

# **Arguing and bargaining in the WTO: Does the Single Undertaking make a difference?**

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All human interaction needs some basis for coming to a decision. As the number of participants increases, so too does the problem of making collective decisions. The challenges seem especially daunting for the global trading system, where the periodic “rounds” of multilateral trade negotiations in the World Trade Organization (WTO) seem interminable. If international organizations are irrelevant to order and change in the global economy, then explaining this problem is of little interest. I assume, in contrast, that the WTO does matter, though in this paper I square bracket any consideration of the effect the WTO has on its domain (Goldstein, Rivers and Tomz, 2007), and I sidestep debates about “cooperation”. Instead, I engage one aspect of recent debates on WTO institutional design: Is the fact that the Doha Round is conducted as a Single Undertaking a factor that helps or hinders the ability of Members to reach agreement? And I engage one debate about international institutions: Does the Single Undertaking make that difference through its effect on bargaining and/or arguing among Members?

As it entered its seventh year in fall 2007, outsiders were declaring the Doha Round dead, a failure.<sup>1</sup> One reason for such pessimism was a belief that even if a deal could be reached, it would never pass the U.S. Congress if submitted by a lame duck President with no credibility and no Trade Promotion Authority. Other explanations focused on the effect fluctuating material forces in the world economy had on the interests of major participants, especially the leading developing countries. Yet negotiators carried on regardless having what many thought their best few months of real negotiations, as opposed to posturing, since the closing days of the Uruguay Round more than a decade earlier. Whether or not a negotiation is in “crisis” is something only the participants can determine. It follows that some part of the explanation for a round ought to be endogenous, whether it eventually breaks down, is pushed forward to future deadlines, or ends in revisions to the WTO agreements. I ask whether the Single Undertaking is part of such an endogenous explanation.

In the declaration launching the Doha Round, Members promised each other that “the conduct, conclusion and entry into force of the outcome of the negotiations shall be treated as parts of a single undertaking (WTO, 2001: paragraph 47).” The terms were carefully negotiated. “Conduct” means that all aspects of the round proceed simultaneously (not sequentially) in a number of special Negotiating Groups, each with a chair whose texts will lead to one or more new agreements either modifying or adding to the existing agreements. “Conclusion” means that as in the Uruguay Round, nothing is agreed until everything and everybody is agreed. The assumption is that once everyone is agreed on all the elements of a package, the new agreements will become part of the annexes to the WTO agreement. “Entry into force” implies that the new provisions would not enter into force for any Member until they are in force for all. Realists may think that

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<sup>1</sup> Doha is the ninth round of negotiations since the signing of the General Agreement on Tariffs and Trade in 1947. Major milestones in the round include the Singapore ministerial of 1996 that consolidated the post-Uruguay Round “built-in agenda”, the Seattle ministerial of 1999 that failed to launch a new round, the Doha ministerial of 2001 that did launch negotiations, the Cancun ministerial of 2003 that was a gloomy stocktaking on the round, the Geneva General Council of July 2004 that completed the work of Cancun, and the Hong Kong ministerial of 2005 that was a moderate success, although it failed to agree on “modalities”—the formulae for how to make the agreed changes in trade policy measures.

the treaty is epiphenomenal, but negotiators behave “as if” it matters, possibly because they intend to respect their obligations, and therefore they take the negotiations seriously.

My argument proceeds in a number of steps. I first lay out the theoretical basis for a constructivist approach to negotiation analysis, in contrast to more familiar utilitarian approaches. I then describe the origin and operation of the Single Undertaking. In the third section I discuss the various ways the Single Undertaking might make a difference to the Doha Round negotiations by facilitating bargaining, given the integrated nature of the WTO *aquis*. The fourth section examines whether arguing facilitates the Single Undertaking. I conclude that the WTO cannot succeed without the Single Undertaking as long as the trade regime is based on diffuse reciprocity, and an argumentative process underlies efforts by Members to reach a consensus given the complexity of issues and parties.

### **Arguing and bargaining in negotiation analysis**

The first ambition of this paper is to establish the basis for a constructivist approach to negotiation analysis. International relations approaches that stress the salience of power or interests, if they consider multilateral economic negotiations worthy of any attention, will look outside the process for an explanation of why agreement is so hard. Negotiations are then explained by such exogenous factors as the identifiable economic interests of participants or their domestic industries, or by the general political, security, or economic context. If institutions enter at all, they are simply the equilibrium outcome of competing sets of domestic preferences. Such approaches do not expect change in WTO procedures to alter the interests of domestic actors, even if change in the decision rule changes how those interests can be mobilized. If the institutions of the trade regime have any role, it would be to allow power to overcome the reality that WTO has 151 veto points and two or three times that many veto players. For example, bargaining can be thought to happen in the shadow of the law, because the formal decision rules (consensus) are a constraint; and in the shadow of power, because ultimate decisions reflect the “invisible weighting” of the material power of the largest participants (Steinberg, 2002). The institution may require that the outcome be a Pareto optimum, a deal that makes all Members better off without making any worse off, but the relative gains assumption (Grieco, 1990) predicts that power will determine the place Members find on the contract curve (Krasner, 1991). Negotiation analysis, however, turns the standard approach on its head by looking, not at exogenous *structural* factors, but at variations in endogenous factors based on *agency*. Analysts assume that the institutional process matters to the outcome of negotiations, or of formal ministerial meetings, meaning whether they end in agreement or deadlock.

In utilitarian negotiation analysis, “negotiating” and “bargaining” are interchangeable terms referring to “a sequence of actions in which two or more parties address demands and proposals to each other for the ostensible purposes of reaching an agreement and changing the behavior of at least one actor” (Odell, 2000: 4). Analysts assess the effects of negotiation *strategies*, whether distributive (value claiming), integrative (value creating), or mixed. The approach is based on the “bounded rationality” assumption that actors pursue their objectives as best they can with the limited information available to them. Analysts see learning as the acquisition of new information about the context of negotiations, which allows parties to aggregate their strength with that of other actors in order to affect egocentric “gains” and “losses” for states or coalitions

(Odell, 2006). In other words, using the terms of a classic in the field (Fisher and Ury, 1981), actors know their own Best Alternative to Negotiated Agreement (BATNA) but need information about the BATNA of others. Under a consensus rule, negotiators of leading states need that information about all participants if they are to know how to craft a package (Steinberg, 2002, 362). This implicit market model of contested exchanges in which market participants need the equivalent price information about all possible buyers and sellers, but do not need to know each other, is a poor approximation of the market for widgets, let alone trade policy. Market exchanges are more often negotiated than contested, meaning that they take place within the context of long-term relationships (Leamer, 2007, 100). WTO Members value the trading system more than any specific policy exchanges whose real value is hard to quantify. Even the largest and most sophisticated developing country delegations admit to not really knowing their own BATNA, which makes relationships all the more important.

In constructivist ideas about social learning, in contrast, negotiations comprise both bargaining and learning (Checkel, 2001). By “learning,” constructivists mean not only the acquisition of new information, but an *argumentative* or *deliberative* process in which an actor’s understanding of self and others can change (Risse, 2000; Risse, 2005; Müller, 2004). In the utilitarian conception, new information about the environment allows actors to realize their interests more effectively. In the constructivist extension, new information changes identity and interests. The distinction follows Nye (1987) who distinguished between simple and complex learning, and Haas (1990) who distinguished between adaptation and learning (Wendt, 1999, 327). This view of negotiation is one in which parties gradually articulate shared interpretations of events, which come to define both the identity of the actors, including who is legitimate, and the way actors understand their “interest,” while developing new consensual understanding of causal relationships (Haas, 1990: 9, 23). The national interest or a country’s preferences are socially constructed, not exogenous givens, even if the nature of the material and social context constrains the range of ideational options. The trade regime is shaped both by material structure and by ideas (Ruggie, 1982), and those ideas emerged in deliberation (Lang, 2006, 109).

Success in WTO negotiations is understood in negotiation analysis to mean that participants were able to codify agreement in the form of a declaration or a new treaty. Utilitarian scholars see the piece of paper as a thing in itself; constructivists are interested in how it shapes the future interaction of the parties. Rather than enforceable obligations entered into by rational egoists worried about cheating by their partners, contracts and treaties furnish a framework for an ongoing relationship, not a precise definition of that relationship (Fuller, 1969: 15). When we stress the importance of arguing, defined as the exchange of reasons by participants who are oriented to reaching consensus and who remain open to changing their minds if faced with better reasons (Mitzen, 2005, 401), then we think that the objective of negotiations is not merely an efficient decision, but a legitimate one. March and Olson (1998) see this as a distinction between a logic of consequences as opposed to a logic of appropriateness. Both the logic of consequences and the logic of appropriateness see “success” as a series of discrete choices. The logic of communicative action captures the sense of negotiation as an indefinite series of choices.

The various approaches to negotiation analysis share an expectation that it will not be possible to read the prior preferences and power capabilities of WTO Members in their final (dis)agreement. The challenge for all approaches that privilege process over structure will be to show that

something happened inside the negotiations that affected the outcome. If negotiation is all about *bargaining* interests, then utilitarian analysts will ask whether the Single Undertaking has some institutional effects on actors' strategies, without asking whether their preferences changed. If *arguing* also matters, then constructivists interested in the logic of communicative action will ask if the institution allowed Members to reach a "reasoned consensus." Such analysts expect that collective decision engaging all Members requires both bargaining over known interests and learning through arguing and deliberation leading to acceptance by participants in the trading system that the rules themselves are appropriate and legitimate (Risse, 2005, 173). They would look for evidence that Members tried to persuade each other, that they were open to a redefinition of their preferences (Checkel, 2005).

Institutions can be thought to exist because they have explicit rules, because they are reproduced in practice, or because they are reproduced in talk. In game theory actors can communicate through signalling; other approaches infer communication from practice. Constructivist negotiation analysis must look at communication directly: we know an international regime by observing how regime ideas shape the rationales and justifications actors advance and accept (Kratochwil and Ruggie, 1986). We can also observe the "forum effects of talk". She suggests that when in public, actors will want to seem fair, and so will cast their arguments in general or impartial terms. Actors will develop criteria for acceptable reasons, and they will expect other actors to make their reasons available. Ultimately, acceptable reasons will come to have the character of shared norms (Mitzen, 2005, 411). The logic of communicative action suggests that we will know that all this talk will have made a difference, that the negotiation process matters, if we can observe a "reasoned consensus".

Consensus is often similar to compromise, "A coming to terms, or arrangement of a dispute, by concessions on both sides," but such a consensus does not require unanimity. A *reasoned consensus* could be said to exist if everybody agrees, and gives the same reasons for agreeing, in contrast to a *bargained consensus* where participants offer multiple reasons for agreeing. Consensus in WTO explicitly requires only that nobody present objects—but how can any observer know why nobody objects, if public reasons are not required or given? If evidence of public reason is lacking, the less satisfactory alternative might be to look for evidence of whether agreement is based on promises, threats, bribes, or deliberation. Another test is to ask if some arguments are seen as inappropriate, or that certain terms of agreement cannot be challenged.

My method in addressing these questions is based first on textual analysis of official documents and press accounts, supported by the work of other scholars, to understand both the process and the ideas of WTO Members. Second, I have been conducting a series of interviews in Geneva during the Doha Round with over 50 senior WTO officials and Ambassadors of WTO Members about their official activities, many a number of times. Such interviews are not meant to understand elite officials either as individuals or as a group. The interview subjects are experts about the institution and the process, and they are witnesses to an intersubjective process that does not leave textual deposits. The results of interviews are evaluated in the same way as other primary sources, although the promise of confidentiality makes them hard to cite.

In sum, if process matters, is it something about the WTO that makes the difference, not merely the strategy and tactics that happen to be used? I am not trying to determine if either arguing or

bargaining predominates in the WTO, but whether we observe arguing, and whether it contributes to success. This objective does not require me to assume that actors do not pursue their interests; only that they may not always know their interests, and therefore that institutional design that facilitates learning helps the pursuit of interests. The next step in my argument is to consider the origin and operation of the Single Undertaking before considering whether it makes a difference.

### **The Single Undertaking**

The WTO Single Undertaking seems to have well-established constitutive effects. The phrase is used only in the declarations launching the last two rounds of negotiations, although an earlier round had used a similar phrase,<sup>2</sup> but the principle goes back even earlier—the launch of the Kennedy Round in the 1960s as of the preceding Dillon Round required the creation of a Trade Negotiations Committee that could oversee simultaneous negotiations on issues of interest to all participants—goods, agriculture, and LDC preferences (Steinberg, 2002, 346, 351). Some argue that the “single undertaking” requirement had been inserted in the Punta del Este Declaration launching the Uruguay Round to circumvent the demand of the then G-10 (led by Brazil and India) that the new negotiations on trade in services not be part of the negotiations under the GATT. Others claim that U.S. negotiators turned to the Single Undertaking in 1990 when they began to wonder how to close the complex negotiations in a way that would avoid the fragmentation and free riding that marked the close of the Tokyo Round.<sup>3</sup> Others suggest that it only came to the fore in 1991 when consideration of the planned integrated dispute settlement system, covering the Uruguay Round agreements on goods, services and intellectual property, suggested to negotiators that the agreements should also be part of an integrated institutional structure, or Single Undertaking. This idea, in turn, suggested the importance of creating a new organization—the WTO had not been envisaged at the outset (Croome, 1995, 322).

In signing the one page *Final Act* of the Uruguay Round, the parties agreed “that the *WTO Agreement* shall be open for acceptance as a whole....” The *WTO Agreement* itself is deceptively simple on the surface—a short treaty ratified by all Members that constitutes the WTO as an international organization. The devil is in Article XIV (1), which stipulates that ratification applies to the 17 trade agreements in the annexes. All of the Uruguay Round agreements, including all of the revised agreements from the Tokyo Round, were included. The preamble provides no rationale for the topics that will or will not be covered—it simply says that the

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<sup>2</sup> Compare the Doha declaration (2001) “the conduct, conclusion and entry into force of the outcome of the negotiations shall be treated as parts of a single undertaking” with the Punta del Este Declaration (1986) “The launching, the conduct and the implementation of the outcome of the negotiations shall be treated as parts of a single undertaking” and the Tokyo declaration (1972) “The negotiations shall be considered as one undertaking, the various elements of which shall move forward together.”

<sup>3</sup> For the analysis of a participant, see (Steinberg, 2002, 359-60 and especially footnote 103). The idea might first have been motivated by American negotiators: as they had to submit the results of the Tokyo Round to Congress as a single package under the “fast track” procedure of the *Trade Act of 1974*, they wanted other Members bound by a similar constraint, not least so that all Members contribute to all aspects of the enhancement of the rules of the trading system (VanGrasstek and Sauve, 2006: 839).

organization aims to promote economic prosperity and sustainable development consistent with the needs of developing countries through the *reciprocal* reduction of barriers to trade and the *elimination of discriminatory treatment*. Negotiators believe that any attempt to accommodate issues by relaxing these central regime norms damages the WTO. No Member can pick and choose among the elements of the system, and “reservations” are not allowed for existing or new Members. The Single Undertaking, in other words, serves the same purpose as Article 1 of the GATT in ensuring that all WTO agreements are applied on a MFN basis.

This appearance of unity is misleading, however, because the structure is not monolithic. Implicit and explicit provisions for special treatment for developing countries, and other forms of “flexibility”, mean that the obligations themselves differ considerably among Members, and the national implementation of obligations is wildly inconsistent. Precise definition of the Single Undertaking is therefore elusive. One could argue that it was defined by the Final Act of the Uruguay Round, but that raises technical difficulties, given all the flexibilities built in to that text, and the length of time it took for everyone to ratify it (Davey, 2006). The Single Undertaking could be equated to the WTO *acquis*. Although it too has no formal definition, the term can be understood by analogy to the “*acquis communautaire*”, the body of accumulated legislation and regulations of the European Union that is not subject to negotiation in the process of accession for new member states. The WTO *acquis* includes all the WTO Agreements as interpreted by Committees and the dispute settlement system.<sup>4</sup> Members have mostly implemented existing agreements properly, and agreements have been honoured, by and large (Barton, et al., 2006, 213-4). It is now impossible for any country to think about appropriate trade policy except in the terms of the normative framework of the WTO *acquis*.

The Single Undertaking for a round is endogenous in that it emerges through negotiation. Most countries, including the United States, began the Uruguay Round with negotiating objectives that in the end were not met.<sup>5</sup> It would have been hard to predict the final shape of the Uruguay Round agreements from the Punta Declaration, so presumably the content of the Single Undertaking evolved. In the case of agriculture, for example, the agreement is far from the demand for an abolition of subsidies with which the Americans began. Obviously the agreement had to pass some threshold for each country before it was acceptable, but the Single Undertaking made it difficult for any state to evaluate the whole agreement on the basis of one element. Nevertheless, at various stages all parties were not prepared to accept what was on the table, and at some point they all decided that what was on offer was good enough. Developing countries may not have wanted to accept disciplines on investment measures or intellectual property, but they had to accept something in these areas in return for new disciplines on industrial countries in such areas as textiles and tropical products.

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<sup>4</sup> WTO has no principle of *stare decisis*—dispute settlement panels are not bound by past precedent because Article 3.2 of the *Dispute Settlement Understanding* stresses that disputes cannot “add to or diminish the rights and obligations” of Members. In practice, however, panels regularly follow prior precedents; indeed the Appellate Body explicitly rebuked a panel in one recent case for not following prior reasoning on a similar issue (WTO, 2008d, 66-67).

<sup>5</sup> This paragraph draws on (Wolfe, 1998).

The Doha Round Single Undertaking began to emerge with the “built-in agenda” that was described in paragraph 19 of the Singapore ministerial declaration of 1996 (WTO, 1996), which recognized that the various provisions of the *Final Act* of the Uruguay Round and the other texts agreed at the Marrakech ministerial of 1994 called for future negotiations on agriculture, services and Trade-Related Aspects of Intellectual Property Rights (TRIPS). These agreements also called for reviews and other work on various other issues. At Singapore ministers agreed to a process of “analysis and exchange of information... to allow Members to better understand the issues involved and identify their interests before undertaking the agreed negotiations and reviews.” By the time of the Doha ministerial in 2001, after the failed Seattle ministerial of 1999, some of the negotiations had begun, some of the reviews had been finished, and many issues were being assembled into the potential package for a new round of negotiations.

The Doha Development Agenda (WTO, 2001) was ambiguous in how it described the subjects for negotiation and discussion. At the outset, negotiations were delayed by the reality that creating a Single Undertaking for the round was both a substantive and a procedural problem. Members would not accept the linkages if they were not sure that their issues would be addressed in a visible way that would lead to an outcome, and if they were not comfortable with the decision rules. On the one hand, developing countries wanted to ensure that all of their concerns about the “implementation” of previous commitments would be considered part of the agenda for the round (Inside US Trade, 2002b). They also wanted to be sure that they would not be forced once again to accept new rules they barely understood and could not afford to implement (Finger, 2001). On the other hand, the EU insisted on “strict symmetry in the timelines between the industrial market access negotiations and the services and agricultural negotiations, so that the EU would be able to weigh potential gains in one sector against concessions on agriculture (Inside US Trade, 2002a).” The real Doha Single Undertaking only began to take firm shape when the unfinished business of the failed Cancún ministerial of 2003 was concluded with the July Framework of 2004 (WTO, 2004), which settled the negotiating status of the so-called Singapore issues of investment, competition policy, transparency in government procurement and trade facilitation.

Rounds often start with large packages—it is said that developing countries can insert things on an agenda at the launch more easily than they can force an agreement at the end (Steinberg, 2002). A big multilateral negotiation moves in a “bottom-up process” from a fog of possible topics for discussion (Singapore 1996 para 19) through a loose agenda (Doha) to a crystallized agenda (July Framework), to a negotiating text (the stage reached in early 2008), to a negotiated text, to an agreed text, to a treaty. Many analysts and experienced WTO officials think that the Single Undertaking has an effect on the process of negotiations independent of the power of the largest participants, and some of them think that eliminating or limiting it might be beneficial.<sup>6</sup> They also argue that it leads to negotiating rounds with a large agenda whose complexity defies human understanding. Given that in practice the extent and rigour of actual obligations differ widely among Members, is the Single Undertaking framework or an integrated WTO *acquis* either necessary or worth the bother? Could Members now abandon it?

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<sup>6</sup> For critiques of the Single Undertaking, even calls for its elimination, see especially (Martin and Messerlin, 2007) 357. See also (Howse, 2005; Levy, 2005; Lawrence, 2007; Pettigrew, et al., 2007). For a claim that the Doha Round will be the last “round” see (Eizenstat and Aldonas, 2007).



## What changes in negotiations because of the Single Undertaking?

The negotiation process might make a difference to outcomes of ministerial meetings, or the round as a whole, in many ways. The variety of potentially relevant features of WTO negotiations include: the decision rule; the techniques used by chairs (Odell, 2005); Members' strategy and tactics, including coalitions or clubs; the number of Negotiating Groups; and the nature of the modalities (e.g. whether a formula approach is used for tariff negotiations). In this paper I isolate one institutional design variable, the Single Undertaking, not least because it continues to be invoked by negotiators from developed and developing countries alike. Nobody questioned the Director-General when he told an informal meeting of the Trade Negotiations Committee (WTO, 2008b) that the Single Undertaking "remains the fundamental underlying principle of this negotiation." Members do not debate the Single Undertaking, although they do debate the "level of ambition" it might achieve, as when Brazil's foreign minister explained yet another impasse in June 2007 by saying of the agriculture *offers* and trade in goods *demands* from developed Members that "The exchange rate being asked was too high" (ICTSD, 2007). Developing countries also do not agree with developed countries on the appropriate level of ambition in the services negotiations. One side thinks progress in services depends on how far they go in agriculture, but the other thinks the reverse. Yet all Members accept that both agriculture and services have to be agreed before everything is agreed, and neither can be agreed on its own.

The linkage was made explicit in paragraph 24 of the Hong Kong ministerial declaration (WTO, 2005a), leaving the chair of the trade in goods negotiations to observe (WTO, 2007a) that it

specifically requires a comparably high level of ambition in market access in agriculture and [trade in goods] and, in a more general sense, a balance between ambition in all elements of the negotiations. However, just as in the case of assessing reciprocity, Members have not agreed a common methodology for measuring that balance. On the contrary, Members have insisted that the final assessment of balance must be their own, based on their individual interests, and they have been clear that I cannot and should not presume to decide this balance for them.

It is possible that this balance could be deduced for each Member based on their initial negotiating mandate and the interests of their domestic constituents. It is also possible that this balance is something that Members must learn in negotiations.

In order to assess the difference it might make to the negotiations, I ask what the WTO process might look like without the Single Undertaking. I approach this counterfactual analysis through ten questions divided in three sets. I first try to compare the WTO to itself through time, and to other international organizations. The second set is a series of hypotheticals about decision making. The third is a set of related questions about linkage, or adding and dropping issues and parties, especially through (non)reciprocity.

### *Comparative analysis*

To begin, *are negotiating rounds needed?* (1) If not, the question of the Single Undertaking as a negotiation device would be moot. Justifications of a negative answer often cite the (misleading) examples of the 1990s agreements on basic telecommunications, financial services, and information technology, all of which were concluded outside a round.<sup>7</sup> The Single Undertaking during a round first requires that all agreements be negotiated at the same time, which slows things down because of the demands it places on small delegations.<sup>8</sup> In the absence of this requirement in a round, which agreement would go first? The one that faces the biggest obstacles (agriculture) or the one of most interest to some OECD countries (services)? In either case, would a critical mass of Members participate in the absence of the possibility of agreement on other issues of interest to them? As it happens, standalone negotiations in both agriculture and services began in 2000 as mandated by the Uruguay Round agreements. They went nowhere.

If rounds are needed, if only for the tough market access issues still on the table, *does the Single Undertaking make rounds longer?* (2) The device was not tried in the Kennedy Round (1964-67). Despite being mentioned for the first time in the declaration launching the Tokyo Round (1973-79), in the end it had no bearing on the outcome (Winham, 2006, 12), but it made a significant difference to the conduct of the Uruguay Round (1986-93). The Doha Round (2001-) now in its seventh year, and with 151 participants, is longer than the Kennedy and Tokyo rounds (62 and 102 participants respectively), but still shorter than the Uruguay Round (123 participants), which took over eight years. It is hard to say whether rounds are getting longer because of the growing complexity of the issues addressed, a more diverse membership, or the decision rule.

Another way to ask whether the Single Undertaking makes a difference is to ask *does the WTO reach agreement on treaty revisions more or less quickly than comparable international organizations?* (3) The question poses a methodological difficulty: to what should we compare the WTO?<sup>9</sup> Would we select a random set of regimes with more than 100 participants, whether or not the regime has a treaty base, without regard to how those organizations conduct negotiations, or whether they try to codify binding rights and obligations? Do we select only regimes that have engaged in at least one attempt to negotiate a significant multilateral treaty?

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<sup>7</sup> The examples are misleading because all were effectively unfinished business from the Uruguay Round, agreements whose success did not affect the overall balance of obligations among Members. No such critical mass negotiations have happened since. It could be that some of the Doha Round difficulties can be attributed to the absence of pressure on negotiators from the proponents of these agreements, who got what they wanted outside a round.

<sup>8</sup> The Doha Round is divided into four major Negotiating Groups (agriculture, NAMA, services, rules) and three less central groups (facilitation, development, environment). For examples of texts on the table in winter 2008, see (WTO, 2007b; WTO, 2008c; WTO, 2008a). At its first meeting, the Doha Round Trade Negotiations Committee noted that “The constraints of smaller delegations should be taken into account when scheduling meetings. ... As an overall guideline, as far as possible only one negotiating body should meet at the same time.” (WTO, 2002)

<sup>9</sup> On the problems of case selection, see (Klotz, 2008).

The potential universe could be expanded to dozens of comparators, with no evident basis for limiting case selection to a manageable set since no multilateral body is obviously able to reach new comprehensive agreements any more quickly than the WTO. It is equally hard to think of non-cases by looking for regimes with a large membership that are in some way the opposite of WTO in being hierarchic (not multilateral). If we accept the risk of selecting on the factor of interest, we could ask if other treaty processes have a Single Undertaking, but no other international organization or multilateral negotiation has anything directly comparable, making a comparison of a random selection of international organizations with this institutional design feature impossible. The closest past analogy to WTO practice, and perhaps the only one, is the Single Negotiating Text that evolved as the basis for concluding the United Nations Conference on the Law of the Sea (Buzan, 1981). The EU also negotiates complex treaties, but it clearly allows opt outs—for this reason most observers would argue that its “variable geometry” is analogous not to any current WTO practice but to the plurilateral Codes that were agreed in the GATT at the end of the Tokyo Round (VanGrasstek and Sauve, 2006). The EU constitutional convention of [dates] agreed that its result would have to be a single document agreed by consensus, but the parties knew that the usual EU power relations would determine ratification, which had an effect on the ability of small countries to hold out (Magnette and Nicolaïdis, 2004). In contrast the WTO Single Undertaking allows smaller Members to extract maximum advantage from their veto, since they cannot readily be ignored.

In the absence of an obvious basis for comparative analysis, I next consider a set of hypotheticals.

*Hypothetical analysis of decision rules*

*Does the Single Undertaking require consensus as the decision rule?* (4) Without the Single Undertaking, could Members decide by voting instead? Many frustrated observers think so, although Members themselves never seem in a hurry to vote in this or any other international organization.<sup>10</sup> Let us assume, improbably, that Members were prepared to try again to negotiate agriculture by itself (that is, outside a round, with no Single Undertaking), and that the decision rule were to be voting not consensus. Who would be responsible for each Member’s vote, agriculture ministers, or trade ministers with broader responsibility? Would they vote on the agriculture text as a whole at the end of the negotiation, or would they vote on each modalities proposal put forward by the chair (for examples, see WTO, 2003; WTO, 2007c; WTO, 2008c), or even on each aspect of each modalities proposal? Would they vote on whether to include agriculture in the Single Undertaking, or would they vote on modalities for reducing domestic support before a vote on the formula for agriculture market access? It seems clear that a series of votes on each aspect in turn would attract different constellations of supporters. What if a principal player lost a vote, and left the negotiations? Would the resulting package stand any chance of ratification? Would an agreement creating new obligations for sovereign states arrived at by a majority vote be seen as legitimate?

If voting is unlikely, *Is critical mass decision making an alternative to the Single Undertaking?* (5) This idea is suggested by Martin and Messerlin (2007, 359) with respect to services, and it

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<sup>10</sup> (For an extensive discussion of the consensus question, see Wolfe, 2007a; Steinberg, 2002, 343-5)

was endorsed more generally by the Warwick Commission (Pettigrew, et al., 2007). One way to give it practical effect is through negotiations that are subject to the MFN and National Treatment rules, but which do not create obligations for all Members, by allowing the potential adherents to be the only participants in a negotiation (Lawrence, 2006). The idea of critical mass implies that the relevant process — whether a nuclear reaction or the wide diffusion of a social norm — is sufficiently large to be self-sustaining. Many applications in social science derive from Olson’s (1965) work on the provision of collective goods. While Olson is pessimistic about the possibility of co-operation, other scholars explore the circumstances under which a group of sufficient size can be created to supply public goods (Oliver and Marwell, 2001; see also Finnemore and Sikkink, 1998 for a discussion of norm cascades). Critical mass in the WTO implies that a bargain must satisfy Members whose market weight is sufficient to give effect to the deal, and that it also satisfy Members whose acquiescence is sufficient to give the deal legitimacy. Critical mass will differ on both dimensions in a round of negotiations as a whole and in each negotiating area.

The Doha Round is effectively comprised of dozens of sub-elements, with different constellations of Members active in each area of the negotiations. Critical mass is therefore negotiable; Members decide how many participants is enough in each area. The more issues involve generalized principles of conduct, the more broad participation is valued; the more agreements can be limited to selected parties, and not make demands of non-participants, the more critical mass negotiations seem feasible. Ministers endorsed a sectoral approach at the Hong Kong ministerial in 2005 for trade in goods (WTO, 2005a), and since then negotiations have considered how to define explicit critical mass in a given sector, where the principles may include the share of world trade and level of participation of competitive producers (WTO, 2007a). It has worked before, with the 1990s agreements outside a round, and with the “zero for zero” sectoral deals in the Uruguay Round where participants represented more than 70% of world trade in the sectors concerned (Hoda, 2001, 38). The approach ensures that Members with a slight interest in a sector cannot block negotiations, yet the requirement creates a high hurdle that would prevent a small group getting too far ahead of other Members (WTO, 2005b). The plurilateral approach introduced for “collective requests” services in the Hong Kong Declaration is similar.

In short, most WTO negotiations already work on a critical mass basis, but sectoral agreements are only building blocks. Even if the emerging modalities for trade in goods were not based on a multilateral formula approach but on a series of bilateral tariff bargains, in the end no single bargain can be agreed until all are agreed. Since each Member will have a unique set of bilateral partners (nobody has significant trade interests with everybody) solving each pair requires solving all of them. It may be true that small clubs can reach agreement more quickly, but they do so by limiting the number of Members committed to liberalization in the domain. As long as identical policies are not essential, which is usually the case in the WTO, broader agreements may end up being deeper (Gilligan, 2004). Rather than being mutually exclusive alternatives, the Single Undertaking seems to be an institutional design principle necessary to accommodate the reality of critical mass negotiations: it ensures that the eventual results of critical mass negotiations include the whole membership, and that Members have an incentive to complete each aspect of the negotiations in the same time frame.

The next question follows: *Are the existing WTO agreements a Single Undertaking?* (6) does the coherence of the WTO *acquis* matter? Critiques of the Single Undertaking as a negotiating device implicitly see the WTO as a set of agreements with no necessary link between them, which means that it would not matter who participates in any new agreement. This appearance is misleading. Nobody suggests that existing Members could opt out of Article XIV (1) of the *WTO Agreement*; they simply think that new negotiations need not be subject to the Single Undertaking as a decision rule. But would the texts agreed among a subset of Members stand beside the WTO, or would they somehow be meshed with the existing treaty provisions under the MFN principle? If the latter, would a free-rider problem create obstacles for agreements without critical mass?

A related question is *Should the "entry into force" of new agreements also be simultaneous?* (7) Members have not considered how to manage the entry into force of a potentially complex Doha Round package, and it is hard to imagine it happening all at once, as the term Single Undertaking might imply (Davey, 2006). Yet diffuse reciprocity requires simultaneous unconditional nondiscrimination. The problem is uncertainty, or reducing the risk of a concession not being reciprocated by the failure of a key trading partner to ratify the treaty, a potentially crippling problem without the Single Undertaking, since every Member has a different set of key partners.

#### *Linkage, reciprocity and developing countries*

The strengthening of the Single Undertaking in the Uruguay Round may have been intended to ensure that developing countries fully accepted reciprocal obligations, but *Does the Single Undertaking now make it harder to accommodate developing countries in the negotiations?* (8) Developing countries could be an impediment because they are so numerous, inevitably slowing discussions, or because they do not share the founding (ideological) assumptions of the GATT/WTO system. "Developing countries," who so designated themselves either when the WTO was created or as part of their accession negotiations, vary considerably, from prosperous Singapore to poor Bangladesh. Even two of the more recent members of the OECD still consider themselves to be developing countries in the WTO. The distinction matters because ever since the Haberler report (GATT, 1958), developing countries have claimed that they should be treated differently than developed countries.

The trade regime has tried two approaches to accommodating such pressures: developing countries can be excused from new obligations, as in the Tokyo Round Codes approach; or bound to everything, as in the Uruguay Round Single Undertaking. The Tokyo Round result was widely thought to have fragmented the trading system; the Uruguay Round solution to that problem led directly what many thought was a significantly asymmetrical bargain and thus to the "implementation" agenda that slowed efforts to launch a new round in the late 1990s (Finger, 2001). The Single Undertaking both limits special and differential treatment (because nobody can opt out) and stimulates a huge increase in demands for special and differential treatment and flexibilities (because developing countries cannot or will not accept the same obligations as OECD members.) It has also stimulated a proliferation of negotiating clubs as developing countries learn to make their voices count (Wolfe, 2008). Going back to the systemic fragmentation created by the Tokyo round hardly seems an improvement, and cannot lead to the integration of developing countries as full participants in the global economy. The process is

slow because developing countries negotiate their exceptions before the fact (for example, in efforts to define “special products” not subject to full liberalization in agriculture) and they use the Single Undertaking to ensure that things like Aid For Trade are negotiated at the same time as new obligations.

*If the Single Undertaking did not exist, could WTO abandon the reciprocity norm? (9) Would the WTO be more effective/efficient without reciprocal bargaining? It is easy to deride the supposedly mercantilist calculus of trade negotiations, forgetting that reciprocity is one of the oldest principles of social organization. Reciprocity troubles economists. Some think it simply means mercantilism (Krugman, 1997); others manage to make a distinction between general and specific reciprocity (Herrmann-Pillath, 2006) without grasping the normative dimension that even utilitarian political scientists assign to diffuse reciprocity as “circular logrolling”: everybody has to offer concessions to one Member while receiving a benefit from another, like drawing numbers from a hat to assign holiday gift-giving (Barton, et al., 2006: 149).*

Reciprocity and non-discrimination are political not economic concepts. Reciprocity has no part in the classical case for free trade because the benefits of free trade come from improved domestic allocative efficiency rather than from enhanced access to other markets. Non-discrimination is a similarly political concept, because free trade is non-discriminatory by definition. *Specific reciprocity* is the common meaning of the term—my actions are directly dependent on yours, but that can be hard for complex issues with multiple players (in formal models, games with multiple equilibria). *Diffuse reciprocity*, in contrast, accepts that action is sometimes motivated by some sense of obligation for the general good; it “adjusts the utilitarian lenses for the long view, emphasizing that actors expect to benefit in the long run, and over many issues, rather than every time and on every issue (Caporaso, 1993, 54; see also Keohane, 1989, 146).” Specific reciprocity may be facilitated by international regimes and in turn may promote greater cooperation, but diffuse reciprocity depends on the existence of the norms of obligation associated with regimes. Winham worried that the experience of the Tokyo Round showed that specific reciprocity was difficult between unequal partners, impeding the integration of developing countries (Winham, 1986, 364). The Uruguay Round Single Undertaking forced simultaneous unconditional MFN, thereby making diffuse reciprocity easier by ensuring that there would be no free riders, one of the common problems in diffuse reciprocity. It works because exchanges between parties do not have to involve the same goods or the same time frame, which is easier with the Single Undertaking.

Even if developing countries should stay in the Single Undertaking, with diffuse reciprocity, *would issue “linkage” be more straightforward without the Single Undertaking? (10) Would it be easier to add an issue, or drop parties, often important choice variables in negotiation (Sebenius, 1983, 281)? Does linkage (Charnovitz, 1998) make a difference both to the process and the outcome?*

In a WTO round, adding parties is not an obvious solution to a negotiating impasse because only Members *can* participate, and every Member *must* participate because of the Single Undertaking. Exit from the WTO is not a practical possibility—no state can be forced out, and none would readily leave. For good or ill, no country can now pretend that the trading system does not matter, nor is it easy to say that that any country does not matter to some other participant in the

system. The way an issue is framed, however, can have the effect of adding or dropping Members from some aspect of the negotiations. For example, in the current chair's text (WTO, 2008a), Least Developed Countries are not expected to cut any tariffs in the negotiations on trade in goods (NAMA), and some other developing countries are asked to do little more than reduce the gap between their tariff commitments and the tariffs actually applied, but all are expected to join the overall consensus by not objecting to the obligations undertaken by other Members. Issues too can be added or dropped, however, because the content of the Single Undertaking is negotiable. Adding divisive issues can undermine negotiations, but the benefits of linkage come from "adding differentially-valued, unrelated issues; bringing in items as side payments to overcome distributional obstacles; and putting together issues with positive interdependence (such as complementarities, interactions, or risk-reduction characteristics)." (Sebenius, 1983, 314) Adding services and intellectual property to the Uruguay Round Single Undertaking motivated business associations in Europe and Japan to lobby for the overall package, and therefore for the agricultural reform part of the package (Davis, 2003). The launch of the Doha Round was only possible because the divisive issue of labour rights was taken off the table and because of the commitment to negotiate on a range of so-called "development" issues, including Aid For Trade. The establishment of a negotiating framework in July 2004 after the breakdown at the Cancún ministerial in 2003 was only possible with the agreement to sideline negotiations on investment, competition policy and transparency in government procurement.

Linkage of this sort is clearly based on incentives, an interest-based form of negotiation that Haas calls "tactical". It can also be what he calls "substantive", where it is based on consensual understanding of how the issues and parties are connected (Haas, 1980; Haas, 1990). The WTO still needs rounds whose results all become part of the WTO *aquis*, with the ultimate decision on the package being taken by consensus, whether or not aspects were negotiated on a critical mass basis. The Single Undertaking with its integrated agenda based on diffuse reciprocity facilitates the tactical or interest-based linkage associated with bargaining by creating structural incentives for trade offs in order to reach consensus. In that sense the Single Undertaking seems to make rounds easier. But tactical linkages among increasingly complex issues with diffuse reciprocity can be hard to understand even within the major Negotiating Groups, especially for small delegations. The problem is compounded because the horizontal linkages between say agriculture and services in the round as a whole are not obvious, even for the largest delegations. If the Single Undertaking itself requires substantive linkages, does that depend on arguing and not just bargaining?

### **Arguing in the Doha Round**

I began by asking, if the outcome is not explained by the prior interests of the participants, does something endogenous to the negotiations process explain the outcome? If the answer is yes, does the Single Undertaking make that difference? In the absence of an outcome, so far, any answer is speculative, but the conclusion of the previous section is that at a minimum the Single Undertaking facilitates WTO bargaining. If consensus is needed, and if no Member can be excluded, do we observe a bargained consensus, perhaps based on threats promises or linkage; or do we observe a reasoned consensus, perhaps based on principles and norms (Risse, 2005, 178)? Do we observe that learning only involved the acquisition of new information, or did it also lead

to a change in identity and interests? These questions pose empirical challenges. How do we know if the WTO values deliberation? Do Members require giving reasons and not just asserting preferences? Do negotiators read their instructions, or do they listen to each other? Do regime ideas shape rationales? Must claims be justified in general terms?

### *Learning*

The Doha negotiations have been blocked by the problem of modalities for agriculture and NAMA. The modalities will be based on a variety of formulae, since the complexity of negotiations based on a series of bilateral bargains among so many significant partners is too daunting (Wolfe, 2007a, 26). Some delegations can develop sophisticated quantitative models of the outcome of a tariff formula (and sharing those models with other delegations can be a form of persuasion) but the overall outcome of the round is too complex for anybody to know it *ex ante*. For developing countries in particular, assessing the benefits of any trade deal is so difficult, even after implementation, that the Doha Round texts will be “credence goods” and not “experience goods”. Many aspects of the agriculture negotiations are so technical that most delegates do not understand, and when the issues are explained, they then respond that they will not be able to explain to their ministers (Kerr, 2007). Even the number of formulae under discussion is daunting, as are the many exceptions and flexibilities under consideration. Some clubs propose complicated trade-offs between the number of exceptions taken from the general liberalization formula in different parts of the agriculture or NAMA texts, allowing less reduction in one formula in return for more in another. Members obviously make these proposals in order to accommodate some “interest”, but nobody really knows what the proposals would mean for specific producers. The “interest”, therefore, could be political (for example in how an outcome will be framed at home), not economic. Perhaps Members’ positions are based on what seems appropriate, rather than on the likely consequences.

### *Talking*

Do Members exchange threats and promises in the negotiations, as utilitarians expect, or do they also offer reasoned arguments? Members talk at the Ministerial Conference every two years, in regular committees that meet two or three times a year and in the negotiating groups that meet with varying degrees of frequency depending on the pace and stage of negotiations. They talk in hundreds of formal on-the-record meetings every year, and they talk in many hundreds more informal meetings, including “mini-ministerials” (Wolfe, 2004). WTO insiders understand the process as a series of nested “concentric circles.” In the outer ring are official WTO meetings (mandated by the treaty or the rules of procedure); these plenary meetings are held only for the record. In the next circle are informal plenary meetings of a regular body, under its regular chair, held mostly for transparency purposes. The real work is done in informal meetings of the various negotiating groups, in restricted meetings when the chair meets with a limited number of technical experts, in “confessionals”, and when s/he invites a small group of key players to explore selected issues, often meeting on their own outside the WTO building without secretariat support. Real work is also done in club meetings, in bilateral sessions, and especially at lunch. Many of these ad hoc groups are explicitly designed to bring the holders of extreme positions together—they are not attempts by Members in the middle to imagine where consensus might be found. The clubs meet often, some of them weekly, but we have no direct evidence of what is



said. It could be that the utilitarian literature on coalitions fully describes their role in developing and maintaining cohesive strategies; it could also be that club meetings are occasions for deliberation, that learning takes place, and that participants attempt to persuade each other. Most of the talk in WTO is not recorded, and nobody can observe it all. The chair of the trade in goods negotiations told Members in April 2008 that he would create a new draft of the proposals based on his sense of what Members will accept. That sense comes in part from the one-on-one confessionals that he has held with many delegations and clubs. Only he knows what reasons they have advanced for their positions, and he will not say until it is safe to write his memoirs.

### *Arguing*

One could proceed inferentially, by asking if the evolution of central concepts reflect arguing—for example, parallelism in the treatment of export subsidies (which may be a form of tactical linkage), the meaning of “special products”, the food aid “safe box” (where the chair referred to Members’ “fundamentally different conceptual premises”), the issue of NAMA coefficients, and the level of tariff bindings for LDCs. A different approach is to ask selected participants about the types of communicative action that they have observed.

In interviews in October 2007 with 18 senior officials and ambassadors at the centre of the negotiations, from developed and developing countries, I asked for a personal judgment: did the subject believe that s/he had observed efforts in the course of the round to build consensus (defined as a shared view) or simply to find a compromise (understood as trade offs)? I added specificity to the question by asking, Do Members defend their own views, or seek to persuade others by giving reasoned arguments? Do members get past an impasse through linkage, threats, or persuasion? The answers were ultimately anecdotal. Interviewees offered extensive evidence of arguing and bargaining, but qualified first because the round was far from over, and second by the admission that nobody knows what is determinative. When a delegation accepts the chair’s suggested compromise, is it because they have changed their mind in the direction of a reasoned consensus, or because that is the trade-off required for compromise, or a bargained consensus? If the EU changes its position on income support for farmers, is it because the Commission was persuaded, or were member states moving in that direction anyway?

As consensus gets near, people say less not more. Agreements in the end are couched in general language. Indeed it is a peculiarity of the WTO that parts of a text intended to solve a specific problem for one Member are framed in terms applicable to all, which often makes the meaning of some details more obscure, but does require even large Members to offer general justifications. Many people thought that in early of September 2007, Members began a phase of real negotiations. After years of mostly defending own views, at least in some of the Negotiating Groups, negotiators were moving towards reasoned argument. One chair tired of repeated rhetorical posturing made it clear that he would accept that views have not changed if delegates simply shut up, which led to more attempts at persuasion.

The point of informal meetings is allow people to give reasons without the risk of too much transparency. And giving reasons is clearly expected. Developing countries asking to be allowed to “bind” less than 100% of their tariffs were expected to offer an explanation for the percentage they wanted. Developed countries were also expected to give an explanation for their definition

of the “sensitive products” that should be exempted from the full rigour of agriculture tariff reductions (ICTSD, 2008). In footnote 2 of his first draft modalities paper, the chair of the agriculture negotiations suggested the possibility of a radically different approach than that desired by one groups of developing countries (WTO, 2007c). He probably meant to be provocative, to tell those developing countries that they had to develop arguments that would be more persuasive to others.

The prevalence of informal meetings should alert us to the possibility of attempts to persuade. But wherever the conversation happens (for example in meetings of the six countries working on domestic consumption estimates for “sensitive” products in agriculture), the results are eventually reported to other Members (for example to the 37 representative Members in so-called “Room E” meetings, or in informal meetings of the agriculture negotiating group open to all Members), and ultimately to the public on the WTO website. Given the “forum effects of talk” (Mitzen, 2005), large Members must take account of what the WTO community considers acceptable reasons for action, whether they seek to promote or resist trade liberalization.

Many analysts have wondered about the point of the Doha Round, since it seemed to have little economic merit. Others have always thought that significant trade liberalization might be possible. I flag this debate only to signal that deducing the interests of participants at the outset of the round in order assess whether the results are surprising would be extremely difficult. It is possible, moreover, that even the participants did not know, that they have kept at the negotiations, with fluctuating levels of enthusiasm, because they have been learning about their interests or because they could not be seen to leave. However the round ends, and whoever is thought to have gained or lost from the results, the I expect that the outcome will have been possible because of the Single Undertaking, and the Single Undertaking will have been possible because of the deliberative opportunities for arguing and not just bargaining created by the WTO as a public forum.

## Conclusion

Multilateralism has a normative dimension but it is mostly pragmatic. It may be a pain, but it works. After 60 years, WTO Members are still trying to complete yet another round of negotiations because the alternatives are not attractive. The hierarchical (hegemonic) alternatives are less democratic, and no more effective; plurilateral and regional alternatives do not serve the broad needs of development, and are unlikely to address the major issues. As trade policy moves behind the border, it is hard to make regulatory changes that benefit only a subset of WTO Members. Other than the EU and NAFTA, we have no examples of significant bilateral deals between major traders. Agriculture proves impossible to negotiate except multilaterally. Most real liberalization among developing countries is either unilateral or multilateral. But multilateral negotiations with large numbers of participants are not easy (Kahler, 1992). The WTO Single Undertaking helps. It is now simultaneously a legal concept that maintains the coherence of the agreements, the *WTO aquis*; a multilateral norm that ensures general “most-favoured nation” treatment (MFN); a decision making tool that forces broad-based coalitions in Geneva and at home; and an economic concept for managing the distributional implications of trade agreements. Does it also require arguing in addition to bargaining?

Constructivists expect that negotiators are more likely to care about norms that define appropriate behavior, even at the expense of short term material gains, but constructivists do not expect negotiators to forgo long-term gains, if they know what they are. That is, constructivists expect that negotiators are inclined to think in terms of diffuse reciprocity, and to value the behavioural norms that facilitate such thinking.

The central obstacle to a new agreement may be uncertainty about most Members own interests and the interests of others; about what other Members are actually doing; about the likely evolution of the trading system; and about the effect of new obligations. Negotiations reduce that uncertainty by providing information about other Members, but they also allow for the slow iteration of a growing understanding of what is to be agreed. Members do not accept what they do not understand. The Single Undertaking requires negotiators to search for a compromise, which in principle necessarily values the long term over the short. In practice it at least means that when short term interests preclude an agreement, Members seem to value the WTO (or the prospects of an eventual agreement) sufficiently that they do not walk away or take other steps that would endanger its long term survival. The parties agree to set aside an issue of long-run importance in order to advance less well defined issues. The proponents of the Singapore issues, for example, had to agree to proceed with more specific mandates in other areas in the Doha declaration, and then ultimately to put three of the issues aside in the July Framework of 2004.

How WTO makes decisions should be reflective of the social order that its Members seek to constitute. One knowledgeable insider believed by October 2007 that the chair of the agriculture negotiations knew enough about each Member's position to write a draft agreement that would be close to a final text, but he would not do so, because Members have to go through the process. Opportunities for deliberation are a chance to feel that you have been heard, which matters when trust is fragile and the results have significant implications for all participants (King, 2003, 43). One vital "outcome" of a trade round is the deliberative process itself. What counts, as in the UN charter negotiations at San Francisco in 1945 (Hurd, 2006), is a sense of participation, even if the influence of the smallest participants is limited. That is, even if analysts think what we see is bargaining, the process itself matters to the acceptability of the result, and that is more about arguing. The Single Undertaking is a representation of the WTO as an integrated whole where legitimacy depends on the acceptance of obligations by everyone. The agreements are not "enforceable" other than through willing implementation by Members, subject to its various surveillance mechanisms. The Single Undertaking is therefore part of how the WTO is constitutive of the actors; how it ensures that all have a voice and a veto.

The Single Undertaking is not a thing but an idea that evolves in the social interaction of the negotiations, and it is part of an interlocking set of WTO institutional design factors. It is tightly tied now to consensus in an organization with many Members and many issues, keeping the whole thing coherent, and negotiations manageable. As an "institution" or norm, the Single Undertaking is not actually something that can be directly negotiated. Institutions live and have their effects in the daily life of a regime. Whatever the text of the Doha declaration, Members negotiate as if the Single Undertaking is a real constraint. They express concerns about the "exchange rate" between different aspects of the round or the importance of a "bottom up process" leading to an eventual "horizontal modalities package". What we do not hear from

Members is a concern about efficiency or speed. Members always act as if it will shape the outcome both of each intermediate ministerial meeting and of the round as a whole even as they debate what has to be in it. It seems clear then that the Single Undertaking with its integrated agenda facilitates the tactical linkage associated with bargaining, but the Single Undertaking itself seems to require the arguing on which substantive linkage depends.

The fact of the Single Undertaking and its content are both related to how Members understand what the WTO is for. It is a symbol of the “collective intentionality” of Members, of their mutual commitment to the system. The trade regime is in that class of group actions that are not reducible to the sum of individual actions. Like singing a duet, the trade regime is something that individual actors cannot even intend let alone provide on their own (Mitzen, 2008). It exists only in the practices of its participants, and its rules are reproduced through their talk. The trade regime is not a one shot affair, not a one-time act of cooperation; it is instead either an infinite series of such acts, or a continuous process of social interaction that sustains an open liberal multilateral trading system. The Single Undertaking changes the so-called “enforcement” problem—even if we accept the assumption that rational governments subject to domestic pressure will be tempted to cheat on their obligations, we can see how it limits this temptation by bundling all the WTO’s benefits together with its costs. Since contracts are always “incomplete,” good trade agreements create the basis for the parties to keep talking and learning about how to adapt to new situations. It is analytically convenient in administrative law to distinguish between making rules, administering rules and enforcing rules, or in political terms between bargaining, monitoring and enforcing, but how you do one determines the others. The Single Undertaking formalizes the reality of diffuse reciprocity: it is a simultaneous exchange in which all must agree at once, or no deal is possible, yet the benefits do not necessarily come in exchanges between any two partners, nor do all Members necessarily gain in the same temporal frame. Sometimes Members will agree to the overall package not because they are certain that all the elements add up, but because they are confident about the importance of the package for the health of the trading system. Some parts of the text will therefore not be codified agreements but markers for continued disagreement that will be resolved through discussions in the WTO’s regular work, in new negotiations, or occasionally in formal disputes. The over-riding importance to Members of the multilateral trading system means that they are committed in the first place to the agreement, and in the second to making it work. In this constitutive sense the Single Undertaking defines the future relationship of the parties through the WTO *acquis* as well as the decision rule in a negotiation, and it structures the process continuously. It works because the essence of participation is nondiscrimination—MFN and national treatment. These two principles define the terms of fair participation in the trading system. All the rest is detail. And in the end these principles are about the policy process, not outcomes, and they work because that process is fundamentally argumentative.

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