DEVELOPMENT AT THE WTO
Looking beyond the Doha round

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The WTO and development paradox

• Major transformations in the role of developing countries in world trade since the Uruguay Round…

• …But a debate on development at the WTO largely frozen in time
Overview

• Disconnect between development needs and WTO disciplines

• Disconnect between developing members’ participation and WTO institutions

• 2 paradigms for reconsidering the trade and development relationship at the WTO
Disconnect between development needs and WTO disciplines

- 1955: Addition of Article XVIII of the GATT
  - 1958: Report by the Director General summarizing the concerns and demands of developing members: mostly high tariffs on “tropical” products in industrialized countries

- 1964: Creation of UNCTAD; addition of Part IV of the GATT on Trade and Development

- 1971: Temporary Waiver to “legalize” preferences and encourage more favorable treatment of developing countries

- 1979: Tokyo Round: Enabling Clause; non reciprocal negotiations


- 2001: Doha “Development” Round inaugurated

- 2003 Decision on Public health amending TRIPS art. 31
A changing membership

- 158 members:
  - 75 % are developing countries
  - 34 of 50 Least-Developed Countries are members
Institutional disconnect with developing members capacity

• Coercive effect of consensus
• Increased “secondary legislation”
• No legal recognition for groups of developing members
• Under-participation in dispute settlement
• Capacity-building efforts at the Secretariat
Institutional disconnects: dispute settlement

• Has the “law based system” leveled the playing field for weaker members?
  • Still virtually no participation by LDCs
  • Some victories by large developing countries (e.g., Upland Cotton); increased participation (China)
• Inconsistent treatment of SDT in disputes
• Negotiations on implementation similar to UR positions for many developing members.
Geneva, we have a problem...

Seattle, 1999

Cancun, 2003

Hong Kong, 2005
Reframing the trade and development relationship

• Ad hoc paradigm:
  • Pragmatic case-by-case consideration of trade and development

• Normative co-constituent paradigm:
  • Trade liberalization and development as complementary core principles to infuse WTO law and institutions
Ad hoc paradigm for trade and development

• Adaptive obligations
  • Use of legal standards
  • Best efforts
• Criteria and triggers for SDT
  • Specify bearer of obligations
  • Specify nature and content of obligations
  • Explicit relationship between SDT and other trade disciplines
• Improved adjudication
  • Transparency and coherence in interpretation of SDT
Normative co-constituent paradigm

• Decision-making
  • Moving beyond formal equality
  • (Advisory) indirect representation?
• Negotiation design
  • Single undertaking as part of the problem?
  • Relative valuation of concessions?
• Dispute Settlement
  • Normative commitment to development would infuse treaty interpretation
  • Rethink retaliation and implementation
Moving forward in practice

• Increasing human and financial resources

• Shifting members’ and the organization’s practices

• Using interpretative decisions by the General Council

• Bringing the interpretation of the WTO agreements in line with contemporary developments in public international law

• Reexamining the negotiation process
THANK YOU

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http://ukcatalogue.oup.com
Selected Publications


• Redesigning the Negotiation Process at the WTO, 13 JOURNAL OF INTERNATIONAL ECONOMIC LAW 65 (2010).

• Developing Country Coalitions at the WTO: In Search of Legal Support, 48 HARVARD INTERNATIONAL LAW JOURNAL 483 (2007).

• Chapter 7: WTO Law, in TRANSNATIONAL LAW (M. Reimann, J. Hathaway, T. Dickinson, J. Samuels eds., forthcoming West casebook)