

PERSPECTIVE OF KEY WTO AMBASSADORS ON CURRENT CHALLENGES IN GLOBAL TRADE TALKS

By Sherman Katz, CSPC Senior Advisor

Interviews in February 2015, in Geneva, of the WTO Ambassadors of China, the U.S., the EU and Brazil, the Chairs of the Agriculture, NAMA and Services Committees and the Director General's Chief of Staff, clarify the dynamics and competing interests behind the current Doha Round stalemate. To help break that stalemate, several propose 'request and offer' ("R&O") negotiations for Agriculture and NAMA. Beyond Doha, some suggest talks on a WTO investment agreement because the benefits of investment are now better understood.

PERCEPTIONS OF UNDERLYING ISSUES

1. Mega-Regionals

No one disputes the mega-R's have 'sucked the oxygen' out of the Round. While U.S. Ambassador Michael Punke recently joined the TTIP discussions in Brussels to help accelerate the pace, his Geneva colleagues say he participates fully in current efforts to craft the post-Bali work program and is readily available and visible. At the same time, Punke thinks TPP and TTIP demonstrate to 'intransigents' there are alternatives and may act as a spur to Doha as NAFTA did to the Uruguay Round. Ambitious aspects of TPP and TTIP would face strong opposition in the WTO, he said, so, "You work your way down to what is possible, e.g. the Trade Facilitation Agreement." For him U.S. policy is pragmatic: "So part of it is what WTO can and can't do. We use all forums and the interplay between them where we can achieve the most."

He also noted that in TPP the U.S. benefits from Japan's tariff cuts and the EU does not; in TTIP the U.S. enjoys EU cuts and Japan does not. He added that bilateral and regional agreements are 'good laboratories for new subjects.' NAFTA had the first services and IPR provisions and those were later carried into WTO. Twenty-first century topics in TPP and TTIP might also make their way into Doha and the WTO. On the other hand, Swiss Chair of the NAMA Committee Ambassador Remigi Winzap said, "There is also the reality that if you need to make concessions in TPP and TTIP, you might not want to make them in Doha."

2. Roles of Emerging and Less Advanced Developing Countries

Punke said, "On any issue deadlocked in the WTO, the recurrent theme is we have failed to define the responsibility of the emerging economies." They resist any effort to establish a new category of countries—in addition to 'developing' and 'developed'—and they do not believe they should be asked to 'graduate'. The most obvious case is China, a 'developing country' at the WTO. While 250 million of its population are now in the middle class—thanks in significant

part to trade facilitated by WTO accession, the remaining 1 billion still live in poverty. China's WTO Ambassador Yu Jianhua said, "For the first time in history, the second largest economy in the world also ranks 90th in per capita GDP." India, Indonesia and South Africa, among others, have similar profiles.

At the same time, smaller and less advanced developing countries now have a stronger taste for individually tailored outcomes. The opportunity for them in the Trade Facilitation Agreement to select their own implementation schedules has heightened their desire for variability and flexibility. Thus several Ambassadors believe the "request and offer" (R&O) technique of tariff reduction (combined with a formula approach) would be responsive to this desire for variable outcomes: As Punke put it, "So you could have R&O where not as much would be requested of Kenya as of China and this could help reach a consensus that allowed all sorts of variability. That is the central quandary of the Doha Round."

3. Limited Agendas

The stakes in the Round of key emerging countries are defensive and status-quo oriented. As India's former WTO ambassador reminded, "India had to be coaxed into a new Round in 2001 and was not a demandeur." As a non-participant in any mega-regional deal, "It is far more important to India that markets remain open. It has a vested interest in keeping the system open and maintaining the centrality of WTO." In this context, he said, India, China and Brazil "have a huge interest in the success of the Round." And yet he confirmed India's agenda is primarily defensive with priority to food security and protection of certain crops. The only offensive interest is movement of persons to provide services across borders ("Mode 4" of GATS). This relatively sparse lineup is hardly conducive to give-and-take bargaining, although it leaves little doubt what might bring India on board any convergence that develops among the Big 5 (China, India, Brazil, EU and U.S).

4. Burdens of China's History, Accession and 'Payor' Concern

Ambassador Yu described an even more guarded posture based on political and economic history and domestic values. The multilateral trading system originated after WWII, 'at a time of two blocks', and is based on a set of economic and social arrangements and values of the west that 'we cannot ignore and must respect' as we adopt a market system. China's position as the world's 'second largest economy but with most of its citizens still in poverty also complicates expectations.

China 'paid a lot for accession to the WTO' and 'we benefitted...' But China 'needs space and transformation time to 'upgrade' our economic structures to move from a labor-intensive economy to participate in global value chains. Our companies want to invest abroad...so we support the multilateral system and we want early conclusion of the Round...We will contribute per our capacity."

Yu also described domestic political sensitivities. While China's industries are getting-bigger in the past ten years, as they are in Brazil and India, he said:

"Our ordinary people are not well prepared to play the role 'expected' by other governments. So our policy-makers must balance these competing forces. In fact in some parts of our economy, agriculture in particular, many believe we were forced to make too big a contribution to accede 10 years ago. The side effects of this are not yet digested. This sentiment is very popular and I have heard it expressed often in my home (farming) town. Because of lower prices and higher subsidies (in the West) we cannot compete with the U.S. Also we have limited arable land. Our food security supports are for livelihood (subsistence) farmers, not commercial ones like the U.S. and Australia. Our government will help farmers but our hands are bound by the WTO."

On tariffs more broadly and the prospects for China in the Round, Yu said, "We are a big NAMA exporter but the developed countries say they can't address their tariff peaks and escalation, because of the financial crisis and manufacturing problems. For us agriculture is totally defensive as we are a net importer." He concluded, "At the end of the day, China will not get much from this Round. We are a pure payor."

5. Other Ambassadors' Support of China

Interestingly leading WTO ambassadors from Europe and Latin America struck a supportive note for China, whether for self-interested or objective reasons. They understand China's reluctance to make further payments for Doha, particularly since China paid a 'uniquely' high price for accession. Several ambassadors spoke approvingly of China's role within the WTO. Colombian Ambassador Gabriel Duque, chair of the Committee on Services, said, "They are becoming more constructive. They want to contribute in a fair way." Ambassador Winzap said, "I don't see them picking and choosing obligations to observe any more than 159 other members." Another said, "They don't try to motivate developing countries against pending initiatives or proposals. China already has a profile [in the WTO] compatible with its role as the largest trading nation." At the same time, Ambassador Duque said, "We are aware of how suspicious DC is of China." Brazilian Ambassador, Marco Galvao noted, "Any leadership role is easier for them to play in groups rather than individually. China is willing to be more flexible, but they don't think they can do it alone."

Many ambassadors believe there will be no Doha deal until a balance is found between U.S. expectations that China can and should become a 'payor' as the world's second largest economy and China's view that it paid a uniquely high price to join the WTO and can do little further now.

6. Evolving China and Static Doha Agenda

Richard Baldwin, international economics professor at the Geneva Graduate Institute and long-time WTO watcher, saw an evolution in the China-WTO relationship:

China made huge changes to get into the WTO and those changes were a major step toward a market economy. At that time (2001) they viewed themselves as a developing country. WTO was great for their exports, which increased 20% a year. They did not see WTO as broken and had the benefit of Special and Differential (S&D) treatment. So they felt they did not have to make systematic contributions and did not see themselves as leaders. When the Doha Round agenda was set, nobody thought the Round would ask much from China. But the Round did not finish in three years—as initially planned—and the agenda did not evolve. By 2011 we and the Chinese recognized we cannot do Doha without them. They are also beginning to have offensive interests, whether in a BIT with the U.S. or as a member of TISA, as they evolve from a “factory economy” to a headquarters one.

7. Brazil's Declining Influence

Brazil's role in WTO has also changed as the result of shifting concerns about agriculture in the Round. Reducing U.S. and EU farm subsidies and tariffs was the principal goal of the G-20 organized by Brazil and India in 2003 at Cancun. But former Indian ambassador to the WTO and now Appellate Body Member, Ujal Bhatia, who was at the center of that effort, said, “Brazil and the G-20 no longer have the same influence because key G-20 members are now more concerned about managing their own supports for their large farming populations within WTO rules rather than U.S. and EU practices.” The G-20, he said, “is ‘in tatters’ and Brazil therefore represents very few.” Brazil Ambassador Marco Galvao would not agree, noting the G-20 meets ‘three or four times a year’ and still issues statements.

The sequence Brazil has insisted upon, agriculture first, then NAMA and finally services, remains intact. But the D-G has encouraged the Committee Chairs of these three core groups to keep each other informed of their progress as part of his emphasis on ‘parallelism’ and ‘horizontality.’ Argentina has just proposed combined Request and Offer talks on Ag and NAMA to facilitate tradeoffs, but so far the idea has not been embraced.

Ambassador Bhatia said it was a “huge mistake” of Brazil, India and other developing countries to ignore services. With services increasingly essential to global value chains, he said, ‘Opportunities are there for countries prepared to take them and they can leap-frog in their development’ by doing so.’ Similarly, a senior WTO official called it a tactical mistake ‘to push services out of the building’ in Doha: “Those who insisted on ‘agriculture first’ would have had more leverage with services as a ‘live hostage’ than a dead one.”

8. EU Role

EU Ambassador Angelos Pangratis said the EU has been ‘behind any significant step toward convergence’ and its strategy is to use ‘the margins’ to build consensus.” In his view no one other than the EU ‘has a positive agenda’ and is in a unique position to be an initiative taker. He lamented there is no push by others in the Big 5 toward painful compromises. EU positions are ‘close to the middle-grounders’ and this is a ‘good starting point with the LDCs. He thought the EU can be more nimble in negotiations than China and the U.S., with fewer time-consuming institutional constraints. But other ambassadors said the EU’s preoccupation with TTIP means it is now less forceful in the Round.

9. Director-General, Green Room and Committee Chair Roles

Several ambassadors said Director-General Roberto Azevedo has improved operation of the Green Room. Now he convenes a wide variety of countries in different configurations based on the issues under discussion. Amb. Galvao said he does not know who will be in the Green Room when he arrives on any given day. To enhance transparency, the D-G posts lists on the Green Room video screen to show which countries were consulted at the previous meeting on the same issue. And yet, his Chief of Staff leaves no doubt he will not get out in front of the Members when it comes to building consensus on new proposals (see below “A Cautious Director General”)

The fact that Azevedo is himself a former WTO ambassador gives the other ambassadors confidence he is ready to work with them. The Chairs are an impressive trio steeped in both the details and the political dynamics of their areas. They convene their Committees frequently in a variety of configurations and convey a sense of urgency about their work. They meet together often to keep informed of progress in each other’s Committees as the D-G has suggested.

RESULTING ATMOSPHERE

This small sampling of uniquely informed opinion hardly lends itself to broad conclusions for 160 Members. But the perceptions of the key players suggest the major obstacles to progress. Overall, several ambassadors agreed that without a U.S.-China agreement, a Doha deal will not be possible. The U.S. is pragmatically pursuing all options, including Mega-Regionals, and is ready to facilitate whatever becomes possible at the WTO such as the TFA. The U.S. sees two central dilemmas in the Round: defining the responsibilities of emerging economies and creating variability of obligations for the other developing countries.

China recognizes it benefitted substantially from WTO membership. It says the major concessions in WTO accession make further ‘payments’ in Doha difficult to swallow. It fears it will be a ‘pure payor’ in this Round. The U.S. has higher expectations about China as a contributor. China’s role in the WTO and position on the Round are seen more favorably in

Geneva than in Washington.

The original purpose of the G-20, organized by Brazil and India to oppose US and EU farm subsidies and tariffs, has less salience now because India and other developing countries are primarily concerned about preserving domestic supports for their large farming populations. India's goals in the Round are only to protect those domestic subsidies and a few crops and to expand Mode 4 in GATS, a short list that could simplify shaping consensus among the Big 5.

The EU is trying to help find convergence between developing countries and industrialized ones, but some believe it is less forceful in this Round because of TTIP. The Green Room is more open and transparent and Azevedo is working directly with ambassadors. But he expects the Members to develop consensus on new ideas and will not get ahead of them. The highly capable Committee Chairs are urgently convening meetings of varying geometry at several levels.

An essential piece in this picture noted by many is the need for talks among the Big 5 to explore ways to come to terms with each other's interests. Without a "deal" acceptable to the "Big 5" it will be impossible to evolve a WTO-wide consensus. Some members suggest that preliminary discussions by the U.S. and the EU with either Brazil or India or both, would increase the chance China's concerns can be addressed. Perhaps the stake Brazil and India have in the Round's success as outsiders to the Mega-Regionals could increase their interest in helping find common ground.

REQUEST AND OFFER ("R&O")

Repeated references by countries large and small to R&O tariff negotiations on Agriculture and NAMA, perhaps in combination with a formula, suggest R&O could facilitate convergence both among the largest key players and among developing countries that want more individually tailored outcomes.¹

¹ For example, a 'formula' agreed by all parties might reduce the tariffs for a specified group of agricultural or manufactured products by, e.g. 36% over 6 years (6% a year) toward an agreed average tariff, with a variety of negotiated longer phase-in periods for developing countries, negotiated exceptions for 'sensitive products' of developing countries, negotiated exceptions for so-called 'special' products of a separate group of countries, etc.

The 'request and offer' process leads to a tariff from the end result of bargaining among 'principal suppliers' and importers of a commodity or manufactured good. That tariff is then applied to all other nations on an MFN basis. While the formula might in principle appear to be more efficient and more transparent on its face and less subject to 'bullying' of smaller countries by large traders and suppliers, the many negotiated exceptions make it difficult to predict additional market access.

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In the NAMA negotiations in 2008, as noted below, the result achieved by the formula was 'topped off' by R&O bargaining to combine the best attributes of each approach.

1. Individually Tailored Outcomes

The U.S. is open to the R&O idea. Amb. Punke said, "With R&O, each country can target what it wants. The outcome allows negotiators to say, 'I got X which you wanted' to their domestic stakeholders. So there is a move back toward R&O because it allows flexibility at the individual country level." Less would be requested of less advanced nations than larger emerging ones "and this could help reach a consensus that allowed all sorts of variability." As noted above, Punke sees such differentiation as "the central quandary of the Doha Round." He thinks the approach of formula and flexibility for S&D has not worked because the exceptions for sensitivities 'swallowed' the gains produced by the formula. The EU is said by others to be 'floating a proposal' on R&O as are the Cairns group and G-33. As noted, Argentina suggests R&O for Agriculture and NAMA together to facilitate tradeoffs. But China has major reservations about R&O as discussed below.

Irene Young, Permanent Representative for Hong Kong and a respected leader among smaller Members, agrees that R&O facilitates targeted requests and suggests 'collective requests' can strengthen the developing countries' position:

The main appeal of R&O is that the requests can be more targeted and hence more likely to achieve a meaningful or commercially significant outcome for the demandeurs. The down side is that it is a time-consuming and resource-demanding exercise, and some smaller economies might not see themselves as being in a favorable bargaining position, especially if R&O is done on a bilateral basis. There is a possibility, however, for Members with common interests to group themselves together to make collective (plurilateral) requests. This may help Members (not limited to developing countries) sharpen focus, strengthen the demandeurs' negotiating positions and facilitate convergence. Indeed the collective request approach had been adopted for the Doha Round Services negotiations after the 2005 Hong Kong Ministerial, alongside the more traditional bilateral R&O.

R&O allows a country for whom market access for, e.g., shea butter for cosmetic purposes, is particularly important to identify the largest consuming countries and seek to negotiate favorable tariffs with them. R&O allows the negotiators of the exporting country of shea to achieve a specific, positive and tangible result for their domestic constituencies. R&O may also lead to a higher level of ambition.

R&O was the methodology used for thousands of product-by-product tariff concessions in the first 6 GATT Rounds from 1947 ("Geneva I") through the Dillon Round (1960-62). The formula approach was introduced in the Kennedy Round (1962-67) to help cope with the large number of tariff lines in rapidly expanding GATT membership.

A WTO Division director notes another advantage: With a formula, one size fits all and so you expect the same from China and Kenya. But the big problem in dealing with developing countries as one group is that the “big guys hide behind little guys and the little ones get zero. The only way to deal with special needs in the Round is to go to R&O.”

2. Limitations of 'R&O' and Formulas

Amb. John Adank (N.Z.), Chair of the Committee on Agriculture, is aware of the limitations of the formula: “The complaint by a number of countries is that at the end of the day you still won’t know the precise access you are getting given the range of flexibilities [exceptions] involved. Many delegations have indicated they like ‘simplification’ and Revision 4 [2008 formula for farm goods] was ‘too complex’ because of exceptions. At the same time these exceptions were derived from all the sensitivities.” He adds. “We had a tiered formula to be more aggressive on higher tariffs than the lower ones. But then flexibility [exceptions] came in which had an effect on the level of ambition.”

At the same time, some argue that if you simplified the formula with an average cut approach that could reduce overall ambition and exacerbate the practice of sheltering lines members want to protect. The net result could be everyone will be doing less albeit with greater flexibility.

For Adank, “...if the problem in the negotiations is that greater added-value is needed, you need to determine more clearly what this added value is and how it will feature in any outcome. This will necessarily need to come through negotiations among the main players”. He also notes some smaller countries have concerns about outcomes from R&O bargaining since they would have less leverage than larger players.

3. R&O is Necessary but Not Sufficient

Amb. Winzap said,

We will probably have no result without some request and offer. But many Members have doubts if it will do the trick as the primary modality. An approach [in NAMA] could be to do part formula and part R&O. But there may not be sufficient space for further cuts using R&O” if the 2008 deal (Revision 3) remains basically unchanged.

Overall, he said, “My impression is there are more members who see value in R&O, but I don’t think this is the main way to get results.”

Winzap hopes modalities will be relatively precise by July 31, 2015, the current ‘deadline’ for a post-Bali work program. That would allow the implementation of the program to be ‘nailed

down' by the ministers at the December ministerial in Nairobi.

4. Benefits of Combining R&O and Formula

The Services Committee Chair Gabriel Duque, Colombia's former Vice-Minister of Foreign Trade, said R&O adds more flexibility and ambition to the predictability of a formula:

The whole thing is about predictable outcomes. The formulas can give a level playing field, including reduction of peaks and escalation. The problem in achieving the important level of ambition of the formula numbers came when countries began seeking exceptions. This meant there was not a specific gain to sell at home. R&O is more cumbersome and complex. It allows a higher level of flexibility but it is less transparent and predictable, especially for smaller countries. So maybe a combination will produce predictability and a level of ambition to sell to constituencies back home.

5. A Cautious Director-General

The Director-General's Chief of Staff Tim Yeend said R&O is a 'classic area where the membership has to consolidate their thinking.' D-G Azevedo 'will promote discussion of the possibilities' but will not get ahead of the Members. At the same time, Yeend added, "To get an outcome, we need to take a view of the need for flexibility."

6. China Opposes R&O

However, despite all the interest from a variety of sources, China will be a major roadblock. Amb. Yu expressed strong reservations about R&O because it will 'lead other nations to single China out' with requests and because it will require re-litigating the merits of WTO bargains with China's domestic industries. China is 'fed up' with all the requests being made to China in discussion about joining the Information Technology Agreement. Domestically, "The formula approach is 'universal' and is easier to explain at home. R&O is 'new' from previous work. "We would have to start from scratch and consult industry by industry." R&O, he concludes, 'could create another backlash' in China.

Yu has discussed the R&O option with Amb. Punke: "I told Amb. Punke, 'We can take Rev. 4 and Rev. 3 [the 2008 formulas for Ag and NAMA]. We know and understand these.'" But R&O, he believes, could create another deadlock.

THE ATMOSPHERE FOR R&O

The U.S. and the EU have discussed with other Members the use of R&O together with a formula for Ag and NAMA. This could raise the level of ambition for all and give developing countries more opportunity to strike individually crafted deals on their priority products and

more to sell to constituencies back home. The Committee Chairs remind that significant value added on Ag and NAMA tariff reductions will come from the 'main players.' But they note the use of formulas with multiple exceptions is complex and less predictable. R&O can provide both flexibility and S&D treatment in a less disruptive way.' The difficulty is China's reservations about R&O. China was deluged with requests in ITA II—not surprisingly—to the point it was 'fed up.' China also says R&O would have to be 'sold' industry by industry' at home because the formula approach is already understood but R&O would be 'completely new.' China has advised the U.S. it prefers the formula to R&O despite the formula's complexity.

China's doubts about R&O and resistance to further contributions in the Round mean the Big 5 must meet with China—if they haven't already done so—to search for middle ground on tariffs between goals and sensitivities. If, as noted above, China, Brazil and India have a major stake in success of the Round as non-participants in the Mega-Regionals, perhaps that stake can help build toward mutual accommodations.

BEYOND DOHA: POTENTIAL FOR WTO AGREEMENT ON INVESTMENT

Beyond Doha, several ambassadors mentioned the promising potential of a WTO agreement on investment. They believe rules on investment would have major payoffs for rich and poor Members and help make the WTO more relevant to global business. These comments reflect changed attitudes about foreign capital, technology, management skills and employment developed since the Singapore issues were excluded from the Round in 2003. The concern of stakeholders about Investor State Dispute Settlement (ISDS) is acknowledged as an obstacle, but rules on investment would have major payoffs for rich and poor Members and help make the WTO more 'relevant' to global business. These comments reflect changed attitudes about foreign capital, technology, management skills and employment developed since the 'Singapore' issues were excluded from the Round in 2003. The concern of stakeholders about Investor State Dispute Settlement (ISDS) are acknowledged as an obstacle, but several believe reforms will address that concern such as new safeguards now being discussed in TTIP for domestic regulation of health, safety and the environment and greater transparency of the tribunals that decide disputes.

Amb. Duque stated the case: 'WTO rules are not in line with current reality and there is scope for enhancing them. There are hundreds of bilateral investment treaties ("BIT"s) out there and accumulated knowledge and experience from them. Preferences in existing BITs will create difficulties but one set of rules—not to supersede the BITs but to give them an agreed framework-- would be a 'value addition' for the world. The rules might include some pre-investment disciplines to give assurance of non-discriminatory treatment even if the investment hasn't occurred. Apart from Brazil, the Big 5 are all signing BIT's and Brazil is receiving major foreign investments in any case.

Baldwin said there is already 'almost an existing common denominator' from the '2 or 3 main models for B.I.T.'s'. China, Korea and 6 or 7 other major manufacturers are now 'emitting FDI'

as part of their offshoring strategies for manufacturing, he added, and this means they have 'offensive interests' on investment. It is 'no longer a North-South issue' in his view, and unilateral liberalization by some governments on investment supports that view. The existing International Center for the Settlement of Investment Disputes (ICSID) is providing knowledge and experience about what rules are needed.

As with services, where general rules 'prevent bad things from happening', Baldwin believes, general rules on investment would have the same useful effect. And the GATS model of self-declaration by individual countries of sectors and modes of supply to be covered by the rules--the 'price to get GATS into WTO', would also facilitate creation of a multilateral deal on investment. Finally, he added, developing countries increasingly realize that investment and services (e.g. telecom, finance, express delivery, reliable power) 'go together'. Thus they understand rules for investment are a natural companion to rules for services

Ambassador Yu hopes investment could be one of the post-Doha Round areas, but, "I don't think it can fly alone in the WTO where it will be difficult to balance all the interests." He wondered if a plurilateral investment deal would be more feasible. In his view, "We should turn a new page, think about new chapters and we cannot focus on one or two areas: we need a new package and a new key word like 'development.'" Of course post-Doha talks may be years away. But the increasingly positive attitude about foreign investment in developing countries is worth noting and suggests multilateral talks about investment could help add value to the global economy and bring new relevance to the WTO.