things started to change. An early example of this is the strong resistance of the developing countries to the launch of the Uruguay Round. After the conclusion of the Uruguay Round and the establishment of the WTO, the developing countries became even more assertive. Led by India and Brazil, the developing countries fought hard against the launch of a new round as they believed that they received a bad bargain in the Uruguay Round. The Round was only launched in 2001 after the developed countries agreed to make important concessions to developing countries. These include, among others, the official recognition of the “utmost importance”¹ of implementation issues - the central demand of developing countries - in the Doha Declarations, and the adoption of a separate Ministerial Declaration explicitly providing developing countries the right to grant compulsory licenses to deal with public health crises.

As the negotiations went under way, the power gradually shifted from the Quad to the new G-4, i.e., US, EU, Brazil and India, and then “Five Interested Parties” (FIPS), i.e., the G-4 plus Australia. This was later expanded into the G-6 with Japan back in the picture. However, China, the biggest developing country Member, has been conspicuously absent in the inner circle.

China’s Ascent in Global Trade Governance

In the first few years since the launch of the DDA, China took a rather cautious approach. While it submitted its first negotiating proposal as early as six months after its accession, most of its earlier years in the WTO were spent on observing the negotiations rather than making active interventions.

There are several reasons for such an approach: First, China lacked experience in WTO negotiations and needed time to learn the negotiating skills. Second, as a recently-acceded Member, China argued that it has already made extensive concessions which greatly exceed those of other WTO Members and thus should not be required to make additional concessions in the DDA.

As the transition period for China’s accession commitments came to an end in 2006, however, the US and EU started to push China to shoulder more responsibilities in the Doha Round. At around the same time, China also began to realize that its interests are not always aligned with those of developing countries and it should not continue to hide behind developing country leaders such as Brazil and India. After re-assessing its priorities, China started to adopt a practical approach to the negotiations. On

the one hand, as the largest exporter, China shares many interests with developed countries. One example is trade facilitation: while many developing countries are against the inclusion of the issue, given its position as one of the top exporters in the world, it is actually in China’s interest to push for the inclusion of trade facilitation in the WTO framework to make the customs process more efficient and cheaper. On the other hand, as a country with a large low-income population, China also sympathizes with the concerns of many developing country Members. This is why China supports the demand by India that developing countries should be entitled to a list of special products that will be exempted from tariff cuts, as well as a special safeguard mechanism that can deal with surge on particular agricultural imports.

As a country that straddles the North-South spectrum, China is well positioned to be an “honest broker” among developed and developing countries. In the words of Dr. Zhang Xiangchen, China’s Deputy Permanent Representative to WTO, China should play “a balancing, bridging and constructive role” between developed and developing countries. One example of China’s bridging role is its proposal at the 2005 HK Ministerial that the Members should try to achieve some early harvest of the negotiating results before the conclusion of a comprehensive agreement. This proposal helped to maintain the momentum of negotiations and pushed the negotiation forward. Sometimes, China is willing to sacrifice some of its own interests to generate momentum for the Round. For example, in 2005, China voluntarily offered to provide duty-free quota-free market access to imports from Least Developed Countries (LDC) even though developing countries are not required to do so.

In recognition of China’s important role, China was finally offered the coveted membership in the core decision-making group of the WTO at the July 2008 Mini-Ministerial in Geneva, when the G6 was expanded to the G7. Of course, with power comes responsibility: part of the reasons for the inclusion of China was that the DDA has finally moved from agriculture to NAMA issues, and any negotiations on industrial tariffs cannot move without the participation of the largest exporter of manufactured products.

While it recognizes that it has special responsibilities as a large developing country, China is resentful of any attempt to single her out in the negotiations. Therefore, China has been consistently opposing efforts by developed countries and some developing countries to differentiate among developing country Members. Similarly, when the July 2008 meeting ran into impasse due to the refusal of India to give in on special products and special safeguard mechanism, China turned down the US request for China to provide additional concessions on special products in agriculture and sectoral negotiations on industrial goods. Part of the reason is domestic political difficulties, but an equally-important reason is that China does not wish to be treated differently than India, which has held steadfast against US demands on these issues.

From the submission of its first negotiating proposal in June 2002 to the fateful July 2008 meeting, China has made more than 100 submissions in the DDA. Judging

1 Para. 12, Doha Declaration.

from the number of proposals submitted, China is one of the most active Members of the Round. However, numbers alone only tell part of the story. Compared to the submissions by other major Members, which often propose game-changing rules, most of the proposals by China focus on either the procedural issues or the special and differential treatment for developing countries and rarely leave a major impact on the negotiations.

One can interpret this to mean that China is content with the current rules, or that China lacks experience in WTO rules, but neither of these two theories explains why China has been actively pushing for changes to the current rules through the WTO dispute settlement system and FTA negotiations. As I have argued in another paper, China has transformed itself from a “rule taker” that passively accept existing rules imposed by other countries, to a “rule shaker” that tries to exploit the existing rules to its advantage, to a “rule maker” that is making new rules that reflects its own interests.² For example, in several recent WTO cases, China has been trying to persuade the Panel to interpret the China-specific provisions in a way to minimize their negative impacts. Similarly, in each of its dozen FTAs, China has been rewriting a key term in its accession package by demanding the recognition of its full market economy status from its FTA partners.

Therefore, the better explanation is that China has lost interests in the normal negotiation process in the WTO. It seems rather bizarre that the largest exporter in the world is not interested in making new rules in the WTO, but once we put all these into the proper context of China’s accession package, it all becomes crystal clear: When China joined the WTO, it reluctantly accepted many discriminatory clauses tailored-made for itself as the price for its accession. As these provisions were specifically designed to soften the impact of China’s WTO accession on other Members, they have a much more direct impact on Chinese exports than the normal WTO rules, at least during the transitional period. While the exact relationship between these special provisions and the normal WTO rules is still subject to debate, most commentators would agree that these provisions would take precedence pursuant to the principle of *lex specialis derogat legi generali* (special rules prevail over general rules). Thus, at least for the first few years after its accession, the revision of these provisions is of more direct interest to China than the revision of the general WTO rules. Unfortunately, revising these provisions through the WTO negotiations is a task that is extremely hard, if not impossible. To start with, the WTO is ill-equipped for this task. Among the WTO agreements, none contains explicit provisions on the revision of the accession protocol. Furthermore, in practice, there has been no precedent of comprehensive revisions of accession terms. Thus, if China were to insist on revising these provisions, the default consensus rule would probably apply. As we have seen from the history of the WTO, consensus is extremely hard to come by - that is one reason why the DDA has taken so long. More importantly, most other WTO Members are not interested in the idea of revising these provisions: as accession negotiation is pretty much a one-way deal, what does China have to offer in the multilateral setting

to compensate for the revisions?

Against this context, the recent calls by the US and EC for China to shoulder more responsibility and make more concessions in the DDA are a bit ironic: on the one hand, the US and EC imposed these harsh conditions in the accession negotiation and effectively denied China the normal membership status; on the other hand, the US and EC now want China to behave like a normal WTO Member, or better still, go beyond what normal WTO Members would offer by taking up the leadership responsibility. Before the US and EC abandon such double-standard and start to treat China on a non-discriminatory basis, why should China be expected to contribute to the Round above and beyond what is expected of a normal Member?

Without the effective participation of the largest exporter, the multilateral trading system cannot last long. Therefore, to revive the long-stalled DDA, **my first suggestion is that the WTO Membership shall seriously consider abolishing all the discriminatory provisions against China, so as to provide China with proper incentive and the WTO with moral authority to encourage more contributions from China in the DDA.**

Lessons for other Emerging Economies

Compared to China, the other emerging economies have an entirely different story. Take Brazil and India for example: both have been founding GATT contracting parties with a long experience of participating in world trade governance. The good side of this is that they are much more experienced in trade diplomacy. Indeed, they have been so successful in trade negotiations that they have long been included in the inner grouping of world trade governance as leaders of developing countries. On the other hand, they have also become victims of their own successes. In the 60s and 70s, they started with the premise that developing countries were losers in the global trading system and successfully fought for special and differential treatments that prevent the vigorous application of the normal GATT rules. However, the world has changed a lot since then. As we enter the new millennium, the emerging consensus is that the only way of prospering or even surviving in the new world is to don rather than shun the “Golden Straightjacket”, a term coined by Thomas Friedman to refer to a set of economic policies such as the liberalization of the trade regime.

In this regard, China’s experience provides a good example: while most countries envy the double-digit growth of China, few seem to be willing to try China’s ultimate success formula - autonomous market liberalization carried out during the two decades before China’s WTO accession. For example, as of 2010, the average bound tariff levels of Brazil and India are respectively three and five times that of China. During the past 15 years, both countries have been reforming their trade regime by cutting tariff levels. However, their average applied tariff levels are still 30-40% higher than that of China. Moreover, unless they are willing to bind their tariffs to the current level, the benefits of lower applied tariffs might not last long as it will

2 Henry Gao, China’s Ascent in Global Trade Governance: From Rule Taker to Rule Shaker, and Maybe Rule Maker?, in Carolyn Deere-Birkbeck (ed.), MAKING GLOBAL TRADE GOVERNANCE WORK FOR DEVELOPMENT, Cambridge University Press, 2011, 153-180.

be very easy for the government to retract from such liberalizations.

In addition, among all WTO Members, China probably is the only country where the Central Government made a serious and conscious effort to educate officials in various government agencies on China's WTO obligations and streamline the compliance process at all government levels. While such a level of familiarities with WTO rules among all government officials might be unfeasible for India or Brazil, at least they should try to educate lawmakers and officials in key central government agencies on the main WTO obligations. As eloquently put by Peter Sutherland, "playing to the gallery of critics is not a responsible position when the critics have no alternative to present to present as a coherent replacement for the system".³ Rather than catering to the whim of the public, the government shall try to educate the public as to what are good economic policies and try to persuade the public to support such policies.

To sum up, my suggestion for the other major emerging economies is that they should get rid of the mentality that they are entitled to S&D treatment in the multilateral trading system. As history has shown, S&D has done them more damage than good. **After having been enjoying an easy ride for so long, it is time for them to step up and assume major responsibilities commensurate with their status as major players in world trade governance and make some meaningful commitments.**

Responsibilities of Developed Countries

In terms of tariff reductions, developed countries have done a much better job than most emerging economies. However, they have failed to practice what they preach in two other aspects: First, while pushing developing countries to reduce tariff barriers, they have also been erecting new forms of trade barriers. The best example is trade remedies measures, which have been a favorite trade policy instrument employed by US and EU. Second, they have been continuously shifting goalposts for developing countries. At first, they urged the developing countries to reduce their tariffs to promote industrialization. When developing countries became competitive in manufacturing activities, they "upped the game" by trying to introduce non-trade issues such as investment rules, competition policy and environmental standards into the equation. When the developed countries refused to accept these rules in the WTO, they turned to the FTAs and other fora (such as Anti-Counterfeiting Trade Agreement).

Such practices set a very bad example for the developing countries. Through these hypocritical acts,

the developed countries are essentially telling the developing countries that the rules are made for others only and the developed countries can choose to play whatever game they want, even by breaking the very own rules set by them; if the developing countries fail to go along, they will simply find a new play ground.

While in the past the developing countries have no option but to follow whatever rules made by developed countries, things started to change when the emerging economies begun to flex their economic muscle. One worrying sign is the widespread use of trade remedy measures by emerging economies such as China and India in the past decade. Similarly, emerging economies have also been riding fast on the FTA bandwagon. As their FTAs can be justified under the Enabling Clause, they are not required to have high trade coverage and this has resulted in many FTAs which are better characterized as Preferential Arrangements that do not necessarily stimulate trade growth.

Thus, my suggestion to developed countries is that they should stop pursuing questionable trade policy instruments or cramming more non-trade issues into the WTO machinery, but instead focusing on helping the WTO to do what it does best, i.e., reducing trade barriers.

Conclusion

Babcock, Bruce (2011). "The Impact of US Biofuel Policies on As astronomers have shown us, even though many new stars have been discovered, none of them can replace the sun, which, because of its distance, size and mass, is perfect for earth. Similarly, the rise of emerging economies, no matter how bright they might be, will not engender the key roles of the US and EU. They should not be alarmed. Instead, they should learn to work with emerging economies to facilitate the work at the WTO. Of course, the proper functioning of the Universe of Free Trade depends on the orderly movement of every object along the orbits prescribed by the WTO rules. In this regard, a World Trading System that is beneficial to everyone can only be achieved by the collective efforts of both developed and developing countries.

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³ Peter Sutherland, *The DDA: Political Challenges to the World Trading System - A Cosmopolitan Perspective*, in E-U Petersmann (ed.), *Reforming the World Trading System: Legitimacy, Efficiency and Democratic Governance*, Oxford University Press, 2005, at p. 42.