

7 Bilateral negotiations in a multilateral world

Implications for the WTO and global trade policy development

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The WTO Doha Development Agenda has moved from initial hope in Doha Qatar, to fiasco in Cancun Mexico, to postponement in Hong Kong, to indecision in most of 2006, to finally, indefinite suspension. After almost five years of multilateral trade negotiations WTO Director-General Pascal Lamy formally suspended Doha talks on 24 July 2006 by stating: "There are no winners or losers in this assembly. Today there are only losers" (WTO 2006). Readers with a long memory will recall that this is not the first time multilateral talks have been suspended. The Uruguay round was essentially suspended by GATT Director-General Arthur Dunkel in the early 1990s followed by the production of the "Dunkel Draft," which laid the foundation for concluding the GATT Uruguay round in December 1993. It is too soon to say if the Doha round is finished, but media reports immediately after suspension often quoted Indian Trade Minister Kamal Nath who claimed the round is not dead but it is definitely between intensive care and the crematorium. Only time will tell ...

Two themes emerged immediately after Doha's suspension. The US and the EU sought to blame each other for the stalemate and suspension of Doha talks, and there were calls or indications by many nations that they would more vigorously pursue bilateral or regional trade agreements. *The Times* of London and *The Australian* each reported that France called on the EU to switch its efforts to regional trade talks following Doha collapse. *The New York Times* reported that EU Trade Commissioner Peter Mandelson said that Europe now needed to focus on new economic opportunities in Asia. The same report indicated that India was prepared to pursue a bilateral trade agreement with the EU and was close to concluding a deal with Japan. *The Australian* said that Australia would now refocus its trade efforts on free-trade deals with countries such as China, Japan and South Korea. United States Trade Representative Susan C. Schwab told *The*

New York Times that Asia would be a prime target for trade deals. The *International Herald Tribune* recognized that the failure of Doha will encourage the proliferation of regional and bilateral trade deals, while *The Washington Post* cautioned that Doha's failure could weaken the multilateral system that governs global commerce with possibly a splintering into regional blocks.

If the developed world is coming to Asia, what about Africa, South America and other forgotten parts of the world? Unquestionably, multilateral agreements are the most inclusive means for distributing gains created by the global economy – and this should never be forgotten. Unfortunately, if a developing country does not have a large market or an emerging middle-class or something else to exchange and if there are no political or strategic imperatives, then nations in the developed world will likely be too busy to even consider a bilateral trade agreement. These are the new realities that many nations must now consider. However, at this point in time these are only possibilities.

The Doha Development Agenda could just drift away or it may produce some sort of marginal or symbolic agreement but its implications for multilateralism are presently unclear. The WTO Doha round has not destroyed multilateralism but multilateralism will no longer be the centerpiece of global trade policy, as it must now compete with bilateral and regional processes. For example, all but 12 countries, Mongolia and 11 island nations (World Bank 2005), have begun pursuing bilateral and regional trade agreements.¹ As a point of comparison, 124 bilateral and regional trade agreements were concluded in the 48-year GATT regime (1947–94), but 196 bilateral and regional trade agreements have been concluded during the 11 years (1994–2005) of the WTO regime (Crawford and Fiorentino 2005). However, it is not the number of agreements that is important but the amount of world trade managed through these agreements. Bilateral and regional trade agreements now make up nearly 40 percent of total global trade (World Bank 2005: 27). It is clear that many countries have already embraced non-WTO trade negotiations as fundamental to their national trade policy strategy. This development is interesting, significant and controversial.

Complex debates often degenerate into slogans to facilitate public comprehension. Unfortunately, simplification can at times distort that which we seek to understand. In this debate the relevant slogan is stated as follows: do bilateral or regional trade agreements serve as a building block or as a stumbling block to a WTO-sponsored agreement? In recent interviews with several WTO administrators responsible for monitoring bilateral and regional trade agreements, I learned that the WTO seeks to move beyond this dichotomized view,

as other views exist. Specifically, there is no official WTO position on non-WTO trade negotiations, but a consensus exists within the WTO that these trade agreements have both a positive and a negative influence on WTO-sponsored negotiations and world trade; thus it is not an either-or question. A useful question to consider is: What are the positive and negative influences that bilateral processes have on WTO-sponsored Doha negotiations and the global economy? In addition, it will be useful to consider the positive and negative influences that bilateral trade negotiations have on nations that are conducting such negotiations. It may be that bilateral trade negotiations and the agreements they produce contain intrinsic value that is separate and independent of any WTO-sponsored process. If so, it will be useful to understand the fundamental nature of bilateral trade negotiations both from the perspective of the WTO and from the perspective of those nations engaged in such negotiations. This may be even more important now that the Doha round is in doubt.

WTO Secretariat staff observe that, for some countries, multilateral and bilateral strategies are equally important parts of their national trade policy, while in many other countries, bilateral and regional trade negotiations have emerged as a higher priority than WTO-sponsored negotiations (Crawford and Fiorentino 2005). The players in this game – both developed and developing countries – have not shifted to another field, but it is clear that these players are now performing on bilateral, regional and multilateral fields.

Bilateral and regional negotiations involving trade in goods have been an accepted part of the multilateral system since the establishment of GATT Article XXIV in 1947, while the Enabling Clause adopted in 1979 provides for the mutual reduction of tariffs on trade in goods among developing countries. Article V of GATS, negotiated during the Uruguay round, covers trade in services for bilateral and regional trade agreements. More recently, with the proliferation of bilateral and regional trade agreements, several trade policy trends can be observed: (1) trade agreements are being negotiated that demonstrate deeper degrees of integration, with treaty provisions containing measures to liberalize, eliminate and harmonize trade-impeding regulatory policies; (2) enlargement and integration of regional trading blocks (e.g. Europe, North America, South America and Asia to some extent) via bilateral and regional trade agreements; (3) trade agreements that link countries from two or more regions; and (4) an increase in trade agreements between developed and developing countries (Jordan–United States FTA of 2000, Chile–EC FTA of 2002, Thailand–Australia FTA of 2004). Of the trade agreements in

force, 75 percent are bilateral (Sampson 2003: 3–17; Crawford and Fiorentino 2005). Clearly, the global trading system has become more complex as a result of these developments.

The World Bank (2005: 27) identifies two trends within the international trading system. The first trend created the WTO, which has sought to consolidate an evolving system of rules based on non-discrimination among trading partners within a multilateral system. A second trend, though, is rapidly gaining momentum under a different set of rules, resulting from a sudden increase in the number of nations negotiating bilateral and regional trade agreements. This second trend reduces barriers to trade on a reciprocal and preferential basis for those nations that are a party to such agreements. Some studies see this emerging system as complementary to the multilateral system (Sampson and Woolcock 2003) and other studies articulate deep concerns about the spread of bilateral and regional trade agreements (WTO Consultative Board 2004). Nevertheless, both systems do exist and will co-exist for the foreseeable future. This fact needs to be accepted so that knowledge can be gained from the challenges and opportunities that may be present.

We require greater understanding about this emerging system of bilateral and regional trade negotiations and the agreements they produce. What are the strengths and weaknesses, and opportunities and challenges presented by a trade policy development system that is bilateral and regional in nature? Once we gain this knowledge we will then be in a position to seek understanding about the interaction or linkage between this emerging trade policy system and the WTO-sponsored multilateral system. In so doing, we should focus on establishing methods that will contribute to the development of high-quality international trade policy. “High-quality trade policy” is defined as trade rules between nations that support free market principles and encourage trade liberalization, as compared to the status quo. Rules guiding such liberalization should be as simple and transparent as possible. It is useful to recognize that high-quality trade policy is sometimes achieved all at once (e.g. a “big bang”) and sometimes incrementally over decades (e.g. GATT).

In pursuing these objectives, the present study will examine both negotiation process and outcome, as interaction between bilateral and multilateral policy development systems occurs in both dimensions. As such, this chapter intends to move the debate beyond the “building block–stumbling block” view of bilateral–multilateral trade negotiations. It is time to broaden and reframe the current debate to build another lens for viewing this world.

We will begin by examining those arguments that are often presented against bilateral and regional trade negotiation – also called preferential trade negotiations by prominent multilateralists. In considering such arguments we seek understanding about the actual costs and benefits that bilateral and regional negotiations have on the global economy and on WTO-sponsored negotiations. This review is presented in the next section of this chapter. Then we consider the relationship between bilateral negotiations and the development of global trade policy based on data from negotiations that established the Australia–United States Free Trade Agreement of 2004 (AUSFTA), the United States–Singapore Free Trade Agreement of 2003 (USSFTA), and the Singapore–Australia Free Trade Agreement of 2003 (SAFTA). In 2004 I interviewed 86 trade negotiators and trade policy specialists that were involved in AUSFTA, USSFTA and SAFTA. Recommendations for the WTO in more effectively managing a multilateral–bilateral trade policy development system are considered in the final sections of this chapter.

Bilateral trade negotiations and the global economy

Multilateralists present three primary concerns about the negative influence that bilateral and regional trade processes have on the global economy. They argue that (1) bilateral and regional trade agreements create distortions in the international economy, and such distortions make the global economy less efficient, while harming countries that are not a party to the treaty; (2) transaction costs increase for both business and government; and (3) they serve to unravel or undermine the multilateral trade policy system.

Bilateral negotiation and trade distortion

Viner's (1950) seminal work on trade creation and trade diversion in a customs union continues to serve as the foundation for the concern that bilateral and regional trade agreements contribute to distortions in the international economy. Since bilateral trade agreements liberalize trade in a preferential manner, they create new trade between the parties to a treaty, while concurrently the treaty can divert trade from low-cost suppliers who are outside the treaty to high-cost suppliers who are covered by the treaty. Overall, bilateral treaties that create trade are defined as beneficial, and treaties that divert trade are defined as harmful to the global economy. This trade creating–diverting issue has been hotly debated within economics (see Panagariya

1999, Ch. 1, for an excellent overview), although this debate has not been helped by the fact that examination of the trade creation and trade diverting effects for a specific trade treaty are difficult, as the empirical evidence remains ambiguous (WTO Consultative Board 2004; Crawford and Fiorentino 2005).

Aside from the empirical evidence, Viner's argument is intuitively logical. A useful illustrative example is found in the US–Singapore trade agreement concerning textiles and apparel (USSFTA 2003: Ch. 5) – an industry considered “extremely sensitive” in the United States (Ng 2004: 90). Textile and apparel trade negotiators that I interviewed in the US and Singapore talked at length about the “US Yarn Forwarding Rule,” which stipulates that raw material (cotton, wool, etc.) can be sourced anywhere in the world, but the yarn from this raw material must be made in either partner country (i.e. Singapore or the US in this case). Such rules of origin may have made economic sense in NAFTA when Canada and Mexico were treaty partners to the US, but such logic stops at the Pacific Ocean, as Singapore does not have a yarn industry. Nevertheless, to gain full tariff preferences on textiles and apparel (total removal of US tariffs that can range from 10 to 33 percent) via USSFTA, Singaporean companies must source yarn locally (generally, none available) or transport yarn from the US to Singapore so that textiles and apparel are “fully processed and assembled in Singapore” (Ng 2004: 85) so that these companies can then transport the finished product back to the US. After substantial objections (this was one of the final issues resolved in USSFTA negotiations), Singapore was forced to recant and accept the US Yarn Forwarding Rule if they wished to conclude their trade treaty with the US.

Obviously, Singaporean textiles that are manufactured for the US market would be less expensive if Singapore could source yarn from China or perhaps even Australia. Are China, Australia and other countries that could sell yarn to Singapore harmed by the USSFTA Chapter on textiles and apparel? Tongzon (2003: 12–19) concludes that the trade diversion effects from the USSFTA should be marginal. How do Tongzon's observations apply to the textiles and apparel covered under USSFTA? Given traditionally high US tariffs, few of the 156 Singaporean textile companies in operation were exporting to the US prior to USSFTA. For example, total tariff savings on Singaporean textiles and apparel due to the USSFTA will be around S\$140 million (Ng 2004: 91). Singaporean companies that were previously exporting to the US will likely be diverted from low-cost yarn suppliers to more expensive US suppliers, and so these low-cost yarn suppliers and their countries will be harmed. However, it is expected that overall

Singaporean textile and apparel manufacturers and exporters will create new business opportunities in the US, resulting in new job opportunities in Singapore.

Although highly inefficient, the overall balance will be trade generating rather than trade diverting. Some of Singapore's former yarn suppliers are harmed, while US yarn-makers and Singaporean transport and warehouse companies should benefit. What about companies in countries that never previously supplied yarn to Singapore, but could now supply less expensive yarn? Are they being hurt? I argue that they are not being hurt as being hurt means losing. Rather, such suppliers are not gaining any new business. There is a difference between being harmed and not gaining benefit from someone else's opportunity.² Each is a form of discrimination but each (trade-loss and no-trade-gain) is a different type of discrimination that can exist within a trade-creating or trade-diverting treaty. Being damaged through loss is a much more significant form of discrimination than being excluded from someone else's opportunity. Calculations of trade distortion should distinguish between these two forms of discrimination. Moreover, perhaps the WTO should devote more attention to the type of discrimination and the degree of discrimination in any specific bilateral treaty, as a means of recommending acceptable and unacceptable bilateral trade proposals, since the multilateral trading system is based on rules grounded in non-discrimination.

Transaction costs: business

Bilateral and regional trade agreements also increase transaction costs, while some studies observe that transaction costs associated with rules of origin (ROOs) are recognized as being increasingly important as the number of bilateral and regional trade agreements multiply (Garnaut 2002). ROOs assist a country to establish where a product was actually made. If a country decides, via a bilateral trade agreement, to give preferential treatment to the products of another country then both countries must be assured that the products being imported are actually made in the partner country. Studies critical of bilateral and regional trade agreements claim that the administration of differing ROOs is complex, inconsistent and contributes to confusion (WTO Consultative Board 2004). This issue is at the core of the "trade policy spaghetti bowl" (Bhagwati and Panagariya 1996b; Snape 1996) – a negative spin on the issue – or "lattice framework" (Dent 2003; Desker 2004) – a positive spin on the issue – that is often

presented in discussions on ROOs in international trade studies. This issue warrants closer examination given the differing views.

I argue that the striking illustrations of the African spaghetti bowl (Schiff and Winters 2003), the spaghetti bowl of the Americas and the Asia–Pacific (Devlin and Estevadeordal 2004), and the Eastern Europe and Central Asia spaghetti bowl (World Bank 2005) are alarmist, as they suggest a degree of complexity that can be derived conceptually, but do not actually exist in the practice of international trade by individual traders and their companies. What is being presented in these illustrations is a visual image of formal trade relationship between nations. However, there is not a multitude of complex ROO systems – just a multitude of trading relationships formalized through bilateral and regional treaties. This concept of a trade policy spaghetti bowl is inadvertently deceiving, as it gives the impression that an international trader must understand hundreds of bilateral ROOs when in fact there are not hundreds but three fundamental forms (Rossman 2004: 61–73). Basically, all bilateral and regional trade agreements that address ROOs can be placed under one of three headings:

- the local value-added ROO system
- the ROO process system
- the change in tariff classification or ROO transformation system.

Each system has its own fundamental logic – so in practice the logic of three systems must be mastered. Briefly, (1) the local value-added ROO system requires that a percentage of the total value of a product (e.g. 50 percent) be added in a partner country if it is to be eligible for tariff benefit in the other partner country; (2) the ROO process system requires that a defined manufacturing process occur in one of the partner countries (often used in manufacturing chemical products); and (3) the ROO transformation system requires that material used in a product experience a change so significant that it achieves a new tariff classification (as per the WTO Harmonized System Nomenclature or HS). For example, water (HS number 11) plus imported malt (HS number 25) plus other imported inputs (HS number 32) are combined to produce beer (HS 2203). In this case the imported malt and other imported input has undergone a change in tariff classification and so are eligible to receive tariff benefits (Rossman 2004: 67). The relationship between the value of the imported products to the overall value of the beer is not an issue in the ROO transformation system, while such a comparison is at the logical core of the ROO local value-added system.

Out of these three systems of logic grow differing tariff schedules and rules in each treaty (not unlike the differing tariff schedules and rules of each nation), but how complicated is this when compared to the GATT/WTO system? Every company interested in exporting to a country where they may gain a tariff advantage must take the time to learn the specific ROO system and the specific tariff schedule and rules that a treaty adopts. Generally, this is no different from the present multilateral system, but rather than looking at the GATT Uruguay round treaty (plus a country's tariff schedule and rules) they must now look at a much smaller bilateral trade treaty that includes the tariff schedule and rules. How complex is this? The fundamental argument is that this complexity inhibits international trade. How can this be when trade concluded via bilateral and regional trade agreements has grown to almost 40 percent? An analogy seems relevant: businesspeople complain that national tax systems are too complex, but do these businesspeople choose to stop making money because of this complexity? When we carefully examine the issue of complexity and increases in business transaction costs we find that it lacks logical coherence, as it can not be demonstrated that the costs inhibit trade.

I am not arguing that this is an ideal system for a business interested in conducting international trade – it is not – but it does not contain the complexity and transaction costs implied by the mythical spaghetti bowl. The scholars that carry out these studies look at the entire world and perceive substantial complexity in the whole, which there is, but an individual trader or company never seeks to understand the whole – they have no need – and they do not search the entire world for every opportunity, rather they examine one single opportunity at a time. On the other hand, a multinational corporation (MNC) may examine hundreds of opportunities a year, but this simply means that the MNC assigns sufficient staff, each of whom is focused on an individual opportunity or group of related opportunities.

Where is the increase in transaction costs for business when we compare the GATT Uruguay system with a system that is based on a bilateral treaty? Business has to learn a new tariff system, but this new system is normally GATT-plus so it is to the economic benefit of a business to learn this new system.

I conducted interviews in 2004 with many trade negotiators who were in regular contact with the business community, as negotiation team–stakeholder relations was a primary theme in my research program. Trade negotiators only reported business community concern when a nation considered adoption of a new ROO system. No trade negotiator reported that the local business community complained

that multiple ROOs disrupted their international business plans. A nation that manages multiple ROOs may impose increased costs on business, but these costs are minor relative to the benefits that the business community enjoys.

Transaction costs: government

Customs officers report that it takes longer to process goods covered in a bilateral or regional treaty (World Bank 2005). These individual observations are intuitively logical, but how does it apply at the organizational level? Australia is a case in point. Historically, Australia has used a local value-added ROO system, as its treaties with both New Zealand and Singapore adopt the value-added system. But, as of 1 January 2005 the Australian Customs Service (ACS) was required to administer the transformation ROO system, as Australia's bilateral treaties with Thailand and with the US each adopted this system for implementation on this date. Now the ACS has to administer two ROO systems depending on an imported product's country of origin. Moreover, the ACS has known that they would be implementing both systems since October 2003, when Thailand–Australia treaty negotiations (see: TAFTA 2004) were substantially concluded (AUSFTA negotiations were substantially concluded in February 2004). How has the ACS responded to this apparent workload increase? See Table 7.1.

ACS learned that they would be required to apply both the value-added ROO system and the transformation ROO system in the 2003/04 fiscal period (3a) and began to implement both ROO systems in the 2004/05 fiscal period (3b). Total ACS employee operating expenses for this two-year period is \$676,058,000 (3c) (see Table 7.1). If we analyze the difference in employee operating expenses between the second period (2c 2001–02 and 2002–03) with the third period (3c) we find that ACS employee operating expenses increased by 12.8 percent from the second to the third period. It is also useful to look at recent historical differences to provide perspective. If we analyze differences in employee operating expenses between the first period (1c 1999–2000 and 2000–01) and the second period (2c) we find employee operating expenses increased by 17.3 percent when comparing these two periods.

Granted, many unidentified factors contribute to ACS employee operating expenses. However, for our purposes it appears that Australia's adoption of a second ROO system has *not* caused ACS substantial financial distress, as employee operating expenses increased more slowly – from 17.3 percent to 12.8 percent – when comparing the periods under investigation (see Table 7.1). ACS

Table 7.1 Australian Customs Service (ACS)

<i>Fiscal year ending 30 June</i>	<i>*Operating expenses: Employees:</i>	<i>Operating expenses: Employees per 2-year period</i>
1a 1999/2000	\$234,507,000	1c \$487,143,000
1b 2000/01	\$252,636,000	(1a + 1b = 1c)
2a 2001/02	\$278,825,000	2c \$589,221,000
2b 2002/03	\$310,396,000	(2a + 2b = 2c)
3a 2003/04	\$320,524,000	3c \$676,058,000
3b 2004/05	\$355,534,000	(3a + 3b = 3c)

Note: * ACS Financial Statement 1999/2005, Statement of financial performance

employee costs are continuing to rise but they actually rose more slowly during the period that the ACS was planning, implementing and operating two ROO systems for the first time in Australia's history. How can this be explained?

Some understanding of ACS responsibilities provides perspective about the administration of multiple ROO systems. First, ROOs are not mentioned at all in the ACS "Significant Events in 2003-04" (ACS Annual Report 2004: 8-9) nor are they mentioned in the ACS "Corporate Priorities 2004-05" (ACS Annual Report 2005: 9-10). ROOs also receive no attention in "Outlook for 2004-05" (ACS Annual Report 2004: 10) or in the 2004-05 "Anticipated Results" (ACS Annual Report 2005: 10). Buried on page 85 of the 2005 ACS Annual Report is a discussion on rules of origin related to the implementation of AUSFTA and TAFTA and that training courses for customs staff were conducted as part of the implementation process. Nowhere is it mentioned that the ACS is administering two rules of origin systems for the first time in Australian history, as it appears that the ACS has more important matters to address. For example, early in these annual reports the ACS expresses concern about securing Australia's borders including issues related to terrorism, narcotics and precursor chemicals. The ACS is especially focused on implementing their Cargo Management Re-engineering project (the world's first fully integrated imports and exports system), starting their neutron scanner pilot project, opening a container facility in Western Australia and continuing to reassess emerging threats in the aviation and maritime security environment (ACS Annual Report 2004, 2005). Compared to these concerns the operation of two ROO systems seems to lack real significance for the ACS.

Scholars writing about the “trade policy spaghetti bowl” express substantial concern about the transaction costs to business and government due to the administration of multiple rules of origin. Additional costs undoubtedly exist, but these scholars have overstated their case to the point of being alarmist. I recommend that these scholars depart from presenting theoretical arguments and start to gather data to quantify the problem that they claim exists as a result of the trade policy spaghetti bowl.

An unraveling multilateral system?

Multilateral trade agreements provide a greater degree of economic liberalization and integration, as compared to bilateral trade agreements. Although much easier to achieve, bilateral trade agreements are second-best options (Desker 2004; LeClair 1997). But in addition, are bilateral trade agreements damaging the multilateral system? Critics claim that such trade agreements unravel or undermine the multilateral system (Bhagwati 1991; Bhagwati and Panagariya 1996a: 1–78; Garnaut 2002; Panagariya 1999). We will not jump to this conclusion so quickly, rather we will ask if bilateral and regional trade agreements are unraveling or enhancing the multilateral system? This question is at the heart of the stumbling block–building block question that we hope to move beyond.

Any negative effect that bilateral or regional trade agreements have on the multilateral system is based on two concerns. The first involves the influence of bilateral and regional trade agreements on the multilateral trading system, with their potential for trade diversion and increased transaction costs (see previous sections of this chapter). The second concern focuses on the effect of bilateral and regional trade negotiations on the actual multilateral WTO Doha process. This section is focused on this second concern.

Countries such as the US, Australia and Singapore have each embraced what is known as “competitive liberalization.” By pursuing bilateral trade agreements this action is believed to drive or motivate achievement in the multilateral process (Senate Committee Report 2003; Desker 2004; USTR Trade Policy Agenda 2004). From this perspective bilateral trade negotiations will enhance the multilateral system although it is unclear how this actually occurs. For example, how do bilateral negotiations between the US and Singapore or Australia or Chile or Morocco or Bahrain or the regional CAFTA agreement (Central America Free Trade Area) motivate WTO member nations to move Doha forward? The connection is unclear. Some studies conclude

that bilateral and regional agreements complement rather than undermine multilateral rules (Woolcock 2003: 330), but complementing is not the same as motivating or driving the multilateral process.

On the other hand we also find observers who claim that bilateral trade negotiations inhibit or stall the WTO Doha process by diverting national negotiation resources. Bhagwati (2003) notes that bureaucratic and political attention is diverted to bilateral negotiations rather than to the WTO Doha round. Australia did require some time to learn how to manage a two-track bilateral–multilateral strategy (the upcoming section on “Trade Policy and Process Management” (p. 190) will address this issue in greater detail). Part of the challenge here is coordinating between bilateral and multilateral processes. For example, one Australian trade lobbyist I interviewed complained bitterly that the Australian Department of Foreign Affairs and Trade scheduled public hearings on Australia–US trade negotiations in Canberra at the same time as the WTO Fifth Ministerial Conference in Cancun (Australia and the US set an unrealistically tight one-year deadline for their bilateral negotiations). This trade lobbyist went to Cancun.

If WTO member countries are going to become engaged in bilateral or regional negotiations they need to add an extra layer of planning to coordinate between these multiple levels. More than one Singaporean negotiator I interviewed indicated that their government’s robust pursuit of bilateral trade agreements was difficult to manage, as the workload was onerous. An American financial services negotiator I interviewed advised that two bilateral trade negotiations are the most that can be handled at any one time, as each negotiation requires around one week of travel every 4–6 weeks; so that means that the trade negotiator will be out of the office for about one week of every 2–3 weeks if they are involved in two bilateral negotiations. Doha negotiations do not move as quickly and do not require as much travel, but careful multilateral–bilateral coordination will be required if a specific negotiator is assigned to two bilateral negotiations plus Doha negotiations. Any unraveling or undermining of actual WTO Doha negotiations can be managed by proper resourcing and careful coordination of such resources. Administrators of negotiation teams need to be in regular communication with their political leaders so that these leaders do not over-stretch a nation’s capability to effectively participate in bilateral and multilateral trade negotiations.

Bilateral and regional trade agreements have not undermined the WTO Doha process, as the WTO process has succeeded in undermining itself. There is generally broad consensus among the 86 trade

negotiators and trade policy specialists that I interviewed. The fundamental nature of global trade negotiation shifted somewhere near the end of the GATT Uruguay round in 1994 and the establishment of the WTO in 1995. First, a flood of nations with experience in multilateral processes gained via the United Nations, but with no prior multilateral trade negotiation experience, sought GATT membership near the conclusion of the Uruguay round in 1994. Although 124 governments signed the Marrakesh agreement that concluded the Uruguay round and established the WTO, many of these nations were new to international trade policy negotiations. A 50 percent increase in new members presented this multilateral forum with challenges that were amplified by a substantially expanded trade agenda. The new global trade agenda would not only incorporate economic sectors that had been previously exempt, such as agriculture and textiles – both considered to be “sensitive sectors” in many powerful countries – but trade in services would also be considered. Trade-related aspects of intellectual property rights (TRIPS) – one of the few WTO successes in its first ten years – and electronic commerce and the so-called “Singapore issues” were also added to the Doha agenda. In total 21 subjects are listed in the Doha Declaration (see the Doha Declaration at: <www.wto.org/>), many of these never before considered or only superficially considered in a multilateral trade forum. A third factor is the recent involvement of representatives of non-governmental organizations (NGOs). NGO participation is generally welcomed, and the WTO is given credit for developing an inclusive culture; however, the addition of more parties – even if observers – increases the complexity that must be managed. Are the WTO and its members up to the task? It seems that political leaders who send representatives to the WTO have generally voted with their feet. One foot clearly remains in the multilateral form but the other foot has gone off in search of bilateral and regional partners. Why is this?

High-level government officials and former high-level WTO officials that I interviewed are not optimistic about the WTO. The general view is that multilateral progress was made in the first and fourth WTO Ministerial Meetings held in Singapore and Doha respectively. The second, third and fifth Ministerial Meetings held in Geneva, Seattle and Cancun were often described as either disasters or fiascos. The sixth Ministerial Meeting in Hong Kong in late 2005 was more sedate, but the assembled trade ministers decided to postpone all the important decisions. A former Chair of the General Council of the WTO observed that trade negotiations were once a technical field but now they have become politicized. Once, customs officers and other

specialists exchanged compromises on tariff schedules; such simple days no longer exist. Concluding a GATT/WTO-sponsored trade treaty requires too much time. National governments operate on 3–5 year planning cycles, as this is how long most governments have a guaranteed hold on office. Why should a government devote trade negotiation resources to accomplish a task that will only be finalized after it has retired from office? Given such circumstances it can be said that government leaders are behaving rationally by adopting a two-track trade policy strategy. It is clear that if the WTO is to continue to convene complex multilateral trade negotiations then WTO members must agree on restraining measures in order to limit the size of the agenda and the length of the process so that results can be delivered to national leaders in a more timely manner.

Bilateral negotiations and trade policy development

The observations and conclusions in the second half of this chapter are directly derived from six months of field research into bilateral trade negotiations. As mentioned previously, I interviewed 86 trade negotiators and trade policy specialists in Canberra, Geneva, Singapore and Washington, DC in 2004. Many of these professionals were involved or had once been involved in GATT/WTO trade talks, but most were involved in one or more of the following bilateral trade negotiations: Singapore–Australia (SAFTA: 11/2000–2/2003), United States–Singapore (USSFTA: 11/2000–5/2003), and Australia–United States (AUSFTA: 11/2002–5/2004). Table 7.2 provides an overview of these three trade negotiations by listing the chapter title found in each trade treaty.³ Data were also gathered from negotiators involved in China–Australia, Japan–Singapore, Thailand–Australia, and United States–Chile bilateral trade negotiations, although these negotiations were not a primary focus of this research program.⁴

In considering bilateral trade negotiations, WTO-sponsored multilateral trade negotiations and global trade policy development, this chapter examines (1) bilateral and multilateral approaches to trade policy development; (2) creating, testing, refining and learning of trade policy solutions; (3) bilateral trade policy and facilitation of domestic reform; and (4) trade policy negotiation and process management.

Bilateral and multilateral approaches

Regardless of bilateral or multilateral processes, trade policy is a product that is manufactured by governmental officials, diplomats

Table 7.2 Bilateral trade negotiation outcomes:
SAFTA, USSFTA and AUSFTA

<i>Singapore–Australia (SAFTA) Treaty chapters</i>	<i>United States–Singapore (USSFTA) Treaty chapters</i>
Preamble	Preamble
1 Objectives and general definitions	1 Establishment of a free trade area and definitions
2 Trade in goods	2 National treatment and market access for goods
3 Rules of origin	3 Rules of origin
4 Customs procedures	4 Customs administration
5 Technical regulations and sanitary and phytosanitary measures	5 Textile and apparel
6 Government procurement	6 Technical barriers to trade
7 Trade in services	7 Safeguards
8 Investment	8 Cross-border trade in services
9 Financial services	9 Telecommunications
10 Telecommunication services	10 Financial services
11 Movement of business persons	11 Temporary entry of business persons
12 Competition policy	12 Anti-competitive business conduct, designated monopolies and government enterprises
13 Intellectual property	13 Government procurement
14 Electronic commerce	14 Electronic commerce
15 Education cooperation	15 Investment
16 Dispute settlement	16 Intellectual property rights
17 Final provisions	17 Labor
	18 Environment
	19 Transparency
	20 Administration and dispute settlement
	21 General and final provisions
<hr/>	
<i>Australia–United States (AUSFTA) Treaty chapters</i>	
Preamble	11 Investment
1 Establishment of a free trade area and definitions	12 Telecommunications
2 National treatment and market access for goods	13 Financial services
3 Agriculture	14 Competition-related matters
4 Textiles and apparel	15 Government procurement
5 Rules of origin	16 Electronic commerce
6 Customs administration	17 Intellectual property
7 Sanitary and phytosanitary measures	18 Labor
8 Technical barriers to trade	19 Environment
9 Safeguards	20 Transparency
10 Cross-border trade in services	21 Institutional arrangements for dispute settlement
	22 General provisions and exceptions
	23 Final provisions

and political leaders. Although the outcome is the same – a trade treaty concerned with goods and services – bilateral processes or multilateral processes creating such treaties differ inherently from each other. This difference in process provides opportunities and challenges for effective global trade policy development. One significant difference between bilateral and multilateral negotiations is in the degree of complexity because of differences in the number of parties at the negotiation table. For example, around 150 negotiators participated in the two-party AUSFTA negotiations. Compare this to the 148 parties (technically speaking) and the thousands of official negotiators that attended the WTO Fifth Ministerial Conference in Cancun in 2003 or the WTO Sixth Ministerial Conference in Hong Kong in 2005. Responding effectively to this complexity is a substantial challenge for all parties as each lose some control in managing process and securing a desired outcome in multilateral, as compared to bilateral, negotiation (Crump and Zartman 2003; Zartman 2003). Differences in the degree of complexity and in the extent to which a party can exercise control are defining characteristics when bilateral and multilateral negotiations are compared with each other. In multilateral trade negotiations, the degree of complexity negatively influences a party's ability to efficiently achieve the outcomes that it seeks. In bilateral trade negotiations there is a much stronger relationship between input and output, risk and reward, and action and outcome. For example, SAFTA and USSFTA required 24 and 29 months respectively from the first negotiation round to the signing of a treaty, while AUSFTA required only 14 months. Compare this to the GATT Uruguay round, which required seven and a half years from start to finish.

Just as some trade policy problems are best managed or can only be managed on a multilateral basis, other trade policy problems are best managed bilaterally. One WTO staffer who I interviewed observed that:

Some issues are too complex to deal with at a multilateral level but they can be dealt with in regional [or bilateral] trade negotiations. Other issues, such as the “Singapore Issues” are unacceptable to some WTO members in multilateral settings but can be addressed in regional trade agreements.⁵

For example, trade in services is much more complex than trade in goods, although an international consensus appears to be emerging that a “negative list” is less complex than a “positive list” for trade in services.⁶ A negative list is more liberalizing and more transparent

because it opens markets by clearly identifying those services that are not tradable within a nation. An international businessperson can review a negative list for a specific nation and quickly determine if a nation has restrictions on a particular service (if it is not listed then it can be assumed that it can be traded when a trade treaty applies). Although a negative list is superior to a positive list, a positive list for trade in services is the approach used by most nations because GATS uses a positive list.

The process of building a positive list rather than a negative list is substantially different for a national government and holds significantly different consequences if errors and oversights are involved. When compared to a negative list, building a list of services that can be traded in a nation (i.e. a positive list) requires much less thought and analysis, much less inter-agency consultation and much less government-business consultation. Forget to add a specific service on a positive list and the only party damaged is a foreign company (domestic consumers may also experience damage but usually domestic consumers are unaware). Forget to add a specific service on a negative list and foreign competition may suddenly bankrupt a domestic business, while it is possible that foreign competition can remove an entire economic sector from a domestic economy. This may be beneficial to domestic consumers but it is not beneficial to the political leaders and trade policy specialists who agreed to such arrangements; hence the reluctance to pursue such trade policy and a willingness to accept a second-best multilateral solution that comes with fewer costs but also produces much lower liberalizing benefits.

In observing Singapore's shift from a positive list to a negative list for trade in services I learned that a nation does not conduct such an analysis once and then apply it to every subsequent bilateral trading partner. Unlike a positive list, a negative list is not a one-size-fits-all solution (e.g. compare Singapore's negative list in SAFTA Ch. 7 and in USSFTA Ch. 8). Shifting from a positive list to a negative list requires substantial government planning including inter-agency and business consultation. Part of this planning needs to be conducted only once, but additional analysis is required each time a national government starts negotiating with a new trading partner over trade in services, as this latter analysis is focused on the economic integration of the services on offer in the two nations negotiating a treaty.

How can this understanding be used at the multilateral level via WTO-sponsored trade negotiations? By its very nature it is less likely that a negative list for trade in services will be adopted in a multilateral setting, since it does not offer a one-size-fits-all solution although

it is more liberalizing, while the trade policy is inherently more simple and more transparent when compared to a positive list. If a negative list for trade in services were adopted, it is likely that each WTO member nation's negative list would be so long as to make the exercise meaningless. On the other hand, as nations become more familiar with a negative list for trade in services, through bilateral trade negotiations and then through the actual administration of such trade policy, they will become better able to conduct such analysis in a meaningful manner. Singapore resisted US and Australian arguments to adopt a negative list for trade in services for a year but finally accepted this template in the end. Now the Singaporean government has much greater understanding of the strengths and weaknesses of positive and negative lists through bilateral processes.

On the basis of such observations, WTO members could pursue an intermediate step in facilitating trade liberalization in services. This intermediate step would have the WTO disseminate information to encourage member states to investigate the strengths and weaknesses of positive and negative lists in services by experimenting with negative lists via bilateral and regional processes. In so doing, the WTO will be motivating nations to use a solution that is simpler, more transparent and more effective in liberalizing trade, while encouraging countries to become familiar with both trade policy and trade policy administration for a negative list for trade in services. Via a bilateral trade policy strategy, WTO member nations may then become sufficiently familiar with the planning and management of a negative list for trade in services to be able to negotiate a global services agreement that is based on a negative list – perhaps 20 or 30 years from now. It is doubtful whether the WTO and its members will be able to truly liberalize trade in services until a majority of nations become familiar with the concept and application of a negative list. For the present, the WTO can only hope to facilitate understanding, thereby laying a foundation for future liberalization – perhaps in the round that follows the round that follows Doha. Here is an example of how bilateral and multilateral processes can be combined to improve international trade policy over an extended time period.

In addition to issues of complexity, some national governments are simply unwilling to consider trade policy issues in a multilateral forum but are willing to consider these same issues in a bilateral setting. For example, government procurement is one of four “Singapore issues” that many nations refuse to discuss in multilateral settings. In 1980 a handful of GATT members negotiated the Government Procurement Agreement (GPA) of 1981, and since then

almost 40 countries have signed the GPA. Conspicuously, Australia is one of the few developed countries not to have signed the GPA because Australia believes this trade policy is too proscriptive, although it has recently begun to experiment with some GPA ideas via bilateral processes.

After protracted bilateral negotiations between the US and Australia regarding government procurement, Australia agreed to relinquish its system of invited tenders or selective tendering and adopt an open tender process – procedures that are at the foundation of the GPA (AUSFTA Ch. 15). Operationally this means that Australia agreed to announce and set a date to receive expressions of interests via the Internet for all federal and state tenders that are above a defined threshold. In making this compromise, Australia's government procurement policies became consistent with the 1979 US Trade Agreement Act, which will now allow Australian companies to compete for US Federal and State government contracts. In addition to this tangible achievement, this process also provided Australia with an opportunity to re-examine its government procurement process and the trade policy principles underlying this process, which should give the Australian government some insight into this sector. A multilateral government procurement agreement established in 1981 was unable to bring such enlightenment to the Australian government, but bilateral negotiations were successful in this regard.

Some trade policy solutions, such as a negative list for trade in services, may require analysis that is too complicated to conduct in multilateral settings until national governments become familiar with the administration of such transparent and liberalizing trade policy. Party familiarity, acceptance, adoption, implementation and management will neutralize complexity. As suggested in this chapter, the WTO can actively facilitate such learning. In other cases national governments are willing to liberalize trade on a bilateral basis but not on a multilateral basis. However, once bilateral experience is gained it may be possible that these national governments will be willing to liberalize on a multilateral basis. Australia's government procurement trade policy may be worth watching in this regard.

Solution creation, testing and refining

Observations about bilateral and multilateral trade policy negotiations by a senior Singaporean trade official are enlightening. The official I interviewed concluded that:

Free [bilateral] trade negotiations are essentially a laboratory for testing new ideas. This opportunity can provide a new way to frame a typical trade policy problem or provide an opportunity to develop policy solutions that have never been tried anywhere in the world or have never been attempted by the negotiating parties. The process of engaging in a free trade negotiation often prompts countries to consider new approaches and positions. For years, a particular country may have taken a specific position in multilateral negotiations and now has an opportunity to consider arguments in a fresh manner – without all the background noise that accompanies multilateral process and without the large audience that is observing position shifts. Conducting a free trade negotiation allows a country to re-examine its national trade policy and to escape or bypass previously entrenched positions, as internal discussions can acknowledge that a particular position which made perfect sense in a multilateral forum is not now as valid or as desirable in a bilateral setting.

This Singaporean trade official observed that WTO-sponsored negotiations are more limited in their ability to create this type of environment.

Numerous examples illustrate these observations. During the Third WTO Ministerial Conference held in Seattle in 1999, the digital economy received substantial attention although nothing tangible followed within Doha. When the US and Singapore began bilateral trade negotiations in 2000, the US found that Singapore was receptive to considering electronic commerce although electronic commerce had never previously been included in a trade treaty. The Singaporean official responsible for negotiating electronic commerce reported that this chapter (USSFTA, Ch. 14) was painstaking and involved creative ground-breaking work. For example, sidestepping a WTO debate about whether a digital product is a good or service, Singapore and the US created special rules for digital products. Trade negotiators on both sides reported that their basic attitude was to explore every possible opportunity to liberalize trade via electronic commerce, as these two countries extended MFN status and national treatment to each other for all digital products. Since then, we find electronic commerce chapters in the SAFTA, AUSFTA and the Chile–US free trade agreement (CUSFTA). There are also reports that the US took the USSFTA Chapter on electronic commerce to APEC and proposed it be used as model language for APEC trade policy on electronic commerce.

Eventually, WTO-sponsored negotiations will give serious consideration to establishing trade policy on electronic commerce. By then, policy will be better informed because of lessons learned from bilateral negotiations conducted in Australia, Chile, Singapore, the US and other countries. Nations with electronic commerce trade policy can report to the WTO about their experience in administering such policy. When the WTO decides to develop a trade policy on electronic commerce, it is reasonable to assume that it will be developed in a more thoughtful manner because WTO policy in this area will be based on tangible experience of WTO members rather than concepts and speculation about what could be possible. As with any manufacturing process, efficiency and product quality are enhanced when a prototype is first developed and tested in regional markets before going global.

Sometimes a bilateral trade negotiation serves as a venue for less dramatic accomplishments, although such developments are still significant to the nation or nations involved. Australia's experience with rules of origin (ROOs) is illuminating in this regard (see discussion on ROOs in section on "Transaction cost: business" for a description of the three most common ROO types). Australia and New Zealand basically adopted a local value-added ROO system in their 1983 Closer Economic Relationship (CER) trade agreement. At Australia's next bilateral trade negotiation, with Singapore in 2001, Singaporean trade negotiators report that they actively sought to persuade Australia to adopt a change in tariff classification or transformation ROO system. Australia was not persuaded, and so SAFTA contains a value-added ROO system (see SAFTA Ch. 3). However, when preparing to confront the same proposal from the US in AUSFTA negotiations in 2003, Australia recanted its preference for a value-added approach and accepted a transformation ROO approach.⁷ Subsequent reports indicate that Australia and New Zealand are now holding talks to modify their 1983 trade treaty to adopt a transformation ROO system for determining product origin (ACS Annual Report 2005), as Australian customs officials report that the transformation approach is straightforward and simple to administer. If so, here is an example of how one nation moved from resistance to acceptance in adopting what may be a more efficient system of customs administration. Bilateral trade negotiations provided parties with an opportunity to experiment with new ideas and methods. Such experience can only benefit the WTO, as Australia now has much greater understanding about the strengths and weaknesses of various ROO systems. It is reasonable to assume that this same kind of experience is built repeatedly

via bilateral processes in other countries. It therefore appears that future WTO-sponsored negotiations can only be better informed, resulting in enhanced WTO trade agreements.

In sum, we find that new and creative solutions can be developed via bilateral trade negotiations, which can be tested and refined in regional settings before they are introduced globally. We also find that individual nations can gain greater insight into trade policy alternatives via movement away from long-held positions and toward new trade policies and positions – opportunities that are less likely to occur in multilateral settings.

Facilitation of domestic reform

Bilateral trade policy negotiators seek to establish a foundation for the integration of two economies and the harmonization of their economic institutions. Along the way, bilateral trade negotiations can provide national governments with the power or insight to make domestic reforms that might have been impossible or could be possible but difficult without such action forcing events.⁸ An ambassador based in Singapore observed:

Although people talk about the government as “Singapore Inc.,” in fact Singapore has some vested interests that seek to protect arrangements that are not in the best interests of Singapore. These vested interests are resistive to change. Free trade agreements serve as a lever for domestic change. For example, the Singapore government knew that they had to introduce competition policy and AUSFTA and USSFTA helped the government to do this.

When US and Australian trade negotiators began their separate negotiations with Singapore, they found a country without a formal competition policy or law. An Australian trade negotiator responsible for competition policy said that Australia did not want to be seen to be telling Singapore what to do in this area, but Australia wanted a commitment that Singapore would respond to non-competitive practices in a non-discriminatory and transparent manner that provided due process. Both Australia and the US sought a commitment from Singapore to move forward on establishing a comprehensive competition law, and SAFTA Chapter 12 and USSFTA Chapter 12 were negotiated with the understanding that Singapore would quickly take such action. In April 2004, about a year after these two treaties were signed, Singapore sought public

comment on draft legislation to regulate anti-competitive practices such as price fixing and other market share agreements, and dominant market players that use their strength to drive out new entrants. The law established a Competition Commission that imposes financial penalties and sanctions, conducts investigations and grants exemptions.

Strengthening its commitment to a free market is not the only domestic reform that Singapore achieved through its program of bilateral trade negotiations, as Singapore has also sought to enhance its commitment to democratic processes.

Leaders of international and foreign chambers of commerce in Singapore and Singaporean trade negotiators observed that Singapore's experience negotiating with the US assisted the Singaporean government in understanding the important role that government-business consultation plays in managing bilateral trade negotiations. Singaporean trade negotiators report that traditionally the Ministry of Trade and Industry (MTI) consulted other governmental agencies only while engaged in trade negotiations. However, the Ministry changed its attitude during USSFTA negotiations. The US has what could be the world's most extensive government-industry trade policy advisory system, including 26 sector and functional committees with a total membership of around 700.⁹ More than one Singaporean trade negotiator reported that access to detailed industry knowledge and examples of specific international trade problems, often only obtained from those directly involved in a specific economic sector, is invaluable at the negotiation table. As a result, MTI began to establish formalized consultative processes with business and industry, starting in around 2002. One outgrowth of this effort was the establishment of the Singapore Business Federation in April 2003 – an umbrella body that includes the five major chambers of commerce in Singapore, plus representatives of foreign chambers of commerce based in Singapore, various industrial associations and 15,000 companies based in Singapore. It is too early to determine the success of these government-business consultative systems, but the establishment of these consultative systems demonstrates a move to enhance democratic processes.

Not all domestic reforms inspired by bilateral trade negotiations are trade liberalizing. Bilateral agreements containing provisions on intellectual property, which are said to be TRIPS plus, are more restrictive than those provided under TRIPS (Crawford and Fiorentino 2005: 6). USSFTA Chapter 16 and AUSFTA Chapter 17 on intellectual property offer examples of this. Investors in the pharmaceuticals, computer software, publishing, television, movie and music

industries should be pleased with the intellectual property trade policies in USSFTA and AUSFTA, as these chapters are about property rights, not trade liberalization. For example, AUSFTA required Australia to increase its protection of copyright material from 50 to 70 years (70 years beyond the life of an author in published works and 70 years from the point of copyright for film and sound). A Senior Advisor to the Australian Prime Minister reported that this latter issue was sufficiently sensitive to include the judgment of the Prime Minister in the final decision. Australia generally accepted US demand on intellectual property, although it drew the line on weakening the Australian pharmaceutical benefits scheme.

It is apparent that special interest groups are reducing trade liberalization, but this can occur in bilateral and multilateral trade negotiations. Nevertheless, overall bilateral trade agreements appear to enhance trade liberalization and can contribute to positive domestic reform, as we can find examples where a nation's commitment to a free market system and democratic processes were strengthened.

Trade policy and process management

One Australian trade negotiator observed that an active and robust trade negotiation agenda can enhance the skill and ability of a nation's negotiation team. If WTO Doha negotiations slow down and if this is a nation's only trade negotiation, then this delay contributes to the loss of a nation's trade negotiation capacity. Bilateral trade negotiations, conducted concurrently with WTO-sponsored negotiations, maintain a nation's negotiation ability. He felt that this was especially important for developing countries. Moreover, this trade negotiator had observed fundamental differences between WTO and bilateral trade negotiations. A bilateral trade negotiation helps a nation to focus on what negotiating a trade treaty actually means. Experience gained in WTO Doha negotiations may prepare participants to negotiate at the United Nations, but WTO negotiations are less helpful in preparing participants to understand processes relevant to trade negotiations.

Bilateral trade negotiations may be one effective way to prepare a national government to make an effective contribution to WTO-sponsored negotiations. Learning to perform effectively in trade policy negotiations operates at an individual level and at an organizational level. For example, the management of governmental inter-agency relations and government-business relations is especially important for the successful outcome of bilateral trade negotiations. Trade negotiators in Australia, Singapore and the US each observed that engaging

in bilateral trade negotiations requires a “whole of government approach.” Successful trade negotiators must identify trade issues likely to emerge far into the future, as well as current issues, and then communicate with the relevant agency to gain information or guidance and/or to build a consensus so that a decision can be made on a particular position or issue. In a WTO-sponsored negotiation, this same information is useful, but there is less urgency to gather it because it takes much longer to conduct WTO-sponsored negotiations, while normally the process is compressed in a bilateral trade negotiation. Bilateral trade negotiations can require a high degree of inter-agency communication and coordination within a tight schedule, with a short turnaround time for gathering and analyzing information and then turning this analysis into approved policy that guides development of negotiation positions and compromises. Although substantially enhanced via bilateral processes, improvement of inter-agency relations will be beneficial for bilateral and multilateral negotiation processes.

Government–business relations is another area that a national government must consider in bilateral trade negotiations. Australia found that shifting from a multilateral to a joint bilateral–multilateral trade strategy required careful rethinking about how to manage government–business relations in a bilateral trade negotiation context. One administrator responsible for the Australian Office of Trade Negotiation within the Department of Foreign Affairs and Trade (DFAT) considered the government’s experience in seeking external consultation since the establishment of the WTO and concluded that DFAT had engaged in more consultation leading up to the AUSFTA negotiations than in the prior ten-year period. Experience conducting government–business consultation in bilateral trade negotiations should readily transfer to WTO-sponsored negotiations.

Operating a two-track bilateral–multilateral trade strategy offers a national government benefits in enhancing the skills and ability of a nation’s negotiation team and in focusing inter-agency relations and government–business relations on trade policy. However, this strategy is not cost-free. A Counselor to the Delegation of the European Commission to Australia and New Zealand asked, “Where was Australia during the WTO Fifth Ministerial Conference in Cancun?” He claimed that the Cairns Group¹⁰ fell asleep when Australia was engaged with the US in negotiating a free trade agreement. He observed that Australia’s negotiation resources were diverted and as a result, some Cairns members departed and joined the G-20 in Cancun. Clearly, it can take some time for a nation to move effectively

from a multilateral to a bilateral–multilateral trade policy strategy. Errors may be made along the way, but these also represent opportunities for learning. In the final analysis, nations that do not properly resource the administrative units responsible for trade negotiations will have difficulty mounting a two-track bilateral–multilateral strategy. In the case of Australia’s management of US bilateral and WTO multilateral negotiations in 2003, the Europeans may dislike the emergence of a new voice for developing countries via the G-20, but not everyone perceives this as undesirable.

In sum, WTO members that divert resources from WTO meetings are not stopping other WTO members from focusing on WTO processes and reaching consensus on trade policy decisions. If anything, the absence of these members could decrease multilateral complexity. This study concludes that bilateral trade negotiation process enhances a government’s understanding of both trade policy and negotiation process, and increases its capacity to prepare for multilateral negotiations via internal and external trade policy consultation systems that operate more efficiently and effectively.

Discussion

Damage done to the global economy by a multitude of bilateral trade agreements is not as great as has been claimed. Respected economists allude to the 1930s during US Senate testimony on bilateral trade agreements (Bhagwati 2003), while opposition political leaders warn the Australian government about repeating the mistakes of the 1930s (Senate Committee Report 2003). This is alarmist. Bilateral and regional trade agreements make up nearly 40 percent of total global trade (World Bank 2005: 27). What is the tipping point for world chaos? Will it be at 50 percent, 75 percent? This chapter argues that it will not happen, as there are too many differences between the present and the 1930s to make such comparisons. These scholars should conduct research and analysis and then build arguments to identify the tipping point or they should stop scaring the public with such unsubstantiated statements.

Any process that provides substantial benefits will come with some costs. This is to be expected. Multilateral solutions are preferred, but it must be recognized that some multilateral solutions are of low quality. A positive list for trade in services is a good example of a low-quality trade policy solution derived via multilateral processes. How are WTO member nations going to learn about higher quality solutions if they never have an opportunity to learn? Do we expect

that WTO members will learn about negative lists from presentations made at multilateral trade talks? Learning is best achieved when we gain direct and tangible experience. For example, the WTO should encourage its members to learn about negative lists for trade in services. Once a sufficient number of members are familiar with the development and administration of negative lists the WTO may then be able to sponsor a multilateral solution – perhaps 20 or 30 years from now.

Another area where the WTO can provide guidance is in identifying the degree of trade discrimination. Trade creation and trade diversion are analytically sound concepts, but after years of research the application of these two concepts have not been able to provide empirically significant data (WTO Consultative Board 2004; Crawford and Fiorentino 2005). Trade distortion is a useful concept, but the focus should be on degree of discrimination, with a distinction made between the much more damaging “trade-loss” and the far less significant “no-trade-gain.” If empirical tools can be developed for these analytical concepts then the WTO could develop guidance about the degree of trade-loss and no-trade-gain discrimination that is acceptable for a specific class of goods that is being traded via a bilateral treaty. The WTO could also encourage members to carefully examine some of the “Singapore Issues.” For example, the WTO could encourage all members involved in bilateral trade negotiations to review and consider adopting some of the basic principles found in the Government Procurement Agreement of 1981. Encouraging nations to adopt such trade policy through bilateral negotiations may result in these nations agreeing to something multilateral later. Change often occurs incrementally.

The WTO should also consider the role it could play in coordinating bilateral and multilateral interaction. The WTO should recognize that generally new solutions that are considered in WTO-sponsored negotiations will be of a higher quality if they have been developed and tested in bilateral settings first. The WTO should encourage members to only propose new issues or solutions after prototypes have been carefully examined in bilateral settings. Future WTO-sponsored negotiations can only be better informed, which will result in higher quality multilateral trade treaties. Changes in trade policy may occur more slowly, but the change that does occur will be of a higher quality.

The WTO could also provide guidance about the scheduling of bilateral formal rounds during WTO Ministerial meetings. WTO Ministerial meetings are an ideal setting for key bilateral players to hold discussions, but other bilateral activity should be postponed during WTO

Ministerial meetings, including formal rounds and public hearings. A “bilateral and regional pause or time-out” may take effect from the week prior to a WTO Ministerial meeting to the week after a Ministerial meeting. This is just an initial step, perhaps even a symbolic step, in managing interaction between bilateral and multilateral processes. Eventually, the WTO should sponsor a conference with every national administrator of a trade negotiation unit so that intensive coordination can be conducted between bilateral and multilateral processes. Operating two trade policy development systems comes with additional costs and complexity that can be effectively managed via planning and coordination. In this setting the WTO must conduct such coordination, as no other organization or entity can assume this role.

Initially, the WTO has been focused on the loss of resources that occurs when a nation pursues a two-track trade policy strategy. It is natural to worry about losses, but such losses should also be balanced by a recognition of benefits that are available to the WTO, because bilateral processes can deliver a range of outcomes that cannot be realized in multilateral settings. For example, it is clear that a bilateral trade policy system enhances the skills of a negotiation team, as they actually have an opportunity to conclude agreements involving trade in goods and services – in some nations negotiators have repeatedly had such experiences. Generally, the WTO has not been able to provide this type of experience to trade negotiators since the Uruguay round concluded. We also find that the short-term and intense nature of bilateral trade negotiations, relative to WTO-sponsored negotiations, contributes to enhanced inter-agency coordination and enhanced governmental–business relations. Strengthening the negotiation team, strengthening relations between the team and relevant governmental agencies, and strengthening relations between the team and the business community can only benefit both bilateral and multilateral negotiations.

Bilateral trade negotiations clearly provide national governments with a source of power that they can use to bring about domestic reform. Singapore’s decision to enhance government–business communication and to formalize competition policy is an example of such domestic reform. Australia’s decision to liberalize government procurement policies also demonstrates how bilateral trade policy can be used to bring about domestic reform. Organizations such as the United Nations, the World Bank, the International Monetary Fund and the OECD are concerned about political, economic and social governance. Here are tools that can help governments effectively implement domestic change. This is an area that requires greater investigation.

The fields of economics, international relations, negotiation and political science have examined the multilateral trade policy development system via GATT and the WTO for many years. Such knowledge is critical to our understanding of the international trading system, but how much do we really know about this new and emerging trade policy development system that reduces barriers to trade on a reciprocal and preferential basis?

Although not exclusively bilateral, the most outstanding structural feature is the bilateral nature of a large majority of the trade agreements that are signed. As with any emerging system, the first step is to describe its fundamental nature. Structural analysis, process analysis and outcome analysis will be most effective in this regard. But this is just the first step, as the real purpose in describing this emerging bilateral trade policy system is to evaluate the interaction between bilateral and multilateral processes. This is where the critical work lies. These two trade policy development systems will continue to exist for the foreseeable future. It will be useful to understand how these two systems naturally interact so that we may be able to design each system and the interaction between them in order to maximize social value. If we are successful in this regard, we can expect higher quality international trade policy, greater national movement toward democratic and free market principles, and negotiation teams that effectively interact within their government and with their stakeholders. All of this is possible if we begin by carefully examining this new and emerging trade policy development system.

Conclusion

For too many years multilateralists have argued that bilateral trade negotiations are a “stumbling block” to the development of a WTO-sponsored trade agreement, political leaders have argued that bilateral trade negotiations are a “building block” toward a WTO-sponsored trade agreement, and the WTO has essentially argued that bilateral trade negotiations are a building block and a stumbling block. I argue that multilateral trade negotiations realize tangible outcomes that are unachievable via bilateral trade negotiations. But this is not the only story, as bilateral trade negotiations serve functions that are not served via multilateral processes. Issues of trade distortion, increased transaction costs and the unraveling of the multilateral system are worries of another era. These were legitimate concerns that existed before bilateral and regional trade agreements became such a prominent part of the global economy. Now it is time to move on. The time

has come to examine global trade policy development with a new lens by recognizing that a two-track system exists and that each part of this system has strengths and weaknesses and provides opportunities and challenges. The critical question is how can we design these two systems and the interaction between them to produce higher quality international trade policy than currently exists.

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Notes

- 1 Trade negotiations that are not sponsored by GATT/WTO are usually referred to as “regional trade negotiations,” “preferential trade negotiations” or “free trade negotiations.” This study prefers the term “bilateral trade negotiations” because “bilateral” is a dispassionate, descriptive and structural term. “Global, multilateral, regional and bilateral” is a useful structure for understanding the range of current trade policy negotiations. Most trade policy negotiations in this study are bilateral and will be referred to as such. If an agreement includes a third country (three or more countries) and all countries are in the same geographical region then the treaty is a regional agreement (e.g. Mercosur includes four South American countries). If one country is not in the same geographical region as the other countries then this is a multilateral agreement. “Global” is a better term than “multilateral” for an agreement reached through the WTO, as global distinguishes a WTO-sponsored treaty from smaller multilateral agreements. Unlike many of the terms used in the trade literature, this nomenclature has the benefit of being logically ground in the fundamental meaning of each term.
- 2 I am not defending the US Yarn Forwarding Rule. The United States is disingenuous to argue for free trade and then force such outrageous trade policies on other countries. The United States government needs to develop a way to counter the political power of the US yarn industry.
- 3 The Australia–United States Free Trade Agreement (AUSFTA) can be read in full at: <http://www.dfat.gov.au/> or <http://www.ustr.gov/>. The Singapore–United States Free Trade Agreement (USSFTA) can be read in full at: <http://www.mti.gov.sg/> or <http://www.ustr.gov/>. The Singapore–Australia Free Trade Agreement (SAFTA) can be read in full at: <http://www.mti.gov.sg/> or <http://www.dfat.gov.au/>. Case summaries of these negotiations can be found in Crump (2006) or Crump (in press).
- 4 In addition to the many trade negotiators that were at the table I also interviewed many high-level governmental appointees including staff in

the Australian Office of the Prime Minister, the Singaporean Office of the Deputy Prime Minister, and the Executive Office of the President of the United States (plus former and current staff in the US National Security Council). I also interviewed Ambassadors and High Commissioners, Deputy Secretaries, Private Secretaries and Under Secretaries. These government officials are political strategists and/or serve as the link between the political strategists and the trade negotiators. Most of my interviews were with staff in the Australian Department of Foreign Affairs and Trade in the Office of Trade Negotiation, staff in the Singapore Ministry of Trade and Industry in Directorate B of the Trade Division, and staff in the Office of the United States Trade Representative (USTR).

- 5 The “Singapore issues” generally emerged at the First WTO Ministerial Conference in Singapore in December 1996. They include trade facilitation, rules on investment, transparency in government procurement, and competition policy.
- 6 A negative list for trade in services allows for trade in any service unless it is specifically “excluded” in the trade treaty. A positive list for trade in services allows for trade only if a service is specifically “included” in the trade treaty. As such, a negative list is considered to be more liberal in encouraging international trade than a positive list. Building a negotiation position for a negative list requires much more governmental planning, as compared to a positive list.
- 7 Australia and Thailand also adopted a transformation ROO approach (this development occurred slightly before AUSFTA negotiations began) in their trade treaty of 2004.
- 8 This study is not the first to make this important observation. See: Echandi (2001) and Jackson (2005).
- 9 In addition to US interview data, see: USTR, ‘Trade Policy Advisory Committee System’. Available at: <<http://www.ustr.gov/outreach/advise>>.
- 10 The Cairns Group is a coalition of 17 agricultural exporting countries (led by Australia) from Latin America, Africa and the Asia–Pacific region that has sought to reform international agricultural trade policy since 1986.

References

- ACS Annual Report (1999–2005) Canberra: Australian Customs Service, Commonwealth of Australia.
- ACS Financial Statement (1999–2005) Canberra: Australian Customs Service, Commonwealth of Australia.
- AUSFTA: Australia–United States free trade agreement 2004. Available at: <<http://www.dfat.gov.au/>> or see: <<http://www.ustr.gov/>>.
- Bhagwati, Jagdish (1991) *The World Trading System at Risk*, Princeton, NJ: Princeton University Press.
- Bhagwati, Jagdish (2003) ‘Testimony on US–Chile and US–Singapore free trade agreements before US House of Representatives’, Committee on Financial Services, Subcommittee on Domestic and International Monetary Policy, Trade and Technology, 1 April.

- Bhagwati, Jagdish and Panagariya, Arvind (1996a) 'Preferential trading areas and multilateralism: Strangers, friends or foes?' in J. Bhagwati and A. Panagariya (eds) *The Economics of Preferential Trade Agreements*, Washington, DC: American Enterprise Institute Press.
- Bhagwati, Jagdish and Panagariya, Arvind (1996b) 'The theory of preferential trade agreements: Historical evolution and current trends', *American Economic Review* (May), 86: 82–7.
- Crawford, Jo-Ann and Fiorentino, Roberto V. (2005) 'The changing landscape of regional trade agreements: WTO Discussion Paper No 8', Geneva: WTO Publications.
- Crump, Larry (2006) 'Global trade policy development in a two-track system', *Journal of International Economic Law*, 9 (2): 487–510.
- Crump, Larry (in press) 'Concurrently linked negotiations and negotiation theory: an examination of bilateral trade negotiations in Australia, Singapore and the United States', *International Negotiation*.
- Crump, Larry and Zartman, I. William (2003) 'Multilateral negotiation and the management of complexity', *International Negotiation*, 8 (1): 1–5.
- Dent, Christopher M. (2003) 'Networking the region? The emergence and impact of Asia–Pacific bilateral free trade agreement projects', *The Pacific Review*, 16 (1): 1–28.
- Desker, Barry (2004) 'In defence of FTAs: From purity to pragmatism in East Asia', *The Pacific Review*, 17 (1): 3–26.
- Devlin, Robert and Estevadeordal, Astoni (2004) 'Trade and cooperation: A regional public good approach', in A. Estevadeordal, B. Frantz, and T.R. Nguyen (eds) *Regional Public Goods: From Theory to Practice*, Washington, DC: Inter-American Development Bank.
- Echandi, Roberto (2001) 'Regional trade integration in the Americas during the 1990s: reflection on some trends and their implications for the multilateral trade system', *Journal of International Economic Law*, 4 (2): 367–410.
- Garnaut, Ross (2002) 'An Australian–United States free trade agreement', *Australian Journal of International Affairs*, 56 (1): 123–41.
- Jackson, John H. (2005) 'Part I: The state of international economic law', *Journal of International Economic Law*, 8 (1): 3–15.
- LeClair, Mark S. (1997) *Regional Integration and Global Free Trade: Addressing the Fundamental Conflict*, Aldershot UK: Avebury-Ashgate Publishing.
- Ng, Kim Neo (2004) 'Textiles and apparel', in T. Koh and C.L. Lin (eds) *The United States–Singapore Free Trade Agreement: Highlights and Insights*, Singapore: Institute of Policy Studies and World Scientific Publishing Co.
- Panagariya, Arvind (1999) *Regionalism in Trade Policy: Essays on Preferential Trading*, Singapore: World Scientific Publishing Co.
- Rossman, Ithnain (2004) 'The goods package', in T. Koh and C.L. Lin (eds) *The United States–Singapore Free Trade Agreement: Highlights and Insights*, Singapore: Institute of Policy Studies and World Scientific Publishing Co.

- SAFTA: Singapore–Australia free trade agreement (2003). Available at: <<http://www.mti.gov.sg/>> or: <<http://www.dfat.gov.au/>>.
- Sampson, Gary P. (2003) ‘Introduction’, in G.P. Sampson and S. Woolcock (eds) *Regionalism, Multilateralism, and Economic Integration: The Recent Experience*, Tokyo: The United Nations University Press.
- Sampson, Gary P. and Woolcock, Stephen (2003) *Regionalism, Multilateralism, and Economic Integration: The Recent Experience*, Tokyo: The United Nations University Press.
- Schiff, Maurice, and Winters, L. Alan (2003) *Regional Integration and Development*, Washington, DC: The International Bank for Reconstruction and Development.
- Senate Committee Report (2003) *Australia’s Foreign Affairs and Trade Policy: Advancing the National Interest*, Canberra: Senate Printing Unit, Commonwealth of Australia.
- Snape, Richard (1996) ‘Trade discrimination – yesterday’s problem?’, *Economic Record*, 72 (219): 381–96.
- TAFTA: Thailand–Australia free trade agreement (2004). Available at: <<http://www.thaigov.go.th/>> or: <<http://www.dfat.gov.au/>>.
- Tongzon, Jose (2003) ‘US–Singapore FTA: Economic implications for Singapore and the ASEAN region’, in C.K. Wah and T.M. Than (eds) *US–Singapore FTA: Implications and Prospects*, Singapore: Institute of Southeast Asian Studies.
- Trade Policy Advisory Committee System (2006) Washington, DC: USTR. Available at: <www.ustr.gov/outreach/advise/>.
- USSFTA: United States–Singapore free trade agreement (2003). Available at: <<http://www.ustr.gov/>> or see: <<http://www.mti.gov.sg/>>.
- USTR Trade Policy Agenda of the President of the United States (2004) Washington, DC: Office of the United States Trade Representative, Executive Office of the President.
- Viner, Joseph (1950) *The Customs Union Issue*, New York: The Carnegie Endowment for International Peace.
- Woolcock, Stephen (2003) ‘Conclusions’, in G.P. Sampson and S. Woolcock (eds) *Regionalism, Multilateralism, and Economic Integration: The Recent Experience*, Tokyo: The United Nations University Press.
- World Bank (2005) *Global Economic Prospects: Trade, Regionalism and Development*, Washington, DC: The International Bank for Reconstruction and Development.
- WTO Consultative Board (2004) *The Future of the WTO: Addressing Institutional Challenges in the New Millennium*, Geneva: World Trade Organization.
- WTO: World Trade Organization (2006). Available at: <www.wto.org/>.
- Zartman, I. William (2003) ‘Conclusion: Managing complexity’, *International Negotiation*, 8 (1): 179–86.