

**RIETI-JETRO Symposium**  
**Global Governance in Trade and Investment Regime**  
**- For Protecting Free Trade -**  
Reference

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June 7, 2012

Research Institute of Economy, Trade and Industry (RIETI)  
<http://www.rieti.go.jp/en/index.html>

December 7, 2011

## **Toward the Reform of the WTO and the Early Conclusion of the Doha Round (Proposal)**

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### **Background**

Rulemaking for the multilateral trade system embodied by the World Trade Organization (WTO) is adrift as the Doha Round continues to drag on without making much headway. After 18 years since the conclusion of the Uruguay Round in 1993 and 10 years since the launch of the Doha Round, the goal for the new round is nowhere in sight.

Its conclusion by the end of this year is hopeless, and with the U.S. presidential election upcoming, it is difficult to expect notable progress next year.

The WTO has been playing an appreciable role as a judicial system. However, as a forum for global trade rulemaking and liberalization, it is in serious confusion.

WTO members continue to posture that the conclusion of the round is necessary. At the same time, however, the race to conclude free trade agreements (FTAs) has accelerated, and protectionist measures have been introduced successively.

The negotiations in the Doha Round, which were close to agreement in the summer of 2008 after tireless efforts, again ran into deadlock and no road leading to the conclusion is in sight at the moment.

### **Causes for the stagnation of the Doha Round and the paralysis of the WTO as a forum for rulemaking and liberalization**

Factors causing the stagnation of the Doha Round and the paralysis of the WTO as a forum for rulemaking and liberalization can be classified into the following: historical and political; economic; and institutional unique to the WTO.

As historical and political factors, the following historical background of the Doha Round can be cited:

- Increase in the number of members (153 members);
- After-effect of the Uruguay Round (widespread dissatisfaction on the part of developing members over their forced acceptance of a wide range of WTO rules by a single undertaking);

- Absence of leading players in the round (the coordination mechanism under the Quad framework—the U.S., EU, Japan, and Canada—has collapsed, and the U.S., a major driving force in the previous round, is not forthcoming this time around);
- Definition of the Doha Round (as a “development round”); and
- Deficiencies in negotiating procedures (non-text-based negotiations, deletion of the Singapore issues from the negotiation agenda, frequent use of non-text-based ministerial discussions as a consensus-building approach, etc.)

Political factors include:

- North-South confrontation;
- U.S.-China confrontation; and
- Loss of homogeneity among WTO members

Meanwhile, economic factors include:

- Stagnation in advanced economies and rise of developing economies;
- Diversification of interests;
- Absence of a “common language”;
- Rise of protectionism triggered by the global economic crisis;
- Divergence from the areas of interest to business communities (the failure of the WTO to address new issues and the slow progress of the Doha Round have been causing their interest in the new round to wane); and
- Intensified FTA and regional trade agreements (RTA) competition (which is not only a cause but also a consequence of the stalemate of the Doha Round)

All of these factors have compounded to make it difficult for the Doha Round to move forward.

Meanwhile, institutional factors unique to the WTO have been causing delays in the Doha Round process and posing obstacles to rulemaking and liberalization at the WTO.

(i) Decision-making by consensus (153 vetoes) and single undertaking

First of all, we must take a look at the consensus rule of decision-making and the single undertaking approach. Decision-making by consensus is a tradition deeply rooted in the General Agreement on Tariffs and Trade (GATT) and the WTO. However, as the number of WTO members has increased significantly over the years as well as the diversity among them, it has become extremely difficult to make any decision by consensus.

The term “single undertaking” can be interpreted in two ways. First, it means the consensus building procedure in which nothing is agreed to until everything is agreed. Second, it refers to the comprehensiveness of the agreements introduced as a result of the Uruguay Round. Both of them have been adopted as principles for the Doha Round of negotiations.

The current framework of single undertaking calls for 153 diverse members to reach agreement in all of the eight designated areas of negotiations, and such agreement—once reached—is to bind all WTO members. However, after 10 years of negotiations, we must say that this framework is hardly functioning.

(ii) Strong dispute settlement mechanism

The establishment of a dispute settlement mechanism can be cited as one of the major achievements of the Uruguay Round. The presence of this mechanism, together with the Agreement on Safeguards reached in the same round, have given teeth to the multilateral trading rules embodied by the WTO. At the same time, however, the presence of the powerful dispute settlement mechanism has the effect of making WTO members cautious about rulemaking and liberalization.

(iii) Uniform rights and obligations

All WTO members must obey the uniform rules in principle, and voluntary subscription to a range of rules, which was allowed at the time of the Tokyo Round Codes, has been abolished with some exceptions. New rules such as the General Agreement on Trade in Services (GATS) and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) have been introduced, to which all signatories are obliged to subscribe.

(iv) Problem of developing members

Although special and differential treatments (S&D) have been accorded to developing members in each WTO agreement, such treatments have various problems in their nature and substance. Meanwhile, there exists no specific definition of “developing member” and any discussion in this regard has been made based on respective members’ self-assertion.

As a result, while the least developed members are having difficulty fulfilling WTO obligations, certain major countries are enjoying the privileges as developing members. For instance, they are subject to modalities for developing countries in the non-agricultural market access (NAMA) negotiations.

(v) Status of the WTO secretariat

The WTO is a member-driven organization, and no clear status is given to the director-general and the secretariat of the WTO

(vi) Collaboration with business communities

The WTO is an organization tasked with establishing global trade rules and realizing global trade liberalization. However, there exists no solid system to support global trade rules and liberalization on the part of business communities, whose members are the very players in international business activity.

(vii) Political support

Whereas the International Monetary Fund (IMF) and the World Bank hold a meeting of finance ministers and central bank governors or the equivalent every year, the WTO holds a ministerial meeting only once every two years. The foundation for political support for the WTO within each member country remains weak. No senior officials meetings or equivalent meetings exist in the WTO either.

### **WTO and risk posed by the unfinished Doha Round**

The Doha Round is adrift.

An early conclusion of the round has critical implications for both the world and Japan.

For the world, it means boosting GDP by \$170-280 billion, a great contribution to the growth of the global economy, according to estimates by the Peterson Institute for International Economics made in June 2010.

For Japan, the conclusion of the Doha Round means: 1) roughly a 50% cut in tariffs imposed by other countries on exports from Japan, and 2) boosting GDP by about \$18.6 billion, according to the estimates by the Peterson Institute for International Economics in June 2010. This would bring huge benefits to Japan, which is significantly behind in the FTA race (with only 18% of its trade covered by FTAs at the moment). These advantages should be widely shared.

Failure to conclude the Doha Round means forging all of these advantages, and we must be aware that the following risks may result:

(i) Risk of rising protectionism

In the global financial crisis after the collapse of Lehman Brothers, the existence of WTO rules and self-control by countries were considered to have prevented a rise in protectionism. However, the continuing economic stagnation in advanced countries and the European financial crisis have cast dark clouds on the future of the global economy. Governments around the world are faced with strong pressure to protect their domestic industries and, one and after, protectionist measures are being introduced. In such a situation, a failure in the Doha Round is highly likely to accelerate protectionist moves. (A joint report by the WTO and

IDE-JETRO on an analysis of value added in Asia based on data from the input-output tables warns of the very clear risk posed by protectionism, noting that more and more products are actually “made in the world” with the production process extending across national boundaries).

(ii) Risk of rising regionalism and FTAs

FTA competition is already accelerating with the number of FTAs notified to the WTO reaching 505 (as of November 15, 2011). A failure of the Doha Round is sure to accelerate this move further.

(iii) Risk to the WTO's judicial function

The discord between the judicial and legislative functions of the WTO will definitely grow (some WTO panel rulings have already been found to be problematic). However, the greatest risk is the possibility that WTO members refuse to comply with panel rulings.

Up until now, WTO members have generally complied with WTO rules and panel/Appellate Body rulings adopted by the Dispute Settlement Body. This, however, could change if the Doha Round fails and the credibility of the WTO is severely undermined.

Indeed, who can assure that the failure of the Doha Round will not affect the WTO system?

### **Direction of WTO reform**

In order to address these risks, the following actions should be taken:

1. Immediate Actions

(i) Confirming commitments to prevent protectionism (“stand-still” and “roll-back” obligations)

It is reassuring that these commitments have been reaffirmed at the recent G20 and APEC summit meetings.

In the forthcoming WTO ministerial meeting later this month (December), it is important to assure further these commitments and create a monitoring mechanism (such as institutionalizing the monitoring and reporting of protectionist measures as a permanent system)

(ii) Delivering as many outcomes as possible.

(iii) Finalizing the work program for the next year and beyond.

2. Medium Term Actions

The future development of the Doha Round is unpredictable.

- 1) What is crucially important in the WTO negotiations is to develop a medium- to long-term strategic approach and analyze the situation from that perspective, going beyond bargaining tactics.

It is necessary to reconstruct global governance not only for the financial system but also for the entire trading system.

- 2) It is necessary to have a viewpoint of seeking drastic reform of the WTO and the Doha Round.

The fact that no conclusion has been reached after 10 years of negotiations (18 years since the conclusion of the Uruguay Round) indicates that the WTO and the Doha Round have fundamental problems.

In the financial and monetary sphere, reform of the international monetary system has begun following the global financial crisis triggered by the collapse of Lehman Brothers. Players in Geneva, however, appear to be secluded from the rest of the world, away from the rough seas of the economy. They are not at all prepared for the second wave of the storm that could hit as early as next year.

Today, the world of business is running in dog years while things in Geneva continue to operate at a traditional pace in the international trade regime, creating an immense gap in the sense of time.

The proliferation of FTAs and the rise of plurilateral initiatives (e.g. ACTA) are consequences of the WTO stalemate.

It is due time to review thoroughly what should be done to change the WTO and the Doha Round.

Even if the round concludes miraculously in a short period of time, the current situation would not allow us to have any prospect or hope for the subsequent successful operation of the WTO or its frameworks for rulemaking and liberalization. If things remain unchanged, the credibility of the WTO is bound to be undermined.

- 3) Constructing a framework for consideration

What should be done in the medium term, then?

It is necessary to analyze and consider the present situation and problems of the WTO and the Doha Round seriously and objectively, setting aside each country's position in negotiations.

We must first create a framework for this and initiate actions.

In order to set the stage for sensible discussions away from the negotiation table, a third-party panel—be it a WTO wise men's group, WTO reform council, or else—should be established, and this must be done immediately. (It is definitely necessary for Japan to participate in this framework.)

#### 4) Matters to be considered

In light of the above-mentioned problems facing the Doha Round and the WTO, the panel should consider and put forward proposals concerning, inter alia, the following matters:

- (i) Shifting to an issue-by-issue approach to negotiations (including separating certain issues from the Doha Round process)

We must recognize that the single-undertaking approach is no longer viable as a decision-making mechanism of the WTO, which now has 153 members.

- (ii) Desirable approach to decision-making

Decision-making by consensus should be maintained as a basic rule of the WTO. However, the notion of “variable geometry” should be introduced in proceeding with rulemaking and liberalization in the WTO. For this purpose, the decision-making mechanism of the WTO must be reformed.

(See the Warwick Commission Report regarding the idea of introducing “critical mass” decision-making under certain conditions. It is also necessary to consider linking this with certain core group discussions.)

- (iii) Utilization of plurilateral agreements (involving changes to the decision-making process for plurilateral agreements)

- (iv) Adoption of the schedules of concessions/commitments in more areas

Schedules of concessions and commitments, which have been used in the areas of tariff reductions/eliminations under the GATT and liberalization under the GATS, should be adopted in other areas as a way to enable the introduction of additional commitments.

- (v) Addressing problems of developing countries

An outcome consistent with the nature of the Doha Round, billed as a “development” round, must be achieved. Tangible progress must be made toward realizing the LDC package.

- (vi) Differentiation of the rights and obligations

Differentiation among WTO member economies must be based on appropriate criteria.

It is necessary to provide a clear and adequate definition of a “developing” “economy. Special and differential treatments should be reviewed and enhanced.

- (vii) Valuing and improving day-to-day operations of the WTO

The role of soft law should be highly valued.

Standing committees of the WTO should play more active roles, and their problem-solving function should be strengthened.



Surveillance under the Trade Policy Review Mechanism (TPRM) must be enhanced.

(viii) Ensuring the transparency of FTAs and regional trade agreements (RTAs) and bringing them into consistency with WTO rules

(ix) Strengthening the linkage with business communities

The WTO should seek to strengthen its linkage with business communities, for instance, by establishing WTO versions of the Business and Industry Advisory Committee (BIAC) in OECD and the APEC Business Advisory Council (ABAC).

(x) Strengthening political commitment to the WTO

One possible way to achieve this end is to establish a “WTO Summit Conference” and hold its meetings subject to adequate preparation (see the Sutherland Report issued in May 2011 regarding the lack of political will).

(xi) Another proposal deserving careful consideration is clarifying the status of the WTO secretariat and enhancing the functions thereof (see Supachai's Report in 2004). As the guardians of the WTO, the director-general and the secretariat should play more active roles in coordinating differences among member economies.

(xii) Utilization of economic analysis findings to educate the world

The report by the WTO and IDE-JETRO should be utilized to promote the “made in the world” initiative and other similar efforts.

### **Inter-institutional competition, division of labor, and complementation**

To the extent where the WTO remains at a standstill, FTAs continue to proliferate, including those between advanced economies and inter-regional FTAs.

This should not be taken negatively given the present situation of the WTO. However, FTAs must be WTO-consistent. (Some FTAs under the Enabling Clause are problematic in terms of their consistency with the WTO.)

The establishment of the Anti-Counterfeiting Trade Agreement (ACTA) will definitely give momentum to liberalization and rulemaking on an issue-by-issue basis under a plurilateral framework.

Going forward, it is important to allow greater flexibility in the use of plurilateral tools to enhance their use.

From the perspective of global governance, it is necessary to stimulate the WTO through inter-institutional competition at multilateral, bilateral, and plurilateral levels so as to contribute to the creation of a new multilateral order.

### **Establishment of an advisory panel of business leaders**

In order to build support for the progress of the Doha Round and for the WTO itself, it is crucial to obtain support not only from member governments but also from business communities.

Perspectives for business and global supply chain development are lacking in the WTO.

Disgusted with its “narrowness” and “slowness,” business communities have lost interest in the WTO and are instead focusing their attention on FTAs at the moment.

This means that the WTO and the multilateral trading system are on the verge of crisis.

What is important is to let business communities have a perspective that the WTO is the vehicle through which they should seek to promote further liberalization and create trade rules that are in consonance with the reality of international business in the 21st century.

From this point of view, it is recommended that the WTO establish an advisory panel of business leaders comparable to the ABAC for the APEC and the BIAC for the OECD.

### **Strengthening political commitment to the WTO**

Political involvement in the WTO has been extremely weak, particularly, in comparison with the degree of political involvement shown in addressing problems in the financial sector.

In order to break the Doha Round impasse and fight back the rising wave of protectionism, it is crucial to mobilize political involvement and support at the top level.

Thus, the proposal made in the Sutherland Report in 2004 to hold a WTO Summit meeting is strongly supported. (Although the report calls for holding a WTO Summit meeting every five years, the frequency of the summit meeting requires further consideration.)