

A Long and Winding Road: The Doha Round Negotiation in the World Trade Organization

Sungjoon Cho[^]

Abstract

Formatted: Font: Bold

This article provides a concise history of the Doha Round negotiation, analyzes its deadlock and offers some suggestions for a successful deal. The article observes that the nearly decade long negotiational stalemate is symptomatic of the diametrically opposed beliefs on the nature of the Round between developed and developing countries. While developed countries appear to be increasingly oblivious of Doha's exigency, i.e., as a "development" round, developing countries vehemently condemn the developed countries' narrow commercial focus on the Doha Round talks. 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. 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 alike have highlighted the vital importance of a well-operating multilateral trading system. The article concludes that the U.S. must not fail to exercise its due leadership in crystallizing such momentum into a concrete outcome, as it did in the interwar period.

Table of Contents

Introduction.....	2
I. The History of Doha Round: An Inglorious Tale.....	4
A. The Genesis of a Development Round	4
B. Collapses and Missed Deadlines	6
C. A Ray of Hope?: The July 2008 Package	9
D. So Close Yet So Far: The Demise of the 2008 Geneva Ministerial Conference	11
II. Reflections on the Doha's Failure: What Went Wrong?	13
A. The Primary Cause: Irreconcilable Agendas of Development and Mercantilism	13
B. The Secondary Cause: The Sterile Environment for Trade Talks.....	16
III. The Future of the Doha Round: Can Doha Ever Be Saved?	17

[^] Associate Professor of Law, and Norman and Edna Freehling Scholar, Chicago-Kent College of Law, Illinois Institute of Technology. This Article has greatly benefited from comments from Professor John Jackson. I also thank Robert Beckman, Michael Ewing-Chou, Michael Gadbow, Jane Bradley, Christophe Larouer and participants of the 2008 Staff Seminar Series at National University of Singapore Faculty of Law and the 2009 Luncheon Speakers Series at the Institute of International Economic Law (IIEL) of Georgetown Law Center for their valuable feedback. Maribel Nash, Daniel Crimmins and Claire Alfus provided excellent research assistance. This Article is current as of August 2009. All errors are mine.

A. The Exigency of the Doha Success	17
B. Preconditions for a Successful Round.....	18
Conclusion	21

Introduction

On July 29, 2008, Pascal Lamy, the head of the World Trade Organization (WTO)¹, bitterly declared the collapse of the most recent Doha Round talks in Geneva. Even his eleventh hour Herculean effort to forge the differences among the major negotiating groups was of no avail. As of August 2009, after eight years of talks, the Doha Round still has no framework (modalities) deal, let alone final national schedules. 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 did not appear entirely alien: it was just a recurring scene from the past. Because of the current economic and political circumstances, as well as the underlying lack of political will (capital) among WTO members, the successful resolution of the Doha Round undoubtedly remains a “tough sell”².

This nearly decade long negotiational stalemate is symptomatic of the diametrically opposed beliefs on the nature of the Round between developed and developing countries. Developed countries appear to be increasingly oblivious of Doha’s exigency, i.e., as a “development” round launched in response to the urgency of the September 11 terrorist attacks and the UN Millennium Development Goals (MDGs).³ These countries, such as the U.S. and the E.U., tend to consider the development nature of Doha Round as a liability, rather than a goal. Attributing Doha’s stalemate to its uncommon (“development”) label for a trade round, developed countries observed that “with a narrow agenda centered on giving market access to poor countries, little incentive was offered to the leading trading nations to compromise.”⁴ This position tends to regard any concessions in agricultural liberalization as potential bargaining chips to exchange squarely for reciprocal concessions from developing countries. Of

¹ Marrakech Agreement Establishing the World Trade Organization, April 15, 1994, Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations [hereinafter WTO Agreement], LEGAL INSTRUMENTS—RESULTS OF THE URUGUAY ROUND, 6, 6-18; 33 I.L.M. 1140, 1144-1153 (1994).

² Stephen Castle & Mark Landler, *After 7 Years, Talks on Trade Collapse*, N.Y. TIMES, Jul. 30, 2008.

³ 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.” WTO, Ministerial Declaration: The Fourth WTO Ministerial Meeting (Doha, Qatar), WT/MIN(01)/DEC/1 (adopted Nov. 14, 2001) [hereinafter Doha Declaration]. Some commentators observe that grand-scale agreements format” became “obsolete.” Alan Beattie, *Doha Hangovers but No Anger Next Morning*, FIN. TIMES, Jul. 30, 2008 [hereinafter *Doha Hangovers*]. Yet the innovative negotiational procedures (“concentric circles”) espoused by the WTO Director-General Pascal Lamy proved to be effective in gathering convergences. See WTO, The July 2008 Package – Seeking Consensus, available at

http://www.wto.org/english/tratop_e/dda_e/meeto8_circles_popup_e.htm#.

⁴ *The Next Step for World Trade*, N.Y. TIMES, Aug. 2, 2008.

course, developed countries' main target is not the world's poorest countries but those 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]." ⁵

Developing countries, however, condemn this narrow commercial focus on the Doha Round talks. ⁶ To developing countries, the Doha trade talks 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. In this context, developing countries perceive developed countries' consistent demand of *quid-pro-quo* throughout the Round as an unconscionable dereliction of Doha's development mandate. Even emerging economies argue that they should be granted larger "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 stark philosophical divergence on the nature of the Doha Round is the main culprit for the negotiational 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 inconvenience, irrelevance or incorrectness as far as politicians of both Worlds are concerned.

The 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 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 This is the moment of truth for the U.S. leadership, which can help crystallize such momentum 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 the U.S. leadership contributed

⁵ United State Trade Representative, The President's Trade Policy Agenda for 2009, Mar. 2009, available at http://www.ustr.gov/Document_Library/Reports_Publications/2009/2009_Trade_Policy_Agenda/Section_Index.html [hereinafter 2009 Trade Policy Agenda].

⁶ See text accompanying *infra* note __.

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

⁸ See e.g., *U.S. Presses WTO for Details on Doha Round Benefits*, REUTERS, Apr. 14, 2009 (reporting that the 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, Jun. 14, 2009 (observing that the rapid economic 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.

¹¹ See Mark Landler, *Dire Forecast for Global Economy and Trade*, N.Y. TIMES, Dec. 10, 2008.

greatly to the deepening of the Great Depression.¹² 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.”¹³

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. The article unfolds in the following sequence. Part I traces the inglorious history of the Doha Round’s seven years of failed negotiations. It reveals a deep-rooted tension between developed and developing countries on the nature of the Doha “development” Round. Part II offers a post-mortem of the collapse of the Doha deal: it observes that a confluence of underlying North-South tensions and other political factors adverse to the negotiations led to the fiasco. Part III then suggests that WTO members resume the trade talks from where they stopped last summer, instead of re-starting the whole negotiation from ground zero.

I. The History of Doha Round: An Inglorious Tale

A. The Genesis of a Development Round

Underdevelopment of some parts of the world has been a constant over the last two centuries of human civilization. This is true despite the spectacular progress of the modern global trading system during last half-century, which has not fully redressed such development deficit. In fact, there have been troubling signs that the world’s poor have become poorer during the last decade.¹⁴ This ever-deepening “poverty trap”¹⁵ tends to expand the chasm between two Worlds, the North (developed countries) and the South (developing countries).

In the past, more precisely in the Cold War era, the North-South tension was often eclipsed by an ideological (East-West) conflict. Furthermore, the post-colonial politics in newly independent countries self-isolated their economies from the mainstream global trading community via highly questionable development strategies, such as import substitution. The South inflicted on itself fatal development wounds by sealing the so-called “Faustian bargain.”¹⁶ In this metaphorical deal, the South accepted the North’s trade barriers (such as quotas) on those products that the former held comparative advantage (such as agricultural products and textiles) in return for certain GATT

¹² CHARLES P. KINDLEBERGER, *THE WORLD IN DEPRESSION 1929-1939* 297-98 (1973).

¹³ *Id.*, at 28.

¹⁴ See WORLD BANK, *WORLD DEVELOPMENT REPORT: EQUITY AND DEVELOPMENT* 7 (2005).

¹⁵ See Jeffrey Sachs, *Helping the World’s Poorest*, *ECONOMIST*, Aug. 14, 1999 (observing that many poor countries are “stuck in a trap of poverty” which seems inescapable without substantial international aids).

¹⁶ MICHAEL J. TREBILCOCK & ROBERT HOWSE, *THE REGULATION OF INTERNATIONAL TRADE* 368 (2d ed. 1999) (quoting Sidney Weintraub who observed that developing countries tolerated developed countries’ trade barriers in the former’s main exports in exchange for the former’s departure from GATT disciplines).

exemptions that had enabled the South to execute the aforementioned inward-looking development policies.

Not until the Eighties did the South realize the futility of their old development strategy. The South's shift to an outward-looking (open) policy led to its active participation in the historic trade round, the Uruguay Round (UR), which dramatically expanded the old GATT's operational scope and created the WTO.¹⁷ The North and the South struck a grand bargain, which was instrumentalized by the "single undertaking" principle. Under the bargain, the South aimed to undo the pernicious Faustian bargain and thus regain its market access in the areas of agricultural products and textiles, while it accepted the North's demands that would broaden trade agendas where the latter retained the comparative advantage, in areas such as services and intellectual property rights.¹⁸

To the South's disappointment, however, the North's old protectionism demonstrated no sign of relenting. The North was very slow in implementing the UR commitments, such as phasing out textile quotas and reducing farm protection. The South believed that the UR had largely been implemented in a "strikingly asymmetrical manner" highly disadvantageous to developing countries.¹⁹ This frustration has since haunted subsequent trade talks up to the present. The scandalous debacle of the Third Ministerial Conference in Seattle in 1999 was attributable in part to this frustration by the South.²⁰

The Doha Round came to its birth amid a grim atmosphere after the September 11 terrorist attacks and global economic woes.²¹ To signal a collective commitment to open trade and prosperity, in particular toward poor countries, the DDA was established at the fourth WTO Ministerial Conference held in Doha, Qatar in November 2001. As a "development" round, the DDA's main concerns were to reduce and/or eliminate agricultural trade barriers, such as farm subsidies and farm tariffs, which rich countries had maintained after the launch of the WTO. 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.

The South had expected to redeem in the Doha Round the raw deal which it had suffered as a result of the UR, as the new round highlighted the "development" dimension of trade. In the meantime, however, the North-South

¹⁷ See generally THE URUGUAY ROUND AND THE DEVELOPING COUNTRIES (Will Martin & L. Alan Winters eds. 1996).

¹⁸ See J. Michael Finger & Philip Schuler, *Implementation of Uruguay Round Commitments: The Development Challenge*, in DEVELOPING COUNTRIES AND THE WTO: A PRO-ACTIVE AGENDA 115 (Bernard M. Hoekman & Will Martin eds. 2001).

¹⁹ Jeffrey L. Dunoff, *The WTO in Transition: Of Constituents, Competence and Coherence*, 33 GEO. WASH. INT'L L. REV. 979, 981 (2001). Cf. UGO MATTEI & LAURA NADER, PLUNDER: WHEN THE RULE OF LAW IS ILLEGAL (2008) (advancing a highly critical view on the developed countries' exploitation of developing countries in the name of "rule of law").

²⁰ See 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 (2004) [hereinafter *A Bridge Too Far*].

²¹ See William A. Lovett, *Bargaining Challenges and Conflicting Interests: Implementing the Doha Round*, 17 AM. U. INTL. L. REV. 951 (2002) (documenting how the September 11 terrorist attacks led to the creation of the Doha round).

line in the Doha Round has been reinforced due to the emergence of a new geography of power resulting largely from China's participation.²² As negotiations proceeded, the original cause for development could not match the tough commercial realities on the ground. Developed countries' governments simply lacked the political capital to bring this "development" cause to light without serious concessions from developing countries. In other words, even this "development" label could not overcome, or at least alleviate, the traditional mercantilist *quid pro quo* reciprocity in the trade talks. Soon, irreconcilable fissures over the depth and the breadth of liberalization eventually derailed the fifth WTO Ministerial Conference in Cancún, Mexico in September 2003.

B. Collapses and Missed Deadlines

The fanfare of the WTO Ministerial Conference in Cancún, Mexico quickly transformed 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) on the basis of which WTO members opened their markets to implement the DDA by the end of 2004. Yet major developed countries were simply not prepared to reform their long-standing agricultural protection policies necessary to meet such ambition. Some observed that the U.S.'s \$ 180 billions farm bill and the EU's refusal to reform its 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."²³ In a frustrating testimony to rich countries' farm protectionism, the U.S. 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.²⁴ One African farmer deplored that "we are used to hardship, disease and famine. Now the WTO is against us as well. I think that this will stay in history."²⁵

This irreconcilable fissure over farm subsidies between the rich and poor countries drove them to pick an easy excuse to discontinue the trade talks. At the first WTO Ministerial Conference in Singapore, WTO members provisionally agreed to study the relationship between trade and some controversial issues, such as investment and competition ("Singapore issues"), by establishing "working groups."²⁶ These Singapore issues turned out to be a deal breaker in

²² *A Bridge Too Far*, *supra* note __, at __.

²³ *World Trade: Coming Unstuck*, THE ECONOMIST, at 14, Nov. 2, 2002; *The Zoellick Plan: Trading Insults*, THE ECONOMIST, at 67, Nov. 30, 2002.

²⁴ Bridges Daily Update on the Fifth WTO Ministerial Conference, Issue 5, *At the Eleventh Hour, Divergence All Over Again*, Sep. 14, 2003, http://www.ictsd.org/ministerial/cancun/wto_daily/ben030914.htm [hereinafter 2003 Bridges, Issue 5]. See also Kevin C. Kennedy, *The Doha Round Negotiations on Agricultural Subsidies*, 36 DENV. J. INTL. L. & POL'Y L. 335 (2008) (demonstrating that cotton subsidies in rich countries have driven down the prices of cotton in the global market).

²⁵ 2003 Bridges, Issue 5, *supra* note __.

²⁶ They connote four issues: trade facilitation, transparency in government procurement, investment, and competition. WTO, The Singapore Ministerial Declaration, adopted on Dec. 13, 1996, WT/MIN(96)/DEC, http://www.wto.org/english/thewto_e/minist_e/min96_e/wtodec_e.htm, paras 20-23.

Cancún when some developed countries demanded these issues to be part of DDA, which most developing countries vehemently opposed.²⁷ Developing countries suspected that they might provide a backdoor to disguised protectionism. The Cancún debacle was a gloomy premonition for the DDR's trying path ahead.

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." The 2004 July Package 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 a higher degree.²⁸ In the reduction of industrial tariffs, developing countries would have longer implementation periods as well as some "flexibility" in choosing tariff lines to cut.²⁹

Nonetheless, the July 2004 Package failed to motivate WTO members to further narrow down their differences in their substantive positions. Domestic political situations in major member countries continued to militate against concessions. For example, then French President Jacques Chirac vowed to "block a world trade deal" if the EU's concession exceeded the status quo of the Common Agricultural Policy (CAP).³⁰ In this antagonistic atmosphere, negotiators could not gain the ground in their talks that matched their original ambition. The revised plan for the Doha Round was to achieve some concrete approximation on their wide differences in 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 2005.³¹ Under this scenario, WTO members might have finalized the whole round by the end of 2006.³² Yet the aforementioned political climate was not ready for the so-called "July Approximation."³³ Having failed to resolve their differences, WTO members lowered their expectations for the Hong Kong Ministerial Conference.³⁴

²⁷ *A Bridge Too Far*, *supra* note __, at __.

²⁸ Text of the 'July Package' – the General Council's Post-Cancún Decision, Annex A: Framework for Establishing Modalities in Agriculture, WT/L/579, Aug. 2, 2004.

²⁹ Text of the 'July Package' – the General Council's Post-Cancún Decision, Annex B: Framework for Establishing Modalities in Market Access for Non-Agricultural Products, WT/L/579, Aug. 2, 2004.

³⁰ See George Parker et al, *Chirac Fires Warning Shot on Trade Deal in Defense of Farm Subsidies*, FIN. TIMES, Oct. 28, 2005, at 4.

³¹ ICTSD, *WTO Members Aim For July 'Approximations,' Hong Kong Deal*, WTO Ministerial Section, vol. 9, no. 5, Feb. 16, 2005, available at <http://ictsd.net/i/news/bridgesweekly/7683/>.

³² *Id.*

³³ Alan Beattie & Frances Williams, *Prospects for WTO Gloomier as Talks End*, FIN. TIMES, Jul. 27, 2005, at 6.

³⁴ See *Members Scale Back Expectations for Hong Kong*, BRIDGES WKLY TRADE NEWS DIG., vol. 9, No. 38, Nov. 9, 2005; *Dark Clouds over Doha*, THE ECONOMIST, Nov. 10, 2005.

These recalibrated expectations naturally led to a largely face-saving pact in Hong Kong.³⁵ After an intense six-day talk, during which one negotiator analogized to “working like a dog,”³⁶ delegates managed to seal a modest deal on an interim package on December 18, 2005.³⁷ The Hong Kong Ministerial Declaration included some meaningful numbers, such as deadlines for getting rid of agricultural export subsidies (2013) and cotton export subsidies (2006), as well as a developmentally critical commitment that the least developed countries (LDCs)’s exports enjoy duty and quota-free access, at least up to 97%, by 2008. The positive view of the Hong Kong deal is that it put the Doha Round “back on track” with a “rebalancing in the favor of developing countries”³⁸ At the same time, however, the negative view of the deal was that it failed to deliver the agreement on “modalities,” which refer to the basic structure of trade liberalization in the agricultural and non-agricultural (NAMA) sector. Negotiators simply procrastinated on this controversial issue and agreed that they would establish the modalities by April 30, 2006.³⁹

As the Doha trade talks continued, it became clear that to reach a deal on the modalities three main players should substantially reduce their respective trade barriers. In other words, the U.S. should cut its farm subsidies, the EU should reduce its farm tariffs, and large developing countries (such as India, Brazil and China) should lower their industrial tariffs.⁴⁰ The problem was how to form a “triangle” with these three sides as commitments. Each side demanded a bigger concession from the others. Unfortunately, rich countries refused to reflect the “development” agenda in the negotiating (triangulating) process. The U.S. and the EU failed to take into full account developing countries’ concerns for “social dislocation and adjustment” in the case of any sudden and massive liberalization.⁴¹ To these developing countries, the Doha triangle should not be “equilateral” in the sense that rich countries’ reduction of farm subsidies and tariffs must be conditioned strictly on social sufferings of poor countries caused by any improvident market opening.⁴² One might reasonably speculate that adequate social safety net programs which could cushion negative impacts from

³⁵ See e.g., Richard Waddington, *WTO Seeks Face-Saving Pact to Keep Talks Moving*, REUTERS, Dec. 13, 2005.

³⁶ WTO, Summary of December 18, 2005, *Day 6: Ministers Agree on Declaration that ‘Puts Round Back on Track,’* available at http://www.wto.org/english/thewto_e/minist_e/min05_e/min05_18dec_e.htm [hereinafter WTO Hong Kong, Day 6].

³⁷ WTO Ministerial Conference (Sixth Session, Hong Kong, Dec. 13-18, 2005), Doha Work Program: Draft Ministerial Declaration (Revision), WT/MIN(05)/W/3/Rev., Dec. 18, 2005, available at http://www.wto.org/english/thewto_e/minist_e/min05_e/min05_e.htm.

³⁸ WTO Hong Kong, Day 6, *supra* note __.

³⁹ Sungjoon Cho, *Half Full or Half Empty?: The Hong Kong WTO Ministerial Conference Has Delivered an Interim Deal for the Doha Round Negotiation*, ASIL INSIGHTS (Dec. 29, 2005).

⁴⁰ *Lamy Sets End-June Deadline for AG, NAMA Modalities*, BRIDGES WKLY TRADE NEWS DIG. - vol. 10, no. 19, 31 May 2006.

⁴¹ *WTO Talks In “Crisis” as High-Level Meeting Fails; Lamy to Try to Facilitate Consensus*, BRIDGES WKLY TRADE NEWS DIG. - Special Update 3 July 2006 [hereinafter *WTO Talks In “Crisis”*].

⁴² *Following G8 Summit, G-6 Ministers to Renew Push for Doha Round Deal*, BRIDGES WKLY TRADE NEWS DIG. - Vol. 10, Number 26 19 July 2006.

trade liberalization would not be available in those developing countries on account of their governments' budget shortfalls and vast populations.

Amid this impasse, the modicum of optimism for a successful trade round that had rekindled in Hong Kong soon died out. The end of the April 2006 deadline for the modalities deal set in the Hong Kong Ministerial Conference⁴³ lapsed and was replaced by an end of June 2006 deadline,⁴⁴ which also lapsed without meaningful development.⁴⁵ On July 28, 2006, upon the Director-General's recommendation, the WTO General Council officially suspended the negotiation due to irreconcilable differences among negotiators over three major trade barriers: farm subsidies, farm tariffs, and industrial tariffs.⁴⁶ Without the announcement of any future negotiation schedule, the Doha Round's future had become marred by uncertainty.

C. A Ray of Hope?: The July 2008 Package

Pascal Lamy declared the resumption of the stalled negotiation in February 2007 after trade ministers from major WTO members informally gathered in the Davos World Economic Forum in January 2007 and recommitted themselves to further negotiations.⁴⁷ As 2008 dawned, the agricultural negotiation emerged with some significant developments as the Chair improved an agricultural modalities draft each time that he issued a new one, although the Non-Agricultural Market Access (NAMA) negotiation demonstrated to be a tougher process.⁴⁸ Both Chairs in the agricultural sector (Crawford Falconer) and NAMA (Don Stephenson) issued a series of drafts in February, May and July 2008, respectively, which identified areas of convergences (and divergences) and provided negotiators with "simplified" options for modalities.⁴⁹

The July Chair drafts on both agriculture and NAMA, which were collectively labeled the "July 2008 Package," was a hybrid of liberalization commitments (concessions) and exceptions which would serve as political safety valves. First, in the agricultural sector, the Package required those developed countries (EU and Japan) whose total farm subsidies (overall trade-distorting domestic support (OTDS)) exceed \$60 billion to cut by 75-85%; it also required those developed countries whose OTDS falls between \$10 and \$60 billion to cut by 66-73%. As to agricultural market access, the Package required developed countries to cut their bound tariffs more drastically when they are higher (0-20%

⁴³ See Sungjoon Cho, *Half Full or Half Empty?: The Hong Kong WTO Ministerial Conference Has Delivered an Interim Deal for the Doha Round Negotiation*, ASIL INSIGHTS, Dec. 29, 2005, <http://www.asil.org/insights/2005/12/insights051229.html>.

⁴⁴ *Lamy Sets End-June Deadline for AG, NAMA Modalities*, BRIDGES WKLY TRADE NEWS DIG. - Vol. 10, Number 19, 31 May 2006.

⁴⁵ WTO News-DDA June/July 2006 Modalities, 'We Are Now in Crisis,' *Director-General to Try to Break Impasse*, Jul. 1, 2006.

⁴⁶ WTO News - General Council, *General Council Supports Suspension of Trade Talks, Task Force Submits "Aid for Trade" Recommendations*, July 27-28, 2006.

⁴⁷ WTO, Lamy: "We Have Resumed Negotiations Fully across the Border," Feb. 7, 2007.

⁴⁸ . *Slow Progress on Industrial Goods Talks in Final Push to Ministerial*, BRIDGES WKLY TRADE NEWS DIG., vol. 12, no. 25 (Jul. 9, 2008).

⁴⁹ *Chair of WTO AG Talks Says New Draft Text Will Simplify Options for Ministers*, BRIDGES WKLY TRADE NEWS DIG., vol. 12, no. 25 (Jul. 9, 2008).

→ 48-52%; 20-50% → 55-60%; 50-75% → 62-65%; over 75% → 66-73%) in accordance with the so-called Swiss formula. The Package granted developing countries some leniency in tariff cuts, which would amount largely to two-thirds of those by developed countries.

In terms of exceptions to the agricultural liberalization, the Package permitted both developed and developing countries to exempt certain (“sensitive”) products from the aforementioned general reduction scheme on the condition that these countries expand tariff quotas for those products. It granted developed countries the ability to designate 4-6% of their tariff lines as sensitive products; it granted developing countries roughly one-third more than what developed countries would designate as sensitive products. As to the “special products” which was an exclusive exception to developing countries for food security reasons, the Package was silent in the numerical target, although the previous (May) draft allowed the self-designation by developing countries of 8-20% of their tariff lines. As to the “special agricultural safeguard” for developing countries, the Package failed to even suggest any numerical indicators, attesting to the sheer lack of convergence. Finally, the Package required developed countries to eliminate export subsidies by 2013.

As to NAMA (industrial tariffs reduction), the Package suggested two coefficients (the maximum level of industrial tariffs) for both developed (8-9%) and developing countries (19-23%). Yet controversies and wide divergences between developed and developing countries continued over such a reduction scheme. While major developing countries, such as Brazil, India and South Africa, complained that the Package demanded over-liberalization from them in the area of industrial tariffs, developed countries, such as the U.S. and the EU, argued that the current draft would not deliver genuine liberalization since it failed to make deep cuts in “applied” tariffs. The same nature of divergences emerged over sector-specific liberalization initiatives (such as chemicals and industrial machinery). In particular, developing countries tried to stave off developed countries’ pressure to lower industrial tariffs through this mechanism by emphasizing that it is a “voluntary” program.⁵⁰ China exhibited the most vehement opposition to this issue as the U.S. targeted China to further open the latter’s market via this mechanism.⁵¹

Despite some concrete headline numbers in the Package, its draft modalities were not without complications. Many devilish details continued to haunt the whole scheme. For example, while sensitive products would grant members more modest tariff cuts in exchange for increasing import quotas, the scope of actual quota increase is based on the volume of consumption of agricultural products at issue. Yet consumption data may not be available, in particular regarding highly specified sub-categories of a product (e.g., particular *cuts* of beef) which importing countries want to designate as sensitive so as to “pinpoint” protection for those products.⁵²

⁵⁰ *Chair Says NAMA Deal is ‘Doable’, Though Divisions Remain*, BRIDGES WKLY TRADE NEWS DIG., vol. 12, No. 26, Jul. 16, 2008 [hereinafter *Divisions Remain*].

⁵¹ Alan Beattie, *Clash of Interests Generates Great Heat*, FIN. TIMES, Jul. 29, 2008

⁵² *Agriculture Negotiators Ask for More Time, Extending Push for Modalities Deal*, BRIDGES WKLY TRADE NEWS DIG., vol. 12, no. 15, Apr. 30, 2008.

D. So Close Yet So Far: The Demise of the 2008 Geneva Ministerial Conference

When the WTO's head, Pascal Lamy, summoned trade ministers to Geneva in the summer of 2008, the odds for a successful deal on modalities were more than fifty percent.⁵³ Truly, most negotiators felt compelled to complete the Doha Round in the foreseeable future, especially considering the global financial turmoil.⁵⁴ Nonetheless, once the actual negotiation set, off the general pace turned out to be rather tedious. The U.S.' ostensibly bold offer to limit its overall trade-distorting support (OTDS) to \$17 billion, which was a notable improvement from its previous position of \$22.5 billion, failed to impress its developing country partners.⁵⁵ Developing countries quickly pointed out that even \$17 billion was much higher than the U.S.' actual farm spending of \$ 7-8 billion in 2007.⁵⁶ This "water," which in the WTO's vernacular refers to a gap between an official limit (cap) and actual spending, was also of concern to developed countries. The U.S. and the EU accused major developing countries (India and Brazil) of refusing to reduce actual ("applied") tariffs by simply slashing "bound" tariffs in the book.⁵⁷

After days of negotiation, no clear signs of progress emerged, although Pascal Lamy, in an effort to expedite the negotiation, adopted an innovative yet controversial methodology ("concentric circles"). This method refers to a consensus-seeking process linking small group meetings (such as those defined by "variable geometry") to formal plenary meetings.⁵⁸ At long last, on the sixth day a ray of hope shone over the stalemated Doha Round negotiation. On the verge of the talk's collapse, Lamy managed to persuade negotiators to continue by presenting the critical "package of elements,"⁵⁹ 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 (ranging from farm subsidies to industrial tariffs' reduction) in an articulated fashion out of the intense consultations among the seven key negotiating parties (G 7: the U.S., the EU, Australia, Japan, China, Brazil and India) under the concentric circles approach. According to the Lamy Draft, the U.S. should cut the current bound level of farm subsidies (U.S.\$ 48 billion) to U.S.\$ 14 billion (which was still much higher than the actual spending last year of U.S.\$ 7 billion).⁶⁰ The EU should cut its farm subsidies by 80%, to approximately

⁵³ *Geneva Mini-Ministerial: 'Now or Never' For Real This Time?*, BRIDGES UPDATE, Jul. 21, 2008 [hereinafter BRIDGES UPDATE, DAY 1].

⁵⁴ WTO News — DDA July 2008 Package: Summary, *Day 1: Ministers Begin Final Effort to Agree Blueprints of Deal*, Jul. 21, 2008.

⁵⁵ *Little Movement on Second Day of WTO Talks*, BRIDGES UPDATE, Jul. 23, 2008.

⁵⁶ *Id.*

⁵⁷ BRIDGES UPDATE, DAY 1, *supra* note __.

⁵⁸ WTO News — DDA July 2008 Package: Summary, *Day 4: Ministers Talk Numbers Till Late but Breakthrough Remains Elusive*, Jul. 24, 2008.

⁵⁹ WTO, *Lamy Presents "Package of Elements" from Consultations with Ministers*, Jul. 26, 2008.

⁶⁰ *WTO Mini-Ministerial Evades Collapse, As Lamy Finds 'Way Forward'*, BRIDGES UPDATE, Jul. 26, 2008.

22 billion euros. As to the market access, the Draft called for a 70% reduction for developed countries' highest (above 75%) farm tariffs. At the same time, the Draft allowed developed countries to designate 4 percent of their agricultural tariff lines as sensitive products. Yet developed countries should cap tariffs on non-sensitive agricultural products at 100%.

Under the Draft, developing countries were also allowed to shelter 12% of all covered products ("special products") from the normal tariff reduction. As to the special safeguard mechanism (SSM), developing countries could use it only when an imports' surge would be by more than 40% in volume. As to NAMA, coefficients (the maximum level of tariffs) would be 8% for developed countries and 20, 22 or 25% for developing countries, depending on three different "flexibility" mechanisms. Developing countries could choose from these flexibility mechanisms to protect some of their strategic products more than others within these limits. 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.⁶¹

Frustratingly, however, this rather "unexpected momentum" soon evaporated as the U.S. wrangled with India and China over the SSM and cotton, respectively.⁶² India maintained a recalcitrant stance against tightening the eligibility of the SSM, while China severely criticized the U.S. for pressuring its China to open its cotton market as a condition to cut the U.S cotton subsidies. On the last (ninth) day of the talks, the core negotiating group (G 7: Australia, US, EU, Japan, China, India, and Brazil), and more narrowly the U.S. and G-33 bloc of food-importing developing countries (India/China/Indonesia), failed to close their gaps in some details of the SSM.⁶³ Other than this holdup, the deal was close to completion since negotiators had managed to reach a consensus on nearly all other sticking points.⁶⁴

The U.S. 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%.⁶⁵ 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*."⁶⁶ Nonetheless, the U.S. was adamant with this 40% threshold, permitting no compromise; it also refused Pascal Lamy's alternative proposal

⁶¹ *Id.*

⁶² Alan Beattie & Frances Williams, *Disputes Sour Doha Mood of Optimism*, FIN. TIMES, Jul. 28, 2008.

⁶³ *WTO Talks Collapse Amid Farm Stand-off*, REUTERS, Jul. 29, 2008

⁶⁴ WTO News — DDA July 2008 Package: Summary, *Day 9: Talks Collapse Despite Progress on a List of Issues*, Jul. 29, 2008 [hereinafter WTO, *Day 9*].

⁶⁵ Daniel Pruzin, *Trade Officials Voice Doubts on Push by Lamy to Revive Doha Round Talks*, 25 INT'L TRADE REP. 1256 (2008).

⁶⁶ Paul Blustein, *The Nine-Day Misadventure of the Most Favored Nations: How the WTO's Doha Round Negotiations Went Awry in July 2008*, THE BROOKINGS INSTITUTION, Dec. 5, 2008, available at http://www.brookings.edu/articles/2008/1205_trade_blustein.aspx.

which would have replaced this numerical trigger by an expert review on “demonstrable harm,” which India accepted.⁶⁷

Jagdish Bhagwati blamed the U.S. as the “central spoiler” of the 2008 Geneva Ministerial Conference. According to Bhagwati, the U.S. refused to reduce significantly its trade-distorting farm subsidies which are “universally recognized as intolerable,” while it attacked India for asking enhanced safeguards protection for its mostly subsistent, rural farmers.⁶⁸ Ironically, however, then United States Trade Representative (USTR) Susan Schwab probably did a service to the WTO since a deal sealed in Geneva yet only killed later in Washington might have dealt a more severe blow to the WTO.⁶⁹

II. Reflections on the Doha’s Failure: What Went Wrong?

What caused the Doha’s collapse? As may be seen with other historic incidences, attributing certain factors to any event is a tricky business. Yet there may have been a unique context for the Doha round which has militated against the smooth negotiation in a consistent manner. For example, a very different expectation for the Doha (*development*) Round between the North and the South may have complicated the negotiation’s entire process. 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. At any rate, a sobering exploration of causes and contributing factors for the Doha’s failure seems to be in order if we want to alter the direction of future trade talks for 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) reads 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.”⁷⁰

However, the initial “development” focus of the Doha Round quickly blurred and faded. Some observers from developed countries even believe that the DDA label tended to distance powerful stakeholders (businesses and industries) who might think the Doha trade talks would be mere charity and thus

⁶⁷ WTO, *Day 9*, *supra* note __.

⁶⁸ Jagdish Bhagwati, *The Selfish Hegemon Must Offer a New Deal on Trade*, FIN. TIMES, Aug. 20, 2008, at 11.

⁶⁹ Blustein, *supra* note __.

⁷⁰ Doha Declaration, *supra* note __, para. 2 (emphasis added).

find little incentive for their participation.⁷¹ They argue that what developed countries basically perceive the Doha Round as merely yet another “commercial” negotiation, in which they could press the market opening by big developing countries, such as China, India and Brazil.⁷²

For example, the U.S. 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 protection on their crops for non-mercantilist purposes (such as food and livelihood security concerns).⁷³ While leaders of developed countries continued to advocate the vital cause of development, these lip-services never materialized at the negotiation table.⁷⁴ In the meantime, developing countries refused to make concessions before developed countries tabled substantial commitments in the area of agricultural protection.⁷⁵ It was this “brinkmanship” that frequently deadlocked the negotiation process.⁷⁶

At the heart of the North-South clash, as far as the Doha Round is concerned, 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 the 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.”⁷⁷ Yet India and China jointly urged rich countries to cut farm tariffs and trade-distorting farm subsidies to unclog the stalled negotiation.

Likewise, Charles Grassley, a powerful U.S. farm state Senator, 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.⁷⁸ Mindful of these anti-trade sentiments in Congress, the USTR desired to reap substantial concessions from trading partners and thus rejected any modest package, such as the “Doha-lite” proposal.⁷⁹ Delegates from the U.S.’s major special interest groups, such as the American Farm Bureau and National Association of Manufacturers, were actually stationed in Geneva as they monitored and even

⁷¹ *The Next Step for World Trade*, N.Y. TIMES, Aug. 2, 2008.

⁷² *Political Positioning Dominates Opening Day of WTO Talks*, BRIDGES UPDATE, Jul. 22, 2008 [hereinafter BRIDGES UPDATE, DAY 2].

⁷³ *G-6 Ministers Agree to Work to Conclude Doha Round by End of 2007*, BRIDGES WKLY TRADE NEWS DIG., vol. 11, no. 13, Apr. 18, 2007 [hereinafter *G-6 Ministers Agree to Work*].

⁷⁴ See Alan Beattie, *G8 Mood and Doha Talks ‘Show Disconnect,’* FIN. TIMES, Jul. 10, 2005, at 4.

⁷⁵ See *Members Try to Convert Dalian Effort into Negotiations Breakthrough*, BRIDGES WKLY TRADE NEWS DIG., vol. 9, No. 26, Jul. 20, 2005.

⁷⁶ See *The Doha Round Cruises Along*, FIN. TIMES, Jul. 15, 2005, at 12.

⁷⁷ *G-6 Ministers Agree to Work*, *supra* note __. See also Raj Bhala, *Doha Round Schisms: Numerous, Technical and Deep*, 6 LOYOLA CHI. INT’L L. REV. __ (2008).

⁷⁸ Doug Palmer, *U.S. Farm Programmes Spared as WTO Talks Collapse*, REUTERS, Jul. 29, 2008.

⁷⁹ Sungjoon Cho, *The WTO Doha Round Negotiation: Suspended Indefinitely*, ASIL INSIGHTS (Sep. 5, 2006).

instructed U.S. negotiators.⁸⁰ Such circumstances squeezed the negotiational space of the then USTR Susan Schwab who was preoccupied by the idea of breaking a deal in Geneva rather than failing to pass it in DC.⁸¹ Naturally, these mercantilist stances by developed countries irked developing countries. Indian Commerce Minister Kamal Nath commented that rich countries pursued only “commercial prosperity.”⁸²

In particular, lavish farm protection in major developed countries, such as the U.S. and the EU, continued to undermine trade liberalization in the agricultural sector of the Doha Round. Under the EU’s Common Agricultural Policy, big agro-businesses in France alone receive more than \$10 billion a year.⁸³ The EU’s biofuels policy created a tariff equivalent of 1,000% for dubious environmental benefits.⁸⁴ In the U.S., the renewal of the highly protectionist-oriented Farm Bill in the middle of the Doha Round negotiation disheartened many delegates.⁸⁵ Even the U.S. media lambasted 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.”⁸⁶ As Victor Davis Hanson trenchantly observed, lavish farm subsidies in the U.S. are “transparent election-cycle harvests for farm-state politicians, who have small constituencies but exercise outsized national political clout.”⁸⁷ 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).⁸⁸

This farm protectionism in the U.S. and EU entails enormous distortion in the global crop market beyond the level which might be remedied through occasional WTO litigation. The G-33 bloc’s (food-importing developing countries) fixation on the SSM originated mainly from rich countries’ highly subsidized and thus cheapened crop.⁸⁹ Under these circumstances, “any opening up of agriculture would be doubly difficult politically because exposing one’s

⁸⁰ Blustein, *supra* note __.

⁸¹ *Id.*

⁸² *Instant Analysis: Implications of the Failure of WTO Talks*, REUTERS, Jul. 29, 2008.

Admittedly, the 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 the latter’s 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. 1218 (2008) [hereinafter *Reviving WTO Talks*]. Other agricultural exporting countries, such 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 India, Jul. 28, 2008. However, such tensions were negligible compared to deep-rooted North-South conflicts.

⁸³ Patrick Messerlin, *A Doha Deal Would Aid Many European Farmers*, FIN. TIMES, Jul. 21, 2008.

⁸⁴ *Id.*

⁸⁵ David M. Herszenhorn, *House Passes Farm Bill by a Veto-Proof Margin*, N.Y. TIMES, May 15, 2008; Missy Ryan, *New Farm Bill Seen Adding Fodder for Trade Feud*, REUTERS, May 11, 2008.

⁸⁶ *A Disgraceful Farm Bill*, N.Y. TIMES, May 16, 2008.

⁸⁷ Victor Davis Hanson, *Harvesting Money in a Hungry World*, N.Y. TIMES, Aug. 1, 2008.

⁸⁸ *Id.*

⁸⁹ *G-7 Talks on Special Safeguard Mechanism Inconclusive as Blame Game Heats Up*, BRIDGES UPDATE, Jul. 29, 2008.

farmers to the impact of highly subsidized foreign producers is regarded as yielding to unfair trade.”⁹⁰ Developing countries tried to fix the raw deal under the UR. Frustratingly to developing countries, the UR 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.⁹¹

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 bargaining chips for reciprocal concessions from the South in the areas of both agricultural and industrial market access.

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

Apart from the abovementioned deep-rooted North-South tensions, a blend of adverse factors has undermined the odds for a successful round. First, as most commentators observed, the recent domestic political situations in major negotiating parties, such as the U.S., EU, and India, have not been amenable to concessions, leading to a general lack of political support for a deal. Key elections were pending in the U.S. and India as delegates papered over the modalities. To make things worse, the Wall Street-born financial crisis quickly spread to the world and froze global trade, brewing protectionist sentiments. Amid this economic hardship, some politicians intensified their rhetoric against the Doha deal. For example, French President Nicolas Sarkozy stated that the EC’s offer would destroy the European farm sector by reducing agricultural production by 20% and cutting 100,000 jobs.⁹²

Another critical factor militating against a successful deal was the fact that the U.S. delegation negotiated without “trade promotion authority (TPA),” formerly known as “fast track authority.” Without TPA, passing the Doha deal in Congress would have been a very difficult, if not impossible, task for the lame-duck administration. This was the case even though U.S. negotiators had been assured that they could continue the trade talks without TPA - which they argued would concern only the deal’s ratification in Congress.⁹³ While the U.S. negotiators stripped of TPA had to grab a deal which could impress the Congress, major developing countries, such as Brazil and India, could not simply concede such a deal without a serious reduction of U.S. farm subsidies, especially in the absence of TPA.⁹⁴

One commentator observed that U.S. trading partners “kn[ew] about the US situation and the severe danger of proceeding, but no country want[ed] to be

⁹⁰ Jagdish Bhagwati & Arvind Panagariya, *How the Food Crisis Could Solve the Doha Round*, FIN. TIMES, Jul. 23, 2008

⁹¹ BRIDGES UPDATE, DAY 2, *supra* note __.

⁹² *Id.*

⁹³ *G-6 Ministers Agree to Work*, *supra* note __.

⁹⁴ Bradley S. Klapper, *Blame High, Confidence Low as WTO Heads into Another ‘Final Year’ for Free Trade Pact*, ASSOC. PRESS, Dec. 7, 2007.

blamed for raising it.”⁹⁵ Moreover, the U.S. proposal of cutting the trade-distorting subsidy to \$15 billion, if implemented, would have forced the U.S. to dilute farm protection bestowed by the new Farm Bill which had recently been passed over presidential veto.⁹⁶ 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.⁹⁷ Tom Harkin, chair of the US Senate agriculture committee, made it clear that this offer was conditioned on enhanced access by U.S. farmers to foreign markets.⁹⁸ However, one might view that a demand for market access in return for undoing protectionist measures, such as farm subsidies, tends to reveal “an absence both of economic logic and good faith” and thus seems “unconscionable.”⁹⁹

III. The Future of the Doha Round: Can Doha Ever Be Saved?

A. *The Exigency of the 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 is likely to contract in 2009 for the first time since the World War II,¹⁰⁰ the Doha failure would further discredit the WTO system and supply ample ammunition to politicians bending 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, which will guide each member articulating its own improved schedule of commitments. Just remember how close negotiators were to a deal before its sudden collapse at the eleventh hour in July 2008. Pascal Lamy observed that out of 20 topics on the “to-do-list,” members’ positions on 18 topics had converged before the 19th topic (the special safeguard mechanism) busted the deal.¹⁰¹ The very fact that the negotiation suddenly fell apart after members had spent so much time and had acquired substantial mileage signifies the lack of political will.¹⁰² Therefore, without recharged political capital negotiators cannot seal the deal on modalities.

⁹⁵ Lori Wallach, *Doha Talks a Charade with Bush on His Way Out*, BUS. DAY, Jul. 15, 2008.

⁹⁶ Dan Looker, *Harkin: WTO Offer Could Affect 2008 Farm Bill Programs If Trade Talks Succeed*, AGR. ONLINE, Jul. 25, 2008.

⁹⁷ Alan Beattie, *Lamy Plan Spurs Optimism at Doha Talks*, FIN. TIMES, Jul. 25, 2008.

⁹⁸ Alan Beattie, *US Offers to Reduce Farm Subsidy Limit to \$15bn*, FIN. TIMES, Jul. 23, 2008.

⁹⁹ Philip Stephens, *Blindfolds That Wrecked a Deal to Boost Global Trade*, FIN. TIMES, Jul. 31, 2008.

¹⁰⁰ See *supra* note __. The international flight also decreased by 17.4% in May 2009 compared to the previous year. Jonathan Lynn, *Trade Ministers Seek Doha Progress for Pittsburgh G20*, REUTERS, Jun. 26, 2009.

¹⁰¹ WTO, *Day 9*, *supra* note __.

¹⁰² Castle & Landler, *supra* note __.

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.¹⁰³ For example, the U.S. has continued to push the "sectoral" approach in industrial tariffs reduction, which it spearheaded in the July Ministerial in Geneva. Pressured by domestic interest groups, such as National Association of Manufactures (NAM), the U.S. 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.¹⁰⁴ China also repeated its previous position strongly opposing the U.S.'s approach, highlighting that participation in the sectoral liberalization program should be "voluntary."¹⁰⁵

Second, every trade deal tends to inevitably accompany certain churning effects and therefore leaves domestic losers who 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.¹⁰⁶

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.¹⁰⁷ If left unchecked, this competition may turn into an ugly trade war, 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 sign of hope in the global business community.¹⁰⁸

B. Preconditions for a Successful Round

To resume the Doha negotiation, it is vital to mobilize necessary political capital both domestically and internationally. To mobilize and gather the

¹⁰³ 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. 1766-67 (Dec. 18, 2008) [hereinafter Pruzin & Yerkey, *Lamy Calls Off*].

¹⁰⁴ *Divisions Remain*, *supra* note __.

¹⁰⁵ Daniel Pruzin & Gary G. Yerkey, *U.S. Refutes NAMA Chairman's Report on Sectorals Agreement for Industrial Goods*, 25 INT'L TRADE REP. 1216 (2008).

¹⁰⁶ Pruzin & Yerkey, *Lamy Calls Off*, *supra* note __, at 1766. Unfortunately, major players, in particular the U.S., found it hard to gather enough 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, BRIDGES WKLY TRADE NEWS DIG., vol. 13, no. 12, Apr. 1, 2009.

¹⁰⁷ See text accompanying *supra* note __.

¹⁰⁸ "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." WTO News, General Council, *Ministers Continue to Attach Highest Priority to the Round's Conclusion - Lamy*, Feb. 3, 4, 2009.

necessary political capital will require monumental leadership from global leaders. In particular, with a new president in office, the U.S. is uniquely situated to offer such a vital public good.¹⁰⁹ As the world's most powerful and affluent country and as the country responsible for engendering the current global financial crisis, the U.S. should recognize and shoulder its historic responsibility. As President Obama stated in his inaugural speech, the U.S. has duties to the world which it "do[es] not grudgingly accept but rather seize gladly."¹¹⁰ Other major trading nations, such as the EU, Canada and Japan should join the U.S. in a move to bold trade liberalization. In fact, trade liberalization means to these countries the saving of public money as well as the repeal 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.¹¹¹ Therefore, the Obama administration continues to highlight "balance" of concessions in the Doha trade talks, which has freshly been reflected in the recent G20 communiqué issued in April 2009, in contrast to the November 2008 equivalent containing no such modifier.¹¹² While it is fortunate that the Obama administration has recently re-engaged in the Doha Round negotiation,¹¹³ many observers still argue that President Obama should be more proactive in exercising political capital and leadership which the exigency of the current financial crisis has called for.¹¹⁴ The U.S. must embrace multilateralism as a critical global public good over myopic parochial interests.¹¹⁵

If the U.S. provides constructive leadership and revitalizes the largely dormant Doha Round negotiation, the recently announced WTO Ministerial

¹⁰⁹ See KINDLEBERGER, *supra* note __, at 307 (describing such leadership as a "public good").

¹¹⁰ *Barack Obama's Inaugural Address*, N.Y. TIMES, Jan. 20, 2009.

¹¹¹ See Claude Barfield, *The Politics and Likely Trade Politics of the Obama Administration*, Speech before the Japanese Ministry of Economy, Trade and Industry, Feb. 26, 2009; Bruce Stokes, *Rousing Doha from Its Doze*, EUR. VOICE.COM, Feb. 12, 2009 (observing that the U.S. businesses view the summer 2008 package no longer acceptable); Doug Palmer, *Business Groups Tell Lamy Need More from Doha*, REUTERS, Mar. 24, 2009 (reporting the U.S. Congress' resistance to the idea of resuming the Doha talks from the last year's draft).

¹¹² G20 Communiqué, Apr. 2, 2009.

¹¹³ See e.g., Jonathan Lynn, *U.S. Trade Chief Woos Partners, Substance Awaited*, REUTERS, May 13, 2009 (reporting on the new USTR Ron Kirk's "conciliatory" engagement with representatives of WTO members in Geneva); Bradley S. Klapper, *New U.S. Trade Chief Finds New Takers on Doha Plan*, ASSOC. PRESS, May 13, 2009 (describing Ron Kirk's "unusual diplomatic step for a Cabinet-level official" in reaching out to a half of all WTO membership in person) [hereinafter Klapper, *New U.S. Trade Chief*].

¹¹⁴ See Claude Barfield, *What President Obama Can Learn from President Clinton*, THE AMERICAN, Jul. 15, 2009 (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); *Tangled Trade Talks*, N.Y. TIMES, Jul. 11, 2009 (criticizing that "Obama has been reluctant to spend any political capital at home on trade").

¹¹⁵ See Antoine Bouët & David Laborde Debucquet, *The Doha Round: A Safety Net in Stormy Weather*, VOX, May 14, 2009 (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, Jun. 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 policies).

Meeting in Geneva in December 2009¹¹⁶ can deliver a genuine breakthrough deal on the modalities, given the progress which the negotiations have made thus far.¹¹⁷ 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.¹¹⁸ This means that WTO members can finalize the Doha Round by the end of 2010.¹¹⁹

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.¹²⁰ Reflecting the increasing impatience from the major U.S. export industries, USTR Ron Kirk has recently floated the idea of skipping the modalities deal and instead directly conducting bilateral negotiations to generate market-opening concessions.¹²¹ This idea has gathered little support from other members, especially from developing countries which fear of being forced into a disadvantageous position in a bilateral setting with developed countries.¹²²

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 2008 was that Lamy was able to narrow down the zone of negotiation, 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 tariff (NAMA). 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.¹²³ Under these circumstances, to cram any of these issues into a forced march may risk yet another collapse or provide recalcitrant negotiators

¹¹⁶ *Factbox: Meetings Where Doha Round Could Be Discussed*, REUTERS, May 26, 2009.

¹¹⁷ See Roberta Rampton, 'Like Waiting for Godot,' *WTO Awaits Next U.S. Move*, REUTERS, May 7, 2009. The WTO head Pascal Lamy observes that an eighty percent of a Doha round deal has been secured thus far (as of June 2009). *Welfare Payment Better than Trade Barriers – WTO Chief*, REUTERS, Jun. 4, 2009.

¹¹⁸ See Shapi Shacinda, *WTO's Lamy Says Doha Deal in Sight*, REUTERS, Apr. 7, 2009 (quoting Pascal Lamy who observed that it would take six or eight months to complete the round once WTO members agree on the modalities).

¹¹⁹ *Doha Talks Get New Energy at Cairns Group Meeting*, 13 BRIDGES WKLY TRADE NEWS DIGEST, vol. 13, no. 21, Jun. 10, 2009 (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, Jul.7, 2009.

¹²⁰ *Id.* 2009 Trade Policy Agenda, *supra* note __.

¹²¹ *Kirk's Geneva Visit Signals US Engagement on Doha*, BRIDGES WKLY TRADE NEWS DIGEST, vol. 13, no. 17, May 13, 2009.

¹²² Klapper, *New U.S. Trade Chief*, *supra* note __ (reporting on the vehement opposition from developing countries to the Kirk's proposal to skip the modalities).

¹²³ 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 __, at 572. See also Mattoo & Subramanian, *supra* note __ (proposing that the WTO should mobilize its enforcement mechanism in addressing the exchange rate issues).

with subterfuges for deal-blocking.¹²⁴ 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.”¹²⁵

Conclusion

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, and parochialism is often powerful enough to stall and sink international trade deals.¹²⁶ Rightly, those impoverished foreign farmers would not cast a single vote to American politicians. After all, wouldn’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.”¹²⁷ Although the financial crisis has started in the U.S., it will soon wreak 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 allies with diseases, violence, conflicts and wars. From the insightful perspective of “comprehensive security” posited by Robert Scalapino,¹²⁸ tanks and soldiers may be a necessary but not sufficient condition for peace and security. Genuine peace and security derives from global citizens who have a decent amount of food to eat and decent kinds of works 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.

¹²⁴ See Sungjoon Cho, *Constitutional Adjudication in the World Trade Organization*, JEAN MONNET WORKING PAPER, Apr. 2008, at 40 (observing widely diverging views on zeroing among negotiators). See also Bradford, *supra* note __ (viewing that it will be hard for WTO members to achieve a single undertaking in the current environment); Robert Wolfe, *Use Transparency to Keep Trade Flowing*, in REBUILDING GLOBAL TRADE, *supra* note __, at 75 (proposing *not* to “call for new items on the WTO’s over-loaded agenda”). But cf. Aaditya Mattoo & Arvind Subramanian, *A Crisis Call for a ‘Crisis Round,’* WALL ST. J., Mar. 24, 2009 (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 __, at 572.

¹²⁵ Claude Barfield, *The Doha Endgame and the Future of the WTO*, VOX, Jan. 19, 2009. 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., Sep. 3, 2009 (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.”).

¹²⁶ See generally TIP O’NEILL, *ALL POLITICS IS LOCAL, AND OTHER RULES OF THE GAME* (1994).

¹²⁷ Constitution of the International Labor Organization, Annex (Declaration concerning the aims and purposes of the International Labor Organization), para. I (c).

¹²⁸ See Robert A. Scalapino, “Regionalism in the Pacific: Prospects and Problems for the Pacific Basin”, 26 THE ATL. COMMUNITY Q. 174 (1988).

The completion of the Doha Round alone can never solve all the development problems which 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.