Challenges Facing the WTO: The DOHA Round and Beyond

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I. Introduction

As you know, earlier today the Thai Bar and Cornell Law School signed a Memorandum of Understanding launching a new scholarship and exchange program linking Thailand and Cornell Law School. This new fund is being established in the name of HRH Princess Bajrakitiyabha Mahidol – better known to us at Cornell as Princess “Pat”. Princess Pat earned her LL.M. at Cornell in 2002, and the J.S.D. (the doctorate in law) from Cornell in 2005. Hence she is both the inspiration and the model for this new scholarship and exchange program. We at Cornell are absolutely delighted that this new fund has been established and that it has been named in the Princess’s honor.

There is a link between this new fellowship and exchange program and the topic of my talk tonight – The Challenges Facing the WTO. Global economic integration lies at the core of each. Global economic integration is the reason why law students travel to other countries to study other legal systems. And of course global economic integration is the reason for the WTO’s existence.

Before turning to my main topic, let me continue with legal education for a moment.

As the world grows smaller, we must teach law students not just about their own national legal system, but also about how other national legal systems work. We must teach them trans-border and transnational law. We must teach them about public international law and human rights. This approach has been a central feature of Cornell Law School since its founding in the late 19th century, and especially since the founding of the international legal studies program at Cornell in 1948. I know it is Dean Schwab’s vision for the school’s future and also that of one of our most important and supportive alumni and benefactors, Jack Clarke, who is also here tonight.

Lawyers today—especially business lawyers, but others as well--must understand global markets and transnational legal problems. They must understand other legal cultures beyond their own shores. This is where the new scholarship and exchange program we have inaugurated today makes a fundamental contribution. It will send some of the most outstanding and talented Thai law students to study at Cornell, where they will be joined by students from all over the world. And they will return to Thailand enriched and broadened by a deeper understanding of the U.S. and other legal systems and other ways of thinking about the function of law in society.

Scholarly exchange is also included in this new program, and it will also make an important contribution. Through it we can look forward to an expanded flow to Cornell of law teachers and scholars from Thammasatt, Chulalongkorn, and other universities and institutions in Thailand, and from Cornell to Thailand’s outstanding universities.
These are things for which we at Cornell are especially grateful.

Let me come back, however, to my main theme—the Challenges Facing the WTO—the flagship institution of world economic integration. This integration process is fundamental, I believe, to raising living standards and possibilities for human fulfillment in all parts of the world. As with any such fundamental force of history there are risks and pitfalls connected with globalization—even if it is overwhelmingly benevolent. Others have been effective in pointing out those risks and pitfalls (risks to the environment, to unique cultural values, to the poor and underprivileged who lose in a competitive environment). These are highly legitimate concerns that need attention. Tonight, however, I want to focus instead on the risks and challenges facing the integration process itself—in particular those facing the WTO—on which so much potential for world betterment depends.

What are those challenges? There are many, but tonight I want to focus on just two. The first is the threat to the DOHA Round of multilateral trade negotiations, which is currently stalled and rapidly running out of time to achieve success. The second, which is interconnected with the first, is the threat to the WTO system coming from the growing number of regional and bilateral trade agreements and other preferential arrangements that continue to be negotiated in all regions of the world. First, let me turn to the DOHA Round.

II. The Challenge of Completing the DOHA Round Successfully

The WTO launched the DOHA Round of multilateral trade negotiations at Doha, Qatar, in 2001. The negotiating agenda included many things, but the fundamental goal was to bring the developing countries more fully into the trade system. Thus, it has become known informally as the “DOHA Development Round”.

The previous round, the Uruguay Round, which lasted from 1986 to 1994, actually began this process. It freed up some trade in labor-intensive textiles, which helped low-wage developing countries. It also included for the first time an Agreement on Agriculture—where developing countries again have important comparative advantages. It did not, however, provide much real market access—even for textiles, but especially for agriculture. It was only a start—a start that the DOHA Round was intended to expand upon.

As is well known, however, the DOHA Round is in trouble. It is stalled. WTO Director General Lamy suspended formal negotiations last July, 2006 because no real progress was being made. This was probably intended as a pause for reflection. Recently Lamy has called for a reopening of informal discussions. It is my understanding that some progress has been made, and that a crucial mini-ministerial meeting is planned for Davos, Switzerland, later this month—on January 27. It seems likely that the near-term success or failure of the DOHA Round will be decided at this Davos meeting or at similar discussions to be held this month and perhaps in the next one or two months.

To explain this practical deadline, I have to spend a few minutes on the trade negotiating authority of President Bush. The U.S. President’s authority in this field depends on power delegated to him by the U.S. Congress—in particular the authority
to agree to a trade deal that forces Congress to vote the deal up or down, without amendments. Anything less than that authority would be unworkable in a complex multilateral trade negotiation—because any WTO deal could unravel if Congress could tinker with it by adding amendments at the stage of U.S. implementation.

President Bush’s current trade negotiating authority expires June 30, 2007 – a little more than 5 months from now. If a breakthrough in the negotiations is achieved this month, or very soon thereafter, there would probably still not be enough time to finish all the details—including draft implementing legislation—required for a complete trade package. But most observers seem to believe that Congress could be persuaded to vote a short extension of the President’s authority if this were needed to complete the technical details of a comprehensive trade package. To the extent that breakthrough progress is achieved or highly likely, Congress would be more encouraged and more likely to grant the new authority, and vice versa if there is no prospect of a breakthrough. So breakthrough progress in the next weeks is essential, if the round is to be successful.

It is also noteworthy that renewal of the current US Farm Bill is closely linked to this timetable. The current US law on farm subsidies was enacted in 2002 and significantly increased U.S. domestic subsidies to agriculture—a movement away from freeing up trade. U.S. farm subsidies expand U.S. production and thus narrow the market space available for developing countries. The current law expires in September, 2007. If a DOHA Round breakthrough occurs in the next one or two months, it will have a significant effect on the content of a renewed U.S. Farm Bill. If an agreement is likely, the Farm Bill will have to allow for a significant cut in U.S. farm subsidies; if it is unlikely, the renewed Farm Bill will probably just re-enact the current program—which is unfriendly to trade and costly for developing countries.

What is needed for a fundamental breakthrough? What I say here comes from persons close to the negotiations and requires some simplification. Apparently a triangular deal is being contemplated, involving further concessions from the United States, on one side of the triangle, from Europe, on another side, and from a group of important developing countries on the final side – countries like India, Brazil, China, and even middle income developing countries like Thailand. Freeing up agricultural trade is at the center of the needed breakthrough. All informed parties seem to believe that the first move must come from the U.S. The United States must agree to a further cut in its domestic farm subsidies—above what it has so far offered at the negotiating table. This would free up market space in the U.S. for increased imports of agricultural products—that would come significantly from developing countries (including Thailand). In return Europe would need to agree to a further significant decrease in its agricultural tariffs—again freeing up agricultural market space to the advantage of efficient producers in developing countries and even in the U.S.

Finally, the key developing countries (India, Brazil, China, and others) would need to agree to a significant decrease in tariffs on non-agricultural manufactured products and some further freeing up of services. Concessions from developing countries are essential to engage the interest and support of the export-oriented producers in the developed world—who do not show much interest when the round is characterized as addressing only the market access interests of developing countries. Without the support of export-oriented producers in the developed world, trade liberalization has
little hope of success. So if new concessions can come from all sides of the triangle—the U.S., the EU, and the leading and mid-level developing countries—a deal is possible.

But will it be possible for a Republican President in the U.S. to agree to cut farm support when that support goes largely to states that tend to vote Republican? And will a Congress now controlled by Democrats be willing to extend a Republican President’s trade mandate to clinch a further liberalization of trade that labor and environmentalists (traditionally in the Democratic camp) tend to oppose? And if the U.S. comes forward, what about Europe? Can the Europeans take the needed step before the French Presidential election in April, 2007, since the French farm sector is the most intransigent about holding on to current levels of agricultural protection? And if that conundrum can be solved, what about the developing countries? Will they be willing to risk significant cuts in non-agricultural protection, when many are demanding that the "DOHA Development Round" give them non-reciprocal, one-way, preferential access to developed markets? And will China be willing to grant more access to its market, feeling as it does that it has already made unprecedented concessions to gain membership in the WTO? These are questions for which no one has a reliable answer. Only time will tell—and not much time, at that.

What will happen if these difficulties are not overcome in the next one or two months? I want to sketch for you 3 unpleasant consequences.

1. The US President’s trade negotiating authority will come to an end. It terminates at the end of June, 2007—and without a promising breakthrough in the negotiations there will be nothing to encourage Congress to grant a short-term extension of the President’s trade authority. That means the DOHA Round will be suspended until after a new U.S. President is elected in 2008 and takes office in 2009. Then new trade legislation would be needed, and the new President would need to construct a new trade negotiating agenda. Any chance of a successful completion of the DOHA Round would then be delayed probably until perhaps 2012 or 2013—a loss of perhaps 5 or 6 valuable years—at a minimum.

2. The US Farm Bill would probably be renewed more or less along its present lines with continued excessive domestic farm subsidies; and European agricultural protectionism would continue undiminished. Thus, developing countries with a comparative advantage in agriculture (and that includes Thailand in some sectors), would be denied the trade benefits that comparative advantage should give them.

3. Finally—and this is a point I want to develop further-- there would be an acceleration of discrimination in the world trading system – coming from increased regionalization and preferential arrangements.

III. The Challenge of Discrimination in the World Trading System

This last point – the threat that discriminatory arrangements pose to the WTO system – is the second major challenge facing the WTO that I want to highlight tonight. The World Bank predicts that sometime this year at least 300 such arrangements will have come into existence. Every country but Mongolia belongs to at least one of them. Many countries belong to several. They are all discriminatory—and as such
they clash with bedrock principles of the WTO—principles of openness, fairness, and nondiscrimination in trading relationships.

The threat posed by these discriminatory arrangements will continue, even if the DOHA Round is completed successfully. And if the DOHA Round fails, or if there is a significant postponement of success, the discriminatory trade problem will worsen. Why? Because one of the most effective arguments proponents of such arrangements make is that trade progress is only possible within smaller regional groupings of like-minded countries who already have significant economic and political affinities and inducements to greater cooperation. A failure of the multilateral round will simply encourage trade proponents to look closer to home—to regional and bilateral agreements.

Why do I stress the danger or threat to the WTO system stemming from these regional and bilateral trade deals? Because, as I have said, these arrangements are discriminatory. And as such they add distortions, complexity, and alliance-like biases to the world trading system.

The hallmark of the WTO/GATT system has always been its enlightened emphasis on non-discriminatory trade. The MFN (Most Favored Nation) principle is enshrined in GATT Art. I and allows all WTO members to trade with other members on equal, non-discriminatory terms. Under this system the most efficient, least-cost producer of, say, flat screen TVs—no matter in which country that producer is located—would supply much of the world’s needs for flat screen TVs. Local tariffs and subsidies might protect local producers to some extent, but not producers in other countries. US tariffs on flat screen TVs—for example—might ensure some local U.S. production of TVs, but under the MFN system of non-discriminatory trade, Thai producers—if, hypothetically, they were the most efficient producers of TVs--would supply the excess demand for TVs in the US.

Now introduce a regional free trade arrangement, like NAFTA (which stands for the North American Free Trade Agreement). Under NAFTA, the member countries, Canada, the US, and Mexico, trade with each other duty free. Hypothetically, suppose that Mexican TV producers are not as efficient as Thai producers, so that Mexican TVs with the same features and quality cost more. Nevertheless, under NAFTA Mexican TVs could well displace Thai TVs in the US market. Why? Because Thai producers would have to pay US tariffs, whereas Mexican producers—located in a NAFTA country-- would not. Mexican TVs could sell for less (not because of greater efficiency, but because of discriminatory tariffs imposed against competing Thai TVs).

You will recall, of course, that the US and Thailand are also considering a bilateral free trade agreement. This must look attractive to Thailand, because it would give Thailand preferential access to the US market—similar to the access that NAFTA gives to Canada and Mexico. Such an agreement might even allow certain Thai producers to displace in the US market some other more efficient producer in a country that does not benefit from a preferential arrangement with the US. But keep in mind, once this process starts to multiply, there will be other regional and bilateral arrangements among other groups of countries that will discriminate against and harm Thai producers wanting access in those other markets. This result is inevitable.

In a sense we face the familiar “tragedy of the commons” dilemma—familiar
to many of you. To explain this concept fully, let me turn to a different field—marine resources—as an example. Over-fishing in some environments where fish stocks are limited harms everyone, because the fish will eventually disappear. But no individual fisherman has an incentive to limit his catch on his own. Doing so would just leave more fish for some other harvester to catch. The solution requires collective, governmental action instead, so that all fishing fleets are constrained together—causing fish stocks to be preserved—from which all will benefit.

In the case of preferential trading arrangements, no two countries may have an incentive to turn away from a specific bilateral or regional deal. But the more these discriminatory arrangements multiply, the more all the countries in the system will be damaged—from discrimination-caused distortions in resource allocations—and from the added costs imposed by a tangled mess of multiple, overlapping, criss-crossing and inconsistent preferential trading arrangements—that Jagdish Bhagwati has so colorfully said reminds him of a “spaghetti bowl.” What is to be done about this “spaghetti bowl” problem? I want to offer 3 proposals—all involving collective, governmental action at the WTO level.

First, and this returns us to the DOHA Round, we need a breakthrough in the DOHA Round negotiations—a breakthrough within the next weeks if a successful completion of the round is to have any chance. Otherwise we will probably have to wait until at least 2012 or 2013. A successful breakthrough, however, would have two effects on the problem of discriminatory trade arrangements. For one thing, it would dampen the drive for such arrangements. But for another, and this is even more important, it would further the ultimate WTO goal of reducing nondiscriminatory tariff rates on a global scale.

Many commentators have repeatedly pointed out that this is the main hope for bringing discriminatory regional arrangements under control. Once nondiscriminatory rates come down sufficiently, the advantage of getting a zero rate under a preferential arrangement disappears. If no one faces a tariff rate of any significance, there’s no real advantage to having a preferential rate of zero. (Incidentally because of this effect, existing preferential arrangements make it harder to reduce nondiscriminatory rates. That’s because preferential arrangements build new constituents who oppose further trade liberalization. Those traders who benefit from existing discriminatory preferences fight against any general reduction of tariffs that would undercut their preferential benefits.) The upshot is—we need a breakthrough in the DOHA Round to stop the slide toward more and more preferential arrangements.

Second, the WTO membership should agree to launch new negotiations aimed at harmonizing rules of origin for all preferential arrangements. This is a complex topic that I have no time to explain fully. Let me just say that every regional or bilateral trade agreement must have a set of rules of origin. These rules determine when a product has experienced a sufficient amount of processing (or value-added) in a member country to be treated as coming from that member country so as to be entitled to zero tariff treatment when imported into another member country. If these rules could be harmonized around a single set of non-restrictive principles, this would be a valuable step in the direction of greater transparency and reduced costs in trading relationships. A single set of rules of origin would apply to all regional and bilateral free trade areas, so that the current complexity, confusion, and inconsistency associated with these rules
would be eliminated—and a good part of the tangled mess of the spaghetti bowl would be straightened out. So, secondly, we need WTO negotiations aimed at harmonizing rules of origin.

Third, the WTO membership needs to think creatively about how to begin a process that would allow existing regional and bilateral arrangements to be combined into larger and larger membership groups so that eventually the gains from trade achieved within these arrangements would be spread to larger and larger numbers of countries—approximating to some extent global tariff reduction. A good start in this direction would be adoption of harmonized rules of origin—so that the same set of rules of origin would apply worldwide. In this setting it would be much easier to combine preferential trade groups into ever larger membership circles.

Might it be possible to encourage the creation of “open regional arrangements” – I believe once proposed by ASEAN (the Association of South East Asian Nations)– under which any country would be welcome to join a regional agreement if it complied with the free trade rules of that agreement. If every member were allowed to exclude some small percentage of sensitive trade, this might be a workable arrangement. Perhaps there are other better ideas that should be considered, but the end goal should be to return to what was once the hallmark of the WTO/GATT—an open, fair, non-discriminatory trading system.

IV. Conclusion

In conclusion, let me reiterate that the challenges facing the WTO are formidable. But success in meeting those challenges—especially a successful conclusion of the DOHA Round-- would carry generous benefits for all. The next weeks are crucial for the DOHA round. Trade ministries in all parts of the world—the US, the EU, India, Brazil, China and Thailand too--should be doing whatever they can to achieve a breakthrough. The world—including developing countries--will benefit if they succeed. And beyond DOHA the WTO should begin to take seriously the problem of discriminatory trading arrangements that are contaminating the system. Future negotiations are needed to address this problem.

Finally, as I look even beyond these issues further into the future we know that other dilemmas and challenges concerning global economic integration will present themselves. But it heightens our celebration tonight of the new “Princess Pat” Scholarship and Exchange Fund when we remind ourselves that among the students and scholars who will benefit from this wonderful new initiative will likely be some, at least, who will address themselves and their careers to issues of this kind – to successful economic integration and global cooperation and prosperity. Thank you.