

The Question of the Q's:
What Cue Should Quebec Send to Qatar?

By:
Sylvia Ostry

Regional Trade Dialogue
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Introduction

Since I am writing this Executive Memo before the April Summit in Quebec the title is one which looks forward. Since we will be meeting to discuss the memo after Quebec perhaps the title should be “What Cue Should Quebec Have Sent to Qatar?” But the FTAA negotiations will go on for some time and Qatar (with luck) could signal the launch of what will no doubt be lengthy and complex multilateral negotiations so there’s still plenty of time for cues from regional to multilateral trade policy-making (and, of course, vice versa.)

What I will try to cover in this memo is first a brief summary of what I call the regional domino policy of the U.S. to provide the background to the origins of the FTAA. I will then review the main features of the transformed political economy of the global trading system in the WTO, including the wide North-South divide and the rise to prominence of new transnational players, the NGO’s, and their emerging global and regional strategies. The final portion will explore some policy options for positive regional-multilateral linkages – a new domino policy.

Regional Dominoes

There was an enormous proliferation of regional agreements in the 1990’s and, more recently, of bilateral agreements. The issue of the relationship between these preferential arrangements and the multilateral system based on non-discrimination has generated a vast literature and an increasingly rancorous debate among trade economists. The favored metaphor to characterize the agreements was building block or stumbling block. My preferred metaphor is the game of dominoes: the use of preferential

agreements as part of an evolving geoeconomic policy template. The ultimate objective of the domino play -- a game launched by the U.S. in the 1980's -- was to broaden and deepen the global system. The advantage of a domino policy is that it's easier to achieve objectives in regional arrangements because they are flexible, less time-consuming and can be "customized." They can then serve as a catalyst for "competitive liberalization", both in other regions, or for other countries, and ultimately the WTO.

Because of time and space constraints this paper will focus on the regional domino game in the Western Hemisphere although Apec was also part of the strategy. I will not analyse the two key agreements -- the Canada-U.S. Trade Agreement (CUSTA) and the North American Free Trade Agreement (NAFTA) -- but simply present some stylized facts to illustrate the strategy of customization and competition.

The first domino -- CUSTA -- was designed for two purposes: to threaten the Europeans who were blocking the launch of a new round because of fear of tackling their common agricultural policy and the G-10 group of developing countries, led by Brazil and India, who were opposed to the inclusion of the so-called "new issues" of services, intellectual property and investment. For developing countries the message from the launch of CUSTA was strongly reinforced by the simultaneous initiation of unilateralism (section 301 of the 1974 Trade Act) in September, 1986.

Was the game successful? Of course it's not possible to "prove" that the E.C. finally decided to grapple with reform of the CAP because of fear of U.S. regionalism. Still, it may have helped by adding to the internal pressure for agriculture reform within the Community from countries like the U.K. and the Netherlands.

A quick summary of the scorecard on the other major objective (the "new

issues”) would be one out of three. Services were included for the first time in any international trade agreement (a major breakthrough), but, for a number of reasons related to Canadian domestic policy and politics, intellectual property was not included and limited progress was made on the investment issue.

The second domino -- NAFTA -- was launched in 1990 at the request of Mexico. Canada felt it essential to join the negotiations as a defense mechanism against a hub and spoke continental system. For the U.S. it provided an opportunity to finish the unfinished new issues agenda of CUSTA and give a push to the lagging Uruguay Round.

In intellectual property, the U.S.-Canada dispute over compulsory licensing (which had blocked an agreement in this area) was settled; Mexican reforms on patent and copyright laws were locked in; and the U.S. won a battle on “pipeline protection” for pharmaceutical and agricultural products already patented elsewhere -- a battle lost in the Uruguay Round. The NAFTA agreement on services is far deeper than the GATS, since a “negative list” approach was adopted. But the really big “victory” was in investment, a key issue which had reaped meagre results in CUSTA and in Geneva.

The NAFTA established the basic norms for an investment regime including national treatment as well as MFN; the right of establishment by prohibition of a wide range of performance requirements (the original American wish-list for the Uruguay Round); and prohibition of restrictions on capital movements (except for prudential or balance of payments reasons). But by far the most innovative element -- a first in a trade agreement -- was the investor protection provisions and a new dispute settlement arrangement -- the famous (or infamous) Chapter 11.

The investment provisions of NAFTA included procedures for resolving disputes by which private parties may seek binding arbitral rulings against a host government in an international forum and adopted a broad definition of expropriation which could include investor claims against government regulation in, say, environmental or other social policy areas, which negatively affect the value of investment. Since, in a sense, any regulation might alter the relative costs and opportunities of companies but only a foreign company can seek compensation, several challenges by American companies in Canada raised a political firestorm. And, indeed, it was the adoption of the NAFTA language on expropriation in the multilateral agreement on investment (MAI) which provided a powerful rallying point for opponents of the OECD negotiations. The rest, as they say, is history. The domino became a boomerang. Many of the NGO's who formed the anti-Mai network were well prepared for Seattle. But more of that later.

What this brief review of U.S. regional domino policy suggests is that competitive liberalization, if carefully crafted, can be effective. If we also noted the skilled domino plays in Apec which included the push to conclude the basic telecommunications agreement and the ITA (international technology agreement) that assessment would be strengthened. After all, the November 1994 "Bogor vision" of free trade was echoed at the December 1994 "Miami vision" although the vision dates differed. But the game has its limits, and since it's a big player game, the need to build some base of consensus -- however difficult and time-consuming -- is a requisite antidote to overreach. Further, since the ultimate target is the WTO, the E.U. must be a partner in the end game. And with two big players the game gets very complicated as the E.U.-Mercosur etc. play illustrates. And sub regional agreements to enhance bargaining clout

are also inevitable. The costs of preferential arrangements are rising, as is uncertainty. So what about a global approach? Which gets me to my next section on the WTO.

The New Political Economy of the WTO

The Uruguay Round could be characterized as a North-South Grand Bargain. (1) Prior to the Uruguay Round developing countries negotiated mainly to secure unreciprocated access to OECD countries' markets. Most lacked the expertise and analytical resources for trade policy-making but that really didn't matter much because the focus of negotiations was on border barriers for industrial products, and also because agriculture was largely excluded.

The Uruguay Round was a watershed in the evolution of that system. For the first time agriculture was at the centre of the negotiations. This spawned a new single-interest coalition -- the Australian-led Cairns Group -- which included Southern countries from Latin America and Asia. And the G10 dragged out the launch to stymie the inclusion of the "new issues".

But, by the onset of the 1990's a major change in economic policy was underway. The debt crisis of the 1980's, and thus the role of the IMF and the World Bank, plus the fall of the Berlin Wall -- a confluence of two unrelated events -- ushered in a major transformation in the economic policy paradigm. Economic reforms, including reform of key service sectors, were seen as essential elements for encouraging and sustaining growth. Thus, well before the end of the Round the G10 had disappeared and coalitions of developing countries concentrated on liberalization of agriculture and textiles and clothing.

Thus the Grand Bargain was completed and was quite different from old-time GATT reciprocity. It was essentially an implicit deal: the opening of OECD markets to agriculture and labor-intensive manufactured goods, especially textiles and clothing, in exchange for the inclusion into the trading system of trade in services (GATS), intellectual property (TRIPS) and (albeit to a lesser extent than originally demanded) investment (TRIMS). And also the creation of a new institution, the WTO, with the strongest dispute settlement mechanism in the history of international law. Since the WTO consisted of a “single undertaking” (in WTO legal-ese) the deal, which also included the Tokyo Round Codes, was pretty much take it or leave it for the Southern countries. So they took it but, it’s safe to say, without a full comprehension of the profoundly transformative implication of this new trading system.

The Northern piece of the bargain consisted of some limited progress in agriculture, with a commitment to go further in new negotiations in 2000; limited progress in textiles and clothing involving a promise to end the Multi Fibre Arrangement in 2005 with most of the restrictions to be eliminated later rather than sooner; a rather significant reduction in tariffs in goods in exchange for deeper cuts and more comprehensive bindings by developing countries (whose tariffs were higher with a smaller percentage of bindings) and with significant tariff peaks remaining on manufactured exports from developing countries.

The essence of the South side of the deal -- the inclusion of the new issues and the creation of the new institution -- was to transform the multilateral trading system. The most significant feature of the transformation was the shift in policy focus from the border barriers of the GATT to domestic regulatory and legal systems.

Thus the Grand Bargain turned out to be a bum deal. In exchange for market access that has been less than expected, especially in agriculture, many developing countries will need to invest in major upgrading in their institutional infrastructure -- in effect, undertake investment with uncertain returns. The World Bank has estimated that for the poorer countries implementation costs would exceed several years' development budget. And, because of severe budgetary constraints, very little technical assistance is available from the WTO.

A wide North-South divide was one of the unintended consequences of the Grand Bargain. The notion of a north-south divide among the members of the WTO is, of course, an oversimplification since the Southern countries are hardly homogeneous and include the poorest or least developed (perhaps 50-60 members) as well as middle income countries. Yet pre-Seattle there was a broad consensus among the Southern countries that the Uruguay Round Agreement was asymmetric and must be "rebalanced" before any new negotiations were launched. There was also a consensus against inclusion of new agenda items such as investment, competition policy, labour and environment. What is most interesting about the pre-Seattle discussions, however, was the proactive role of the Southern countries who submitted over half of the more than 250 specific proposals for the Ministerial meeting. And, of course, the Seattle meeting ended with the walkout of virtually all the non-OECD countries sparked by President Clinton's statement about the use of sanctions to enforce labour standards.

Since Seattle little has changed. The debate over implementation continues. Transatlantic conflict over the agenda between the U.S. and the EU continues. Southern coalitions, much better equipped with information provided by a reinvigorated

UNCTAD and by Southern and some Northern NGO's (a "virtual secretariat") (2) are still proactive. So we have, at present, a proactive South and a paralyzed North -- and stalemate with respect to a new round. The legitimacy and credibility of the WTO is at stake.

But, of course, that legitimacy and credibility is under attack outside the meeting rooms in Geneva. The WTO, as was so vividly demonstrated in Seattle, has become a magnet for dissent by the new global actors, the NGO's -- a subject to which I will now turn.

The New Global Players: The NGO's (3)

The mobilization of protest demonstrations by NGO's against international institutions didn't start in Seattle. But the scale and the complexity of the choreography and drama at Seattle was unprecedented and perhaps a new trend has been established. Even if that were so it would be incorrect to assess the implications of the anti-globalization movement solely by its visible manifestation on television. The invisible impact of the NGO's on the international policy processes and institutions may turn out to be more important over the longer-run. Hence, it's useful to distinguish between two groups of NGO's: those which have created international networks which can be broadly categorized as "mobilization networks" whose chief objective is to rally support for dissent at a specific event and by doing so to change agendas, and those which constitute "technical / legal networks" designed to provide information with respect to a specific policy issue, policy action or policy-making process. Since the main activity of these latter groups (dominated by environmentalist and lawyers) has been

directed to the WTO dispute settlement mechanism I won't cover them in this paper.

Except to note that it would be unwise to ignore their potential impact on the FTAA. (4)

While the mobilization networks are loosely knit coalitions of very disparate groups an analysis of the networks at Seattle, Washington and Prague show that a significant proportion are environmental, human and gender rights NGO's. However one must be wary of the view (often stressed by the NGO's themselves) that these loose and diverse coalitions represent a new form of globalized participatory democracy on the internet. That may be partly the case, but the most significant development facilitated by the internet has been the emergence of a new service industry -- the business of dissent. And there is a "business centre" -- call it dissent.com -- very effectively operated by a core group of NGO's headed by a new breed of policy entrepreneurs. The core group (mainly North American and European NGO's) (5) manages the protests; coordinates logistics and training for non-violent action; provides legal and medical services; crafts the message; and organizes a "circulation list" or manifesto. Indeed the key assets of dissent.com are the three M's: the media, the message, and the money (from mass mailings and foundations, mainly American). Inexpensive, borderless, real time networking provides entrepreneurial advocacy NGO's with economies of scale and also of scope by linking widely disparate groups with one common theme. As is the case for all innovations there are also important positive feedback loops. An NGO Network established at the Rio Summit in 1992 was used by American, Canadian and Mexican anti-NAFTA advocacy groups and this experience was vital to creating the movement against the FTAA and to mobilizing the fight against the Multilateral Agreement on Investment (MAI). The lessons from the MAI were put to use in preparing for Seattle and

the Seattle experience was helpful in planning to Washington and so on – and on. And the constant message is a variant of a common theme: anti-corporate globalization and pro-democracy.

Since the main objective of mobilization networks is to influence public opinion and through that route initiate change in the agenda and policy processes of the international institutions, has the dissent industry been successful? In the case of the WTO, I would argue that it's too early to tell. The claim that Seattle was the "big bang" of a new global social movement won't stand up to closer inspection of post-Seattle activities. But, of course, the play is not over and the next act will likely be Quebec City.

While some of the "Seattle plus" core groups are actively involved, the umbrella network for Quebec City -- the Hemispheric Social Alliance -- was conceived at Belo Horizonte, Brazil, in May, 1997 when 700 activists (many of them part of the anti NAFTA network) decided to build a hemispheric movement. The next year in Santiago the Allianza and its coordinating council were formalized and the first Peoples Summit of the Americas was held with 2000 delegates. The Allianza includes Canadian and American mobilization networks, plus Mexican, Brazilian and Chilean NGO's who are building linkages with Andean, Southern Cone and Caribbean groups. The AFL/CIO and ORIT (the Western Hemisphere Union Federation) are very actively involved in the planning process. The message which is being crafted by these networks is mainly an attack on the FTAA (called "NAFTA plus") and the secrecy of the negotiations. (Indeed, one American NGO is suing the USTR for failing to release U.S. negotiating proposals for investor protection provisions in the FTAA and Nader's Public Citizen has organized a campaign of inquiry with a letter, distributed on the internet, to the Chair of the Trade

Negotiating Committee signed by the Executive Secretary of the Alianza). There is also a growing emphasis on human rights and, of course, on sustainable development.

Given the mounting opposition to the FTAA it's worth noting that from the outset the Summit of the Americas established a mechanism to involve civil society. (6) A designated group of NGO's have assumed key roles in consultations with civil society organizations and work in close coordination with the Summit institutions including the OAS and the SIRG (Summit Implementation Review Group). This mechanism, proposed by the Americans, was designed to create a network of stakeholders supportive of the Summit and the FTAA. But after Miami the split between "insiders" and "outsiders" began to emerge and has since widened. Only in the case of the business community has the stakeholder policy worked. The Foro Empresario de la Americas, organized by the large American multinationals, has played an active role in trade policy discussions. This has, naturally, led to the charge of preferential treatment by the "outsiders" and so on -- and on! Nonetheless, this initiative to involve civil society was a useful effort and should not be abandoned but perhaps adapted. Which leads me to my final remarks -- a new regional domino policy.

Conclusions: A new Regional Domino Policy?

This brief review of the transformed political economy of trade policy stressed the serious threat to the WTO of the current gridlock over new negotiations and the emergence of a coordinated global --regional strategy managed by a core group of NGO's. There does not appear to be such a strategy among governments, however, either

at the global or regional level. Perhaps the Western Hemisphere is a good place to launch one?

The Summit project is to promote the deeper integration of the Hemisphere, a project which goes well beyond “free trade”, and includes promoting democracy and enhancing capacity-building. The only other example of a deeper integration project is, of course, the European Union and the process has proceeded in fits and starts for well over fifty years. But the Western Hemisphere is markedly different from Europe in many ways of which one, worth noting in the present context, is the combination of developed and developing countries in its membership. The deeper integration of the Hemisphere thus provides a kind of natural experiment in how the ongoing process of community building can bridge the North-South divide. That process, involving hundreds of meeting of officials and Ministers, fosters the dialogue, knowledge diffusion and networking that is essential to forging (albeit over a lengthy time period), shared norms and values.

So, could the Summit and FTAA process serve as a “laboratory” for innovative experiments that could be adapted by the WTO? Surely this would be more feasible in a regional setting, with regional institutions that are more familiar with the cultural, historical and institutional character of member countries, than at the WTO with its 140 enormously diverse members and its paucity of analytic and technical resources. There is an important reason for considering this option at present. Since there is a given stock of political capital (and bureaucratic resources) in any country at a given time, it’s not impossible that the FTAA negotiations could “crowd out” the multilateral negotiations over the next several years. But that need not happen if the hemispheric

processes could, at least in part, be directed to facilitating the progress of both sets of negotiations.

One way of pursuing a policy of “crowding in” would be to establish a working group dedicated to the analysis of the linkages between the two negotiations. The group should be a policy forum, not a negotiating forum. This is important because the latter inhibits debate and discussion and the pursuit of consensus: when words can be turned into rules the less said the better. There are a number of North-South conflictual areas which would be candidates for the new forum. Among them is the review of the TRIPS agreement which has been delayed in Geneva. The current fracas over the AID’s crisis in South Africa, the WTO dispute over Brazilian patent policy and Indian demands for patent rights for traditional knowledge are just a few examples of contention and there will be more to come. An objective and careful review of policy options to deal with these contested aspects of TRIPS is essential to promote discussion and, if possible, consensus. This would facilitate the FTAA negotiations (which are bound to be affected by the current climate of contention) and then feed into the Geneva discussions. Another possible option could be to agree the elimination of all industrial tariffs by a given date (2003?) perhaps with some longer transition for the smaller countries.

These are simply examples of a list of candidates for the new FTAA forum. There are many other obvious ones and, indeed, one of the first outputs of the Working Group on FTAA-WTO Linkages would be to compile such a list after consultation with members and with the WTO. It is essential to underline that this is a policy analytic exercise and any decisions on negotiations would remain the mandate of relevant negotiation working group. But because policy analysis and debate is not

feasible in the WTO and could be in the FTAA it may be possible to use regional policy innovation as a new kind of domino. Worth a try?

Another policy innovation that could diffuse from the hemisphere to Geneva is a pilot project concerning NGO's. As is obvious from the criticism of both the WTO and the FTAA (undemocratic, secretive, dominated by business, etc.) many NGO's are demanding a "seat at the table". But trade policy is the result of a two level game: the structure and dynamics of the process at the national level and the interaction among the national players at the supranational level. While the international policy process has been extensively documented and analyzed, remarkably little is known -- except for a few countries -- about the nature of the process at the first level. Yet the process at the national level is an essential component of the final outcome

Moreover, because trade policy has become far more complex in recent years, both in terms of the range of issues involved and the participation of new actors, it is important to enhance our understanding of processes at the national level – since they are a key determinant of a country's policy. The response by many countries to the demand for NGO participation in the policy process at the international level has been that participation in the policy process at the national level is the more appropriate form of participation. But is that participation possible? What form does it take? The purpose of this project would be to provide that information. Memoranda would be requested from each country to document the following questions:

- (1) Is there an established procedure for consultation on trade policy issues in your country? Is this procedure transparent, i.e. is the

information on the procedure available to the public and the press?

What issues are covered (agenda, strategy, etc.)?

- (2) What groups are included in the consultative process (e.g., business, trade unions, farmers, non-governmental organizations, academics, etc.)?
- (3) What is the nature of the consultation's scheduling? Is it prior to a negotiation? During the negotiations? Prior to the final outcome? Review of the final outcome?
- (4) What is the structure of the consultation? Are business sectors consulted separately? Are different groups combined in one overall committee? How are groups selected? Is this structure flexible -- i.e. how can it be changed and/or challenged?

The memoranda would provide the basis for a discussion on the modality of the policy process in each country. While the processes would, obviously, be very diverse, the objective of the discussion would be to seek agreement on some basic principles, such as transparency, inclusiveness, periodicity, etc. It would be important to emphasize that no one size fits all but that even with significant variation certain bedrock underpinning are required to maximize the value of the consultative arrangements. That value derives from information and the building of a stakeholder base, both of which are essential to effective and sustainable policy-making. While this pilot project should not replace the current mechanism for civil society involvement, it might well prove useful as a complement and as a proposal for the WTO's current (and unsuccessful) efforts to enhance "external transparency".

In conclusion, this paper has argued that the FTAA negotiations could provide the opportunity not only to further the Summit project of deeper integration but also to develop policy innovations to enhance the prospects for the WTO. This could be the new regional domino and demonstrate that governments are also forging a new integrated regional and global strategy. A useful cue to send to Qatar.

Footnotes

- (1) This discussion is based on Sylvia Ostry, “The Uruguay Round North-South Grand Bargain: Implications for Future Negotiations”, paper presented at University of Minnesota Conference in honour of Robert Hudec, The Political Economy of International Trade Law (publication forthcoming, 2001)

- (2) The most prominent and first transnational NGO in Asia is the Third World Network (TWN) with affiliates in many Asian countries and links with activist / advocacy groups in North America and Europe. Other Asian NGO’s include Focus on the Global South based in Thailand which is linked with TWN and groups in a number of Asian countries as is the Indian Research Foundation for Science, Technology and Ecology. This network arrangement was extended by the establishment in 1995 of the South Centre in Geneva which is funded by the G77. In Africa the International South Group Network based in Zimbabwe was started in 1994 and Seatini, with three African offices, (funded by UNCTAD and several African governments) was established after the Singapore WTO Ministerial meeting to provide research and analysis for African countries. A link between Asian and African NGO’s is provided by CUTS (Consumer Unity and Trust Society), which arose out of the consumer movement of the 1980’s but then established CITEE (Centre for International Trade Economics and Environment) and other resource groups in Asia and Africa in the 1990’s.

The role of these NGO’s is to provide information, ranging from technical research and policy papers to activist policy advocacy. Since the mid-90’s most of their output is available on the internet and many of them worked cooperatively with UNCTAD in developing positions for the Seattle meeting. And this network of NGO’s in the South is also linked to and supported by a wide array of Northern NGO’s with a Southern focus, including research and analysis as well as training and capacity building.

Many of these North / South NGO’s also were established in the 1990’s although some, which began as development institutions and then shifted to trade, date from the 1970’s and 1980’s. Some examples are WEED, based in Germany and dedicated to training and consultancy for Southern NGO’s; 92 Group (Denmark), a North / South Coalition concerned with the environment; ICTSD (International Centre for Trade and Sustainable Development, established in Geneva in 1996 and jointly funded by Governments & Foundations as well as CUTS and OXFAM. ICTSD publishes Bridges Weekly Trade Digest which provides comprehensive coverage on trade and trade-related issues. CIEL (Centre for International Environmental Law) was established in Geneva in 1995 (CIEL in Washington was established in 1989) and provides training for Southern NGO’s as well as information and analyses. Other training and research institutions are RONGEAD of France; INTRAC, ACTION AID and CHRISTIAN AID of the U. K. The list goes on—and is getting longer. Many of these groups receive some funding from governmental or intergovernmental institutions but they are regarded, in respect to their activities, as NGO’s.

- (3) This discussion is based on Sylvia Ostry, "The WTO After Seattle: Something's happening here, what it is ain't exactly clear", American Economic Association, New Orleans, Jan. 2001.
- (4) The issue of amicus curiae briefs in the WTO has become a subject of intense debate after several recent Appellate Board decisions to permit NGO's to access the system in this fashion. Now perhaps a similar legalistic route is being tested with respect to NAFTA. A panel established under Chapter 11 has accepted the principle that NGO's can have intervener status in a case involving a claim against California by Canadian firm Methanex. The ruling was based on jurisprudence established by the WTO -- even though nothing in WTO dispute arrangements formally establishes precedence. See International Trade Reporter, Vol. 18, No. 5, Jan. 2001.
- (5) See Roberto Patricio Korzeniewicz and William C. Smith, Regional Networks and the Summits, Preliminary Draft, 12/22/00 (mimeo)