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The Demise of Development in the Doha Round Negotiations

SUNGJOON CHO*

Abstract

This article provides a concise history of the Doha Round negotiation, analyzes its deadlock, and offers some suggestions for a successful Doha deal and for developing countries. The article observes that the nearly decade-long negotiation stalemate is symptomatic of diametrically opposed perceptions of the nature of the Round between developed and developing countries. While developed countries appear to be increasingly oblivious to Doha's original genesis, developing countries vehemently condemn their narrow commercial focus in the Doha Round talks. It will not be easy to untie this Gordian knot since both developed and developing countries tend to think that no deal is better than a bad deal. This political dilemma notwithstanding, the current global economic crisis has been a clarion call for a successful Doha deal. Ironically, the widespread protectionist reactions from both developed and developing countries have highlighted the vital importance of a well-operating multilateral trading system. This article concludes that the United States must exercise leadership in delivering the Doha Round and that developing countries must embrace open trade more vigorously beyond the Doha Development Agenda.

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I. INTRODUCTION

On July 29, 2008, Pascal Lamy, the head of the World Trade Organization (WTO), bitterly declared the collapse of yet another attempt to conclude the Doha Round talks.¹ Even his eleventh-hour Herculean effort to bridge the differences among the major negotiating groups was of no avail. As of March 2010, after nine years of talks, the Doha Round still has no framework (modalities) deal, let alone final national schedules.² A recidivistic pattern of collapses and resumptions in the negotiation process has fostered a sense of defeatism and learned helplessness among delegates. As such, the 2008 collapse was not entirely alien; it was just a recurring scene from the past. Because of the economic and political circumstances of the past several years, as well as the underlying lack of political will or capital among WTO members, the successful resolution of the Doha Round undoubtedly remains a “tough sell.”³ As the Doha Round has become the longest trade round in GATT/WTO history, its current torpor may only be broken by an epic catastrophe.

This nearly decade-long negotiation stalemate is attributable to the diametrically opposed perceptions of the Round between developed and developing countries. Developed countries appear to be increasingly oblivious to the original reasons for Doha's creation: to foster a *development* round launched in response to the urgency of the September 11 terrorist attacks and the UN Millennium

1. Pascal Lamy, Director-General of the World Trade Organization, DG Press Conference (July 2008) (transcript available at http://www.wto.org/english/news_e/news08_e/news08_07_29_pc_lamy_e.doc).

2. The most recent WTO Ministerial Conference, held in Geneva in December 2009, delivered no breakthrough on the Doha Round negotiation. See Chairman's Summary, WT/MIN(09)/18 (Dec. 2, 2009) (reviewing the accomplishments of the Ministerial Conference); Jonathan Lynn, *No Doha Decision from Meeting*, REUTERS, Nov. 27, 2009, <http://uk.reuters.com/article/idUKTRE5AQ1ZP20091127?sp=true> (recapping the conclusion that there will be no decision on the long-standing Doha Round).

3. Stephen Castle & Mark Landler, *After 7 Years, Talks on Trade Collapse*, N.Y. TIMES, July 30, 2008, at A1.

Development Goals (MDGs).⁴ These countries, such as the United States and those of the EU, tend to consider the advancement of the Doha Round to be a liability rather than a goal. Ascribing to the Doha crisis its uncommon *development* label for a trade round, developed countries realized that “with a narrow agenda centered on giving market access to poor countries, little incentive was offered to the leading trading nations to compromise.”⁵ This position tends to regard any concessions in agricultural liberalization as potential bargaining chips to be exchanged squarely for reciprocal concessions from developing countries. Of course, developed countries’ main target is not the world’s poorest countries, but emerging countries such as India, Brazil, and China. Developed countries thus condition their reduction of farm protection on these emerging countries’ matching reduction of industrial tariffs. This is why the Obama administration still believes that the most recent Doha package is “imbalance[d].”⁶

Developing countries, however, condemn this narrow commercial focus. To developing countries, Doha should not be yet another Wall Street deal. Principally, developing countries view the Doha Development Agenda (DDA) as an avenue for reducing or eliminating old, *unfair* protection by developed countries that the skewed Uruguay Round deal failed to resolve. In this context, developing countries perceive developed countries’ consistent quid pro quo demands as unconscionable derelictions of Doha’s development mandate. Even emerging economies argue that they should be granted more “policy space” than developed countries in cutting industrial tariffs, given the former’s limited institutional capability.⁷

In sum, WTO members are split between two diametrically opposed worlds. This philosophical divergence on the nature of the Doha Round is the main culprit for the negotiation deadlock. It will not be easy to untie this Gordian knot since both worlds tend to think that no deal is better than a bad deal.⁸ A new geography of power defined by the recent rise of emerging economies has also contributed to this deadlock.⁹ Under these circumstances, the Doha Round may be relegated to

4. In the Doha Ministerial Declaration of 2001, WTO members highlighted that “the majority of WTO members are developing countries” and agreed to “place [developing countries’] needs and interests at the heart of the Work Programme adopted in this Declaration.” World Trade Organization, Ministerial Declaration of 14 November 2001, para. 2, WT/MIN(01)/DEC/1, 41 I.L.M. 746 (2002) [hereinafter Doha Declaration]. Some commentators observe that the “grand-scale agreements format” became “obsolete.” Alan Beattie, *Doha Hangovers But No Anger Next Morning*, FIN. TIMES, July 30, 2008, available at http://www.ft.com/cms/s/0/3e4f0e12-5e56-11dd-b354-000077b07658.html?nclink_check=1 [hereinafter *Doha Hangovers*] (quoting Susan Schwab, U.S. Trade Representative). Yet the innovative negotiation procedures (“concentric circles”) espoused by the WTO Director-General Pascal Lamy proved to be effective in gathering convergences. World Trade Organization, *The July 2008 Package—Seeking Consensus*, http://www.wto.org/english/tratop_e/dda_e/meet08_circles_popup_e.htm# (last visited Feb. 6, 2010).

5. Editorial, *The Next Step for World Trade*, N.Y. TIMES, Aug. 2, 2008, at A14.

6. OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE, *THE PRESIDENT’S TRADE POLICY AGENDA FOR 2009*, at 3 (2009) [hereinafter 2009 Trade Policy Agenda].

7. World Trade Organization Secretariat, *Developmental Aspects of the Doha Round of Negotiations, in AGREEING AND IMPLEMENTING THE DOHA ROUND OF THE WTO 41, 49* (Harald Hohmann ed., 2008) [hereinafter *AGREEING AND IMPLEMENTING*].

8. See, e.g., *U.S. Presses WTO for Details on Doha Round Benefits*, REUTERS, Apr. 14, 2009, <http://in.reuters.com/article/idINIndia-39048220090415> (reporting that U.S. business groups are pressuring the Obama administration not to agree on the current form of the Doha deal).

9. See, e.g., *BRIC Makes Formal Debut with First Summit Meeting*, XINHUA, June 14, 2009, available at http://news.xinhuanet.com/english/2009-06/14/content_11541582.htm (observing that the rapid economic

inconvenience, irrelevance, or incorrectness as far as politicians of both worlds are concerned.

The political dilemma notwithstanding, the current global economic crisis has offered a clarion call for a successful Doha deal. Ironically, the widespread protectionist reactions from both developed and developing countries alike have highlighted the vital importance of a well-operating multilateral trading system.¹⁰ Moreover, the fact that the crisis tends to victimize the poor in a highly disproportionate manner has also amplified the original mission for a development round.¹¹ In this regard, the Doha Round urgently needs to change its rhetoric of negotiation from a narrowly defined commercial deal to a broad, collective public good. WTO members should deem the Doha Round as a *Gemeinschaftian* enterprise in which they share a communitarian ethos and identity, not as a mere *Gesellschaftian* set of mercantilist bargains.¹² After all, the DDA is not as much of a consequentialist balance sheet as it is a teleological commitment.

Markedly, this is the moment of truth for the U.S. leadership, which can help crystallize the DDA into a concrete outcome as it overcomes many political hurdles, domestic and international. As Charles Kindleberger aptly observed more than three decades ago, the lack of U.S. leadership contributed greatly to the deepening of the Great Depression.¹³ Now in the face of the biggest crisis since the Great Depression, what the global economic system truly needs is “a country which is prepared . . . to set standards of conduct for other countries; and to seek to get others to follow them, to take on an undue share of the burdens of the system.”¹⁴

At the same time, however, developing countries should not anticipate a panacea for development from the DDA. With or without the Doha Round, developing countries, in particular low-income developing countries, should take active development initiatives on their own terms. Developing countries should first realize that the conventional WTO development mantras, such as the special and differential (S&D) treatment, may not benefit them much in practice. In addition to the fact that its developmental potential is empirically doubted, it may implicitly provide developed countries with subterfuges for deviations from free trade

growth of BRIC countries (Brazil, Russia, India, and China) has led them to “reposition” themselves in the international sphere).

10. See Steven Mufson, *WTO Seeks to Curtail Protectionist Measures*, WASH. POST, Feb. 9, 2009, at D03 (detailing many of the protectionist measures taken by China, India, and the United States); *WTO Chief: Multilateral Trading System to Face “Stress Test.”* GLOBAL TIMES, May 27, 2009, available at <http://business.globaltimes.cn/world/2009-05/432914.html> (“It is precisely at this time, when protectionist temptations flourish, that the value of the multilateral trading system is all the more apparent to all [of] us’ . . .”).

11. See Mark Landler, *Dire Forecast for Global Economy and Trade*, N.Y. TIMES, Dec. 10, 2008, at B1 (highlighting the disproportionate impact of the downturn on developing nations); Pascal Lamy, *We Must Seal the Deal on World Trade*, GUARDIAN, Nov. 23, 2009, available at <http://www.guardian.co.uk/commentisfree/2009/nov/23/world-trade-doha-round-deal> (observing that export earnings by the world’s poorest countries have dropped by 44% since the onset of the global financial crisis and that the “Doha deal represents one of the most valuable tools at our disposal to help meet the United Nations’ millennium development goals”).

12. See generally Sungjoon Cho, *The WTO’s Gemeinschaft*, 56 ALA. L. REV. 483, 541 (2004) [hereinafter Cho, *Gemeinschaft*] (“[T]he WTO *Gesellschaft* has not been, and should not be, an answer. Only global empathy realized through the achievement and operation of the WTO *Gemeinschaft* . . . can deliver true changes.”).

13. CHARLES P. KINDLEBERGER, *THE WORLD IN DEPRESSION 1929–1939*, at 297–98 (1973).

14. *Id.* at 28.

principles, such as tariff peaks. In the long term, developing countries should mainstream open trade more aggressively as their primary developmental avenue.

Against this backdrop, this article provides a concise history of the Doha Round negotiation, analyzes its deadlock, and offers some suggestions for a successful deal as well as for developing countries in general. Part II sketches the inglorious history of the Doha Round's nine years of stalled negotiations. It reveals a deep-rooted tension between developed and developing countries on the nature of the Doha Development Round. Part III determines why the nine-year negotiations have failed to secure a deal thus far; it critically observes that a confluence of underlying North-South tensions and other political factors adverse to the negotiations led to the current stalemate. Part IV characterizes the Doha failure as the WTO's legitimacy crisis: such failure will cause disproportionate harms to developing countries, accounting for more than three quarters of the WTO membership, which have already suffered from the current global financial crisis. Part V then suggests that developed countries, in particular the United States, mobilize more political capital to deliver a Doha success and that developing countries mainstream open trade as their primary developmental tool beyond Doha's promises.

II. THE HISTORY OF THE DOHA ROUND: AN INGLORIOUS TALE

A. *The Genesis of a Development Round*

The Doha Round began its existence amid a grim atmosphere after the September 11 terrorist attacks and global economic woes.¹⁵ To signal a collective commitment to open trade and prosperity, in particular toward poor countries, the Round was established at the fourth WTO Ministerial Conference held in Doha, Qatar in November 2001. As a development round, the DDA's main concern was to reduce or eliminate agricultural trade barriers, such as farm subsidies and farm tariffs, which rich countries had maintained after the launch of the WTO.¹⁶ The level of urgency in the international community at the DDA's inception enabled negotiators to nail down an ambitious deadline of January 1, 2005 as the date for completing the Doha Round.¹⁷

Importantly, the South expected to redeem the unbalanced deal that it had suffered as a result of the Uruguay Round, because the new round highlighted the development dimension of trade.¹⁸ The emergence of a new geography of power

15. See William A. Lovett, *Bargaining Challenges and Conflicting Interests: Implementing the Doha Round*, 17 AM. U. INT'L L. REV. 951, 958 (2002) (documenting how the September 11 terrorist attacks led to the creation of the Doha Round).

16. See Doha Declaration, *supra* note 4, para. 13 ("Building on the work carried out to date and without prejudging the outcome of the negotiations we commit ourselves to comprehensive negotiations aimed at: substantial improvements in market access; reductions of, with a view to phasing out, all forms of export subsidies; and substantial reductions in trade-distorting domestic support.").

17. See *id.* paras. 42, 45 (setting a deadline of early 2005 and noting the seriousness of concerns facing least-developed countries).

18. J. Michael Finger, *Trade and Development: Systematic Lessons from WTO Experience with Implementation, Trade Facilitation, and Aid for Trade*, in DEVELOPING COUNTRIES IN THE WTO LEGAL

within the WTO, exemplified by China's recent accession to membership, seemed to reinforce this development mandate in the Doha Round.¹⁹ As negotiations proceeded, however, the Round's original development goals could not match the tough business realities on the ground. Developed countries' governments simply lacked the political capital to bring the development cause to light without obtaining serious concessions from developing countries. This lack of political will in developed countries to accommodate developing countries' interests had also eventually derailed the Seattle Ministerial Conference in 1999.²⁰

B. *Collapses and Missed Deadlines*

The fanfare of the WTO Ministerial Conference in Cancún, Mexico in September 2003 quickly turned into a disgraceful tumult of infuriation and finger-pointing. According to the original plan, the Cancún Conference was supposed to deliver a basic deal on the modalities (framework) requiring WTO members to open their markets in implementing the DDA by the end of 2004. Yet major developed countries were simply not prepared to reform their long-standing agricultural protection policies to meet such ambition. Some observed that the \$180 billion U.S. farm bill and the EU's refusal to reform its outmoded Common Agricultural Policy (CAP), led by a Franco-German collusion, made a "mockery of the idea that the Doha round was to be a development round."²¹ In a frustrating testimony to rich countries' farm protectionism, the United States refused to reduce its notorious cotton subsidies, even in the face of desperate pleas from Africa's Cotton Four (Benin, Burkina Faso, Chad, and Mali) and then-WTO Director-General Supachai.²² One representative of the cotton industry decried that "[w]e are used to hardship, disease and famine Now the WTO is against us as well. I think that this will stay in history."²³

After the Cancún debacle, the Doha trade talks were largely deadlocked until the summer of 2004 when negotiators managed to work out the July 2004 Package. This Package was nothing but the modality of modalities. It contained the basic principles and framework for establishing the modalities in future negotiations. For example, the July 2004 Package adopted a tiered approach to reducing farm subsidies and tariffs, which required that a member with a higher level of trade-distorting agricultural subsidies and agricultural tariffs cut its subsidies and tariffs to

SYSTEM 75, 87–90 (Chantal Thomas & Joel P. Trachtman eds., 2009).

19. Sungjoon Cho, *A Bridge Too Far: The Fall of the Fifth WTO Ministerial Conference in Cancún and the Future of Trade Constitution*, 7 J. INT'L ECON. L. 219, 234–35 (2004) (discussing the dramatic impact of the "China factor" on the power of the G-21 at the Cancun Ministerial Conference).

20. WORLD BANK, *GLOBALIZATION, GROWTH, AND POVERTY: BUILDING AN INCLUSIVE WORLD ECONOMY* 60 (2002) (quoting Report Commissioned by the Secretary-General, *Recommendations of High-Level Panel on Financing for Development*, at 7 (June 22, 2001)).

21. *Trading Insults*, ECONOMIST, Nov. 30, 2002, at 67. See also *Coming Unstuck*, ECONOMIST, Nov. 2, 2002, at 14 (explaining the failure of the United States and Europe to make good on their pledges to disable their farm support programs).

22. *At the Eleventh Hour, Divergence All Over Again*, BRIDGES DAILY UPDATE (Int'l Ctr. for Trade and Sustainable Dev.), Sept. 14, 2003, <http://ictsd.org/downloads/2008/08/ben030914.pdf>. See generally Kevin C. Kennedy, *The Doha Round Negotiations on Agricultural Subsidies*, 36 DENV. J. INT'L L. & POL'Y 335, 343 (2008) (demonstrating that cotton subsidies in rich countries have driven down the prices of cotton in the global market).

23. *At the Eleventh Hour, Divergence All Over Again*, *supra* note 22.

a higher degree.²⁴ In the reduction of industrial tariffs, developing countries would have longer implementation periods as well as some flexibility in choosing tariff lines to cut.²⁵

Nonetheless, the July 2004 Package failed to motivate WTO members to further narrow differences in their substantive positions. The revised plan for the Doha Round was to achieve some concrete approximation of the members' substantial differences on critical issues—such as the size of the reduction of farm subsidies and tariffs—by July 2005, and then to deliver a deal on the modalities in the upcoming Hong Kong Ministerial Conference in December 2005.²⁶ Under this scenario, WTO members might have finalized the whole round by the end of 2006.²⁷ Yet the political climate was not ripe for the so-called July Approximation.²⁸ Having failed to resolve their differences, WTO members lowered their expectations for the Hong Kong Ministerial Conference.²⁹

These recalibrated expectations naturally led to a largely face-saving pact in Hong Kong.³⁰ The Hong Kong Ministerial Declaration included some meaningful numbers, such as deadlines for getting rid of agricultural export subsidies (2013)³¹ and cotton export subsidies (2006),³² as well as a developmentally critical commitment that the exports of least developed countries (LDCs) enjoy duty and quota-free access, at least up to 97 percent, by 2008.³³ The positive view of the Hong Kong deal is that it put the Doha Round “back on track” with a “rebalancing in the favour of developing countries.”³⁴ At the same time, however, the negative view of the deal was that it failed again to deliver the long-awaited deal on modalities for the agricultural and non-agricultural market access (NAMA) sector.³⁵ Negotiators simply deferred resolving this controversial issue and agreed that they would establish the modalities by April 30, 2006.³⁶

24. World Trade Organization, *Decision Adopted by the General Council on 1 August 2004*, Annex A, WT/L/579 (Aug. 2, 2004).

25. *Id.* Annex B.

26. *WTO Members Aim for July 'Approximations,' Hong Kong Deal*, 9 BRIDGES WKLY. TRADE NEWS DIG. (Int'l Ctr. for Trade and Sustainable Dev.), Feb. 16, 2005, available at <http://ictsd.org/i/news/bridgesweekly/7683/>.

27. *Id.*

28. Alan Beattie, *G8 Mood and Doha Talks 'Show Disconnect'*, FIN. TIMES, July 8, 2005, at 4.

29. *Members Scale Back Expectations for Hong Kong*, 9 BRIDGES WKLY. TRADE NEWS DIG. (Int'l Ctr. for Trade and Sustainable Dev.), Nov. 9, 2005, at 1, available at <http://ictsd.net/downloads/bridgesweekly9-38.pdf>; *Dark Clouds Over Doha*, ECONOMIST, Nov. 10, 2005, http://www.economist.com/agenda/displaystory.cfm?story_id=5134656&fsrc=nwl.

30. See, e.g., Richard Waddington, *WTO Seeks Face-Saving Pact to Keep Talks Moving*, REUTERS, Dec. 13, 2005 (explaining that the conference's objectives were tempered from producing a draft free-trade treaty to providing special aid for poorer countries).

31. World Trade Organization, Ministerial Declaration Adopted on 18 December 2005, para. 6, WT/MIN(05)/DEC, (2005) available at http://www.wto.org/english/thewto_e/minist_e/min05_e/final_text_e.htm.

32. *Id.* para. 11.

33. *Id.* Annex F.

34. World Trade Organization, Day 6: Ministers Agree on Declaration that 'Puts Round Back on Track,' (Dec. 18, 2005), http://www.wto.org/english/thewto_e/minist_e/min05_e/min05_18dec_e.htm.

35. *Id.*

36. Sungjoon Cho, *Half Full or Half Empty?: The Hong Kong WTO Ministerial Conference Has Delivered an Interim Deal for the Doha Round Negotiation*, AM. SOC'Y INT'L L. INSIGHTS, Dec. 29, 2005, <http://www.asil.org/insights051229.cfm>.

Yet this deadline lapsed and was replaced by another one (set for the end of June 2006),³⁷ which also lapsed without meaningful development.³⁸ On July 28, 2006, upon the Director-General's recommendation, the WTO General Council suspended the negotiation due to irreconcilable differences among negotiators over three major trade barriers: farm subsidies, farm tariffs, and industrial tariffs.³⁹ Without the announcement of any future negotiation schedule, the Doha Round's future had plunged into uncertainty.

C. *So Close, Yet So Far: The Demise of the 2008 Geneva Ministerial Conference*

Pascal Lamy declared the resumption of the stalled negotiation in February 2007 after trade ministers from major WTO members informally gathered at the Davos World Economic Forum in January 2007 and recommitted themselves to further negotiations.⁴⁰ As the year 2008 dawned, the agricultural negotiation emerged with some significant developments as the Chair improved the agricultural modalities text with each new draft, although the NAMA negotiation proved to be a tougher process.⁴¹ Chairs in both the agricultural sector, Crawford Falconer, and NAMA, Don Stephenson, issued a series of drafts in February, May, and July of 2008 which identified areas of convergences and divergences.⁴² These drafts were to provide negotiators with simplified options for modalities.⁴³

When the WTO's head, Pascal Lamy, summoned trade ministers to Geneva in the summer of 2008, many cautiously predicted a successful deal on modalities.⁴⁴ Most negotiators felt compelled to complete the Doha Round in the foreseeable

37. *Lamy Sets End-June Deadline for AG, NAMA Modalities*, 10 BRIDGES WKLY. TRADE NEWS DIG. (Int'l Ctr. for Trade and Sustainable Dev.), May 31, 2006, at 1, available at <http://ictsd.org/downloads/bridgesweekly/bridgesweekly10-19.pdf>.

38. World Trade Organization, 'We Are Now in Crisis.' Director-General to Try to Break Impasse, July 1, 2006, http://www.wto.org/english/news_e/news06_e/mod06_summary_01july_e.htm.

39. *Id.* See World Trade Organization, Talks Suspended: 'Today There Are Only Losers,' July 24, 2006, http://www.wto.org/english/news_e/news06_e/mod06_summary_24july_e.htm ("The main blockage is . . . agriculture . . . market access and domestic support, [and] . . . non-agricultural market access . . ."); World Trade Organization, General Council Supports Suspension of Trade Talks, Task Force Submits 'Aid for Trade' Recommendations, July 27, 2006, http://www.wto.org/english/news_e/news06_e/gc_27july06_e.htm.

40. Pascal Lamy, Director-General, World Trade Organization, Informal TNC Meeting at the Level of Head of Delegation, Chairman's Remarks, JOB(07)/12 (Jan. 31, 2007), http://www.wto.org/english/news_e/news07_e/job07_12_e.doc.

41. See *Slow Progress on Industrial Goods Talks in Final Push to Ministerial*, 12 BRIDGES WKLY. TRADE NEWS DIG. (Int'l Ctr. for Trade and Sustainable Dev.), July 9, 2008, available at <http://ictsd.org/downloads/bridgesweekly/bridgesweekly12-25.pdf> ("Differences in the NAMA talks have proved especially stubborn.").

42. For a synopsis of these drafts, see Raj Bhala, *Doha Round Schisms: Numerous, Technical and Deep*, 6 LOYOLA CHI. INT'L L. REV. 5 (2008).

43. *Chair of WTO AG Talks Says New Draft Text Will Simplify Options for Ministers*, 12 BRIDGES WKLY. TRADE NEWS DIG. (Int'l Ctr. for Trade and Sustainable Dev.), July 9, 2008, at 2, available at <http://ictsd.org/downloads/bridgesweekly/bridgesweekly12-25.pdf>. Regarding the most recent Doha draft text, see World Trade Organization, The July 2008 Package, available at http://www.wto.org/english/tratop_e/dda_e/meet08_e.htm.

44. *Geneva Mini-Ministerial: 'Now or Never' For Real This Time?*, BRIDGES DAILY UPDATE (Int'l Ctr. for Trade and Sustainable Dev.), July 21, 2008, at 1, available at <http://ictsd.org/downloads/2008/07/bridges-daily-update-21-july1.pdf>.

future, especially considering the global financial turmoil.⁴⁵ Nonetheless, once the actual negotiation began, the general pace turned out to be rather slow-going. After days of negotiation, no clear signs of progress emerged. At long last, on the sixth day, a ray of hope shone over the stalemated negotiation. On the verge of collapse in the talks, Lamy managed to persuade negotiators to continue by presenting the critical “package of elements,”⁴⁶ which might have been coined the Lamy Draft. This deal-salvaging package was nothing more than a deliberate compromise proposal based on the most recent draft modalities on agriculture and NAMA.

What Lamy did was to present some concrete headline numbers on several major sticking issues, such as farm subsidies and industrial tariffs, in an articulated fashion out of the intense consultations among the seven key negotiating parties (United States, the EU, Australia, Japan, China, Brazil, and India). According to the Lamy Draft, the United States would cut the current bound level of farm subsidies (\$48 billion) to \$14 billion⁴⁷ (which was still much higher than the actual spending in the previous year of \$7 billion), and the EU would cut its farm subsidies by 80 percent, to approximately €22 billion.⁴⁸ As to the market access, the Draft called for a 70 percent reduction for the highest farm tariffs (above 75 percent) of developed countries.⁴⁹ At the same time, the Draft allowed developed countries to designate 4 percent of their agricultural tariff lines as “sensitive products” which are exempt from the aforementioned tariff cut.⁵⁰

Under the Draft, developing countries were also allowed to shelter 12 percent of all covered products (special products) from the normal tariff reduction.⁵¹ As to the special safeguard mechanism (SSM), developing countries could use it only when an import surges by more than 40 percent in volume.⁵² As to NAMA, coefficients, the maximum level of tariffs, would be 8 percent for developed countries and 20, 22 or 25 percent for developing countries, depending on three different “flexibility mechanisms.”⁵³ Developing countries could choose from these flexibility mechanisms to protect some of their strategic products more than others within these limits.⁵⁴ Finally, the Draft proposed to hold the Services Signaling Conference to gather voluntary commitments in service-sector liberalization from developing countries in an effort to give some comfort to developed countries.⁵⁵

Frustratingly, this rather “unexpected momentum” soon evaporated as the United States wrangled with India and China over the SSM and cotton.⁵⁶ India

45. World Trade Organization, Day 1: Ministers begin final effort to agree blueprints of deal, July 21, 2008, http://www.wto.org/english/news_e/news08_e/meet08_summary_21july_e.htm.

46. World Trade Organization, Lamy Presents “Package of Elements” from Consultations with Ministers, July 26, 2008, http://www.wto.org/english/news_e/news08_e/meet08_chair_26july08_e.htm.

47. *WTO Mini-Ministerial Evades Collapse, As Lamy Finds ‘Way Forward,’* BRIDGES DAILY UPDATE (Int’l Ctr. for Trade and Sustainable Dev.), July 26, 2008, at 1, available at <http://ictsd.org/downloads/2008/07/daily-update-issue-6-template.pdf>.

48. *Id.*

49. *Id.*

50. *Id.*

51. *Id.*

52. *Id.* at 2.

53. *WTO Mini-Ministerial Evades Collapse, As Lamy Finds ‘Way Forward,’* *supra* note 47, at 2.

54. *Id.*

55. *Id.*

56. *Disputes Threaten Doha Round*, FIN. TIMES CHINESE, July 29, 2008, available at

maintained a recalcitrant stance against tightening the eligibility of the SSM, while China severely criticized the United States for pressuring it to open its cotton market as a condition to cut the U.S cotton subsidies. On the ninth and final day of the talks, the core negotiating group (Australia, US, EU, Japan, China, India, and Brazil) and the G-33 bloc of food-importing developing countries (India, China, Indonesia, etc.) failed to close their gaps in some details of the SSM.⁵⁷ Other than this holdup, the deal was close to completion because negotiators had managed to reach a consensus on nearly all other sticking points.⁵⁸

Jagdish Bhagwati blamed the United States as the “central spoiler” of the 2008 Geneva Ministerial Conference.⁵⁹ According to Bhagwati, the United States refused to significantly reduce its trade-distorting farm subsidies which are “universally recognized as intolerable,” while it attacked India for requesting enhanced safeguards for its mostly subsistent, rural farmers.⁶⁰ Ironically, U.S. Trade Representative (USTR) Susan Schwab, at the time, probably did a service to the WTO since any deal sealed in Geneva but killed later in Washington might have dealt a more severe blow to the WTO.⁶¹

The Doha Round talks entered into yet another dormant stage after the Geneva debacle of the summer of 2008. Although during September 2009 in Pittsburgh, the G-20 leaders pledged, yet again, to conclude the Doha Round by the end of 2010,⁶² no genuine breakthrough, such as an agreement on the modalities, had been made by October 2009.⁶³ The Geneva Ministerial Meeting in December 2009 ended without any substantial progress, merely reaffirming the 2010 deadline.⁶⁴ All in all, the Doha Round still remains a failure.⁶⁵

<http://www.ftchinese.com/story/001020872/en>.

57. *WTO Mini-Ministerial Ends in Collapse*, BRIDGES DAILY UPDATE (Int’l Ctr. for Trade and Sustainable Dev.), July 30, 2008. The United States insisted that an importing country might impose these emergency tariffs above the current WTO limits determined at the previous Uruguay Round only when imports increase more than by 40% over the preceding three years, while India wanted the trigger to be 15%. Daniel Pruzin, *Trade Officials Voice Doubts on Push by Lamy to Revive Doha Round Talks*, 25 Int’l Trade Rep. (BNA) 1256 (Sept. 4, 2008). Yet India argued that with a 40% threshold the SSM would be inoperable “because India’s ability to monitor its imports of individual products is so haphazard that by the time the government detected a 40% import surge farmers would already be committing suicide *en masse*.” Paul Blustein, *The Nine-Day Misadventure of the Most Favored Nations: How the WTO’s Doha Round Negotiations Went Awry in July 2008*, BROOKINGS INST., Dec. 5, 2008, at 10, available at http://www.brookings.edu/articles/2008/1205_trade_blustein.aspx. Nonetheless, the United States was adamant with this 40% threshold, permitting no compromise; it also refused Pascal Lamy’s alternative proposal which would have replaced this numerical trigger with an expert review on “demonstrable harm,” which India accepted. *Id.* at 15.

58. World Trade Organization, *Day 9: Talks collapse despite progress on a list of issues*, July 29, 2008, http://www.wto.org/english/news_e/news08_e/meet08_summary_29july_e.htm [hereinafter WTO, Day 9].

59. Jagdish Bhagwati, *The Selfish Hegemon Must Offer a New Deal on Trade*, FIN. TIMES, Aug. 20, 2008, at 11.

60. *Id.*

61. See Blustein, *supra* note 57 (referencing Susan Schwab’s outburst at Lamy).

62. Doug Palmer & Darren Ennis, *G-20 Leaders Pledge Quick Action on Doha Deal*, REUTERS, Sept. 26, 2009, <http://www.reuters.com/article/idUSTRE5805MO20090925>.

63. Daniel Pruzin, *WTO Chief Warns 2010 Deadline for Doha Hard to Meet without ‘Serious Acceleration’*, 26 Int’l Trade Rep. (BNA) 1414 (Oct. 22, 2009).

64. See *WTO Ministerial Lifts Hopes for Doha, But Scepticism Lingers*, 13 BRIDGES WKLY. TRADE NEWS DIG. (Int’l Ctr. for Trade and Sustainable Dev.), Dec. 9, 2009, at 1–2 [hereinafter *Scepticism Lingers*].

65. The most recent attempt by negotiators to “take stock” until March 2010 to meet the end of 2010 deadline seems to have faltered, darkening the prospects of completing the Round by the end of 2010. See

III. REFLECTIONS ON DOHA'S FAILURE: WHAT WENT WRONG?

What caused Doha's failure? There may have been a unique context for the Doha Round which has militated against smooth negotiation in a consistent manner. For example, different expectations for the Doha Round between the North and the South may have complicated the entire process of negotiation. Adverse election cycles in major economies, as well as the recent global economic recession, may have also rendered any concessions (liberalization commitments) politically unpalatable. Or, as a more immediate cause, an unfortunate discordant chemistry among major negotiators may have triggered the demise.⁶⁶ At any rate, a sobering exploration of causes and contributing factors for Doha's failure seems to be in order if we want to alter the direction of future trade talks toward a successful round.

A. *The Primary Cause: Irreconcilable Agendas of Development and Mercantilism*

As discussed above, the Doha Round was meant to be a development round. The Doha Ministerial Declaration (2001) states that:

International trade can play a major role in the promotion of *economic development* and the *alleviation of poverty*. We recognize the need for all our peoples to benefit from the increased opportunities and welfare gains that the multilateral trading system generates. The *majority* of WTO members are *developing countries*. We seek to place their needs and interests at the heart of the Work Programme adopted in this Declaration.⁶⁷

However, the initial development focus of the Doha Round quickly blurred and faded. Some observers from developed countries even believe that the *development* label tended to distance powerful stakeholders (businesses and industries) who might think the Doha trade talks would be mere charity and thus find little incentive to participate.⁶⁸ They argue that developed countries basically perceive the Doha Round as yet another *commercial* negotiation in which could they can press for market opening by big developing countries, such as China, India, and Brazil.⁶⁹

For example, the United States conditioned the reduction of its farm subsidies firmly on other members' concessions, not only on the EU's reduction of farm tariffs but also on developing countries' (such as China and India) disarmament of special

Jonathan Lynn, *Ministers Won't Meet on Doha Prospects Soon*, REUTERS, Feb. 19, 2010, <http://in.reuters.com/article/businessNews/idINIndia-46329820100220>.

66. See Blustein, *supra* note 57, at 2 (depicting vehement negotiation styles of negotiators from major WTO members).

67. Doha Declaration, *supra* note 4, para. 2 (emphasis added).

68. See David S. Christy, Jr., 'Round and 'Round We Go . . .', WORLD POL'Y J., Summer 2008, at 19, 24 (contending that "affixing the label 'development' to the Round may have warmed a few hearts, but it has not filled any bellies."); Simon J. Evenett, *What Can Researchers Learn from the Suspension of the Doha Round Negotiations in 2006?*, at 5 (Univ. of St. Gallen Discussion Paper No. 2007-17, 2007) (observing that the ambiguous and confusing "development" mandate of the Doha Round discouraged corporate executives from attending WTO Ministerial Conference).

69. *Political Positioning Dominates Opening Day of WTO Talks*, BRIDGES DAILY UPDATE (Int'l Ctr. for Trade and Sustainable Dev.), July 22, 2008 [hereinafter *Political Positioning Dominates*].

protection for their crops, even though this special protection was for non-mercantilist purposes (such as food and livelihood concerns).⁷⁰ While leaders of developed countries continued to advocate the vital cause of development, this rhetoric had little consequence at the negotiation table.⁷¹ In the meantime, developing countries refused to make concessions before developed countries tabled substantial commitments in the area of agricultural protection.⁷² It was this brinkmanship that frequently deadlocked the negotiation process.⁷³

At the heart of the North-South clash in the Doha Round laid the domestic politics of rich countries which simply could not accommodate the cause of development on political terms. The heavily battered Bush administration was simply incapable of managing protectionist pressures from Congress in its lame-duck period. In a highly symbolic gesture, in April 2007 fifty-eight U.S. Senators jointly sent a warning letter to U.S. President Bush stating that “our trading partners have refused to offer significant tariff reductions, and they insist on exceptions for sensitive and special products that will render meaningless the modest tariff reduction formulas they have proposed.”⁷⁴ Likewise, Charles Grassley, a powerful U.S. Senator from a farming state, urged shortly before the collapse of the deal that the U.S. negotiators “pack their bags and come home” if other trading partners refused to grant U.S. businesses substantial market access in agricultural and industrial goods.⁷⁵

Mindful of these anti-trade sentiments in Congress, the USTR desired substantial concessions from trading partners and thus rejected any modest package, such as the “Doha-lite” proposal.⁷⁶ Delegates from major U.S. special interest groups, such as the American Farm Bureau and National Association of Manufacturers, were actually stationed in Geneva as they monitored and even instructed U.S. negotiators.⁷⁷ Such circumstances squeezed the negotiation space of the USTR who was preoccupied with the idea of sinking a deal in Geneva rather than failing to pass it in D.C.⁷⁸ Naturally, these mercantilist stances by developed

70. *G-6 Ministers Agree to Work to Conclude Doha Round by End of 2007*, 11 BRIDGES WKLY. TRADE NEWS DIG. (Int’l Ctr. for Trade and Sustainable Dev.), Apr. 18, 2007, at 2 [hereinafter *G-6 Ministers Agree to Work*].

71. See Alan Beattie, *G8 Mood*, *supra* note 28 (claiming that there was a “bizarre disconnect between the enthusiastic rhetoric from G8 leaders in Gleneagles on pushing ahead with trade talks and intransigence from negotiators that has brought the Doha round almost to a halt”).

72. See *Members Try to Convert Dalian Effort into Negotiations Breakthrough*, 9 BRIDGES WKLY. TRADE NEWS DIG. (Int’l Ctr. for Trade and Sustainable Dev.), July 20, 2005, at 2 (noting insistence by developing nations that some of their demands be met in agriculture before moving forward on NAMA, and citing “demands that the EU reduce subsidies and open its markets to foreign farm products”).

73. See *The Doha Round Cruising Along*, FIN. TIMES, July 15, 2005, at 12 (claiming that brinkmanship would once have led to a last-minute deal, “but the sheer breadth of the current round of trade talks, coupled with the involvement of no less than 148 countries, forecloses that option”).

74. Letter to George W. Bush, President, United States of America (Apr. 12, 2007), https://conrad.senate.gov/issues/statements/agriculture/070412_WTO_Ag_Letter.pdf; see also Bhala, *Doha Round Schisms*, *supra* note 42, at 12 (discussing the provisions on special products).

75. Doug Palmer, *U.S. Farm Programmes Spared as WTO Talks Collapse*, REUTERS, July 29, 2008, <http://www.reuters.com/article/idUKL950898920080729>.

76. Sungjoon Cho, *The WTO Doha Round Negotiation: Suspended Indefinitely*, ASIL INSIGHTS, Sept. 5, 2006, <http://www.asil.org/insights060905.cfm>.

77. Blustein, *supra* note 57, at 11.

78. *Id.*

countries irked developing countries. Indian Commerce Minister Kamal Nath commented that rich countries pursued only “commercial prosperity.”⁷⁹

In particular, lavish farm protection in major developed countries, such as the United States and the EU nations, continued to undermine the DDA as the negotiation progressed. Under the EU’s Common Agricultural Policy, big agribusinesses in France alone receive more than \$10 billion a year.⁸⁰ The EU’s biofuels policy created a tariff equivalent of 1,000 percent for controversial environmental benefits.⁸¹ In the United States, the renewal of the highly protectionist-oriented Farm Bill in the middle of the Doha Round negotiation disheartened many delegates.⁸² This ignominious bill, which “rewards rich farmers who do not need the help while doing virtually nothing to help the world’s hungry, who need all the help they can get,” was lambasted by some U.S. media outlets.⁸³ As Victor Davis Hanson trenchantly observed, lavish farm subsidies in the United States are “transparent election-cycle harvests for farm-state politicians, who have small constituencies but exercise outsized national political clout.”⁸⁴ In a six-year cycle, U.S. politicians have masqueraded this special interest legislation by phony rationalizations, as seen in the Freedom to Farm Act (1996), the Farm Security and Rural Investment Act (2002), and the Farm, Nutrition and Bioenergy Act (2008).⁸⁵

Farm protectionism in the United States and EU entails enormous distortion in the global crop market beyond the level which might be remedied through occasional WTO litigation. The fixation by the G-33 bloc (food-importing developing countries) on the SSM originated mainly from rich countries’ highly subsidized, and thus cheapened, crop.⁸⁶ Under these circumstances, “any opening up of agriculture would be doubly difficult politically because exposing one’s farmers to the impact of highly subsidized foreign producers is regarded as yielding to unfair

79. *Instant Analysis: Implications of the Failure of WTO Talks*, REUTERS, July 29, 2008, <http://www.reuters.com/article/idUKL928387320080729>. Admittedly, South-South relations were not without tensions in the Doha trade talks. For example, Brazil, one of the main agricultural exporting countries, criticized India for their recalcitrant position on the SSM. Gary G. Yerkey, *World Bank President Offers Some Ideas for Reviving WTO Talks, Focuses on Poor*, 25 Int’l Trade Rep. (BNA) 1218 (August 21, 2008) [hereinafter *Reviving WTO Talks*]. Other agricultural exporting countries, such as Argentina and Thailand, also opposed a separate exception of “special products” under which importing countries can protect certain agricultural sectors for food and livelihood security and rural development. See also Jonathan Lynn, *Developing Countries Split over WTO Farm Protection*, REUTERS, July 27, 2008, <http://www.reuters.com/article/idUKL748592720080728> (discussing the division between poorer countries over proposals for a new trade deal). However, such tensions were negligible compared to deep-rooted North-South conflicts.

80. Patrick Messerlin, *A Doha Deal Would Aid Many European Farmers*, FIN. TIMES, July 21, 2008, at 9.

81. *Id.*

82. Missy Ryan, *New Farm Bill Seen Adding Fodder for Trade Feud*, REUTERS, May 11, 2008, <http://www.reuters.com/article/idUSN0953063020080511>. See David M. Herszenhorn, *House Passes Farm Bill by a Veto-Proof Margin*, N.Y. TIMES, May 15, 2008, at A19 (discussing the passage of the Farm Bill against the wishes of President Bush).

83. See, e.g., *A Disgraceful Farm Bill*, N.Y. TIMES, May 16, 2008, at A22.

84. Victor Davis Hanson, *Harvesting Money in a Hungry World*, N.Y. TIMES, Aug. 1, 2008, at A19.

85. *Id.*

86. *G-7 Talks on Special Safeguard Mechanism Inconclusive as Blame Game Heats Up*, BRIDGES DAILY UPDATE (Int’l Ctr. for Trade and Sustainable Dev.), July 29, 2008, available at <http://ictsd.org/i/wto/englishupdates/15018/>.

trade.”⁸⁷ The Uruguay Round outcome enabled developed countries to continue their old practice of lavish farm subsidies, but deterred developing countries from invoking the special safeguard mechanism under the Agreement on Agriculture for technical reasons.⁸⁸ This frustrated developing countries, who now want to fix this imbalance in the Doha Round.

In sum, different expectations over the Doha Round bred enormous tensions between the North and the South in the course of trade talks. While the South basically demanded from the North unreciprocated disarmament in farm protection under the DDA, the North still wanted to use the reduction of farm protection, if any, as a bargaining chip for reciprocal concessions from the South in areas of both agricultural and industrial market access.

B. The Secondary Cause: The Sterile Environment for Trade Talks

Apart from the aforementioned deep-rooted North-South tensions, a blend of adverse factors has undermined the odds for a successful round. First, as most commentators noted, the recent domestic political situations of major negotiating parties, such as the United States, EU, and India, have not been amenable to trade concessions, leading to a general lack of political support for a deal. Key elections were pending in the United States and India as delegates papered over the modalities. To make things worse, the Wall Street-born financial crisis quickly spread throughout the world and froze global trade, brewing protectionist sentiments. Amid this economic hardship, some politicians intensified their acerbic rhetoric against the Doha deal. For example, French President Nicolas Sarkozy stated that the EU Trade Commission’s offer would destroy the European farm sector by reducing agricultural production by 20 percent and cutting 100,000 jobs.⁸⁹

Another negative factor was the absence of the U.S. government’s trade promotion authority (TPA), formerly known as “fast track authority.”⁹⁰ Without the TPA, passing the Doha deal in Congress would have been a very difficult, if not impossible, task for the lame-duck administration. The U.S. negotiators, stripped of the TPA, had to grab a deal which could impress Congress, but major developing countries, such as Brazil and India, could not simply concede such a deal without a serious reduction of U.S. farm subsidies.⁹¹

Moreover, the U.S. proposal of cutting the trade-distorting subsidy to \$15 billion, if implemented, would have forced the United States to dilute farm protection bestowed by the new Farm Bill⁹² which had recently been passed over a

87. Jagdish Bhagwati & Arvind Panagariya, *How the Food Crisis Could Solve the Doha Round*, FIN. TIMES, June 23, 2008, at 9.

88. *Political Positioning Dominates*, *supra* note 69.

89. *Id.*

90. Business Roundtable, Trade Resource Center, Trade Promotion Authority (TPA) Is an Important Tool, http://trade.businessroundtable.org/trade_2006/tpa/important_tool.html (last visited Feb. 3, 2010).

91. Bradley S. Klapper, *Blame High, Confidence Low as WTO Heads into Another ‘Final Year’ for Free Trade Pact*, ASSOC. PRESS, Dec. 7, 2007.

92. Dan Looker, *Harkin: WTO Offer Could Affect 2008 Farm Bill Programs If Trade Talks Succeed*, AGR. ONLINE, July 25, 2008, <http://www.agriculture.com/ag/story.jhtml?storyid=/templatedata/ag/story/data/1216993795055.xml>.

presidential veto.⁹³ This forecast seemed to have pushed the U.S. negotiators to resist loosening the trigger threshold of the SSM, which would have hampered U.S. farmers' exports to emerging markets.⁹⁴ Tom Harkin, chair of the U.S. Senate agriculture committee, made it clear that this proposal was conditioned on enhanced access for U.S. farmers to foreign markets.⁹⁵

IV. THE DOHA FAILURE AS THE WTO'S LEGITIMACY CRISIS

The failure of the Doha Development Round is particularly ill-timed amid the global financial crisis.⁹⁶ One recent study revealed that the global financial crisis will cut developing countries' income by \$750 billion before the end of 2009 and leave another 50 million people in abject poverty.⁹⁷ Collateral damage to the world's poor, such as the decrease of foreign direct investment and remittances, may last long after rich countries start recovering economically.⁹⁸ A Doha success would certainly mitigate such developmental impacts to a great extent, considering that its agricultural package is two or three times larger than that of the Uruguay Round.⁹⁹ However, a Doha failure would reduce developing countries' agricultural exports by 11.5 percent.¹⁰⁰

It is also of serious concern that a systemic failure of the WTO—representing the well-operating multilateral trading system—could inflict suffering on developing countries. The Doha failure is a WTO failure in that “commitment to free trade is weakening.”¹⁰¹ The Doha failure would embolden protectionism by generating a “public impression that whoever opens their markets loses.”¹⁰² Such sentiments have already emerged. For example, the EU has recently decided to pour lavish export refunds (subsidies) on its dairy farmers, despite the fact that such subsidies are clearly against the current Doha agricultural draft.¹⁰³ The EU, which had originally

93. Food, Conservation, and Energy Act of 2008, 7 U.S.C. § 8701 (2008); David Stout & David Hershenhorn, *House Override of Farm Bill Veto Is Only the 2nd in Bush's Presidency*, N.Y. TIMES, May 22, 2008, at A24.

94. Alan Beattie, *Lamy Plan Spurs Optimism at Doha Talks*, FIN. TIMES, July 25, 2008, at 5.

95. Alan Beattie, *US Offers to Reduce Farm Subsidy Limit to \$15bn*, FIN. TIMES, July 23, 2008, at 8.

96. *Dried Up*, ECONOMIST, July 29, 2008; see Blustein, *supra* note 57, at 2 (observing that the “financial crisis has greatly magnified the import of [Doha's] failure”).

97. *How to Rescue the Global Economy?*, 13 BRIDGES MONTHLY (Int'l Ctr. for Trade and Sustainable Dev.), Mar. 2009, available at <http://ictsd.org/i/news/bridges/44278/>.

98. *WTO Worried about Developing Economies*, UNITED PRESS INT'L, Jan. 22, 2009.

99. Peter Mandelson, *Doha a Posteriori*, in AGREEING AND IMPLEMENTING THE DOHA ROUND OF THE WTO 9, 9 (Harald Hohmann ed., 2008). Under the current Doha package on the table, trade distorting farms subsidies will be cut by 70–80%. Lamy, *supra* note 11.

100. Antoine Bouët & David Laborde, *The Potential Cost of a Failed Doha Round*, 56 INT'L FOOD POL'Y RES. INST. 2 (2008), available at <http://www.ifpri.org/sites/default/files/publications/ib56.pdf>.

101. Niall Ferguson, *How a Local Squall Might Become a Global Tempest*, FIN. TIMES, Aug. 8, 2008, at 9.

102. Siobhán Dowling, *WTO Failure Reflects Changing Global Power Relations*, SPIEGEL ONLINE, July 30, 2008, <http://www.spiegel.de/international/world/0,1518,569027,00.html>.

103. Elisa Gamberoni & Richard Newfarmer, *Trade Protection: Incipient but Worrisome Trends*, TRADE NOTES (World Bank Int'l Trade Dept.), Mar. 2, 2009, at 2, available at http://siteresources.worldbank.org/INTRANETTRADE/Resources/239054-1126812419270/Trade_Note_37.pdf.

planned to repeal such export refunds, took advantage of the legal vacuum created by the Doha deadlock.¹⁰⁴

Therefore, beyond any calculable welfare loss, the Doha failure might leave an irreversible systemic impact on the credibility of the WTO legal system. As the Doha failure undermines the WTO's legal shield, powerful countries tend to downplay the WTO's authority. This would be highly detrimental to less powerful developing countries.¹⁰⁵ Under these circumstances, a small developing country's victory against a big developed country in the WTO tribunal might seem to be less secure.¹⁰⁶

It is imperative to fully realize the symbolic and dynamic impact which delivering the development round could bring to the WTO. Most quantitative studies on the welfare gains which a successful completion of the Doha Round might generate to developing countries are based on a rather static model.¹⁰⁷ This is why some studies forecast fairly limited benefits to developing countries from a Doha success.¹⁰⁸ However, such a model, by design, does not take into account long-term, institutional ramifications for development brought by Doha success.¹⁰⁹ Such institutional ramifications include enhanced credibility of trade for economic growth in the LDCs, further political impetus for trade liberalization—both unilateral and in South-South trade liberalization—and increased domestic and foreign investment in these countries' lifeline industries, such as agriculture.¹¹⁰

In addition to the Doha Round's importance in staving off protectionism during the current financial crisis, it is inextricably linked to the WTO's moral agenda. Moral foundations for delivering the development round can be located in multiple sources. The idea of a "duty to assist" less fortunate nations is established in well-known literature,¹¹¹ and has been applied in the trade context.¹¹² Given what

104. Peter Hunt, *EU Subsidies to Wreak Havoc on Global Dairy Industry*, WKLY. TIME NOW, Jan. 21, 2009; *EU Gives Boost to Dairy Exports*, BBC, Jan. 23, 2009; David McKenzie & Simone Smith, *Protectionism Is Back*, WKLY. TIMES NOW, June 10, 2009 (quoting the Australian trade minister Simon Crean who stated that "if the Doha round is concluded, export subsidies will be eliminated").

105. Kimberly Ann Elliott, *Does the Doha Round Matter?*, 108 CURRENT HIST. 39, 42 (2009).

106. Blustein, *supra* note 57, at 3.

107. Lance Taylor & Rudiger von Arnim, *Projected Benefits of the Doha Round Hinge on Misleading Trade Models*, POLICY NOTE (Schwartz Ctr. for Econ. Pol'y Analysis), Mar. 2007, at 2, available at http://www.newschool.edu/cepa/publications/policynotes/Doha%20Policy%20Note%20Final%2003_12_07.pdf.

108. See, e.g., EDUARDO ZEPEDA ET AL., *THE IMPACT OF THE DOHA ROUND ON KENYA* (2009) (predicting that a Doha success would bring a negligible or small boost to Kenya's GDP); Taylor & von Arnim, *supra* note 107, at 1.

109. See Stephen Tokarick, *Trade Issues in the Doha Round: Dispelling Some Misconceptions* (Int'l Monetary Fund Policy Discussion Paper), Aug. 2006, <http://www.imf.org/external/pubs/ft/pdp/2006/pdp04.pdf> (arguing that the World Bank's forecast of small scale benefits to developing countries from the Doha success (US\$20 billion in 2015) failed to fully appreciate dynamic effects of trade liberalization, which are hard to quantify).

110. Tonia Kandiero & Léonce Ndikumana, *Supporting the World Trade Organization Negotiations: Looking beyond Market Access*, VOX, Nov. 27, 2009, <http://vox.cepr.org/index.php?q=node/4295> (observing that one of the benefits from the Doha Round to African countries is to "lock-in" domestic reforms).

111. See, e.g., JOHN RAWLS, *THE LAW OF PEOPLES* 106 (1999) ("[W]ell-ordered peoples have a duty to assist burdened societies.").

112. See FRANK J. GARCIA, *TRADE, INEQUALITY, AND JUSTICE: TOWARD A LIBERAL THEORY OF JUST TRADE* 107 (2003) (arguing for the special treatment of developing countries along Rawlsian lines, and advocating for S&D treatment as a solution). *But cf.* Joost Pauwelyn, *Book Review* (reviewing FRANK

developing countries potentially stand to gain from a successful development round,¹¹³ it is important for developed countries to fully realize that developing countries' effective access to the former's markets is a critical ingredient for the latter's development.¹¹⁴

The moral failure of a Doha breakdown is further highlighted by the developmentally unsound outcome of the previous Uruguay Round. Under the Uruguay Round, the concessions of developing countries (such as the inclusion of trade in services and trade-related intellectual property rights) materialized immediately, while those borne by developed countries (such as further liberalization in the areas of agriculture and textiles) "remained to be negotiated."¹¹⁵ The Doha *Development Agenda* was the widely accepted acknowledgement that the WTO system "owed something to developing countries."¹¹⁶ The Doha Round, if it fails to address this unfair legacy, will leave an indelible mark of moral failure on the WTO.

V. THE FUTURE OF THE DOHA ROUND AND BEYOND: COULD DEVELOPMENT SURVIVE DOHA?

A. *The Exigency of a Doha Success*

Does the Doha Round have a future? Can it ever be salvaged? Considering the dire consequences that its permanent failure would likely bring, in particular to the WTO system itself, the better question to ask might be *how*, not whether, it can be saved. The global trading community simply cannot afford an eventual Doha failure against the recent background of global economic hardship. As global trade contracted in 2009 for the first time since World War II,¹¹⁷ a Doha failure would further discredit the WTO system and supply ample ammunition to politicians leaning toward protectionism.

It appears that the *timing*, not the substance, of a deal will be the most decisive factor for any successful conclusion of the framework agreement on modalities,

J. GARCIA, TRADE, INEQUALITY, AND JUSTICE: TOWARD A LIBERAL THEORY OF JUST TRADE (2003)), 37 GEO. WASH. INT'L L. REV. 559 (2005) (criticizing Garcia's application of Rawls' difference principle to trade in terms of his focus on the allocation of natural endowments as *ex ante* disadvantages to developing countries, but agreeing with the premise that developing countries deserve special treatment and suggesting equal free trade, as opposed to S&D treatment, as a better solution). The concept of a moral obligation between states in trade related matters is worthy of a much more detailed discussion but is beyond the scope of this article.

113. See *supra* notes 107–10 and accompanying text.

114. E.g., Joseph E. Stiglitz, *Two Principles for the Next Round or, How to Bring Developing Countries in From the Cold*, 23 WORLD ECON. 437, 452 (2000).

115. Finger, *supra* note 18, at 87. In the same context, a former Canadian trade negotiator, Sylvia Ostry, labeled the Uruguay Round deal as a "Bum Deal" for developing countries. Sylvia Ostry, *Asymmetry in the Uruguay Round and in the Doha Round*, in DEVELOPING COUNTRIES IN THE WTO, *supra* note 18, at 105, 105.

116. Finger, *supra* note 18, at 90.

117. See *Open Markets Would Support Rebound in Trade in 2010*, IMF SURV. MAG. (Int'l Monetary Fund), Jan. 13, 2010, <http://www.imf.org/external/pubs/ft/survey/so/2010/SurveyartB.htm> (indicating that trade volume fell by 18 percent).

which will guide each member's efforts to articulate its own improved schedule of commitments. Just remember how close negotiators were to a deal before negotiations suddenly collapsed at the eleventh hour in July 2008. Pascal Lamy observed that out of twenty topics on the "to-do-list," members' positions on eighteen topics had converged before the 19th topic (the special safeguard mechanism) busted the deal.¹¹⁸ The very fact that the negotiation suddenly fell apart after members spent so much time and acquired substantial mileage signifies a lack of political will.¹¹⁹ Without recharged political capital, negotiators cannot seal the deal on modalities.

Yet the current economic landscape tends to render any political initiative for free trade unpalatable. First, the global economic crisis appears to have hardened key players' intractable positions with regards to their wish lists.¹²⁰ For example, the United States has continued to push the "sectoral" approach in industrial tariffs reduction, which it spearheaded in the July Ministerial in Geneva.¹²¹ Pressured by domestic interest groups, such as National Association of Manufactures (NAM), the United States desired to draw a substantial level of tariff reduction commitments in key sectors, such as chemicals, electronics, and industrial machinery, from major importing countries, including China.¹²² China also repeated its previous position, strongly opposing the U.S. approach, that participation in the sectoral liberalization program should be "voluntary."¹²³

Second, every trade deal tends to inevitably accompany certain churning effects and therefore leaves domestic constituencies that will be negatively affected by increased competition from abroad. Adding this trade-generated dislocation to recession-generated unemployment might be difficult for any government to implement. Against this backdrop, having acknowledged that "there was no readiness to spend the political capital needed," Lamy cancelled the pre-scheduled ministerial meeting in December 2008 where negotiators were supposed to deliver a breakthrough on modalities.¹²⁴

Nonetheless, forsaking the Doha Round at this stage is not an option since it would likely broaden the room for protectionism. As discussed above, major governments have competitively responded to some of the consequences of the current economic crisis by simply relying on protectionist measures, such as subsidies.¹²⁵ If left unchecked, this competition may turn into an ugly trade war,

118. WTO, Day 9, *supra* note 58.

119. Castle & Landler, *supra* note 3.

120. Daniel Pruzin & Gary Yerkey, *WTO's Lamy Calls Off Doha Ministerial; Deal up to Obama Team, U.S. Official Says*, 25 Int'l Trade Rep. (BNA) 1766, 1767 (Dec. 18, 2008) [hereinafter Pruzin & Yerkey, *Lamy Calls Off*].

121. *Id.*

122. *Id.*

123. Daniel Pruzin & Gary G. Yerkey, *U.S. Refutes NAMA Chairman's Report On Sectorals Agreement for Industrial Goods*, 25 Int'l Trade Rep. (BNA) 1216, 1216-17 (Aug. 21, 2008).

124. Pruzin & Yerkey, *Lamy Calls Off*, *supra* note 120, at 1766. Unfortunately, major players, in particular the United States, found it hard to gather the political capital necessary to sell the Doha deal to recession-battered domestic constituencies. See *US Not Prepared for High-Level Doha Engagement Before Fall: US Official*, 13 BRIDGES WKLY. TRADE NEWS DIG. (Int'l Ctr. for Trade and Sustainable Dev.), Apr. 1, 2009, at 11.

125. See Blustein, *supra* note 57, at 2 (claiming that the economic downturn discouraged countries from removing trade barriers and subsidies); Simon J. Evenett, *The Global Overview: Has Stabilisation Affected the Landscape of Crisis-Era Protectionism?*, in WILL STABILISATION LIMIT PROTECTIONISM?

invoking the old specter of economic balkanization on a global scale. The conclusion of the Doha Round can effectively deter such proclivity of major members. In fact, the news of a Doha deal will imbue a strong sense of hope in the global business community.¹²⁶

B. *Preconditions for a Successful Round*

To resume the Doha negotiation, it is vital to mobilize necessary political capital both domestically and internationally. Doing so will require monumental leadership from global leaders. In particular, the United States is uniquely situated to offer such an important public good with a new president in office.¹²⁷ As the world's most powerful and affluent country and as the country responsible for engendering the current global financial crisis, the United States should recognize and shoulder its historic responsibility. As President Obama stated in his inaugural speech, the United States has duties to the world which it “do[es] not grudgingly accept but rather seize[s] gladly.”¹²⁸ Other major trading nations, such as Canada, Japan, and those of the EU should join the United States in a move toward bold trade liberalization. In fact, to these countries trade liberalization means the saving of public money and the repealing of wasteful rent-seeking programs. They are nothing but a form of domestic economic reform.

True, the current economic landscape could complicate any trade deal. For example, the U.S. special interests' reciprocal demands from the Doha Round have intensified as the recession worsens.¹²⁹ Yet the Obama administration should be more proactive in exercising political capital and leadership that the exigency of the current financial crisis has called for.¹³⁰ The United States must embrace

THE FOURTH GTA REPORT: A FOCUS ON THE GULF REGION 17, 17–18 (Simon J. Evenett ed., 2010), available at http://www.globaltradealert.org/sites/default/files/evenett_gta4.pdf (observing that the recent sign of stabilization has not ended protectionism in major countries).

126. World Trade Organization, “Ministers Continue to Attach Highest Priority to the Round’s Conclusion”—Lamy, Feb. 3–4, 2009, http://www.wto.org/english/news_e/news09_e/tnc_chair_report_03feb09_e.htm (“Trade with its multiplier effect must be an integral part of the stimulus packages that are being adopted. A successful outcome of the Doha Development Round can therefore be part of the solution to the economic downturn.”).

127. See KINDLEBERGER, *supra* note 13, at 307 (describing such leadership as a “public good”).

128. President Barack Obama, Inaugural Address (Jan. 21, 2009) (transcript available at <http://www.whitehouse.gov/blog/inaugural-address/>).

129. See Claude Barfield, The Politics and Likely Trade Policies of the Obama Administration, Speech before the Japanese Ministry of Economy, Trade and Industry (Feb. 26, 2009) (transcript available at <http://www.rieti.go.jp/en/events/bbl/09022601.html>) (noting how current economic conditions have made parties less willing to negotiate); Doug Palmer, *Business Groups Tell Lamy Need More from Doha*, REUTERS, Mar. 24, 2009, <http://uk.reuters.com/article/idUKTRE52N7KY20090324> (reporting the U.S. Congress’ resistance to the idea of resuming the Doha talks from the last year’s draft); Bruce Stokes, *Rousing Doha from Its Doze*, EUROPEANVOICE.COM, Feb. 12, 2009, <http://www.europeanvoice.com/article/imported/rousing-doha-from-its-doze/63918.aspx> (observing that U.S. businesses view the summer 2008 package as no longer acceptable).

130. See Claude Barfield, *What President Obama Can Learn from President Clinton*, THE AMERICAN, July 15, 2009, available at <http://www.american.com/archive/2009/july/what-president-obama-can-learn-from-president-clinton> (arguing that President Obama should abandon his ambivalent trade policy positions by disconnecting himself from anti-trade Democrats in the Congress as President Clinton did); Editorial, *Tangled Trade Talks*, N.Y. TIMES, July 11, 2009, at A18 (criticizing Obama’s reluctance to spend any political capital at home on trade).

multilateralism as a critical global public good over myopic parochial interests.¹³¹ If the United States provides constructive leadership and revitalizes the largely dormant Doha Round negotiation, WTO members can soon deliver a genuine breakthrough deal on the modalities, given the progress the negotiations have made thus far.¹³² Once WTO members conclude the modalities deal, the rest of the process, including the actual composition of national schedules based on the modalities and the subsequent verification, would be finalized rather expeditiously, potentially within several months.¹³³ This means that WTO members can finalize the Doha Round by the end of 2010 or 2011.¹³⁴

Nonetheless, any attempt to ignore the penultimate deal in the summer of 2008 as well as the whole modalities structure would gravely jeopardize the Doha Round.¹³⁵ Reflecting the increasing impatience from the major U.S. export industries, U.S. Trade Representative Ron Kirk has recently floated the idea of skipping the modalities deal and instead directly conducting bilateral negotiations to generate market-opening concessions.¹³⁶ This idea has gathered little support from other members, especially from developing countries, which fear being forced into a disadvantageous position in a bilateral setting with developed countries.¹³⁷

Likewise, it seems to be vital that WTO members preserve the original scope of negotiation and defy any unreasonable ambition regarding what the Doha Round talks might achieve. In fact, the main reason why the last deal was so close in July

131. See Antoine Bouët & David Laborde Debucquet, *The Doha Round: A Safety Net in Stormy Weather*, VOX, May 14, 2009, <http://www.voxeu.org/index.php?q=node/3564> (arguing that “the WTO is an international public good that acts as an insurance scheme against potential trade wars”). Cf. Doug Palmer, *U.S. Trade Freeze Could Be Slowly Thawing*, REUTERS, June 21, 2009 (citing Jeffrey Schott who observed that with the U.S. economy improved and its social safety net reinforced, Obama will be in a better position to promote free trade polices).

132. See Roberta Rampton, *‘Like Waiting for Godot,’ WTO Awaits Next U.S. Move*, REUTERS, May 8, 2009, <http://af.reuters.com/article/topNews/idAFJJOE54703V20090508?sp=true> (discussing halt in progress on talks until United States determines how to proceed). The WTO head Pascal Lamy observes that eighty percent of a Doha Round deal has been secured thus far (as of June 2009). *Welfare Payments Better than Trade Barriers—WTO Chief*, REUTERS, June 4, 2009, <http://in.reuters.com/article/economicNews/idINIndia-40092320090604>.

133. See Shapi Shacinda, *WTO’s Lamy Says Doha Deal in Sight*, REUTERS, Apr. 7, 2009, <http://af.reuters.com/article/topNews/idAFJJOE5360JJ20090407?sp=true> (quoting Pascal Lamy who observed that it would take six or eight months to complete the round once WTO members agree on the modalities).

134. *Doha Talks Get New Energy at Cairns Group Meeting*, 13 BRIDGES WKLY. TRADE NEWS DIG. (Int’l Ctr. for Trade and Sustainable Dev.), June 10, 2009, at 1 (observing that WTO members seem to have set a new deadline of the end of 2010 for the completion of the Doha Round). See also *G8 plus G5 Agree to Conclude Doha in 2010*, REUTERS, July 8, 2009, <http://www.reuters.com/article/idUUSTRE5665MK20090708> (“WTO chief Pascal Lamy said last month that a deal could be clinched in 2010 because the mood of the negotiations had improved since the appointment this year of U.S. Trade Representative Ron Kirk and India trade minister Anand Sharma whose countries are seen as key to unlocking a deal.”); *Day 1: Ministers Target 2010 for Doha Conclusion, but Gaps Remain*, BRIDGES DAILY UPDATE (Int’l Ctr. for Trade and Sustainable Dev.), Dec. 1, 2009 (“Differences on substance notwithstanding, several countries have started to outline a potential process for concluding the round in 2010.”).

135. 2009 Trade Policy Agenda, *supra* note 6, at 4.

136. *Kirk’s Geneva Visit Signals US Engagement on Doha*, 13 BRIDGES WKLY. TRADE NEWS DIG. (Int’l Ctr. for Trade and Sustainable Dev.), May 13, 2009, at 2.

137. Bradley S. Klapper, *New U.S. Trade Chief Finds Few Takers on Doha Plan*, ASSOC. PRESS, Dec. 7, 2000 (reporting on the vehement opposition to Kirk’s proposal to skip the modalities due largely to its potential effect on developing countries).

2008 was that Lamy was able to narrow down the zone of negotiation by excluding potential deal-breakers such as services, rules (antidumping), and geographical indications. Although these issues have been technically part of the Doha trade talks, they do not belong to essential agendas, such as agricultural trade and industrial tariffs. Those issues, albeit important to many members, have not fully ripened for a possible deal mainly because members' positions diverge to a great degree and they often cannot agree on basic concepts.¹³⁸ Under these circumstances, to force engagement on these issues may risk yet another collapse or provide recalcitrant negotiators with subterfuges for deal-blocking.¹³⁹ One commentator aptly encapsulated the desirable path of the Doha Round as follows: "It is time to step back and build political support for a limited, scaled-down conclusion to the Doha Round and then plot a course for the long-term survival of the multilateral system and the WTO."¹⁴⁰

C. *With or Without Doha: Developing Countries' Own Initiatives*

As discussed above, developed countries' leadership, in particular that of the United States, is vital in reviving the stalled Doha Round. Given the state of negotiations, the United States could not avoid criticisms for the Doha failure both from the North and the South.¹⁴¹ Developed countries should realize that certain S&D treatments, which the special products exemption and the special safeguard

138. Of course, this position does not necessarily restrict the WTO's future agenda. Regarding positions in favor of the expansion of the WTO's agenda, see Pauwelyn, *supra* note 112 (evaluating Garcia's claims that preferential trade schemes are unjustified because of their unilateral and conditional nature). See also Aaditya Mattoo & Arvind Subramanian, *A Crisis Calls for a 'Crisis Round,'* WALL ST. J. ASIA, Mar. 25, 2009, at 14 (urging the launch of a "Crisis Round" of trade talks at the April 2009 G-20 summit).

139. See Sungjoon Cho, *Constitutional Adjudication in the World Trade Organization* 40 (Soc'y of Int'l Econ. Law, Working Paper No. 46, 2008), available at <http://www.ssrn.com/link/SIEL-Inaugural-Conference.html> (observing widely diverging views on zeroing among negotiators). See also Robert Wolfe, *Use Transparency to Keep Trade Flowing*, in REBUILDING GLOBAL TRADE: PROPOSALS FOR A FAIRER, MORE SUSTAINABLE FUTURE 75, 75 (Carolyn Deere Birkbeck & Ricardo Meléndez-Ortiz eds., 2009) (proposing *not* to "call for new items on the WTO's over-loaded agenda"). *But cf.* Mattoo & Subramanian, *supra* note 138 (proposing to replace the current Doha Round by a new "Crisis Round" which mainly targets new protectionism such as antidumping measures, government procurement, and climate change policies); Pauwelyn, *supra* note 138, at 572.

140. Claude Barfield, *The Doha Endgame and the Future of the WTO*, VOX, Jan. 19, 2009, <http://www.voxeu.org/index.php?q=node/2806>. See also Paul Blustein, *G20 Should Be Pragmatic about Protectionism*, REUTERS, Mar. 30, 2009 (arguing that WTO members "should recast the Doha talks as an emergency anti-protectionism round" and postpone controversial issues); Doug Palmer, *Remove Environmental Goods Talks from Doha: U.S. Groups*, REUTERS, Aug. 3, 2009 (reporting that U.S. businesses urged the Obama administration to remove the negotiation on environmental goods and services from the current Doha Round negotiation); John W. Miller & Peter Fritsch, *Few Expect Progress on Doha at WTO Talks*, WALL ST. J., Sept. 3, 2009, at A14 (quoting Fredrik Erikson from the European Center for International Politics and Economy who observed that for a Doha success "trade ministers could jettison the idea of liberalizing trade in services, such as law firms and banking").

141. See, e.g., Francis Elliot, *President Obama 'Has Failed to Kick-Start World Trade Talks,'* TIMES, Dec. 2, 2009, available at <http://www.timesonline.co.uk/tol/news/politics/article6939446.ece> (citing Gareth Thomas, the British top trade negotiator who criticized President Barack Obama for his failure to galvanize the Doha Round negotiations); *India Blames U.S. for Delay in Doha Deal*, TIMES OF INDIA, Dec. 9, 2009 (criticizing the "non-serious" U.S. attitudes to the Doha Round talks in which it failed to appoint trade negotiators for the Round).

mechanism embody, are necessary for developing countries to cushion the overall liberalization impact on poor countries' subsistence farmers and to address food security concerns.¹⁴² In fact, these S&D treatments do not significantly affect other countries' gains from the Doha Round.¹⁴³

At the same time, however, developing countries, including low-income developing countries such as LDCs, should, on their own initiatives, mainstream open trade as their top development strategy and endeavor to integrate themselves to the global market, rather than relying solely on S&D treatments.¹⁴⁴ "Retreat from openness would unacceptably delay the development transformation that developing countries sorely need."¹⁴⁵ This awakening may start from a sobering reality check on the genuine effectiveness of pre-existing S&D treatments for developing countries. While a garden variety of development assistance initiatives with different labels, such as S&D and aid for trade, may symbolize the development mandate within the WTO system, in particular under the DDA, their practical values are still questionable.

First of all, the very concept of S&D treatment is obscure.¹⁴⁶ While it may offer useful rhetoric, it fails to generate any concrete legal rights and obligations among WTO members. The fact that even the Doha agenda calls for "more precise, effective and operational" S&D treatment¹⁴⁷ is testimonial to its innate nebulous nature. Yet such opacity, which certainly tends to jeopardize its effectiveness, cannot be easily fixed. Some developing countries desire to convert the current hortatory structure of S&D treatment into a legally binding mechanism.¹⁴⁸ However,

142. John Nash & Donald Mitchell, *How Freer Trade Can Help Feed the Poor*, 42 FIN. & DEV., Mar. 2005, at 34, 36, available at <http://www.imf.org/external/pubs/ft/fandd/2005/03/pdf/nash.pdf>.

143. SANDRA POLASKI, WINNERS AND LOSERS: IMPACT OF THE DOHA ROUND ON DEVELOPING COUNTRIES ix (2006) (submitting only a modest gain for developing countries from a Doha success). Even among developing countries positions on special products tend to diverge between food-exporting countries (such as Thailand, Malaysia, and Costa Rica) and food-importing countries (such as Brazil, China, and India). Daniel Pruzin, *Latest Round of WTO Farm Talks Reveals Mixed Progress on SSM, Special Products*, 26 Int'l Trade Rep. (BNA) 1603 (Nov. 26, 2009).

144. See Martin Wolf, *Two-Edged Sword: Demands of Developing Countries and the Trading System*, in POWER, PASSIONS, AND PURPOSE: PROSPECTS FOR NORTH-SOUTH NEGOTIATIONS 201-03 (Jagdish N. Bhagwati & John Gerard Ruggie eds., 1984) (describing developing country demands for special and differential treatment as a "two-edged sword," implying that it eventually damages developing countries themselves via the destruction of free trade regime); Kym Anderson et al., *The Cost of Rich (and Poor) Country Protection to Developing Countries*, 10 J. OF AFR. ECONOMIES 227, 227 (2001) (finding that around sixty percent of all trade barriers in the global trading system originate from developing countries, not developed countries); United Nations Conference on Trade and Development, Bangkok, Thailand, Feb. 12, 2000, U.N. Doc. TD(X)/RT.1/2 (Dec. 3, 1999) (highlighting the importance of openness and non-discrimination in light of reducing the opportunities for corruption and arbitrariness).

145. Joseph E. Stiglitz, *Two Principles for the Next Round or, How to Bring Developing Countries in From the Cold*, 23 WORLD ECON. 437, 452 (2000).

146. WORLD TRADE ORG. & ORG. FOR ECON. COOPERATION AND DEV., AID FOR TRADE AT A GLANCE 2009: MAINTAINING MOMENTUM 39 (2009) [hereinafter MAINTAINING MOMENTUM], available at http://www.wto.org/english/res_e/booksp_e/aid4trade09_e.pdf (acknowledging that the scope and definition of aid for trade is not clear).

147. World Trade Organization, Ministerial Declaration of 14 November 2001, para. 44, WT/MIN(01)/DEC/1, 41 I.L.M. 746, 753 (2002).

148. See Proposal for a Framework Agreement on Special and Differential Treatment (Communication from Cuba, Dominican Republic, Honduras, India, Indonesia, Kenya, Malaysia, Pakistan, Sri Lanka, Tanzania, Uganda, and Zimbabwe), para. 15, WT/GC/W/442 (Sept. 19, 2001) (proposing that S&D treatment "shall be mandatory and legally binding through the dispute settlement system of the WTO").

it is unlikely that such a drastic proposal would find supporters among other WTO members, especially developed countries. In fact, this proposal goes beyond the level of S&D treatment: it touches on the very constitutional nature of the WTO system as a whole. The current WTO structure would not permit such a far-reaching redistributive mechanism.

The practical effects of S&D treatment are also controversial. Non-reciprocal (free-riding) concessions from the North to the South may not necessarily be translated into poor countries' effective access to rich countries markets. Those products subject to reduced MFN tariffs may not match exports of low-income developing countries.¹⁴⁹ For example, suppose that the U.S. import duties for passenger cars are reduced to zero due to the U.S. negotiation with South Korea in the WTO. Even though Zimbabwe may theoretically benefit from such concession via the MFN principle, it will not practically help Zimbabwe since it does not produce and export any cars to the United States.

Furthermore, developing-exporting countries should demystify unilateral preferential tariffs such as the Generalized System of Preferences (GSP) and other regional preferential trade programs.¹⁵⁰ Empirical studies demonstrate that real preferential values of those programs may be relatively small. For sub-Saharan African countries, for example, such values are only four percent of their exports to the EU market and 1.5 percent to the U.S. market.¹⁵¹ Such shocking statistics may be explained by the facts that (1) many developing country products have low or non-existent tariffs before the application of any preferences, (2) products with high duties are typically excluded from preferences, and (3) uncertainty surrounding preferences often dampen incentives to invest.¹⁵² Likewise, the U.S. Caribbean Basin Initiative (CBI) strictly limits the import of sugar from Caribbean countries which earn more than a half of their foreign currencies from exporting sugar.¹⁵³ The cost of compliance with those preferential programs, such as the rules of origin, is also quite high.¹⁵⁴ According to Francois, Hoekman, and Manchin, these costs may amount to four percent of beneficiary countries' total exports from preference regimes.¹⁵⁵ Finally, importers, not poor countries' farmers or producers, may reap most of the

149. Chantal Thomas & Joel P. Trachtman, *Editor's Introduction* to DEVELOPING COUNTRIES IN THE WTO LEGAL SYSTEM 1, 4–5 (Chantal Thomas & Joel P. Trachtman eds., 2009).

150. Regarding an earlier argument in favor of MFN-based trade liberalization over trade preferences, see ROBERT E. HUDEC, DEVELOPING COUNTRIES IN THE GATT LEGAL SYSTEM (1987). From the standpoint of public choice theory, Hudec warned that trade preferences programs were vulnerable to capture and abuse in their arrangement. Thomas & Trachtman, *supra* note 149, at 2.

151. Tokarick, *supra* note 109, at 7–8. See also DILIP K. DAS, THE DOHA ROUND OF MULTILATERAL TRADE NEGOTIATIONS: ARDUOUS ISSUES AND STRATEGIC RESPONSES 95 (2005) (observing that the preference programs are rife with “restrictions, product exclusions and administrative rules”).

152. See Paul Brenton & Takako Ikezuki, *The Value of Trade Preferences for Africa*, in TRADE, DOHA, AND DEVELOPMENT: A WINDOW INTO THE ISSUES 223, 226–27 (Richard Newfarmer ed., 2006).

153. Jeffrey L. Dunoff, *Dysfunction, Diversion, and the Debate over Preferences: (How) Do Preferential Trade Policies Work?*, in DEVELOPING COUNTRIES IN THE WTO, *supra* note 149, at 51–52. See also OXFAM, RIGGED RULES AND DOUBLE STANDARDS—TRADE, GLOBALIZATION, AND THE FIGHT AGAINST POVERTY 101 (2002) (pointing out the exclusion of sensitive products from liberalization under the U.S. African Growth and Opportunity Act).

154. Dunoff, *supra* note 153, at 53.

155. Joseph Francois et al., *Preference Erosion and Multilateral Trade Liberalization* 8–11 (World Bank Policy Research Working Paper No. 3730, 2005).

benefits from those preferential tariffs programs.¹⁵⁶ In sum, it seems fair to say that the economic benefits of preferential programs have been disappointing in general.¹⁵⁷

A mercantilist assumption behind S&D treatment that no (reciprocal) tariff reduction somehow leads to development, as seen in the argument for the infant industry protection, remains debatable.¹⁵⁸ Maintaining high tariffs may in fact harm developing countries since it deprives them of potential gains from domestic trade liberalization.¹⁵⁹ As a matter of fact, this non-reciprocity tends to induce tariff peaks maintained by rich importing countries against main exports by low-income developing countries.¹⁶⁰ Such “reverse S&D,” which refers to a number of exemptions from free trade principles that developed countries retain in practice, may outweigh any benefits from S&D treatment.¹⁶¹ This is nothing but a “Faustian Bargain”¹⁶² to developing countries: it is developmentally pernicious because it undermines economic efficiency domestically (due to the maintenance of high tariffs) *and* impedes developing countries’ market access abroad (due to developed countries’ lingering tariff barriers to developing countries’ main exports).

Most importantly, lowering tariffs for developing countries’ exports is not a panacea to their development. A plethora of the so-called non-tariff barriers (NTBs) or behind-the-border measures can effectively block the access of developing countries’ exports even after tariffs are eliminated. For example, both the United States and the EU launched a large number of antidumping investigations against low- and lower-middle-income developing countries from 1995 to 2008: out of the 418 U.S. antidumping investigations, 179 were against low- or lower-middle-income developing countries; out of the 391 EU investigations, 208 were also aimed at such countries.¹⁶³ In a developmentally devastating pattern, these antidumping initiations have concentrated on those products in which low-income

156. See, e.g., M. Olarrega & C. Özden, *AGOA and Apparel: Who Captures the Tariff Rent in the Presence of Preferential Market Access?*, 28 *WORLD ECON.* 63 (2005) (explaining that while trade regimes like the AGOA purport to encourage trade and direct investment in LDCs they have the effect of benefiting importing industrialized countries rather than LDCs); Dunoff, *supra* note 153, at 54.

157. U.N. Conference on Trade & Development [UNCTAD], *Trade Preferences for LDCs: An Early Assessment of Benefits and Possible Improvements*, UNCTAD/ITCD/TSB/2003/8 (Jan. 30, 2004); Dunoff, *supra* note 153, at 55.

158. GROUP OF THIRTY, *SHARING THE GAINS FROM TRADE: REVIVING THE DOHA ROUND* 55 (2004).

159. DAS, *supra* note 151, at 105. There is also a collective benefit from trade liberalization: developing countries should open their markets among one another to fully achieve “export-market diversification.” *Id.* at 106.

160. Thomas & Trachtman, *supra* note 149, at 6.

161. Ablasse Ouedraogo, Deputy Director-General, World Trade Organization, Closing Remarks at Seminar on Special and Differential Treatment for Developing Countries (July 3, 2000) (transcript available at http://www.wto.org/english/news_e/pres99_e/pr150_e.htm).

162. BELA A. BALASSA, *NEW DIRECTIONS IN THE WORLD ECONOMY* 360 (1989) (quoting Sidney Weintraub, who observed that the developed countries’ exclusion of most competitive exports from trade preferences was a price for non-reciprocal maintenance of tariffs retained by developing countries).

163. These figures were derived from antidumping investigations data on individual countries from the WTO website after applying the World Bank’s list of low- and lower-middle-income economies. World Trade Organization, *Statistics on Antidumping*, http://www.wto.org/english/tratop_e/adp_e/adp_e.htm#statistics; World Bank, *Data & Statistics: Country Groups*, <http://web.worldbank.org/WBSITE/EXTERNAL/DATASTATISTICS/0,,contentMDK:20421402~pagePK:64133150~piPK:64133175~theSitePK:239419,00.html> (last visited Mar. 16, 2010).

developing countries retain comparative advantages vis-à-vis developed countries, such as primary commodities and labor-intensive manufacturing goods.¹⁶⁴

Taxing regulatory standards in the areas of environment and food safety that are imposed by rich importing countries also hinder poor countries' effective access to the former's markets. Most low-income developing countries, such as LDCs, simply cannot afford those sophisticated standards, nor do they have the necessary technology to meet them.¹⁶⁵ More often than not, some rich countries' prohibitively demanding standards, based on a zero-tolerance policy, unduly harm poor countries' exports. For example, the EU's aflatoxin regulation, which is more austere than a relevant international standard, could reduce African food exports by over sixty percent, while it might save only 1.4 deaths per billion a year.¹⁶⁶ These structural issues, such as capacity gap, cannot be fully addressed by S&D provisions alone without any serious redistributive measures such as financial aid and technology transfer.

The aforementioned reality check offers a new perspective on the prospects of the Doha Round as a development round. While the Doha Round's developmental potential as it stands under the current proposed package may not be insignificant, at the same time one should not overestimate it. Developing countries, in particular low-income developing countries such as LDCs, should look beyond Doha's promises.¹⁶⁷ Departing from the hitherto largely passive, recipient's standpoint, developing countries themselves should take more active and innovative stances toward their development, with or without the DDA.

First, developing countries may reconsider representing themselves in big groups, such as the G-77 or G-90. Each developing country's developmental agenda is unique. A more targeted approach—country or product-specific—in the trade negotiation may prove more effective than a big group approach. Here, a litigation threat under the WTO dispute settlement mechanism may boost individual developing countries' leverage in the trade negotiation.

Second, developing countries themselves should boldly embrace market opening¹⁶⁸ and thus situate themselves in a better position to pressure developed

164. *Id.*

165. See generally STANDARDS AND GLOBAL TRADE: A VOICE FOR AFRICA (John S. Wilson & Victor O. Abiola eds., 2003) (providing case-by-base analyses of the struggles Kenya, Mozambique, Nigeria, South Africa, and Uganda have experienced complying with regulatory standards).

166. John S. Wilson, *Standards, Regulation, and Trade: WTO Rules and Developing Country Concerns*, in DEVELOPMENT, TRADE, AND THE WTO: A HANDBOOK 428, 431 (Bernard Hoekman et al. eds., 2002) (citing Sunehiro Otsuki et al., *Saving Two in a Billion: A Case Study to Quantify the Trade Effect of European Food Safety Standards on African Exports*, 26 FOOD POL'Y 495 (2001)).

167. See generally Sungjoon Cho, *Beyond Doha's Promises: Administrative Barriers as an Obstruction to Development*, 25 BERKELEY J. INT'L L. 395 (2007) (arguing that developing countries' exports are still subject to various non-tariff barriers, such as antidumping measures, rule of origin and regulatory standards, imposed by developed countries even though the Doha Development Agenda fully materializes).

168. The 2002 U.N. International Conference on Financing for Development featured many speeches highlighting the essential role which open trade can play in achieving development. These speeches were delivered by then World Bank President James Wolfensohn (stressing that all trading nations would eventually benefit from more open trade), IMF Managing Director Horst Koehler (describing trade as "the most import avenue for self-help"), and then WTO Director-General Mike Moore (pointing out that "poor countries need to grow their way out of poverty and trade can serve as a key engine of that growth"). *Mixed Reaction on Trade in Financing for Development Outcome*, 6 BRIDGES WKLY. TRADE NEWS DIG.

countries to drop chronic protectionism, such as tariff peaks. In particular, freer South-South trade, which many commentators on international trade have long advocated,¹⁶⁹ is an essential component for development. The developmental potential of some anecdotal South-South trade attempts, regional or plurilateral, appear to be largely limited in that they remain closed and exclusive.¹⁷⁰ Possible export decreases due to preference erosion could be compensated by export increases of non-preferential products.¹⁷¹ Concomitantly, in what may be called “strategic liberalization,”¹⁷² a developing country should set its own trade liberalization course, including a case-specific liberalization sequence, modality, and speed,¹⁷³ taking into account its own socio-economic context.¹⁷⁴ Often, developing countries are compelled to restrict trade due to the lack of adequate adjustment assistance programs as well as certain policy concerns such as food security. These inevitable restrictions should be regarded not as a mercantilist exemption but rather as a justifiable moderation in market opening, this is particularly true as long as rich countries’ lavish subsidies continue to distort the global market.¹⁷⁵

Finally, developing countries themselves, more than the WTO, should aggressively tap into development agencies, such as the World Bank and the United Nations Conference on Trade and Development (UNCTAD), to receive trade-related technical assistance for capacity building.¹⁷⁶ At the same time, donor governments may work directly with the developing countries’ private sector without the intermediation of recipient governments. Developed countries’ manufacturers may then outsource their production to the private sector of developing countries. For example, in 2003 the Norwegian Agency for Development Cooperation (NORAD), partnered with the Federation of Indian Chambers of Commerce and

(Int’l Ctr. for Trade and Sustainable Dev.), Mar. 26, 2002, at 8.

169. See Raj Bhala, *Resurrecting the Doha Round: Devilish Details, Grand Themes, and China Too*, 45 TEX. INT’L L.J. 1, 121 (2009) (agreeing with United States that South-South trade must increase; poor countries must lift themselves out of poverty in part by trading more with each other).

170. See Sungjoon Cho, *Breaking the Barrier between Regionalism and Multilateralism: A New Perspective on Trade Regionalism*, 42 HARV. INT’L L.J. 419, 449 (2001) (observing that South-South regional trading blocks tend to generate only limited development impacts due to the lack of diversity in trade patterns).

171. Tokarick, *supra* note 109, at 10; Mary Amity & John Romalis, *Will the Doha Round Lead to Preference Erosion?* 4 (Int’l Monetary Fund, Working Paper 06/10, 2006).

172. Jim Redden, *Introduction*, in TRADE AND POVERTY REDUCTION IN THE ASIA-PACIFIC REGION: CASE STUDIES AND LESSONS FROM LOW-INCOME COMMUNITIES 1, 19 (Andrew T. Stoler et al. eds., 2009) [hereinafter TRADE AND POVERTY REDUCTION].

173. *Id.*

174. See Euan McMillan, *The Economic Effects of Trade on Poverty Reduction: Perspectives from the Economic Literature*, in TRADE AND POVERTY REDUCTION, *supra* note 172, at 58–59 (observing that the effects of trade on developing countries are context-specific and depend on many non-economic variables such as history and geography). This is also true in the area of development aid, such as the Aid for Trade program. See MAINTAINING MOMENTUM, *supra* note 146, at 32 (emphasizing the notion of “country-owned development”).

175. B.S. Chimni, *Some Reflections on the Idea of Free Trade and Doha Round Trade Negotiations*, in DEVELOPING COUNTRIES IN THE WTO LEGAL SYSTEM 21, at 27–28 (Chantal Thomas & Joel P. Trachtman eds., 2009). Governments of developing countries, such as India, are under severe political pressure against market opening from their subsistent farmers who fear the dumping of highly subsidized crops from rich countries into their markets. See *Delhi Trade Talks Face Familiar Foe as India’s Farmers Prepare to Protest*, TIMES, Sept. 3, 2009 (indicating that an association of 50,000 Indian farmers would rally “to keep agriculture out of the WTO”).

176. Supachai Panitchpakdi, *The WTO, Global Governance and Development*, in THE WTO AND GLOBAL GOVERNANCE: FUTURE DIRECTIONS 187, 200 (Gary P. Sampson ed., 2008).

Industry (FICCI), and invested in a pilot project to train Indian grape growers about a voluntary European agricultural standard (EurepGAP).¹⁷⁷ Once these grapes, which are harvested in compliance with good practices prescribed by the EurepGAP, are certified, they can get access to the European market.¹⁷⁸ Such public-private (state-to-business) technical assistance might be more effective than a public-public (state-to-state) one in that the former could cut red tape and directly benefit producers (exporters) in the developing world.

VI. CONCLUSION

The Doha Round, the longest trade round ever, is yet another constitutional moment for the global trading system. How it ends may determine the way in which WTO members structure trade relations between each other in the future. At the same time, however, this Round will exhaust neither development challenges nor responses thereto. For the Doha Round to have any meaning for the future of the WTO, it is imperative that the rhetoric of the negotiation change from a mere commercial bargain controlled by major players to a public good whose institutional success benefits developing countries, which make up more than three quarters of the WTO membership. The more WTO members subscribe to the rhetoric of commercial bargains, the further they tend to jeopardize the Doha Round itself. Although some members prefer to explore alternative venues for allegedly equivalent commercial deals, such as RTAs,¹⁷⁹ they could not provide the same public good as the Doha Round, let alone their high costs to the global trading system.¹⁸⁰

The lack of the U.S. leadership in the Doha Round is evidenced by both its dispassionate engagement in the negotiation¹⁸¹ and insistence on the mercantilist balance in concessions. Its trading partners, both developed and developing countries, now criticize in unison that the United States is the “main stumbling block” to the success of the Round.¹⁸² U.S. Doha leadership starts with the U.S. government’s resistance to domestic lobbies from special interest groups, such as big

177. EurepGAP, What Is EurepGAP, <http://www.eurepgap.org/Languages/English/about.html> (last visited Feb 23, 2010); FICCI Quality Forum, <http://www.ficci.com/fqf07/hm/europgap.htm> (last visited Feb. 15, 2010).

178. *European Food Safety Norms Phase II Project Likely by June*, FIN. EXPRESS (Feb. 27, 2006), available at <http://www.financialexpress.com/news/european-food-safety-norms-phase-ii-project-likely-by-june/70881/>.

179. See *Time for Parallel and Alternative Paths?*, 13 BRIDGES WKLY. TRADE NEWS DIG. (Int’l Ctr. for Trade and Sustainable Dev.), Sept. 2009, at 1–2, available at <http://ictsd.org/i/news/bridges/54391/> (contending that various countries are searching for alternative venues for trade governance).

180. See generally Sungjoon Cho, *Defragmenting World Trade*, 27 NW. J. INT’L L. & BUS. 39, 40 (2006) (arguing that the current proliferation of regional trading blocs risks fragmenting the multilateral trading system); Evenett, *supra* note 68, at 12–13 (observing that costs of Doha failure, such as more trade disputes and trade remedies, are often underestimated). See also KEVIN P. GALLAGHER & TIMOTHY A. WISE, SOUTH CENTRE, IS DEVELOPMENT BACK IN THE DOHA ROUND?, No. 18, Nov. 2009, at 6 (contending that North-South RTAs “exploit the asymmetric nature of bargaining power between developed and developing nations, divert trade away from nations with true comparative advantages, and curtail the ability of developing countries to deploy effective policies for development”).

181. See *WTO’s Lamy Says U.S. Slowing Doha Talks: Report*, REUTERS, Nov. 10, 2009, <http://www.reuters.com/article/idUSTRE5A913T20091110>.

182. *Scepticism Lingers*, *supra* note 64.

agro-businesses and labor unions.¹⁸³ Free from the myopic trade policy driven by rent-seekers, the U.S. government can reestablish its Doha goal from sealing a commercially attractive deal to helping secure a public good for the global trading system.

In terms of a strategic choice, the United States should accept the so-called Doha-lite, which largely reflects the current negotiation package (agriculture and NAMA) on the table. In particular, the United States may refrain from insisting on additional reductions of industrial tariffs from emerging economies (China, India, and Brazil). Due to unilateral tariff reduction, these countries now actually apply much lower tariffs than their official bound levels.¹⁸⁴ The United States argues that developing countries' tariff cut concessions in the Doha Round should be based on these applied levels, not the bound ones.¹⁸⁵ However, even the mere binding of the applied tariff levels by these developing countries in the Doha Round might be adequate, if not ideal, to seal the Doha Round. After all, what is vital for the future of the WTO is to maintain the culture of openness among WTO members, not particular numerical levels of tariff cuts which may or may not satisfy certain powerful countries' domestic constituencies. As they have done in the past, these developing countries will continue to slash their tariffs for their own economic purposes once a Doha success affirms the solemn existence of a credible multilateral trading system. This is why the United States should break from a narrow focus, defined by rent-seekers, and pursue a truly collective goal—delivering a development-friendly trade round.

Concededly, it would be naïve to interpret an international negotiation like the Doha Round by a moral mandate only. As the late Tip O'Neill famously stated, all politics is local,¹⁸⁶ and parochialism is often powerful enough to stall and sink international trade deals. Rightly, those impoverished foreign farmers would not cast a single vote for American politicians. After all, isn't it be a democratic virtue to respond faithfully to your *own* local constituency?

The problem, however, is that “poverty anywhere constitutes a danger to prosperity everywhere.”¹⁸⁷ Although the financial crisis started in the United States, it now wreaks havoc on the world's poorest in a highly disproportionate manner. Poverty is one of the most horrible agonies, and it never comes alone: it accompanies diseases, violence, conflicts, and wars. From the insightful perspective of “comprehensive security” posited by Robert Scalapino,¹⁸⁸ tanks and soldiers may be a necessary but insufficient condition for peace and security. Genuine peace and security derives from global citizens who have a decent amount of food to eat and

183. See, e.g., Ross P. Buckley, *Introduction: The Changing Face of World Trade and the Greatest Challenge Facing the WTO and the World Today*, in *THE WTO AND THE DOHA ROUND: THE CHANGING FACE OF WORLD TRADE 5* (2003) (observing that while the WTO should grant poor countries “better and fairer” access to rich countries' agricultural markets to alleviate the world's income inequality, the opposition of farmers from rich countries remains “massive and undiminished”).

184. Bhala, *Resurrecting the Doha Round*, *supra* note 169, at 8.

185. *Cf. id.* at 7.

186. See generally TIP O'NEILL, *ALL POLITICS IS LOCAL, AND OTHER RULES OF THE GAME* (1994) (stating that politicians must understand and connect to their constituents to be successful).

187. Constitution of the International Labour Organization, Annex, para. I(c), *available at* <http://www.ilo.org/ilolex/english/constq.htm>.

188. See Robert A. Scalapino, “*Regionalism in the Pacific: Prospects and Problems for the Pacific Basin*,” 26 *ATL. COMMUNITY Q.* 174 (1988) (discussing economic policies as a vital component of national security).

decent kinds of work to do, which trade can provide. The total financial burden of concessions necessary to help deliver Doha's success would be trivial compared to astronomical military spending to keep the world safe.

The completion of the Doha Round alone could never solve all the development problems that the WTO is facing. Yet it is still an important step to fulfill the ultimate *telos* of the WTO—sustainable development—especially amid the current global economic crisis.