



**THE WTO IN TRANSITION:
COPING WITH NEW AND EVOLVING CHALLENGES**

OR

**FREEING THE IMPORTANT PROJECT OF TRADE
LIBERALIZATION FROM THE CLUTCHES OF LAW AND
LAWYERS**

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-- *SPEAKING NOTES* --

Thanks to Peter for including me in this panel, and to all of you for hanging in there so late in the afternoon of a long day. This is an exciting Public Forum coming at a difficult time for the Organization and its Members. I regard my main job today as stirring the pot, a comfortable assignment for many reasons including the fact that I have landed here as the panel's only Yank and therefore its only candidate for the role of Ugly American. What I will offer is *an* American perspective, which certainly should not be confused with *the* American perspective. Nor do these personal views represent those of any clients -- although as it happens one of the things I am recommending would be beneficial to one of my consulting clients.

I have as requested prepared brief comments under two headings -- food and agriculture first and then some more "cosmic" issues second.

I. FOOD AND AGRICULTURE

Even to an eternal optimist and strong believer in the multilateral system, it is unsurprising that the WTO has been struggling more rather than less when it comes to food and agriculture issues. At the risk of adding to what is already a gigantic quantity of hand-wringing, frustration and sour diagnoses, here is my own short list of depressing observations:

- The disciplines agreed upon since 1947 that touch this sector are, even with regard to their own limited objectives, quite incomplete. This point should not be controversial. I know of no one who considers that the Uruguay Round -- great as it was -- finished the job.
- New negotiations around market access have never achieved much of a lift-off. Members cannot even make much headway on the basic blocking and tackling of tariff and quota liberalization, much less on tougher barriers like SPS measures that can easily deprive tariff/quota commitments of any real economic value.

- Negotiations on another “old” agenda item -- subsidy control – have remained mired in an outdated negotiating paradigm involving color-coded boxes, a modality that seems more capable of impeding than facilitating negotiated subsidy control.
- And the discussion of agriculture-specific trade remedies has produced the spectacle of some of the Organization’s most dedicated opponents of contingent remedies demanding SSM rules that bear a striking resemblance to strict liability for growing agriculture trade (irrespective of dumping, subsidization *and* injury!).

The conclusion seems inescapable that there is little appetite for further rules- and commitment-based liberalization of food and agriculture trade, and no solid basis for a new Agriculture deal.

Then there are new challenges aggravating the already-considerable difficulty facing the experts who periodically gather around these issues in Geneva. A partial list includes:

- shocks and crises in nature, involving both climate and disease;
- heightened price volatility across a range of commodities, sharpened by food-to-fuel switches and speculation in futures markets; and
- an eruption of food security concerns followed, as night follows day, by a wave of experimentation with export restrictions that land in a well-known “soft spot” in the WTO rulebook.

These factors matter if you believe, as I do, that while a negotiation may be launched in an environment dominated by nervousness (as at Doha), its closure requires an atmosphere of greater confidence and optimism. I once heard Chris Parlin say, and he persuaded me, that there was a prevailing world-price-per-barrel of crude oil above which Doha could never conclude successfully irrespective of other factors.

It could be considered bad form to describe things in such bleak terms without trying to propose solutions. I believe, as I shall explain momentarily, that the Doha negotiation as currently framed is unlikely to continue. Nonetheless, insofar as the negotiation and its agriculture thread do carry on, my suggestions (which I would be glad to unpack during Q&A) include:

- abandon the colored boxes -- or at least make scheduled/numerical commitments on subsidies a secondary source of discipline complementing what results from horizontal application of the ASCM rules;

- tackle market access in an integrated fashion, so that officials at the same table and in the same conversation are dealing with everything that will determine the extent and value of new trade flows in this sector; and
- develop new disciplines (or at least a standstill) on export restrictions, as an agricultural precursor to better across-the-board WTO rules on this subject.

II. THE BIGGER PICTURE

Friends at home assume I traveled here this week to add my small contribution to the output of the cottage industry deliberating “whither Doha” and, in light of the answers there, “whither the WTO?”

But I’m hoping to do something more – maybe you’ll think it’s less – than adding a few rocks to that large pile. There is a staleness, and a sameness, to the “Whither Doha” commentary, in at least two respects. First, it largely ignores the question of what could and should be done in tandem with a shut-down of the negotiation. And second, it tends to ignore that exchanging commitments here in Geneva is not an end in itself but merely a tactic that is potentially useful in the service of something far more important. This is, of course, liberalizing changes in the actual, applied trade policies of WTO Members.

So I’d like to try a different formula – with a very brief recounting of why the Doha negotiation is in a ditch, and then an argument that its objectives can best be taken forward through autonomous reform in capitals.

Doha is in a ditch because it has too few attractive features at both the governmental and private sector levels, and because it did not conclude in time – it failed to stay ahead of the financial and geopolitical events that have been changing the world since Doha and indeed since Marrakesh.

- Within the business community, far too many companies and industry associations whose enthusiastic backing would be indispensable are more worried about what they might lose than excited about what they might gain. One hears more about “insufficient ambition,” but the actual retrenchments that have been gradually baked into the pie of this Round are corrosive and in my view just as damaging. The Round also leaves untouched many problems that have become important to businesses over the last ten change-intensive years – so that some who do not see the Round as alarming see it as irrelevant. The net result is a situation of some, but dramatically insufficient, business community demand for the deal that is visible.
- Meanwhile, at the government level, there is of course a new geometry of country groupings and perceived interests – but what I detect at the core is that inability to agree about the past is *still* impeding an agreement about the future. Alumni of failed marriages know this dynamic all too well. Each generation of incumbent officials that has tried to move the negotiation forward – I count

three main ones – has faced a problem as much of irreconcilable narratives as of practical, commercial give-and-take. Was the Uruguay Round a contract of adhesion forced upon unwilling or defrauded developing countries, and therefore establishing not a “balance of concessions” but an *imbalanced* situation that has to be corrected through a new accord which is itself imbalanced in the other direction? Or was it a mutually beneficial agreement solemnly entered into and duly ratified in more than a hundred capitals, perhaps incomplete but certainly a long way from iniquitous?

It's quite a problem – all the more frustrating because, when viewed objectively, the economics aren't all that bad for the North or the South. Nonetheless, one can find seeds of success among the detritus of failure. This is because even without adding a syllable to the corpus of the covered agreements, the Round has served a useful function by clarifying what are the best policy changes that could be made in those capitals whose decisions most affect world trade. *What if we skipped the promises and moved directly to the policy changes?* Here's how that might start from a U.S. perspective.

Americans know what we ought to do to our preference programs: allow a much broader swath of LDC products to benefit. The EU has set a good example here that we know we ought to follow. Maybe this has to be done in revenue-neutral fashion, by graduating some products of the most successful beneficiary countries to make room for other products – but we can work out those details. We thought we would have a Doha result, and a DFQF commitment, to provide impetus and parameters for this exercise. But the commitment is a tactic. Maybe this tactic was useful in the past, and maybe it could be again. But it does not seem to be available right now. So – why not see if we can do without it? The shortest distance between two points is a straight line. Let us announce right now – meaning in December, to help soften the blow of terminating what was to be a development round – that we will immediately go to work on expanding the LDC product coverage of our preference schemes.

Likewise, we know what we ought to do to our farm subsidies. We may have expected a Doha result to help with the domestic politics there, and we may have indulged the fiction that scaling back those subsidies was a concession that we ought to be paid for – but we know that this change, like preference reform, is affirmatively in our interest even if it buys no concessions from others. What if we scaled back *and* added some flexibility so that situations where the remaining subsidies begin to cause or threaten serious prejudice to other WTO Members could be cured through timely administrative action, without waiting for the next 5-year Farm Bill?

These are two examples. There are others – perhaps even including GATS Mode 4-type business immigration. And other advanced WTO Members have similar opportunities available to them – improvements they can make even without first promising to do so. Maybe we can watch and motivate each other, moving in parallel in different capitals. Maybe we can discover that exchanging commitments in Geneva is a crutch we can do without. We have talented officials,

and even a few leaders and statesmen here and there. Let's see what they can do at home.

Would this leave a shrunken and irrelevant Organization in this fancy refurbished Centre William Rappard building? I think not. The dispute work will remain essential, and the committee work valuable even if under-appreciated. And the Organization will find other worthwhile hills to climb. Many innovations during Director-General Lamy's tenure – perhaps especially the amped-up peer monitoring launched during the recent economic crisis period – show how the WTO can remain relevant and do lots of good whether or not it is hosting productive MTN-type negotiations. And of course there are important negotiations, on accessions and procurement and other topics, that can be carried to fruition, as well as the possibility of plurilaterals to be added into Annex 4 once the decks have been cleared.

But it is time for capitals to emerge as the main locus of activity on the topics that have dominated the Doha negotiation. Many will count this as a failure, but it needn't be one in any lasting sense. Better to think of it as a pivot, and a recognition that what really counts is not the deal but the behavior. And also – perhaps some of you can warm to it on these terms -- as freeing the important project of trade liberalization from the clutches of law and lawyers. If the demand for law proves insatiable, we can try after a few years to get a standstill commitment covering the liberalizing changes we have managed to put in place autonomously.

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I thank you for your attention and look forward to your questions.