

**VARIABLE GEOMETRY FOR THE WTO:
CONCEPT AND PRECEDENTS**

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No. 171
May 2004

DISCUSSION PAPERS

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JEL classification: F02, F10, F13, F15

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VARIABLE GEOMETRY FOR THE WTO: CONCEPT AND PRECEDENTS¹

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Abstract

In the aftermath of the breakdown of the multilateral trade negotiations in Cancun in mid-September 2003, various ideas have been put forward not only for their re-launching but also more broadly for the reform of the WTO as an institution and as a repository for agreements on trade and related matters. Amongst the latter is the idea of a WTO characterized by variable geometry, in other words of a WTO that would serve as an umbrella framework for agreements on trade issues whose signatories would not necessarily include all its members, and thus as a vehicle for some countries to undertake deeper integration or liberalization regarding selected subjects without trammels due to the unwillingness of other members to go along. This paper reviews this concept in the context of the history of the GATT/WTO and of different views as to its underlying rationale. It also takes a preliminary look at what a framework of variable geometry might involve and considers some of the benefits and problems likely to be associated with a multi-tier WTO.

The paper begins with a review of features of the rules of the GATT which allowed for various kinds of non-uniformity in their application. While some of these were of a highly specific nature, others involved more fundamental departures from the principle of universal applicability. Of particular interest in this context are the Codes negotiated during the Tokyo Round. In the discussion of pertinent issues regarding the rationale and function of the GATT/WTO which follows, attention is drawn to the contrast between those who emphasize the role of non-discriminatory trade rules as a vehicle for reducing sources of economic and ultimately political and military conflict, on the one hand, and those who give greater importance to the WTO's role as an instrument for achieving convergence in business regimes worldwide, on the other.

In a sketch of possible solutions to some of the problems of reconciling variable geometry with WTO rules, the paper devotes special attention to the deviations from the MFN principle which would be involved, and to accession conditions for plurilateral agreements. The idea of variable geometry was raised during the Uruguay Round when the constitution of the new multilateral organization (which was eventually to be the WTO) was under consideration. However, the structure eventually adopted reflects the concept of a "single package" or "single undertaking". More recently the European Union has floated recourse to a plurilateral approach as a way of getting out of the present negotiating impasse regarding certain subjects. However, developing countries have not proved receptive partly, it is reasonable to assume, because the approach would not do anything to resolve the major conflicts in the areas of tariffs and subsidies currently blocking resumption of the negotiations or to deal with features of the outcome of the Uruguay Round which some consider should actually be rolled back. The counterargument, which refers as much to the longer term as to the present impasse, is that a multi-tier framework may enable the WTO to avoid the paralysis which could result from attempting to reach uniformly applicable agreements on trade-related subjects among countries with interests and concerns reflecting different levels of economic development.

¹ The principal works on the global regime for international trade consulted for this paper, which are not cited under particular topics subsequently, are as follows: E. McGovern, *International Trade Regulation: GATT, the United States and the European Community* (Exeter, Globefield Press, 1986); J.H. Jackson and W.J. Davey, *Legal Problems of International Economic Relations*, second edition (St. Paul, Minn., West Publishing Co., 1986); G.R. Winham, *International Trade and the Tokyo Round Negotiation* (Princeton, Princeton University Press, 1986); J.H. Jackson, *The World Trading System: Law and Policy of International Economic Relations* (Cambridge, Mass. and London, The MIT Press, 1989); J.H. Jackson, *Restructuring the GATT System* (London, Pinter Publishers for the Royal Institute of International Affairs, 1990); J.H. Jackson, *The World Trade Organization: Constitution and Jurisprudence* (London, The Royal Institute of International Affairs, 1998); B.L. Das, *The World Trade Organization: A Guide to the Framework for International Trade* (London and New York, Zed Books and Penang, Malaysia, Third World Network, 1999); and J.H. Jackson, W.J. Davey and A.O. Sykes, *Legal Problems of International Economic Relations*, fourth edition (St. Paul, Minn., West Group, 2002). On the concept of "single undertaking" (see below) the author benefited from the discussion of its historical origins, the alternative meanings attributed to it, and its role in the negotiating process of GATT/WTO in C. Patel, "Single undertaking: a straitjacket or variable geometry?", *Trade-Related Agenda, Development and Equity (T.R.A.D.E.) Working Paper 15* (Geneva, South Centre, May 2003).

A. INTRODUCTION

The breakdown of the multilateral trade negotiations in Cancun in mid-September has provoked various reactions in different quarters both as to future directions for international trade negotiations and as to possible changes in the functioning of the WTO. At one extreme the United States trade representative has declared that the breakdown will push his country into giving greater emphasis to bilateral trade negotiations. This, however, has the drawback that the results are likely to be difficult to reconcile with the most-favoured-nation principle (MFN) which has been an important feature of United States policy towards international trade since it was adopted by the administration of Franklin Roosevelt in the 1930s, and which has been a central element of the construction of the international trading system since World War II. Other reactions have focused more on the WTO itself. Some involve proposals which do not go beyond providing greater support to developing countries to enable them to participate more effectively in trade negotiations and in the opening-up to world markets which ensues. Slightly more far-reaching are proposals for reforming the decision-making process in the WTO to make it more difficult for a minority of countries to frustrate the will of a substantial majority. The difficulty here is the belief of many countries that WTO processes are already dominated by small groups which take the key decisions concerning the agenda for negotiations and the principal features of texts submitted for agreement by the whole membership. Indeed, the view that the breakdown in Cancun was due simply to the obduracy of the resistance of a small number of countries to proposals commanding broad consensus on the part of most of the WTO's membership is implausible. More fundamentally there is also renewed interest in the idea of a WTO which would be characterized by variable geometry, in other words of a WTO that would serve as an umbrella framework for agreements on trade issues whose members would not necessarily include all the members of the WTO, and thus as a vehicle for some countries to undertake deeper integration or liberalization regarding selected subjects without trammels due to the unwillingness of important parts of WTO's membership to go along.

Different views on the institutional issues raised by the Cancun breakdown were succinctly set out in an editorial in the *Financial Times* of 23 September ("Lessons from Cancun: the answer is new negotiating geometries, not WTO reform"), which is worth quoting at length:

The European Union wants changes to what Pascal Lamy, trade commissioner, calls the institution's "medieval" structure and decision-making methods. But such proposals are unlikely to get far because they miss the real target.

The organization's 148 members will find it no easier to achieve consensus for such reforms than to agree on trade liberalization. In any case, the main problem is not WTO procedures; it is the

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