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WHY THE U.S.-INDIA TRADE AGREEMENT SHOULD MAKE US WORRY MORE, RATHER THAN LESS, ABOUT GLOBAL TRADE GOVERNANCE*

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Why the U.S.-India trade agreement should make us worry more, rather than less, about global trade governance[*]

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The agreement of a deal between the U.S. and India in mid-November 2014 cleared the way for the package of trade measures agreed in Bali at the WTO's 9th ministerial conference to be finally implemented. The deal—which modifies the decision on *Public Stockholding for Food Security Purposes* to extend indefinitely the protection afforded developing country agricultural stockholding programmes against challenges under the dispute settlement mechanism until a permanent solution can be negotiated—was greeted in many quarters with both relief and welcome (Mehra, 2014; Wolfgang, 2014; Needham, 2014). It did not go un-noted, however, that the content of the agreement was little altered from that which had originally been offered to India in July 2014 when objections had first been raised about the ambiguity of the wording that surrounded the longevity of the so-called 'peace-clause' and the strength of India's reluctance to accept the status-quo position had become apparent (see Donnan, 2014).

Two aspects of the response to the U.S.-India agreement are worth dwelling on momentarily. First, a number of commentators cast the deal as a 'victory' for India, in particular—even though some also noted the pressure under which India's delegation had been put and the periods of isolation it had experienced (see, for example, Elliott, 2014)—and further evidence of a broader re-adjustment of power relations in the WTO more generally (see, for example, *Business Standard*, 2014; Kumar, Hughes and Miles, 2014; consider also Scott and Wilkinson, 2013). The BBC's Sanjoy Majumder (2014), for instance, suggested India's actions had gone some considerable way to saving the WTO from what the organization's Director General (DG) Roberto Azevêdo's had previously suggested could be 'the most serious situation that this organization has ever faced'

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(WTO, 2014),[1] a consolidation of India's role of as a 'firm leader', and the country's place as champion of the global poor. Second, commentators were almost unanimous in their celebration of the perceived contribution that the agreement would make to the global economy. Indeed, almost all of the commentary syndicated estimations that US $1 trillion of value would be added globally claiming further that 21 million new jobs would be created—of which 18 million would be created in the developing world.

What is noteworthy about these aspects of the post-agreement commentary is that they are taken—almost universally—as sure evidence of (and more-often-than-not positive) changes in the distribution of power in the multilateral trading system as well as signals that any value arising from an implementation of the Bali package would be more than just an addition to headline global economic welfare figures. Yet, while it is certainly the case that a greater diffusion of power has—in the abstract—the potential to be positive for the governance of global trade, and the generation of growth and employment in a fragile global economy are indeed praiseworthy, we celebrate India's 'victory' and these ballpark projections at our peril. We celebrate them at our peril because they are all-too-often borne more out of too close a focus on the perpetual cycles of crisis and reprieve that have come to characterise the politics of the WTO and the Doha round and of the uncritical recycling of best case scenario assumptions about what might result if the Bali package were—under a given set of circumstances—to be implemented, than they are a more detached reflection on what the U.S.-India deal *actually* means for the way trade is governed and how that governance can be made to more equitably distribute the gains from trade and the manner in which bargains are negotiated.

The consequences of this closely focused commentary and the uncritical fashion with which moments of reprieve are greeted in global trade politics are significant and have at least two problematic consequences: (i) they serve to divert attention away from the more fundamental problems that afflict the multilateral trading system; and (ii) they inhibit us from standing back and identifying solutions that are better and more suited to the early 21st century and which might result from a less frenzied process of reflection. In short, they lock us into a trade politics that is short-termist and symptom-orientated

[1] A claim that is perhaps overstated when one considers the contested passage of events that have defined the Doha round since its launch.

rather than one that is more measured and which addresses the fundamental problems facing trade governance today.

Thus, while it may be the case that the agreement enables the Doha round to move forward, the history of the multilateral trading system so far tells us that such forward movement is unlikely to generate broad-based, equitable, development gains. Indeed, it is more likely that the U.S.-India agreement will actually reinforce the long-run tendency in multilateral trade negotiations to produce bargains that buttress and exacerbate existing inequalities in the distribution of trade and related economic opportunities. What we should be doing, instead, is seeing the U.S.-India agreement not as an antidote to the ills of the multilateral trading system but symptomatic of much that is wrong therein, as yet another example of a small number of large trading powers dominating negotiations while at the same time holding the rest of the membership hostage to their special interests—albeit one, because of the changed character of one of the players involved, that gives an allure of a progressive movement forward in global trade governance.

This short paper explores why we ought to think more critically about what the U.S.-India agreement means for the way we govern global trade and not get side-tracked by the collective sign of relief that occurs when *something* happens that appears to have broken a deadlock. It explores how the agreement may simply reinforce an existing and problematic way of distributing commercial opportunities among WTO members as well as what might actually result should movement forward in the Doha round take place on the basis of the agreement and the operationalisation of the Bali package.

What the U.S.-India deal *really* means for the way we govern trade

The U.S.-India deal is not, as many claim, a antidote for an ailing form of trade governance. Rather, it is an agreement that enables trade governance to continue in the same way that it always has—that is, as a system which distributes commercial opportunities disproportionately to the largest and most significant trading powers while at the same time offering little that is of comparable value to smaller, less able developing and least developed countries. In this way, the U.S.-India agreement merely replicates the manner in which deals have always been done (thereby adding further credibility and precedent to continuing to do deals in this way); and it ensures that the actual substance of what the U.S.-India agreement generates, not only in terms of moving the Doha round forward but also within the broader context of the distribution of economic opportunities across the life-cycle of the multilateral trading system, with be asymmetrical and limited for the vast majority of WTO members.

What is interesting about the U.S.-India agreement is not so much that it unlocks the post-Bali deadlock but that the brokering of the deal happened in a way that is entirely consistent with the way multilateral trade negotiations have always been conducted. Often forgotten in analyses of the way the multilateral trading system works is the fact that the negotiation machinery is not a neutral, technocratic device that manages the flow of world trade flow for the gain of all involved. It is a fundamentally political mechanism the character of which is determined by the interactions of its member states. These interactions are not mere instances of co-ordination, collaboration and mutual assistance. They are at root adversarial encounters designed to leverage trade advantages that are of greater benefit to domestic rather than foreign interests. This is a somewhat obvious but nonetheless important feature to point out because it helps us see that in large part the WTO is a forum in which competition among member states over trade advantages takes place and wherein the outcome of that competition—i.e. what is, and who has 'won'—forms the basis of the way trade is governed globally. It is not, as a result, a forum intrinsically designed to promote trade co-operation. If it were then the primary goal would be the conclusion of deals designed to promote absolute and reasonably equitable gain and not to mediate in a competition among members to secure individualistic gain and relative advantage.

Competition not co-operation

Why does this matter? It matters because it helps us see that a global trade regime governed by competition and not co-operation is not one that is likely to produce equitably distributed welfare gains among members; nor is it likely to make a major contribution to the elimination of extreme poverty precisely because it is the strongest and most powerful that benefit most from adversarial systems. Pitching member states against one another in strategic games wherein few hard-and-fast rules exist, where myriad strategies are deployed in pursuit of a deal, and where the bulk of negotiating takes place away from the scrutiny of others, inevitably produces asymmetrical bargains. These bargains, in turn, produce trade opportunities, rules governing the conduct of negotiations, and procedures for the administration of the system that affect all aspects of the system's operation but which inevitably favour the interests of the strongest and most powerful.

Certainly other aspects of the system are important—such as the dispute settlement system, trade policy review mechanism, and the technical and support services offered by the secretariat—but in themselves these are not going to drive forward the kind of trade opportunities the poorest and least developed need. It thus remains the case that primary means of governing global trade and of distributing trade opportunities is through the striking of bargains borne of competitive interactions among 160 members all of whom seek at a minimum to maintain—and preferably to extend—their advantages.

Organising a system of trade governance in this way has two effects. First, it ensures that negotiations will always be highly contested affairs and exude a propensity towards crisis and collapse—as the passage of the Doha round amply shows but which is also evident across the entire history of the GATT/WTO (see Wilkinson, 2006). Second, in the absence of a clear preponderance of power, an agreement between leading adversaries (such as in the U.S.-India agreement) or a capacity to bring members together around specific and shared issues, negotiations will tend towards stasis—as they have frequently in the Doha round.

Bargaining among unequals

Understanding that this is a system that generates outcomes and systems of rules that result from contestations between and among members varying dramatically in size, economic significance and negotiating capacity wherein the onus is on individualistic rather than group-wide gain immediately calls into question suggestions that fair and equitable bargains can, or could ever be produced. While deals concluded may comprise aspects that are benevolent and 'good', or trade-offs that result in concessions given to ensure others continue to buy into a system—as the Bali package goes—they will nonetheless reflect and speak primarily to the interests of the most powerful. And they are likely to exacerbate rather than attend to growing inequalities between rich and poor countries.

This matters because if we are serious about using what trade machinery we have to make a material difference to the lives of the global have-nots then we should take the opportunity to set in motion a wholesale process of reform of the WTO (and perhaps all of our multilateral economic machineries). A first step in this process is to recognise the current system for what it is and to understand that we can and should change it.

Yet, before we can think about how a trade machinery might be reformed to produce trade-led-growth for all there are several other features of the way the multilateral system works that compound rather than attenuate worries about a form of governance predicated on bargains struck among unequals and which underscore the need for fundamental reform. Among other things, we need to recognise that it is not just negotiating among unequals *per se* that is the problem. It is that the vast majority of WTO members are excluded from negotiating in the first place. Member states do not just come to the negotiating table varying dramatically in size and negotiating capacity and ability. Rather, negotiations are organised to ensure that the most significant players in world trade—as major exporters and/or significant importers—have a seat at the negotiating table, while those that matter very little in terms of their overall share of world trade do not.

This practice is highly exclusionary. While it was always intended that any beneficial outcome of these small group negotiations would be conveyed to the wider membership under the most-favoured nation (MFN) provisions (via a multilateralisation process), a least two problems present themselves. First, this is a piecemeal mechanism for passing on what are often untailored and incongruous market openings onto smaller developing countries with little thought to their specific commercial make-up or economic needs. Second, the lack of developing (particularly small and least developed) country involvement in setting the tone and content of the negotiations inhibits their capacity to negotiate areas of interest to them as well as crowds out their capacity to have a say in the way trade is governed. This is most evidently the case in the run-up to the U.S.-India agreement when Indian special interests prevailed over those of the least developed and wherein the poorest and least able had little say in the unblocking of the impasse.

The trouble with rounds

This would be bad enough if deals like the U.S.-India agreement were merely infrequent exceptions. Yet, deals like these are very much the norm and have comprised the primary way multilateral trade agreements have been brokered over time. That said, it is not just the very existence of large power mini-lateral deals that is problematic. It is their compound consequences—that is, what results when they take place time after time. And it is for this reason that the use of rounds as a vehicle for negotiating market openings needs also to be rethought.

At issue here is that rounds are not 'blank pieces of paper', 'fresh starts' or 'year zeros'. Rather, each new negotiation unfolds in relation to the outcome of a previous round or rounds. This means that delegations approach any new round mindful of what has gone before, cognisant of any inequities that had resulted therein, and determined to improve upon any previous deal relative to the gains—perceived or otherwise—of their competitors. It is precisely because of this iterated nature that the outcome of one round necessarily shapes the way future negotiations unfold. For both developed and developing countries this inevitably means pursuing openings in new areas and sectors in which a deal was not, or was only partially reached during a previous round. It also provides an opportunity to rectify anomalies and imbalances from previous deals.

This iterated form of bargaining predictably accentuates the degree to which members are placed at loggerheads with one another. For developing countries, the asymmetry of previous rounds has ensured that they approach any new negotiation seeking to rectify past anomalies (and as time goes by, more determinedly so). While this position has also been the case for a number of industrial countries—as it was for the United States during the Kennedy round vis-à-vis the European Economic Community—their primary position has been one of seeking to protect sectors of decreasing competitiveness and political sensitivity as well as to open up new areas of economic opportunity. The problem is that in approaching a new round those seeking some kind of rectification are encouraged to agree to new concessions in return for remedial action. This is the logic of any bargaining-based system. Yet, it is because of this requirement to offer something in return for that which is received, coupled with existing power inequalities between participating states, that asymmetries in outcome have inevitably been perpetuated and exacerbated in successive GATT/WTO rounds. The Uruguay round is a good example of just this and provides the backdrop to developing country positions in the Doha round. The Bali package is equally as problematic as it exchanged best endeavour promises for a legally binding agreement on trade facilitation—that latter of which will be of greater benefit to exporters in industrial countries than in their developing counterparts (see Wilkinson, Hannah and Scott, 2014).

The point here is that the use of exchange as the mechanism of liberalising (and governing) trade among states of vastly different capabilities in institutional confines that have traditionally favoured the industrial states (and which now includes a small set of very large developing countries of which India is just one) over their developing counterparts has produced bargains that are of dramatically different value to participating states (that is, they are asymmetrical). As negotiations take place in bursts over time, the inequities of one negotiation influences others; and, as it is only in reciprocating for concessions received that a round can hope to reach a conclusion, it is only through a process of exchange that past anomalies can be redressed. Yet, it is precisely because each exchange is asymmetrical that as negotiations take place the imbalance of commercial opportunities among participating states is exacerbated rather than attenuated. And while it may be the case that the least developed are often relieved of the requirement to reciprocate, this itself is not unproblematic precisely because their lack of significance in world trade excludes them from influencing in any way the shape of the negotiations.

The consequence is that one asymmetrical bargain has been produced after another. Yet, it is only when all of the negotiations are taken as a whole—that is, over the lifetime of the institution—that the extent of the asymmetries of economic opportunity between developed and developing members can be appreciated. It is only when viewed in this way that we can appreciate how entrenched the imbalance in the distribution of trade opportunities has become, and why the WTO current fashioned is a questionable vehicle for helping generate trade-led growth for all.

What about the global trillion?

What this all means is that if the implementation of the Bali package were to add US $1 trillion to the value of the global economy it would unlikely do so in a way that was even or equitable in its distribution. What is more likely is that the largest gains would flow to the largest trading nations, while the adjustment costs would be disproportionately borne by those members whose legal system require reform (i.e. who currently operate customs system at variance with the trade facilitation agreement, namely developing countries).

It is also worth bearing in mind that there is a tenuous relationship between predicted and actual gains. While it is the case that significant advances have been made in modelling trade outcomes, those outcomes are contingent on a number of assumptions (which often vary dramatically across projections) being made about the nature of the global economy, of individual states and of the capacity for restructuring to take place. Modelled outcomes can provide delegations and missions with useful aids as to the value of entering into a particular negotiation, but their use is at best a guide rather than an emphatic statement of expected outcome. Instead, these projections should be better understood as claims made by analysts that have particular views of trade and the gains from liberalisation and/or regulation. Much of their utility, however, lies in the way they are deployed to shape expected outcomes. Used in this way, projections are political tools that are one of a number of devices deployed to shape negotiations in such a way that preferred outcomes occur. And as the capacity to conduct simulations is unevenly distributed among WTO members—with the largest trading nations invariably having the greatest capacity and smaller countries either running inferior exercises or else relying on scenarios modelled elsewhere—it is unsurprising that they can cloak subjective positions about trade outcomes in a way that professes to be objective and the result of matter-of-fact exercises. Thus, while commentator accounts may claim with some authority that the U.S.-India deal may result in a trillion dollars of value being added to the global economy with a concomitant increase in employment, those figures say little about either the distribution of gain or of net—that is, adjusted for losses resulting from restructuring—increases in employment.

My point here is not to undermine the usefulness of modelling. Rather, it is to raise a note of caution that behoves us to look more carefully at what is in front of us and ask questions about its real value. If we genuinely believe that the U.S.-India deal will bring about welfare gains for all and that it is the result of a fair process of politicking and negotiation then we should join the chorus in celebration. If, however, we recognise that the deal lends contemporary trade governance an illusion of functionality which in reality merely props up an outmoded and unfair system of commercial opportunity allocation then we should begin the task of reflecting on what precisely we want from a system of trade governance and how we go about creating it.

Conclusion

Stating that a multilateral trading system wherein successive asymmetrical outcomes are negotiated favouring those that already have a great deal over those that have very little requires reform is obvious and has been so for a very long time. Yet, despite its well-noted faults we have been unable to agree on just what that reform might look like. Part of the problem is that many of the reform proposals that have been put forward would, if implemented, merely patch up an already problematic system. Few have pressed for a more radical overhaul of the system that does away with competitive negotiating as a machinery for generating economic opportunity, which installs a governance structure that is more democratic, representative, accountable and appropriate, or which connects the way we govern trade up with the realisation of broader social goods and the way we manage other aspects of global life (Wilkinson, 2014). Yet, we fail to heed the necessity of WTO reform at our peril. As Nelson Mandela put it in 1998 in his assessment of the previous Uruguay round at the celebrations of the multilateral trading system's half century,

> Fifty years ago, when the founders of the GATT evoked the link between trade, growth and a better life, few could have foreseen such poverty, homelessness and unemployment as the world now knows. Few would have imagined that the exploitation of the world's abundant resources and a prodigious growth in world trade would have seen the gap between rich and poor widening. And few could have anticipated the burden of debt on many poor nations.
>
> As we celebrate what has been achieved in shaping the world trading system, let us resolve to leave no stone unturned in working together to ensure that our shared principles are everywhere translated into reality ... let us forge a new partnership for development through trade (Mandela, 1998).

It is to upturning every stone and forging a new partnership that we must now all turn.

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