

**FROM MULTILATERAL NEGOTIATIONS TO BILATERAL AND REGIONAL NEGOTIATIONS:
THE EFFECT OF DOHA STALLING**

JUAN MANUEL GIL

Abstract.

This article argues that the stalling of the Doha Round negotiations is a forsaken opportunity for developing countries. Since the first deadline of Doha Round was missed in 2005, developed countries have changed their strategy of achieving free trade through multilateral negotiations, towards achieving it in regional or bilateral negotiations. Therefore, developing countries have had to stop bargaining in a considerable less hierarchical system and being compelled to bargain in a scenario characterized by power asymmetries. They have also swapped free trade based on non-discriminative multilateral principles, for preferential and discriminative trade treatment.

Keywords: trade negotiations, multilateral, regional and bilateral forum, power asymmetries, developing countries.

JEL: F13, F59

1. Introduction

For the last decade, WTO members have been negotiating free trade liberalization under the Doha Round. However, the negotiation deadlines have not been met, leading to the absence of an agreement, which is why the Doha Round is stalled while the number of Free Trade Agreements (FTAs) has increased. The stalling of Doha Round negotiations is a missed opportunity for developing countries because multilateral negotiations were replaced by bilateral and regional negotiations. As a result, developing countries stopped bargaining in a considerable less hierarchical system and began to bargain in a scenario characterized by power asymmetries. They have also swapped free trade based on non-discriminative multilateral rules for preferential and discriminative trade rules.

Multilateral trade negotiations are considerably less hierarchical because during Doha Round negotiations, developing countries created a more equal decision making process, increasing their influence in setting the negotiation agenda, raising their bargaining power by building coalitions and improving their efficiency in the negotiations.

On the other hand, bilateral and regional negotiations are characterized by power asymmetries among the members. In FTAs the negotiation agenda is set by developed countries according with their interests. Therefore, the negotiation agenda is unbalanced. It goes further than current WTO agreements but excludes important issues for developing countries like agricultural subsidies; therefore developing countries cannot balance the power building coalitions.

FTAs are also preferential and discriminative. Thus, developed countries have used them as stick and carrot strategy. In the WTO this strategy cannot be used due to the Most Favored Nation (MFN) principle. Finally, FTAs divert trade and reduce the world's wealth whilst WTO agreements create trade and increase the world's wealth.

In order to emphasize the importance of this perspective, I begin by explaining the change from multilateral negotiations to bilateral and regional negotiations. Then I continue showing how developing countries have reduced the hierarchy in the WTO. Following, I illustrate how FTAs are ruled by power asymmetries and its consequences for developing countries. In the next section, I explain the disadvantages of having preferential and discriminatory trade rules and the advantages of having multilateral rules and MFN for developing countries. Finally, I clarify how FTAs divert trade and reduce the world's wealth and how WTO agreements create trade and increase the world's wealth.

2. From Multilateral Negotiations to Bilateral and Regional Negotiations: The Effect of Doha stalling

According with Adam Smith's (1776) Absolute Advantage theory and David Ricardo's (1817) Comparative Advantage theory, if each country specializes in the production of those goods that it is most efficient at producing, and later trades them (in a free international market) in order to get the goods to meet its necessities, the wealth for each country and for the whole world will increase. Based on these theories, since the 1980s the world has moved toward deeper free trade liberalization (Milner, 1999) and developing countries have seen free trade as the solution for economic development (Rodrick, 1994).

Under this economic scenario, in November of 1982 the members of the General Agreement of Trade and Tariffs (GATT) planted the seed to initiate the Uruguay Round. This round was officially launched in September 1986 and was finished in 1994 with the signature of the new agreement which created the World Trade Organization (WTO). Basically, the new agreement covers goods under the 1994 GATT, services under the GATS and intellectual property under the TRIPS. It also establishes the WTO as a negotiating forum, as a set of rules and as a dispute settlement body (WTO, 2010 a).

With the purpose of continuing trade liberalization under the WTO, its members started new negotiations between them on November of 2001 and launched the Doha round with the declaration of the fourth Ministerial Conference. The declaration provides the work program for negotiations and specifically states that WTO members are determined to continue trade liberalization in order to promote economic development, to reduce poverty and foster recovery and growth during the slowdown of the world's economy. The work program involves about 20 subjects¹ to be negotiated and deals with issues regarding the implementations of the current WTO agreements that need to be solved. The issues were included particularly on request of developing countries (WTO, 2001). The original aim of the round was to conclude negotiations by January of 2005. Nevertheless, the deadline established for the negotiation was not met while the negotiations progressed and the Doha round stalled.

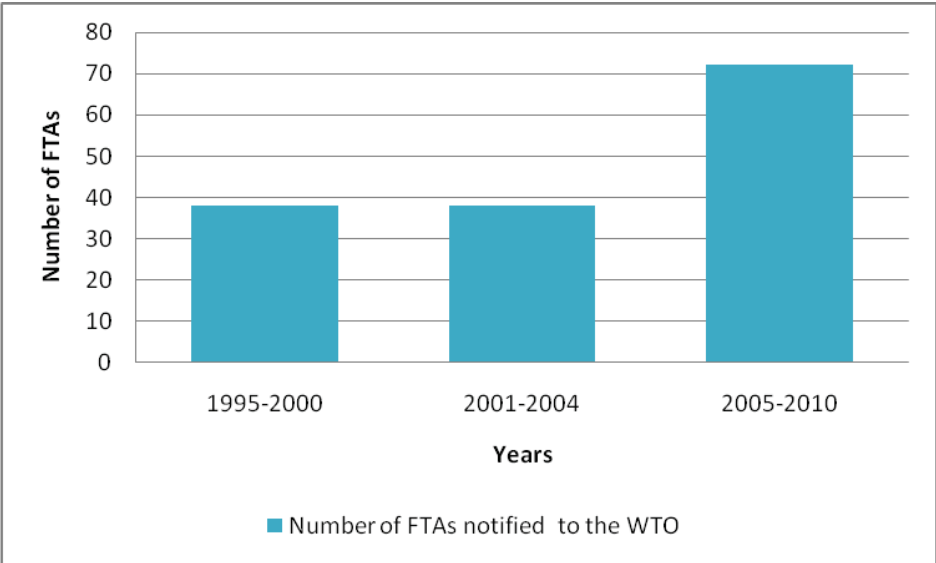
Despite the stalling of Doha, countries have not stopped working to get free trade. They just changed their strategy and switched it from multilateral negotiations in the WTO to bilateral or regional negotiations through Free Trade Agreements (FTAs). A free trade agreement is "a preferential arrangement in which tariff rates among members are zero" (Krueger, 1997).

The graph # 1 below displays the number of FTAs notified to the WTO by its members within 1992 and October of 2010. The graph shows that the number of FTAs increased after the failure of the negotiations that took place on the first term of the Doha round. In the first period of time between the establishment of the WTO (1995) and the year after the launch of the Doha round (2000), the number of FTAs notified to the WTO was thirty-eight. Since the launch of the Doha round (2001) and its deadline (January, 2005), another

¹ The subjects involve in the negotiations are: Agriculture, Services, Market access for non-agricultural products (NAMA), Trade-related aspects of intellectual property rights (TRIPS), Relationship between trade and investment, Interaction between trade and competition policy, Transparency in government procurement, Trade facilitation, WTO rules: anti-dumping and subsidies, regional trade agreements, Dispute Settlement Understanding, Trade and environment, Electronic commerce, Small economies, Trade, debt and finance, Trade and technology transfer, Technical cooperation and capacity building, Least-developed countries and Special and differential treatment.

thirty-eight FTAs were notified. However, after missing deadline, the number of FTAs notified to the WTO dramatically increased almost by 90%.

Graph #1
Number of FTAs notified to the WTO



Source: Own elaboration with WTO, RTA

Database.

The stalling of Doha led to a new strategy of international trade and changed the “rules of the game” and, therefore, the negotiation environment for Developing Countries. It has shifted from multilateral negotiations where developing countries bargain with developed countries in a considerable less hierarchical system (Singh, 2000) to bilateral and regional negotiations characterized by power asymmetries between developed and developing countries, where the hierarchical system is more pronounced. It has also swapped free trade based on non-discriminative multilateral rules to selective and discriminative free trade.

These changes represent a missed opportunity for developing countries to continue the path of free trade in a less hierarchical system based on multilateral rules.

The less hierarchical system can be evidenced in the WTO decision making process. In it, all the decisions are made by consensus and based on the sovereign equality of members. Thus, the decision making procedure offers equal representation and voting power to all WTO members (Steinberg, 2002: 339). In other words, it could be said that the WTO decision making system “eliminates” the asymmetries of power between its members. However, it does not eliminate the asymmetries. It just reduces them.

One of the reasons why the decision making system does not eliminate the asymmetries of power can be found in the way the agenda of the negotiations is established. According with Steinberg (2002: 360), the agenda for the negotiations is made based on the interests of the powerful countries. It means that they decide which topics are going to be negotiated during the round. A clear example of this situation can be found in the Uruguay Round negotiation, where the developed countries included in the agenda Investment Measures (TRIMS), Intellectual Property Rights (TRIPS), and Trade in Services (GATS) were against the interest of the developing countries (Wade, 2003). Nevertheless, the panorama changed in the Doha round. In it, developing countries blocked the consensus necessary to launch the round until the agenda was “balanced”. As a result, the agenda was modified; the Doha round was declared to have special concern for the interests of developing countries. Exceptions for public health in TRIPS and agricultural subsidies were included in the agenda (Echeverri-Gent, & Armijo, 2005: 10-11). Hence, even though developed countries have the power to construct the agenda, it can be modified by developing countries.

Another reason is that most of the important decisions during the negotiations are made in the “green room” by a group of developed countries. The agreement made in the Green Room is presented to the rest of the WTO members and they usually accept it by consensus without modification or with only minor changes (Blackhurst, R. 1998). This

situation was evident in the negotiations at the GATT than in the WTO. Curzon & Curzon (1973) state that the United States and the European Community have dominated all the important decisions in the GATT negotiations. In order to solve this problem during Doha Round negotiations, developing countries have made coalitions and reduced the power asymmetries between them and the developed countries. During the Doha round more than 26 groups have been working actively during the negotiations according with specific necessities or topics (WTO, 2010 b). Indeed, the inclusion of the exceptions for public health in TRIPS in the Doha agenda was a positive result of the coalition of the developing countries. An alliance between developing countries and NGOs influenced the decision to include the declaration on TRIPS and public health (Mayne, 2002).

Another problem of asymmetries between developed and developing countries that can be solved by creating coalitions is the lack of knowledge, economic resources and amount of people able to participate efficiently in the negotiations. For instance, the ASEAN group was created in order to share their limit resources, to cover all the negotiation meetings, to gather information and to improve their technical analyses (Blackhurst, et. al.1999). Thus the ASEAN group could overcome this asymmetry.

As shown above, developing countries have reduced the bargaining asymmetries between them and the developed countries during the Doha round negotiations and have created a more equal decision making process. First, increasing their influence in setting the negotiation agenda and second, increasing their negotiation power and their efficiency by building coalitions.

Nonetheless, when developed countries decided to increase the number of FTAs' negotiations with developing countries, instead of continuing the negotiations under the Doha round, they changed the arena to free trade negotiations characterized by power asymmetries. In any agreement and especially in trade agreements, there is an inherent disadvantage when the arrangement is made between a rich and a poor country

(Deardorff & Stern, 2007: 21). According to Lombaerde (2008), in a FTA between developed and developing countries, the FTA reflects more the interest of the first. Indeed, FTAs negotiated by the United States have been characterized by asymmetric reciprocity where the trading partner has had to make more “concessions” in obedience to the interest of the United States (Feinberg, 2003).

The reason why developed countries are able to get more concessions is because they have more power and therefore, they set the FTA negotiation agenda (Orbie, 2007). In this agenda, they do not only include commitments to reduce tariff rates to zero but they also include additional topics like more protection to intellectual property rights, and labour and environmental standards. Even though, these topics are against the interest of the developing countries (Deardorff & Stern, 2007: 22) and go beyond the FTA definition, they include them and make it a single package. For example, in the FTA between the United States and Jordan, Jordan had to agree to go further in its commitments in the WTO and give more protection to intellectual property rights. Consequently, as an intellectual property importer, its terms of trade were harmed (Drahos, 2001).

Some scholars argue that more protection to intellectual property rights does not generate mutual gain. They state also that “inadequate” protection does not lessen the creation of new technology or knowledge. Instead with more intellectual property rights protection the world’s welfare might be reduced (Bhagwati, 1993).

Another major concern of developing countries is that developed countries, and particularly the United States and the European Union have been looking for more patent protection. Therefore, developing countries are afraid that more protection will tie their hands to solve public health problems that have been solved by TRIPS flexibilities. For instance, when Thailand sought to produce generic medicine of patented drugs to promote public health, the United States threatened to impose trade sanctions (Collins-Chase, 2008). A similar situation happened in South Africa. South Africa is the African

country that has the most people infected with HIV. In 1997, South Africa wanted to buy cheaper HIV/AIDS drugs that were patented by doing parallel importation. However, they could not do it because the United States threatened South Africa with possible trade sanctions (Drahos, 2003).

Also, labour and environmental standards have been used against the interest of the developing countries since the negotiation to launch the Doha Round started (Krueger, 1999). The consequence for developing countries in accepting these standards is that it generates an additional cost of production, increasing the final price of the product. The real concern behind labour and environmental standards is that, in actuality, it does not improve the life of the workers in the developing countries or protect the environment. As Bhagwati (2005) shows, workers in the United States are terrified to lose their jobs because companies might move to developing countries looking for high skill workers with lower wages. Thus, they want to increase wages in these countries by increasing labour standards. In other words, labour standards take away the opportunity to create new jobs in developing countries. Companies in the develop countries are afraid of losing markets as a result of cheaper and high quality goods produced in developing countries. Hence, they want developing countries to adopt environmental standards because it increases the cost of production and raise the final price. If the United States was truly concerned about the environment they would have signed the Kyoto protocol as some of the developing countries did.

FTAs that include deeper and additional commitments are known as “WTO plus” because they go beyond the WTO agreements. However, not every agreement goes beyond and some strategic topics for developing countries like agricultural subsidies are excluded, creating an unbalanced negotiation agenda.

Agriculture is important for developing countries because it constitutes a source of employment, income and export earnings. Moreover, for some developing countries their export sector is mostly supported by agricultural products. Trade barriers to agricultural products and subsidies that developed countries give to their farmers have created a highly distorted world market, with instable commodities prices (Goldin & Knudsen, 1990). Indeed, subsidies encourage farmers to produce more than the demand, increasing the low-price tendency of the agriculture products (Aksoy & Beghin, 2005). Low agricultural prices deteriorate the terms of trade of the developing countries that depend on agriculture exports. Furthermore, it reduces their income, exports earnings, creates unemployment and hampers countries that have a comparative advantage in agricultural products.

In general, all new FTAs negotiated by the European Union and the United States are WTO plus (Koopmann & Wilhelm, 2010) and the strategic topics for developing countries are left to be negotiated under the Doha Round (Feinberg, 2003). Developed countries set the agenda as a result of the developing countries lack of power and they have little chance to improve the situation by creating coalitions.

An additional problem with FTAs between developing countries and major powers is that with the aim of “success” in negotiations, developing countries require a lot more preparation, resources and coordination with different domestic agencies than those required in the Doha Round negotiation (Sally, 2008).

Moreover, in contrast to the Doha Round, it is almost impossible for developing countries to build coalitions in FTAs in order to solve this asymmetry. Because FTAs are usually bilateral or regional among few countries, the chances to conform a coalition that balances the power is absent.

Besides an unbalanced agenda and the impossibility to form coalitions, another issue that developing countries have to face is that FTAs are “inherently preferential and discriminatory” (Bhagwati, 1995). It means that unlike the Doha Round negotiations, developed countries can decide with which country to negotiate an agreement and hence give preferential access to his rich market. It also means they can take away from some developing countries the possibility to have preferential market access, and therefore reduce their competitiveness. Due to this fact, FTAs are especially likely to be formed between allies (Gowa, 1994).

Discriminative FTAs have also been used by powerful developed countries to consolidate their political influence over developing countries (Mansfield & Milner, 1999). Because powerful developed countries have the richest and largest markets and the possibility to choose with which country negotiate the FTA, they take advantage of it and use it as stick and carrot strategy. If the developing country does not behave as an ally, they will not negotiate the FTA. But if they behave as an ally they probably will. For instance, as Rosen (2004) explains, the FTA negotiated between the United States and Israel was a pilot project to prove the effectiveness of FTAs as carrots. This project has evolved and one of the current US criteria to negotiate a FTA is to reward friends (Schott, 2004).

Since FTAs give preferential market access to its members, trading partners who are not part of the agreement can lose the market. The explicit risk of loss creates an additional pressure for developing countries, which often depend on the developed countries markets to be part of the agreement. Developed countries understand this situation and use it to influence countries behaviours according to their own interest.

In contrast, in the WTO developed countries cannot discriminate between any of its 153 members and have to behave according with the multilateral rules that have been agreed to. One of the main and more important principles at the WTO is the Most Favored Nation (MFN) principle. It is a non-discrimination principle which states that normally none of the

WTO members can give a preferential or a worst treatment to any of the other members (WTO, 2010 c). In other words, whatever grant a developed country gives to its allies has to give it also to its enemies.

This principle assures that regardless of the political structure, the size of the economy, or other characteristic of the country, all of the WTO members will be treated equally. Thus, developed countries cannot use the WTO agreements as a stick and carrot strategy. If developing countries could keep the free trade path under the WTO and concluded a positive Doha Round negotiation, they will reduce the influence of the developed countries.

In the WTO, the MFN is a rule but it has some exceptions. The exceptions that allow preferential and discriminatory FTAs are set out in Article XXIV of the GATT 1947, the enabling clause and Article V of the GATS. Thus, WTO members can go from non-discriminative and multilateral rules to preferential and discriminatory FTAs, without violating any of the WTO agreements (WTO, 2010 d).

Bhagwati (2000) also argue that FTAs are trade diverting². He shows that many labour-intensive goods exported by developing countries have high tariff rates in developed countries. And some goods that are usually imported by developing countries from the developed ones have also high tariff rates. Thus, when the FTA comes into force it creates trade diversion. The problem associated with trade diversion is that it goes against the basic assumption of the absolute advantage theory and the competitive advantage theory, consisting in an efficient resource allocation generated by free trade. As a result the wealth of the world will decrease. So, taking into account that developing countries

² Trade diversion happens when a country who originally supplies a good is replaced for a country member of a trade agreement, because the later is cheaper. Not because his products are more competitive and have a lower price but as a result of the lower tariffs (Viner, 1950). In this situation the more competitive country lose a market since he is not part of the agreement and has to pay a tariff which increases his price.

decided to move toward free trade based on these theories³, FTAs might not be the right path to follow.

In the WTO, multilateral trade rules and MFN assure that the agreements, instead of diverting trade, will create trade⁴. If the 153 members of the WTO lower their tariff rates and reduce or remove the non-tariff barriers to trade, the whole world would be richer as the final output increase as a consequence of the efficient resource allocation and country specialization.

Even though FTAs have an unbalance agenda that benefits more developed countries than developing countries, these are WTO plus, and divert trade, while in the WTO and specifically in the Doha Round, developing countries have reduced the bargaining asymmetries and created a more equal decision making process. Developing countries keep negotiating FTAs because they fear being left behind and having their competitiveness undermined. With the stalling of the Doha Round they do not have any better alternative than to continue the path of free trade.

3. Conclusion

In this paper, I have shown that as an alternative to Doha Round stalling developed countries decided to negotiate more FTAs with developing countries. Consequently, multilateral negotiations, where developing countries bargain with developed countries in a considerable less hierarchical system, were replaced by bilateral and regional negotiations characterized by power asymmetries. Also, non-discriminative multilateral rules were substituted by preferential and discriminative trade rules.

³ See Milner (1999) and Rodrick (1994).

⁴ Trade creation takes place when a country, who originally supplies a good, because it has preference access to the market, is replaced for a country that makes the good more efficiently and could not be able to supply the good before because of the tariff.

In doing so, developing countries have had to accept FTAs with an unbalanced agenda while agreeing to more intellectual property rights' protection, labour and environmental standards as well as excluding agricultural subsidies. They are also losing the opportunity of continuing trade negotiations at the multilateral level where the decision making process is more equal, where they can influence the negotiation agenda, raise their bargaining power by building coalitions and improve their efficiency during the negotiations.

Finally, preferential, discriminative and trade diverting FTAs are used by developed countries as stick and carrot strategy. For all of these aspects, it can be said that the stalling of the Doha Round is a missed opportunity for developing countries.

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