EU TRADE POLICY IN THE MULTILATERAL TRADING SYSTEM

Alejandro Jara

Former Deputy Director General, World Trade Organization (WTO) ajara@kslaw.com

Introduction

In the context of the Doha Development Round (DDA) trade negotiations, in June 2008 ministers from some 70 WTO member countries met in Geneva in a so-called "mini-ministerial" format to seek an agreement on a set of key elements of a package of results on agricultural and non-agricultural market access (NAMA), among other areas. Ministers and senior officials knew by then what the main features should be of the potential political agreement necessary to enter the final phase of the DDA. To secure a substantial result in agriculture, trade-offs in other areas were required. Developing countries, especially the emerging economies, were in particular called to make concessions on NAMA. After nine days of mini-ministerial meetings, it became clear that an agreement was not possible. This was the last time a serious attempt was made to conclude the DDA. Many point to India and/or the US as bearing the main responsibility for this failure. What is truly remarkable is that even though the main controversy was, as usual, agriculture, the EU was not blamed, unlike in past multilateral rounds of trade negotiations (VanGrasstek, 2013: 447-456; Blustein, 2008).

At the WTO Ministerial Conference in Nairobi (December 2015), against the expectations of most actors and observers, a substantial result was achieved in the form of prohibiting agriculture export subsidies – though some forms of export assistance were allowed to remain in place in order to accommodate the US. By then very few countries were actually employing export subsidies, which explains the apparent ease with which consensus was possible. This result was based on a joint proposal by Brazil and the EU, who for decades sat at opposite extremes as far as agricultural trade was concerned. The proposal was also co-sponsored by Argentina, the Republic of Moldova, New Zealand, Paraguay, Peru and Uruguay (WTO, 2015).

Both episodes illustrate dramatic changes over seven years in the position of the EU as well as in the perception of its contribution and role in the trading system. From being constantly on the defensive in the past, the EU had been thrust into a position of positive leadership.

1. Switzerland, Norway and Canada.

This is compounded by a very active engagement of the EU in trade negotiations outside the WTO. While declaring its firm support for the multilateral trading system as embodied in the WTO, the EU has engaged in numerous negotiations of free trade agreements (FTAs), including with developed countries such as the Republic of Korea, Canada, the US and Japan. This is a major departure from the position the EU took in the late 1990s when it proposed a new round of multilateral trade negotiations – the Millennium Round – and later at the turn of the century when it enforced a self-imposed moratorium on the initiation of new negotiations of FTAs in order to prioritise the Doha Round that lasted until 2006.

This paper attempts to explain the main reasons for these changes and thus the context within which the EU plays a role in the multilateral trading system, as well as the challenges it faces.

Internal changes

The EU's expansion to 28 members and budgetary constraints have no doubt been at the root of the gradual reform undergone by the Common Agriculture Policy (CAP), since domestic support did not increase as much the headcount of farmers. Also, in some cases, less trade-distorting instruments began to be employed. Long gone are the days of mountains of butter and massive export subsidies for sugar and other products that heavily distorted world markets and depressed international prices. This helps to explain the change in the EU's position in trade negotiations from extremely defensive to proactive at the multilateral, regional and bilateral levels. To be sure, there still are many sensitivities in several agriculture sectors in the EU which probably make full liberalisation unfeasible, but the direction and trend of the reform have been positive.

Changes in WTO negotiations

The Uruguay Round (1986-1994) re-established a consensus around the basic rules governing agricultural trade that had been lost since the early years of the GATT. However, it achieved little actual liberalisation and, in recognition of this, the Agreement on Agriculture provided for future negotiations to be initiated by the year 2000 (WTO Agreement on Agriculture, Art. 20). Similarly, the General Agreement on Trade in Services (GATS) envisaged negotiations to continue to liberalise trade beginning in 2000, since the initial specific commitments made by members were rather modest (WTO GATS, Art. XIX). Politically, agriculture and/or services could not be negotiated individually or jointly without trade-offs in other areas. Consequently, in 2001, the Doha Development Round (DDA) was launched with the central purpose of achieving substantial agricultural liberalisation by reducing or eliminating domestic support and export subsidies, along with ambitious objectives in other areas such as non-agriculture market access, antidumping measures, trade and environment, fisheries' subsidies, geographical indications and trade facilitation. Investment, competition policy and transparency in government procurement were taken off the agenda in 2004, thus reducing the

space for trade-offs. By 2008 massive changes had taken place in the world with a profound impact on the political economy of the negotiations. What follows is a brief consideration of some such changes.

The extent and speed of China's emergence as a major trading power, as well as the growth of other emerging economies such as Brazil, India, Indonesia, the Russian Federation and South Africa upset the traditional way of achieving a balance of results. The DDA had been organised on the basis of three levels of concessions, in decreasing order of magnitude, for developed, developing and least-developed countries (besides the special case of members that acceded after 1995). The growth in income, trade and investment of emerging economies made it politically impossible to achieve substantial results in the DDA without a greater contribution from them to the results relative to what was expected seven years earlier.

By the same token, one-size-fits-all special and differential treatment (SDT) was no longer feasible. SDT necessary for weaker economies - say, Honduras - was no longer acceptable if the benefits were also accorded to bigger countries such as Mexico and Brazil. As a consequence, the trend of fragmentation of developing countries continued with the creation of new groupings such as the small and vulnerable economies (SVEs), the recently-acceded members (RAMs), and the very recently-acceded members (VRAMs), among others. These coalitions, by limiting the extent of SDT sought by subgroups of developing countries, would presumably be more acceptable. This also led to the creation of a new kind of SDT as reflected in the mandate for the Trade Facilitation negotiation, according to which "The results of the negotiations shall take fully into account the principle of special and differential treatment for developing and least-developed countries [...] In particular, the extent and the timing of entering into commitments shall be related to the implementation capacities of developing and least-developed Members." (WTO, 2004).

Growth and development, particularly in emerging economies, increased the demand for protein and food, driving prices of agricultural products upwards on a global scale. The priorities for many exporting countries shifted from seeking better access in foreign markets to developing the capacity to increase production to meet the demand. This reduced their willingness to make concessions on industrial goods and services as a trade-off for agriculture liberalisation.

In contrast with the agricultural reform in the EU, the farm policies in the US as expressed in the so-called "farm bills" did not exactly point in the same direction, making substantial results in the WTO even more difficult.

Also significant is the fact that US embarked on negotiations of bilateral FTAs with other countries under the strategy of competitive liberalisation explained in the 2005 Trade Policy Agenda, "...to pursue reinforcing trade initiatives globally, regionally, and bilaterally ... By pursuing multiple free trade initiatives, the United States has created a "competition for liberalization", launching new global trade negotiations, providing leverage to spur new negotiations and

solve problems, and establishing models of success in areas such as intellectual property, e-commerce, environment and labour, and anti-corruption" (USTR, 2005). Most of these negotiations were with relatively small markets such as Chile, Singapore, Central America, Colombia and Peru. However, FTA negotiations with Australia and the Republic of Korea were announced in 2003 and 2006, respectively. The EU could not stand idle and be discriminated against in important markets, particularly Korea, and thus in 2006 it put an end to the moratorium on negotiation of new trade agreements that had been in place since 1999. Ironically, while the EU began negotiations with Korea a year later than the US, its FTA entered into force a year earlier (2011).

In the past 25 years the growing wave of liberalisation through FTAs has involved an increasing number of developing countries, both among themselves, and with industrialised economies such as Mexico, Central America, Colombia, Peru, Chile, Singapore, Brunei, Vietnam and China. I call these the "reciprocity countries" since such arrangements signify that they have chosen to conduct their trade relations under strict reciprocal arrangements. Indirectly, such countries indicate that SDT or other forms of dispensation are not needed. Consequently, they can be as – or more –ambitious than developed countries in the WTO or elsewhere. In addition, most agreements these countries have concluded or are negotiating are of a high-standard, cover "substantially all trade" and include cross-border trade services and investment under a negative listing, government procurement, trade facilitation and dispute settlement, among other areas.

In contrast, other countries such as India, Brazil, Argentina, Indonesia and South Africa have been unable to conclude any major trade agreement of similar standing.² The Russian Federation has spearheaded the establishment of the Eurasian Economic Union with Kazakhstan, Belarus, Armenia and Kyrgyzstan, but has not ventured outside its immediate neighbourhood. It is to be expected that over time more countries will join the "reciprocity countries", including economies such as Argentina and Brazil, following recent political changes in both countries.

Economic and political changes

Global value chains describe the new forms of organisation of production across jurisdictions that have a strong regional presence but global implications (Jara and Escaith, 2012). The EU is one of the main hubs. Where should we say lightbulbs produced in China by a Chinese company (perhaps with European ownership) with European and Asian components and technology are made? To hit this product with trade remedies in Europe probably harms European interests. The logic of the distinction between foreign and domestic products or services is quickly blurring as is the distinction between trade in goods and services. The numbers are eloquent: approximately 50% of world trade is in intermediate goods. Protectionism starts to make less sense and instead liberalisation becomes more necessary. Europe, North America and East Asia are at the centre of this process (WTO,

South Africa concluded an FTA with the EU in 1999 that essentially covered only trade in goods and with important exceptions.

2016a). The full implications of this new way of organising production and consequently the perceptions of the political economy of trade and international relations are yet not fully known. The perceived need of an increasing number of developing countries to better integrate with other economies that are rich in technology and innovation probably fuels the appetite for more liberalisation and better rules.

Protecting the consumer

We are witnessing a major shift away from systems designed to protect the producer towards systems that attach greater importance to protecting the consumer. Pascal Lamy calls this the transition from the "old to the new world of trade" (Lamy, 2014). Under the "old world", policies designed to protect the producer include instruments such as tariffs, subsidies and other obstacles to trade. In the "new world", the aim is to protect the consumer; hence the proliferation of regulations to ensure security of goods and services, safety and health.

Trade liberalisation levels the playing field, increases trade, growth and welfare. To level the playing field in the "old" world, negotiations are directed to eliminating tariff and other border measures as well as subsidies and other distortions that affect the competitive environment. In the "new" world, levelling the playing field becomes more complex since the objective is to reduce the differences in the levels and administration of consumer protection, such as technical standards and sanitary and phytosanitary measures, through a process of presumptive mutual recognition, voluntary asymmetric recognition, voluntary unilateral recognition of equivalence, regulatory co-operation, or a combination of these approaches (Bergkamp and Kogan, 2013: 493).

The political economy also changes. Liberalisation meets the resistance of the producer in the "old" world but is supported by the consumer. In the "new" world, the producer resists the increase in regulations while the consumer welcomes it. The protection of the consumer touches upon more sensitive issues than those merely associated with loss of benefits and/or jobs, and at times touches upon cultural and ideological questions. Consequently, the regulatory activity is not only a technical matter, purely based on scientific risk-assessment. This is well reflected in the EU's new trade strategy Trade for All: "The third pillar of the strategy is about ensuring EU trade policy is not just about interests but also about values. The new approach will safeguard the European social and regulatory model at home. The Commission makes a clear pledge that no trade agreement will ever lower levels of regulatory protection; that any change to levels of protection can only be upward; and that the right regulation will always be protected. The strategy also points to the next steps for the new EU approach to investment protection" (Malmström, 2015).

These simplistic reflections on the protection of the consumer illustrate a trend that has increased in pace over the last 15 years or so. Interestingly, the impact on international cooperation including trade negotiations is dramatic for the world as we know it. For example, if the aim is to protect consumers, there is no room to have preferential or discriminatory instruments because the protection cannot be relative

to the origin of the good, service or investment. Consequently, there is no room for SDT and the distinction between bilateral and multilateral arrangements makes no sense as far as regulations are concerned. Reciprocity loses purpose, since one country should not protect more or less depending on the level of protection given by its partners.

Values, except in the broadest sense, differ among countries because of cultural, political and other reasons. A trade policy anchored in the protection and maintenance of a value-based regulatory model is bound to clash with the policies of other countries. For a recent example of this, see the "Seal" litigation in the WTO following complaints by Canada (WTO DS 400) and Norway (WTO DS 401) against EU measures prohibiting the importation and marketing of seal products. The EU defended its measures as necessary to protect public morals. Other cases involving EU measures based on values and not only on a science-based risk assessment are "Hormones" (WTO DS 26) and "GMOs" (WTO DS 291).

The Transatlantic Trade and Investment Partnership (TTIP) negotiations are important, since the two major economic players – the EU and the US – must confront the challenge of achieving closer integration and cooperation of two different regulatory cultures. Roughly, the EU's "precautionary principle" is contrasted with the US's science-based risk assessment, cost-benefit analysis, and cost-effectiveness regulatory process. According to Bergkamp and Logan (2013), "there are signs that both approaches tend to converge over time". Be that as it may, they conclude: "The end game should be the establishment of a robust science-based procedure for mutual recognition of equivalent product-related standards, including standards that diverge in stringency without a basis in science".

Challenges in the multilateral system: Rules matter – services liberalisation

Trade in services is approximately 25 years old in the multilateral trading system and the rules as embodied in the GATS ensure nondiscrimination. The North American Free Trade Agreement (NAFTA) was the first ever trade agreement with extensive coverage of services but produced little liberalisation while enhancing transparency and certainty since the signatories for the most part bound their status quo. Trade agreements following NAFTA produced little if any liberalisation with the notable exception of accession negotiations to the WTO (Jara and Dominguez, 2008: 105-107). The evidence points to the fact that trade negotiations are not a good vehicle for producing actual liberalisation, meaning the creation of new business opportunities (Roy, Marchetti and Lim, 2007: 180-183). Most services are subject to domestic regulations that in the absence of international co-operation might create unnecessary obstacles to trade and investment, increase transaction costs and reduce competitiveness. Accordingly, agreements that spell out what governments may or may not do to regulate markets of particular services, and effective disciplines on transparency and regulatory coherence become essential. Examples in the WTO are the Understanding on Commitments in Financial Services (WTO, 1999) and the protocol on telecommunications approved in 1997. (WTO, 1997). The Trade in Services Agreement (TiSA) currently under negotiation between 23 countries, counting the EU as one, is another example of an agreement with numerous sectoral annexes spelling out particular disciplines that establish regulatory frameworks. The Trans-Pacific Partnership (TPP) and eventually the TTIP also reflect this approach to improving and protecting services markets. All this has strong and direct links with competition policy. The best example, by far, is the construction of the EU's single market.

Challenges in the multilateral system: Too much water

Throughout the successive negotiations in the multilateral trading system, market access negotiations have resulted in bindings of tariffs, services commitments, agricultural subsidies and domestic support. In several cases, the applied rate is lower than the binding, a gap known as "water". This can result because: (i) a government wanted to have a margin of manoeuvre in case it needs to raise the tariff in the future; or (ii) a subsequent unilateral liberalisation resulted in a lower applied rate. Some developing countries in the Tokyo and Uruguay Rounds bound 100% of their tariffs, but several other countries maintain many unbound tariff lines.3 With regards to services the "water" is probably greater since a great deal of autonomous liberalisation has taken place and many sectors or subsectors remain unbound. So much water in the system creates uncertainty. Future multilateral trade negotiations should as a minimum aim to bind: (i) all products and services at the applied rate; (ii) applied levels of domestic support on agriculture and any form of export assistance left untouched by the Nairobi decision; (iii) preferential margins under government procurement. On this basis the playing field would be levelled and further liberalisation could be pursued for the benefit of all. A fact to be noted is that countries that acceded to the WTO after 1995 have bound at least 99% of products at or very close to the applied rate and made extensive commitments on services.

Challenges in the multilateral system: New protectionism

Much has been said on how, following the 2008-09 financial crisis, countries did not react with protectionist measures like in the 1930s, and the multilateral trading system has been credited as the main instrument that contained such pressures. However, what the world has witnessed is a steady rise in protectionist measures in forms other than tariffs, and despite all the promises – for example at the yearly meetings of the G20 – little rollback has taken place (Global Trade Alert, 2016; WTO, 2016b). According to some accounts, the stock of protectionism amounts to 5% of world trade (WTO, 2016c: par. 3.11). This reveals some weakness or loopholes in the rule-book. Future negotiations will have to address this reality and devote much energy to dismantling protectionism and establishing better rules to prevent backsliding. One important aspect in this regard is the use of subsidies, including bail-outs, and the widespread use of trade remedies.

3. Chile was the first country to bind all its tariffs (at 35%), in the Tokyo Round. Other Latin American countries followed the example in the Uruguay Round.

Challenges in the multilateral system: Dispute settlement

The WTO's dispute settlement system (DSU), frequently referred to as the "jewel in the crown", works very well. However, some improvements are needed. Members have been engaged in a DSU review since 1997, but negotiations have yet to produce any result. Some of the improvements are clarifications of a technical nature, while others are more political in character. Some of the latter are: (i) the selection of panellists, including whether there should be a permanent roster of panellists or, at least, of panel chairs; (ii) the selection and re-appointment of Appellate Body members; (iii) how to encourage the use of alternative methods to settle disputes; and (iv) compliance with the rulings and recommendations adopted by the Dispute Settlement Body (DSB).

The last point is crucial since the only means of creating incentives for a member to comply is to adopt retaliatory measures, which makes little economic sense and leaves little margin for small economies to act in this manner. The cost of no or partial compliance should increase semi-automatically over time, and perhaps take the shape of losing rights such as being precluded from raising a complaint against other members. The experience of the EU with a rules-based system, control of legality, protection of rights and enforcement of obligations shows how much more is possible to facilitate increased co-operation and integration.

Challenges in the multilateral system: Expanding the agenda – investment and competition policy

Investment and trade are two possible ways of doing business. The WTO already has discipline on investment insofar as it relates to services, as embodied in the text of the GATS.4 Otherwise, foreign investment is regulated by hundreds of bilateral agreements some of which contain pre-establishment access obligations, not exactly the best model of global governance. Despite past failures to incorporate rules on investment in the OECD and the WTO, there is a renewed interest that now includes the new capital exporters such as China, as reflected for example in the communiqué of the 2016 G20 Summit held in Hangzhou, China (G20, 2016). Services and investment regulation are closely intertwined with competition policy, which also requires greater international co-operation. The same can be said of the challenges posed by the pervasiveness of the digital economy. In short, the multilateral trading system is faced with the need to respond to a wide ranging agenda of complex and politically sensitive issues. The EU embodies the best model of co-operation among nation-states that should become a reference point for the rest of the world. This indicates the challenges and opportunities if not outright responsibility of leadership for the EU

4. Article I.1.b of GATS defines trade in services inter alia as the supply of a service "by a service supplier of one Member, through commercial presence in the territory of any other Member".

Challenges in the multilateral system: Enhancing the analytical capacity

Weaker and poorer jurisdictions lack the capacity to undertake the analysis and impact- assessment of the present and future issues on the agenda of the multilateral trading system. Other countries with more resources will have limited capacity. To the extent that these governments are asked to take positions and contribute to increasing and deeper levels of international co-operation, prudence dictates that in the face of uncertainty a negative or suspicious attitude protects their interests better. Many past failures can be explained by this reality. Much is done already by different programmes in the WTO and other international agencies. However, it's still not nearly enough in light of the coming challenges. Better co-ordination between governments, agencies, NGOs and others is also required, and a central element is the organisation of and access to information. Once more, the long tradition of European countries and institutions providing assistance can be a key catalyst to greatly improving and enhancing the analytical capacity of other countries and the public at large.

Conclusions

This paper has briefly described the main changes that have impacted international trade relations in the EU and worldwide. It can easily be said that it is no longer "business as usual". More and deeper international co-operation is needed, and some of it is of an urgent character. The negotiating processes take a long time to conclude. Reflection, analysis and exchanges need to accelerate in a transparent and inclusive manner.

The EU epitomises the evolution towards deep integration going beyond co-operation based on the Westphalian nation-state model. The European experience has not been without problems and hiccups, such as the recent Brexit referendum in the UK. But there is no denying the huge and formidable successes on peace, democracy, human rights, welfare, growth, development, innovation, etc.

It is in the interest of Europe as well as most countries to have a rules-based international system of trade and investment, and in other fields, to better harness increasing globalisation. This requires leadership in ideas and values, which is a central responsibility for the EU.

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