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SLEEPLESS IN SEATTLE: THE WTO MINISTERIAL OF NOVEMBER 1999*

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ABSTRACT

The long anticipated Ministerial meeting of the World Trade Organization (WTO) was held in Seattle from November 30 to December 3, 1999. There were two major issues, first, whether to start a new comprehensive round of negotiations such as the Uruguay Round or confine negotiations to the so-called "built in agenda" of agriculture and services mandated at the last Ministerial. Secondly, what should the negotiations encompass, more specifically what should be included in the agenda of the meeting. The meeting was unable to resolve both issues, and ended in stalemate. The deliberations were suspended without agreement on a new round of negotiations and without agreement on a ministerial declaration. Indeed, the meeting issued no formal documentation and did not even decide if and when to hold the next ministerial.

No one won, but perhaps more importantly, no one lost, in the sense of making any irreversible commitments or concessions. The large, well-organized demonstrations were not a causal factor although the inchoate coalition was able to bring to a global media audience a wide range of strongly held views. Nor was the lack of resolution due to the perverse conduct of negotiators reducing the conference to "a theatre of the absurd."¹ It is essential that all concerned should understand what happened in Seattle and why, and learn the lessons of that

* Address to the Institute for International Trade Law and the Society for International Development, Washington, D.C. The author was a member of the delegation of Jamaica to the Seattle Ministerial Meeting.

¹ Larry Elliot, "Unless the World Trade Organization cleans up its act there will be more issues for the protesters to trade on," *Guardian Weekly*, December 9-15, 1999.

experience. Assessing the importance of this type of analytic exercise, one expert ventured: "The Battle of Seattle may acquire the same instructive value for future diplomats as Pearl Harbour has for military officers."²

I. SEATTLE

There are five factors, which explain why the Seattle Ministerial meeting ended without consensus on an agenda for a new Round of multilateral trade negotiations.

1. The Political Environment

First, in many respects the Seattle meeting was politically premature, as a broad consensus had not emanated from the preparatory process in Geneva. There was more than a little "political egotism", both national and personal, which motivated the suggestion and adoption of the idea of a Millennium Round. There was little political support and insufficient careful thought on which to build such a complex undertaking. In preceding years, before the launch of a new Round the developed countries, and the larger trading countries would have arrived at an agreement on a core set of issues and then tried to persuade the rest of the world to adopt their agenda. The Seattle meeting began without consensus or agreement or even coordination between the European Union, the US and Japan, a fact which was clearly reflected in the deliberations.

Secondly, the state of US domestic politics played a large part in the lack of momentum. The focus on domestic political matters detracted from the ability of the Clinton Administration to lead the WTO process in a decisive way and the preparatory process was deprived of a concerted US effort because of the preoccupation with concluding a trade pact with China, after 13 years of negotiations. The President's

² Gary Clyde Hufbauer, *World Trade After Seattle: Implications for the United States*, International Economics Policy Briefs, No. 99-10 (Washington, D.C.: Institute for International Economics, December, 1999) page 1.

speech in Seattle did not help an already unsettled gathering as it appeared to condone the demonstrations and his remarks on sanctions as a chastisement for not adhering to labour standards offended many delegations. While the President's comments were widely interpreted as aimed at a domestic audience in an election year³ when the financial and manpower contribution of organized labour would be crucial, it aroused "suspicions of Western intentions"⁴ among the developing countries. In Seattle there was pervasive awareness among the negotiating parties that in 2001, there could be a radical shift in the US position on many issues, which were proposed for possible inclusion in the negotiations, for example, the differences between the Democrats and the Republicans on the issues of labour and environment and how they should be dealt with in international trade agreements. There was also concern that the US did not have fast track at this time and it seemed unlikely that this legislative issue would be resolved before the next President assumes office. Ironically, the unprecedented economic boom being experienced in the US economy has not assuaged the escalating demands for protectionism. Paradoxically, it weakened the traditional vociferous lobbying of business groups.⁵

Thirdly, part of the problem as well, is that the United States appears to have other priorities at the moment. The deal with China consumed an inordinate amount of time of the lead negotiators of the US; time which if it had been channeled into the WTO process, may have made a difference. The signing of a free trade agreement with South Africa in October⁶ and an FTA outline with Mexico less than a week before the Seattle meeting was an ambiguous signal by the EU of

³ President Clinton has denied that his statement was intended to boost the candidacy of Vice President Al Gore. See Paul Magnusson and Aaron Bernstein, "Whose World is it, anyway?", *Business Week*, December 20, 1999, page 34.

⁴ "The Seattle Fiasco", editorial, *Journal of Commerce*, December 7, 1999.

⁵ Kevin Nealer, "Did Seattle Matter?," Issue Brief No. 00-01. Forum for International Policy, January 7, 2000, page 2.

⁶ Victor Mallett, "South Africa and EU sign free trade pact" *Financial Times*, October 12, 2000.

its commitment to multilateralism.⁷ In addition, the preparation of the European Union, a key player, was severely hampered by “a six month political vacuum” created by the resignation en masse of the European Commission.⁸ At the same time, many developing countries, which have vigorously implemented substantial trade liberalization, are cautious about further liberalization because of public discontent. The Inter-American Dialogue warns that: “Skepticism is growing about whether democratic rule and market economic policies will ever be able to satisfy the demands of Latin America’s citizens. Democracy and markets are still on trial for most Latin Americans.”⁹

The economic output of Asian economies in 1998 stagnated or declined for the first time in 25 years.¹⁰ With a few exceptions notably Singapore and Asia weary from two years of recession in the aftermath of an unprecedented financial crisis had “little appetite” for negotiations.¹¹ While there was some interest in reducing tariffs on industrial goods, there was reluctance to open the financial sector to foreign firms and unwillingness to expose certain manufacturing industries to foreign competition. Malaysia exhibited a growing suspicion of liberalization and paranoia about multinational corporations and global currency traders. The poorer countries lost faith over the entrenched protectionism constraining textiles and apparel exports. Asian countries were in no mood to cooperate with the West as antagonism persists since the US declined to support Thailand’s Supachai Panitchpakdi for Director General of the WTO.¹²

7 Henry Tricks, “Mexico and Brussels sign free trade agreement”, *Financial Times*, November 25, 1999.

8 Guy de Jonquieres, “The circus comes to town,” *Financial Times*, November 25, 1999.

9 The Americas at the Millennium: A Time of Testing (Washington, D.C.: Intern-American Dialogue, 1999) page 1. See also John Lancaster, “US Sees Democracy Wane in Latin America,” *Washington Post*, January 30, 2000.

10 World Trade Organization Annual Report 1999 (Geneva: World Trade Organization, 1999) page 19.

11 Peter Montagon “Little appetite for negotiations” *Financial Times*, November 29, 1999.

12 Shawn W. Crispin, “New World Disorder,” *Far Eastern Economic Review*, February 17, 2000, page 17.

One clear omen was the failure of last minute attempt by the White House to get some 30 Heads of Governments to join President Clinton in Seattle. Their non-attendance was an acknowledgment that they had come to the conclusion that the Seattle meeting was likely to be a fiasco. This sense of foreboding even pervaded senior officials in Washington, D.C. who realized that the chances of failure were much higher than anyone was willing to admit publicly.

Fourthly, the ministerial meeting took place in the context of growing "globaphobia"¹³ i.e. apprehension about trade liberalization and globalization. There is a broad transnational community, which includes small business in developed countries¹⁴, governments in developing countries, environmentalists and trade unions that is apprehensive about globalization and further trade liberalization at the multilateral level. Most governments were worried that further trade liberalization will seriously erode the sovereignty of the nation state and the ability to pursue autonomous national economic policies. There is also widespread apprehension among developing countries, including least developed countries about the pace of liberalization because they have not fully implemented the commitments of the WTO agreements. Their reservations also stemmed from the conviction that the Uruguay Round did not yield the tangible benefits which developing countries had anticipated. Consequently, developing countries felt that it was premature to begin negotiations on complex issues with far-reaching implications.

Globalization and the associated multilateral liberalization of trade and investment cause conflict within and between countries over domestic norms, social institutions and social insurance to ameliorate adjustment costs.¹⁵ This issue had been resolved in the post World

¹³ Gary Burtless, Robert Z. Lawrence, Robert E. Litan and Robert J. Shapiro, *Globaphobia. Confronting Fears about Open Trade* (Washington, D.C.: The Brookings Institution, 1998).

¹⁴ Leif Johansson, president of Volvo made the point graphically at Davos when he stated: "Small may be beautiful, but there are no examples of small companies doing well." See Charles P. Wallace, "Davos listens to the world," *Time*, February 14, 2000 page 42.

¹⁵ Dani Rodrick, *Has Globalization Gone Too Far?* (Washington, D.C., Institute of International Economics, 1997).

War II period by an unwritten social contract operationalized by welfare state, in which adjustment was embedded in a wider set of policies and institutions cushioned internal social and economic adjustments. The excesses and fluctuation of the market system were minimized and businesses in distress and displaced and unemployed workers were assisted by the State. As the transition to a global marketplace proceeds, trade liberalization is taking place in the absence of such a complex of institutions at the global level, which would serve the same purposes, that state undertakes at the national level. In addition, there are no multilateral institutions, which have the political responsibility to design and implement such institutions and policies.

The political environment was not conducive for a new round of multilateral trade negotiation. This was known before the Seattle meeting, but it was hoped that it would have been possible to galvanize member states to abandon some of their fixed positions, thus permitting a consensus to emerge. A week before the Ministerial, Charlene Barshefsky, US Trade Representative, was reported as "confident a successful outcome would still be reached."¹⁶ However, the pessimistic prognostication of Pascal Lamy, the EU Trade Commissioner proved correct.¹⁷ Although some progress was made in some of the less contentious areas, at the end of the frustrating meetings, the differences were considerable.

2. Truncated Preparatory Process

The preparatory process for the ministerial meeting suffered from the fact that the Director General (DG) of the WTO assumed office a couple months before this major meeting, because of the long and contentious debate over the election. This prolonged electoral process reflected some of the divisions within the membership, many of which persist to the present. The new DG, Mr. Moore, did not have suffi-

¹⁶ Frances Williams and Mark Suzman, "Trade Ambassadors abandon attempt to agree talks agenda," *Financial Times*, November 24, 1999.

¹⁷ Neil Buckley, "Seattle may fail, warns Lamy," *Financial Times*, November 24, 1999.

cient time to assert leadership of the secretariat and direct the preparatory work. This reduced the progress which could have been expected in normal circumstances. In addition, the four Deputy Director Generals who play a significant role in the day-to-day work of the WTO were not in place until shortly before the convening of the Ministerial.

The issues, which were included in the agenda for the proposed new Round and which were discussed in Seattle, were more difficult than in previous Rounds. These issues either required further liberalization in many areas, where the easier phases of liberalization have already been completed, or were complex and new to, and not fully understood by many countries. The failure to achieve consensus on the agenda resulted from the fact that the preparatory process referred too many unresolved issues to the Seattle Ministerial. Meetings at the Ministerial level are most likely to succeed when there are only a few major issues to be settled.

The preparatory process was severely hampered by the acrimonious relationship between the EU and US. In particular, dispute over agricultural trade undermined the possibility of them achieving accommodation on other issues. Contentious and at times hostile behaviour between the two "heavyweights" has a long history aggravated in recent years by bitter disputes, e.g. bananas, hormones, subsidies. Both parties have "dirty hands" on agricultural subsidies and the dialogue has degenerated into an exchange of accusations. Canada, a vigorous proponent of trade liberalization, entered a codicil on protecting its "social interests" in the areas of culture, health, education and investment. It proffered the notion of a new international instrument which would permit a country to maintain domestic policies to preserve and promote its national culture, even if this could be interpreted as trade distorting.¹⁸ Japan's insistence on multi-functionality of agriculture may have resonated with EU countries, but remained a

¹⁸ Edward Alden, "Canada lists priorities for WTO Seattle talks," *Financial Times*, November 17, 1999.

proposal, which was incomprehensible to the Cairns group in their campaign to banish subsidies and open up markets.¹⁹

The preparatory process was already weakened by the absence of representation by many least developed countries and inadequate presence, and participation of developing countries, which constitute the vast majority of the WTO membership. "Industrial countries deployed an average of 6.8 officials to follow activities in Geneva. Developing countries sent an average of 3.5" officials.²⁰ Nineteen of the forty-two African countries have no permanent representative at the WTO in Geneva.²¹

3. Minimalist versus Millennium Round

There were different ideas on what the next Round of the WTO negotiations should encompass. The WTO was committed to commence negotiations in 2000 on the "built-in agenda" which consists of agriculture and services. It was mandated at the end of the Uruguay Round that these negotiations would start in early 2000. The discussions on services achieved some progress before and during the Seattle Ministerial, and this was not one of the issues on which the meeting foundered. However, in agriculture the issues remain very contentious, and the positions taken were in many instances diametrically opposed. The parties were far apart and there was little or no willingness to compromise. Additional issues were proposed for inclusion, i.e. competition policy, government procurement, investment, trade related labour issues, the environment and electronic commerce. There were, however, serious differences on which of these topics should be included. The European Union advocated investment and competition policy as priorities, but the United States was insistent on electronic commerce and

19 Frances Williams and Guy de Jonquieres, "EU's tactics anger CAIRNS group, and US", *Financial Times*, November 12, 1999.

20 *Entering the 21st Century*, World Development Report 1999/2000 (Washington, D.C.: World Bank, 1999) page 55 and 57.

21 Patrick F. J. Macory, *Developing Countries and the WTO*, (Washington, D.C., International Law Institute, December 1, 1999) pages 5-6.

as Ambassador Barshefsky said in testifying to the Senate Finance Committee: "more attention to the interaction of trade and core labour standards is warranted."²² There was even profound disagreement on what to include in the mandated service negotiations. The developed countries pushed for air transport, financial and professional services, while developing countries pressed for maritime transport, entertainment and movement of natural persons.

There were two schools of thought on what the agenda should encompass. The "*minimalist school*" suggested that the built-in agenda was adequate to constitute the basis for further multilateral trade negotiations. The objectives in Article XIX of the GATT and Article 20 of the Agreement on Agriculture²³ are couched in such vague language that the ambit of negotiations could be very wide. It was strongly felt by the proponents of this perspective that there was no need for a new round of negotiations and if there was such a round, it was ill advised to broaden the agenda to include divisive issues such as labour, environment and investment. Many developing countries felt that any future negotiations should focus on the issue of development, as the UNCTAD Trade and Development Report of 1999 states: "*the predicted gains to developing countries from the Uruguay Round have proved to be exaggerated.*"²⁴ The advocates of a "*Millennium Round*" argued that a wider agenda would provide more trade-offs thereby allowing countries to compromise in agriculture and services. The notion of a millennium round was instigated by the EU at the behest of Trade Commissioner, Sir Leon Britten, with a view to ensuring adequate compensation for concessions in agriculture.²⁵ However, the

22 Mark Suzman, "WTO must be sensitive to labour issues," Financial Times, September 30, 1999.

23 The Results of the Uruguay Round of Multilateral Trade Negotiations, The Legal Tests (Geneva: World Trade Organization, June, 1994) pages 39, 343-344.

24 Trade and Development Report, 1999 (Geneva: United Nations Conference on trade and Development, 1999) page 1.

25 The WTO Multilateral Trade Agenda and the South (Geneva: south Centre, December, 1998) page 97.

disadvantages of a widened agenda were the increased number of issues, permutations and possibilities. In reality, rather than making it easier to arrive at an agenda, more trade-offs actually made the process more complex. For example, for every new issue proposed there were some group of countries that were opposed to its inclusion or did not think it should be dealt with in the way it was proposed. The broad approach to the draft agenda did not necessarily help to get consensus on an agenda. The experience of Seattle reinforced the view expressed by India's Minister of Commerce and Industry: "What we need is a manageable round, not a millennium round."²⁶

4. Decision-making Process

The decision-making process in the WTO has major deficiencies. It is a process developed in the GATT where membership was much smaller and has been dominated by the developed and industrialized countries. The developing countries on a whole went along because they were not as assertive and sophisticated as they are now. The Green Room process controlled by the Chair, the Developed Countries and the Director General is a process in which a few other countries are chosen to constitute groups of about 20 countries to discuss critical issues. The problem is that the full membership is not aware of what criteria are used for admission to the Green Room and therefore feel disenfranchised. Even if some developing countries are present in the Green Rooms, they do not have a clear mandate to represent those member states, which were omitted. The result is that spokespersons from developing countries were confined to articulating national positions or very broad principles subscribed to by the majority of developing countries.

The situation has changed and therefore, the old management style and decision-making process, which was not transparent and was essentially undemocratic, will no longer work. Sir Shridath Ramphal,

²⁶ David Gardner, "Indian minister takes on the mantle of trade round saviour," Financial Times, February 2, 2000.

Chief Negotiator of the Caribbean Regional Negotiating Machinery (CRNM) issued a communiqué which declared that *“as long as due respect to the procedures and conditions of transparency, openness and participation that allow for adequately balanced results in respect of the interests of all members do not exist, we will not join the consensus.”*²⁷ The African countries issued a similarly condemnatory statement highlighting the lack of transparency as the basis for their unwillingness to join any consensus.

Obviously, 135 countries cannot constitute a manageable drafting committee and therefore there has to be some smaller group charged with resolving key issues. Such a group must however, satisfy the principles of transparency and representation. Ambassador Barshefsky, the chair of the meeting and Director General Moore expressed empathy with a more transparent process in Seattle. Hence, a hybrid system of formal working groups and informal Green rooms emerged in Seattle. This new arrangement was one of managed democracy, as was evident when the chair of implementation-working group was switched from Jamaica (spokesperson for trade on behalf of the 70 developing countries of the African, Caribbean and Pacific group in their negotiations with EU) to Canada, overnight and without explanation.

The process of dialogue was also complicated by the patent lack of diplomacy, as there was an imperial management style, which was an ever-present threat to consensus. Barshefsky stated that if the process did not reach a consensus text, *“I fully reserve the right to also use a more exclusive process to achieve a final outcome. There is no question about either my right as the chair to do it or my intention as the chair to do it.”*²⁸ The inadequacy of diplomacy deprived the forum of the possibility of achieving the synergism necessary for a consensus.

²⁷ Caribbean Community Communiqué. WTO Ministerial Meeting, Seattle, December 2, 1999.

²⁸ Transcript, WTO Press Briefing, US Trade Representative Charlene Barshefsky (et al), World Trade Organization Conference, Seattle, Washington, December 2, 1999, page 2.

5. Dissatisfied Majority

There is a dissatisfied majority of countries because the 110 non-OECD member states, mainly developing countries, felt that their issues were not being fully recognised. These countries called for development to be a dimension of all the issues being discussed, and that it should not be a stand-alone issue. The majority of members in the organization felt that this issue should be reviewed or they would be reluctant to be part of any consensus. Developed countries advised developing countries that there would not be a re-opening of the Uruguay Round text, unless a plethora of new issues could be included in the discussion. The developed countries also contended that the development issue had already been addressed and there was now an urgent need to move on to other matters. In reality many developing countries have not been able to meet the implementation deadlines despite their best endeavors. This prompted the African, Caribbean and Pacific Group of States to propose the extension of transitional periods of the TRIPS, TRIMS and Custom Valuation Agreements for "*periods that take into account the availability of resources required to effectively implement these Agreements.*"²⁹ The costs of implementing these three agreements have been very substantial³⁰ It was unfortunate that such modest demands by developing countries were allowed to be a source of resentment. The US in particular was implacable in their insistence on compliance with commitments on time and in full.³¹

This controversy was not unexpected, as developing countries had consistently expressed their reservations. Skepticism had been expressed at the G-15 Summit about the efforts of developed countries

29 Declaration on the Third WTO Ministerial Conference. Adopted by ACP Ministers of Trade, Brussels, October 22, 1999, ACP/61/051/99, page 3.

30 J. Michael Finger and Philip Schuler, Implementation of Uruguay Round Commitment: The Development Challenge, The WTO/World Bank Conference on Developing Countries' interests in a Millennium Round, Geneva, September, 1999, pages 20-21.

31 The US position does not seem to countenance flexibility for developing countries. See American Goals in the Trading System, Testimony of Ambassador Susan Esserman, Deputy US Trade Representative, House Ways and Means Subcommittee on Trade, Washington, D.C., August 5, 1999, pages 3-4.

to implement obligations benefiting developing countries and the consequent inability of these countries to realize the gains which can result from improved market access in developed countries, particularly in agriculture and textiles and apparel. The caucus also condemned the failure to implement the provisions for special and differential treatment for developing countries and least developed countries³² Some developing countries had taken more strident positions. Brazil and India have questioned whether further tariff liberalization is in the interest of developing countries unless the problems of non-tariff barriers e.g. anti-dumping and countervailing duties imposed by developed countries are addressed, particularly in agricultural trade.³³

Developing countries have repeatedly stated that it has been extremely difficult to translate the special and differential provisions contained in the WTO Uruguay Round agreements into meaningful results such as increased market access. The effectiveness of special and differential treatment is also limited by offsetting countervailing action by developed countries and utilization of other or new forms of protectionism. The provisions need to be simplified and clarified in order to turn them into tangible benefits. Special and differential treatment came under severe attack from more developed countries, reflecting a shift in the philosophical approach to trade and development, the emergence of the newly industrialized economies who can utilize these special privileges in a way that threatens developed country markets and the perception that developing countries are not doing enough to take advantage of the provisions.

If the majority of members in an organization feel strongly about an issue, which is not included on the agenda, it is unlikely that they will agree to be part of the consensus. Such a situation occurred because developing countries, which constitute the majority of the membership of the WTO, felt that issues of vital concern to them were ignored. Developed countries had consistently rebuffed developing

32 "WTO Council Chair Presents Draft on Ministerial Declaration." *Inside US Trade*, Vol. 17, No. 36 (September 10, 1999) pages 1, 24-26.

33 *Ibid.*

countries stating repeatedly that there was no need to reopen the Uruguay Round text, as the question of development had already been adequately dealt with and there is now a compelling need to move on to other topics. In addition, reopening would have to include “new” issues not in the existing agreement. Since it is neither magnanimous nor impractical to take the concerns of developing countries into account, developed countries should have adopted a more conciliatory stance; a more reasonable approach by developed countries would in all likelihood have elicited a cooperative disposition by the majority of member states. For example, the least developed countries’ call for “*bound and duty-free, quota-free market access for all products originating in LDCs*,”³⁴ could have been welcomed since it was not a major concession. Exports from the 48 LDCs comprise only 0.25 per cent of total world trade.³⁵

II. POST SEATTLE

The Seattle Ministerial discussed intensely, but made limited progress on the 32-page draft declaration and resolved few of the nearly 400-bracketed items. The status of this document remains unclear because there is disagreement among member states on whether discussions would resume where they ended or whether to start afresh, as many countries regard the draft text as no longer valid.³⁶ The debacle in Seattle was a setback to the prospects for and process of a new round of negotiations in the WTO, but it was not fatal. The following factors are among the most influential in determining what transpires in the future.

³⁴ Declaration Adopted by the Ministers of Trade of Least Developed Countries, Seattle, November 29, 1999, page 2.

³⁵ Mike Moore, ‘A Balanced Agenda for Seattle’ The World Trade Brief WTO Ministerial, Conference, Seattle, November 30 - December 3, 1999. (London: Agenda Publishing in Association with the WTO, November, 1999) page 7.

³⁶ World Trade Organization. Seattle Ministerial: Outcome and Lessons Learned, Statement of Susan S. Westin, before the Subcommittee on Trade, Committee on Ways and Means, House of Representative, February 8, 2000 (Washington, D.C.: United States General Accounting Office, 2000), page 4.

1. Progress on the Built-in Agenda

One possibility for restarting a new Round is to begin with the existing mandate i.e. the "built in" agenda and expand the ambit by adding new initiatives as occurred during the Tokyo and Uruguay Round and/or adding the TRIPS Agreement which is soon to be reviewed.³⁷ The built-in agenda could also be expanded by adding less contentious issues, which might include increased transparency in the WTO, more technical assistance for developing countries, duty-free market access for the least developed countries and improvements to the dispute settlement process. The built-in agenda is a positive and complex agenda, and its successful conclusion would be an important achievement. If substantial progress can be made in liberalizing trade in agriculture and services it would make a significant contribution to global economy since these two sectors account for about 30 per cent of world trade. Liberalization of these sectors could produce a significant stimulus to the expansion of global trade in which all countries can be beneficiaries. Negotiations in agriculture and services will be complicated because of entrenched national interests and new issues emerging from the evolution of global service economy and will take considerable time and therefore negotiations should start immediately.

The passage of time may also have a salutary effect on some of the principal protagonists. The EU's positions on several issues may be influenced by the expansion of its members to include 13 new countries and the expiration of the "peace clause" in 2002. The predicted recovery of the world economy may make a range of countries more disposed to liberalization.

2. Post Election US-Trade Policy

Significant progress in the WTO negotiations is unlikely until after the US Presidential elections, when a new administration will be in office

³⁷ Sylvia Saborio, "Reflections on the Millennium Round," Seminar on the WTO Agenda from a Development Perspective, IMF/World Bank Annual Meetings, Washington, D.C., September 27, 1999, page 3.

and enunciates its trade policy. If the new administration is granted fast track authority by Congress, this will provide the assurance that the US negotiators have a clear mandate and negotiations can proceed in earnest. A new administration with fast track authority can give the kind of decisive leadership, which it has in the past and which as the largest trading country and the most powerful country in the world, it has to give if this process is to come to fruition. How long it will take a new administration to persuade Congress to grant fast-track authority is impossible to predict. The only certainty is that it will be a protracted debate³⁸ which will require political acumen and adroitness by the White House and Congressional leaders. Early in 2000 the Clinton Administration must present to Congress a report on US gains and losses from its membership in the WTO. Within the next 90 days any Congressman or Senator can request a vote on whether the US should remain a member of the WTO. Such a request seems inevitable and the subsequent debate will provide an indication of the considerations that will have an impact on future US trade policy.

How the labour rights issue is treated, will be an important determinant on whether there will be consensus on an expanded agenda for negotiation. US insistence on including the topic in the WTO deliberations rather than in the International Labour Organization could derail the negotiations, as the opposition of developing countries is deeply entrenched. A former chief economic advisor to President Clinton believes that the irony of such a predicament is that *"the biggest losers would be the very workers."*³⁹ Only one of four possible outcomes of the US elections, namely, Republican control of the White House and Congress, could provide the possibility to expunge labour rights from US trade policy.

38 Jeff J. Schott, "Whither Fast Track," in Jeff J. Schott (ed.), *Restarting Fast Track* (Washington, D.C.: Institute of International Economics, April, 1998) page 29-40 and I. M. Destler, *Reviewing Fast Track Legislation* (Washington, D.C.: International Economics, September, 1997).

39 Laura D'Andrea Tyson, "What Really Sabotaged the Seattle Trade Talks," *Business Week*, February 7, 2000, page 10.

3. Reforming the Institutional Process

There has to be a review and reorganization of the decision-making process in the WTO. In particular, there needs to be some decision-making mechanism which stands between the chairing country, the Director General and the membership. The existing General Council on which all member states are represented is too large and cumbersome to be effective. Decisions are usually made by consensus but if this is not possible, decisions can be arrived at by voting. This means that one member state can block the consensus. A smaller representative body more conducive to efficacious decision-making is needed. A committee similar to the Economic Security Council proposed by the Commission on Global Governance⁴⁰ should be considered. It should comprise 20-25 member states and its composition must include the 10 largest countries by share of global trade in goods and services. The remaining membership of 10 to 15 countries should be elected by a democratic process. Adequate and balanced representation could be ensured by having members elected on the basis of region⁴¹ or categories of countries or some combination of both criteria. Decisions would be made by consensus, as this body would not confer a veto power to any country. A US proposal for allocating votes based on members share of world trade⁴² is a non-starter, as it would ensure the dominance of the US and the EU. A transparent, decision-making institutional structure must be created to avoid the problems, which occurred in Seattle. This is a matter, which the Director General needs to turn his attention to immediately.

In the Free Trade Area of the Americas (FTAA), this problem has been resolved by the operation at the Ministerial and Trade Nego-

40 Our Global Neighborhood. The Report of the Commission on Global Governance (Oxford: Oxford University Press, 1995) pages 155-159.

41 Schott and Watal suggest global geographic representation, with at least two countries from all "major regions." See Jeffrey J. Schott and Jayashree Watal, Decision making in the WTO, International Economics Policy Briefs, NO 00-2 (Washington, D.C., Institute of International Economics, March, 2000) page 3.

42 Guy de Jonquieres and Frances Williams, "All at sea since Seattle storm," Financial Times, January 20, 2000.

tiators Committee of a small informal group including the largest trading countries namely: the United States, Canada, Mexico and Chile and one country from each regional group (Andean Group, Central America, CARICOM and Mercusor. In the GATT and subsequently in the WTO process there is no such intermediary managing committee. Those countries that are not invited or conscripted to the Green Rooms do not feel they have representation or a voice in the deliberations. The result is that decisions lack the legitimacy of a participatory democratic process and cannot command compliance. The old undemocratic process is no longer acceptable, indeed, the majority of countries, i.e. the developing countries, are less willing to acquiesce to the traditional hegemony of the developed countries. This deficiency in the WTO system needs to be corrected at the earliest opportunity.

4. Incorporating Civil Society

There is widespread anxiety and even disaffection about globalization and further trade liberalization as an aspect of this process. These concerns are exhibited by governments, business organizations, trade unions and non-governmental organizations (NGOs) in developed and developing countries. Concerns about the impact of trade liberalization have led to interventions by new actors and may portend new alliances. For example, Consumers' International (CI), a federation of 247 consumer organizations in 111 countries opposed to further global trade liberalization. It advocates ensuring the benefits from Uruguay Round are fully attained and finding ways to achieve adequate protection for consumers. The CI is convinced that the benefits of the Uruguay Round have not been shared equitably; in fact, the WTO accords have been implemented chiefly to the advantage of multinational corporations and the more powerful countries.⁴³ This perspective is not unlike some views emanating from developing countries. Interestingly, there is a possible coincidence of interests between

⁴³ Frances Williams, "Consumer groups oppose further liberalization", *Financial Times*, September 15, 1999, page 9.

groups in developed and developing countries and the global NGO community on some issues e.g. curtailing the dominance of developed countries⁴⁴ which could be portents of a nascent strategic alliance.

A new development in multilateral trade talks is the increased influence of non-governmental organizations (NGOs). The NGO community has begun to exert influence beyond the issue of trade and the environment, particularly in developed countries where NGOs have both opposed the positions of their own governments and sought to influence other countries participating in trade negotiations. Non-governmental groups have considerably expanded their international cooperation; for example, the NGO statement on the Multilateral Agreements on Investment was endorsed by 565 organizations in 68 countries⁴⁵ A month after Seattle selected NGOs and labour organizations participated in the World Economic Forum in Davos, the so called "*inner sanctum of global business executives.*"

Non-governmental organizations can make an important contribution to the work of the World Trade Organization as it can provide a mechanism for (a) soliciting and incorporating the view of civil society (b) improve the responsiveness of the WTO to criticisms about the roles of the multilateral trading system (c) it can enhance the legitimacy of the WTO as the rule making organization by making the decisions of the WTO more representative and (d) can facilitate an increased and improved flow of information to groups and organizations traditionally excluded from trade negotiations⁴⁶ The WTO should seek to develop institutional mechanisms for expanded public participation and consultation as this can enrich its decision making process. However, this has to be done in a way which does not overwhelm the

44 Consumer Rights and the Multilateral Trading System: What needs to be done before a Millennium Round (London: Consumers International, August, 1999) page 7.

45 Andrew Jackson and Matthew Sanger (eds.), *Dismantling Democracy. The Multilateral Agreement on Investment and Its Impact* (Ontario: Canadian Centre for Policy Alternatives and James Lorimer & Co., 1990) pages 319-337.

46 Daniel C. Esty, "Non-Governmental Organizations at the World Trade Organization: Cooperation, Competition, or Exclusion", *Journal of International Economic Law*, Vol. 1, (1998) pages 123-147.

WTO capacity to assimilate information and make decisions. In this regard the experience of the consultative group on civil society in the Free Trade Areas of the Americas (FTAA) could be instructive.

Impact of New Members

There are 30 countries waiting to join the WTO, including China, Russia and some transitional economies. Although their entry is not likely to be achieved very quickly, whenever they do accede to membership, it will further complicate the negotiations. This will be the case whether they enter during the negotiations of the "built in" agenda or a comprehensive Round, if that is launched. The entry of China will change the political dynamics of the WTO process depending on where it chooses to align itself, for example in tandem with developing countries it could change the existing power configuration. Another problem is the request by transitional economies for special treatment and concessions, a concept which is likely to be repudiated by some developed countries and resisted by developing countries.

6. Reconciliation of Bilateralism, Regionalism and Multilateralism

More than in any previous round of multilateral trade negotiations; member states came to Seattle in the midst of numerous bilateral, regional and hemispheric initiatives. This plethora of activity, aptly described as "*trade promiscuity*,"⁴⁷ enervated the WTO preparatory process. These other negotiations diverted time, money and human resources from the preparatory process. The EU and 70 developing countries of the ACP were in the penultimate stage of concluding a renewal of the Lomé Convention. The Americas were involved with the Free Trade area of the Americas and with a notable resurgence of intra-regional trade in NAFTA, Mercosur, CARICOM, the Andean

⁴⁷ Moses Naim and Robin King, "Free Trade Express? The Future of Hemispheric Integration," *Harvard International Review*, Vol. 19, No. 4 (Fall, 1997) page 23.

Group and the Central American Common Market.⁴⁸ The Asian countries, although embroiled in financial crises, continued to work within the ASEAN and APEC. The United States, since the late 1980s, has operated a trade strategy of inter-related multilateral, regional and bilateral initiatives, which may have weakened the multilateral track.⁴⁹ Several observers have decried the US for not being in its traditional assertive leadership role in multilateral trade fora.⁵⁰ This has been attributed to domestic politics, changing global realities in the world economy, "aggressive unilateralism" in US trade policy⁵¹ and a preoccupation with a few "big emerging markets."⁵²

Regionalism is going to coexist with multilateralism for the foreseeable future, therefore the issue is how to create a symbiosis between regionalism and multilateralism. It may be easier to resolve issues or break new ground in regional fora where the numbers of participants is smaller and affinity is greater. Achievements in regional groups could feed into multilateral negotiations already having support from a group of countries. For example, the multilateral discussion on investment has stalled yet it is actively and constructively being tackled in the EU, FTAA and APEC.

48 Richard L. Bernal, "Trade Blocs: A Regionally Specific Phenomenon or a Global Trend?" Walter Sterling Surrey Memorial Series (Washington, D.C.: National Planning Association, September, 1997), "Regional Trade Arrangements in the Western Hemisphere" The American University, *Journal of International Law and Policy*, Vol. 8 No.4, (Summer, 1993) pages 683-718 and "Regional Trade Arrangements and the Establishment of a Free Trade Area of the Americas," *Law and Policy in International Business*, Vol. 27, No. 4 (Summer, 1996) pages 945-962.

49 Ernest H. Preeg, "Trade realities in the aftermath of Seattle," *Journal of Commerce*, December 14, 1999 and for a fuller exposition, Ernest H. Preeg, *Trade Policy Ahead. Free Tracks and One Question* (Washington, D.C.: Center for Strategic and International Studies, 1995).

50 Ann Krueger, *American Trade Policy: A Tragedy in the Making* (Washington, D.C.: American Enterprise Institute, 1995) pages 6 and 7, Ernest Preeg, *From Here to Free Trade. Essays in Post-Uruguay Round Trade Strategy* (Washington D.C. Center for Strategic and International Studies, 1998) page 129.

51 Jagdish Bhagwati, "Aggressive Unilateralism: An Overview" in Jagdish Bhagwati and Hugh T. Patrick (eds.), *Aggressive Unilateralism. America's 301 Trade Policy and the World Trading System* (Ann Arbor: University of Michigan Press, 1993) pages 1-45.

52 Jeffrey P. Garten, *The Big Ten. The Big Emerging Markets and How They Will Change Our Lives* (New York: Basic Books, 1997).

7. Developing Country Demands

Developing countries constitute the majority of the membership of the WTO and are adamant that their concerns must be addressed in any future negotiations. Their demands center on adjusting implementation schedules, more participation in decision-making, transforming special and differential treatment into tangible gains, duty free, quota, free treatment of exports from the least developed countries and a moratorium on new forms of protectionism. The EU⁵³ Japan and Canada evince more empathy of developing country demands than the US. The US, leaning towards duty-free but not quota-free treatment for the LDC's providing it did go further than the Africa Trade bill and the CBI enhancement legislation now before Congress was met with derision. The stance of the US is tantamount to no liberalization of market access for textiles and apparel, commodities in which LDC have a comparative advantage and potential for export growth. The developing countries and the US seem destined to prolonged fulmination over labor and trade. Inadequate workers' rights in developing countries is believed by the US to be an unfair trade practice as it functions as a subsidy to exports and investment in labor intensive industries.⁵⁴ The perceived evisceration of their goals during the WTO has engendered a new militancy by developing countries enunciated by the Minister from St. Lucia in his address to the plenary of the Seattle meeting. *"No to globalization without ethics! No to liberalization without equity! No to globalization without inclusion! No to liberalization without human security! No to globalization without sustainability and above all Chairperson, no to liberalization without development."*⁵⁵

53 For the EU's position see Pascal Lamy, "What are the opinions after Seattle?", Brussels. European Parliament, 25 January 2000.

54 Peter Morici with the assistance of Andrew Harig, *Setting US Goals for WTO Negotiations* (Washington, D.C.: Economic Strategy Institute, June, 1999) page 4.

55 Address by the Minister of Foreign Affairs and International Trade of Saint Lucia, Hon. George Odlum to the WTO Seattle Ministerial Conference. Seattle, December 1, 1999, page 4.

REVIEW AND OUTLOOK

Some critics have equated the WTO to some Orwellian "Big Brother" and have called for it to be dismantled⁵⁶. However, a rule based, multi-lateral trading system must have an institution where the rules are formulated, monitored and interpreted. Like democracy, the WTO system is not perfect but it is the best alternative and therefore attention must be focused on improving its operations. The trade ministerial in Seattle was detrimental but not fatal to the WTO. The failure of the meeting to decide on whether to have a new comprehensive round of negotiations and what should be included in the agenda of such a round is a reflection of a political environment which was not conducive to achieving success on such a momentous issue. It also revealed the truncated preparatory process and the endemic weaknesses of the WTO's decision-making process. The proposal to expand the ambit of the agenda beyond the built-in issues did create options and tradeoffs but it also multiplied the difficulties. The complexity of the issues and the dissatisfaction of developing countries over the lack of traction on issues critical to them also contributed to the stalemate.

The WTO will commence negotiations on the built-in agenda of agriculture and services early in 2000, a task that will be technically complex and politically contentious. These negotiations are enormously important and if successful can be a major boost to global trade. If the negotiations on the built-in agenda are to be expanded into a comprehensive round, it will depend on the progress achieved on the items of the built-in agenda and US trade policy after the November 2000 presidential elections. The extent to which member states focus on multilateral trade issues rather than on the burgeoning regional and bilateral initiatives will be an important factor. The decisions, which have to be taken, can be facilitated by reforming the decision-making structure and process of the WTO to make them more transparent, democratic and responsive to civil society. The developing countries

⁵⁶ "Dismantle the WTO," *Multinational Monitor*, Vol. 20, Nos. 10 and 11 (October/November, 1999) page 5.

(the majority of membership) will be more assertive in pursuit of issues that they feel strongly have been neglected or marginalized. This will create a new political dynamic in the WTO negotiating process, a dynamic which is certain to be changed by the entry of as many as 30 new members, in particular China.