

**The WTO Doha Round Impasse
and Proliferating Trade Agreements**

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Abstract

Beginning in 2001 the Doha Rounds afforded World Trade Organization (WTO) members the opportunity to develop equitable trade rules between the developed and developing member states. The WTO has been successful in advancing multilateral international trade; however, since the Doha Rounds stalemate, it has witnessed the development of more than 300 Preferential Trade Agreements (PTAs) and over 500 Free Trade Agreements (FTAs). This article attempts to answer two questions: first, has the failure of the Doha Rounds contributed to the proliferation of PTAs and FTAs, and the second are these agreements threatening the regulatory authority of the WTO, which, in turn, reduces its ability to effectively promote and govern free trade, and its mission?

Introduction

First initiated in Doha, Qatar in 2001 in an effort to reach equitable trade rules between the developed and developing nations, the Doha Rounds, now called the Doha Development Agenda (DDA), have proved to be a major obstacle for the WTO. The December 2011 meeting of the WTO in Geneva turned into a stalemate for the Doha negotiations, and it collapsed as did the 2008 Round. The Doha stalemate raises two questions. The first is has the failure of the Doha Rounds contributed to the proliferation of Preferential Trade Agreements (PTAs), Free Trade Agreements (FTAs), and Regional Trade Agreements (RTAs). The second follows on by questioning whether these agreements are threatening the regulatory authority of the WTO, which, in turn, threatens its ability to effectively promote and govern free trade?

Background

The 1944 Bretton Woods Conference initially contained three pillars. The first was the creation of the International Monetary Fund (IMF). The second was creation of

the International Bank for Reconstruction and Development, better known as the World Bank, and the third was the International Trade Organization (ITO), which was purposed to supervise the administration of an open and non-preferential multilateral trading system. The first two have proven to be very visionary and equally successful, but the latter was stillborn as the American Congress objected to its formation on the grounds that it would sacrifice national sovereignty to an international trade body.

The failure of the ITO to gain momentum precipitated the formation in 1947 of the General Agreement on Tariffs and Trade (GATT) with 23 “contracting parties” for the purpose of facilitating a multilateral trade system (GATT 1947). The take away is the “contracting parties” were not called members, and therefore the agreement was only provisional. Thus, it was not considered a legitimate international trade body, so the U.S. agreed to it.

The GATT had several weaknesses. In addition to being only a provisional agreement as its “contracting parties” were not members, there were issues with its dispute system because decisions could be vetoed by the defendant, and no formal enforcement procedures existed. Additionally new members often were not required to comply with GATT rules or provide market access to their national trading system since there was no enforcement mechanism. Another issue was that its trade promotion activities applied only to manufactured goods with few standardized trade agreements among its participants. The GATT’s loose regulations and lack of enforcement caused it to be considered “more like a gentlemen’s club than a legal regime. Its objective was to settle trade problems, not to create or clarify trade law” (Pauwelyn 2005). These shortcomings led to the formation of the World Trade Organization (WTO) in 1995 as a new and “improved” version of the GATT

As a result of the Uruguay Round the WTO was created in 1995 as a structured international organization with a fully accepted membership (WTO 2013). It overhauled the GATTs dispute-veto settlement process by implementing the Single Undertaking rule which requires a unanimous vote of the membership. In addition to regulating trade, it also included intellectual property protection, which was a glaring omission of the original GATT agreement.

Since its establishment the WTO has successfully adopted a full range of trade rules including the very effective and highly respected dispute-resolution settlement system. Additionally, through continuous network dialogue among committee members it has maintained a smoothly functioning world trading system. In fact, since the inception of the WTO in 1995, up to 2012, international world merchandise and exports and imports increased 353.85% or 13.2 trillion in current U.S. dollars.

Table 1

Total Values and Shares of Merchandise Exports and Imports, Annual 1995 – 2012 in Trillions

1995	2010	Increase
5.2	18.4	353.85%

Source: UNCTADSTAT. United Nations Conference on Trade and Development. Values and shares of merchandise exports and imports, annual, 1948-2012. UNCTAD.org. <http://unctadstat.unctad.org/TableViewer/tableView.aspx?ReportId=101> (accessed September 29, 2013).

But how much (if any) of this increase in trade is attributable to the WTO? Research by Myeong Hwan Kim demonstrates that the GATT/WTO increased trade by 10.6 percent between members, and over time it has steadily continued to increase (Kim, 2011). This study used extensive trade data from 1948-2007, and its results are statistically significant.

The Doha Rounds

A major failure, hopefully not fatal, is the WTO's inability to achieve forward progress in the Doha Rounds. These negotiations face several challenges. First of all there is the Single Undertaking rule:

Virtually every item of the negotiation is part of a whole and indivisible package and cannot be agreed separately. This is known as the 'single undertaking': 'Nothing is agreed until everything is agreed.' (WTO The Doha Round 2011)

Whereas the original GATT had twenty-three members (“contracting parties”), currently the WTO organization has 153 members. WTO members are all sovereign states, and the membership includes not only the developed nations of the world, but also a broad cross section of developing nations. Thus, there are widely divergent national interests, and very complex trade and economic implications. This makes achieving the required consensus by the single undertaking rule an extremely challenging, if not impossible, objective intensified as it is by the extremely dynamic and ever changing international trade and economic climate.

The Single Undertaking principle makes it particularly challenging for the Doha Rounds to come to a resolution since there is no agreement unless “everything is agreed.” Officially, there are twenty-one bargaining items in the Doha Rounds, but some, such as Agriculture, are more challenging than others, and almost every area is contentious,. In his report to the General Council on November 30, 2011, Director-General Pascal Lamy succinctly stated the following political nuances of the issues surrounding the 2011 Doha Round:

... I believe that Ministers need to address the essential question which in my view is behind the current impasse: different views as to what constitutes a fair distribution of rights and obligations within the global trading system, among Members with different levels of development. This is a political question to which a political response will be required. (Lamy 2011b)

Indeed, a major issue is the steadily increasing rhetoric between the developed and developing nations:

The WTO has long confronted a challenge to its legitimacy from the perception in developing countries that it exists as a tool to enable the United States and European countries to control international trade. A criticism of the WTO and other multilateral organizations holds that great powers use international institutions to conserve and extend their authority (Daemmrigh 2011).

However, as a result of the December 2011 Geneva Doha stalemate Ambassador Michael Punke, U.S. permanent representative to the WTO, stated "We

need to explore new negotiating approaches to end the stagnation on the Doha Round" (Robinson, 2011). In reality, however, "a Doha-weary world faces a difficult 'trilemma' over whether to implement all or part of the draft agreements as they stand today, to modify them substantially, or to dump Doha and start afresh" (Martin and Matoo, 2012).

For purposes of this discussion, the critical Doha issues can be condensed to the following major areas:

- Agriculture

"Agriculture has become the linchpin of the Doha Development Agenda" (Fergusson, 2008). The main issues center around the amount of import duties a developed country would charge on agricultural products being exported by a developing country, and the duty amount a developing country could charge a developed country for imports. In particular the developing countries, which are largely agricultural economies, sought in the 2008 Doha Round to protect themselves from the developed countries' agricultural surges. The developed countries refused this request, and the 2008 Doha Round collapsed.

The basic argument put forward by the developed nations in support of subsidies is that they even out commodity price fluctuations created by various unpredictable events including weather conditions, insect infestations, floods, disease etc.

A second rationale of developed nations is that food production is essentially a security issue in that the subsidies prevent farmers from making a nation vulnerable to the vicissitudes of international trade, terrorist attacks, or energy price spikes. Poorer countries could be devastated by uncontrollable agricultural price swings. A third argument is that there is little public support for eliminating agricultural subsidies since it provides a predictable food supply.

However, those who criticize subsidies, often developing nations, state that the real culprits are modern agribusiness and advanced farming techniques. The critics also argue that the agriculture industry has created superb lobbying methodologies that have forced governments worldwide, usually developed nations, to implement trade restrictive subsidies that place developing nations at a severe disadvantage.

The impact of a developed nation having subsidized agricultural products with free access to export to an underdeveloped nation is best illustrated by the United States' free access to Mexico's economy as a result of the NAFTA agreement: It created devastation for the rural Mexican farmers:

American agricultural imports displaced many Mexican farmers who were not as automated as [America – comment added] and thus less productive American agricultural production is too competitive for the average Mexican farmer. U.S. farm subsidies have rendered obsolete Mexican farming, and millions of farmers have lost their livelihoods (Hartman 2008).

The Mexican experience illustrates another major area of concern. The amount of product support a country is able to give its farmers for the production and export of agricultural products varies greatly. These supports are delineated in the box categories:

Green box: supports considered not to distort trade and therefore permitted with no limits. Blue box: permitted supports linked to production, but subject to production limits, and therefore minimally trade-distorting. Amber box: supports considered to distort trade and therefore subject to reduction commitments (WTO n.d.).

In view of the Mexican outcome with NAFTA's free access rules, it is very rational that the developing nations do not want to open their agricultural markets to the highly developed and governmentally supported agricultural industry exports from the developed nations. This governmental support is an example of an amber box that distorts trade.

Another very difficult area for agriculture in the Doha negotiations is cotton. The cotton producing group of African nations consisting of Benin, Mali, Chad and Maili (the C4 nations) have consistently pointed out that both the United States and the European Union have been the largest subsidizers of their domestic cotton farmers, resulting in detriments to C-4 economies. C4 leaders also claim:

their attempts to negotiate an agreement at WTO talks have been ignored. "We have received no responses or counterproposals from the U.S. How can we have a solution if there is no dialogue? Our proposal is on the table. It has been on the table too long with no response" (Kurtzleben 2012)

A final issue for agricultural access involves the G20 group of developed nations. The G20 was formed in 1999 and currently consists of Argentina, Australia, Brazil, Canada, China, European Union, France, Germany, Italy, India, Indonesia, Japan, Mexico, Russia, Saudi Arabia, South Africa, South Korea, Turkey, United Kingdom, and the United States. Brazil has been leading a general opposition to the developed countries within the G20 insisting they must drop their agricultural subsidies. Additionally the opposing members do not want to agree to a quid pro quo where they will reduce their own border barriers to finished products from the developed countries. So far, however, there has been no movement by the developed countries to reduce their domestic agricultural subsidies. Thus, this is another intractable agricultural issue.

The December 2011 Doha meeting was a stalemate, and basically nothing was achieved in the agriculture area.

- Non-agricultural market access (NAMA)

The basic NAMA objective is to reduce tariffs and nontariff barriers (NTBs) in all sectors exclusive of agriculture for all members. The purpose of these sessions was to make progress on the working documents concerning the Ministerial Decision on Procedures for the Facilitation of Solutions on Non-Tariff Barriers to reach an understanding on the Interpretation of the Agreement on Technical Barriers to Trade with respect to the Labeling of Textiles, Clothing, Footwear, and Travel Goods (textile labeling).

On the tariff component of these negotiations, the Director General states in his report on the Doha Round to the General Council on November 30, 2011 that it "still represents a challenge" (Lamy, 2011a). This is another major stumbling block for the WTO although some progress was made on the other (NAMA) issues, but more needs to be done.

- Services

This negotiation issue covers services in areas such as telecommunications, banking, insurance, construction, distribution and transport to help enhance performance as well as open access from outside sources to increase trade. A major concern is that the WTO' should not force nations to privatize and deregulate all services, including public services, to allow foreign competition from transnational corporations.

However, in 1997 the:

WTO's Financial Services Agreement (FSA) locked in domestically, and exported internationally, the model of extreme financial service deregulation that most analysts consider a prime cause of the current [financial] crisis. Deregulation (not only liberalization) of the financial service sector – including banking, insurance, asset management, pension funds, securities, and more – is among the most important, but least discussed, aspects of the WTO. (Public Citizen, 2010).

In the United States the Clinton administration, which participated in the WTO FSA negotiations, complied with its terms and passed the Gramm-Leach-Bliley Act in 1999 and repealed provisions of the 1933 Glass-Steagall act that prohibited a bank holding company from owning other financial companies effectively deregulating the U.S. financial services industry. When this was coupled with the passage of the 1992 Housing and Community Development act that allowed the HUD secretary to insure a first-time buyer's mortgage whose principal amount exceeded 97% of the property's appraised value if the mortgagor completed an approved program of counseling on homeownership responsibilities and financial management, the subprime mortgage race to the bottom was launched.

The ensuing 2008 American and international financial crisis created concern that re-regulation of the U.S. financial services industry was a necessary prerequisite to resolving the issue. This gave impetus to the passage of the Dodd–Frank Wall Street Reform and Consumer Protection Act of 2010, the details of which at this writing are still being developed.

The reality is, however, the “United States – and U.S. based financial service firms - used WTO negotiations to export the U.S. model of extreme financial service deregulation to 105 other WTO signatory countries who are bound under the Financial Service Agreement” (Citizen, 2010). While there is little doubt the financial services industry needs tighter regulation, any national effort to re-regulate its own financial industry is a violation of the FSA.

The national sovereignty limitations raise serious issues. This is highlighted by the U.N.’s *Report of the Commission of Experts of the President of the United Nations General Assembly on Reforms of the International Monetary and Financial System* states:

Agreements that restrict a country’s ability to revise its regulatory regime—including not only domestic prudential but, crucially, capital account regulations—obviously have to be altered, in light of what has been learned about deficiencies in this crisis. In particular, there is concern that existing agreements under the WTO’s Financial Services Agreement might, were they enforced, impede countries from revising their regulatory structures in ways that would promote growth, equity, and stability. (UN, September 21, 2009).

This is a critical issue for the Doha Round on services. The WTO’s FSA language needs to be clarified and revised to allow nations to re-regulate their national financial services sector in order to remedy the damage done by the international financial crisis set in motion in 2008 and to prevent further proliferation of the problem. One conclusion of the UN Commission, otherwise known as the Stiglitz commission, is “one of the lessons of the current crisis is that there should be no presumption that *eventually* there should be full liberalization. Rather, even the most advanced industrial countries require strong financial market regulations.” (UN, September 21, 2009)

However, there has been no movement in the Doha Rounds to do this as they are in a state of impasse. Instead what has been happening is that the developed nations, in particular the United States, have been providing loans and subsidies to their own financial sectors that developing countries cannot match in breadth nor scale for

their own countries. The concept of too big to fail through governmental guarantees in the developed countries provides a distinct advantage over banks in the less developed countries (LDCs). This is a major issue of disagreement that is another strong contributor to the Doha impasse.

- Rules

The Negotiating Group on Rules covers anti-dumping, subsidies and countervailing measures, including fishery subsidies and regional trade agreements. More than 3,500 anti-dumping investigations have been launched since WTO came into being in 1995. A group of fifteen developing nations, calling themselves “Friends of Anti-Dumping Negotiations” (FANs), believe that the existing WTO Anti-Dumping Agreement should be improved to counter what they consider to be an abuse of the way anti-dumping measures can be applied primarily to benefit the United States and other major nations.

However, in an April 21, 2011 WTO report by the Chairman of the Negotiating Group of Rules, Ambassador Dennis Francis, states the committee is at impasse:

To conclude, it is clear that notwithstanding the mandate in Doha and the Ministerial Declaration in Hong Kong, China:
in essence, the objectives of various Members in these negotiations remain conceptually different, and gaps persist in Members' positions on all elements proposed.

I reaffirm my advice to Members that unless they adopt a pragmatic, flexible and less doctrinaire approach to these negotiations it is unlikely that this impasse will be overcome (Francis, April 21, 2011).

But on a bright note, and despite the impasse, the Council for Multilateral Business Diplomacy (CMBD) reported that a new chair was appointed for the Group, Ambassador Wayne McCook from Jamaica (CMBD, March 13, 2012). Thus there may well be life after death, at least for the Group, but it does not look good.

- Trade-Related Aspect of Intellectual Property Rights (TRIPS)

The TRIPS agreement came into effect on January 1, 1995, and to date is the most comprehensive multilateral agreement on intellectual property.

The areas of intellectual property that it covers are: copyright and related rights (i.e. the rights of performers, producers of sound recordings and broadcasting organizations); trademarks including service marks; geographical indications including appellations of origin; industrial designs; patents including the protection of new varieties of plants; the layout-designs of integrated circuits; and undisclosed information including trade secrets and test data (WTO, 2012a).

There are three main features in the TRIPS agreement. They include Standards. for the main areas of intellectual property covered by the TRIPS Agreement where The Agreement provides minimum standards of protection to be complied with by each Member. A second standard is Enforcement of the set of provisions deals with domestic procedures and remedies for the enforcement of intellectual property rights as the agreement specifies. The third area is dispute settlement. The agreement makes disputes between WTO Members regarding TRIPS obligations subject to the WTO's dispute settlement procedures.

The main area of disagreement occurs over enforcement of the TRIPS agreement between the developed and underdeveloped nations in the area of healthcare where the underdeveloped nations claim the cost of many patented medicines are unaffordable, and they, therefore, seek generic drugs that can be made available at affordable prices. In 2001, developing countries, concerned that developed countries were insisting on an overly narrow reading of TRIPS, initiated a Round of talks that resulted in the Doha Declaration. Adopted on November 14, 2001 it reaffirmed flexibility of TRIPS member states to circumvent patent rights for better access to essential medicines.

Specifically it is stated in the Doha Declaration on the TRIPS Agreement and Public Health in paragraph 6 that:

We recognize that WTO Members with insufficient or no manufacturing capacities in the pharmaceutical sector could face

difficulties in making effective use of compulsory licensing under the TRIPS Agreement. We instruct the Council for TRIPS to find an expeditious solution to this problem and to report to the General Council before the end of 2002 (WTO November 14, 2001).

This was a provisional agreement, but it was particularly important for those nations challenged by epidemics of HIV/AIDS, tuberculosis, malaria and other serious diseases as detailed in paragraph 5 part C of the declaration. In 2007 the European Union's (EU) Commissioner, Peter Mandelson, announced that the EU approved a 2005 WTO declaration formally amending the Doha Declaration to make the paragraph 6 provision permanent.

However, the EU has never obtained the required signatures for this agreement to be effective. Thus, this remains a serious issue between the developed and developing nations in the TRIPS DOHA discussions.

- Trade and environment

In a report to the WTO on June 7, 2012 Director General Lamy stated:

For the first time since the beginning of the crisis in 2008, this report is alarming.

The accumulation of ... trade restrictions is now a matter of serious concern. Trade coverage of the restrictive measures put in place since October 2008, excluding those that were terminated, is estimated to be almost 3% of world merchandise trade, and almost 4% of G-20 trade. (Lamy June 7, 2012)

As a result of the financial crisis of 2008, the subsequent recession, and the tenuous economic recovery, nations have been imposing restrictive trade measures in an effort to protect their own domestic economies. This poses a direct threat to the WTO and multilateralism.

This situation has occurred despite ongoing environmental services negotiations under the Committee on Trade and Environment in special session. The negotiations, part of the Doha Development Agenda (DDA), address two main themes: the relationship between the WTO and multilateral environmental agreements (MEAs); and

the elimination of barriers to trade in environmental goods and services. The Committee on Trade and Environment, in special session, is striving to reconcile ideas put forward by WTO members on the relationship between the WTO and multilateral environmental agreements (MEAs).

Additional progress was made with respect to the negotiations on the reduction or elimination of tariff and non-tariff barriers on environmental goods and services. Members had progress in the identification of environmental issues termed “goods.” The “goods” discussed to date (September, 2012) include environmental categories, such as air pollution control, renewable energy, waste management, water and waste-water treatment.

However, little progress was made in the December 2011 Doha meeting, and no final agreements have been reached regarding trade and development. Indeed, increased national trade restrictions pose deep concern for the international trade environment. Furthermore, at the September 26, 2012 WTO Public Forum a presentation was made on the Implications of Negotiation Failures on Environmental Goods and Services at the Doha Round for Global Trade Governance (Ferdi, 2012).

[Special and differential treatment](#)

The special provisions are contained within the WTO agreements that provide developing countries special rights and allow other members to treat them more favorably. These are termed the “special and differential treatment provisions” (WTO, 2011c). Special provisions can include such elements as longer time periods for implementing agreements and commitments or measures to increase trading opportunities for developing countries. However, at the December 2011 meeting, the deliberations came to impasse, and nothing was formally approved.

The basic issue of the Doha Rounds is that while some progress has been made in the main categories, the reality of the December 2011 meeting impasse is that these issues coupled with the single undertaking rule threatens the entire Doha process and the viability of the WTO as an organization as well as its ability to promote international trade.

PTAs

A unilateral Preferential Trade Agreements (PTAs) are non-reciprocal preferential trade schemes. Free Trade Agreement (FTAs) or a Regional Trade Agreement (RTAs) is a reciprocal trade agreements between two or more partners. PTAs typically are between a developed nation and developing nation where the developed nation favors the developing nation by reducing a tariff for trade purposes. At the present time there over 300 PTAs.

FTAs can be between any type of nation or nations and feature a reduced or no tariff for the FTA members. While the overwhelming majority of FTAs/RTAs are bilateral, many FTAs/RTAs are multilateral particularly those created after 2001. Currently there are over 500 FTAs/RTAs worldwide. However, both PTAs and FTAs/RTAs share a common tariff to nonmembers. Therefore, they are inherently discriminatory toward nonmembers.

FTAs were permitted to be developed under Article XXIV of the original GATT agreement. The purpose of this was to encourage additional free trade through the creation of voluntary agreements of closer integration of the economies of the member countries in order to facilitate trade (GATT, 1994).

While the Doha Rounds are basically in a stalemate, there has been a steadily increasing number of Preferential Trade Agreements (PTAs) during the same period of time. At the time of this writing there are over three hundred PTAs and more than 500 FTAs/RTAs worldwide. In fact UNCTAD reports in June 2013 "Today, at least 110 countries are involved in 22 regional *negotiations* (italics added)." (UNCTAD, 2013)

However, the accuracy of this data may be offset by a lack of clarity on the definition of a PTA and FTAs/RTAs and some of the data may include both trade agreements being considered together.

The reality is that the use of these terms is somewhat confusing:

The term "RTA (regional trade agreement)" is the general term used in the WTO for trade agreements in which the parties offer more preferential treatment to each other than to other WTO members. It may be a *slightly confusing* (italics added) term, since not all RTAs are "regional"; so for example a possible agreement

between the EU and India would be termed an RTA.

An FTA is a subset of RTAs. "Free trade" in such agreements may be a matter of interpretation, since there are typically exceptions to the product coverage in these agreements. One way of thinking about this (though I would add not a wholly satisfactory way) is to see what WTO provision the RTA has been notified under. If it is notified under GATT Article XXIV, chances are it will be closer to an "FTA" than if it is notified under the Enabling Clause (the Enabling Clause allows flexibilities for RTAs between developing countries in terms of product coverage or depth of preferences). RTAs in services are also possible (these are notified under Article V of the General Agreement on Trade in Services).

As for unilateral preferential schemes, it so happens that in the WTO - in the context of negotiations that took place recently - these are now called preferential trade arrangements. *Again, the terminology can be somewhat confusing, especially since some authors use the term "PTA" to describe what I have defined above as an "RTA"!* (italics added) Essentially, though, these are arrangements where one country (or in some cases more than one country) offers preferential treatment to other countries - typically developing countries - and the beneficiaries do not offer any preferential treatment in return. (Iyer, 2013)

Nonetheless, a hypothesis of this article is that the failure of the Doha Rounds has contributed to the proliferation of these agreements. However, as with everything, it is not that simple.

PTAs are not new. As of 1990 there were over ninety PTAs worldwide. But, by 2010 there were over three hundred. Thus between 1990 and 2010, twenty years, there was an increase of 210 (233.3%) PTAs worldwide. The Doha Rounds

commenced in November 2001. One could surmise that there could be at least a partial correlation between the Doha stalemate and the growth of PTAs.

However, this reasoning overlooks some major characteristics of PTAs. The rapid growth of PTAs and the launch of the Doha Rounds may be a simple coincidence:

PTAs may be part of a broad pattern seen since the Second World War – where some countries want to move “further and faster” in trade rule-making than others, where bilateral and regional agreements can have a positive, “domino effect”, encouraging the pace of multilateral cooperation (and vice versa), and where regional and multilateral agreements are becoming coherent, not conflicting, approaches to managing a more complex and integrated world trading order.

There is no reason to assume that PTAs will cease to grow in number or that they will not form part of the long-term tapestry of international trade relations. Secondly, the content of PTAs continues to evolve and deepen, reflecting important changes in the world economy (WTO, 2011b).

Furthermore the WTO’s Director General Pascal Lamy states:

The continuing proliferation of PTAs in parallel with the Doha Round has provoked a debate about coherence, compatibility and potential conflict between multilateral and regional approaches to trade cooperation. Among the questions addressed in this debate are whether burgeoning regionalism signals a weakening of international commitment to open trade, and foreshadows a return to a more fragmented trading system (WTO, 2011b).

A different perspective may be that the formation of these bilateral agreements is simply a needed development in managing trade and foreign relations in an extremely

complex and integrated world. Every WTO member (with the exception of Mongolia) belongs to one PTA or another. In fact, many members belong to several PTAs. Yet, the Director General states “One of the key challenges currently facing WTO Members is how to ensure that the trade opening conferred by preferential agreements synergizes with the multilateral trading system” (Lamy 2010).

The United States has concluded a series of FTAs, including the Obama administration’s successful October 2011 effort in getting the Congress to approve three more with Colombia, Panama, and South Korea. Additionally the Obama administration (as of this writing July, 2012) is in the process of negotiating a plurilateral Trans-Pacific Partnership (TPP) with Australia, Brunei, Chile, Malaysia, New Zealand, Peru, Singapore, and Vietnam. Additional negotiations are also underway with Canada, Mexico, and Japan to join the partnership as well.

The motivations for the U.S. to complete the TPP are strong financial benefits, as well as recognition of the political risks and rewards of the Doha agreement:

... the TPP will add billions to the U.S. economy and solidify Washington’s political, financial, and military commitment to the Pacific for decades to come. Given the potential windfall, the Obama administration believes that the TPP has a better chance of overcoming domestic opposition than would a Doha agreement or new bilateral deals (Gordon 2012).

Not only has there been a rapidly increasing number of PTAs and FTAs/RTAs, but also their characteristics have been evolving. An increasing number have broader geographical scope including being cross-regional. Others, such as the evolving U.S. TPP deal, have been consolidated into plurilateral agreements as well as bilateral agreements across regions between developed and developing countries.

The Director General states that as a result of this confluence of regional agreements there is a trend toward “increased fragmentation of trade relations, with countries belonging to multiple, sometimes overlapping PTAs” (WTO, 2011b). However, one can question the reason for the rapid increase in PTAs since the general “reduction of tariff rates over time – through multilateral, preferential and unilateral

processes – has reduced the scope for securing meaningful trade preference” (WTO, 2011b). Therefore it would seem the motivation extends beyond tariff reduction alone.

Prior to both the GATT and the WTO the motivation for creating a PTA agreement more than likely was to avoid the Most Favored Nation status granted between two or more nations in a bilateral or multilateral trade agreement that implemented a reciprocal trade agreement. However, with both the GATT and the WTO MFN status is a cornerstone of both agreements.

A more basic motivation, to avoid tariffs, is not, however, a primary driver of the formation of PTAs simply because WTO members are legally forced to reduce or eliminate tariffs under the terms of the agreement. A deeper investigation into recent PTAs shows they are expanding beyond the legally enforceable provisions of the WTO agreement.

A study performed by Horn, Mavroidis and Sapir entitled “Beyond the WTO? An anatomy of EU and US preferential trade agreements” analyzed the content of the European Community (EC) and US preferential trade agreements, and divided the areas covered by these agreements into:

- ‘WTO plus’ (WTO+): commitments building on those already agreed to at the multilateral level, e.g., a further reduction in tariffs.
- ‘WTO extra’ (WTO-X): commitments dealing with issues going beyond the current WTO mandate altogether, e.g., on labor standards (Horn, 2010).

The study “covers all the provisions in all 14 EC and US agreements respectively with WTO partners signed by the parties and, generally, notified to the WTO as of October 2008. It examines to what extent these provisions are legally enforceable”

Basically the PTAs labeled WTO+ stay strictly within WTO guidelines and legally are totally enforceable, while WTO-X exceeds the WTO mandate, and is not legally enforceable under WTO guidelines. However, with many PTAs covering a number of issues not covered by the WTO, existing rules are considered to be of limited relevance as there has never been any enforcement action brought against them by the WTO. This is termed a “deeper” agreement which essentially disregards the WTO rules. Table 2 illustrates the policy area differences between the two categories.

Table 2**WTO+ and WTO-X Policy Areas in PTAs**

WTO+ Areas	WTO-X Areas	
	Anti-corruption	Health
PTA industrial goods		
PTA agricultural goods	Competition Policy	Human Rights
Customs administration	Environmental laws	Illegal Immigration
Export taxes	IPR	Illicit Drugs
SPS measures	Investment measures	Industrial Cooperation
State trading enterprises	labor Market regulation	Information society
Technical barriers to trade	Movement of Capital	Mining
Countervailing measures	Consumer protection	Money Laundering
Anti-dumping	Data Protection	Nuclear Safety
State aid	Agriculture	Political Dialogue
Public procurement	Approximation of legislation	Public Administration
TRIMS measures	Audio Visual	Regional Cooperation
GATS	Civil Protection	Research and Technology
TRIPS	Innovation policies	SMEs
	Cultural cooperation	Social Matters
	Economic Policy Dialogue	Statistics
	Education and Training	Taxation
	Energy	Terrorism
	Financial Assistance	Visa and Asylum

Source: WTO, *World Trade Report 2011, D. Anatomy of Preferential*

Trade Agreements, Table D.2: WTO+ and WTO-X policy areas in PTAs, p. 129.

http://www.wto.org/english/res_e/booksp_e/anrep_e/wtr11-2d_e.pdf. Accessed

September 20, 2013.

The authors found that the EC agreements have four times as many instances of WTO-X provisions as the 14 US agreements, and the EC agreements have “legal inflation” that contain numerous obligations that are not enforceable under the WTO mandate. In fact, there are very few legally enforceable WTO-X provisions in the EC and US PTAs. The legally enforceable WTO-X provisions primarily deal with regulatory issues.

A main finding of the study is that the EC and US PTA agreements result in the two regions exporting their own regulatory approaches to their PTA partners (Horn, 2010). Therefore, the PTA agreements analyzed in the study would be considered to have more “depth” than is permitted within the traditional WTO mandate since the extent of the provisions clearly exceeds the WTO’s regulatory enforcement capability. This finding adds credibility to the hypothesis that PTAs are essentially competing with the WTO by adding additional regulatory authority beyond the scope of the WTO agreement. “There is now also an institutional acknowledgement that PTAs should be regarded as a serious concern for the multilateral trading system” (Horn, 2010).

Another question is whether PTAs create or deflect trade. On the one hand a PTA between two nations could create increased trade volume not only between the partners, but even stimulate trade outside of the partnering countries under certain circumstances. The downside, however, is that PTAs could also create trade diversionary tactics formulated as non-tariff public policy measures of all types including health, safety, and environmental regulations that have the same effect as tariffs in reducing or eliminating trade. The net effect in the latter circumstance is preference based discrimination that could lead to market disintegration predicated on regulatory trade diversion. As the Director General notes “...we should be mindful of the possibility that even in the absence of intent, market segmentation and discriminatory outcomes could be an unavoidable consequence of (PTAs) (WTO, 2011b). The June 2013 UNCTAD *IIA Issues Notes* also expresses concern about increasing layers of complexity for investment:

Rising regionalism in international investment policymaking presents a rare opportunity to rationalize the regime and create a more coherent, manageable and development-oriented set of

investment policies. In reality, however, regionalism is moving in the opposite direction, effectively leading to a multiplication of treaty layers, making the network of international investment obligations even more complex and prone to overlap and inconsistency. (UNCTAD, 2013)

One of the conclusions that can be drawn from Doha's stalemate at the very least is that member states have been unable to advance the WTO multilateral agenda to general consensus. There is little doubt that one of the outcomes of Doha's stalemate has been the proliferation of PTAs and FTAs/RTAs. Since the prospect of obtaining a multilateral Doha trade agreement in the near term is currently minimal, at best, countries begin to reason that a PTA would help control current cross border trade policies that are volatile and unmanageable. Another compelling factor for advancing PTAs is that they give greater multilateral bargaining power because trade partners could add more to a multilateral trade agreement than an isolated nation. Additionally, PTAs are attractive since the agreement is based on trade cooperation rather than competition or a thinly disguised trade war. A nation could also agree to join a PTA to open wider markets for their domestic production with the added benefit of being more attractive for foreign direct investment (FDI). This is particularly true for the less developed nations that have small markets and capital reserves (WTO, 2011b). Another practical consideration is that PTAs, FTAs/RTAs are far less complicated to develop than completing the Doha Rounds, and they can be done very expeditiously.

It goes without saying that if a viable multilateral trade agreement were in place with genuine cooperation, there would be little rationale for creating or joining a PTA. But nations exist in a dynamic real time environment, and they have to make trade decisions in their own interests. Trade is the lifeblood of national economic survival, and when a multilateral trade system does not respond to a nation's needs, PTAs becomes the path of least resistance.

The number of PTAs and FTAs/RTAs has grown steadily throughout the world while the Doha Round has been unable to achieve significant progress. This raises a core question about the WTO and the whole concept of multilateralism. Is a binding multilateral trade agreement that meets the interest of all of the members realistic?

Secondly, are PTAs more effective instruments than the WTO's concept of multilateralism?

Questioning the viability of the WTO's core multilateralism goal is a challenge. The basic rationale for seeking a multilateral trade agreement to eliminate trade restrictions is very viable. **As Table 1 illustrates there has been a 353.85% increase in trade since the beginning of the WTO in 1995.** There is simply no going back nor is there any reason to. The primary purpose of the PTAs and FTAs/RTAs is to create trading partners on a bilateral or plurilateral basis, but "...despite the explosion of PTAs in recent years, 84 per cent of world merchandise trade still takes place on a non-discriminatory most-favored nation (MFN) basis (WTO, 2011b). All WTO members are MFN nations.

The fundamental issue with multilateralism for the WTO is satisfying the highly disparate interests of 153 nations ranging from those which are economically advanced to the very poor developing nations. Additionally, there are the structural issues of national subsidies given to the agrarian sector in a significant majority of the membership where removing trade barriers would require removing the subsidies. The latter is a very hot-button issue and a huge obstacle in the agriculture negotiations.

Conclusion

In terms of whether or not the failure of the Doha Rounds contributed to the proliferation of Preferential Trade Agreements (PTAs) and FTAs/RTAs, the fact that the number of new PTAs and FTAs/RTAs has accelerated since the beginning of the Doha Rounds lends support to the hypothesis. However, it is also a reflection of the basic failure of the developed nations to continue liberalizing their stance on the main issues of the Doha Rounds. This is particularly true with the agriculture negotiations where talks have basically broken down between the developed and the developing nations.

Creating PTAs can be viewed as an end-run play around reaching a consensus on the main issues between the developed and developing nations. The creation of PTAs is cheaper, easier, faster, and engenders less domestic political opposition than reaching a Doha consensus on the main agenda issues. Additionally, PTAs are

accommodative to major financial interests rather than threatening. The recent trend toward creating deeper PTA agreements gives the developed nations increased control over their trading partners thus reducing risk. As PTAs become more entrenched and developed, the motivation to reach consensus on the Doha Rounds steadily diminishes.

Regarding the second hypothesis that the PTAs are threatening the regulatory authority of the WTO, which, in turn, threatens its ability to effectively promote and govern free trade, is a more complex question. The Director General has repeatedly expressed his concern about the surge in PTA agreements. Traditionally PTAs were bilateral agreements. A more recent trend is the development of plurilateral PTA agreements having three or more partners. NAFTA set the trend in this direction followed by the Caribbean Free Trade Agreement (CAFTA) and, of course, the development of the European community where free trade is a cornerstone of the agreement. The current negotiations by the United States to create the plurilateral (TPP) is just one more example of an increasing trend.

Certainly the WTO's Director General has reasons to be concerned. Should the Doha Rounds completely fail with no additional meetings being scheduled, which is not currently the case, the WTO agreement would be seriously compromised. It may be possible, just as is currently occurring, to continue the WTO while PTAs continue to proliferate. However, if the Doha Rounds completely collapse, the WTO would then become comparable to the failed League of Nations. If no new efforts were to be made to get the industrialized nations to form a consensus trade agreement with the developing nations, the WTO would lose its legitimacy.

The Director General stated the importance of the completion of the Doha Round for the WTO and the world:

Unless we can complete the Doha Round in the near future, and maintain markets open, we will find it harder to address other challenges where international cooperation is essential. This involves issues such as climate change, coherence between a future climate change regime and the trade regime, managing increasing prices and scarcity of some raw materials, and ensuring adequate coherence between regional and multilateral

approaches to trade cooperation. This is not an exhaustive list, but it does convey the urgency, I believe, for all of us to play our parts in advancing the trade agenda (Lamy, March 18, 2010).

However, a possible silver lining is that the rise of regional trade agreements could make obsolete and essentially replace at least a portion of the PTAs and bilateral trade agreements. The real question is what role the WTO will have as the plethora of international trade agreements continues to grow, and what impact this growth will have on those nations which are not included in this web of trade.

Bibliography

Council for Multilateral Business Diplomacy (CMBD). 2012. CMBD Perspectives — The WTO starts coming back to life after the Doha impasse. March 13. <http://www.cmbd.ch/?p=2969> (accessed March 24, 2012).

Daemmrigh, A. 2011. The Evolving Basis for Legitimacy of the World Trade Organization: Dispute Settlement and the Rebalancing of Global Interests, Working Paper 12-041, p. 28. Harvard Business School. December 8, 2011. <http://www.hbs.edu/research/pdf/12-041.pdf> (accessed March 25, 2012).

Ferdi, Jaime de Melo. WTO Public Forum, September 26, 2012. *Implications of Negotiation Failures on Environmental Goods and Services at the Doha Round for Global Trade Governance*. http://www.wto.org/english/forums_e/public_forum12_e/session41demelofferdi_e.pdf (accessed September 19, 2013).

Fergusson Ian F. CRS Report for Congress, World Trade Organization Negotiations: The Doha Development Agenda. *Congressional Research Service*. Updated August 18, 2008. <http://www.au.af.mil/au/awc/awcgate/crs/rl32060.pdf> (accessed March 25, 2012).

Francis, D. Negotiations on Regional Trade Agreements: Systemic Issues, Report by Ambassador Dennis Francis Chairman, Negotiating Group on Rules. *World Trade Organization*, TN/RL/W/253. April 21, 2011.

http://www.wto.org/english/tratop_e/dda_e/chair_texts11_e/chair_texts11_e.htm

(accessed March 7, 2012).

General Agreement on Tariff and Trade [GATT] (1947).

www.wto.org/english/docs_e/legal_e/gatt47_e.doc. P1 (accessed September 28, 2013).

General Agreement on Tariff and Trade [GATT], WTO. (1994). WTO ANALYTICAL INDEX: GATT 1994.

http://www.wto.org/english/res_e/booksp_e/analytic_index_e/gatt1994_09_e.htm

(accessed July 18, 2012).

Gordon, B. K. 2012. Trading Up in Asia. *Foreign Affairs*, July/August 2012. <http://www.foreignaffairs.com/articles/137727/bernard-k-gordon/trading-up-in-asia> (accessed September 20, 2013).

Hartman, S. 2008. NAFTA, the Controversy, *The International Trade Journal*. January-March, 11 (1): 19.

Horn, Henrik, Mavroidis, P. C., and Sapir, A. (2010). *Beyond the WTO? An Anatomy of EU and US Preferential Trade Agreements*. Bruegel Blueprint Series, Volume VII. <http://www.bruegel.org/download/parent/238-beyond-the-wto-an-anatomy-of-eu-and-us-preferential-trade-agreements/file/663-beyond-the-wto-an-anatomy-of-eu-and-us-preferential-trade-agreements-english/>. Pg. 1. (accessed July 1, 2012).

Kim, M.H. 2011. Do We Really Know That the WTO Increases Trade? Revisited. *Global Economy Journal*. 11 (2): 10.

Kurtzleben, Danielle. African Producers Press Rich Nations on Cotton Subsidies. *Inter Press Service News Agency*. February 24, 2012. <http://ipsnews.net/africa/nota.asp?idnews=47768> (accessed February 24, 2012).

Lamy, P. 2010., WTO NEWS: Speeches — DG Pascal Lamy. *World Trade Organization*. http://www.wto.org/english/news_e/sppl_e/sppl150_e.htm (accessed February 1, 2012).

Lamy, Pascal, 2011a. Foreword by the WTO Director-General, World Trade Report. *World Trade Organization*. www.wto.org/english/res_e/publications_e/wtr11_e.htm (accessed April 4, 2012).

Lamy, P. 2011b. WTO: 2011 News Items, General Council, “Lamy sees support for advancing negotiations in more promising areas of the Round.” http://www.wto.org/english/news_e/news11_e/gc_rpt_30nov11_e.htm (accessed February 4, 2012).

Lamy, P. 2012. WTO NEWS: Speeches — DG Pascal Lamy. *World Trade Organization*. http://www.wto.org/english/news_e/sppl_e/sppl234_e.htm (accessed June 20, 2012.)

Martin, Will and Mattoo, Aaditya, eds. Unfinished Business? The WTO’s Doha Agenda. *The International Bank for Reconstruction and Development/The World Bank*, 2011. http://voxeu.org/sites/default/files/file/unfinished_business_web.pdf (accessed April 1, 2012).

Pauwelyn, Joost. *The Transformation of World Trade*. 2005. P. 11. http://www.law.berkeley.edu/files/spring05_Pauwelyn.pdf. (accessed September 28, 2013).

Public Citizen, 2010. The WTO Helped Cause the Global Economic Crisis, In Haerens, Margaret, editor, *The World Trade Organization*, p. 52. Farmington Hills, MI: Greenhaven Press a part of Gale, Cengage Learning.

Robinson, F. 2011. WTO Shifts Meeting Goals Amid Doha Stalemate. *The Wall Street Journal*. <http://online.wsj.com/article/SB10001424052970203893404577098511856526158.html?KEYWORDS=doha+Round> (accessed February 20, 2012).

United Nations [UN]. 2009. *Report of the Commission of Experts of the President of the United Nations General Assembly on Reforms of the International Monetary and Financial System*. September 21, 2009.
http://www.un.org/ga/econcrisissummit/docs/FinalReport_CoE.pdf. P. 105 (accessed February 14, 2012).

(UNCTAD) United Nations Conference on Trade and Development. *The Rise of Regionalism in International Investment Policymaking: Consolidation or Complexity? IIA Issues Note*, No. 3, June, 2013.
http://investmentpolicyhub.unctad.org/Upload/Documents/UNCTAD_WEB_DIAE_IA_2013_IIA%20Issues%20Note%203%20Regionalism%20NEW%20.pdf (accessed June 12, 2013).

(UNCTADSTAT) United Nations Conference on Trade and Development. *Values and shares of merchandise exports and imports, annual, 1948-2012*. UNCTAD.org. <http://unctadstat.unctad.org/TableViewer/tableView.aspx?ReportId=101> (accessed September 29, 2013).

World Trade Organization. WTO, n. d. *Green box, Blue box, Amber box: Glossary Definition*, n.d. http://www.wto.org/english/thewto_e/glossary_e/box_e.htm. Accessed September 18, 2013.

World Trade Organization. [WTO] 2001. *Declaration on the TRIPS agreement and Public Health. Doha WTO Ministerial 2001: Trips*.
http://www.wto.org/english/thewto_e/minist_e/min01_e/mindecl_trips_e.htm (accessed March 28, 2012).

World Trade Organization. [WTO]. 2009. *Workshop on Environmental Goods and Services*.
http://www.wto.org/english/tratop_e/envir_e/wksp_goods_sept09_e/wksp_goods_sept09_e.htm (accessed September 20, 2013).

World Trade Organization. [WTO]. 2011a. *1 The Doha Round*.
http://www.wto.org/english/tratop_e/dda_e/dda_e.htm (accessed February 4, 2012).

World Trade Organization [WTO]. 2011b. World Trade Report 2011.
http://wto.org/english/res_e/publications_e/wtr11_e.htm (accessed February 2, 2012).

World Trade Organization [WTO] 2011c. *Work on Special and Differential Provisions*.
http://www.wto.org/english/tratop_e/devel_e/dev_special_differential_provisions_e.htm
(accessed September 19, 2013).

World Trade Organization. [WTO]. 2012a. *Overview: the TRIPS Agreement*.
http://www.wto.org/english/tratop_e/TRIPS_e/intel2_e.htm (Accessed March 26, 2012).

World Trade Organization. [WTO]. 2012b. *WTO Annual Report 2012*.
http://wto.org/english/res_e/booksp_e/anrep_e/anrep12_e.pdf (Accessed June 16, 2012).

World Trade Organization. [WTO]. 2013. *About the WTO — A statement by former Director-General Pascal Lamy*.
http://www.wto.org/english/thewto_e/whatis_e/wto_dg_stat_e.htm (Accessed September 21, 2013).