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Commentary

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I very much enjoyed reading Jeff Schott's paper. When I agreed to discuss it, I knew only its proposed title "The WTO: Its Performance to Date and Current Issues." The paper I received, however, has a different and catchy title borrowed from the title of a highly successful film. The changed title also is reflected in the paper's forward-looking theme of the proposed new round of multilateral trade negotiations (MTN). I firmly reject the appellation "Millennium Round" with its link to a particular religion. In Schott's paper, the performance of the World Trade Organization (WTO) to date is touched upon only incidentally.

Jeff rightly points out that there are complex issues relating to whether this is the opportune time to initiate a new round of MTN, and if it is, whether its coverage should be limited or broad, and whether a relatively short span of three years should be set for the conclusion of the negotiations. Nonetheless, Jeff is convinced about the importance of proceeding promptly with a new round. While I am sympathetic to his view, I also am somewhat skeptical about many of the arguments Jeff and others have advanced for starting a new round. Let me discuss each of them in turn.

Jeff argues that the global financial crisis of 1998-99 has dampened political support for new trade reforms and, therefore, a new round of MTN is needed to bring the reform process on track. Setting aside the point that it is somewhat of an exaggeration to state that the recent financial crisis in a few countries in East Asia and Latin America, and Russia is a global financial crisis, there is no strong evidence that because of these financial crises reforms aimed at further liberalization of trade flows—as contrasted to liberalization of financial flows—have perceptibly slowed down. If anything, analysts and policy-makers have tried to draw a distinction between liberalizing trade and liberalizing finance. They have argued that there is no reason to go slow on the former even though—according to some, though by no means all, or even a

majority—there are strong arguments for slowing down the latter.

A second argument is a version of the old cliché, "the bicycle theory of trade liberalization," namely, unless there is forward momentum for liberalizing access to markets everywhere, protectionist forces will gather strength—particularly in major trading nations and groups, such as the United States and the European Union (EU). Jeff suggests that once the U.S. expansion ceases and unemployment rises, protectionist demands will rise. He also points to the impasse over the renewal of the fast-track authority of the U.S. president to negotiate reduction of trade barriers, the resistance to new trade initiatives, and the attacks on the WTO in the United States and the European Union as evidence of his point.

I am not entirely persuaded. The unholy alliance of protectionists—consisting of industrial labor unions in rich countries, such as the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO), masquerading as champions of the welfare and rights of workers (particularly child and female workers) in emerging markets, naive do-gooders who may be genuinely concerned with the welfare of children, and misguided environmentalists—would have mounted its campaign against fast-track-authority regardless of the level of unemployment in the United States. In the same vein, it is unlikely that the alliance of protectionist unions and environmentalists in the European Union would give up its attacks on WTO even if the unemployment rate in major European countries were much lower than it is. In any case, unless such alliances could be persuaded that a new round of MTN will indeed forge agreements that allay their concerns, the fact that they are attacking the WTO is not a strong reason to start another round.

I do not quite understand what Jeff means when he says that "the WTO requires that restrictions on trade in products developed through new biotechnologies must be underpinned by sound scientific evidence of potential harm." True, this requirement is specified in Article II, paragraph 2, of the Uruguay Round (UR) agreement on the Application of Sanitary and Phytosanitary measures, but, it also is subject to an exception specified in Article V, paragraph 7, that allows provisional measures to be adopted when relevant scientific evidence is

insufficient. Be that as it may, it is misleading to say that the WTO as an organization requires such a restriction. The agreement establishing the WTO only requires that it facilitate the implementation of the agreements into which its members have entered. Such agreements, being part of the Uruguay Agreement as a single undertaking, are (in any case) binding on all members of the WTO. Critics of the WTO have the wrong target: Instead of persuading members to amend or scrap their agreement on sanitary and phytosanitary measures, they are attacking the WTO, which is merely a facilitator of the implementation of the agreement. Starting a new round could satisfy the critics of the WTO on this ground, only if the repeal or amendment of the sanitary agreement is part of the agenda of the new round. It is very unlikely that this would be the case.

Jeff correctly argues that the considerably strengthened (relative to the original agreement in 1947) Dispute Settlement System of the WTO has run into a number of problems that need to be corrected. Some of the problems are of great concern to the developing country members of the WTO. I will discuss this issue later. While it could be part of the agenda of a new round, by itself it is not a compelling reason to start one. Indeed, it could be addressed through one of Jeff's own proposed mini-rounds or round-ups.

Among other structural problems of the WTO system that Jeff views as needing correction is the WTO's management structure, which he compares unfavorably with those of the International Monetary Fund (IMF) and World Bank. I am puzzled by this comparison. The WTO has no resources to distribute nor does it have much of an executive role. As specified in Article III of the agreement establishing it, the WTO's functions involve facilitating the implementation of the agreements among its members, providing a forum for negotiation, and administering the Dispute Settlement System and the Trade Policy Review Mechanism. None of these call for any standing executive board such as the one that both the IMF and World Bank have. True, the various Councils of the WTO are unwieldy and its supreme decision-making body, namely its ministerial conference, meets only once every two years. A simple decision at the Seattle ministerial—to create a steering committee that is larger than the quad and meets periodically—ought to take care of this problem.

Jeff argues that the quad consisting of the most powerful members of the WTO has no interest in

relinquishing its informal role as a steering committee. The United Nations Conference on Trade and Development (1999) also laments about the unequal distribution of power in the WTO in saying:

Underlying these concerns is the more basic question of whether it is in the interest of developing countries to enter into negotiations with wealthier trading partners from a position of chronic weakness not only in terms of economic power but also in terms of research, analytical and intellectual support and negotiating skills. (p. 40)

This lament is somewhat beside the point. On the one hand, as Winham (1989) pointed out in his comments regarding the differences between some developing countries and others on whether the Uruguay Round should be launched:

It was a brutal but salutary demonstration that power would be served in that nations comprising 5 percent of world trade were not able to stop a negotiation sought by nations comprising 95 percent of world trade. (Winham, 1989, p. 54, as cited in Srinivasan, 1998, p. 35)

On the other hand, unlike the World Bank, the IMF, and the United Nations Security Council, in the WTO each member has one vote and the convention is that all decisions are by consensus. Thus, developing country members can have a much greater say in the WTO decisions than their power, as measured by their share in world trade would warrant.

I agree with Jeff that the size of the WTO Secretariat and the budgetary resources of the organization are inadequate to discharge effectively its functions and responsibilities. Nonetheless, it is the small size and high quality of its staff that explain why the General Agreement on Tariffs and Trade (GATT) was perhaps the most cost-effective and efficient among multilateral organizations. Certainly more resources ought to be provided. I would suggest that a small share of the net income of the World Bank be provided to the WTO; but, I will be wary of excessive expansion of its staff. There is the danger that, if it becomes too large, the WTO will be as bloated, self-serving, and expensive as the bureaucracies of the United Nations, the IMF, and the World Bank.

Only one of Jeff's arguments for initiating a new round, instead of merely completing the built-

in agenda of the UR agreement, appears strong. This argument is that a new and comprehensive round will allow countries to trade off concessions, in the time-honored mercantilist tradition of GATT, across sectors and issues and undertake obligations to liberalize longstanding and politically sensitive trade barriers. Certainly selling any agreement of trade liberalization that involves political costs of hurting the interests of some groups (that is, producers of importables) in a country would be easier if it also involves political gains by benefiting other interest groups (that is, producers of exportables, and users of importables). Such a balance is more likely if several issues are part of the negotiating agenda.

Achieving a politically balanced portfolio through a mercantilist exchange of liberalization among countries is to be sharply distinguished from welfare gains from trade liberalization *per se*. For most members of the WTO, unilateral liberalization of one or more sectors would bring in net welfare gains without a mercantilist exchange of each country's liberalization with others. Of course, *domestic compensation* of losers by gainers from unilateral liberalization still would be needed. In any case, as Fred Brown and John Whalley (1980) showed in their work on the various formulas proposed for tariff reductions in the Tokyo Round, the proposer of each formula gained (in welfare terms) more from the formulas of others than from its own! This suggests that negotiators were ignorant of what could be the best deal for them as they discussed various proposals. As such, the seemingly strong argument, which stated that negotiations with a comprehensive agenda are likely to produce agreements that are deemed satisfactory by all parties, is not so strong after all—if the outcome of negotiations is judged by welfare considerations. Of course, this is no surprise—after all, once politics come in, coherence and rationality go out!

Jeff states that only universal membership would make WTO a truly global system, by which he presumably means a system that includes all autonomous customs jurisdictions of the world. Jeff complains that the progress towards this goal, though good, is not good enough, because the “entry bar (for accession to the WTO) has been elevated to record heights just as the demand for WTO membership has increased dramatically!” Strictly speaking, Article XII on accession to the WTO is no more demanding or difficult than Article XXXIII of GATT. Jeff's proposal to tailor accession protocols to suit the particular background and economic system

of a country seeking membership seems to be an extension, to the entry stage, of the special and more favorable treatment for developing-country contracting parties in the old GATT. I have argued elsewhere that this special treatment was not in the interest of developing countries because it enabled developed countries to implement the Multifiber Arrangement (MFA) and other schemes that violated the core principles of GATT, such as most-favored nations treatment and the non-use of quantitative restrictions. It also allowed developing countries to maintain high trade barriers and pursue their costly import-substituting industrialization strategy. I do not believe special membership access in protocols would be in the interests of those seeking membership. This is not to say, however, that imposing conditions on aspiring members—that existing members do not have to satisfy—is justified.

Let me turn to Jeff's proposals for the negotiating agenda in the next round. On agriculture, the Uruguay Round did not go far. It did not integrate agriculture fully into the WTO system. The core disciplines, such as outright prohibition of quantitative restrictions and subsidization of exports that apply to trade in manufactures, still do not apply to agricultural trade. The Uruguay Round agreement merely reduced the scope of allowable subsidies and restrictions without eliminating them. The scandalous process of “dirty tariffication” precluded any hope of significant liberalization. The notorious Common Agriculture Policy (CAP) of the European Union (EU)—to the extent it reduced the prices of its agricultural exports—did benefit some developing country importers. Nonetheless, overall, the distortions introduced by CAP, various quotas in the United States and other developed countries, as well as the insulation of their domestic agriculture from world markets by many developing countries, are large. Whether through the mandated review or a part of the agenda of a new round, agricultural trade should be brought fully under the disciplines of WTO at last.

The General Agreement Trade in Services (GATS) also is up for review. The failure to come to an agreement on movement of natural persons is a major blow for developing countries. The postponed negotiations on Maritime Services are due for resumption in 2000, whether or not there is a new round. Also, the fact that GATS is not GATT when it comes to most favored nation (MFN) or national treatment has to be kept in mind. Jeff's pessimism about agreeing on a meaningful agenda for negotiating liberalization of services trade indeed is warranted.

On tariffs, there is no doubt that addressing tariff peaks, as well as tariff escalation by stage processing, has to be high on the agenda.

Anti-dumping as a trade policy instrument is a virus that has spread from industrial to developing countries. For obvious reasons, it is now the preferred means of administered protection for protectionists everywhere. Although some recent theorizing seems to infuse some life into predation arguments, its practical significance seems virtually nil. As such, there is no economic rationale for the use of anti-dumping actions, which is a discriminatory measure. Instead of attempting to restrict its scope, and the circumstances under which it could be used, I would rather make the use of anti-dumping actions WTO-illegal altogether and strengthen, if necessary, nondiscriminatory safeguards already available under Article XIX of the GATT.

On the environment, thus far, by failing to come up with any recommendations, the WTO's Committee on Trade and Environment fortunately has spared the global trading system from crippling constraints. I would like to see it wound up, once and for all, and have the important environmental issues be taken up at more appropriate forums, such as the United Nations Environmental Programme (NEP).

At the first two ministerials of WTO, the participants have courageously, wisely, and clearly expressed themselves against introducing a "social clause" in the WTO. I would hope the participants at the Seattle ministerial would have similar courage.

I am not convinced that investment issues, which go beyond those already included in the Trade-Related Investment Measures (TRIMs) agreement, are ripe for multilateral negotiations. Until they are, current national policies and restrictions should be made more transparent and widely disseminated. Turning to competition policy, I would argue that in most tradeable products (other than very few, such as wide-bodied jet aircraft) the world market is large relative to the minimum efficient scale of operation. As such, for such products and for most countries, the most effective competition policy is to allow free competition from the rest of the world. This means not only traditional trade barriers should be lowered, but regulatory barriers and administered protection should be eliminated as well.

Regarding the dispute-settlement system, Bernard Hoekman and Petros Mavroidis (1999) have raised a number of serious issues, particularly from the perspective of developing countries. While a system based on clearly specified rules and a fair

and transparent process for enforcing them—as well as adjudicating disputes over their interpretation—is undoubtedly in the interest of the weak, and WTO's dispute-settlement procedures meet these desiderata in good measure, Hoekman and Mavroidis rightly point out that there are a number of serious deficiencies in the system. First of all, for poor countries, access to the system is expensive and the information and expertise required to present and win a case are formidable. Second, there are fundamental weaknesses in the enforcement mechanism. As has been amply demonstrated by the banana case, a defendant can delay compliance with an adverse panel decision without appearing to have failed to comply. Third, the only recourse that a plaintiff has for addressing the failure of the defendant to abide by the panel decision is to raise its own trade barriers against the defendant's exports. Obviously, such a punishment forces the plaintiff to forego gains from trade and, therefore, is costly to both parties. Further, it punishes the wrong group in both countries without providing any relief to the injured group.

Any import restriction benefits the producer of import substitutes in the defendant country, while it hurts the exporters and import users. By raising its own barrier on imports from the defendant for failing to comply with a panel decision, the plaintiff does not offer any relief to its own exporters. It hurts users of imports from the defendant, and helps producers of substitutes for imports. At the same time, it also hurts the interests of exporters and import users in the defendant country, while the producers of import substitutes continue to enjoy the benefits afforded by the impugned restriction. Moreover, whether a small and weak plaintiff will actually raise the barriers is, itself, doubtful. If the defendant is a large and powerful country, the plaintiff may not wish to jeopardize their relationship. This suggests that large and powerful traders may be able to get away with violations that hurt the interests of the weak and, anticipating this, the weak may not bring such violations before the dispute-settlement system. Fortunately, thus far, some developing countries have not refrained from bringing disputes against the powerful to the WTO, and the powerful have complied with panel decisions that went against them. Nonetheless, one cannot be certain that this happy situation will continue to prevail in the future.

Any non-compliance with a panel decision against a member for its violation of WTO rules not only

injures other members whose interests are affected by that violation, it also erodes the credibility of the rules-based system itself. Nonetheless, unless the members—whose interests are affected adversely—bring the violation before the dispute-settlement system, there is no way the system can recognize the violation. Not all violations need be brought before the system. I already have noted that the weak may not bring complaints against violators before the system either because of lack of resources, expertise, and information, or because of the possibly adverse impact on non-trade aspects of their relationships with the violators. It also is likely that the powerful may not bring weak violators before the system either, because the violators' markets for their product is too small for the loss from violations to be significant. If violations are widespread, but few of them are brought before the dispute-settlement system, the credibility of the rules-based trading system as a whole—and not just that of its dispute-resolution mechanism—will be eroded. Whether the WTO Secretariat should be empowered to bring before a panel any violation of rules—regardless if those hurt by the violation do so themselves—or whether there should be an independent prosecutor in the WTO who will be charged with such a task, has to be examined. It would be desirable to increase the technical assistance given to developing countries under Article XXVII, paragraph 2, of the Dispute-Settlement Understanding of the UR Agreement, and extend this article to make such assistances available at the “exploratory or discovery” stage prior to submission of disputes to WTO. For reasons advanced by Levy and Srinivasan (1996), however, it is not a good idea to allow private parties access to the WTO's dispute-settlement system.

Jeff does not mention the recent proliferation of regional free-trade agreements. As is well known, in such agreements the phrase “free trade” does not have its natural meaning of multilateral free trade. It means that trade freedom is preferential and applies only to trade among its members. Such preferential trade agreements violate the core MFN principle of GATT and, as such, from the very beginning of GATT, an exception from MFN principle had to be made for them. Such an exception is allowed under Article XXIV of GATT, subject to certain conditions and a formal review of any proposed agreement by a working party established by GATT to examine whether it meets the conditions.

Although many working parties were established to review proposed customs unions and free-trade areas in the history of GATT, few have sub-

mitted their reports. And interestingly, no working party ever pronounced on the compatibility of the European Union with Article XXIV, the reason being that the European Union was originally formed primarily for political, and not economic, reasons. Given that the powerful U.S. and the EU members stood behind the European Union, there was no serious examination of its compatibility with Article XXIV. Attempts are being made to confer respectability to the blatantly discriminatory (that is, preferential) trade preferences of such agreements under the cloak of oxymoronic “open regionalism.” These ought to be rejected. If there is a next round, negotiators ought to repeal Article XXIV. Instead they should require that any proposed free trade agreement or customs union be deemed consistent with WTO, *only* if the preferences granted to its members are extended automatically to all members of the WTO on a MFN basis at the end of, say, five years after the start of such an agreement.

Let me conclude with a few remarks on the concerns of developing countries. Jeff lists several benefits for the developing countries by participating in any new round of MTN. He rightly stresses that the interests of developing countries vary and this diversity makes it difficult to outline what their agenda for negotiations ought to be. While I agree with him that a rules-based system is in the interests of the developing countries, it is not clear how Jeff reaches the conclusion that it is in their interests to participate in a new round. Jeff and others argue that participation in the MTN helps developing countries undertake and “lock-in” domestic reforms. *Prima facie*, it does appear plausible that authorities in power could make commitments as part of the agreement that emerges from MTN and then diffuse opposition to reforms by linking them with the fulfillment of commitments. Unless the punishment for renegeing on commitments is credible, as well as costly, such commitments alone will not be effective tools for diffusing opposition in reforms and locking them in.

As Jeff suggests, other benefits to developing countries, such as from the Organization for Economic Cooperation and Development's liberalization of agriculture, liberalization in service sectors, and reduction in tariff peaks and tariff escalation, could be significant. I would reiterate Jeff's caution that unless developing countries are persuaded that the rich will not seek to avoid or evade fulfilling their commitments in the UR agreement, they will be wary of entering any new round. Indeed, because the agreement to

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phase-out MFA was backloaded, and even before the phase-out anti-dumping measures had been invoked to curb imports of textile and apparel imports, developing countries seriously doubt whether the MFA will be phased out in 2005 as was agreed to in the Uruguay Round. This is yet another reason why anti-dumping should be eliminated as a WTO-legal trade-policy instrument.

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