



University Library

Author/Filing Title SOMERSET

Class Mark T

**Please note that fines are charged on ALL
overdue items.**

--	--	--

0403910609





The European Commission in the World Trade Organisation:

A Question of Roles, Responsibilities and Interests

by

Kerry Somerset

A Doctoral Thesis

Submitted in partial fulfilment of the requirements

for the award of

PhD of Loughborough University

30th April 2008

© by Kerry Somerset, 2008



Loughborough
University
Pilkington Library

Date 26/3/11

Class T

Acc
No. 0403910609

Acknowledgements

Dedication

*For my father, **John Joseph Somerset** (1932-2002) who was, and remains, my inspiration.*

*Also for my husband, **Colin Brake**, who never previously understood why people compared writing theses to having babies until he had to help me cope with the 'new arrival' by looking after the other two.*

*For Cefn **John Harvard Somerset-Brake** and **Kassia Christine Sofia Somerset-Brake** for being patient beyond the call of duty*

An acknowledgement really isn't enough for **Professor Michael H Smith** for prising out my inner analyst. I don't think anyone else would ever have had the patience.

To my Mum, **Sally**, who has been supportive and positive throughout, as ever. No one could ask for more. I'm still hoping I'll grow up to be like her.

To my colleagues for supporting me through the experience especially Drs **Ajaree, Emma, Emilian, Matt** and **Natee** and not forgetting **Jeff** who obviously couldn't deal with the New England Patriots forever winning the AFC East title. Also my Director of Research **Professor David Allen, Val, Audrey, Frances, Pauline, Maurice** and everyone in PIREs at Loughborough. The pleasure was all mine. Glad that blue Christmas tree is still going strong with its unmissable...angel??

To my friends especially **Cat** and **Paul** for putting it all into context over plenty of chilled Pinot Grigio both in and out of canvas and **BW, KK** and **Miss Natalie** for being there even though that isn't here. Not forgetting either **Janis** or **Zoey**. I owe you dinner.

To **Sophie Meunier** and **Kalypso Nicolaidis**. I can safely say it is Your Fault. At least I could if I didn't want to blame **Professor Alex Warleigh-Lack**, which I do.

To **Jacques McMillan** in the European Commission who gave me a chance and all my friends and colleagues who never knew how important they were.

The European Commission in the WTO: A Question of Roles, Responsibilities and Interests

This thesis sets out to answer the question: What roles and responsibilities have accrued to the European Commission in relation to its operations within global trade negotiations, how have these been interpreted and pursued, and how have they been affected by changing patterns of interests and institutions in the world trading system?

The thesis has as its central empirical focus the activities of the European Commission in the World Trade Organisation (WTO) from 1995 to 2003 – that is to say, from the foundation of the Organisation to the failure of the Cancún Ministerial. It focuses on the roles and responsibilities of the Commission within trade negotiations and identifies the ways in which it has been affected both by the interests that it serves, or confronts, and by changes in the broader context of the negotiations themselves. The thesis argues that the need to maintain this complex balance of roles, responsibilities and interests in a changing environment creates patterns of path dependency and a search for consistency that reduces the possibility of creative adaptation on the part of the Commission.

Acting on a global stage invokes particular difficulties for the Commission in that it has to serve and/or confront a number of different interests on three specific levels and build a supportive coalition at each level in order to make progress with policy initiatives. At the first level, the Commission has to develop a mandate proposal for WTO negotiations. The second, intra-European, level is where the Commission has to submit its proposals and obtain a negotiating mandate from the Council of Ministers as well as, informally but increasingly importantly, the European Parliament. The third, extra-European, level comes into play when the Commission begins negotiations, and its position has to accommodate the diverse interests of WTO members and the WTO Secretariat. These interests are not unitary actors and their preferences are dynamic. Therefore they can be enabling or constraining on the Commission over time and over different issues.

Early chapters of the thesis synthesize the existing literature in an effort to define what roles and responsibilities the Commission has both in general, and then in external trade. This leads in chapter 1 to the generation of four key propositions – on roles, responsibilities, interests, and change/politicisation - that form the central organising focus of the thesis. The thesis then goes on in chapter 2 to provide historical context by exploring the developing roles and responsibilities of the Commission under the General Agreement on Tariffs and Trade (GATT) as well as outlining the new institutional structure within which it has had to work in the WTO. Chapters 3-8 of the thesis focus on the period since the establishment of the WTO, dividing it into two sub-periods – the period up to the Seattle ministerial of 1999, during which Sir Leon Brittan was Trade Commissioner, and the period 1999-2003, when Pascal Lamy held that position. These chapters trace in detail the processes through which the Commission participated on the one hand in the setting of the framework for trade negotiations, and on the other hand in the negotiation of specific sectoral issues.

The conclusion suggests that negotiations within the GATT and the WTO have been politicised since the Kennedy Round in 1964, although the process has now become more pervasive and unpredictable. Although the Commission's roles and responsibilities have not so far come under threat from the Council of Ministers, there are questions as to whether the Commission can continue to make progress given the growing difficulties of aligning the preferences of key interests and the reducing 'policy space' the Commission has to achieve its objectives, particularly because of the entrenched debates surrounding agriculture.

Keywords

European Commission
World Trade Organisation
Roles
Responsibilities
Interests
GATT

Contents

<i>Abstract</i>	i
<i>Keywords</i>	ii
<i>Contents</i>	iii
<i>List of Abbreviations</i>	v
<i>List of Tables</i>	x
Introduction	1
Chapter 1:	
The European Commission: A Question of Roles, Responsibilities and Interests	12
<i>Introduction</i>	12
<i>General Roles and Responsibilities</i>	14
<i>Roles and Responsibilities in External Trade</i>	23
<i>The Interests</i>	33
<i>Conclusions</i>	41
Chapter 2:	
The European Commission in the GATT and the transition to WTO	46
<i>Introduction</i>	46
<i>The GATT</i>	47
<i>The World Trade Organisation</i>	63
<i>Conclusions</i>	71
Chapter 3:	
The Trade Negotiations Framework from Marrakech to Seattle	76
<i>Introduction</i>	76
<i>The First WTO Ministerial - Singapore</i>	78
<i>The Second WTO Ministerial - Geneva</i>	90
<i>Conclusions</i>	111
Chapter 4:	
Case Studies in the Trade Negotiations Framework from Marrakech to Seattle ..	113
<i>Introduction</i>	113
<i>The Information Technology Agreement</i>	115
<i>The Basic Telecommunications Services Agreement</i>	126
<i>The Financial Services Agreement</i>	137
<i>Conclusions</i>	145
Chapter 5:	
The European Commission in the WTO from Marrakech to Seattle. Evaluation ..	150
<i>Introduction</i>	150
<i>Overview</i>	151
<i>Roles and Responsibilities</i>	153
<i>Interests</i>	161
<i>Conclusions</i>	167

Chapter 6:	
The Trade Negotiations Framework from Seattle to Cancún	171
<i>Introduction</i>	171
<i>Overview</i>	172
<i>The Third WTO Ministerial - Seattle</i>	173
<i>The Fourth WTO Ministerial - Doha</i>	187
<i>The Fifth WTO Ministerial - Cancún</i>	204
<i>Conclusions</i>	215
Chapter 7:	
Case Studies in the Trade Negotiations Framework from Seattle to Cancún	217
<i>Introduction</i>	217
<i>Trade and Investment</i>	219
<i>Trade and Competition</i>	236
<i>Transparency in Government Procurement</i>	250
<i>The Singapore Issues as a Package</i>	262
<i>Conclusions</i>	266
Chapter 8:	
The European Commission in the WTO from Seattle to Cancún. Evaluation	269
<i>Introduction</i>	269
<i>Overview</i>	270
<i>Roles and Responsibilities</i>	271
<i>Interests</i>	281
<i>Conclusions</i>	290
Chapter 9:	
Conclusions	293
<i>Introduction</i>	293
<i>The European Commission's Roles in the WTO</i>	294
<i>The European Commission's Responsibilities in the WTO</i>	299
<i>Interests and the European Commission in the WTO</i>	302
<i>Change and Politicization</i>	304
<i>Policy Implications</i>	306
<i>Contribution to Research</i>	309
Bibliography	313

List of Abbreviations

ACP	African, Caribbean and Pacific Group of States
AGP	Agreement on Government Procurement
APEC	Asia-Pacific Economic Cooperation
ART	French Telecommunications Regulatory Authority
ASEAN	Association of South East Asian Nations
ASEM	Asia Europe Meeting
ASP	American Selling Price
ATGP	Agreement on Transparency in Government Procurement
BBC	British Broadcasting Corporation
BEUC	European Consumers' Organisation
BITS	Bilateral Investment Treaties
BTA	Basic Telecommunications Services Agreement
CAFOD	Catholic Agency for Overseas Development
CAP	Common Agricultural Policy
CCP	Common Commercial Policy
CEN	European Committee for Standardization
CENELEC	European Committee for Electronic Standardization
CEO	Chief Executive Officer
CFSP	Common Foreign and Security Policy
CIDSE	International Cooperation for Development and Solidarity
COM	Council of Ministers
COMESA	Common Market for Eastern and Southern Africa

CONCORD	European NGO Confederation for Relief and Development
COREPER I	Committee of Deputy Permanent Representatives
COREPER II	Committee of Permanent Representatives
CSI	Coalition of Service Industries
DDA	Doha Development Agenda
DG	Directorate General/Director General
DSU	Dispute Settlement Understanding
EBA	'Everything but Arms' initiative
EC/EU	European Community/European Union
ECJ	European Court of Justice
ECOSOC	European Economic and Social Committee
ECSC	European Coal and Steel Community
ESF	European Services Forum
ETUC	European Trade Union Confederation
EUROSTEP	NGO Network on European Development Cooperation
FAO	Food and Agriculture Organisation
FDI	Foreign Direct Investment
FSA	Financial Services Agreement
FTA	Foreign Trade Association
FTA	Free Trade Agreement
FTAA	Free Trade Area of the Americas
G7	Meeting of Finance Ministers and Central Bank Governors of the Seven Industrialised Nations

G8	Meeting of Heads of State of the Seven Industrialised Nations (<i>plus Russia</i>)
G20(+)	Group of agricultural exporting developing countries
G77	International organisation of developing states
GAC	General Affairs Council
GATT	General Agreement on Tariffs and Trade
GATS	General Agreement on Trade in Services
GP	Government Procurement
GSP	Generalised System of Preferences
ICFTU	International Confederation of Free Trade Unions
ICITO	Interim Committee for the International Trade Organisation
ICTSD	International Centre for Trade and Sustainable Development
IGC	Inter-Governmental Conference
IGO	Inter-Government Organizations
ILO	International Labour Organization
IMF	International Monetary Fund
IT	Information Technology
ITA	Information Technology Agreement
ITO	International Trade Organization
LDC	Least Developed Country
MAC	Multilateral Agreement on Competition
MAI	Multilateral Agreement on Investment
MEA	Multilateral Environmental Agreement
MFA	Multi-Fibre Arrangement

MFN	Most Favoured Nation
MNE	Multinational Enterprise(s)
MRA	Mutual Recognition Agreement
MTA	Multilateral Trade Agreement
NAMA	Non-Agricultural Market Access
NGO	Non-Governmental Organization
NTB	Non-Tariff Barrier(s)
OAU	Organization of African Unity
ODA	Overseas Development Agency
ODA	Overseas Development Assistance
OECD	Organization for Economic Cooperation and Development
OPEC	Organisation of the Petroleum Exporting Countries
QMV	Qualified Majority Voting
SAARC	South Asian Association for Regional Cooperation
SADC	South African Development Community
SDT	Special and Differential Treatment
SME	Small and Medium-sized Enterprises
SOMTI	ASEM Senior Officials Meeting on Trade and Investment
TABD	Transatlantic Business Dialogue
TBT	Technical Barriers to Trade
TEU	The Maastricht Treaty
TPRM	Trade Policy Review Mechanism
TRIMS	Trade Related Investment Measures

TRIPS	Trade Related Intellectual Property Rights
TWN	Third World Network
UK	United Kingdom
UN	United Nations
UNCTAD	United Nations Conference on Trade and Development
UNDP	United Nations Development Programme
UNEP	United Nations Environment Programme
UNICE	Union of Industrial and Employers' Confederations of Europe
US/USA	United States (of America)
USTR	United States Trade Representative
WTO	World Trade Organization

List of Tables

Table 3.1 The positions of the least-developed countries (LDCs) in the Singapore Ministerial.....	80
Table 3.2 The positions of the Quad countries in the Singapore Ministerial.....	81
Table 3.3 The positions of the least-developed countries (LDCs) in the Geneva Ministerial.....	91-2
Table 3.4 The positions of the Quad countries in the Geneva Ministerial.....	93
Table 4.1 Brief Overview of Case Studies.....	110
Table 6.1 The positions of the least-developed countries (LDCs) in the Seattle Ministerial.....	174
Table 6.2 The positions of the G20 countries in the Seattle Ministerial.....	176
Table 6.3 The positions of the Quad countries in the Seattle Ministerial.....	177
Table 6.4 The positions of the least-developed countries (LDCs) in the Doha Ministerial.....	191-2
Table 6.5 The positions of the G20 countries in the Doha Ministerial.....	193
Table 6.6. The positions of the Quad countries in the Doha Ministerial.....	194
Table 6.7 The positions of the least-developed countries (LDCs) in the Cancún Ministerial.....	204-5
Table 6.8 The positions of the G20 countries in the Cancún Ministerial.....	206
Table 6.9 The positions of the Quad countries in the Cancún Ministerial.....	207
Table 7.1 Brief Overview of Case Studies.....	215

INTRODUCTION

The European Commission in the World Trade Organisation: A Question of Roles, Responsibilities and Interests

Overview

In 2003, the Cancún Ministerial meeting of the World Trade Organisation (WTO) was 'killed' with the European Union (EU) named as one of the suspects.¹ Criticism was levelled at both its inflexibility on agriculture and its misguided attempts to force through unpopular policy initiatives.² Although the Hong Kong Ministerial in December 2005 did not fail, it was not widely regarded as a success and the EU was again criticized for going along with outdated 'consultation' procedures and insisting on a late date to abolish agricultural export subsidies.³ The consultation procedures at issue, known as Green Rooms, were also partly blamed for the failure of the Seattle Ministerial in 1999 (Hawken, 2000: 50, Schott and Watal, 2000: 286). Taken together, the EU, with the Commission as its negotiator, appears to have made little headway, and to have failed to adapt its positions or actions to changes in the WTO negotiating environment. Why is this and what factors might it reflect? Should we look for explanations in the nature of the Commission's roles and responsibilities, the ways in which they were interpreted and pursued? Should we look at the ways in which shifting patterns of interests created constraints and/or opportunities, or the changing nature of the WTO environment, the issues that were at stake in the negotiations and the increasing politicisation of trade issues?

¹ From 'Content, Not Pontificating, Was What Killed Cancún' edited by Max Gebhardt from the Independent (Johannesburg, South Africa) on 16th September 2003 reproduced at <http://www.mindfully.org/WTO/2003/Cancun-Content-Killed16sep03.htm> accessed 8th April 2008

² From Action Aid 'Divide and Rule. The EU and US response to developing country alliances at the WTO' at http://www.actionaid.org.uk/doc_lib/30_1_divide_rule.pdf accessed 7th April 2008. The 'unpopular policy initiatives' are the Singapore Issues

³ From 'How the WTO's Conference adopted its Ministerial Declaration in Hong Kong' by Martin Khor of the Third World Network 21st December 2005 at <http://www.twinside.org.sg/title2/twninfo336.htm> accessed 7th April 2008

In order to investigate these questions, this thesis has as its central empirical focus the European Commission in the WTO from 1995 to 2003 – that is to say, from the foundation of the Organisation to the failure of the Cancún Ministerial. It will focus on the roles and responsibilities of the Commission within these trade negotiations and identify the ways in which the Commission was affected both by the interests that it had to satisfy and by changes in the broader context of the negotiations themselves. The thesis argues that the need to maintain this complex balance of roles, responsibilities and interests in a changing environment creates patterns of path dependency and a search for consistency that reduce the possibility of creative adaptation on the part of the Commission.

The **key research question** on which this thesis centres is thus: What roles and responsibilities have accrued to the Commission in relation to its operations within global trade negotiations, how have these been interpreted and pursued, and how have they been affected by changing patterns of interests and institutions in the world trading system?

This broad initial question can be broken down into four **secondary research questions**:

- a) What roles does the Commission have in external trade, and how are these expressed in its operations within the WTO?
- b) How effectively does the Commission fulfil the responsibilities associated with those roles in implementing its policies within the WTO?
- c) To what extent are these roles and responsibilities affected by the patterns of interests to be found within European institutions and the WTO and, in particular, the convergence or dispersal of preferences among those interests?
- d) How is the interaction between roles, responsibilities and interests in the Commission's operations within the WTO affected by time and issue?

Research rationale

The thesis has its roots in Meunier and Nicolaïdis' article from 1999 - 'Who Speaks for Europe? The Delegation of Trade Authority in the EU'. In essence, the authors argued that the 1/94 Opinion of the European Court of Justice (ECJ), which followed the often acrimonious Uruguay Round negotiations under the General Agreement on Tariffs and Trade (GATT), was indicative of the Commission's sole competence to negotiate for the Union in goods being subjected to "roll back" (p477).

They suggested that this rollback came about because of the domestic importance, for Council members, of new issues discussed in the Tokyo Round such as "aviation and product standards" (p483). These 'new issues' became more important in the Uruguay Round, which covered areas such as Trade-Related Investment Measures (TRIMS) and Trade-Related Aspects of Intellectual Property Rights (TRIPS) alongside services negotiations. Following the Round, questions were asked as to whether it was the Commission or Council, which was 'competent' to conclude such negotiations. In an attempt at resolution, at the end of the Round, the Commission asked the Court "for an advisory opinion on the issue of competence" (p485) seemingly expecting that the ECJ would rule in its favour. As it was, the Court ruled that although the Commission would continue to have sole competence for negotiating in trade in goods, there was mixed competence, shared between the Commission and the Member States, for trade outside goods. Meunier and Nicolaïdis concluded that this mixed competence had implications for the Commission's roles and responsibilities in external trade. These implications would not just affect the Commission but could destabilize "all other areas of trade negotiations" (p498) and even influence the "world political economy" if bargains and package deals did not hold because of national considerations or if a 'divide and rule' strategy was used by other actors to ensure outcomes favourable to themselves (or to keep the status quo).

This thesis arises out of the need to take this argument further and to put it in a broader context. The end of the Uruguay Round was not 'just' about the 1/94 Opinion; it also heralded a transition from GATT to the WTO. In terms of context, the thesis looks also at the earlier GATT Rounds to allow an appreciation, at the outset, as to whether Opinion 1/94 could be held to be such a watershed in terms of the relationship between

the Commission and the Council of Ministers in external trade as Meunier and Nicolaïdis seemed to suggest. However, the WTO forms the main focus of the work and the significance of the change from GATT to WTO is clearly important, particularly because the European Communities (and thus the European Commission as its 'voice') became a Contracting Party in its own right. If Meunier and Nicolaïdis were correct in their assumptions, the Commission's eroding roles and responsibilities in external trade and growing concerns on the part of the Member States (that the Commission was intervening in national issues), could be tracked through WTO negotiations. It is anticipated that this might even become more acute over time because of increasing politicization of the trade field.

Furthermore, the thesis set out to probe the differential successes of trade negotiations under the WTO. These had seemingly started well at the Singapore Ministerial and apparently continued at the Geneva Ministerial (given that there was very little reported about it in the media) but had fallen down badly in Seattle before picking up again at Doha then collapsing ignominiously at Cancún. The thesis assesses what part the Commission played in these outcomes and seeks to identify what pressures were on them (internally and externally in the Council of Ministers and the WTO) in their efforts to negotiate for the Member States in the WTO. In considering the Commission's part in these negotiations, it was also important to reflect upon the parties who were influencing the Commission and how they were aligned or dispersed around the key issues that were being tackled. These interests might be centred on the European Commission itself, the Council of Ministers (or even the Parliament) at the European level and the WTO itself. The thesis, then, seeks to assess how the convergence or dispersal of preferences among those interests might affect the Commission's roles and responsibilities therein.

In terms of data management, that both Brittan and Lamy had presided as Trade Commissioners from 1995, when the WTO was created, to 2003 in the aftermath of Cancún, afforded an opportunity to compare the two time periods. This allowed consideration of Meunier and Nicolaïdis' contentions at each point in time. In deciding on this comparison, it was important to structure both parts the same way. Therefore, not only does the narrative focus on the Ministerials over Brittan's and Lamy's tenures

but case studies, that appeared to be the best representative of each period, were chosen for both. This allowed distinction to be made between the high political Ministerials and the technical negotiations.

In sum, although Meunier and Nicolaidis (1999) started the process, in that their article formed the basis of the rationale for this piece of research, efforts were made to put their findings in a significantly wider context and to test their contentions in a more thorough way through the WTO negotiations.

The structure of the thesis

The structure of the thesis reflects the key research questions outlined above. **Chapter One** establishes a broad analytical framework, which discusses roles, responsibilities and interests in general terms and proposes some broad propositions arising from the initial research questions. The aim here is to put the practice of the Commission's roles and responsibilities in external trade into the context of the literature on the Commission and on European external trade policies, and into a conceptual framework that will frame the rest of the thesis. **Chapter Two** provides further analytical and empirical context by exploring the ways in which the Commission operated within the General Agreement on Tariffs and Trade (GATT) between the late 1950s and the mid-1990s, and by identifying key aspects and implications of the change from the GATT to the WTO in 1995. By the end of this first phase of the thesis, the foundations for the argument both in analytical and in empirical terms will have been established.

Chapters Three to Eight contain the empirical core of the thesis, and deal with the Commission's involvement in WTO negotiations between 1995 and 2003. The six chapters naturally divide between two distinctive time periods – Leon Brittan's time as Trade Commissioner from 1995-1999 and Pascal Lamy's tenure from 1999 to 2003 – and the thesis ends at the last Ministerial meeting that Lamy presided over in this position. Within these two distinctive periods, there is a further division between the high political Ministerial level negotiations and the, perhaps more technocratic, sectoral negotiations. The expectation is that the Ministerial meetings will be more politicised than the task-oriented negotiations. This might be expected to influence the choices the

Commission makes in terms of exercising its responsibilities, and the effectiveness of its discharge of those responsibilities.

Thus, **Chapter Three** focuses on the WTO Ministerials between 1995 and 1999, including the preparations for the Seattle Ministerial, whilst **Chapter Four** explores sectoral negotiations in relation to the Information Technology Agreement, the Basic Telecommunications Agreement and the Financial Services Agreement, and **Chapter Five** provides an overall evaluation of the period 1995-1999 in relation to the propositions advanced in Chapter 1. In the same way, **Chapter Six** focuses on negotiations at the Ministerial level between 1999-2003, centring on the fate of the Doha Development Agenda, whilst **Chapter Seven** explores the sectoral 'Singapore Issues' relating to market access, investment and other issues and **Chapter Eight** provides an overall evaluation of the period 1999-2003. **Chapter Nine** returns to the propositions made at the end of the opening Chapter and reassesses them in the light of the evidence, taking an explicitly comparative approach to the two periods under discussion (1995-1999 and 1999-2003). This research design and chapter structure is intended to provide both an analytical 'spine' to the thesis and a detailed empirical study of key negotiation issues.

Key definitions

For the purpose of the thesis, 'roles' are taken to mean the "patterns of expected or appropriate behaviour and... the expectations or role prescriptions of other actors" (Elgström and Smith, 2006: 5) and 'responsibilities' as ways in which "a role is played" (ibid, page 6) in terms of accountabilities, capacities or tasks within role performance (Bovens, 1998: 25; Hamilton, 1978: 320).

'Interests' have been defined as "state and non-state actors...attempt(ing) to influence European public policy" (Fairbrass and Warleigh, 2002: 2). These may be within and without the European institutions, national governments, the European Parliament, regional and local authorities (Lord, 1998:45) or "social and regional interests" (Jeffery, 2002:343). In the context of the WTO, these interests may also be global, for example from groups of countries with specific interests in matters of agriculture or development.

'Politicization', meanwhile, is defined as "the addition or accretion of political meanings, understandings and consequences to particular areas and instruments of policy" (Smith, 1998: 83) and here will be applied to external trade.

Methodology and sources

In terms of methodology, there are a number of aspects of historical institutionalism that are useful for the analysis herein. The central methodology employed through the thesis is that of process tracing, which plays an important part in historical institutionalist analyses. The aim is to identify the factors, which affect the Commission's roles and responsibilities in external trade over time as decisions made at one time can influence policies and practices in a later time (Katznelson, 2003, Pierson, 1996, Smith, 2005).⁴ An early definition of process-tracing within political science was given by Alexander George and Timothy McKeown (1985), who suggested that its purpose was to "attempt to uncover what stimuli...actors attend to; the decision process that makes use of these stimuli to arrive at decisions; the actual behaviour that then occurs; the effect of various institutional arrangements on attention, processing, and behaviour; and the effect of other variables of interest on attention, processing, and behaviour" (p35 [also cited in Falleti, 2006:9]). It was felt that this methodology would allow the research question to be addressed as fully as possible in terms of the roles and responsibilities that had accrued to the Commission in external trade and how it had been affected by the changing patterns of interests and institutions over time and issue. The time factor is important in process tracing as it also helps to establish whether particular outcomes were "sensitive to the choices made by earlier decision makers" (Elman and Elman, 2001: 30) so whether the problems in Cancún arose because of problems at Doha, for example. In sum, the efforts made to identify the causal processes leading to particular outcomes, at a high and low political level, explains why process tracing is a key analytical technique here.

⁴ Also see S. Steinmo (2001) 'The New Institutionalism' in Clark, B and Foweraker, J (eds) The Encyclopedia of Political Thought, London Routledge reproduced at <http://stripe.colorado.edu/~steinmo/foweracker.pdf> accessed August 20th 2008

Other relevant aspects to historical institutionalism that need to be introduced are that institutions can “influence or constrain the behaviour of the actors who established them” (Pollack, 2004: 139) so, in these terms, member states may find themselves in conflict with the Commission, and each other, over what outcomes are expected at any given stage. Also, the choices made by those actors, often at “critical junctures”, (Capoccia and Kelemen, 2007: 341) can become “locked-in” (Pollack, *ibid*) insofar as such institutions either do not change, or change only slightly in response to changes in the environment in which they operate (Pierson, 2000). This “constraining power of context” (Schneiberg, 2007: 50) would suggest that the European Commission has the capacity to influence the Council of Ministers, perhaps strongly, but yet does not have the flexibility of manoeuvre, which would allow it to make structural changes even if the circumstances in which it was working changed significantly. Thus the level of continuity and change will be shown through the thesis.

Pollack (2005:363) explains that political structures incentivise actors “to perpetuate institutional and policy choices inherited from the past, even when the resulting outcomes are manifestly inefficient” a condition which is termed path dependence. In the case of the relationship between the European Commission and the Council of Ministers, this is partly due to the short-term view held by member states; most concerned with political support as expressed through the ballot box (Pierson, 1996) and becomes more obvious over time (Fernández, 2008).⁵ Moe (1990) further suggests that because of this short time horizon, it is in governments’ interests to ‘lock in’ institutional arrangements making them difficult to reverse when an opposition party comes into power (p125). In his seminal article on path dependence for the *American Political Science Review* in 2000, Paul Pierson notes that the costs of changing to different forms of organisation increase over time and that “issues of timing and sequence...reinforce divergent paths” (p251, also see Bennett and Elman, 2006:464). He suggests this is an “increasing returns process” (p252) in that the more steps that are taken down a particular path, the more likely that the path will continue to be followed and, in fact, that the path is “self-reinforcing” (p260) and change resistant. Therefore, he would argue that because the member states created the European infrastructure for

⁵ From A M Fernández (2008) ‘The EU Council Presidency Dilemma: An historical institutionalist interpretation’ *Cahier europeen* number 01/2008 Sciences Po at http://www.portedeurope.org/IMG/pdf/Cahier_N_012008_ANAMAR_090508.pdf accessed August 20th 2008

their own ends, and have shown commitment to it, it is most likely that they will continue to demonstrate their commitment to it. This is partly due to the “cost of exit” (p259) and partly because agreement for change needs to be wide ranging before it can be put in place such as the need for unanimity from Council (p262). Furthermore, he agrees that it is difficult to establish causal links between process and development and accepts the reality of “the complex mix of stability and bursts of change that characterize...political processes” (p265). This ‘mix’ is another factor that will be explored in the thesis.

The process tracing in the thesis is primarily qualitative, depending on close analysis of policy actions and policy positions. This was thought to be most useful in an effort to infer the motivations behind and the impact of a wide range of Commission activities, and to relate them to the ways in which key interests are arrayed. Process tracing, then, will build up a detailed narrative account of Commission positions and activities, their reception and subsequent adaptation by the Commission, and identify the positions occupied by key interests at each stage of the negotiation process under examination. This approach uses the Brittan and Lamy periods (1995-1999 and 1999-2003) as key foci in order to provide a comparative analysis of the Commission’s roles and responsibilities and their intersection with the changing pattern of interests across time periods and across types of negotiating context i.e. by dealing with, on the one hand, the ‘high political’ process of WTO Ministerials and on the other with the sectoral politics of negotiations about specific parts of the WTO agenda. It also enables the tracing of key changes within the WTO and its environment, particularly those related to the increasing politicisation of international trade negotiations. The assumption is that the growing politicisation of WTO negotiations would be felt on a cumulative but uneven basis. In other words, it should be possible to discern the growth of politicisation, and thus the intrusion of political interests into the Commission’s activities, across the two time periods studied. It should also be possible to see differences between the ‘high politics’ of Ministerials and the sectoral politics and *technocratic processes of more specialised negotiations including the extent to which these change over time or are path dependent and ‘locked in’ even where greater change in response to policy or process changes would be optimal.* This

would then impact on the Commission's aims, its interpretation of its mandate, its adaption of its roles and its tactics.

The sources used in preparation of this thesis fall into three broad categories. First, use has been made of the extensive secondary material on EU policy-making, on the role of the Commission, and on European external trade policies. Second, the investigation relies upon a very extensive exploration of a wide range of primary documentation from both EU and WTO sources, and on the use of newspaper and other materials, many of which are web-based. Finally, a number of semi-structured interviews were conducted both in Geneva and in Brussels as a means of confirming or enriching conclusions reached through the documentary analysis. The interviewees were generally selected on personal recommendation of my contact in the President's office in the European Commission and the questions asked were open ended and allowed exploration of the issues if this was thought to be desirable at the time. As the volume of primary documentary material is so great, and such a high proportion is available through web-based sources, footnotes have been used for websites and for newspaper articles as well as for Minutes of official meetings, which are accessed as Word documents from a central portal. These sources are listed in summary terms in the bibliography.

A note on terminology

There were several changes in terminology over the period covered by this thesis. The four changes that affect the thesis are outlined here. First, following the Maastricht Treaty (TEU) (1992), the European Communities (EC) became known as the European Union (EU). As the 'first pillar' of the Union, the European Community (EC) has the legal personality to sign WTO agreements; since this acts as the basis for the Commission's roles and responsibilities *vis-à-vis* the WTO, reference is made to the EC throughout except where other authors refer to it differently. Second, the Treaty of Amsterdam (1997) renumbered Articles in the Treaty of Rome so that Article 113 (and the Article 113 Committee), which pertains to trade policy, became Article 133. The thesis uses Article 113 when discussing issues occurring prior to 1997 and Article 133 for those that occurred thereafter. Third, although the numbering system for Directorate Generals (DGs) in the Commission was only removed in 1999, DG Trade is referred to as DG Trade throughout. Fourth, although COREPER I and COREPER II (the

Committee of the Deputy Permanent Representative and the Committee of Permanent Representatives respectively) are separate bodies and it is acknowledged that COREPER I is responsible for external trade, it is referred to throughout as 'COREPER'.

Note too that when 'the member state' interest is being discussed with reference to external trade, this is the General Affairs Council, except where other Council configurations are specifically mentioned (such as the European Council).⁶ Both forums provide a platform for domestic concerns to be expressed (Sherrington, 2002: 38).

⁶ Although this has been meeting as the General Affairs and External Relations Council (GAERC) since June 2002, separate meetings are held for each. Therefore, this thesis uses the term General Affairs Council (GAC) throughout (information sourced from http://www.consilium.europa.eu/cims3_fo/showPage.asp?id=388&lang=en accessed 25th April 2008).

CHAPTER ONE

The European Commission: a question of roles, responsibilities and interests

Introduction

Just as it was when Coombes was writing in 1970, it is still the case that the European Commission's roles and responsibilities are difficult to pin down in "any meaningful classification" (p 234). This is because, as Edwards and Spence (1997: 5) reveal, definitions of the Commission range from "a putative government of a United States of Europe at one extreme and (as) a traditional international secretariat at the other". In spite of this obvious difficulty, it is important to be able to define the Commission in a more useful way, for the purposes of this thesis, both in terms of Commission roles and responsibilities in a general sense, which will form the first part of this chapter, and then in terms of their roles and responsibilities as an actor in external trade, which will form the second part of the chapter.

The third part of the chapter, meanwhile, will look at the 'interests' and their intersection and interaction with the Commission's roles and responsibilities. These interests can be defined as fitting into three broad categories; the Commission (internal) interest, the Member State interest and the WTO interest. The capacity that each has for influencing the Commission's external trade function will then be examined and assessed. This section will show that the preferences of the interests are not stable – at certain times they are permissive and at others they are much more constraining. This links back to the research questions, set out in the Introduction, where it was suggested that the two external interests have become more constraining on the Commission over time, and this has been magnified by the increasing politicization of the external trade field. The concept of politicization will only be introduced here, as it will be explored in detail over subsequent chapters.

The chapter will conclude by reassessing the arguments put forward and by revisiting the four key research questions advanced in the thesis Introduction – about roles, responsibilities, interests and change. It will then translate these questions into propositions, which will form a broad framework for the investigation that follows and which will be explicitly reappraised in the thesis Conclusions.

The first part begins by identifying what has been said in the literature about the Commission's roles and responsibilities, in a broad sense, and then using these points to develop a comprehensive picture of what the Commission's roles and responsibilities are in external trade for the second part of the Chapter. The argument will not dwell on the Commission's basic legal functions (as the 'engine...of the Union' [Cini, 2002: 52] and as 'Guardian of the Treaties' [Hallstein, 1972:38, Docksey and Williams, 1997: 128, for example]) as such responsibilities, which were given to the Commission in the Treaty of Rome, have not been contested in the way that some of the less tightly defined roles and responsibilities have been. Similarly, the specifics of the Commission's role as external negotiator and representative will not be included in the first part of this chapter; because it is taken as a given bearing in mind it will be the sole subject of the second part of this chapter and is also the focus of the thesis as a whole.

The first step is to categorise the roles and responsibilities that the Commission has. Hayes-Renshaw and Wallace (1997: 178-9) draw attention to Rometsch and Wessels' (1994) accounts of the Commission-Council relationship. The latter asserted that four, very general, behavioural characteristics, that could be termed 'roles and responsibilities', in this instance, could be evidenced. Very concise explanations follow in brackets; the "technocracy" model (Commission as Expert), the "federal executive" model (Commission as Government), the "secretariat" model (Commission as Administrator) and the "promotional brokerage" model (Commission as Policy Entrepreneur/Coalition Builder).¹ Hayes-Renshaw and Wallace, in agreeing that these roles exist, also emphasise both their instability and their variance over policy issues and timescales (see also Cini, 2002: 55).

¹ for completeness here see also Elgström and Jonsson, 2000: 693 for their list of policy issues [following Lowi, 1972], Temple Lang, 2002: 333, Cameron, 1997: 100, Cini, 2002: 52, Spence, 2002:2 and Coombes, 1970: 235-241 I opine that these fit into the Rometsch and Wessels classification.

Helen Drake (2000: 55) summarizes the problems of definition thus: “The Commission...suffers from ‘multiple accountabilities’...‘identities’ ...and probably personalities”. This echoes the distinction made earlier between the different interests that the Commission has to satisfy, which is a distinction that will grow in importance in the second and third parts of the chapter. This description also emphasises the Commission’s “many faces as a result of its uneven institutional history and the complex nature of the Treaties that created it” (Fligstein and McNichol, 1998:5) which might be best explained by seeing the Commission as a “multi-organisation” (Cram, 1999: 49).

In the light of this, or maybe in spite of it, it is important to define a set of general roles and responsibilities, which apply to the Commission and, later, in analysis of the Commission’s external relations capacity, it will be appropriate to look at these roles and responsibilities in this specific context. To this end, this chapter will use Rometsch and Wessels’ four definitions in these two different ways.

General Roles and Responsibilities

The Commission as Expert

This model sees the Commission as a technocratic leader in the policy areas for which it has competence and using this expertise to shape the European agenda. Recounting the origins of the High Authority within the European Coal and Steel Community, Meynaud (1968:107) highlights:

“Iron and steel industry employers...stressed the danger of a technocratic power which could deprive Parliamentary assemblies and administrative authorities of their legal prerogatives”.

Monnet’s ambition for a technocracy-led Europe was not a secret, even if the way he developed his plans was; making sure that no details were given to the public until he was sure of French cabinet support and trade-offs had guaranteed that the project would not be

derailed by other politicians (Lindberg and Scheingold, 1970: 21- 2). The rationale for this secrecy was because Monnet did not believe that anyone outside the elites would appreciate what was being developed (Featherstone, 1994) although this tactic ultimately had the effect of creating “an ‘attitudinal gap’... between the general public and...the EU” (Hueglin, 1999: 255).

When it came to plans for how the new European Commission would look within the European Community infrastructure, again Monnet put his faith in the superiority of the technocratic approach (see Mazey, 2001: 36). He sought a Commission, which was as powerful as the High Authority had been, over an increased range of sectors, with only a minimal role played by the Council of Ministers and an even smaller part played by Parliament. Central to that was his belief that “intergovernmental cooperation had never led anywhere” (Monnet, 1978: 328) hence he wanted the Commission to dominate the Council “which would remain a kind of ‘sounding board’ or ‘ratification body’ without any major role of its own” (Rometsch and Wessels, 1994: 204).

In reality, though, the High Authority does not appear to have exercised a hegemonic role over the coal and steel sector; rather it “worked in harness...with the Council whose opinion it sought more often than was legally required” (Mayne, 1970: 234-5) possibly because integration could not take place without the agreement of the member state governments (Lindberg, 1963: 52). The High Authority, in other words, needed the Council’s political support in order for it to work effectively. This also meant that the EEC Treaty formalised this relationship and both Council and Parliament were made proportionally stronger in the Treaty of Rome than they had been under the Treaty of Paris. Furthermore, that it was called ‘The Commission’ rather than keeping the name ‘the High Authority’, and that the word ‘supranational’ was omitted in the Rome Treaty, had significance to its position in the new European institutional infrastructure (Robertson, 1973: 183 also Tugendhat, 1986: 72). Therefore, looking at what the Rome Treaty tried to achieve *vis-à-vis* the balance of the relationship between the Council and Commission, it would be reasonable to conclude that it indicated a political reining-in of any Monnet-like technocratic ambition, as well as curtailing any existing technocratic ideals of the High

Authority itself, which could be carried over into the new organisation. After all, if the Commission was to epitomise the continuation of such an approach, the level of involvement by the Council would (at most) have been kept to that set out formally in the Treaty of Paris. This might suggest that the member states were more permissive and enabling of the High Authority in the Treaty of Paris and became constraining on the new Commission under the Treaty of Rome and that this constraint had become more evident over time. Another example of the constraint was that the Commission became subject to Parliamentary oversight, which would be 'upgraded' from 1979 with an assembly elected by universal adult suffrage (Article 138:3, EEC Treaty).²

Although the Commission, then, is not a technocracy, it nevertheless exercises some level of policy leadership, specifically under the first pillar where it has a duty to put forward initiatives in order to promote a European rather than a national view. The extent to which it is able to exert this authority in the field of external trade will be tackled in the second part of this chapter; Bernard (2002: 228) suggests that although "the Commission may have a near-monopoly on the right of legislative initiative under the first pillar...it does not have full control over the legislative agenda". Similarly, conflict between the Council and the Commission may also demonstrate ambition in specific areas of responsibility. Meynaud (1968: 295) reveals that, after all, "the politician cannot dream of ejecting the technician from the government machine but the reverse is not true".

The Commission as Government

This model sees the Commission assuming attributes of a European 'government' allowing it to operate alongside Council and to take over from it in areas where it held substantive powers. Rometsch and Wessels (1994: 217) suggest that this potential outcome was a direct contradiction of the previous model, in that the Commission would "develop into the 'government', the head of which would be elected by and...responsible to the European

² Although this section in the Treaty sets out the intention that there should be universal adult suffrage for electing members of the European Parliament, this did not happen until 1979. According to the Action Committee for the United States of Europe, in their Joint Declaration of November 1959 (1969, p42) "the EP's Committee on universal suffrage expects that its first elections by universal suffrage will be possible in 1963". Hence, this was expected earlier.

Parliament". To contextualise this by using the Westminster model, the European Parliament would be the House of Commons, the Council would be the House of Lords, and the Commission would be the Cabinet, with the President of the Commission as Prime Minister or rather European President. This structure would reconfigure the relationship between the Parliament and the Commission as the most important in the European infrastructure, rather than that between the Council and Commission. Rometsch and Wessels suggest that this view was particularly important to the early federalists and this would seem to be supported considering the opinions of both Deniau (1967:30) and Haas (1968: 4) who advise that the ECSC could be "a European government in embryo" or "a quasi-federal government" respectively.³ It was Walter Hallstein's aim, as the first Commission President, to make the Commission into a 'government', which caused the Empty Chair Crisis, resulting in (amongst other things) an assurance within the Luxembourg Compromise that the Member States would retain authority within the European structure (Christiansen, 2001: 98).⁴

When they were writing, Rometsch and Wessels seemed to believe that this model was virtually redundant, except as a form of "yardstick" (p217) by which to measure the extent of integration. However, rightly or wrongly, this discussion has persisted. Helen Drake (2000: 152) noted that Prodi's use of the term 'government' appeared to be tolerated, alongside "the political and ethical accountabilities to the state and citizens that are characteristics of modern political executives".⁵ This suggests that the argument is evolving into a more sophisticated discussion over national sovereignty, in the face of increasing authority being ceded to the European level, and, specifically, into the first pillar. Such debate is rooted in discourses on, for example, European citizenship (Shaw, 1997, Wiener, 1998 and Bellamy and Warleigh, 2001) where rights, duties and obligations on the citizen as a European, rather than solely a national citizen, have been discussed, involving its virtues in providing an "ethical glue to enhance the stability of the European *condominio*"

³ Memedovic et al 1999: 10 say that the EU "is an incomplete state with the ultimate objective to acquire all the attributes of sovereignty" which also fits in well here

⁴ For further elaboration on the Luxembourg Compromise, as I have only sketched out the barest minimum here, see Nugent, 2001: 30-32

⁵ Although this statement by Prodi, according to Peterson (2002: 92) "provoked a backlash that lasted well into Prodi's term in office".

(Bellamy and Warleigh, 1998: 456). Even though Michael Newman (2001: 364) terms the outcome as “largely symbolic”, as citizenship was previously the domain of the member states it is, perhaps, not surprising that discussion has continued in this vein.

For the Commission to become a ‘European government’, when it was established by member states at least partly to fulfil national needs (Vilella, 1999:212), the European institutions would need to be able to encourage the emergence and solidarity of ‘Europeanness’, as the primary attachment for citizens in place of national loyalty.⁶ Were this to happen, it could be suggested that the European Union had turned into a nation state, not that it had superseded nation states (Canovan, 1996:119). Whether this could happen or not, and although it is an interesting argument it is somewhat tangential to the thesis; what is clear is that, although the European Commission may not be ‘a government’, neither is “the state...the omnipotent political sovereign” (Bernard, 2002: 234, also Hueglin, 1999: 253, Keohane, 2003: 116, van Ham, 2001: 130). The term is also equally applicable, however, to activities in particular portfolios so it can be said that the Commission “has some of the institutional attributes of a ‘government’ for trade policy purposes” (Smith, 2001:790). This confirms the currency of the issue and will be further explored in the second part of the chapter.

The Commission as Administrator

Although this model in its absolutist form sees the Commission as highly passive because it holds little independent power and has no authority beyond what is directly granted to it by Council, to suggest that the Commission is “like the secretariat of a typical international organisation” as does Michelmann (1978:12) is probably a little too critical (see Henig, 1980: 56) given its right of initiative in the first pillar (Rometsch and Wessels, 1996:220, Schmidt, 1999: 155). Even Andrew Moravcsik (1998: 161), although scathing about the Commission being viewed as having any independent authority beyond what is granted to it by Council, at least credits it as being able to “lock in agreements against defection by

⁶ see Lord 1998: 132, Shaw 1996, 1997, Eleftheriadis 1998 and other writers on the need for a European ‘demos’

foreign governments” which is not, one might suggest, solely an administrative function. A related issue is that of the nature of the Commission as ‘civil service’ (or bureaucracy), which will be looked at here.

Again, the definition of what constitutes such an animal is problematic. Peters (1995: 27) explains the dichotomy of bureaucracy thus:

“On the one hand, bureaucracy is seen as a Leviathan seeking to increase its powers and operating as an integrated, monstrous institution. On the other hand, bureaucracy is pictured as a court jester – a fumbling, bumbling collection of uncoordinated agencies that at best muddle through and at worst make absolute fools of themselves”.

He does not go on to say which view he would be closer to subscribing to so it can be assumed that the perception of bureaucracy is somewhat personal (also Gladden, 1956: 196). With this in mind, it is interesting that Mazey and Richardson (1995) suggest that the Commission is “both an adolescent and a promiscuous bureaucracy” (quoted in Richardson, 2002: 12) and Cram (1999: 44) agrees that the Commission can be “best understood as a bureaucracy with a mission” (also Smyrl, 1999: 97).

There are advantages for a civil service, in the main because of its stability compared with that of the legislature, it can ‘wait out’ for a prevailing climate that is more sympathetic to their proposals if the current one is not (Peters, 1995: 32) There is some evidence of the Commission taking advantage of this more permissive environment in discussions about trade competence in Amsterdam when, essentially, the bulk of their recommendations were simply carried over to Nice when the Council was more enabling (see Nicolaïdis and Meunier, 2002: 189). There is also a “reliance” (Peters, *ibid*) on the civil service to develop policy proposals although, in the EC, these proposals are then scrutinized by comitology committees to the extent that “def(ies) any notion that the Commission is an omnipotent and unaccountable bureaucracy” (Nugent, 2002:153).

The rationale behind the view of the Commission partly as a bureaucracy could be because as a “purposeful opportunist” (Cram, 1997:156) it will seek out ways to maximise its status (also Nugent and Saurugger, 2002: 345) including opportunities to evade the influence of national governments through its information advantages, long term planning ability and because it can play off differences between member states (Schmitt, 2000: 41).⁷ Pollack (1998:222) agrees that the Commission is able to predict the views of the principals, which enables it to change its own approach in response; a more proactive stance. An agent, like the Commission, cannot then be seen as wholly subordinate, or passive, even if the member states may choose to be more constraining – the Commission is able to exert its own influence through the policy process and can, with perhaps the right political environment, follow its own policy preferences.

It has subsequently been suggested that trying to isolate administrative functionality might risk obscuring the increasing level of administrative cooperation “in all phases of the policy cycle, from agenda setting over decision making to implementation of policies” (Curtin, 2007: 523). Administrative cooperation stretches over all policy areas and cannot be separated from other types of tasks, reiterating its importance not just as one of the Commission’s roles and responsibilities but also as a necessary aspect within other roles and responsibilities. The totality of the Commission’s behaviour as an agent, in this sense, could become important over the next chapters when the Commission’s roles and responsibilities in the WTO will be assessed.

The Commission as Policy Entrepreneur/Coalition Builder

This model sees the Commission as a broker and mediator of policy. In order to succeed in this role, it has to be able to negotiate and broker and put together package deals to gain support from Council. As was noted earlier, the Commission has the sole right of initiative, a “monopoly” (Lord, 1998: 27 also see De Gucht, 2003:165) perhaps, under the first pillar. It is not quite as simple as that as the Commission receives proposals for such initiatives

⁷ Echoed by Hooghe and Marks (2001: 10) who say that “The more hands there are on the steering wheel, the less control any driver will have”

from Council, the European Parliament, national parliaments, sub-national groups, lobby groups, international actors and others. The Commission is, then, a “clearinghouse, a springboard of ideas and...a first stage compromise of...many interests” (Commission official quoted in Hooghe and Marks, 2001: 148). As might be expected, these multilevel discussions at the policy instigating stage work both ways. For example, the Commission might be able to use informal discussions with Council members or COREPER (Keating, 1999: 445) to pressurise member states to support its own proposals or reveal the way other governments are working (Hull and Rhodes, 1977: 69). This could be considered as profiting from using “subterfuge” in developing policy networks (Heretier, 1999: 279), in terms of the Commission putting itself in a position to be able to mitigate the effects of any constraints by the Council and the other interests.

There is a view that the Commission President plays a particularly important role in any effort to build coalitions in order to further the Commission’s policy ambitions. This could be achieved by the President being able to “identify, persuade, cajole and, at times, threaten other key actors” (Endo, 1999: 37). The logical continuation of that argument would be that the Commission is most successful in exercising a brokerage function when its leadership is strong, such as when Jacques Delors was President from 1985 to 1995 (see Warleigh, 2002). There are two issues here; the first is the (macro) diplomatic function, which can undoubtedly be exercised most effectively by the Commissioners, if not the President or other strong “personalities” alone (Sidjanski, 2003: 79), and the wider issues of building coalitions at a micro level, which can be just as important.⁸

Coalition building is the responsibility of all ‘A’ grade officials in the Commission, and, of which, *personality would dictate that some are better at it than others (see also Bellier, 1997: 105, Stevens and Stevens, 2001: 143)*. A good example is the New Approach enabling products to be placed on the market in all member states if they are able to satisfy the minimum requirements set for each specific product.⁹ This began as a loose idea from the Industry Commissioner to his services but it was the services, which had to put flesh on

⁸ Sidjanski (2003: 79) says that “other personalities” besides the President who have “left their mark on Commission policy” are “Mansholt, Barre, Spinelli, Davignon and Brittan”

⁹ This applies to products coming under the New Approach (e.g. lifts, hot water boilers, toys)

those bones and make the New Approach concept broadly acceptable to the Member States.¹⁰ The system of comitology enables those who work in the Commission to meet influential representatives from all member states in order to promote ideas to them at a very early stage (Murphy, 2000:107) which may be why it could be said that the Commission is “geared towards promotional brokerage” (Bouwen, 2002: 379). The alleged watchdog role (see Smith, 1994:256) that committees have in the structure can, then, work both ways.

The need to consult with a range of people prior to putting a proposal on the table has led to accusations that the Commission is practicing “a kind of extreme consensus democracy” (Lord, 1998: 78). This is not much of a surprise considering the need for large majorities in Council before proposals are accepted (officially under QMV for the first pillar, but normally through consensus,) which results, according to game theorists, in the need to first build a ‘winning coalition’ (Axelrod, 1970, Riker, 1962 as detailed in de Swaan, 1973).¹¹ Helen Wallace (2000: 59) concludes that “the development and sustainability of European policies require the satisfaction of multiple interests” which can be interpreted as an acknowledgement that the interests have to be satisfied in the end, whether they are enabling or not, under both QMV and unanimity. This has been the case from the earliest days of the Commission.¹²

Mediation is particularly important when there are a lot of people around the table with divergent views and vested interests. Hayes-Renshaw and Wallace (1997: 188) point out “part of the Commission’s ‘street credibility’ and ability to win confidence from its interlocutors in the Council depends on its capacity to stitch agreements together”.¹³ This is important when there is disagreement within the Council and may result in the Commission

¹⁰ It was actually the responsibility of a relatively low level British *fonctionnaire* in the Industry DG, Jacques McMillan. He also wrote the Council Resolution of 7th May 1985 (see Vincenzi, 1996: 206 for the full text)

¹¹ Most policy is decided by consensus whether it should officially be by QMV or unanimity as the Commission noted in the White Paper on Governance, 2001. This disputes Shore’s observation (2001:210) that “decision-making in the Council...has moved dramatically from the rule of unanimity to that of QMV”. Also see Hayes-Renshaw et al, 2006: 161

¹² See PEP, 1968: 173 on the preliminary “far reaching discussions” held by the Commission before policy proposals are put forward.

¹³ Supported by interviewees 2, 4, 5 and 9

putting together 'package deals' (see Chapter Two where the process of finalising the Uruguay Round accords is explained).

Concluding Remarks

It has been shown above that the Commission demonstrates many types of roles and responsibilities. Even though, when we first look at the headings for each section, we may believe (as Rometsch and Wessels seemed to believe) that the roles and responsibilities identified are mutually exclusive, instead they can be evidenced, not according to the different theoretical perspectives applied to them, but according to the different activities the Commission carries out and/or according to the timeline of a specific task. Thus, it has provided evidence of the sheer complexity of the Commission's roles and responsibilities. The implications of this complexity will be subject to further analysis.

This section has only barely introduced the importance of the interests. These interests, as well as the Commission's roles and responsibilities, change over time and can be enabling or constraining depending on the issue. This will become more important both in the next section when the Commission's roles and responsibilities in external trade will be considered, and in the final section where the interests are explicitly addressed.

Roles and Responsibilities in External Trade

Introduction

Here the Chapter will look at the above roles and responsibilities as they apply specifically to external trade in order to define the Commission's external function as the 'single voice' of Europe (see, for example, Meunier and Nicolaïdis, 1999). As noted earlier, the roles and responsibilities identified by Rometsch and Wessels in 1994 (i.e. the Commission as Expert, the Commission as Government, the Commission as Administrator and the Commission as Policy Instigator/Entrepreneur and Coalition Builder) will herein be used to define the functions within the external trade portfolio.

The Treaty of Rome, creating the European Economic Community, signed in 1957, gave a “pivotal function” (Smith, 1994: 249) to the European Commission for developing legislation, supervising implementation and acting on behalf of the member states in external trade negotiations (Nugent, 2001: 26). There were two main reasons why trade was considered so important by the Six for inclusion in the Rome Treaty. The first was that trade policy would be the main instrument of foreign policy and the other was that member states thought that they could achieve more by acting collectively in trade than they would individually.¹⁴ This was partly because of the potential size of the market (Meunier, 2000: 103, 2007:5) which would allow the Community to exert greater influence on their largest trading partners, specifically the USA and possibly Japan (Ginsberg, 2001: 253, Bergsten, 2000: 53, Meunier, 2007:5). At the same time, the new, larger market would be protected from national interests allowing for greater liberalisation (Meunier and Nicolaïdis, 1999: 480). Because Article XXIV of the GATT Agreement treated the customs union “as though it were a (single) contracting party”, trade was made a Community competence. This made the Commission into a neutral arbiter, steering a course between the needs and wants of each member state and a negotiator, in order that the Community could be seen to speak with one voice (Smith, 1996: 248).

Where the Commission has these roles and responsibilities, and what these mean in practice, will be the subject of this section. Once again, this will emphasize the importance of the Commission within the external trade function. At the same time, it will highlight the extent to which the three categories of interests (the internal Commission interest, the Council and the WTO), that were mentioned earlier, have contested it. This will confirm the assumption, as set out in the introduction, that the Commission has to satisfy the often-differing wants and needs of those interests and that this can prove particularly difficult.

¹⁴ See, for one example, Memedovic et al 1999 who suggest that the EC did this in order to exercise “economic hegemony” (p12)

The Commission as Expert

The Commission has certain duties regarding the provision of expertise in external trade negotiations. *There are, of course, many stages in negotiations, which will be detailed in subsequent chapters, but the first stage is that the Commission drafts proposals for negotiations and submits them to Council (see Murphy, 1990: 118).*

One of Andrew Moravcsik's arguments is that the impetus for proposals under the first pillar would emanate from the Council and the Commission would be "reactive" (1998: 616,621) in accepting them. However, when the Council does suggest initiatives, they can be nebulous (Cloutier, 1999: 180) and the Commission then needs to expand them into something more meaningful. Although the Commission may have the right of initiative under the first pillar, it does not have the right to set the legislative agenda (Bernard, 2002) so the question is on the extent of the authority that the Commission has to act as an expert in the field of external trade.

The Commission has the basis for its authority to provide expertise in external trade set out in the Treaty of Rome. Arguably the most important section is Article 229 which says, "It shall be for the Commission to ensure the maintenance of all appropriate relations with...the GATT". As part of this ceded authority, the Commission also has the responsibility to negotiate (Stevens and Stevens, 2001: 142) and, even though the Member States are in attendance, in their own rights, it is the Commission who participates in discussions and who exercises voting rights (see Macleod et al, 1996: 180). Furthermore, although the obligation to negotiate is Treaty-based, the ways and means to negotiate are matters for the Commission to decide (Somerset, 2002: 58).

The Commission is able to act as an expert because there is no other institution that is capable of so doing. Parliament does not have any authority in negotiating trade agreements (see Nugent, 1999: 445) and with its multi-party character and multi-sited meetings it would be a challenge for it to do so even if it was. Similarly, the Council would have problems balancing the different national perspectives of its Members (ibid) and

although there have been discussions on the merits of setting up an independent trade agency, it seems doubtful that it would be seen as a credible negotiator by internal and external countries.¹⁵ It also seems unlikely that it would be able (structurally) to incorporate the broad base of knowledge, which would enable it to cope with the “many multilateral agreements being negotiated separately” at each Ministerial (Landau, 2000:12). Finally, the Council would have to be sure that this would not sacrifice the knowledge, breadth and depth of experience and political acumen that the Commission has.

This does not mean to say that the Commission’s roles and responsibilities in external trade are uncontested. Council has claimed that the Commission lacks competence to negotiate in certain trade areas in spite of Commission arguments, since the Uruguay Round, that its expertise should be extended.¹⁶ National governments also seek to retain the national veto, such as in the cultural sphere on audio-visual agreements, (see Collins, 1997: 329-355, van Ham, 2001: 81-85). Furthermore, individual Member States feel they have a right to negotiate with third countries in areas such as civil aviation (for example) (Woolcock, 1997: 232) rather than simply allow the Commission to use its expertise in order to develop Europe-wide agreements, although this may now be changing (Meunier, 2005: 145). As well as Council, Parliament has complained that it too should have more of a say on trade matters (see Duff, 2001) although this has yet to be forthcoming.

Finally, the Commission’s expertise has also come under fire as part of the general global backlash against the multilateral trading system, epitomised by the WTO. It maybe that the Commission has been targeted specifically because it is seen as the “voice” of Europe within the widened agenda which now “touches upon areas that are arguably part of the domestic social fabric” (Nicolaidis and Meunier, 2002: 174). This contestation is not only on the part of the member states but also the wider global interest such as NGOs rallying around the WTO and affecting its own policy preferences (O’Brien et al, 2000: 212) and, in turn, affecting the EU’s policy preferences (Winters, 2001: 28).

¹⁵ See Christiansen 1996: 90 and the European Commission’s White Paper on Governance 2001 where the Commission acknowledged the need for further autonomous agencies

¹⁶ This can be tracked from its appeal to the ECJ for its Opinion on competence after the Uruguay Round, its proposals for changing Article 113/133 in Amsterdam and Nice and the 2001 White Paper on Governance

The Commission as Government

The Commission has a number of functions in external trade that are completely independent of the Council, for example, import relief, competition and diplomatic representation (Featherstone and Ginsberg, 1996: 79, Macleod et al, 1996: 166). This latter diplomatic representation function “flow(s) from the Commission’s own powers to organize its services as seems most appropriate to it as an institution” (Macleod et al, 1996: 55). This was particularly helpful to the Commission and the member states in the Uruguay Round as the insider knowledge garnered by the diplomatic representations allowed the Commission to develop proposals they knew member states would consider (Taylor, 1983: 136-7). The Commission also has permanent representations in many international organisations, which indicate the importance it places on its external role (Macleod et al 1996: 225) and this level of supporting infrastructure puts it, again, on a par with member states.

Another governmental function exercised by the Commission is that of the “voice” of the Union within the WTO. It could be argued that in the WTO it “exercises authority at a higher level...(and) ...operates on a larger scale than the sovereign authorities” (Vollaard 2001: 98) as the member states are not free to speak where competence rests with the Commission (see the introduction to this section above). This suggestion of “de-territorialisation of political authority in the EU”, the title of Vollaard’s chapter, is an indication of the growing responsibilities that the Commission has, at least in first pillar issues and specifically when their responsibilities have an external dimension. However, the Commission’s position is contested by wider arguments about legitimacy and accountability; Susan Strange suggested that the lack of national control in the European structure created “a yawning hole of non-authority, ungovernance it might be called” (2003: 154). Another term used to describe the lack of national involvement is the “‘democratic disconnect’ in recognition of the increasingly attenuated nature of direct national control and oversight” (Lindseth 2002: 151), which also fits with this argument.

The attempt to rationalise the duality of governance, between the member states and the European institutions, has been embodied in the principle of 'subsidiarity', elaborated in the Maastricht Treaty (TEU).¹⁷ This was introduced to satisfy vehemently disparate demands, which is best indicated by both federalists and intergovernmentalists claiming it as a positive step forward. The general concept is that issues would only be dealt with at the European level when they could not be tackled at a more intermediate, local level (Peterson, 1994: 117). The vague way in which it was mentioned in the TEU (Van Kersbergen and Verbeek, 1994: 216) suggests that it was an effort to develop an ambitious consensus to reject federalism, ensure the primacy of the member state interest yet adopting some measure of 'political union'.¹⁸ One problem with the concept of subsidiarity is that the TEU mentions it in two different ways (Warleigh, 2003: 64) – firstly as a "substantive issue" which sets out that decisions must be made as close as possible to the citizen and then as a "procedural issue", to set out where the Community should and should not have a role.¹⁹ To add more complexity, the importance of the principle as it related to the citizen did not appear in the European Council's Edinburgh Declaration of 1992 where subsidiarity was mentioned solely as a means of regulating power between the member states and the European institutions (Warleigh, *ibid* p65). This debate has continued since the definition of the term has remained unchanged in subsequent Treaty revisions. Therefore, although subsidiarity may have set out to draw a solid line between the responsibilities of the member states and the European institutions, because of its deliberate and necessary vagaries, it has failed to do so. This may be a contributory factor as to why the issue of Commission competence in external relations is still unresolved, because sovereignty transfers are especially political when considered in the context of global trade (Nicolaidis and Meunier, 2002: 174).²⁰

¹⁷ Which was known, in DG Industry/Enterprise after the TEU, as 'the S word' no doubt parodying John Major's insistence that no reference was made in the Maastricht Treaty to the federal nature of the EU, terming federalism 'the F word' (see Nicoll and Salmon 1994: 259)

¹⁸ Van Kersbergen and Verbeek (1994: 216) suggest these three aspects constituted "the seemingly insoluble 'trilemma'" hence why subsidiarity was mentioned in the TEU.

¹⁹ Andrew Duff (1993: 10) suggests that one of the main problems with the TEU was its "failure to set out clearly the distribution of power between the supranational and the national levels of government"

²⁰ At least with respect to cultural and audiovisual, education, social and human health services, transport and non-commercial aspects of intellectual property, which are all subject to 'mixed competence' rather than sole Commission competence (see Neunreither 2000: 194). This was also echoed by Interviewee 9 that although

It has been shown that the Commission's 'government-like' roles and responsibilities that it demonstrates in external trade have not been uncontested. Furthermore, within its external trade responsibilities, efforts have been made (according to Meunier and Nicolaïdes, 1999:477) to 'rollback' the competence of the Commission. This will be looked at in the next section and elaborated upon in Chapter Two.

The Commission as Administrator

The entry in the first part of this chapter showed that it was difficult to pinpoint the administration functions of the European Commission as they are bundled up within policy responsibilities and capabilities. Nevertheless, these functions could be said to be most obvious in the implementation area, where "most front line implementation is undertaken by appropriate agencies in the member states" (Nugent, 2001: 312) with the Commission merely checking that this has been done in the correct manner, as far as possible, with the proviso that resource constraints meant that this might not be as detailed or efficient as the Commission might wish it to be (ibid).

The Commission's roles and responsibilities in anti-dumping activities could also be said to be administrative in nature, at least at first glance. Formally, the Commission's primary activity in this area is to carry out what is essentially a desk review to determine whether there has been any 'injury' to producers in terms of the amount of goods that have been either subsidized, the price being charged for the goods and the likely impact on the relevant European industry (Cunnane and Stanbrook, 1983: 64-6). Dumping can be identified either when the price charged for the export is less than the price charged in the market of manufacture or when the price charged can be shown to be lower than the production price (Davenport, 1989: 1). In anti-dumping issues there is no legal authority invested in the Commission to change or enforce the relevant legislation or to "impose definitive anti-dumping duties" (Stanbrook, 1980: 40). In addition, the Commission is also usually obliged to consult with an Advisory Committee, with representatives from all

he represented his country in the Article 133 Committee, he did not deal with issues that were 'mixed competence'.

member states, through the investigative process (*ibid*). Informally, however, this seems much more of a way to allow the Commission “to pursue protection under the acceptable guise of ‘fair play’ or ‘levelling the playing field’” (Davenport, 1989: 23) and, secondly, to maximise the Commission’s scope for manoeuvre. It would appear that the Commission has sought to increase its authority by using its ability to agree pricing strategies with exporters who are identified as dumping goods “as an alternative to the imposition of duties (from which) part of the economic rent...then goes to the exporter in the shape of higher revenue at the expense of the EU consumer”(Woolcock, 2000: 391).²¹ By using this method, the Commission can minimize the role of the Council (Winters, 2001: 27).

It would not seem to suit anyone if the Commission was ‘just’ an administrator in anti-dumping matters. Anti dumping is a European issue, not just a national issue; goods come on to the European market, not just the national market (this is a principle of the Single European Act of July 1987 [when it came into force]) so it makes commercial, as well as logistical, sense for it to be dealt with at the European level. Furthermore, this builds on the Commission’s reputation as the ‘single voice’ for trade matters. Nevertheless, that the Commission has this responsibility in anti-dumping is because it has achieved that role, rather than been granted that role, and there are questions, if not of efficiency and effectiveness, then about legitimacy. This echoes Susan Strange’s argument highlighted in the previous section as to the extent of ‘ungovernance’ within the European structure.

If Meunier and Nicolaïdis (1999:477) are correct in their assumption that Council actively sought to roll back the competence of the Commission in the Uruguay Round of GATT , there should be evidence of it becoming more administrative and less able to follow its own preferences. This contention will be assessed through the thesis. It is possible that the Council might wish to see the Commission’s authority reduced and further analysis of this point will take place in the following chapters.

²¹ For an excellent case study on the anti-dumping procedure, as applied to piezo-electric quartz watches, see Völker and Steenbergen, 1985: 236-252.

The Commission as Policy Entrepreneur/Coalition Builder

The Commission has an advantage in developing coalitions because of its “relative cohesion” *vis-à-vis* the Council and Parliament (Nugent, 1995: 611-2). Policy proposals from the Commission, setting out the ‘European view’ and their vision for progress, are developed through many stages of discussion and negotiation. This takes place through the College of Commissioners and their services and, by the time they reach the Council table, proposals should be “well designed technically with both the common goals of all the members and the specific needs or problems of individual countries” (Lindberg and Scheingold, 1970: 93). It would be difficult, then, for Council to dismiss any suggested resolution from the Commission entirely except on grounds of individual national interest.²² This is an important reason why the Commission has this policy initiator function i.e. “it eliminates the inconvenience of the Council being forced to choose between rival texts submitted by member states on the basis of their opposing positions” (Lister, 1996: 99). Because of the Commission’s position, it can develop proposals on the basis of what it thinks the member states will accept (as mentioned in the ‘government’ roles and responsibilities) and can choose when best to “take advantage” of particular situations such as changes in industry practices or growing public concerns about particular issues (Deeken, 1993: 2 also George, 1995)

In the external trade context the Commission must satisfy both the member state and the wider global interest in order to be able to make forward progress. As far as satisfying the member states is concerned, the next chapter will detail the events that happened at the end of the Uruguay Round, where the Commission was instrumental in getting Council agreement to finalize the Round in spite of, initially, strong disagreement from France and Portugal (Devuyst, 1995: 459, Wiener, 1995: 226). As well as achieving this level of consensus, Woolcock (1993: 556) points out that the Commission was also able to get the negotiating mandate changed as although in the original mandate, the European

²² This was supported by interviewees 1,2,4,5,6,7 & 9. Interviewee 5 commented that it would be unlikely that countries would show their hands at the outset but would try to find other countries who shared their perspective. Interviewee 6 said it was rare for the Commission to directly tackle a country in this way without discussion first.

Commission (at Uruguay) was instructed to oppose the setting up of a dispute resolution mechanism with more teeth “by 1991...the European Commission had endorsed Section 5 of the draft final act of the Uruguay Round which contains just that”. Global aspects will be considered within the narrative chapters, where it will become clear that consensus building is imperative although difficult to achieve.

Within the GATT, there were a number of examples of the Commission acting as an entrepreneur. The first example, from the Dillon Round, was where the Commission unilaterally agreed not to pursue reciprocity in trading relations with the least developed countries (Dam, 1970: 238). Later, the Tokyo Round relied on the Commission’s entrepreneurship because it was conducted on the basis of bilateral deals between the US and EC negotiators, which were then sold on to the Japanese and “other industrial nations” once they had been agreed (McDonald, 2000: 207). Within the WTO, although this particular example is tangential to the thesis, it is also instructive to note that in the Singapore Ministerial of the WTO in 1996, the Commission sought an agreement on environmental issues. Although its initiative was unsuccessful, the Commission simply transferred the work to the Hague, which eventually resulted in the Basle Convention on Transboundary Movements of Hazardous Wastes and Their Disposal (Oxley, 2002: 81). This demonstrates the Commission’s wider ability to push forward its policy preferences, even without building a supportive coalition in the WTO. In 1997, the Commission “played a major role in pushing through the...*Information Technology Agreement*” in the WTO (Moussis, 2000: 375), which will be discussed in more depth in a future chapter as a case study, and, that same year, attracted a supporting coalition within the WTO for a Millennium Round (Brittan, 2002, van den Hoven, 2004).

Interests

Introduction

The issue of interests is important in terms of the effects that their positions and preferences have on the Commission (see earlier sections). As the WTO system and Council voting works on consensus, and through the fact that the WTO “reflects...existing power structures” (Hoefnagels, 1981: 35) the EC as a whole is able to dictate priorities as the joint ‘superpower’ (van den Hoven, 2004: 258) within the WTO alongside the US. However, although the member states may retain collective overall control, provided they can agree a common line, the interests can also enable or constrain the member states’ individually and collectively as well as the Commission’s policy choices. These enabling or restraining influences are, in the same way as roles and responsibilities are, unstable and vary over policy issues, timescales and even through the involvement of different personalities (see Hayes Renshaw and Wallace, 1997: 178-9, Jørgensen and Phillips, 2002:37 and Johnstone, 2002:134). It could be concluded that it was the importance of these interests, which shaped Europe’s foreign policy exercised through the Common Commercial Policy (CCP) (Young, 2002:21).

The political environment (Nugent, 1997: 17) or the “negotiating context” (Meunier, 2000: 104) that prevails at a given time also affects the views of the interests. Where there is less politicization and an enabling environment, it is likely that the Commission is going to be less controlled by Council and more able to pursue its policy preferences (Dalton and Eichenberg, 1998: 251). Where the environment is more politicized, or there is less support, perhaps precipitated by economic problems, (see Hindley and Nicolaïdis, 1983: 3) it is the converse – the Commission is likely to have fewer opportunities to act as a policy entrepreneur and is less likely to be able to build a supportive coalition. On the global stage, if world economic conditions are unfavourable (oil price increase, recession, etc.), states are likely to prefer unilateral rather than multilateral arrangements (Wiener 1995: 220) making it more difficult for the Commission to get broad agreement from the member states. This tension between the three interests underpins what Smith (2001: 789) terms the

“coherence and fragmentation” of external trade policy with the “fluctuating balance of views” (ibid) of the interests being enabling or constraining on the Commission as agent. This, according to Drake (2000: 152) has been more noticeable “since Delors’ departure” suggesting that the politicization of the trade field has increased since 1995, adversely affected by the lack of a strong politician at the helm (Endo, 1999).

The impact of the interests cross-cuts the roles and responsibilities; they do not stand alone because their interaction is “part of the overall negotiation process in multi-actor settings” (van den Hoven, 2004: 258) and, furthermore, the relationships between them form “a continuous bargaining process that constantly reinterprets and reshapes (itself) thus possibly giving birth to policy changes” (Fouilleux, 2004: 236) making it important to understand how discussions and relationships manifest themselves at any particular moment in time.

The Commission interest

Suggesting that the Commission is a unitary actor is a misnomer; it is, as noted earlier, a ‘multi-organisation’ (Cram, 1999:49). Because of portfolio allocation, there are a number of parts of the Commission, with an interest in trade Rounds, which need to work together in order to develop a draft mandate for negotiations, on behalf of the Council. This is particularly important since the scope of those Rounds widened to include issues other than tariffs i.e. from the end of the Dillon Round in 1962 (Bretherton and Vogler, 2000:168, Curzon and Curzon, 1970:70). Although Directorates General I (External Relations) and VI (Agriculture) had the co-ordinating and negotiating roles, DG III (Industry), for one, also had a great deal of interest and technical expertise in certain of the issues covered (e.g. sectoral issues, technical barriers and trade harmonization) as did DG VIII (Development), at least as far as relations between the EC and the developing countries were concerned.

To arrive at agreement and a ‘Commission view’, there are a number of often-difficult internal meetings, from Commissioner to general administrative level, first in each DG, or maybe even each Unit within a DG, with an interest and then in a larger meeting chaired by

the appropriate Director in DG External Relations (Nugent, 2001: 310-311, Cram, 1997: 157, interviewees 1 & 4). The situation is complicated by the differences of opinion, not just on policy, but in terms of different perspectives, which might be “political, national, religious, professional, linguistic and administrative” in nature (Cini, 1997:75) with the associated risk of “institutional friction...policy inconsistency and policy failure”(ibid, p86, also Metcalfe, 2000:821 on Commission ‘fragmentation’). This is a further illustration of the Commission’s nature as a ‘multi-organisation’ (Cram, 1999).

In terms of external trade negotiations in the WTO, it is the Trade Commissioner who is the “negotiator..arbitrator (and) *defacto* leader of the policy process” (Baldwin, 2006: 938, also Dür and Zimmerman, 2007: 773). In order to deal with the evolving perspectives of the interests, within trade Rounds, the Trade Commissioner is the person who must “reinterpret” the mandate in order to make progress risking disapproval from other parts of the Commission, from the Council or from the WTO (Woolcock, 2003: 206).

The member state interest

The way the member state interests are articulated is somewhat complex in the external trade arena and, for this reason, they shall be explored in detail here.

The Treaty of Rome, as a document creating a Customs Union between the member states, defined the basis upon which the Commission would negotiate on behalf of the Community.²³ This was elucidated in Article 110, which committed the Community to “contribute, in the common interest, to the harmonious development of world trade, the progressive abolition of restrictions on international trade and the lowering of customs barriers”. Articles 113-114, meanwhile, set out how this would be achieved, what roles and responsibilities the Commission had to facilitate trade agreements and how the Council of Ministers would exert control over the process, mainly through the development and approval of a negotiating mandate. The methodology outlined in the Treaty of Rome remains practically unchanged to date.

²³ From ‘External Trade: Introduction’ at <http://europa.eu/scadplus/leg/en/lvb/r11000.htm> accessed 30th August 2007

In accordance with the Treaty, it is the responsibility of the Commission to alert the Council to multilateral trade negotiations and it is also their responsibility to develop a draft mandate for discussion by the Council; the process for which was discussed earlier (Heidensohn, 1995:154). Once this has been agreed, the Commission is sent away to begin negotiations. During the negotiation process, the Article 113 Committee is essentially the eyes and ears of the Member States (Smith, 1994:256).²⁴ It has a two way communication loop to ensure that the Commission is kept abreast of Council views on each aspect of the draft mandate (Houben, 1999:300). Although the 113 Committee itself is a fairly recent construct, dating from 1970, earlier groupings, dating from 1959, performed much the same function (Lewis, 2000:277). The previous, and identical, incarnation of the Article 113 Committee, the Article 111 Committee, was established for the Kennedy Round in 1964 (Winham, 1986: 318) and it metamorphosized into the 113 Committee for the Tokyo Round in 1973. Certain authors (e.g. Elsig, 2002: 12, Peterson and Bomberg, 1999) have suggested that the Committee is confrontational. However, representatives on the Committee get to know each other very well, as membership is relatively constant, so it seems more the case that although there may be some initial scepticism, it tends to “work(s) with rather than against the Commission indicating to the latter what is and what is not likely to be accepted by Ministers” (Nugent, 2001: 308 also Hayes, 1993 and Somerset, 2002, generally supported by interviewees 5, 7 & 9). Although it might limit the extent to which the Commission might want to pursue its own preferences, it does legitimise the Commission’s negotiating stance, as approval by the 113 Committee often equals approval by the Council, mainly because the members of this Committee are the trade specialists from the member states which is not true of the personnel in the other groupings (Dinan, 1999:485).²⁵ There is also scope for the Commission to discuss issues informally both within and outside that forum in order to resolve disputes, even if the full committee is not officially in session (Hayes, 1993:131 also Brittan, 2000).

²⁴ As explained in the Introduction, Article numbering was changed in the Amsterdam Treaty and the Committee renamed the Article 133 Committee. Because the focus here is on the Committee under GATT I have retained its ‘old’ name.

²⁵ Although they may have briefings from trade experts; perhaps even from the 113 Committee in their national roles.

Once the Article 113 Committee has agreed the draft position, it is submitted for scrutiny by COREPER, the Committee of Permanent Representatives (i.e. the representations of the member states in Brussels), which has been responsible for preparing agendas for Council since 1958 (Lewis, 2002: 285). It is particularly important in the structure since it acts to create a “bottlenecking-effect” (Lewis, 2000: 283, also Freestone and Davidson, 1988:86) for the Council of Ministers. Items for the Council agenda first have to be passed through either COREPER II (the Committee of the Permanent Representatives), which deals with GATT/WTO issues) or COREPER I (the Committee of the Deputy Permanent Representatives) (Bostock, 2002:232). Although, officially, there is no difference between the two, Roy Jenkins an ex-President of the Commission in his memoirs talks about “...the junior COREPER” (1989: 43) (also Sherrington, 2000: 28).

When COREPER was established, there were concerns that it would become an Executive institution in its own right, thus threatening the roles and responsibilities of the Commission (Lindberg, 1963) and it has been suggested subsequently that COREPER occasionally works against the Commission seeing it as some sort of competitor (Rometsch and Wessels, 1994). However, Roy Jenkins (1989: 212) wrote in a diary entry that, far from being a threat to the Commission, he found COREPER “bitty (and) lacking any leadership” suggesting that this is not always the case.²⁶ It appears likely that the influence of the Commission within the forum (as they are present at each meeting), and the usefulness of the Committee’s discussions, and no doubt their behaviour towards the Commission, depends upon the subjects being discussed.²⁷ It is worthwhile noting that decisions on certain arcane parts of trade policy made by the Article 113 Committee may not be revisited by COREPER. (see also Bostock, 2002: 232). In terms of working relationships within COREPER, it is seen as a mutually supportive forum and this must also include the relationships between the Permanent Representatives and the Commission officials that attend each meeting (Lewis, 2000:269-271).

²⁶Diary entry for 28th June 1978

²⁷ This was echoed by Interviewees 6 & 7.

It is the Council of Ministers which bears the responsibility for issuing the agreed negotiating mandate and ensuring that this is adhered to throughout the process. COREPER II members sit next to Ministers during their deliberations (Lewis, 2002:288) but the position, since the Treaty of Rome, is for the Council to decide (see, for example, Hine, 1985:94) even if they actually take decisions in only a small number of instances (Van Schendelen, 1996:544). In trade negotiations it is usually the General Affairs Council (GAC), consisting of the foreign ministers of each member state, which agrees a negotiating mandate on behalf of the Council. However, because of the stages that the negotiating mandate has been through before it arrives at Council, it is unlikely that discussion at this stage is substantive but rather concentrates on areas of particular political sensitivity as flagged up by COREPER (Somerset, 2002:65, Westlake, 1999:76).

Although, since January 1996, Common Commercial Policy decisions should be taken by qualified majority voting in accordance with the Treaty it has been noted that, in practice, Council makes decisions on the basis of consensus (Young, 2002: 24, Meunier, 2000: 107, also Haaland Matlary, 1998). It is possible that this reflects willingness on the part of the Commission to amend contentious proposals or because member states have felt able to discuss issues and agree them within that forum. Others have suggested that it is more because countries feel it unacceptable to proceed where even one member has a concern about the line taken (interviewee number 6, further explained by Henig 1980: 28). This suggests that there is an unofficial veto, which comes into play before issues might be discussed.

The WTO interest

The global interest, and the role it plays in informing the role of the Commission, is also important in this context. However, at this point, because of the multiplicity of interests that position themselves around the WTO, it is important to limit the categorization to cover only those that are articulated through the members, Secretariat and the Chairs of Committees rather than the associated NGOs.

The WTO can be defined as an example of global governance (Falk, 1999: 135, Held et al, 1999: 50, 85) responsible for a “universal public good” (Mendez, 1995: 39) i.e. global trade. Multilevel governance suggests that dealing with global issues means that there is a need to establish institutions in order to level the playing field and order rewards or sanctions in the case of non compliance (Ostrom, 1986 and North, 1990 quoted in Prakash and Hart, 2000:2).²⁸ It is an acknowledgement that “local, regional, national, transnational and international (levels)...collectively shape integration” (Holland 2002:241) and all these levels together can be envisioned as “a complex congeries of multilevel games, played on multilayered institutional playing fields above and across, as well as within, state boundaries” (Cerny, 2000: 118).

The purpose of multilateral institutions is to reduce transaction costs and minimize uncertainty (Pierson, 1998: 33). Furthermore, they “aggregate the preferences of actors into policies and...set the rules of conflict resolution through bargaining” (Kahler and Lake, 2003: 24) thus they are key to ensuring countries work together (Keohane and Nye, 2003: 386). The WTO Secretariat has certain roles, responsibilities and interests of its own. It is, like the Commission, not a unitary actor but a collective of 151 members (as of 18th January 2008) with the assistance of some 625 staff (as of 18th January 2008). Its decisions have to be taken by consensus although there is often complaint that certain parties, for example developing countries, have been excluded from the consensus-building process (Arai, 2000:62).

The WTO is important as an interest because the member states of the EC, although individual members in their own right, cannot (at least individually) control it (Holland, 2003, Winters, 2001, Lake, 2000, Busch, 2000, Brown, 2001, Farrands, 2003).²⁹ Not only can they not control it, but also their domestic policy choices are constrained (Sasse et al, 1997) or, at the very least, influenced (Goldstein, 1996) as a result of its existence and this is particularly difficult to challenge because of its consensus-based decision making

²⁸ also Morris 1998: 295 who opines that it is more a contractual than institutional arrangement, although the effect remains the same

²⁹ To the point to which certain authors (e.g. Casson, 1986: 57) have asked whether member states are even “viable” in a globalized economy.

(Jackson, 2000: 43, Qureshi, 1996: 6-7) and because of the rule base upon which it has been constructed. Not only national but also European policy choices are constrained, even from the beginning of the Union, particularly in development policy (Holland, 2002:11) but, at the same time, choices have also been enabled, perhaps “most dramatically...by supporting EU advocates of agricultural reform over the 1990’s” (Winters, 2001: 28). This influence on policy has been particularly marked in the agricultural field with post-Uruguay Round discussions on CAP reform “framed in terms of the WTO” (Coleman and Tangermann, 1999: 402, Fouilleux, 2004: 250). The possibility of future Rounds tackling agriculture in more depth was used as an incentive to change the CAP prior to enlargement (Akrill, 2000, Egdell and Thomson, 1999, Hennis, 2001). In addition, the WTO has been used to give Commission officials “more scope for policy entrepreneurship” (Skogstad, 2001: 487). In talking about the WTO and food safety policy, she says that where two types of negotiations are taking place (one which is politically sensitive and one which is “technical and ‘bureaucratic” (ibid), the Council tend to concentrate on the first, allowing the Commission free rein on the second.

The WTO, like the Council of Ministers, could be said to be a ‘fulcrum’ of interests (see Henig, 1980: 28 on the Council) with the Secretariat having to liaise between the members and between various civil groups such as women’s groups (O’Brien et al, 2000: 229) as NGOs neither have membership nor attendance rights in Ministerials. Furthermore, the WTO staff is proactively “involved in providing legal, economic and policy advice to individual delegations in Geneva” specifically in “developing approaches on particular issues” (Blackhurst, 2000: 42). They also produce papers, chair meetings and give speeches (ibid) as well as carrying out membership negotiations (Krueger, 2000: 402) and conducting trade policy reviews (Blackhurst, 2000: 42 and 2001: 535). In negotiations, their role has been noticeably different from ‘traditional’ secretariat functions – this was evidenced in the closing stages of the Uruguay Round where there was “strong personal leadership” by Peter Sutherland, the then Director General (Henderson, 2000: 112). It is likely that the role of the Secretariat will be increased in the future. After the Doha Ministerial the Commission commented that the WTO would be able to “play a fuller role in the pursuit of economic growth, employment and poverty reduction in global

governance”.³⁰ Since then, Pascal Lamy expressed the view that the role of the Director General should be enlarged and upgraded (2004:17); this issue may feature on the agenda of a future Round.

This section has shown the importance of the WTO as an interest in this context. Participating in the WTO has both constrained and enabled the Commission to make policy choices and, at the same time, the structure minimizes the possibilities of defection by one member state because of its rule-base. It is also, according to Russell (2001: 52) working in a “politically charged atmosphere” partially because globalisation “focus(es) on the losers” (Robertson, 2002:3) and has thus become “pejorative because it is so often defined...by reference to job losses, intrusions on sovereignty (and) corporate misdeeds” (ibid). This increasing politicization will be demonstrated in the following chapters.

Conclusions

This chapter has introduced many issues that will be recurring themes throughout this thesis. The overall theme that this chapter highlights is the complexity inherent in the roles and responsibilities that the Commission has in external trade and the interests that the Commission has to satisfy therein. This is summed up very well by van Ham (2001: 129) who comments that “the image of policy-making as an ordered and predictable operation is surely obsolete” instead it “offers an intricate web of multi-level, multi-arena and nested games determined by uncertainty and ambiguity”. With the involvement of the Commission, the Council, the Article 113 Committee and COREPER, the member states, the WTO Secretariat and the members of the WTO (as well as influence from pressure groups and business interests) this seems an extremely apt remark.

The administrative structure of the Commission was shown to be very similar to that which was put in place after the Treaty of Rome. The question will be brought up later as to whether this is adequate given its increased responsibilities and the growing complexity of

³⁰ From the External Trade FAQs page under ‘EU, WTO, Multilateral issues’ subheading at http://ec.europa.eu/trade/gentools/faqs_en.htm accessed 9th April 2008

the trade field. The multiplicity of points of view and the division of responsibilities, mean that it is often difficult to see where the Commission's authority begins and ends through the whole raft of issues where they have roles and responsibilities. This will be explored further within the case studies in Chapters Four and Five. The European Court of Justice, in its Chernobyl ruling of 70/88 (given in 1990), contained the principle that "each of the institutions must exercise its powers with due regard for the powers of the other institutions" (from Lenaerts and Verhoeven, 2002: 37) which had the potential to be a useful delineation of responsibilities within the European infrastructure - but what does this mean in practice when not only do relationships change over time, but there is no fixed structure (to date at least) to shape that interaction? Division of responsibilities solely on this basis might perhaps have been used to clear up outstanding questions on the competence issue, as it was the Commission, which had the treaty-given responsibility to 'speak for Europe' in external trade. Perhaps, if one included the national parliaments within the 'institutions', it could be argued that this ruling might negate the need for any subsidiarity clause.

There have been issues raised about sovereignty and on the division of competence between the Commission and Council within external trade, which are still not entirely resolved. This brings a focus on the possibility of fragmentation in the internal interest when politically sensitive issues are discussed. The difficulty in reaching agreement on such issues is not helped by the lack of a *demos* on the European level and national priorities may be shown to be paramount under certain circumstances.

The difficulty of arriving at a single conclusion on the extent of the Commission's agency was also introduced here. Although activities might appear to be predominately administrative, they may be much more a way of increasing policy capabilities. It was noted that the Commission had a number of weapons in its arsenal to enable it to pursue its policy preferences. It could either use 'personalities' to get its message across (Delors, Brittan or administrative personnel were all mentioned), it could exert leverage on the Council using information received from the WTO or other parties, it could build supportive coalitions and it was even able, perhaps through force of will, to get its

preferences on the agenda and/or to follow its preferences in spite of Member State wishes. Whether that would change because of the politicization of external trade is something that will be tracked through the rest of the thesis

Finally, the context in which the Commission exercises its roles and responsibilities is important given the extent that the interests intersect through them. They also interact with each other causing this “coherence and fragmentation” (Smith 2001: 789) of external trade policy. The interests, depending on the issue, the context and the timeframe could be either enabling or constraining on each other in a ‘multilayered game’ and this could have either positive or negative effects on any of them.

At this point, it is appropriate to revisit the four central research questions – about roles, responsibilities, interests and change - on which this thesis is based, and to put them in the form of positive propositions about what we would expect to find as we investigate the Commission’s role(s) in the GATT and the WTO. This will serve the function of providing a broad conceptual framework for the investigation, and will then be explicitly reappraised in the thesis Conclusions. In brief, the four key propositions can be stated as follows:

1. *Roles*: We would anticipate that within the GATT and the WTO, we would find traces of all four key Commission roles: expert, government, administrator, coalition-builder. Further, we would expect to find that the ‘mix’ of these roles would vary across levels of activity, across issues and across time, and that reconciling the roles would be a key aspect of the Commission’s ‘self-management’. This proposition brings into play a number of issues discussed in this chapter, including the nature of Commission agency and autonomy.
2. *Responsibilities*: In a study of the Commission’s role in the GATT and the WTO, we would expect to encounter questions relating to the Commission’s ability to carry out its responsibilities – in other words, to fulfil the functions entailed by the roles. As with the roles themselves, we would expect the Commission’s ability to fulfil its responsibilities to vary across levels of activity, issues areas and time. This proposition brings into play issues relating to the gap between role conception and performance, and thus the institutional,

political or personal constraints that may be encountered by Commission leaders in achieving their objectives.

3. *Interests:* We would expect interests to play a key part in shaping the Commission's combination of the roles discussed in this chapter, and equally to condition the extent to which the Commission is able to fulfil its responsibilities. Broadly stated, we can expect interests to be 'permissive', 'supportive' or 'constraining': the first when they allow the Commission considerable freedom of action but within a relatively undefined environment, the second when they are positively aligned with specific lines of Commission activity, and the third when they are negatively aligned with Commission activities. In all three cases, the combination of interests at three levels will be important: within the Commission, within the Council of Ministers representing the Member States, and within the GATT/WTO context, representing the external interest in progress through trade negotiations.

4. *Change:* Finally, we would expect the interaction of roles, responsibilities and interests to be linked to and conditioned by processes of change, both within and outside the Commission and the EC. In particular, we would expect changes in Commission structure and leadership, changes in the alignment of Member States and changes in the political context for GATT/WTO negotiations to be significant. More specifically still, we would anticipate changes in institutional structure and membership and changes in the level of politicisation around trade negotiations to play a key role in the capacity of the Commission to develop a stable mix of roles and responsibilities and to balance competing interests in the pursuit of its aims, and thus to link with issues such as innovation, path dependency and entrepreneurship.

With these propositions in mind, Chapter Two will assess the broad changes which took place both on an institutional level for the Commission over the period with which it was engaged with the GATT and then the WTO (including changes in their relationships with the Council, and whether those relationships were enabling or constraining and when and on which issues), the changing institutional structures of the GATT/WTO wherein the

Commission had to work and the increasingly politicized context of the external trade arena, with the aim of establishing a broad analysis that can be carried forward into the detailed study conducted in Chapters Three to Eight.

CHAPTER TWO

The European Commission in the GATT and the transition to WTO

Introduction

The purpose of this chapter is to look at the General Agreement on Tariffs and Trade (GATT) as a necessary prerequisite to the succeeding chapters. This establishes why external trade was made a Community competence and looks at the evolving roles and responsibilities of the European Commission within external trade as well as at their changing relationships with the interests. This Chapter also details what the shift to the WTO in 1996 meant to global trade and trade politicization and the impact this had on the Commission.

In order to assess the 'mix' of the Commission's roles and the contested nature of the responsibilities, the history of Community involvement will be described by looking at the behaviour and performance of the European Commission in GATT Rounds.¹ This will identify, first of all, the development of collective action through the actions of the European Commission within the negotiations, and, secondly, the evolution of the 'internal interest' in terms of the relationship between the Commission and the Council of Ministers. It will also track the strong, if not cohesive, external interest through this time set within a backdrop of change and increasing politicization. It is important to note at the outset that the European Parliament was still very much in its infancy, at least at the start of this period, and does not contribute as part of the European interest within this chapter.

This chapter will not only set the scene for the rest of the thesis but the thick description that it generates will facilitate comparison with future chapters in terms of tracking the evolving roles and responsibilities of the European Commission in this area, the dynamic nature of the interests and the growing politicization of the trade field.

¹ i.e. from the Dillon Round of 1960-1962 (the fifth Round of GATT talks) onwards

The GATT

Twenty-three countries signed the General Agreement on Tariffs and Trade (GATT), one of the Bretton Woods instruments (along with the International Monetary Fund and the World Bank) in 1947 accepting it as a binding agreement based on the three principles of “non discrimination, reciprocity and transparency” (Heidensohn, 1995: 154).

The GATT was never intended to be an international trade organisation in its own right (Jackson , 1990) but rather a constituent part of a much wider International Trade Organisation (ITO) (Hine, 1985: 38). For many reasons, however, the ITO negotiations failed and the GATT continued to be the most important regulator of world trade, until the creation of the World Trade Organisation (WTO) following the end of the Uruguay Round in 1994.² The GATT, as its name suggests, consists of a list of commitments on tariffs and common trade rules and sets out information about the organisation including how it would be administered, how negotiations would be facilitated and how disputes between the members (a.k.a. Contracting Parties) would be resolved (Allen, 1960).

The six member states of the European Coal and Steel Community (ECSC) had all signed the GATT Agreement at its inception. However, when the Six started discussions aimed at furthering their economic and political integration (Lindberg, 1963), during preparations for the Messina Conference in 1955, there may have been an opportunity to design a radically different trading infrastructure. The German government, though, demanded that EEC rules complied with GATT (Young, 2002) and accepting this principle meant that the Six would not be able to create a unique trading arrangement (Hine,1985, Ranieri and Sorenson, 1994).

² Not least because the US Congress failed to ratify it, concluding that the ITO was a threat to its sovereignty. Palmetier and Mavroidis (2006: 1) suggest that “The ITO was...too ambitious for the United States Congress and, perhaps with the advantage of hindsight, too ambitious by almost any reasonable standard”.

Even after accepting that there needed to be a degree of commonality in national trade policies, the member states continued to retain individual membership of GATT. Although the Community was treated as a single entity for negotiating purposes as per Article XXIV of the GATT Agreement (Haas, 1968: 297) the European Commission was not itself a Contracting Party to the Agreement. GATT had to be asked formally to accept the EC as a Customs Union and a Panel was convened for this purpose, as was normal practice. Although, at the time, it was not the case that the EC's arrangement covered "substantially all the trade" between them, the main criterion for acceptance as a Customs Union, because of the perceived political importance of this step, the EC was not only accepted but it received special dispensations allowing it to eliminate tariffs internally without needing to grant concessions to others (Heidensohn, 1995:172, Dell, 1963:111).

As was shown in the previous Chapter, the Treaty of Rome, as a document creating a Customs Union between the member states, defined the basis upon which the Commission would negotiate on behalf of the Community.³ Once the negotiating mandate is approved, it is returned to the Commission allowing them to begin negotiations on that basis. The Article 133 Committee must be periodically consulted during the process (Nugent, 1999), as it is the Commission's main contact point throughout (Murphy, 1990:118). Therefore, although there are a number of steps before the final negotiating mandate can be issued, the Commission is involved at every stage. In addition, the membership of all of these groups is relatively constant over time allowing for the development of solid personal relationships. The close involvement of the Commission with the member states, through all parts of this process (Cini, 1996) enables it to develop solid proposals capable of wide support as it is constantly aware of the evolving views of the member states.

³ From 'External Trade: Introduction' at <http://europa.eu/scadplus/leg/en/lvb/r11000.htm> accessed 30th August 2007

The European Commission in the GATT

That the Commission is aware of these evolving views plays a very important part in fulfilling its roles and responsibilities in GATT and also the WTO because, after all, it has to negotiate on behalf of the Member States. The first GATT Round, where the Commission had to act as the 'single voice', was the Dillon Round in 1960-62. A restrictive mandate had been issued by Council, concerned that the Commission "might act imprudently in its newly acquired role" (Murphy, 1990: 110). The Commission would also negotiate in the Kennedy Round (1964-7), the Tokyo Round (1973-9) and the Uruguay Round (1986-94). These will be considered in turn.

The European Commission in the Dillon Round

Although the Council of Ministers might have been worried about asking the Commission to speak for Europe in the Dillon Round, which had, after all, been inaugurated partly because of the existence of the EC, the evidence suggests that they had no cause for concern (Hoekman and Kostecki, 1996: 18).⁴ The Dillon Round was the last Round, which concentrated solely on tariff reductions, or at least tariff reductions discussed on a country-by-country, product-by-product basis (Golt, 1974:2). This methodology was beginning to fall out of favour, probably because of the time it took once membership started to increase, and the end of the Round saw an attempt to adopt a formula by which tariffs would be dropped by a given percentage unless justification could be given; a process which would be used in the Kennedy Round (Heidensohn, 1995:157). This suggests awareness on the part of negotiators that the next Round would be more important – perhaps anticipating Britain's membership of the EC as they had applied to join at the Dillon Round's close (Miles, 1968:16, Evans, 1971:138).

⁴ Also partly because the US Congress had extended the Trade Agreements Act allowing tariff reductions to be discussed.

For the larger trading countries, even bearing in mind this slow tariff negotiation process, the results of the Dillon Round were somewhat disappointing, especially considering that there were relatively few new tariff concessions as a result (Koch, 1969:87, Hoekman and Kostecki, 1996:18). This tends to obscure the importance of what was to happen after the Round. The USA, as the EC's largest trading partner, viewed the development of the EC acting as a trading bloc, as a threat to its export markets and recognised that there could be serious repercussions on its balance of trade if it did not make changes to its policy.⁵ This meant it could either become 'Fortress America' and choose a strategy of protectionism or reduce its own trade barriers (Dell, 1963:14). Congress chose the second option and passed the Trade Expansion Act of 1962, which enabled the President to reduce duties on industrial and agricultural goods by a maximum of fifty percent (see Koch, 1969: 88). The passing of this Act led to the Kennedy Round. Sophie Meunier (2005: 75) suggests that "the impending establishment of the Common Agricultural Policy" acted as a further incentive to encourage the US to return to the negotiating table.

The European Commission in the Kennedy Round

Preliminary talks on the Kennedy Round were held, for the first time, between the US and the Six (although not specifically the Commission) in Brussels (Koch, 1969: 89), making it clear at the outset that agreement between the US and the EC would be particularly important in this, and perhaps future, rounds. Piers Ludlow (2007:353) builds on this by suggesting that the Kennedy Round was the first time since 1945 that the EC and the US held the same bargaining power. The Kennedy Round has been called "the first real *trade* negotiation" since the Second World War (Curzon and Curzon, 1976: 70) primarily because it was concerned with issues other than tariffs. It was planned that the Round would have a wide agenda encompassing negotiations on anti-dumping, technical barriers to trade (TBTs), the involvement of the developing countries, the American Selling Price (ASP) procedure for chemicals and footwear and, perhaps most controversially, agriculture, specifically on access to EC markets. (see Koch, 1969: 91). The main actors in the negotiations were the EC, the US, the UK, Canada and Japan who became known as "the Bridge Club" (Winham, 1986: 65,note 9,

⁵ Golt (1974: 2) suggested that the Dillon Round marked the beginning of "the shift from overwhelming US trade dominance".

Kahler, 1995:688).⁶ It was within that small group that most of the real work of the negotiations appears to have been conducted. After deals had been done therein, they were then 'sold' to the other countries although it is difficult to see that a negative view could have had much impact on the outcome apart from an outright veto.

As far as the relationship between the Council of Ministers and the Commission was concerned, Golt (1974: 11) commented that the Kennedy Round highlighted the need for unanimity on negotiation points in the Council of Ministers (also Moravcsik, 1998: 208). The problems in achieving that unanimity and, specifically, problems that the French had with the agricultural position combined with strong objections to QMV, caused the Round to be effectively stopped for over a year until the Luxembourg Compromise in May 1966 (Meunier, 2005: 91). The Commission appeared able to counteract this stalemate by continuing to negotiate, albeit more on technical issues (Meunier, 2005: 89) and it is likely that this helped to develop an embryonic supportive consensus within the WTO (Curzon and Curzon, 1970:43-44, Winham, 1986:324). This suggests either that other members of the Council responded positively to trade offs between sectors, or that the existence of the 111 Committee gave the Commission more of a free rein than the member governments did individually, making protectionism less of a day to day problem (Winham, 1970: 64-6 and 318, Ludlow, 2007: 359 also see Koch, 1969: 131).⁷

Ultimately, although there were great hopes for the Round, and although tariffs were again reduced substantially (Curzon and Curzon, 1976: 36), there was still very little progress on agriculture (Golt, 1974: 3) partly because of the French (Wiener, 1995:73). Even the little progress that was made meant that negotiations were "interspersed with one crisis after another" (Koch, 1969: 91). The TBT code was elaborated to a certain extent but would be further developed in the next Round but no agreement was forthcoming on the ASP in spite of last minute manoeuvring and because Congressional approval wasn't forthcoming, a substantive amount of work on chemicals and footwear was apparently lost from the final text (Winham, 1986: 78, Dunn and Mutti, 2004: 190).

⁶ Quad meetings did not start until 1982, so this must have been a very informal gathering.

⁷ Ludlow (2007: 359) also says that within GATT, "the Community machine...depended on the smooth running of both the Commission *and* the Council of Ministers. Any attempt to explain how the EEC came to decisions merely by looking at the Commission *or* the member states acting collectively through the Council is...bound to fail".

The positive aspects were that an anti-dumping code was developed (Curtis and Vastine, 1971: 234, MacBean and Snowden, 1981:73) and, perhaps most importantly, the Round also agreed that preferential treatment should be given to developing countries (Hoekman and Kostecki, 1996: 18) although what this meant in practice was yet to be seen.⁸ The developing countries, which participated, though, said afterwards that they were disappointed that they had not received enough from the developed countries, especially on products of special interest, so perhaps 'preferential treatment' was more for the future than for the current time (Glick, 1984: 6). Perhaps the most positive outcome, though, was that the Commission had "established its reputation as a strong bargainer" (Meunier, 2005: 97), including within the Council (Neunreither, 1972: 239), particularly as the Round was "concluded on European terms" (Meunier, 2005: 99).

The European Commission in the Tokyo Round

The Tokyo Round, with ninety-nine countries participating representing ninety percent of world trade with a value of \$155bn, took place after the UK/Ireland/Denmark enlargement of the EC (Hoekman and Kostecki, 1996: 18, Jackson, 1990: 37). In contrast to the Kennedy Round, there were more bilateral discussions in evidence than had been noted in previous rounds (Winham, 1986: 272) possibly because the US and EC were both lobbying countries for their support.

The importance of tariff negotiations had, by now, reduced dramatically and the focus changed towards developing trade rules amongst members (Heidensohn, 1995:157).⁹ The difficult subjects on the agenda were the embryonic Codes on government procurement, technical barriers to trade and civil aircraft as well as agriculture (Murphy, 1990: 41). The EC's priorities were listed in a document issued in 1973 called an "*Overall Approach to Trade of the European Community*".¹⁰ These go from the very general aims of further trade liberalisation and helping the developing countries to a more detailed objective for a better Safeguard Clause. That the EC did this seems to

⁸ Perdakis and Read (2005:11) comment that the antidumping rules was the "first major amendment to GATT"

⁹ Dunn and Mutti (2004: 190) note that following the Tokyo Round, "tariffs were so low that they did not constitute a major barrier to trade in industrial countries"

¹⁰ the full text of which can be found in Golt, 1974: Annex B pp59-68

suggest increased confidence that they could expect certain outcomes from GATT rounds as a major player in tandem with the US (Winham, 1986: 386). This was greatly helped by the US being extremely supportive of the Commission within the negotiations and “develop(ing) a mutual sympathy, for instance about dealing with the French” (Taylor, 1983: 140).

Although, because of the difficult subjects on the agenda, Council may not have been able to put together a strong coalition in favour of any particular measure, nevertheless Paul Taylor (1983: 137-8) suggests that Council at least shared a desire for the European Commission to be seen as a strong negotiator on their behalf. Because of this, Member States worked hard to appear united behind the Commission. Furthermore, Council agreed not to revisit deals done by the Commission in the negotiations in spite of there being agreements in areas where no EC rules existed (Taylor, *ibid*, p122, Murphy, 1990: 41). No doubt this assisted in the successful albeit apparently slow (Cline et al, 1978: 237, Croome, 1995: 5) conclusion of the Round, which ended with a range of instruments being developed including on preferential tariffs in favour of developing countries, NTBs, bovine meat, dairy products and civil aircraft (see Hoekman and Kostecki, 1996: 19).¹¹

At the end of the Round, Council agreed that the Commission could sign off the results of the Round on their behalf with the exception of reduced tariffs in the ECSC area, TBTs and aircraft, which Council and the Commission would both sign (Taylor, 1983: 123). However, these Final Agreements were only given assent “after the rejection by the Council of two earlier versions...and the return of the Commission to the negotiating forum in Geneva to seek adjustments to the package” perhaps reflecting the perceived political importance of trade necessitating a firmer stance on the part of Council (Taylor, 1983: 134).

¹¹ Note that David Robertson (2006: 48) says that the NTB agreements were tantamount to “a shambles of commitments and offers” and led to approaching negotiations as a Single Undertaking although this does not seem to have been formalised at this point.

The European Commission in the Uruguay Round

At the end of the Tokyo Round, negotiators thought another GATT Round was necessary in order to cement in the Tokyo reforms and as a response to increasing globalization (Jackson, 1990: 38). Uruguay was chosen because of the need for strong developing country endorsement (Croome, 1995: 28). The Uruguay Round is particularly important, not only because it was the last trade Round under GATT but it was also distinct from its predecessors in that it was the first time that agricultural trade in its entirety came under GATT rules; this was because of the end of the waiver on the applicability of GATT rules to agriculture which had been agreed in 1955 (Swinbank and Tanner, 1996:157, Bhagwati, 2000: 58).

The Uruguay Round could be said to be more ambitious than earlier Rounds mainly because only the more contentious issues were left to be dealt with after the relative success of previous Rounds (Nedergaard, 1993: 57, Moussis, 2000: 375, Woolcock, 1999: 31). In addition, there were 123 countries involved in negotiations by the end of the Round and it attempted to cover many new areas; as such, it became exceedingly complex, controversial and lengthy (Jackson, 1990: 91, Dinan, 1999: 488).¹² Furthermore, certain of the issues allegedly covered by the Uruguay Round returned later to the WTO agenda seemingly because they were not resolved to the satisfaction of a number of participant countries or because they were disputed at the end of the Round. It has been suggested that the Round was a watershed for the Commission in that it heralded not only a “strict return to intergovernmentalism” in external trade but, furthermore, that it showed the member states attempting to “rollback” external trade competence from the Commission (Meunier and Nicolaïdis, 1999: 477). This provides key contextual evidence for the argument that the politicization of the trade field has meant the Commission is less able to satisfy the diverse interests by which it is surrounded.

¹² General information sourced from ‘Understanding the WTO: The Uruguay Round’ at http://www.wto.org/english/thewto_e/whatis_e/tif_e/fact5_e.htm accessed 30th August 2007

The EC played a lead role in agenda setting here due to its “increased economic leverage” on the world stage but it was not the only player with an important voice (Woolcock, 2000: 374). As an influential actor in the previous Rounds, it is worthwhile to consider the position of the US in the Uruguay Round. Their main concern was in covering agriculture in as great a depth as possible (Roederer-Rynning, 2003: 184). There was concern about the protectionist nature of the CAP, which had been instrumental in setting off trade wars (Moon, 1996: 20, Rieger, 2000: 195). This precipitated the US’ call for the abolition of agricultural subsidies and gradual phasing out of export subsidies and other such barriers (Meunier, 2000: 122). They were also keen for the Round to tackle other disputed areas including audio-visuals, of which more later (Featherstone and Ginsberg, 1996: 170).

More generally, the US had, perhaps, a concern about “Fortress Europe”, and outstanding questions over their market access, which had come to the fore after the Single European Act of 1986. This drove them to ensure the Uruguay Round tackled the question of trade “discipline” (Minshull, 1996: 106). In addition, the US had also claimed that they should be negotiating with the individual member states of the EC rather than with the European Commission on their behalf because of the complexities of reaching agreement (Featherstone and Ginsberg, 1996: 254). In a contradiction of the ease with which the US had allied with the Commission in the Tokyo Round, at this time the US was somewhat reluctant to accept the EC speaking with one voice with the Commission as their mouthpiece. This may have manifested in them being more heavy handed, and far less supportive of, the Commission than they had been in the Tokyo Round (Taylor, 1983: 141). Although, then, relations between the US and the Commission may not have been as positive as in the Tokyo Round, nevertheless, their commitment to the GATT process was demonstrated at the end of the negotiating schedule where the US demonstrated its determination to hold the agreement together (Meunier, 2000: 126). It seems that without this commitment to reopening the Blair House negotiations, the reasons for which will be detailed later, the Uruguay Round may never have been completed (Devuyst, 1995: 456).

Although other groups played an important part in the negotiations, in many cases for the first time, perhaps the main concern for the Member States was that of keeping domestic farming lobbies happy (Landau, 2000: 9). The MacSharry Plan for reforming the CAP, which had been tabled in 1992 as a solution to US/EC disputes, had resulted in violent demonstrations, particularly in France (Paemen and Bensch, 1995:210) raising concerns that farmers felt distanced from consultation procedures. It was because of the political risks involved that the level of agricultural liberalisation prior to the Uruguay Round was extremely small.¹³ The importance of the farming lobby meant that France only agreed to discussions taking place on agriculture if its primary concerns could be addressed in the Round. These included services and investment liberalization, the vacillation of interest rates and the rather ominous sounding “rebalancing of former privileges” (Meunier, 1998: 198). At the same time, France also wanted, and achieved, cultural (especially audio-visual) areas excluded from the negotiations, which was a major blow to the US as this was so important to its trade balance (Collins, 1997: 330). This refusal to consider cultural issues did not meet with unanimous support from member states either, with concerns that it might reflect a lack of will towards liberalizing markets.

The developing country perspective, particularly those who were net importers of food, was also an influential factor informing the agenda for the Uruguay Round, for the first time, and the Round was undoubtedly considered important for helping developing countries within the GATT system (Martin and Winters, 1995: v).¹⁴ However, there was also concern that developing countries would feel pressured into making substantial commitments so they would be “taken seriously” (Safadi and Laird, 1996:1223) and may have expected significant market access commitments from the developed countries in return. They did persuade other members to commit to “phasing out...the Multi-Fibre Agreement (MFA)”, although perhaps this was thought insufficient (Krueger, 1999:909). Similarly, there was some support for the position of the Cairns Group, a group of fourteen industrialized agricultural producer countries, led

¹³ Miles (1968:21) commented that “farmers tend to be the best organised and often most numerous” of pressure groups, which was why it had proved difficult to address agriculture in the Kennedy Round. The same reason for the difficulty of agricultural negotiations could be applied to subsequent Rounds.

¹⁴ Also S Healy, R Pearce and M Stockbridge (1998) ‘The Implications of the Uruguay Round Agreement on Agriculture for Developing Countries –a Training Manual’ Prepared for the Agricultural Policy Support Service, Policy Assistance Division. Training Materials for Agriculture Planning 41 at <http://www.fao.org/docrep/004/w7814e/W7814E04.htm> accessed 21st January 2008

by Canada, Australia and Argentina, who sought greater access for their agricultural products in both the EC and US markets.¹⁵ Some of these issues had been tackled but left unresolved by the Tokyo Round. The demands from the Cairns Group should not be underestimated when considering the politicised environment of the Round – they (together with the USA) had put the EC under pressure to cut agricultural subsidies; in some cases by up to ninety percent (Nugent, 1999: 430).

Negotiating the Round

As far as negotiating the Uruguay Round was concerned, developing common positions addressing each of the Member States' main concerns was extremely difficult and, perhaps, forced the Commission to be more reactive than proactive within the Round (Murphy, 1990: 128). Council, however, sought to use bargaining and issue-linkages to break deadlock amongst its members rather than using the Commission as proactive policy makers, making it clear that they did not want to lose advantageous settlements because of a lack of progress in agriculture (Devuyst, 1995: 450, Balaan, 1999: 60). Evidence for this can be found in the outcome on dispute resolution where, prior to the Round, the Commission was told not to give this measure its support but, by the end, had agreed that this could go ahead (Woolcock, 1993: 556). Therefore, in spite of the mandate, the Commission was able to take initiatives and make progress with the negotiations even though the Council may have been arguing backstage. It has been suggested that this was primarily because of the Commission's ability to draw coalitions together (Coleman and Tangermann, 1999: 400, Smith, 1999: 286), especially in the latter part of the negotiations.

With the Cairns Group and the US on one side and the European Community on the other, agriculture was always going to be a problem. Significant pressure had been put on the EC to make radical changes to their tariff levels. Council of Ministers' meetings, although wholly concerned with agricultural support, involved not only agriculture ministers but also (at least latterly) trade and foreign ministers showing how complex and interlinked the whole sphere became (Nugent, 1999: 431, Devuyst, 1995: 452). Even then, when results weren't immediately forthcoming, the US raised the stakes by

¹⁵ See <http://www.cairnsgroup.org/milestones.html> accessed 21st January 2008

threatening an escalation of trade actions, including a two hundred percent tariff on food imports from Europe in an attempt to force their hands (Meunier, 2000:123). As a result of this, the Agriculture Commissioner, Ray MacSharry, immediately attempted to develop a compromise position with the US in order to make make headway and “provide bargaining leverage” for the rest of the Round (Croome, 1995: 288). Jacques Delors (the Commission President) “threatened to block the agreement as he claimed it went beyond the Council’s mandate” (Cini, 1996: 93) thereby creating huge internal difficulties for the Commission within the negotiations. MacSharry resigned until Delors was outvoted in the Commission whereupon he rescinded his resignation and continued to negotiate. As it was, the Commission wanted to reduce agricultural support (Meunier, 1998: 199) due to an “all too real prospect of bankruptcy” (Paemen and Bensch, 1995: 25) so it would have been a Pyrrhic victory for Delors had this agreement been blocked.

Agreement within the Commission did not prevent serious problems emerging at the end of the Round threatening the internal consensus. Firstly, France, Ireland and Belgium thought that the final agreement went further than the proposed changes to the Common Agricultural Policy as set out in the MacSharry Plan. Secondly, France was concerned that the Blair House Agreement would affect Community participation in agricultural market expansion.¹⁶ Thirdly, France, Ireland, Belgium, Germany, Italy and Luxembourg were anxious to ensure that the measures in place which complied with GATT rules should be untouchable for longer than the agreed six years and, finally, the UK was determined not to reopen the negotiations while the French were determined to renegotiate (Devuyst, 1995: 455).

¹⁶ The Blair House agreement (named after the guest quarters in the White House) was negotiated in 1992 and covered grain export subsidies and soy (and other oil) beans (see K Bradsher, International Herald Tribune September 14 1993, ‘US seeks to keep trade talks on track’ at <http://query.nytimes.com/gst/fullpage.html?res=9F0CE4DE1638F937A2575AC0A965958260> accessed 25th March 2008)

Although Paemen and Bensch (1995: 94) point out that the Community at the time was “far from being (a) coherent whole” because of the vast “geographical, economic and social diversity” of the Member States, nevertheless agreement was reached.

Ultimately, the Commission was able to defuse a potentially catastrophic situation, whereby the entire agreement could have been vetoed, by agreeing to revisit some of the decisions made at Blair House (see Meunier, 2000: 126). This was achieved even though the US had not been enthusiastic about it previously (Meunier, 2005: 117).¹⁷ The key point, however, is that this compromise position adopted by the Commission was only achieved with the acquiescence of the Council even though the Commission facilitated the agreement and was genuinely concerned that France would break ranks by openly not supporting the common line (Sperling and Kirschner, 1997: 146, Teasdale, 1993: 577, Devuyst, 1995:126). This shows the pressures that mounted on the internal consensus because of agriculture.

The issue of competence would also become very important both during and after the Uruguay Round. Although it is tempting to blame this on the fact that there was a very wide agenda, or that there were a number of ‘new issues’, it has been suggested that it was heralded by the difficulties in achieving a collective view on agriculture (Meunier and Nicolaïdis, 1999: 483). One reason for the issue of competence becoming critical may have been the level of secrecy surrounding the Blair House negotiations (see Meunier, 1998: 203, Swinbank and Tanner, 1996: 105). One Italian trade Minister suggested that EC Ministers received “what has been somewhat cynically (termed) as ‘the mushroom treatment’...kept in the dark and every so often the door is opened and a bucket of manure thrown over them” (cited in Hayes, 1993: 125). It could be argued that the Commission was right to uphold the secrecy of the negotiations, which, after all, enabled them to come back to Council with a compromise proposal (Coleman and Tangermann, 1999: 401). Not only did the US agree to revisit the agreement but no other agreements were re-opened or jeopardised and, in addition, the Commission extracted even further concessions (Devuyst, 1995: 456, Meunier, 2000: 126 and 2007: 122, Swinbank and Tanner, 1996: 109, Reiger, 2000: 198) as the French may have hoped at the outset (Wiener, 1995: 218).

¹⁷ see P Horvitz, International Herald Tribune September 22 1993, ‘US spurns Europe’s call to reopen farm accord’ at http://www.ihl.com/articles/1993/09/22/react_1.php accessed 25th March 2008

Although Meunier (2000: 125) reads the outcome as being indicative of “a clear step towards a return to strict intergovernmentalism in trade negotiating matters and a reining in of the Commission’s negotiating powers” (also Meunier and Nicolaïdis, 2000: 334) the evidence seems unclear. That Council had also rejected the first version of the Final Agreements in the Tokyo Round, resulting in further negotiation, could be more indicative of ‘retention’ of Council control rather than a “return” to intergovernmentalism. Additionally, Germany eventually changed its position (at the end of the Round) to support the Commission, thereby showing that there was no sustained member state opposition to the Commission en bloc (Devuyst, 1995: 453, Balaan, 1999: 60). German agreement also had the effect of “isolating the French who did not carry through on their threat to veto the agreement” (Balaan, *ibid*). Partly this came about due to effective issue trade-offs along with a strong desire not to throw the baby out with the bathwater; France was a strong proponent of the WTO, for example (Devuyst, 1995: 450).

The Aftermath of the Uruguay Round

Although there were a number of areas within the Round where there was conflict between the Council and Commission, there seemed to be some optimism that the behaviour of the negotiators and the level of agreement were both extremely positive and boded well for the future (see Baldwin, 2000: 44, for example). This may have been considered true for the WTO as a whole although perhaps not for the EC because of growing member state concern about increasing Commission competence (Pollack 2000: 524-5). This concern may have arisen because of the sensitive issues that had been brought up through the Round but there was speculation that this might have an adverse impact on other areas of Community competence and would lead to what Meunier and Nicolaïdis referred to as “rollback” (1999: 477) from the supranational level to the national platform (also Andersen and Eliassen, 1993: 261).

The Commission attempted to bolster its position for the next Round by clarifying the position on competence. Therefore, it sought an Opinion from the European Court of Justice (ECJ) as to which areas it was able to negotiate in. In doing this, it was clear that the Commission anticipated that the Court would interpret Article 113 of the Treaty in its favour, i.e. that the Article would be deemed to cover all aspects of trade, be that in goods, services, intellectual property or anything else. The Council, meanwhile, seemed to hope that the Court would delineate between the competence of each in order to assure that the Council's preferences would be paramount enabling them to keep control over sensitive and new areas of trade.¹⁸ In this they were also supported by the Parliament hoping, perhaps, to achieve more of a say in external trade (Meunier and Nicolaïdis, 1999: 485).

Given the views prevalent in the Council of Ministers, it may have been the case that the Commission did become concerned at the likely outcome of the Court's judgement. As if reiterating their authority within the structure, the Commission threatened to delay circulating the final version of the Marrakech Accords until the issue of competence was resolved.¹⁹ This jeopardized any forward movement and suggested that the ratification of the Agreement could be delayed.²⁰ Because of the likely amount of time elapsing before the Court issued a Ruling, it was deemed necessary for a Code of Conduct to be produced, which "would determine which EU institutions take the lead in new, non-trade areas...(in)...the WTO" although Belgium (along with the other smaller states) was critical of efforts to do this prior to the Court ruling possibly because they thought the Court would agree with the Commission making this exercise a waste of time.²¹ There was also concern that divided competence was inescapable due to increased politicisation and perhaps the IGC, not the Court, should decide the operational extent.²² Fortunately the Court agreed to issue its ruling on November 15th,

¹⁸ See Leal-Arcas, R (2004) – *The EC in GATT/WTO Negotiations: From Rome to Nice – Have EC Trade Policy Reforms Been Good Enough for a Coherent EC Trade Policy in the WTO?* European Integration Online Papers (EIoP) vol 8 No 1 at <http://eiop.or.at/eiop/texte/2004-001a.htm> accessed 20th July 2006

¹⁹ T Buerkle, International Herald Tribune of Monday October 3rd 1994 'GATT Outlook is Brightened by EU Accord' at <http://www.iht.com/articles/1994/10/03/gatt.php> accessed 22nd January 2008

²⁰ From Sunsonline September 23rd 1994 C Raghavan 'Sutherland wants actions to match intentions' at <http://www.sunsonline.org/trade/process/towards/09230094.htm> accessed 8th August 2006

²¹ E Tucker page 4, 'EU seeks means to ratify GATT' in the Financial Times of 3rd August 1994. This article was followed by another on 6th August, 'EU set for clash on GATT ratification' (page 2, also by Emma Tucker

²² The Financial Times editorial, 'Ratifying EU Agreements' on August 11th 1994 (page 13

before the ratification deadline and, at the same time, Council consented to sending the information to Parliament for their views, which ended the turf war.²³

The Court gave its ruling in Opinion 1/94 concluding that the Community had competence in goods but not for other areas such as the General Agreement on Trade in Services (GATS) and Trade Related Intellectual Property Rights (TRIPS) agreements.²⁴ This meant that the Commission had no choice but to accept the involvement of the member states in the negotiations (Demaret 2000: 446-447). This could be read as the Court espousing the merits of a “return to intergovernmentalism” (Meunier, 1998: 209), which seems unlikely as trade in goods remained unaffected, or, that it merely reflected Council views at the time, which were that the importance of national politics superseded the supranational trade competence centred on the Commission (Pollack, 2000: 527, Messerlin 1999:58, Cremona 2000b: 12-13). How this worked in practice would be far more significant than the decision.

At the time, the Commission commented that it “always realised some areas would have to be shared” and Leon Brittan acknowledged that the ruling at least “provided ‘a clear basis’ on which Europe could participate in the WTO”.²⁵ He pointed out that member states and the Commission had a duty to cooperate on trade matters including where shared competence applied so this would still prohibit member states from acting individually, lessening a risk of paralysis if agreement could not be reached (Young, 2002:31) . It seemed to have been recognised that a code of conduct might still be appropriate but a new one would need to reflect the totality of the judgement.²⁶ Judging from reactions, the Commission, although undoubtedly dissatisfied by the Ruling, accepted that this Judgement was a reflection of Council views following the Uruguay

²³ Report that the Court was to issue its ruling prior to the ratification deadline from E Tucker in the Financial Times of 3rd October 1994 (page 4, ‘EU hopes for the Uruguay Round’). The European Parliament voted on the Uruguay Round accord on 14th December 1994 (according to L Barber in the Financial Times of 15th December, page 5, ‘Ministers endorse Gatt trade pact’) The result of the vote was given as 325 in favour with only 62 against and 12 abstentions. The Council of Ministers did the same on 22nd December (from E Tucker’s Financial Times 23rd December, page 3, ‘EU clears Uruguay Round’) thus “meeting the end of year deadline allowing...the WTO, to be set up on January 1 1995” (ibid).

²⁴ See Leal-Arcas’ 2004 paper (details in footnote 13) page 3

²⁵ Shared competence quote from A Marshall The Independent, 16th November 1994, page 13 ‘Brussels trade wings clipped’. Leon Brittan quote from T Buerkle International Herald Tribune November 16th 1994, page 15 ‘European Trade Authority Clipped’

²⁶ E Tucker, Financial Times 16 November page 5 ‘Court clears EU path on trade accord’

Round and further analysis will show that this did not affect the working relationship between the Commission and Council.

Even once the judgement had been issued and the Council had sent the information to Parliament, this was not the only problem facing the final ratification process of the WTO. The US was considering rejecting the Uruguay Round accords unless there was a stated commitment from the WTO that it would address labour standards in the future.²⁷ Both Mexico and India had already spoken strongly against this, with other countries suggesting that this would not be supported.²⁸ Leon Brittan, however, seemed to agree that this was important although this did not culminate in him threatening not to sign for the EC.²⁹ At the Conference marking the signing, the Chairman commented that there was no consensus so the wording could not be changed and, perhaps figuring they weren't going to get anything better than was already in the opening preamble of the Marrakesh Agreement, the USA signed the Accords.³⁰ This did not mean that the issue went away; just that it was held over for the future and, indeed, will be mentioned in future chapters.

The World Trade Organisation

The WTO was created essentially, according to Wolff (1998: 361), to an American design, to supersede the existing GATT infrastructure. The transfer of responsibilities from one to the other was almost seamless – many countries, when they signed the Final Accord of the Uruguay Round in Marrakech on 15 April 1994, also signed the agreement establishing the WTO which was to be officially launched on 1 January 1995 (Dunkley, 2000: 47). The 'grand plan', if there was one, was that a new, stronger organisation would be in a better position to further build on what the Uruguay Round

²⁷ Low (1993: 234) suggests that the US had tried very hard to have this negotiated in the Uruguay Round although they had been unsuccessful. Further information from Trade Week in Review and other publications Vol 3 No 13, Friday April 1st 1994 'Labor Standards Jeopardize Final Deal' at <http://www.ctext.org/Politics/Trade.News/Volume.3/tmb-03.013> accessed 30th August 2007

²⁸ C Raghavan, Sunsonline March 16th 1994 'US Tries To Push New 'Trade Related' Agendas' at <http://www.sunsonline.org/trade/process/towards/03160094.htm> accessed 30th August 2007

²⁹ G de Jonquieres, Financial Times March 24th 1994 (page 6), 'Brittan wants rights put on WTO agenda'

³⁰ Chairman's comments from 'WTO Briefing Notes from the Doha Ministerial 2001' – Trade and Labour Standards: A Difficult Issue for Many WTO Member Governments at http://www.wto.org/english/thewto_e/minist_e/min01_e/brief_e/brief16_e.htm accessed 30th August 2007. The wording from the Marrakech Agreement reads; "relations in the field of trade and economic endeavour should be conducted with a view to raising standards of living (and) ensuring full employment ...".

had achieved (Schott and Buurman, 1994: 39, Bayne, 2003: 87) and thus accelerate multilateral trade liberalisation (Dent, 1997: 196). Moreover, it could also be said that the formation of the WTO was a tacit acknowledgement that the GATT was ill equipped to deal with new trade issues and, thus, had to be changed (Perraton, 2000: 179). Changing the organisation was intended to resolve outstanding questions surrounding the authority of the GATT, which had arisen because of “its ‘provisional status’, ‘birth defects’ and significant ambiguities concerning the legal status of particular texts” (Jackson, 1999: 37).

However, any ambitions for this new organisation to echo the long-awaited International Trade Organisation, the aims of which were described earlier, were soon thwarted. Instead, the WTO agreement was only around 15 pages long and was more a “mini charter” than a clone of ITO (Jackson, 1999: 36). This meant that some of the work items proposed in the Havana Charter of 1948 would continue to be excluded from the work programme of the new organisation, including “Employment and Economic Activity, Economic Development... (and) Restrictive Business Practices” even though it would embrace some issues outside trade through the Uruguay Round accords (Dam, 1970: 11, also Tay, 2002: 92 and 105). Perhaps, in terms of its agenda, it could be said to be, “something more, but not much more, than the GATT” (Irwin, 2002: 186) although this is in danger of underplaying the significance of the move.

Because of the name change, even if little change in anything else, it became more obvious that the WTO would have a clearer and higher status in the world economic arena than the confusingly named, non-organisation that was GATT. The name change would place the WTO squarely “within a wider international community” on a par with the World Bank and the International Monetary Fund; a place that was always expected to be filled by ITO (Tay, 2002: 105). This new found visibility might also exert a price on the trade administrations of the members as the WTO became identified in public consciousness as a “symbol of globalisation... fix(ing) the spotlight on trade as a core factor” in the inequalities that globalisation had wrought (Cosgrove-Sacks, 1999: 348, also Irwin 2002: 95). This seems to be supported by the increased involvement, or at least increased publicity surrounding the involvement, of NGOs in the trade arena post-1994 which will be investigated in the following chapters.

Although the name may have been the most obvious change, arguably, the most important institutional change, was that WTO became a 'single undertaking'. This had been "invented for the use in the Uruguay Round" (Ahnliid, 2005:131) to enable issue linkages and the creation of package deals. This initiative meant that membership of the WTO committed members to adopt, implement and enforce the totality of the trade rules rather than there being any element of 'pick and mix' or, for that matter, any significant derogations from the rules for the benefit of the less developed country members (Blackhurst, 2001: 528, Hoekman, 2002: 45).³¹ In other words, a "one size fits all approach" prevailed in the WTO's structure and founding (Ganesan, 2000: 87) and, furthermore, "essentially award(ed) veto power to every individual negotiation" (Moon, 2004: 28).³² This single undertaking included the incorporation of some of the previously voluntary Codes into the central agreements, such as the TBT Code along with the results of the Uruguay Round (Elsig, 2002: 143).³³

Signature of the WTO Agreement also demanded the acceptance of a new Trade Policy Review Mechanism (TPRM), which would be prepared by the Secretariat, the purpose of which was to assess the adequacy of domestic policy (or common policy in the case of regional groupings such as the EC) for compliance with WTO requirements (Blackhurst, 2000). The progress each country/group of countries made towards fulfilling their WTO commitments, and the state of their markets, would be assessed on a regular basis to make sure progress was continuous and there was no lagging behind. There would also be a stronger, formal and juridicial dispute settlement understanding (DSU), the results of which were binding and which would be automatically set up when a complaint was received with strict time limits established for each stage (Sandholz, 2000:93, De Bièvre, 2006: 856). This was very different from GATT's mechanisms of establishing Panels that could be blocked and of failing to set time limits and implementation requirements compounded by a lack of clarity on rulings making it difficult for countries to identify the necessary remedial measures (Trebilcock and

³¹ This did not apply to the built-in agenda from the Uruguay Round (e.g. information technology, basic telecommunications and financial services). See Philip I Levy's paper on 'Do we need an undertaker for the Single Undertaking? Considering the angles of variable geometry' of February 2004 at http://www.yale.edu/macmillan/globalization/levy_paper.pdf accessed 6th March 2008.

³² Supported by Interviewees 2, 3, 9 & 10

³³ Blackhurst (2000:32) was to say that, in volume, this consisted of "twenty nine individual legal texts. and twenty eight additional ministerial declarations, decisions and understandings...(all together 588 pages in the English version)"

Howse, 2001:51, Costello, 1999: 337, Peterson, 2001: 61, Guay, 1999:74, supported by interviewee 2). The new DSU had to be rigorous enough to deal with trade infractions by member states, responsive enough to cope with the ever-changing trade 'climate' and able to treat developing and developed countries equally rather than having "the more powerful countries simply dictat(ing) outcomes" (Irwin, 2002:189-90 also Costello, 1999: 338).

As well as upgrading the DSU, the management structure was also revamped in the hope of making the WTO more efficient and effective. Specifically, the Ministerial Conference, which would hold the strategic leadership role for the organisation, would now meet regularly every two years (Hoekman, 2002: 46). In between those meetings, the general management function would become the responsibility of the General Council which could also sit as the Trade Policy Review Body and the Dispute Settlement Body and which would have the Council for Trade in Goods, the Council for Trade in Services and the Council for Trade related Aspects of Intellectual Property Rights reporting to it (see Blackhurst, 2000: 33).

To accompany these changes, the Secretariat was made permanent. The GATT had been using the secretariat services of the Interim Committee for the International Trade Organisation (ICITO), which had been set up within the UN in 1948, rather than having its own staff.³⁴ Even then, the staffing numbers were extremely small "equating to just one per member state" with a total budget "equivalent to the IMF's travel budget" (Peterson, 2001: 61-2). This had ramifications for the level of support poorer countries could expect to help them participate in the WTO and there were still countries without permanent delegations, negatively affecting their ability to work with the Secretariat (Blackhurst, 2000, see also Michalopoulos, 1999, Schott and Watal, 2000).³⁵ Furthermore, the level of specialist knowledge needed by the delegations, given the breadth and complexity of the agenda, was ever-growing, meaning that countries without even a single permanent representative were at risk of becoming increasingly marginalised within the structure.

³⁴ See Jackson (1999: 52) for the full account. Although, *defacto*, these were its own staff officially, at least, it had no way to reward or sanction their behaviour.

³⁵ Blackhurst (2000: 36) names Chad, Guinea, Rwanda, Niger, Malawi, Burkina Faso, Mali and Mozambique as countries without permanent delegations.

This would seem to suggest that the WTO was not free of the structural impediments of its predecessor and that it perhaps even had some new problems of its own. Some of these were its tenuous links to other institutions such as the ILO (Schott, 2000:10) and “the imbalance between the WTO’s consensus-plagued, inefficient rule making procedures and its highly efficient dispute settlement system” (Barfield, 2001: 1), which would only grow in complexity as membership grew, risking policy standstill (Preeg, 1998: 52, Hudson, 2003: 248). Simon Bromley’s summation (2001: 298-9) was to see the WTO as an institutional “golden straitjacket”, minimizing domestic policy choices to benefit the global market with the potential to cause public unrest. Finding the necessary mix of ingredients to get all players to accept the “cocktail” (Richardson et al, 1998: 55) of results from Ministerials, some good but some bad, was in danger of becoming increasingly difficult.

There was no suggestion, at transition, that the preparatory sessions for WTO Rounds, which were conducted for GATT mainly through the informal Green Room process, would be changed. The Green Room meetings under GATT typically involved around 25 nations, although there was “no objective basis for participation...(and) generally only the most active countries in the negotiations participate(d)” (Schott and Watal, 2000: 285). Partly as a result of countries not having delegations, as described above, and partly (possibly) because of the low share of world trade, developing countries had tended to be excluded from this process, affecting their attitude about the WTO to one which was less than positive (Arai, 2000: 62). However, not only had developing countries felt themselves shut out of key decision making processes in GATT, but NGOs had also expressed their dissatisfaction with the way trade policy making worked, suggesting that without greater involvement there was a risk of a growing democratic deficit in the WTO with, perhaps, public demonstrations resulting from this lack of civic involvement (Frost, 1998: 73, Kingsbury, 1995: 17, Wood and Moore, 2002: 25).

Although this sounds conclusive, it cannot be said that NGOs are completely excluded from WTO deliberations in practice. One trade official told me that an Oxfam representative was an official member of his country's delegation to the WTO and, although they were not able to participate in the actual Ministerial meetings, they were briefed "once or even twice a day" on developments. Furthermore, the same official said that, even without an Oxfam delegate, he felt that the situation of the rural poor would inform his country's trade policies, not least because if nothing was done then the LDCs would not be able to "buy our stuff".³⁶

That NGOs have been involved at this level perhaps supports Robertson's contention that "ten percent of the EU budget is distributed to NGOs who tend to lobby in member countries to support EC policies" (2002: 9). There are concerns that NGOs should be kept out of the policy 'fray' altogether for fear that they might dilute the direct public accountability of member governments (Barfield, 2001: 81). The reverse argument holds that as the WTO has a duty of "pursuing social goals" as part of its wider trade agenda, NGOs could contend that they should have wider access to the WTO policy process (Marable, 2000: 83). However, as there are issues surrounding their lack of accountability their presence may not have a positive effect on the democratic deficit (Harriss, 2002: 118).

As NGOs have complained of the institutional strictures of the WTO for their lack of involvement, so have they accused multinational enterprises (MNEs) of embedding themselves into the WTO in order to promote their own trade rules agendas. On the one hand, MNEs are said to be "supranational powers" because their economic performance enables them to bargain in order to extract concessions from both developed and developing countries (Hamilton, 1986: 16). They can also use this power to influence the WTO in a way that NGOs can't, helped by the lack of a strict Code of Conduct to regulate their corporate behaviour (Madeley, 1999: 164).³⁷ Some authors go so far as to suggest that this was the reason why the WTO came about - because MNEs could

³⁶ Interviewee 5

³⁷ See Jungnickel and Koopman (1984: 295) for the suggested, yet ultimately unsuccessful, Code of Conduct for Multinationals developed at the Raw Materials Conference in Dakar in February 1975 and then transferred under the auspices of the UN. However, how successful it would have been even if adopted is a moot point. Madeley (1999: xiv) recounts a trip to Nigeria where he spoke to one of the directors of an MNE who told him, "point by point" how MNEs would evade the requirements.

increase their influence through further 'marketization' and privatisation as a result of a more liberalized global market (Dunkley, 2000:102-3, Watkins, 1992: 37). The opposing view is that MNEs are too busy trying to make profit and to grow to be able to influence areas outside this direct sphere of interest although they remain "a convenient symbol" of wider world problems not of their making (LaPalombara and Blank, 1984: 19, Rugman, 2002: 7). There is evidence that conglomerates of companies have influenced WTO policy but it seems unlikely that MNEs could push initiatives through the WTO if there was not popular support of governments who would be participating in the discussions (as neither MNEs nor NGOs could). It is also important to note that, at least on a national basis, NGO leaders can have influence on political power, together with the industrial sector, partly because of the class positions that they each hold (Feldman, 2003: 20) suggesting that the three (MNE, NGO, government) are not as far apart as is often pictured.

The EC within the WTO

It has already been noted that the end of the Uruguay Round was fraught for the Commission. It had proved difficult to gain agreement from the member states for the compromise on agriculture with the United States, as set out in the Blair House Agreement, France had threatened not to ratify the Final Accords and because of this, Leon Brittan (fairly new to the portfolio as the Round had taken so long to negotiate that two Commissions were involved) had been sent back to Washington to try to renegotiate. Because the Commission was a Contracting Party in its own right under the WTO, which it had not been under GATT, there was a possibility that the Council might try to rein it in in the future using the Article 113 Committee or by rolling back authority from the Commission in order to make it have more of an administrative function (Nicolaidis & Meunier, 2002). A harsher and less supportive Article 113 Committee might be entrusted with assuring that there would be no agency slack or slippage in negotiations.

Although the Article 113 Committee has been restructured since the Uruguay Round (according to interviewees 5, 6 & 9) by having more working groups dealing with different agenda items in more detail, there seems to be no substantive changes in their oversight function; perhaps this is because of a lack of leadership and effectiveness leaving it incapable of so doing (Elsig, 2007: 938). Nevertheless, the World Wildlife Fund (WWF) (2002: 18-20) suggested that the Committee should be opened, especially to national and European Parliamentarians, and that it should become much more transparent. If it was to open, there would be pressure on it to allow more representatives from diverse organisations, perhaps even civil society.³⁸ However, it could be considered partisan, particularly by NGOs, were it to allow industry representation. The seeming lack of concern of the membership to pursue such ambitions for openness and transparency could be because they see themselves solely as an advisory committee rather than a policy-making committee. This may explain why “no formal votes are recorded and its deliberations are not published”. This advisory status may also be why it is subject to very little industry lobbying (Shaffer, 2001: 114) with business still focusing more on their “national capitals” (Elsig, 2007: 933).

As well as seeking resolution of the competence issue following the Uruguay Round, which would enable it to lead negotiations on all issues, the Commission also hoped to cement in the new WTO infrastructure by extending its agenda into new areas. The growing politicization, that was hinted at with the name change from GATT to the WTO, and the suggested extension of the WTO’s remit, could also be expected to have an impact on the Commission’s roles and responsibilities, especially in terms of the extent to which the interests contest the Commission in the WTO and the extent to which the Commission is able to make forward progress.

³⁸ As advocated by Klasing and Christopher, 2003: 7

Conclusions

This Chapter established the historical background to the Commission as the 'voice of Europe' in the World Trade Organisation. In doing so, it introduced the practical side of its roles and responsibilities in external trade, which were elaborated in the previous Chapter. Importantly, it has been shown that there was increasing politicization of the trade field before the WTO was created; noticeable after the Dillon Round when issues other than tariff reduction came to the fore. That the Kennedy Round was stalled for a period of time, the Tokyo Round Final Agreements needed to be renegotiated (Taylor, 1983: 134) the Uruguay Round discussions on agriculture almost resulted in punitive tariff action on the EC from the US (Meunier, 2000:123) and critical aspects had to be revisited at the end of the Round at Blair House (Swinbank and Tanner, 1996: 105) highlight the growing difficulties of achieving consensus in GATT. This has implications on the level of politicisation that might be expected within the WTO and how that might affect the Commission.

The period of time leading up to the creation of the WTO seems to show a supportive internal consensus, excepting in agriculture, and a relatively strong external consensus, with the exception of agriculture and labour standards. There were a variety of different groups involved in the Uruguay Round, some of which did not appear to be particularly supportive of the Commission's stance, especially the USA (after the Tokyo Round, partly because of its alignment with the Cairns Group on agricultural issues). This demonstrates the importance of the Commission not only understanding and even anticipating the views of the member states (presumably with the help of the Article 113 Committee) but also understanding and anticipating the views of its negotiating partners. This information could then be used as a way to develop and hold together a supportive internal coalition at the same time as building a supportive coalition within the WTO. Whether this continued to be successful, or even possible, will be a theme running through the rest of the thesis.

In terms of the status of the Commission, there is a lack of strong evidence for any 'rollback' (Nicolaidis and Meunier, 1999: 477) of the Commission's responsibilities by Council between the Dillon Round and the completion of the Uruguay Round, suggesting that the mechanisms put in place in the Treaty of Rome were thought to be fit for purpose under the WTO as well as under the GATT. It will also be shown later that Ruling 1/94, after the Uruguay Round, did not affect Council-Commission relations in practice. In the Rounds following Dillon, there seemed to be every effort for the member states to appear united behind the Commission as negotiator suggesting that the Council at least tried not to act like a principal to its agent within the negotiations themselves and allowed the Commission varying degrees of room for manoeuvre (Ludlow, 2007: 359, Taylor, 1983: 137-8, Woolcock, 1993: 556).

On the basis of the roles and responsibilities of the Commission within the GATT and what they managed to achieve, one could suggest that the Commission's position was "far more significant than the Treaty of Rome would predict" (Sbragia, 1998: 283). That the Commission began negotiating for the member states only on tariffs in the Dillon Round then, by the Uruguay Round, was negotiating on tariffs, intellectual property rights, technical barriers to trade, trade aid, environment, services, agriculture and textiles supports this summation. This might suggest that the Commission would be able to make just as much progress within the WTO as it had managed to make within GATT. However, this does not take account of any fragmentation of preferences within the interests or of the growing politicization within the trade field, as has been highlighted herein. Furthermore, discussions about the openness or otherwise of the Article 113 Committee suggests that the European Parliament would continue to seek a greater role in trade policy, which could threaten the Commission's ability to develop a supportive European consensus. Whether the control mechanisms would remain appropriate, or whether the Commission would be able to have much room for manoeuvre, or, indeed, whether the Commission would have increased competence to negotiate in new areas, will be covered later.

Another important aspect that has been covered in the Chapter is that the creation of the WTO did not seem to herald a huge shift from the methodology and structure of the GATT. In spite of the aims being to rectify some of the "birth defects" of the GATT (Jackson, 1999: 37), the WTO appeared to have some of its own. Whether its own structure might suggest the Commission would have problems in making forward progress will be looked at over the next six chapters. This is in addition to the increased politicization around, and public focus on, the WTO because of the name change and the widened (and growing) membership of the WTO. The increasing number of developing countries joining was evidenced within the Uruguay Round of GATT.

It is appropriate now to revisit the contentions outlined at the end of the previous Chapter in order to build a picture of the Commission's roles and responsibilities in GATT and how these are likely to play out in the context of the WTO:

1. *Roles:* As expected, aspects of all four of the Commission's roles have been evidenced within this Chapter. For example, negotiating in the Dillon Round, where the Commission had a very tight mandate limiting its room for manoeuvre, seems more administrative in nature and being seen as "a strong bargainer" (Meunier, 2007: 97) in the Kennedy Round suggests it was able to act as an expert and as a coalition builder. Looking at the agricultural negotiations as a whole, we can view elements of the 'mix' of roles across levels of activity issues and time such as with the Uruguay Round agricultural negotiations. The background to the negotiations had been the MacSharry Plan (Commission as expert), resulting in serious domestic pressures, particularly in France (Commission as administrator) but France was eventually encouraged to agree to accept the results of the Round (Commission as coalition builder) and the Commission signed off the results and became a Contracting Party to the WTO (Commission as government). The evidence suggests that the extent of flexibility that the Commission has in fulfilling its roles is important (Cremona, 2000a: 94) and that this depends on a number of interlinking issues: the level of agency that it is given by Council; the room for manoeuvre it has to ensure trade offs and the level of politicization surrounding each issue. That this takes place in a dynamic environment means that the nature of the interests is of critical importance.

2. *Responsibilities*: This Chapter has shown that the Commission's role in GATT was contested by Council. This was seen in the agricultural negotiations, which almost held up the launch of the WTO. After the Uruguay Round, the Commission appealed to the ECJ to evaluate the competence that it had to negotiate agreements. Ruling 1/94 suggested that the Council might expect the Commission to take more of an administrative responsibility in areas subject to mixed competence. Furthermore, it also looked as if the Commission would not be able to exercise its responsibility to finalise the Marrakesh Agreement because the US was loath to re-open the Blair House Agreement. Although the latter was eventually resolved, later Chapters will show whether the Council did expect to be able to rollback the Commission's authority with Ruling 1/94 and, if so, what effect it would have on the Commission's ability to fulfil its responsibilities. In sum, there appears to be an evident gap between the Council's role conception and the Commission's performance – brought into sharp contrast at the end of the Uruguay Round. Further chapters will show how that might have been manifested in the WTO.

3. *Interests*: The Commission interest played a key role in ensuring agreement in agriculture at the end of the Uruguay Round. The MacSharry compromise and the opening of Blair House (including the re-negotiation) showed the importance of the Agriculture and Trade Commissioners working together with the acquiescence of the Commission President. The Council interest was also important; particularly in granting the Commission leeway to pursue trade-offs in spite of the politicized internal environment and domestic pressures. This shaped the Commission's combination of the roles and conditioned the extent to which the Commission was able to fulfil its responsibilities; even though this was also being contested from outside (the Cairns Group and the US). In this example, the Commission was permissive and Council was supportive as the US was constraining (as it threatened to implement huge tariff increases) alongside the Cairns Group. This fits with the contention outlined in the previous Chapter. The extent to which the Commission is able to build a supportive coalition of the diverse interests will be further explored in the thesis.

4. *Change*: There were hints in the Uruguay Round that the 'Bridge Club' method of elite bargaining, prevalent in earlier Rounds, was changing. Agriculture, as already mentioned, was extremely difficult to negotiate because of the Cairns Group and the US with directly opposing views to that of the EC, the developing countries were becoming more involved and NGOs were also seeking to make an impact on trade policy formation (as was the European Parliament). This might suggest that the changes from GATT to WTO, including the 'birth defects' that were explained earlier, might increase the level of politicization. This would have an impact on the capacity of the Commission to exercise a stable mix of roles and responsibilities because of their need to respond to diverse groupings raising different, conflicting, issues. Balancing these competing interests and building supportive coalitions was likely, then, to become more difficult in the future. How the Commission might respond to these challenges and, in particular, the level of innovation and entrepreneurship that they are able to demonstrate, will be detailed in further Chapters. The difference between the Delors Commission and the Santer Commission may also be significant in the next three Chapters

The next six Chapters will explore the efforts that the Commission made to this end through assessing the progress that was made through the more political Ministerial process and the more practically oriented issue areas – the latter using case studies highlighting fields where the Commission particularly wanted to make progress. These Chapters have been broken down into time periods. The first set of three Chapters look at Leon Brittan's tenure as Trade Commissioner from the signing of the Marrakesh Accords to the lead-up to the Seattle Ministerial in 1999; the second set of three assess Pascal Lamy's time as Trade Commissioner from the Seattle Ministerial to the failed Cancún Ministerial in 2003. Conclusions from these six Chapters will be drawn in Chapter Nine.

CHAPTER THREE

The Trade Negotiations Framework from Marrakech to Seattle

Introduction

As explained in the previous Chapter, and in the Introduction, the purpose here is to show the Commission's role in the WTO from the aftermath of the Marrakech Agreement to the lead-up to the Seattle Ministerial in 1999. This will focus on the high political level of the WTO, which is the Ministerial process. In common with the following two chapters, this spans Leon Brittan's tenure as Trade Commissioner.¹ This will allow comparison between his period of office and Lamy's period of office (which will be the subject of Chapters Six, Seven and Eight) with overall conclusions being drawn in Chapter Nine.

This Chapter will track the evolution of the Commission's roles and responsibilities pertaining to the WTO Ministerial process and consider the evolving internal consensus, along with the increasing difficulties of establishing an external consensus. It will also explore the growing politicization over the period in order to assess whether this impacted on the Commission's roles and responsibilities and negatively influenced their ability to satisfy the three central interests. This is important in the light of the previous Chapters where it was made clear that the interests are not static and can be constraining, supportive or permissive on the Commission not only according to different work areas but within work areas. This Chapter will, then, set out how far the Commission was able to achieve progress both on its own agenda (where this differed from that of the Council) and with its mandate in the timeframe given above.

¹ It also almost coincides with Renato Ruggiero's period as Director General of the WTO (from 1st May 1995-1st September 1999)

In spite of the ECJ's 1/94 ruling, outlined in Chapter Two, this Chapter will show that the Commission still had sufficient 'policy space' to pursue its own aims both internally and externally. Internally, this is especially noticeable in the document on the '*EU Approach to the Millennium Round*', COM(1999)331, which sets out negotiating positions outside, as well as inside, the Commission's areas of competence as defined in Ruling 1/94. This, then, tends to cast doubt on the contention of Nicolaïdis and Meunier (2002) that the Commission's responsibilities were 'clawed back' by Council following the Uruguay Round.

As regards the external consensus, this Chapter explores Brittan's efforts to set up a 'Millennium Round' of trade talks. This endeavour was successful although the progress within the preparatory Ministerials turned out to be less than expected. With this in mind, it is valuable to look briefly at the Commission's relationships to the other players in the WTO in order to ascertain the possibilities for forward progress over this timescale, as well as to show whether the wider environment was permissive, supportive or constraining on the Commission. In order to demonstrate this more overtly, this Chapter uses tables as a proxy for politicization to set out the differences and similarities between the Least Developed Countries (LDCs) and the Quad positions within the WTO at the Singapore and Geneva Ministerials. In addition, the theme of trade-labour linkages, which will recur through the chapter, will be used to contextualise this gap and will show evidence that the increasingly politicized context coupled with the increased membership, would create problems in achieving a supportive external consensus.

It is important to test the contentions as well as identify the expected problems for the future noted in previous chapters. In particular, to what extent the views of the Commission and the interests change over time and are dynamic rather than static, whether there is a demonstrable increase in politicisation through the time period affecting the mix of tactics used by the Commission (in terms of technocracy, bureaucracy, coalition building and administration) and thus the extent of the Commission's internal and external influence within the WTO.

The First WTO Ministerial - Singapore, 9th-13th December 1996

The Lead Up

The Singapore Ministerial had been scheduled to revisit the workings of the Marrakech Agreement and to cement in the successes of the Uruguay Round, as well to incorporate some of the issues where discussions had continued after the end of the Round (Young, 2000). It was also to be used to consider new aspects of the trade agenda (Zampetti and Sauv , 1996:335) and to “equip the multilateral trading system with the range of instruments and institutional flexibility required both to mediate the tensions...and to successfully promote the system’s efficiency enhancing liberalisation objectives” (ibid, p336).² The Singapore Ministerial would also have to take on board the views of a number of new members and deal with concerns expressed by the developing countries. In short, there was a great deal riding on the outcome both for the European Commission and the WTO.³ In order to maximise its chances of success, public demonstrations were banned and a number of Green Room meetings were held beforehand in order to agree on policy priorities, no doubt antagonising the developing countries.⁴

The European Commission’s own aims for the Singapore Ministerial were for agreements on a number of new issues, perhaps most importantly on a new Round of trade talks. The first mention of a new Round by the Commission, or indeed by any WTO member, seems to have been in October 1995 when Leon Brittan “called on WTO members to make investment rules, competition policy, the environment and labour standards the top priorities for future international trade negotiations”.⁵ This proposal seemed to be a canny move considering 1999 would herald further agricultural

² This is supported by the Draft Council conclusions of the meeting of Trade Ministers on 29 October 1996 at <http://www.ilo.org/public/english/standards/reln/gb/docs/gb267/sdl-1-3a.htm> accessed 24th July 2006.

³ This was agreed by interviewees 2,3,5 & 9

⁴ Demonstrations banned from J Kynge and G de Jonquieres, the Financial Times November 15th 1996 page 7 “Singapore Bans WTO Demonstrations”. Report of Green Room meetings from A Mittal, IPS Columnist Service November 7th 2002 ‘WTO in Sydney: Rule by the Rich for the Rich’ reproduced at <http://www.foodfirst.org/archive/media/opeds/2002/wtosydney.html> accessed 26th July 2006

⁵ G de Jonquieres the Financial Times of October 24th 1995, page 6 ‘Brittan attempts to map out WTO’s agenda’

negotiations with further talks on services taking place the following year.⁶ A new Round bringing a raft of different issues to the table might be expected to take the focus off agriculture and enable trade-offs between policy issues (Swinbank, 1999:46).⁷ As was shown at the end of the Uruguay Round, detailed in Chapter Two, this had already worked well for the Commission.

Another Commission aim was for the WTO to establish a mechanism to look at the links between trade and environment issues and between trade and labour issues.⁸ The member states were particularly influential in establishing the trade-environment agenda mainly because stringent EC environmental legislation created an incentive to block imports from countries that did not meet it.⁹ In parallel, the Commission was also asking the WTO to “make it easier for countries legally to impose trade restrictions in support of multilateral environmental agreements (MEAs)”.¹⁰ Internally, it had submitted a Communication on this matter noting the importance of compatibility between internal and external measures.¹¹ This had been adopted by GAC, which agreed with the Commission that the WTO should establish agreements in this area.¹² The Environment Commissioner was later to comment that if the WTO failed to do this, there could be “conflicts, which might be politically devastating for the WTO”, which shows the importance that this initiative was given internally.¹³

⁶ ‘Fifty Years On’ May 14th 1998, The Economist at http://www.economist.com/displayStory.cfm?Story_ID=128462 accessed 27th July 2006

⁷ Taking the focus off agriculture from F Williams, the Financial Times of 26th February 1999 p3 ‘EU to press case for poor’. Trade-offs had notably happened in the Uruguay Round where the French had to accept the MacSharry reforms to the Common Agricultural Policy or they would have risked losing the WTO (see also Swinbank 1999: 46, looking specifically at agriculture in the Millennium Round.

⁸ Both trade-environment and trade-labour linkages could be termed “sensitive topics” (from Item 8 of the European Commission Spokesman’s Briefing of 24 April 1996 at http://www.hri.org/news/europe/midex/1996/96-04-24_midex.html#08 accessed 15th July 2006.

⁹ B Maddox, the Financial Times of March 3rd 1994, page 11, ‘Black skies, red tape, green fields, grey area’. This was agreed by interviewee 8

¹⁰ G de Jonquieres, the Financial Times of 14th February 1996 page 5, ‘EU initiative on environment’

¹¹ On 28th February 1996, Communication to the Council and the European Parliament on Trade and Environment (COM (96)34) Full text in EU Bulletin 1/2- 1996 at <http://europa.eu.int/abc/doc/off/bull/en/9601/p104026.htm> accessed 26th July 2006

¹² On 15th July, full text in EU Bulletin see 7-1996 at <http://europa.eu.int/abc/doc/off/bull/en/9607/p104036.htm> accessed 26th July 2006

¹³ European Spokesman’s briefing for 24th June 1996 ‘Ritt Bjerregaard on Trade and Environment’ (at http://www.hri.org/news/europe/midex/1996/96-06-24_midex.html accessed 26th July 2006 (she was speaking at a Conference on ‘EU Policy and Global Trade and Environment’)

As regards trade-labour linkages, the Commission had been including clauses on this in agreements with individual third countries since 1992, suggesting they had a good deal of internal experience.¹⁴ Although it has been suggested that Brittan was at first hostile to furthering this in the WTO because of concerns about protectionism being levied on the EC, this negative stance cannot have lasted for very long – particularly since he had made a formal proposal for trade-labour to go on the agenda in Marrakech.¹⁵ Even though this had not proved possible, the first effort to incorporate such a statement into multi-country agreements was in a Communication from the Commission on 1st June 1994 recommending that the EC give incentives to countries, which enacted legislation in accordance with ILO conventions.¹⁶ This was later given further elucidation in a Commission White Paper on *'European Social Policy – A Way Forward for the Union'*; a position which was subsequently agreed by the Corfu European Council.¹⁷ A 1996 paper, jointly written by Leon Brittan and Padraig Flynn, asked Council for the authority to launch a working group at Singapore, in addition to supporting capacity building measures for the ILO.¹⁸ This appeared to have been agreed between the Commission and the ILO already, giving the initiative, perhaps, more chance of success in Singapore although risking criticism from Council that the Commission was exceeding its mandate.¹⁹ Although no criticism seemed to result, Council was warned by the Director General of the WTO that it would be difficult to get trade-labour issues onto the WTO agenda especially since Mexico and India had criticized the US for wanting a more overt reference to the WTO and labour standards in the Marrakech

¹⁴ COM(2001)252, Communication from the Commission to the Council and the European Parliament on *'The EU's Role in Promoting Human Rights and Democratization in Third Countries'* at http://europa.eu.int/comm/external_relations/human_rights/doc/com01_252_en.pdf accessed 26th July 2006

¹⁵ Brittan's hostility from C Southey, the Financial Times of 12th July 1996 page 20 'Brussels seeks trade deal links with workers' rights'. Concerns about protectionism from L Barber, the Financial Times of January 18th 1994 page 6, 'Brittan warns on protectionism'. That Brittan made a formal request for trade-labour to go on the agenda in Marrakech from G de Jonquieres, the Financial Times of March 24th 1994 (page 6), 'Brittan wants rights put on WTO agenda'

¹⁶ Communication from the Commission to the Council and European Parliament of 1 June 1994 on *'The Integration of Developing Countries in the International Trading System – Role of the GSP 1995-2004'*, COM(94)212 (at <http://europa.eu.int/scadplus/leg/en/lvb/r11014.htm>) accessed 22nd July 2006

¹⁷ COM(94)333 final at <http://europa.eu.int/scadplus/leg/en/cha/c10112.htm> accessed 22nd July 2006

¹⁸ Brittan and Flynn (who was the Employment and Social Affairs Commissioner) paper within a Communication from the Commission to the Council on 24 July 1996 entitled *'The Trading System and Internationally Recognised Labour Standards'* COM(96)0402 (a summary of which can be found at <http://europa.eu.int/scadplus/leg/en/cha/c11907.htm> accessed 25th July 2006. Also see G de Jonquieres the Financial Times of 24th July, page 6 'WTO urged to tackle labour standards'. ILO capacity building taken from the Spokesman's Briefing of 24th July at <http://www.hri.org/news/europe/midex/1996/96-07-24.midex.html> accessed 26th July 2006

¹⁹ The ILO said that it wanted to "“push...the trade-social clause link” in the WTO. From the ILO Position Paper, quoted in SUNS Online, January 20th 1995 at <http://www.sunsonline.org/trade/areas/develop/01200195.htm> accessed 26th July 2006

Agreement.²⁰ In addition, at that meeting it was clear that there were significant differences in perspective between the member states suggesting a fragmented internal consensus: although it was reported that the Northern members seemed to be very supportive, there were concerns from the Southern members (along with Ireland, Belgium and France) of going ahead with these measures too quickly.²¹ As well as resolution of these more contentious policy areas at the Ministerial, the Commission was also looking for a political push to the Information Technology (ITA) and the Basic Telecommunications Agreements (BTA).²² However, the Commission also remained alert to the concerns of the developing countries, especially the LDCs, noting they would have to be given additional support to fully implement the Uruguay Round accords and that efforts should be made to afford closer alignment of the WTO to other international bodies, which would maximise effectiveness and capacity.²³

As well as the Commission's own agenda, it is important to consider the mandate given to it by the Council of Ministers (the process for which was explained in the opening Chapter). Council asked the Commission to pursue agreements on trade and investment, competition, tariffs, the ITA and trade-labour links within the Singapore Ministerial, suggesting that the Commission's and Council's agendas were closely aligned.²⁴ Perhaps mindful of what Ruggiero had said, Council advised the Commission to be careful of its tone on trade-labour and insist that there was no desire to undermine competitive advantage. It is not just the Commission's agenda or the mandate that concerns us here. In terms of the internal consensus, the European Parliament wanted

²⁰ The WTO Director General spoke at the Council's 'informal' meeting of trade ministers in Dublin on 18 and 19 September 1996. Difficulty of furthering this from the 'European Union' section of the ILO Report for the Working Party on the Social Dimensions of the Liberalization of International Trade at [http://www.ilo.org/public/english/standards/relm/gb/docs/gb267/sdl-1-3.htm#World%20Organisation%20\(WTO\)](http://www.ilo.org/public/english/standards/relm/gb/docs/gb267/sdl-1-3.htm#World%20Organisation%20(WTO)) accessed 26th July 2006.

²¹ G de Jonquieres, the Financial Times of 20th September 1996, 'Brittan sets tough line for WTO'. Supported by interviewees 5 & 9

²² E Vermulst and B Driessen in The European Journal of International Law Vol 8 (1997) Number 2 'International Trade Developments, Including Commercial Defence Actions in the European Communities XII: 1 July 1996-31 December 1996' at <http://www.ejil.org/journal/Vol8/No2/sr1.html> accessed 26th July 2006.

²³ The Commission donated 50,000 ECU to enable some of the Ministers from LDCs to attend. From the European Commission Spokesman's Briefing of 31st October 1996 at <http://www.hri.org/news/europe/midex/1996/96-10-31.midex.html> accessed 26th July 2006. Closer alignment from the European Commission Spokesman's Briefing of 24 April 1996 as is set out in the Commission Spokesman's briefing of 24 April 1996 <http://www.hri.org/news/europe/midex/1996/96-04-24.midex.html> - 08 accessed 26th July 2006.

²⁴ Meeting held 29 October 1996 in Luxembourg. Draft Council Conclusions submitted to the ILO Working Party on the Social Dimensions of the Liberalization of International Trade' in November 1996 sourced from <http://www.ilo.org/public/english/standards/relm/gb/docs/gb267/sdl-1-3a.htm> accessed 26th July 2006

the Commission to pursue progress in other areas than those previously stated including "health and plant health standards, textiles and intellectual property" suggesting that they had even wider ambitions for increasing the scope of the WTO.²⁵ However, as was shown in Chapter One, because of the European Parliament's position in external trade, it would appear unlikely that the Commission would push for progress in these areas. The issue, then, would be whether this would cause conflict between the European Parliament and the Commission.

The Singapore Ministerial

The views of the Commission and Council at Singapore, as expressed in their statements to the Meeting, were very similar. The Commission made clear that its priorities were to: complete the BTA and ITA negotiations; enlarge the WTO; try to encourage members to open their markets to LDC imports; achieve new work items on the environment, labour standards and a general widened agenda (including financial services, competition and investment); proceed with the built-in agenda and, finally, emphasize the importance of a Millennium Round.²⁶ The Council of Ministers' statement was in line with these aims, even though, as was shown earlier, the consensus for trade-labour work was not strong.²⁷ In addition, Council cited the importance of making sure that regional integration supported the WTO and opined that the relevance of the WTO had to be demonstrated to "political leaders, to business and to consumers". However, notably, Council did not mention anything about a Millennium Round, which would suggest, firstly, that this was the Commission's own aim and, secondly, that, because of this, the Commission might not achieve its goal of getting a supportive statement in the Declaration text. It further suggests that the Commission still had room

²⁵ The call for textile liberalization may have been precipitated by the failure of the EC to get textile exporting countries including India, Pakistan, Indonesia and Thailand, Malaysia, Philippines, Argentina and Brazil to agree to remove certain trade barriers in return for allowing them to export more textiles. See C Southey the Financial Times of September 13th 1996, page 6, 'EU's call for textile deal goes unheeded'. It is possible that there was a connection between the lack of take-up of this initiative and an associated anti-dumping action instigated by the Commission on undyed cotton from India, Pakistan, Indonesia, China, Taiwan and Egypt launched in the week of 16th September 1996 (see J Luesby, the Financial Times of 16th September, page 4, 'Brussels to act over cotton'). Parliament's position from the European Parliament Resolution on the WTO on 13 November 1996 from the EU Bulletin 11-1996 at <http://europa.eu.int/abc/doc/off/bull/en/9611/pi04023.htm> accessed 26th July 2006

²⁶ Circulated as WT/MIN(96)/ST/2

²⁷ Circulated as WT/MIN(96)/ST/3 and ST/3/Add1

for manoeuvre in pursuing such policy intentions, even without direct Council agreement, in spite of Ruling 1/94.

Moving on from the internal consensus, it is important to consider the views of WTO members because of the principle of consensus-based rule making, which was the same as in the GATT. Forward progress could, thus, only be achieved if there was wide agreement on particular issues. In order to gain such consensus, the Commission or the Council of Ministers, or both, would have to embark on a coalition building process (as outlined in Chapter One). To have a clear indication of the differences between the EC position and those of some of the other players, and, thus, to see the pressures on them, this section uses tables to show the similarities and differences of the preferences between the Quad (Canada, Japan, the European Commission and the USA), as the group of the richest countries in the WTO, and the LDCs as the group of the poorest.²⁸ These tables have been constructed using the texts of the Ministerial Statements.

The commonality of developing country positions will be assessed first. Logic would dictate that were the developing countries to agree a common position, given their numerical supremacy it would be difficult for the European Commission, or the Quad as a whole, to pursue policy preferences contrary to them. However, if the Quad had more political weight, it might be that the concerns of the LDCs could simply be glossed over. Therefore, the following tables show what, if any, new agenda items countries were proposing for the WTO, limited (in order to facilitate comparison and to keep the table as useful as possible as a tool to show the views of all countries) to three for each country. The next three columns look at country views on the European Commission's main objectives for the round, namely trade/investment, trade/labour and trade/environment links. The final column reveals whether they expressed any particular concerns. Where countries believed other organisations than the WTO were responsible for rule making, the name of the organisation is placed in brackets. For

²⁸ The OECD classifies developing countries in five categories, depending on their income (least-developed, other low income, lower middle income, upper middle income and high income) Information can be found at <http://www.oecd.org/dataoecd/35/9/2488552.pdf> showing the state of play on 1st January 2003, accessed 25th January 2008

ease of reference, the results will be presented in tabular form with a more detailed explanation following.²⁹

*The LDCs*³⁰

Table 3.1 The positions of the least-developed countries (LDCs) in the Singapore Ministerial.

	New	Trade/investment	Trade/labour	Trade/environment	Concerns
Bangladesh WT/MIN(96)/ST/12		No			Debt
Burundi WT/MIN(96)/ST/125		(UNCTAD)	(ILO)	Unsure	(domestic issues)
Chad WT/MIN(96)/ST/31		Limit			Technical assistance
Gambia WT/MIN(96)/ST/86					Marginalisation
Lesotho WT/MIN(96)/ST/78		Limit	(ILO)	Limit	Implementation
Madagascar WT/MIN(96)/ST/119		Yes	(ILO)		Market access
Malawi WT/MIN(96)/ST/129		(UNCTAD)	(ILO)		Technical assistance
Maldives WT/MIN(96)/ST/113			No		Marginalisation
Mozambique WT/MIN(96)/ST/115		No	No	No	Marginalisation
Myanmar WT/MIN(96)/ST/124		Yes	(ILO)		Implementation
Nepal WT/MIN(96)/ST/92		No	No	No	Market access
Senegal WT/MIN(96)/ST/122		(UNCTAD)	(ILO)		Implementation
Sierra Leone WT/MIN(96)/ST/59		Limit	Limit	Limit	Technical assistance
Solomon Is. WT/MIN(96)/ST/58					Marginalisation
Sudan WT/MIN(96)/ST/94					Debt
Tanzania WT/MIN(96)/ST/50		(UNCTAD)	(ILO)	No	Marginalisation
Togo WT/MIN(96)/ST/87		Yes	Yes		Poverty
Uganda WT/MIN(96)/ST/85		(UNCTAD)	(ILO)	No	Poverty
Zambia WT/MIN(96)/ST/102		(UNCTAD)	(ILO)		Marginalisation/Debt

²⁹ It should be noted that the countries' concerns and suggestions for new issues (where they have been given) are deliberately simplified for ease of comparison.

³⁰ Although WT/MIN(96)/ST/95 is a statement from Cambodia, the statement brought up none of these issues, and did not highlight any points of concern from the Government, therefore Cambodia has not been included in this table.

No LDC put forward any suggestions about new issues they would like to see pursued, presumably because of their problems implementing the WTO Agreement in its totality (as was suggested in the previous Chapter and previously noted by the Commission). Trade/investment was one area subjected to a mixed welcome, although there is a majority negative view. Consensus is particularly strong on trade/labour issues, which was rejected as a possible new work item for the WTO by twelve out of nineteen countries; nine of which clearly indicating that they felt this was ILO's domain and not the WTO's. The countries that mentioned trade/ environment were generally opposed to discussions about it, but insufficient numbers stated a definitive objection. The main concern that the LDCs had was about marginalisation (raised by six countries). The other issues raised could be contributory factors to this including debt, the need for technical and other forms of assistance in order to achieve implementation of the Marrakech Agreement and, finally, issues of market access and poverty. As these issues are interrelated, it is difficult to unbundle them. This strongly suggests that the LDCs would not welcome any new issues being put on the table at Singapore and, because of the extent of this disagreement; it would seem unlikely that the European Commission, or the Quad, would be able to convince them otherwise.

The Quad countries

Table 3.2 The positions of the Quad countries in the Singapore Ministerial.

	New	Trade/inv	Trade/labour	Trade/env	Concerns
Canada WT/MIN(96)/ST/1	IT/competition/ transparency	Yes	Yes	Yes	Dynamism
EC WT/MIN(96)/ST/2	IT/ Basic Telecoms/ Millennium Round	Yes	Yes	Yes	Marginalisation/ Enlargement/ Data protection.
Japan WT/MIN(96)/ST/34	IT/competition/ gov't procurement	Yes		Yes	Marginalisation/ Enlargement
USA WT/MIN(96)/ST/5	IT/gov't procurement	Yes	Yes	Yes	Agriculture/ Dynamism

This table shows that there are strong similarities between the positions of the Commission (and because of the strong similarity between the Commission's and Council's statements already noted, this can be said to represent the EC as a whole) and the rest of the Quad. A great deal of emphasis was placed on the successful completion of the ITA within the Singapore Ministerial. Leon Brittan suggested that if the ITA, and

the BTA, were not concluded, the Ministerial could not be said to have been a success. Government procurement and procedural transparency were also deemed important as was trade/environment and trade/labour (although not for Japan). Both Brittan and Charlene Barshefsky, the US Trade Representative (USTR) hastened to reassure developing countries that trade/labour was not to "be a cloak for protectionism" (Brittan), in that "we are not proposing an agreement on minimum wages... We are proposing that concerns of working people... be addressed in a modest work programme" (Barshefsky). However, the views of the developing countries outlined above would suggest that they remained unconvinced either of the merits of such a programme or, indeed, that the WTO was the right place for such discussions to take place.

The three most significant concerns expressed by this group were marginalisation, enlargement and dynamism, each being raised twice. Both Japan and the European Commission recognised there was a need to help the developing countries although the Commission went much further in what it thought would address this, seeking agreement on duty free market access for products from LDCs. The membership issue centred on the need for the speedy conclusion of negotiations with China and others. As for concerns about dynamism, this is an oft-repeating theme within the Quad statements, even where it is not raised as a primary concern and seems, again, to be very much against what the LDCs were calling for i.e. the Quad wanted to extend the work programme to demonstrate this 'dynamism' while the developing country members preferred to keep the status quo. This, exemplified by Brittan's call for a new trade Round, will be a recurring theme through the rest of this chapter.

In sum, if the Quad could drive the policy process in the WTO because of their relative political rather than numerical weight it might be expected that there would be negotiations beginning on trade/investment, trade/labour and trade/environment. It could also be anticipated that the ITA and BTA would be concluded and government procurement, and procedural transparency, would become new work items. However, if the developing countries acted in concert and made the most of their numerical superiority, it was likely that there would be no new work items and instead an effort to improve the trading situation to benefit them. Either way, it might be an indicator of increasing politicization given the wide dispersal of preferences. Whether the Final

Declaration would be a balance between the two views, or whether there would be friction as a result, will be assessed in the following sections.

The negotiations

As was shown in earlier chapters, the Ministerial process had not changed from the GATT to the WTO. Consensus was still all-important and building supportive coalitions in order to achieve priorities was as critical at the Singapore negotiations as it had been in the Tokyo Round of GATT (for example). As has already been made clear, one of the main aims of the Commission was to promote work on trade/labour standards yet the tables earlier in this chapter suggest that the Commission was likely to confront the developing countries who did not wish to see the WTO extend its remit to this area.

The problems with the Commission getting its way on trade/labour issues started early on in the Ministerial. Michel Hansenne, the Director General of the ILO, was asked by the WTO Council to give an address to the Ministerial but this invitation had to be withdrawn either because “some members pointed out that the ILO was not one of the seven IGO’s accredited to the WTO Council” or because the developing countries raised serious objections to the extent that it could not go ahead (Leary, 1997, Roozendaal, 2001).³¹ In addition to the lack of consensus within the WTO, Brittan was unable to make headway because the internal consensus showed that it would not hold, as it had not done in the earlier Council of Ministers meeting, this time with clear opposition evident from the UK and Germany.³² It was suggested that this was indicative of the high level of “disagreements during the week on contentious issues” although consensus did eventually emerge in agreement to the Final Declaration.³³ From the evidence in the Statements, the Commission and, seemingly, most of the Council of Ministers, hoped for more in the outcome on labour standards. Instead, the relevant section of the Declaration was ambiguous. Although the commitment to labour

³¹ From the ICTSD Bridges Report ‘WTO Ministerial Conference Highlights’ of 9th December 1996 at <http://www.ictsd.org/ministerial/singapore/story09-12-96.htm> accessed 26th July 2006

³² A Reyes, Asiaweek (WTO section) 20th December 1998 ‘Rich versus Nearly Rich: Small Nations Try to Hold Their Own in Singapore’ at <http://www.asiaweek.com/asiaweek/96/1220/biz4.html> accessed 19th May 2003

³³ P Watson from the Center for Strategic and International Studies in Washington DC, reporting on the meeting in CSIS Watch, Number 169 January 10th 1997 at <http://www.csis.org/html/7wtch169.html> accessed 14th May 2003

standards was spelt out, and ILO acknowledged as the competent body, the Chairman of the meeting said that this did not “inscribe the relationship between trade and core labour standards on the WTO agenda”.³⁴ Furthermore, he noted that there was “no authorisation in the text for any new work on this issue”.³⁵ This was somewhat different from what was given as Leon Brittan’s own interpretation (from the same article) that “The EC believes this agreement marks a breakthrough in world-wide dialogue... (which)...must now be taken further so we can promote greater respect of core labour rights in all our countries”.

Brittan got no further with his plea for duty free access to markets for products from the LDCs either; it was reported that this proposal, also supported by Ruggiero, was roundly rejected.³⁶ However, the general principle that developing countries needed more help was accepted even if Brittan’s methodology for addressing it was not (at least at this point). It was agreed that LDCs should receive increased technical assistance, that the impact of agricultural reform should be assessed and that there should be a ‘Plan of Action’. This Plan would, according to the Declaration, aim to “enhance conditions for investments and provide predictable and favourable market access”. The LDCs, at a meeting held at UNCTAD earlier in the year, had already commented that the proposed ‘Plan of Action’ would not be enough to address the existing imbalances; instead they needed support “to address the fundamental constraints on their production capacity”.³⁷ This was likely too radical, and/or too expensive, a proposal to gain popular support, especially if the Commission, and the Quad, thought that the agenda would be extended anyway.

³⁴ O’Brien et al (2000: 227-8) suggest that the US used the ‘weak’ statement on labour as a “bargaining chip” to achieve Asian sign-up to the ITA. However, buy in from Malaysia and Thailand, for example, was not fully achieved until March 1997 so although it may have been the first push, it was not the only initiative needed.

³⁵ M Khor in SUNSonline of December 17th 1996 ‘After SMC, the Battle of Interpretations’ at <http://www.sunsonline.org/trade/process/followup/1996/12170196.htm> accessed 26th July 2006

³⁶ Information sourced from G de Jonquieres and F Williams the Financial Times of 11th December 1996 page 4, ‘Information Technology deal is close’. Also L Elliott in the Guardian of the same day, page 11, ‘Poorest traders kept outside’, commented that it was rejected “by Canada, the US, Spain, Italy, France and Portugal” as well as by “the big textile exporters – India, Hong Kong, Pakistan and Indonesia”

³⁷ From the UNCTAD Press Release TAD/INF/NC/96_23 of 10th October 1996 ‘LDCs urge the international community to action’ at <http://www.unctad.org/Templates/Webflyer.asp?docID=3725&intItemID=2068&lang=1> accessed 26th July 2006

The Commission did not go away empty handed; further work in trade and environment became more likely with a commitment to use the existing Working Group as a foundation for further development.³⁸ Likewise, although the BTA and ITA had not been signed in Singapore, there was a commitment in the Declaration to conclude the BTA in February and restart the FSA negotiations in April along with establishing three committees on investment, competition and transparency in government procurement, all of which reflected Commission and Quad aims.³⁹ The only fly in the ointment here was that there was a clear statement in the Declaration that work to develop policies on investment and competition would only take place following not just a consensus but “an explicit consensus decision” of the membership.⁴⁰ Brittan’s comment that; “On investment...we have at last put WTO on the map” will be shown to have been a little premature.⁴¹

The most important outcome for the Commission, however, was a stated commitment in the Declaration to begin another Round of trade talks in 1999 called, just as Brittan had asked, ‘The Millennium Round’. It was expected to be launched at the next Ministerial in Seattle in 1999 even though the WTO consensus was by no means assured (Srinivasan, 1999: 1061, Tangermann 1999: 1176). This was especially true on the part of the developing countries, concerned that this would be another opportunity for the Quad to widen the agenda (Tharukan, 1999: 1145).⁴² In spite of these concerns, this was a clear statement that Brittan, and the Commission were influential within the

³⁸ Supported by interviewee 8

³⁹ These topics would become known collectively as ‘the Singapore Issues’. Cook and Kirkpatrick (1996: 62) note that the importance attached to investment stemmed from the “rapid” increase in the flow “with the share of developing countries in total FDI flows increasing from 17% in the second half of the 1980’s, to 32% in 1992”. This, they felt, made an approach to develop policy on this issue particularly timely. T Wall in Africa Recovery Vol 10:3 December 1996 ‘New WTO Investment Rules Cause Concern’ commented that this paragraph within the Final Declaration reflected “a proposal...that had been beaten back by developing countries at an early November meeting to set the agenda for...Singapore” and that this was (in TWN’s words), tantamount to “a return to the colonial era” (sourced at <http://www.globalpolicy.org/socecon/bwi-wto/wtoinvst.htm> accessed 25th January 2008).

⁴⁰ The Pocket Oxford English Dictionary defines ‘explicit’ as being “*unambiguous in expression [with] such verbal plainness and distinctness that there is no need for inference and no room for difficulty in understanding*”, which suggests that silence or failure to actively object on the part of any member could not, under explicit consensus, be taken to be in agreement with the action. The insinuation is that a single member might veto onward progress if they did not agree with work on investment and/or competition going ahead.

⁴¹ from M Khor Sunsonline, 17th December 1996 ‘After SMC, the battle of interpretations’, at <http://www.sunsonline.org/trade/process/followup/1996/12170196.htm> accessed 26th July 2006

⁴² Also see the section on ‘International Trade’ in ‘Developments in Intergovernmental Organizations of Interest to the Business World’ Volume 17: 4, November 1996 at <http://www.uscib.org/index.asp?documentID=1103>, which raises all these issues, accessed 26th July 2006

WTO structure, particularly noticeable since this aim had not been supported, explicitly at least, by the Council of Ministers.

The results of the Singapore Ministerial were endorsed by the Council of Ministers, which then “authorized the Commission to sign (the Final Accords) on behalf of the Community and the member states”.⁴³ At its January meeting it asked the Commission to continue its efforts to ensure the implementation of the agreements reached, especially the BTA, ITA and FSA.⁴⁴ This was absolutely in line with what the Commission itself wanted and again shows that the internal consensus was strong and the Council was permissive on the Commission in allowing it to proceed unhindered by other proposals and additional requirements on Council’s part. This is in spite of what might have been deduced from the ECJ’s 1/94 ruling.

The Second WTO Ministerial – Geneva, 18-20th May 1998

The Lead Up

It was a proposal from Canada that there should be a Ministerial to celebrate fifty years of multilateral trade arrangements and that the meeting should focus on two core issues of implementation and the LDCs.⁴⁵ The Geneva Ministerial would be different from the Singapore Ministerial because the outcome would be agreed informally at Head of Delegation level and then formally agreed at General Council.⁴⁶ This would have the effect of minimizing the scope for argument in the wider forum and authority being given to the negotiators involved at the preliminary stages, most certainly including the Commission, who would be able to decide upon the agenda and the outcome simultaneously.

⁴³ At its meeting of 13th December. From the EU Bulletin 12-1996 at <http://europa.eu.int/abc/doc/off/bull/en/9612/p104013.htm> accessed 26th July 2006

⁴⁴ Meeting 20th January In the EU Bulletin 1-1997 at <http://europa.eu.int/abc/doc/off/bull/en/9701/p103023.htm> accessed 26th July 2006

⁴⁵ C Raghavan, Sunsonline 7th February 1997 ‘Canada Proposes Ministerial Meet Early 1998’ at <http://www.sunsonline.org/trade/process/followup/1997/02070097.htm> accessed 26th July 2006

⁴⁶ C Raghavan, Sunsonline 8th May 1998 ‘Second Ministerial: ‘A meeting about another meeting’ at <http://www.sunsonline.org/trade/process/followup/1998/05080198.htm> accessed 26th July 2006

It did not appear, on this basis, that a wide consensus would be difficult to achieve. At Singapore, labour standards had been discussed, and seemingly resolved in the wording of the Ministerial Declaration (although, as was shown, different parties believed the wording had indicated different things); conflicts on trade and investment, trade and competition, government procurement and regional trading arrangements had been addressed through the inauguration of committees and work on trade and environment links had been continued. Subsequent to the Singapore Ministerial, the ITA, the BTA and the FSA had all been concluded, even if not necessarily to the complete satisfaction of all parties (see Chapter Four). In addition, focusing on implementation and the LDCs would encourage consensus, as these issues had not been fully explored at Singapore. Progress might also persuade the LDCs to accept a new Round of trade talks, which was not a given as it had not been officially launched, and, in addition, a strong consensus in Council would be permissive on the Commission, allowing it to exercise the more technocratic leadership that it had exerted through the ITA, BTA and FSA processes.

The Council of Ministers discussed this Ministerial in March 1997 when the primary task for the Commission was set out, i.e. to conduct "thorough groundwork on all the areas likely to be covered by the (1999) ministerial meeting (and)...to secure a trade pledge from all the parties".⁴⁷ Apart from the 'trade pledge', and what form it would take was not set out, this seemed not to disagree with the Canadian proposal too much. However, Council conclusions in April suggested that the Commission should now seek agreement on a "work programme" in order for future negotiations to have an agreed basis to work from.⁴⁸ To this end, Council suggested that agreement should be sought on the Singapore Issues, tariffs "and all matters not yet included, including trade, the environment and core labour standards" for inclusion into the Work Programme. In other words, they did not see discussion on the contentious issues in Singapore as being closed and, moreover, seemed to suggest that the Geneva Ministerial could be used to gain agreement to incorporate them into the next Round.

⁴⁷ EU Bulletin 3-1997 at <http://www.europa.eu.int/abc/doc/off/bull/en/9803/p103020.htm> accessed 26th July 2006

⁴⁸ EU Bulletin 4-1998 at <http://europa.eu.int/abc/doc/off/bull/en/9804/p103016.htm> accessed 26th July 2006

Council also wanted the Commission to achieve consensus on the integration of developing countries into the multilateral framework, for accession negotiations to be finalized and for measures to inform the public of “the benefits of trade liberalisation”. In sum, Council wanted a comprehensive and highly politicized agenda for the third Ministerial, the latter, which was intended to mark the beginning of a new trade Round. Although the European Parliament did not have a formal role in external trade negotiations, it too was proposing a wider agenda, convinced of the merits of including “non-economic policy objectives, such as the protection of the environment, public health, cultural and ethical diversity and animal welfare” in the WTO. Furthermore, it urged the Commission and Council to seek a “binding declaration or decision” on these issues from WTO members within the Ministerial.⁴⁹

Taking the agreed conclusions from a number of internal and external meetings at which the Commission was represented and where the WTO was discussed, along with the stated priorities of Council and the European Parliament, it can be assumed that there were around fifteen agenda items that the Commission was expected to advance within the WTO and these have been grouped for ease of reference.⁵⁰ The ‘social issues’ category would be particularly difficult to progress as it had proved impossible to reach agreement on any of these issues at Singapore (beyond discussions), due to strong developing country resistance aided by German and British reluctance to promote regulations on labour standards.⁵¹ The ‘institutional issues’ seem to reflect a general concern with demonstrations of public dissatisfaction with the multilateral

⁴⁹ EU Bulletin 4-1998 at <http://europa.eu.int/abc/doc/off/bull/en/9804/p103017.htm> accessed 26th July 2006

⁵⁰ Meeting outcomes used include ASEM, which prepared for the Geneva Ministerial in their meeting of 5th to 6th February 1998 – well before the Council’s discussions began (see http://www.iiias.nl/asem/offdocs/docs/ASEM_SOMTB-CoChSumm.pdf for the full report, accessed 26th July 2006 the TABD whose Mid Year Report was issued on May 10th (at <http://128.121.145.19/tabd/media/MYM98.pdf>) where they set out 21 priorities, to be addressed at both the 1998 and 1999 Ministerials. Accessed 12th May 2002 and various G-8 configurations (the Joint Finance and Foreign Ministers Meeting 9th May in Birmingham, UK. Conclusions found at <http://www.g8.utoronto.ca/finance/fj980509.htm> accessed 26th July 2006 and the G-8 Birmingham Summit held 15th –17th May 1998, *Final Communiqué* sourced at <http://www.g8.utoronto.ca/summit/1998birmingham/finalcom.htm> accessed 26th July 2006 The issues brought up by these meetings are: the launch of a PR initiative to educate the public of the advantages of the multilateral trading system; further removal of industrial tariffs and ‘nuisance’ tariffs; the Singapore Issues; trade/environment (perhaps involving the setting up of a Council for the Environment and Sustainable Development); trade/labour; trade/investment; market access for the developing countries, or at least the LDCs, and the implementation of the Plan of Action; transparency; outstanding accession negotiations (especially China); full implementation of existing Agreements; regional trading arrangements; electronic commerce; reform of the Government Procurement Agreement; a general ‘deepening and widening’ of the agenda and agreement on the launch of a new trade Round in 1999. These issues have been grouped in footnotes.

⁵¹ trade-labour, trade-environment, market access.

system, thus encouraging more transparency of working combined with appropriate PR, in an attempt to defuse the potential negative effects on the multilateral system.⁵² The question of membership was also ongoing from Singapore. Interestingly, the ‘traditional issues’ are practically the same as those that came up at Singapore – specifically implementation of agreements and tariff removal (it is instructive that little progress had been made on these).⁵³ Finally, it is important to note that the largest category of ‘new issues’ is incredibly broad; to promote a “widened agenda” in addition to addressing all the other topics would seem to have been a practically impossible aim given the developing country position.⁵⁴

The Geneva Ministerial

The Commission’s Statement to the Ministerial set out four key aims centring on the importance of multilateralism and the need to implement commitments, the push towards global membership and the “recognition of the benefits of further broad-based liberalization within the WTO framework”.⁵⁵ In particular, Brittan emphasized what he thought were core issues: investment, IT, competition, environment and sustainability. He saw the Millennium Round as a way “to frame a response” to address public concerns with globalisation. This emphasis on civil society may have been partly in response to “the first mass demonstrations to which the WTO was to be exposed; after the calm of Singapore...the extent of the protests surprised many”.⁵⁶ Council’s Statement to the Ministerial again did not mention a ‘Millennium Round’ but cast it in terms of “maintaining the momentum of multilateral liberalization”; a repeat of the ‘dynamism’ argument that had been expressed at Singapore.⁵⁷ As such, it went on to promote a wide

⁵² PR, transparency, membership and a new trade Round

⁵³ tariff removal, implementation and government procurement

⁵⁴ Singapore issues, regional trading arrangements, trade/investment, electronic commerce and a ‘widened agenda’

⁵⁵ delivered by Leon Brittan on 18th May, statement circulated as WT/MIN(98)/ST/76

⁵⁶ Quote from R Wilkinson, IPEG Papers in Global Political Economy Number 3 ‘A Tale of Four Ministerials. The Rise and Demise of the Trade-Labour Standards Debate’ April 2002 at <http://www.bisa.ac.uk/groups/18/papers/RordenWilkinson.pdf> accessed 15th July 2006. A useful website detailing the kinds of actions planned by protestors in Geneva is <http://www.nadir.org/nadir/initiatiiv/agp/free/global/geneva98.htm> accessed 26th July 2006, although it is likely that these details are simply representative of a wider set of activities designed to disrupt the Ministerial and/or the city of Geneva as a whole.

⁵⁷ circulated as WT/MIN(98)/ST/90 on 20th May, submitted by Margaret Beckett for the British Presidency

ranging agenda and wider membership, as well as advocating a joint approach on electronic commerce, which had seemingly not been mentioned before.

Perhaps the most important part of Council's statement was that "The European Union also attaches importance to the language in the Singapore Declaration on core labour standards", with no suggestion as to what that meant in practice – was this an attempt to take the issue off the table (as the British and German governments had tried to do in Singapore) or was this an effort to avoid confrontation with the developing countries by being deliberately vague? As the Council did not mention a 'Millennium Round'; neither did Brittan mention labour standards although Santer did in his speech; which could be indicative of a more fragmented internal consensus than first thought. At this Ministerial, groups of countries (apart from the EC) issued statements for the first time.⁵⁸ This could have been merely symbolic, considering the original Canadian proposal, or an attempt to maximise the impact of representations through collective action and/or to ensure that there was an element of cohesion in positions. As only eight developing countries made individual statements to the Ministerial, it suggests that there was at least a residual symbolism.⁵⁹ However, if there was a genuine wish on the part of the Commission and the rest of the WTO to take account of the concerns of the developing countries, then the issues that they raised, as individuals as well as collectives, would be clearly visible in the Final Declaration.

As before with the Singapore Ministerial, tables have been compiled to show what, if any, new agenda items countries or groups of developing countries were proposing for the WTO, limited (in order to facilitate comparison and to keep the table as useful as possible as a tool to show the views of all countries) to three for each country. The next three columns look at individual and collective LDC views on the European Commission's main objectives for the round, namely trade/investment and trade/environment along with trade/labour to see if any changes were evident from the

⁵⁸ The Groups represented were the South Centre, an intergovernmental organisation of developing countries, the Organisation for African Unity/ African Economic Community (OAU), the Common Market for Eastern and Southern Africa (COMESA), a grouping of 20 states, the South Asian Association for Regional Cooperation (SAARC), a group of 7 states, ASEAN, APEC and the Ministers of the Least Developed Countries. In addition Tanzania made a statement on behalf of the Southern African Development Community (SADC), a group of 14 states.

⁵⁹ Unfortunately the WTO could not find a copy of Myanmar's statement that was accessible so it has not been included in the table.

positions taken at Singapore. The final column shows whether countries expressed any particular concerns. For ease of reference, the results will be presented in tabular form with a more detailed explanation following.⁶⁰

The LDCs

Table 3.3 The positions of the least-developed countries (LDCs) in the Geneva Ministerial.

	New	Trade/inv	Trade/labour	Trade/env	Concerns
Bangladesh (WT/MIN(98)/ST/60)					SDT/poverty/ ODA
Burundi (WT/MIN(98)/ST/78)	Multilateral work plans on developmental issues				Marginalisation
Chad (WT/MIN(98)/ST/79)	Coordination between agencies				Financial assistance/ integrated initiatives/ capacity
COMESA WT/MIN(98)/ST/74	Capacity building programmes				Market access/ SDT/integrated initiatives
LDC Group WT/MIN(98)/ST/91					Plan of action & integrated approach/ accession/debt
Maldives WT/MIN(98)/ST/88	Harmonization and regulation of preferential rules of origin		No		Technical assistance/ investment & market access/textiles
Myanmar WT/MIN(98)/ST/6	RTAs/ globalisation of free trade by 2010	Yes but in parallel with others	Probably not	Possibly but must support trade	Integration/ tariff and NTB reduction/ accession
Nepal WT/MIN(98)/ST/51					SDT/ global fund for export development
OAU WT/MIN(98)/ST/72	Measures to deal with country specific situations			As long as not a guise for protectionism	Market access/ integrated initiatives/ accession
SAARC WT/MIN(98)/ST/49			No	No	Debt/transfer of technology/ areas of interest to developing countries
SADC WT/MIN(96)/ST/96	Country-specific programmes/ coordination between agencies	No	No	No	Capacity/ implementation & enactment/ SDT

⁶⁰ It should be noted that the countries' concerns and suggestions for new issues (where they have been given) are deliberately simplified for ease of comparison.

Solomon Is WT/MIN(98)/ST/93	Multilateral Agreement on Labour				Integrated initiatives/ accession/ implementation
South Centre WT/MIN(98)/ST/20	Coordination between UN and Bretton Woods institutions		No	No	SDT/reciprocity /accession
Zambia WT/MIN(98)/ST/82	Mechanism to restore lost rights (due to lack of technical capacity)				Implementation /debt/integrated initiatives

There are very few comments on trade-investment suggesting either that countries remained to be convinced of the benefits of such an agreement or that this fitted in with their general wish not to have new items on the agenda except where it benefited them. *Of countries and groups that commented on trade/labour, there was a general negative opinion, akin to that expressed at Singapore. Only the OAU and Myanmar expressed a wish to perhaps consider trade environment although they seemed to have a concern that it might be used for the purposes of protectionism.*

There are a number of ideas for new work items here although preferences are dispersed. Where these countries or groups expressed views, the most popular idea was for coordination between agencies (Chad, OAU, SADC, South Centre, COMESA, the LDC Group, Solomon Islands and Zambia [the latter four suggesting this should be a new work item]) and country-specific programmes (which could be linked). There are also a number of countries and groups that mention ongoing problems with implementation and financial and technical assistance, alongside SDT, which are also linked (Bangladesh, Chad, COMESA, Maldives, Nepal, SADC, Solomon Islands, South Centre and Zambia).

Table 3.4 The Quad countries positions in the Geneva Ministerial.

	New	Trade/inv	Trade/labour	Trade/env	Concerns
Canada WT/MIN(98)/ST/73	'Cluster approach' to Rounds rather than large multilateral negotiations/ Civil society involvement	Yes			Cultural industry protection/ Erosion of rights to regulate/electronic commerce
EC WT/MIN(98)/ST/76	Tariffs/ promoting wider understanding of social and economic benefits of WTO/ICT	Yes	⁶¹	Yes	Implementation/ membership/ need for a 'far reaching agenda' for future negotiations
Japan ⁶²	Tariffs	Yes		Yes	Developing countries/RTAs
USA WT/MIN(98)/ST/57	ITA II/ electronic commerce/ transparency of state trading enterprises		Yes	Yes	Agriculture/services/ Intellectual property rights

Preferences here are quite dispersed with no issue attracting support from all four Quad members, unlike at Singapore where trade-investment and trade-environment had unanimous support. Trade/labour seems to have effectively gone from the agenda excepting for the US, who continued to want to pursue it. Whether there would be an effect on the internal consensus because Brittan did not want this on the WTO agenda whereas Santer did, will be shown. The extent of fragmentation within the Quad is also noted on new issues with the EC and Japan wanting to negotiate on tariffs, the EC and Canada considering civil society and Canada and the US looking at electronic

⁶¹ Although Leon Brittan said nothing about labour standards in the Statement, Jacques Santer also gave a speech on the first day in which he remarked, "The WTO cannot allow itself to be branded with the image of an anti-democratic organisation which disregards ethnic diversity, has no respect for the environment or labour standards and which acts against the interests of a large majority of citizens in particular the most disadvantaged" (sourced at http://www.wto.org/english/thewto_e/minist_e/min98_e/anniv_e/santer_e.htm accessed 7th April 2008). Although Council's statement (WT/MIN(98)/ST/90) said it "attaches importance to the language in the Singapore Declaration on core labour standards", the speech from the Chairman of the Council, Romano Prodi, said only that there should be "enhanced cooperation between WTO and ILO" (from http://www.wto.org/english/thewto_e/minist_e/min98_e/anniv_e/prodi_e.htm accessed 7th April 2008)

⁶² Statement delivered by the Prime Minister of Japan but not labelled or numbered as a statement yet no other statements circulated. Sourced at http://www.wto.org/english/thewto_e/minist_e/min98_e/anniv_e/jap_e.htm accessed 7th April 2008

commerce. This shows that the Quad could not have led consensus-building processes in the Geneva Ministerial even if there had been an opportunity for them to do so.

The negotiations

There are two Declarations from the Geneva Ministerial; both of which were adopted on 20th May.⁶³ The Council of Ministers had already considered them, in draft form, on 18th May and was content particularly with the Declaration on Electronic Commerce.⁶⁴ As explained earlier, these Declarations had been negotiated prior to the Ministerial and from this positive reception, it could be expected that the Ministerial Declaration followed Council's preferences and laid the way for dynamic future developments, with a wider scope and the date for a future Round set. This, however, was not the case, again perhaps due to the ceremonial aspects to the meeting.⁶⁵

There was very little substance to the Geneva Final Declaration in that there were no new work items set out, no indication of a wide consensus so a comprehensive work programme could be taken forward to the next Ministerial and no attempt to build on what had happened at Singapore; there wasn't even mention of a future Round (also Croome 1998: 47). As far as encouraging the developing countries, although there was recognition in the first section that, "More remains to be done to enable all the world's peoples to share fully and equitably in these achievements", as Brittan had been arguing for some time, there was very little else in the Declaration that might put flesh on those particular bones.⁶⁶ There was a clear "commitment to achieve progressive liberalization of trade in goods and services" although the ways and means to achieve it were left unstated. The most substantive section established "a process... to ensure full and faithful implementation of existing agreements, and to prepare (a work programme) for

⁶³ WT/MIN(98)/DEC/1 is the 'Ministerial Conference - Ministerial Declaration and WT/MIN(98)/DEC/2 is the 'Ministerial Conference Declaration on Global Electronic Commerce',

⁶⁴ From EU Bulletin 5-1998 at <http://www.europa.eu.int/abc/doc/off/bull/en/9805/p103024.htm> accessed on 26 July 2006

⁶⁵ R. Thompson of the Evian Group, in her 2002 paper on 'Electronic Commerce and the WTO' Accessed at <http://www.sitrends.org/downloads/statistics/pdf/ECommWTO.pdf> on 26th July 2006

⁶⁶ Section 5 looks to extend the benefits of the system "as widely as possible" and is related to Section 6 on the particular problems faced by the least-developed countries. This calls on members to assist them by fully implementing market access obligations

the Third Session of the Ministerial Conference”.⁶⁷ This next Ministerial would be held in Seattle in November 1999.⁶⁸ Council appeared to have wanted the agenda to be prepared (or at least settled) at Geneva so it is noteworthy, then, that there was no explicit mention of trade/investment, trade/labour, trade/competition or government procurement within the Final Declaration. Perhaps, the antipathy of the developing countries to new work items was impeding the Commission’s progress towards a broadened WTO agenda. This contention is supported by Penny Fowler who commented that although the EC had called for a new Round, “several developing countries stressed that they will not accept negotiations on new issues unless their concerns about implementation of the existing agreements is taken into account”.⁶⁹ This would appear to indicate a turning point in the developing countries’ stance within negotiations, and it will be seen if this affected the internal consensus and boded ill for any future progress desired by the Commission.

⁶⁷ Rather than setting out exactly what the work programme would include, details were left sketchy with a commitment to look at (i) the implementation of existing agreements, (ii) the timeliness of negotiations already agreed in Marrakech to ensure the schedule remains on target, (iii) any “future work already provided for under other existing agreements”, (iv) work items from the Singapore meeting, (v) “follow-up to the High-Level Meeting on Least Developed Countries” and (vi) other issues “agreed to by Members”. The only acknowledgement of the problems of the LDCs in developing a work programme was that there should be an “overall balance of interests of all members” although, as has already been shown, this would be difficult to achieve considering the antipathy of the developing countries to the incorporation of any new issues on the agenda that did not specifically benefit them.

⁶⁸ The superstitious may have wondered whether this was asking for trouble – Seattle was infamous for staging the USA’s “first total strike” on February 6th 1919 (see J Cassy the Guardian of 24th November 1999 p27 ‘Washington hopes Castro will follow Queen’s example’ and, for more information about the strike, <http://seattletimes.nwsource.com/centennial/march/labor.html> (accessed 12th May 2003) detailing the article by S Boswell and L McConaghy, Seattle Times March 31st 1996, ‘Strike! Labor unites for rights’ However, A Gumbel in the Independent on Sunday of 5th December 1999 (at <http://www.gene.ch/gentech/1999/Dec/msg00029.html> accessed 12th May 2003) ‘City at bay after taking liberties with civil rights’ pointed out that, in recent years, Seattle was a city where the “idea of civil disobedience, most weeks of the year, is a pedestrian daring to step on to the road before the traffic lights turn red”. The invitation had been given by US President Bill Clinton to “come to America”. From ‘The Economist’ Survey: World Trade October 1st 1998 ‘Slow Road to Fast Track’ at http://www.economist.com/surveys/displayStory.cfm?Story_id=605236 accessed 26th July 2006

⁶⁹ Penny Fowler’s report on the Ministerial for the UK Food Group: Agricultural Biodiversity Coalition at <http://www.ukabc.org/wto.htm> accessed 26th July 2006. Even the Secretary-General of UNCTAD, Rubens Ricupero, called for the WTO to “finally address the cumulative ‘unfinished business’ of the Tokyo and Uruguay Rounds” (from the ICTSD Bridges Report of, 12th April 1999 ‘Promoting the Millennium Round: On the Road with Sir Leon’ at <http://www.ictsd.org/html/story4.12-04-99.htm> accessed 26th July 2006) rather than extending the agenda further. He was later quoted as saying, at Columbia University on 23rd July 1999 “There is not much excitement among developing countries in Geneva regarding the prospects of a new trade round. In fact there is hardly any excitement at all anywhere in the world about this...”. From the FoE submission to the House of Commons Tuesday 9th November 1999 at <http://www.parliament.the-stationery-office.co.uk/pa/cm199900/cmslect/cmenvaud/45/9110909.htm> accessed 26th July 2006

The second '*Ministerial Declaration on Global Electronic Commerce*' is a statement that General Council would develop a programme of work in this area. The Commission's 1998 Report said that this had come about because the European Union had pushed for it; Council had also mentioned it in their Statement to Geneva.⁷⁰ It has been suggested by others that the proposal was a joint US/Quad initiative or that it was from the US alone, which would explain why there is no record of discussions of this in previous Council meetings and also why it featured prominently in the US' Statement at Geneva.⁷¹ That it forms a separate Declaration is strange, particularly as the statement is so short – this may barely reflect the pressure exerted to get more into the Declaration, especially since the US held an eighty-five percent market share so it was strongly in its interest to stop trade barriers.⁷²

Since it has been shown that there was little in the Declaration that tallied with what the Commission and Council sought, it is surprising that the European Council, acknowledging the results, said that it," welcome(d) the outcome of the 1998 WTO Ministerial...It underlines the importance of initiating a comprehensive new round of liberalising negotiations at the third WTO Ministerial Conference towards the end of 1999".⁷³ This latter point, as was shown, was hardly the conclusion from the Geneva Ministerial so it would appear that this was wishful thinking on the European Council's part. It gave no encouragement to the Commission to work at achieving the necessary consensus, perhaps through developing trade-offs or bargaining, prior to the next Ministerial, which may have proved to be a fatal mistake.⁷⁴

⁷⁰ General Report 1998 - Chapter V: Role of the Union in the world, Section 3: Common commercial policy at <http://europa.eu.int/abc/doc/off/rg/en/1998/x0710.htm> accessed 26th July 2006
Council's statement circulated as WT/MIN(98)/ST/90

⁷¹ Article suggesting it was a US/Quad initiative is B Lal Das in the South-North Development Monitor, May 5th 1998 'Electronic Commerce in the WTO', based on the author's presentation at a TWN-organised seminar on 'Current Issues on Trade, the WTO and Developing Countries' on 29-30 April 1998 in Geneva found at <http://www.twinside.org.sg/title/lall-cn.htm> accessed 26th July 2006. Article suggesting it was a US proposal was S Tangkitvanich in Cooperation South Number 1 (2001) 'Global E-Commerce Policies Seen From the South' at http://tedc.undp.org/coopsouth/2001_oct/016-028.pdf accessed 26th July 2006. Canada also mentioned electronic commerce although in a small paragraph at the bottom of the penultimate page of the statement, which does not suggest it was a priority. In a speech delivered by the Japanese Prime Minister – labelled a Statement but not accessible from the WTO's Statements page – no mention was given of electronic commerce at all. Accessed at http://www.wto.org/english/thewto_e/minist_e/min98_e/anniv_e/jap_e.htm on March 25th 2008.

⁷² See Rachel Thompson 's 2002 paper on 'Electronic Commerce and the WTO' Accessed at <http://www.sitrends.org/downloads/statistics/pdf/ECommWTO.pdf> on 26th July 2006

⁷³ EU Bulletin 6-1998 at <http://www.europa.eu.int/abc/doc/off/bull/en/9806/j1022.htm> accessed 26th July 2006

⁷⁴ Or that they were convinced the US would see that a Round was launched at Seattle. This was proved correct on January 19th 1999 (as outlined by M Wolf Financial Times 24th February 1999, page 26, 'The

Parliament also adopted the conclusions of the Geneva Ministerial calling on the Commission to take into account “interests of the developing countries” on matters of clothing and textiles, as well as to “examine the various aspects of world trade as part of the future reform of the common agricultural policy”, quite a concern for the Commission considering agriculture had proved so divisive internally and externally in the Uruguay Round (see Chapter Two).⁷⁵ It might have seemed from this that Parliament was supporting a more balanced agenda in the WTO, possibly because of the lack of consensus to any new work items on the part of the developing countries, by incorporating issues of primary interest to them. However, Parliament would later call “for the precautionary principle to be explicitly upheld as a priority basis for all decisions which have an impact on public health and consumer protection”, thus limiting agricultural liberalisation.⁷⁶ Finally, Parliament wanted any new Round to address “the link between trade and...core labour standards, environmental protection and public health”. In the end, then, although it supported certain of the issues dear to the hearts of many developing countries, specifically textiles and clothing, this did not mean that it wanted the Commission to ignore European interests (in terms of agriculture and the precautionary principle) or what it perceived as the critical aspects of the ‘new agenda’ (most notably trade-labour links).⁷⁷

The aftermath of Geneva and onwards to Seattle

After Geneva, there were two key issues for the WTO. Firstly, it had to develop a work programme for Seattle and for the new Round following the insubstantial mandate given at Geneva. To this end, a Special Session of the Ministerial Council took place on 24th September.⁷⁸ At this meeting, the Commission set out its wish list of what it wanted to see being covered listing further tariff cuts, further liberalization of services -

right call) when Bill Clinton said; “Tonight I issue a call to the nations of the world to join the United States in a new round of global trade negotiations” which “made the ‘millennium’ round...almost a certainty”

⁷⁵ Meeting 18th June in EU Bulletin 6-1998 at <http://www.europa.eu.int/abc/doc/off/bull/en/9806/p104035.htm> accessed 26th July 2006

⁷⁶ Particularly applicable at the time considering a Dispute was underway with the US on hormone-treated beef, in fact according to G de Jonquieres Financial Times 27th January 1996 page 3 ‘US goes to WTO over EU beef ban’, the US had “launched its long-threatened legal challenge” on the previous day.

⁷⁷ Perhaps encouraged by the ambiguous wording of the trade-labour section of the Singapore Declaration.

⁷⁸ C Raghavan, Third World Economics 194, 1-15 October ‘EC Pushes Comprehensive Agenda, Millennium Round’ reproduced at <http://www.twinside.org.sg/title/mille-cn.htm> reporting on a meeting which took place on 24th September, accessed 26th July 2006

including “all sectors and all ‘modes of delivery’” - investment, competition, trade facilitation and trade/environment.⁷⁹ Trade/labour, then, was conspicuous by its absence. This wish for a wide agenda was again stated by Brittan in October and was to eventually find favour from Japan, the only Quad member overtly supportive of the Commission’s line.⁸⁰ The US was still going to continue to take some convincing over the merits of a wide ranging Round as it reportedly wanted to, “attack global trade problems on an industry-by-industry basis”, preferring a focus on agriculture and biotechnology.⁸¹ Secondly, there needed to be efforts to find a replacement for Ruggiero as he was due to retire in April 1999.⁸² The General Council had initially hoped to reach their decision by the end of November 1998.

Even though the European Parliament had reservations about the Multilateral Agreement on Investment (MAI), commenting that to date “negotiations have...been conducted in the utmost secrecy, with even national parliaments being excluded”, they agreed that global investment rules were needed.⁸³ Therefore, they recommended that work should be transferred from OECD to the WTO and UNCTAD.⁸⁴ Johnston and

⁷⁹ Even though the US was reportedly still “cool” to another Round. Raghavan pointed out that the US were not enthusiastic about a new Round partly because they felt sectoral negotiations might work better for them, partly because of the possibilities of internal dissent if the agenda was too wide and partly because of the upcoming Presidential elections in 2000.

⁸⁰ Speech by Leon Brittan of 19th October on ‘Trade, Enlargement and the Multilateral System’ at <http://europa.eu.int/rapid/pressReleasesAction.do?reference=SPEECH/98/207&format=HTML&aged=1&language=EN&guiLanguage=en> accessed 26th July 2006. Japanese support given following meetings in December 1998 and January 1999. See the report of the Meeting with the Minister of International Trade and Industry of Japan in Brussels on 7th January 1999 (joint press release from the EU Delegation to Japan at http://jpn.cec.eu.int/home/news_en_newsobj709.php accessed 26th July 2006)

⁸¹ US perspective from J Choy, JEI Report Number 3 January 22nd at <http://www.jei.org/Archive/JEIR99/9903w3.html> accessed 15th July 2006. Agriculture and biotech focus from G de Jonquieres Financial Times 30th January page 5, ‘US wants farm trade at centre of new round’

⁸² Search for Ruggiero’s replacement from R Dale International Herald Tribune Tuesday April 27th 1999 ‘Thinking Ahead/Commentary : WTO needs chief with people skills’ at http://www.iht.com/articles/1999/04/27/think_2_t_2.php accessed 25th March 2008. The four initial candidates were “Hassan Abouyoub, Morocco’s ambassador in charge of trade negotiations; Roy MacLaren, Canada’s High Commissioner in London, Mike Moore, former PM of New Zealand and Supachai Panitchpakdi, Thailand’s deputy PM” This process had apparently only started on 1st October, according to the Financial Times (on Saturday November 27th 1999 ‘Timeline: World Trade Organisation’ at <http://specials.ft.com/ln/specials/sp3d7e.htm> accessed 15th July 2006

⁸³ From the ‘Resolution containing Parliament’s recommendations to the Commission on negotiations in the framework of the OECD on a multilateral agreement on investments (MAI)’ A4-0073/1998 of 11th March 1998 sourced at http://www.europarl.europa.eu/pv2/pv2?PRG=CALDOC&TPV=DEF&FILE=980311&SDOCTA=8&TXTLST=1&POS=1&LASTCHAP=1&Type_Doc=FIRST&LANGUE=EN accessed 25th March 2007

⁸⁴ C Raghavan, Sunsonline March 18th 1998 ‘Finance: EU Parliament Sets Conditions for MAI’ at <http://www.sunsonline.org/trade/process/followup/mai/03180098.htm> accessed 23rd July 2007. This was despite the reason why the MAI was OECD’s responsibility in the first place in that it may have been as “a response to the recognition that a WTO deal (was) not imminent and that a separate OECD

Laxer (2003: 42) suggested that this was the issue that proved divisive in Seattle, possibly because the MAI had already mobilised a great deal of attention from NGO's who lobbied for its jettison from the international agenda.⁸⁵ Both Ruggiero and the Commission were strongly pushing for transferral referring to the MAI as a "constitution for globalisation".⁸⁶ Perhaps it was this 'vision' that had turned NGOs against the MAI, and, more than that, inspired them to focus their ire on international trade.⁸⁷ The network developed as a result was then put to use as a mobilizing force that would have disastrous effects on the negotiating atmosphere in Seattle.

The Commission was presumably pleased at signs that the European Parliament was revisiting its stance on trade and labour links, evident in their January 1999 '*Resolution on the Commission communication on the trading system and internationally recognised labour standards*' from 1996 in which they asked the Commission to "ensure genuine cooperation" between WTO and ILO.⁸⁸ This was unlikely to demonstrate Parliament's lack of commitment to the issue of trade-labour; rather it was another example of a fragmented internal consensus because Austria and the UK had yet to ratify an ILO Convention on abolishing child labour and forced child labour. As Parliament rightly assumed, it would be practically impossible for the Commission to insist that all WTO members signed the ILO Conventions when one of the G8 members had not. Parliament expanded upon this view in a later resolution where it asked the Commission to get commitments from the developing countries (that they would adhere to ILO core standards), which seemed more likely, even if scarcely possible, to be

initiative was required to push forward...an international agreement" from Drabek, Z (1999) – 'A Multilateral Agreement on Investment: Convincing the Sceptics' WTO Staff Working Paper ERAD-98-05, June 1998 at http://www.wto.org/english/res_e/reser_e/ac9805_e.htm accessed 23rd July 2006. Furthermore, because "the vast bulk of FDI originates within OECD countries and is destined for other markets within the OECD area" (Witherell, 1997: 38-43) the OECD was considered the appropriate forum.

⁸⁵ One example is the WWF European Policy Office press release of 8th May reproduced at <http://www.cb3rob.net/~merijn89/nieuws/99-5-13.html>. accessed 26th July 2006. A paper setting out these views can be found in a House of Commons Research Paper 98/31 from 4th March 1998 entitled 'Multilateral Agreement on Investment' written by M Hillyard of the Economic Policy and Statistics Section of the House of Commons library found at <http://www.parliament.uk/commons/lib/research/rp98/rp98-031.pdf>. accessed 26th July 2006. A number of interviewees speculated about this but were generally unsure whether the relationship was quite as direct as Johnson and Laxer suggested (interviewees 1, 7, 8, 9 & 10)

⁸⁶ From C Denny the Guardian of October 20th 1997, page 19, 'Fears of global 'race to bottom''

⁸⁷ M Byers London Review of Books Vol 22:6, 6th January 2000 'Woken up in Seattle' at http://www.lrb.co.uk/v22/n01/byer01_.html accessed 26th July 2006

⁸⁸ From EC Bulletin January and February 1999 at <http://europa.eu.int/abc/doc/off/bull/en/9901/p104024.htm> The document was circulated as A4-0423/1998)

accepted by the membership, and this fitted in with the Commission's own perspective to a much greater extent.⁸⁹

However, the Chairs of the developing country group in the UN, the G77, meeting that year, made it clear that the developing countries had not budged from their previous position, as articulated at both the Singapore and Geneva Ministerials, of keeping a tight boundary on the range of items to be discussed and, primarily, to keep WTO away from making policies on trade/labour and trade/environment.⁹⁰ This is evidence of the mobilisation of the developing countries against efforts seen as contrary to their best interests suggesting that the Commission would have to establish suitable trade offs in order to extend the WTO's agenda.

Arguably the most critical event of 1999 was the resignation of the entire Commission on 15th March.⁹¹ Although Brittan was not accused of any wrongdoing within the Report, Jacques Santer announced at a press conference that all twenty Commissioners would resign in a spirit of collegiality.⁹² It was suggested that the Commissioners "had decided to jump before they were pushed" because of the European Parliament's threat of a vote of censure.⁹³ This resignation could perhaps have heralded a shift in the power relationships in the European infrastructure with Parliament assuming more

⁸⁹ Resolution on 'Multilateral commercial relations: the European Union and the developing partner countries of the European Union' on the 4th May at EU Bulletin 5- 1999 at <http://europa.eu.int/abc/doc/off/bull/en/9905/p103027.htm> accessed 26th July 2006

⁹⁰ The Final Communiqué of the G77 Chairmen/Coordinators meeting in Geneva on 6-7 April 1999 (full text at <http://www.unesco.org/g77/documents/final-coomun-geneva99.html>) accessed 26th July 2006

⁹¹ This followed the *First Report by the Committee of Independent Experts on allegations of fraud, mismanagement and nepotism in the European Commission*. The paper itself has been reproduced in the University of Pittsburgh's wonderful archive system at http://aei.pitt.edu/4579/01/003947_1.pdf accessed on 26th July 2006.

⁹² V Miller and R Ware, House of Commons Research Paper 99/32 of 16th March 1999 'The Resignation of the European Commission' at <http://www.parliament.uk/commons/lib/research/tp99/rp99-032.pdf> accessed 26th July 2006. It was clear from the beginning of Santer's tenure that he was not popular in the European Parliament. J Palmer the Guardian of 22nd July 1994 page 24, 'Slim majority puts Santer on probation' reported that "Yesterday, Mr Santer...sat impassively as one European Parliament leader after another described him as 'a man without political profile or charisma' and 'frankly not good enough for the job'. The British Leader of the Socialist Group, Pauline Green, criticised John Major (the UK Prime Minister) for vetoing the candidature of the Belgian Jean-Luc Dehaene in favour of Santer "despite their identical views on Europe" – she is quoted in Palmer's article as remarking "The veto is meant to be used in case of a vital national interest. In God's name can anyone tell me what is Britain's vital interest in rejecting Mr Dehaene and accepting Mr Santer?"

⁹³ B Cassen, Le Monde Diplomatique April 1999 'Musical Chairs in Brussels' at <http://mondediplo.com/1999/04/03cassen> accessed 15th August 2006. Not supported by interviewees 1, 5, 6 & 7 who thought that the Parliament would not have exercised this.

importance.⁹⁴ As it was, Parliament seemed to play down this aspect in their Resolution on the resignation by saying only that the collective resignation was “necessary and proportionate to the nature and scale of the criticism” yet they did not set a definitive timetable for the Commission’s replacement.⁹⁵ The resignation was discussed in GAC and by the Presidency, which confirmed that it would ask Romano Prodi to replace Jacques Santer as President of the next Commission.⁹⁶ The rationale was that a new Commission would be in place from July onwards – and would hold a full five-year term from January 2000.⁹⁷ Whether this would make any difference to the Commission’s exercise of its roles and responsibilities will be shown later. Pending the new Commission, the existing Commission continued to work in a caretaker capacity. The resignation did not appear to have dented Brittan’s enthusiasm for a new Round. At the end of March, and in early April, he was travelling to encourage governments to support a Millennium Round. Perhaps continuing to be concerned with the breadth of the agenda, presciently, both Pakistan and India warned of possible conflict in Seattle, particularly between the developed and developing countries.⁹⁸

In spite of the WTO General Council’s wishes that the leadership battle would be completed in the previous year, it was still ongoing in May 1999.⁹⁹ There were now two main candidates; Mike Moore of Australia and Supachai Panitchpakdi of Thailand. It might have been expected that the Commission could have encouraged a supportive coalition in favour of one of them. However, Moore appeared to have support from the US along with Germany, Italy and France while Supachai was supported by Japan and

⁹⁴ A Stern, Variety Magazine March 17th 1999 ‘EU Panelists Quit’ at <http://print.google.com/print/doc?articleid=gxyuA48cs2L> accessed 13th March 2003

⁹⁵ See Parliament’s *Resolution on the resignation of the Commission and the appointment of a new Commission* in the EU Bulletin 3-1999 at <http://europa.eu.int/abc/doc/off/bull/en/9903/p203001.htm> accessed 25th July 2006

⁹⁶ GAC meeting held on 21st and 22nd March, Minutes reproduced at http://ue.eu.int/ueDocs/cms_Data/docs/pressData/en/gena/06776.EN9.htm accessed 26th July 2006. Presidency comments from EU Bulletin 3-1999 at <http://europa.eu.int/abc/doc/off/bull/en/9903/i1039.htm> accessed 26th July 2006

⁹⁷ Rather than being caretakers for six months after which another selection process would have to be put in train. Interviewee 6 commented that it was “much easier” for Council this way i.e. not having to select two groups of people.

⁹⁸ ‘New trade agreement with EC in May: Leon’ Dawn Wire Service of 10th April 1999 (at <http://www.lib.virginia.edu/area-studies/SouthAsia/SAserials/Dawn/1999/10Apr99.html#newt> accessed 26th July 2006 also ‘India and the WTO’ A monthly newsletter of the Ministry of Commerce Vol 1 No 4 April 1999 at also <http://commerce.nic.in/wto-apr.pdf> accessed on 26th July 2006

⁹⁹ Even the Quad expressed concern at their meeting May 11th and 12th in Tokyo. Chair’s statement (at <https://tspace.library.utoronto.ca/retrieve/1068/quad33.html>. accessed 27th July 2006. See also EU Bulletin 5-1999 at <http://europa.eu.int/abc/doc/off/bull/en/9905/p103099.htm> accessed 27th July 2006.

the UK.¹⁰⁰ A European consensus on one candidate was still not visible and the situation was not resolved until June where “informal talks” in the margins of the APEC meeting at the end of June bore fruit.¹⁰¹ The Commission suggested that it might support an Australian proposal to split the term of office between the two and it was duly agreed – the Europeans failing to speak with a single voice and agree on a single candidate. (Holland, 2002: 71).¹⁰² The new WTO Director General was finally confirmed on July 20th (“twenty months late”).¹⁰³ Although a split term was not optimal, and would in no way set a precedent, because the Seattle Ministerial was (by then) looming on the horizon, it was thought that this was the best way forward.¹⁰⁴ Perhaps these developments should not have been so surprising; the previous leadership contest saw the USA’s candidate passed over and problems were only “resolved by a last-minute compromise which made Korean Kim Chul Su the deputy of Italy’s Renato Ruggiero”.¹⁰⁵

The Commission’s preparations for Seattle went on apace and they set their opinions down on paper for circulation to the other members. The 28th May 1999 saw seven documents from the Commission being submitted to the WTO General Council. The first, on the ‘*EC Approach to Services*’ set out the priorities for the GATS 2000 negotiations.¹⁰⁶ This was followed by the ‘*EC Approach to Trade Facilitation*’, which asked the WTO to “simplify, harmonize and automate (import and export) procedures, reduce documentation, and increase transparency” for both SMEs “and developing countries, for who costs of compliance with procedures are proportionately higher and

¹⁰⁰ From A Friedman the International Herald Tribune of Friday May 14th 1999, page 5 ‘Deadlock on Chief Stymies Trade Body: WTO Fight Raises Risk of Further Trade Wars’ at <http://www.iht.com/articles/1999/05/14/wto.2.t.7.php> accessed 25th March 2008.

¹⁰¹ G Robinson, the Financial Times of June 30th page 4, ‘Ministers back new trade round’

¹⁰² Jawara and Kwa (2003: 188-189) opine that this solution was not decided in the WTO but between US Secretary of State Madeleine Albright and the Thai Foreign Minister which had the effect of “delay (ing) Supachai’s term of office by three years; to shorten it by one year (and) to install Moore, a long time US ally...as DG” (p191). Split term of office from C Denny the Guardian of June 30th page 23, ‘WTO job rivals offered a trade’. Agreement reported in ICTSD Bridges Trade News Digest Vol 6:30 13th September 2002 ‘WTO Welcomes New Team at the Helm’ at <http://www.ictsd.org/weekly/02-09-13/story3.htm> accessed 26th July 2006.

¹⁰³ According to M Arnold, the Financial Times of November 27th 1999 ‘Timeline: World Trade Organisation’, at <http://specials.ft.com/ln/specials/sp3d7e.htm> accessed 12th May 2003.

¹⁰⁴ PRESS/131, 22nd July 1999 ‘WTO member governments agree on Director General succession’ at http://www.wto.org/english/news_e/pres99_e/pr131_e.htm accessed 27th July 2006.

¹⁰⁵ Asiaweek editorial ‘Put it to a vote – that’s what the WTO should do if it cannot agree on a leader’ 16th July edition at <http://www.asiaweek.com/asiaweek/99/0716/ed2.html> accessed 27th July 2006. F Williams the Financial Times of 27th January 1995, page 8 ‘US-EU talks to focus on WTO’, says that the US’ preferred candidate, Carlos Salinas de Gortari (ex-President of Mexico) was not considered for the job.

¹⁰⁶ WT/GC/W/189

deter exports”.¹⁰⁷ The ‘*EC Approach to Trade and Competition*’ encouraged setting up “negotiations on a basic framework of binding principles and rules on competition law and policy”.¹⁰⁸ This was followed by the ‘*EC Approach to Government Procurement*’, which said that because of the volume and value of Government purchasing, transparency should be assured so trade wasn’t distorted.¹⁰⁹ In the ‘*EC Approach to trade related aspects of intellectual property in the New Round*’ the Commission identified a number of areas coming under TRIPS which needed to be addressed including those where there had been: “(a) lack of consensus at the end of the Uruguay Round...new developments on intellectual property...and...the area of geographical indications”.¹¹⁰ The ‘*EC Approach to Trade and Environment in the New WTO Round*’, emphasized the importance of sustainable development being a central theme in the Millennium Round, noting that the Commission was looking at this internally in order to inform its own position and as a starting point for dialogue with civil society.¹¹¹ Finally, the ‘*EC Approach to Duty-Free Market Access for the LDCs*’ once again suggested that the best way to help the developing countries would be to allow “duty-free market access no later than the end of the new round of negotiations for essentially all products” exported by them.¹¹² These papers may have been submitted in part for a meeting of thirty countries in the ‘Friends of the Round’ in Geneva where potential agenda items for Seattle were identified. These included; “industrial tariffs, electronic commerce...further liberalization of information technology products...trade in agriculture and services...investment and competition policy”.¹¹³ Once again, this list constituted an extremely ambitious range of policy initiatives.

Council discussed preparations for the Seattle Ministerial on 21st June and supported the Commission’s aim of a new Round being launched in order to “strengthen(ing) the multilateral trading system, manag(e) international monetary problems more effectively, improv(e) economic growth and employment and involv(e) developing countries”. It also reiterated the importance it attached to the Round being a single

¹⁰⁷ WT/GC/W/190

¹⁰⁸ WT/GC/W/191

¹⁰⁹ WT/GC/W/192

¹¹⁰ WT/GC/W/193

¹¹¹ WT/GC/W/194

¹¹² WT/GC/W/195

¹¹³ K Eddy the Financial Times May 29th, page 3, ‘Issues for global trade talks become clearer’

undertaking.¹¹⁴ Perhaps, by failing to mention it, Council took heed to what happened in Geneva and had decided to drop an overt reference to trade-labour standards for Seattle. The Commission, meanwhile, submitted another document to the WTO General Council entitled '*EC Approach to possible decisions at Seattle*'.¹¹⁵ This set out the primary objective for the Commission, as well as Council, which was to "launch...the millennium round" with the aim of making sure that everything possible was done to achieve this aim. The Commission again set out its proposals for increased access for products from less-developed countries to developed country markets, it sought the resolution of a number of issues concerning transparency, coherence, a general review of the DSU and work on electronic commerce.¹¹⁶

Further to this, and very much in advance of itself, on 8th July, the Commission set out categorically what it wanted from a Millennium Round in a single document called '*The EU Approach to the Millennium Round: Communication to the Council and the European Parliament*' (COM(1999)331).¹¹⁷ This also set out positions for areas that Ruling 1/94 had made clear were subject to shared competence. The Commission felt that the WTO should: reduce tariffs and non-tariff barriers; further free up services trade; continue to progressively incorporate agriculture; develop rules on trade/investment, trade/competition, trade/environment and trade facilitation; take measures to enable a "further strengthening of the WTO system" including greater transparency and consider SDT measures for developing countries alongside duty free access to markets and "health and social concerns".¹¹⁸ Leon Brittan was quoted as saying that the Commission wanted to "tak(e) special account of the interests in the developing countries. There can be no justification for developed countries maintaining high tariff peaks in sectors such as textiles. This has gone on too long and must be a major target in the New Round".¹¹⁹ "Social concerns" could be interpreted as a proxy

¹¹⁴ in EU Bulletin 6-99 at <http://europa.eu.int/abc/doc/off/bull/en/9906/p103021.htm> accessed 27th July 2006

¹¹⁵ On 5th July 1999 circulated to the General Council on 6th July as WT/GC/W/232

¹¹⁶ including the "derestriction of documents and consultation with civil society", increased openness of the DSU procedures and increased transparency in government procurement

¹¹⁷ From EU Bulletin 7/8- 1999 at <http://europa.eu/bulletin/en/9907/p104030.htm> accessed 15th January 2008

¹¹⁸ Possibly another way of handling trade-labour?

¹¹⁹ It is interesting to note this change of heart, considering that the EC had deliberately delayed full implementation of the MFA (see G de Jonquieres the Financial Times of 17th September 1994, page 2 'EU to move slowly over fibres accord' with "the Commission...proposing...to carry out this commitment [to dismantle the MFA] in a way which would leave the range of products covered by MFA quotas virtually unchanged until 1998". The World Development Movement "estimate(d) (this) would result in the EU lifting restrictions on only 0.1% of products on which it imposes quotas" which was said

for trade-labour issues without saying it specifically. It is also of note that this proposal in many ways reflects the desires of the European Parliament with its insistence on liberalizing trade in goods with specific interest for the developing countries (textiles and agriculture) suggesting that the Parliament view was being taken on board by the Commission even if it had no formal role in the process.¹²⁰

On the same day, the EC submitted a document to the WTO General Council on the '*EC Approach to Trade and Investment*' in which the aim was "to establish a multilateral framework of rules governing international investment, with the objective of securing a stable and predictable climate for foreign direct investment world-wide".¹²¹ A further document to General Council was sent on 21st July on the '*EC Approach to the TBT Agreement*' asking that the Round "provide an opportunity to promote regulatory cooperation...(including) encouraging manufacturers to use international standards as a means to demonstrate compliance with requirements".¹²² This was followed by the '*EC Approach on Agriculture*' on 23rd July putting forward the importance to the EC of the 'multifunctionality' of agriculture along with food safety and animal welfare.¹²³ This latter document would do nothing to quell the voices against European policy on agricultural support, as had been the case in the Uruguay Round. First it was Canada seeking "the elimination of export subsidies and a sharp reduction in domestic farm supports" and then the Australian Trade Minister, chair of the Cairns Group said that "trade in agriculture must be on an equal footing with other sectors" wanting the new Round to "deliver substantial cuts in government support and protection".¹²⁴

to be "a travesty" of the agreement to phase out the MFA". The article continued that this 'go slow' was inspired by a wish to encourage developing countries to open up their markets. The EC was not alone in this methodology – according to an uncredited piece in the Financial Times of 28th October (page 7, 'Textile exporters hit at pace of reform') the US, the EC and Canada had "hardly liberalised any significant MFA restriction on any developing country" according to the International Textile and Clothing Bureau (a group of 21 developing country textile exporters).

¹²⁰ see also G de Jonquieres the Financial Times of 9th July, page 4, 'EU sets out its stall for the new trade round' where he says that France, Belgium and the US wanted discussion on labour standards but, rather than that, the paper proposed "a loose five point plan involving cooperation with the ILO".

¹²¹ Circulated to the General Council on 9th July as WT/GC/W/245

¹²² Circulated to General Council on 27th July as WT/GC/W/274. This makes it sound very like a multilateral version of the CE Mark.

¹²³ Circulated to General Council on 27th July 1999 as WT/GC/W/273

¹²⁴ Canada's position from E Alden the Financial Times of 20th August 1999 p4, 'Canada outlines position ahead of WTO talks'. Cairns Group quote from a Reuters report in the Financial Times 26th August, page 4 'Boost for campaign to reform farm trade'. Interviewee 3 commented that this was still the aim for the Cairns Group.

The 'EC Approach to Capacity Building and Coherence in Global Economic Policy Making' was sent five days later proposing "a WTO work programme on coherence...be developed and introduced by the Seattle Ministerial Declaration" and that the "relevant international organisations" should also participate.¹²⁵ Such capacity building would "ensure that when an agreement is being concluded in the WTO it is accompanied by a framework to be put in place to support the implementation in light of country specific requirements", which may have been an acknowledgement that this was why the developing countries had problems keeping to their Uruguay Round commitments. On 9th August a further paper was submitted to the General Council of the WTO proposing issues for consideration in a future 'WTO Work Programme on Electronic Commerce' for inclusion in the Seattle agenda.¹²⁶ This set out some general trade principles, seemingly building on what had been proposed in Geneva and acknowledged the importance of technical assistance for the developing countries.

Nevertheless, in the 'wish lists' for the new Round, of which all these EC papers formed a part, there was "little consensus on what should be included, even among the leading trading nations" and, more worryingly for the Commission, the US remained "lukewarm" about a broad-based Round.¹²⁷ In the meantime, September saw widespread demonstrations against the Millennium Round involving "more than 1000 NGOs from 77 countries" suggesting that the meeting at Seattle might also be affected by public demonstrations.¹²⁸ Meanwhile, business leaders had a letter published in the Financial Times noting that a Round was essential for the global economy and that it should concentrate on agricultural liberalization, opening services markets and foreign investment rules. The idea of agricultural liberalisation would never be popular with the Commission because of the fragmented internal consensus but services and investment were very similar to what the Commission wanted.¹²⁹

¹²⁵ circulated to the General Council on 5th August as WT/GC/W/297

¹²⁶ circulated as WT/GC/W/306

¹²⁷ in the Financial Times of July 30th page 6, 'WTO members square up for new round of discord'

¹²⁸ From 'NGOs mobilise against WTO' ICTSD Bridges News 20 September 1999 at

<http://www.ictsd.org/html/story2.20-09-99.htm> accessed 29th January 2008

¹²⁹ The letter was entitled "Seattle trade round needs ambitious objectives' On 31st August accessed at the ICC website at http://www.iccwbo.org/home/news_archives/1999/trade_letter_31_august.asp on 27th July 2006. It was signed by the Secretary Generals of the International Chamber of Commerce, the Business Advisory Council to the OECD, the Pacific Basin Economic Council and UNICE, together with the Director General of the Commonwealth Business Council and the President of the Europe-American Business Council

Conclusions

The internal Commission consensus appears to have been supportive, if not permissive on the Trade Commissioner over this period with joint working evident between Trade and Social Affairs and Trade and Environment on various policy initiatives. In spite of the 1/94 Ruling, the Commission was still able to pursue its own preferences in terms of achieving an agreement in the WTO for a Millennium Round, even though Council did not mention this in their Ministerial Statements. The Commission also dropped trade-labour from its agenda once it became clear (at Singapore) that it would be difficult to make further progress; even though Santer mentioned this at Geneva, it was not pursued again. Council, meanwhile, was still talking about labour standards in Geneva, albeit in a rather oblique way, but did not seem to put pressure on the Commission to push it more strongly. The Council was thus supportive of the Commission at this time. Following the resignation of the Commission, it is possible that more evidence might be forthcoming (in future Chapters) of an increased role for the European Parliament in external trade negotiations. It has been shown that Parliament's views, particularly on textiles and agriculture, were incorporated into COM(1999)331 indicating that their informal role in this area was more important than their formal role. Whether their preferences can also be tracked through the sectoral negotiations will be shown in the following Chapter.

There has been evidence presented here of increasing politicization. The developing countries felt that their concerns were not adequately taken on board at Singapore (as shown by the differences between the tables of preferences and the Final Declaration) and the ceremonial aspects of the Geneva Ministerial meant that they were scarcely taken on board there either. In terms of the external consensus, fragmentation (Quad becoming fragmented, thus more constraining, developing countries constraining) restricted the amount of progress that could be made in widening and deepening the WTO's agenda and remit. Whether this would be the case, too, with the sectoral negotiations will be shown in the next Chapter. It is possible that this will also be shown to have had further ramifications on what progress could be expected from the Seattle Ministerial, which will be covered in Chapter Six. Lack of progress in Seattle might be expected, not just because of the developing countries, but also because of

concerns about the MAI, NGOs becoming more mobilized in support of developing countries and because of the insubstantial mandate developed at Geneva.

The next Chapter focuses on the sectoral negotiations in Leon Brittan's tenure to see how the Commission exercised its roles and responsibilities within those more technical forums. The aims and objectives of each will be shown to be much more specialized yet forward progress, as in the Ministerial process, demands consensus. The Chapter will track through the level of politicization to see if that affected the Commission's ability to satisfy its interests.

CHAPTER FOUR

Case Studies in the Trade Negotiations Framework: From Marrakech to Seattle

Introduction

This Chapter looks at case studies over Leon Brittan's tenure to see how the Commission exercised its roles and responsibilities in the sectoral, perhaps more technocratic, areas outside of the more formal Ministerial process. Although the aims and objectives of each negotiation will be more specialized, it remains critical that a supportive consensus is achieved so negotiations can be concluded. Given that their nature is more technical, we might expect that these negotiations would be less politicized than the Ministerials allowing, perhaps, more technocratic leadership on the part of the Commission.

Because of the sheer number of issues that the Commission was taking forward to the Singapore Ministerial, it is not possible to look at the negotiations for all areas in the necessary depth. Therefore, this Chapter will focus specifically on three case studies: the Information Technology Agreement (ITA), the Basic Telecommunications Services Agreement (BTA) and the Financial Services Agreement (FSA). Leon Brittan apparently referred to these three initiatives as 'the Trinity' because, in his opinion, they were the most important policies that he and his Directorate advanced in the WTO during his tenure.¹ These case studies will show the methodology and practice used by Brittan to pursue agreement and highlight the ways in which the Commission view intersected or diverged with the internal or external interests in these sectoral negotiations.

¹ It is worthwhile reiterating here that these were not the only negotiations taking place in the WTO at the time – just that these issues were the ones chosen by Leon Brittan as representing his tenure particularly well. It is, of course, debatable whether the outcomes generated from this chapter would be the same using the other negotiations. This is doubtless an area offering further research opportunities.

Conclusions will be drawn in Chapter Five and then this period will be contrasted with Lamy's tenure as Trade Commissioner in Chapters Six, Seven and Eight before overall conclusions are written in Chapter Nine.

Figure 4.1 below sets out when each negotiation started, what each was to do and when discussions ended in order to provide an overview of these Agreements at the outset.

Table 4.1 Brief Overview of the Case Studies

NAME	BEGAN	MAIN TOPIC	LAST MEETING
Information Technology Agreement	In parallel with the Uruguay Round. ²	To "completely eliminate duties on IT products covered by the Agreement". ³	26 th March 1997 ⁴
Basic Telecommunications Services Agreement	(part of the 'built in agenda' after the Uruguay Round)	The "progressive liberalization of trade in telecommunications transport networks and services" ⁵	15 th February 1997
Financial Services Agreement	(part of the 'built in agenda' after the Uruguay Round)	To give governments "wide latitude to take prudential measures, such as those for the protection of investors, depositors and insurance policy holders, and to ensure the integrity and stability of the financial system". ⁶	30 th December 1997

² The ITA was not part of the 'built in agenda' (see the WTO page on 'Understanding the WTO: The Uruguay Round' at http://www.wto.org/english/thewto_e/whatis_e/tif_e/fact5_e.htm accessed 12th April 2008), but appears to have been treated as such in terms of not being subject to the Single Undertaking.

³ From the WTO's page on 'Information Technology Agreement' at http://www.wto.org/english/tratop_e/inftec_e/inftec_e.htm accessed 12th April 2008.

⁴ However, ITA-II discussions are ongoing

⁵ From the WTO's page on Uruguay Round decision on negotiations on Basic Telecommunications' at http://www.wto.org/english/tratop_e/serv_e/telecom_e/tel22_e.htm accessed 12th April 2008.

⁶ From the WTO's page on the Financial Services Agreement at http://www.wto.org/english/tratop_e/serv_e/10-anfin_e.htm accessed 12th April 2008

The Information Technology Agreement (ITA)

It has been suggested that the ITA began in the US's private sector and that support was later given by both European and third country industry in late 1994.⁷ However, it is probably more accurate to suggest that both the US and EC were driving this simultaneously (Raboy, 2004: 227). The European Council had started to think about information technology and the information society as early as their Brussels meeting of December 1993 wherein they asked the Commission to prepare a document for discussion the following year, at the Council meeting in Corfu.⁸ On the basis of this report, the Council asked the Commission "to establish...a programme covering the remaining measures needed at Community level".⁹ This prompted the Commission to issue COM(94)347 on '*Europe's Way to the Information Society – An Action Plan*' on 19th July 1994.¹⁰ Although this document did not suggest that the WTO would be the ultimate destination for discussions and agreement in the IT field, it did advocate involving the Quad. The Commission had already set up a dialogue on information technology with the USA, perhaps for this purpose.¹¹

In order to garner wider support so a supportive coalition might be achieved, the Commission set up a meeting of the G7 in February 1995, in Brussels (Cogburn, 2003: 139). This G7 Information Society Conference was an historic event as it was (and still is) "the first, and only, G7 meeting officially hosted by the European Commission".¹² The Commission had now realised the importance of seeking global coverage of any agreement, specifically through multilateral forums, which is highlighted by their introductory '*Theme Paper*' of January 1995, where they noted the need for the involvement of the WTO as well as national governments in setting such rules.¹³ Many

⁷ Quote from B Fliess and P Sauvé, 'Of Chips, Floppy Disks and Great Timing' Paper produced for the Institut Francais des Relations Internationales and the Tokyo Club Foundation for Global Studies Final Revision 1997 at http://www.tcf.or.jp/data/19971011_Barbara_Fliess_-_Pierre_Sauve.pdf accessed 15th July 2004 page 29

⁸ Reproduced from the Bulletin of the European Communities 12/1993 sourced at http://aei.pitt.edu/1425/01/Brussels_dec_1993.pdf accessed 25th July 2006

⁹ Found at, www.europa.eu.int/ISPO/infosoc/backg/bangeman.html accessed on 15th January 2004. See also E Tucker the Financial Times of 2nd June 1994 page 2, 'Lines open up to Europe's information society' and N Bannister the Guardian of 21st June 1994, page 14 "EU members 'must hasten telecom revolution'".

¹⁰ Accessed at [www.europa.eu.int/ISPO/docs/htmlgenerated/i_COM\(94\)347final.html](http://www.europa.eu.int/ISPO/docs/htmlgenerated/i_COM(94)347final.html) on 15th January 2004

¹¹ According to G Tett the Financial Times of 6th April 1994 page 6, 'Information technology on EU-US agenda'

¹² From www.europa.eu.int/comm/external_relations/g7_g8/intro/ accessed 15th January 2004

¹³ Sourced at www.europa.eu.int/ISPO/docs/intcoop/g8/is_conf_95_theme_paper.pdf accessed 15th January 2004

senior personnel from multinational companies also gave speeches at the G7 meeting; this may reflect the importance placed on these early IT initiatives by industry and the amount of lobbying they were prepared to do in order to achieve a positive result.¹⁴ The G7 set down core principles for an information society and made a number of important recommendations, including a statement that customs duties should be abolished on those items deemed critical to the formation of a Global Information Infrastructure.¹⁵ This would become an important aspect of the IT Agreement.

Positive results from the G7 Conference may have led the Commission to believe that they would be able to achieve similarly unequivocal support from the Quad. Instead, the Chair's statement from their May meeting seems to prefer Mutual Recognition Agreements (MRAs) as a tool, much less ambitious than a multilateral agreement, suggesting that the Commission still had some way to go to establish a supportive coalition in that forum.¹⁶ Another weapon the Commission had in its arsenal, to secure agreement with the US, was the Transatlantic Business Dialogue (TABD), the inaugural meeting of which took place at the end of 1995 and was attended by "CEOs from more than 100 American and EU companies".¹⁷ Brittan jointly led the delegation with Martin Bangemann, the Industry Commissioner, and the US Commerce Secretary. The overall conclusions of Working Group II were:

"Both Governments (sic) should make a commitment to conclude negotiations of the ITA by December 1996...It is the view of the overwhelming majority that the ITA package should include a commitment to eliminate all tariffs by January 1st 2000 or sooner".¹⁸

¹⁴ List of speeches accessed at www.europa.eu.int/ISPO/intcoop/g8/i_g8conference.html on 17th January 2004. Speeches given by Robert Allen (Chairman and CEO of AT&T); Carlo De Benetti (Chairman of Olivetti); Peter Bonfield (Chair and CEO of ICL); Marco Tronchetti Provera (Executive Deputy Chairman and Managing Director Pirelli SpA); Charles Sirois (Chairman of the Board and CEO, Teleglobe); Iain Vallance (Chairman, BT); LR Wilson (Chairman, President and CEO, BCE Inc) and Haruo Yamaguchi (Chairman, NTT)

¹⁵ From 'Of Chips, Floppy Disks and Great Timing' (page 29) Full details at footnote number 7.

¹⁶ From the Chairman's Statement following the Quad Meeting of May 3-5 1995 in Whistler, Canada at www.g8.toronto.ca/trade/quad26.html accessed 15th January 2004

¹⁷ www.europa.eu.int/comm/enterprise/enterprise_policy/business_dialogues/tabd/tabdoverw.htm accessed 15th January 2004

¹⁸ Report of the Working Group meeting of November 11th and 12th in Seville, Spain sourced at www.tabd.com/ceo_reports accessed 15th January 2004. At their next meeting of 9th November 1996, they said, instead, that the WTO should aim "for the complete elimination of residual customs tariffs by the end of the Year 2000" rather than the beginning. Information taken from the ten page Chicago Declaration (accessed through www.tabd.com/ceo_reports on 6th July 2006

The Commission might have thought that having both the G7 and TABD onside would help to push the WTO Ministerial to agree the text.¹⁹ Nevertheless, to further bilateral efforts, the US-EU Summit was set up a month later, culminating in the '*Joint US-EU Action Plan*' the results of which made clear the benefits of joint leadership in order to achieve an IT Agreement.²⁰ This could be evidence to support Smith's concept of 'bimultilateralism', whereby a bilateral agreement is used to further initiatives in the multilateral sphere (Smith, 2005:165). The two sides continued to discuss the issue in February the following year where they hoped they could make a proposal acceptable to the other Quad members as well as to the Asian nations.²¹ The only stumbling block was that the EC wanted to be part of an agreement on semiconductors between Japan and the US before it accepted the ITA. This would assume a great deal of importance later on in the process.

Because of the importance of South East Asia in the IT field, it could be expected that the Commission would introduce this as an agenda item for the first Asia-Europe Meeting (ASEM), which took place in March 1996.²² According to the background paper, this forum would be valuable to the Commission because of their lack of involvement in APEC, which meant "ties between Asia and Europe have not been developed to their full potential".²³ It is surprising, then, that there was nothing specifically mentioned about an ITA in that meeting.²⁴ Instead, the Commission and the US continued to discuss the initiative bilaterally prior to presenting it again to the Quad. At the same time, there appeared to be no effort made by the Commission to develop a common approach to this issue by the member states and France and the Southern

¹⁹ The White House fact sheet on the TABD makes an explicit link from the TABD to "cooperation between the US and the EU" positions in the WTO Factsheet sourced from www.state.gov/p/eur/rls/fs/9923.htm accessed 15th January 2004

²⁰ Meeting held on December 5th 1995 in Madrid to launch the 'New Transatlantic Agenda'. Part of this was a 'Joint US-EU Action Plan' (text reproduced at <http://dosfan.lib.uic.edu/ERC/bureaus/eur/releases/951203EUAction.html> accessed 15th January 2004. The relevant part pertaining to the IT Agreement was under Section III 'Contributing to the Function of the World Economy' Item 1g 'Market Access - Creating Additional Trading Opportunities'

²¹ Report to the NATO Parliamentary Assembly entitled 'Europe and North America: Partners and Competitors' by Mr. Norbert WIECZOREK (Germany), General Rapporteur, Document number AN 238 or EC (96) 11 of 20 September 1996 at <http://www.naa.be/archivedpub/comrep/1996/an238ec.asp> accessed 6th July 2006

²² Meeting in Bangkok on 1-2 March 1996. See the background note entitled 'ASEAN-EUROPEAN UNION DIALOGUE' at <http://www.ascansec.org/5612.htm> accessed 6th July 2006

²³ Background information no ASEM found at <http://asem.inter.net.th/asem-info/background.html> accessed 6th July 2006

²⁴ See the 'Chairman's Statement' of the meeting at <http://asem.inter.net.th/chairman/index.html> accessed 6th July 2006

members expressed concern that tariffs would be reduced with no commitment on the part of the other WTO members to negotiate in any other areas.²⁵ That the Commission was trying to make progress in the semiconductor field might have partly satisfied the objectors but there could have been negative repercussions on the internal consensus. The April 1996 Quad meeting was a further opportunity for the US and the EC to convince the other members of the merits of this initiative.²⁶ The Commission was later to comment that the ITA had been comprehensively discussed, which was to good effect since the Chairman's Statement from that meeting was worded more strongly than the previous and "reaffirmed" the importance of achieving an agreement.²⁷ Nevertheless, the Commission was still pressing for entry into the semiconductor agreement as compensation.²⁸ They also seemed prepared to delay ITA negotiations until the issue was resolved.²⁹ Semiconductors were brought up once again in bilateral meetings between the Commission and Japan at the end of April, in the second week of May and then at the end of May, at which point there seemed to be a slight softening of stance from Tokyo that it could be persuaded to acquiesce to EC demands if "the EU commit(ted) itself to abolishing semiconductor tariffs by the year 2000".³⁰ This was still not enough for the Commission who continued the debate at further meetings in June and July.³¹

²⁵ G de Jonquieres the *Financial Times* of 1st April 1996 page 4 'Drive to dismantle electronics tariffs'

²⁶ Meeting in Kobe, Japan on 21st and 22nd April

²⁷ Commission comment in the EU Bulletin of April 1996 at www.europa.int/abc/doc/off/bull/en/9604/p104080b.htm accessed 6th July 2006. Chairman's statement at www.g8.utoronto.ca/trade/quad28.html accessed 6th July 2006

²⁸ From E Vermulst and B Driessen (1996) 'The International Practice of the European Communities: Current Survey. Commercial Defence Actions and other international trade developments in the European Communities No. XL - 1st January 1996 - 30th June 1996' in the *European Journal of International Law* Vol 7 Number 4 found at <http://www.ejil.org/journal/Vol7/No4/sr1.html> accessed 15th July 2006

²⁹ W Dawkins the *Financial Times* of 22nd April 1996. page 4 'EU and US clash over plan to lift IT barriers'.

³⁰ Account of first meeting from W Dawkins and B Clark the *Financial Times* of 29th April 1999 page 4 'Tokyo faces Brussels pressure on chips'. Account of second meeting from E Terazono the *Financial Times* of 2nd May 1996 page 4 'Brittan set for Tokyo chip talks'. Account of third meeting from G de Jonquieres the *Financial Times* of 23rd May page 5, 'Japan demands end to EU semiconductor tariffs'

³¹ June meeting account from G de Jonquieres and M Nakamoto, the *Financial Times* of 4th June 1996, page 8, 'Push for chip co-operation agreement'. It was confirmed that the two sides would work together to seek agreement in G de Jonquieres and W Dawkins, the *Financial Times* of 7th June 1996, page 18, 'Chipmakers agree to co-operate on plan for global trade network'. This, however, was premature. July meeting report from N Buckley the *Financial Times* of July 9th 1996 page 4, 'Global forum on chips planned'

Another occasion for the Commission to seek support for an ITA from the countries of South East Asia came on 25 July when the inaugural ASEM Senior Officials Meeting on Trade and Development (SOMTI) was held in Brussels. This meeting was a follow-up to ASEM (which, as was noted above, failed to mention the importance of an ITA). However, this SOMTI meeting also failed to bring up ITA issues (and basic telecoms issues), even though the WTO was one of “two key areas” to be discussed.³² It is possible that the Commission was delaying discussion until the issue of compensation was resolved between itself, Japan and the US.

Prior to the Quad meeting in September 1996, Brittan made a concession that “he (was) no longer demanding immediate...membership of the (semiconductor) council (and was) offering to let the IT negotiations go forward” as long as there were no meetings of the council that might jeopardize European interests.³³ Brittan’s move may have been an acknowledgement that he could not use the ITA as leverage to enter the semiconductor agreement.³⁴ However, as the US seemed to want to make more headway in the negotiations, the EC had a further opportunity to seek concessions.³⁵ As this would be the last Quad meeting before the WTO Ministerial, the conclusions needed to strongly endorse the IT Agreement, which meant it was imperative that a bilateral deal between the US and EC was reached beforehand.

The outcome was that the EC eventually agreed to abolish semiconductor tariffs and the US agreed not to hold meetings of the Semiconductor Council until the implementation of the ITA took place.³⁶ Nevertheless, the US was concerned, firstly, that the EC might seek further concessions at a later stage and, secondly, because it wanted to keep “capacitors and television tubes” out of the Agreement even though the EC wanted them in.³⁷ The Commission said that the Quad meeting got off to an auspicious start

³² See the Co-Chairmen’s Summary of the meeting of 25th July 1996 at

http://europa.eu.int/comm/external_relations/asem/min_other_meeting/somti_1.htm accessed 6th July 2006

³³ The Quad meeting took place on 27-28 September 1996 in Seattle, Washington. Brittan’s agreement that an ITA could go forward from G de Jonquieres and N Dunne the Financial Times of 25th September, page 7, ‘EU acts to unblock deal on IT’

³⁴ G de Jonquieres and N Dunne the Financial Times of 26th September page 5, ‘Communication gap in IT talks’

³⁵ G de Jonquieres the Financial Times of 27th September page 5, ‘EU condemns ultimatum on IT’

³⁶ A Counsell, the Financial Times of 30th September, page 5 ‘US and EU to eliminate tariffs on IT’

³⁷ N Dunne, the Financial Times of 11th November, page 6, ‘US, EU closer on telecoms and IT accord’

because of this bilateral agreement.³⁸ The Chairperson's Summary says that the Quad would now be "determined to provid(e) leadership...to complete the ITA...by the Singapore Conference" suggesting a significant ratcheting up of the Quad's ambitions for the ITA following the Commission's lead.³⁹ Facilitating this was confirmation of the Commission's acceptance into the Semiconductor Agreement. Appended to the Chairperson's Summary is an 'Understanding on Semiconductors and ITA between the European Commission, Japan and the United States'. This states that, following an ITA; "EU industry will become a permanent member of the Semiconductor Council and the EU and its industry will have the right to participate in all industry and government-to-government activities". Therefore, the Commission would become a member of the Semiconductor Council but it would have to ensure the successful completion of the ITA first.

In order to be meaningful, the ITA would have to include a high percentage of those countries with an export trade in information technology as signatories. To assist in this regard, the Commission recommended a Council Decision on 27th October, which would allow the Commission to negotiate with third countries on removing excise duties in IT.⁴⁰ This proposal was approved by Council, which agreed, at the same time, that a revised telecoms offer could be put forward to the WTO.⁴¹ Council acquiescence would be an opportunity for the Commission to rally more support, through conducting bilateral meetings, with a possibility of using the 'carrot' of an improved telecoms offer to achieve a supportive coalition on the ITA. However, at the Singapore Ministerial, the Malaysian delegation, which was particularly important to the debate, made it clear that they had not come to the Singapore Ministerial "to negotiate the ITA".⁴² It was not just the external coalition that was proving elusive; although a draft ITA had been developed, it did not receive unanimous support from the EC member states: the French Trade Minister (for one), not mincing words, concluded that reaching a deal on the ITA

³⁸ From the report of the Quad meeting in EU Bulletin September 1996 at <http://europa.eu.int/abc/doc/off/bull/en/9609/p104051.htm> accessed on 6th July 2006. However, this statement from the Commission was not exactly true, as will be shown later.

³⁹ Sourced at <https://tspace.library.utoronto.ca/retrieve/1072/quad28.html> accessed 6th July 2006

⁴⁰ Text at <http://europa.eu.int/abc/doc/off/bull/en/9610/p103117.htm> accessed 6th July 2006

⁴¹ Text at <http://europa.eu.int/abc/doc/off/bull/en/9610/p104017.htm> accessed 6th July 2006

⁴² A. Reyes Asiaweek December 20th 'Rich Versus Nearly Rich. Small nations try to hold their own in Singapore' at www.asiaweek.com/asiaweek/96/1220/biz4.html accessed 6th July 2006

in Singapore would be “impossible”.⁴³ It is likely that because of threats to the internal consensus, the Commission now sought a wider deal.⁴⁴ This meant, once again, a bilateral agreement had to be reached before further discussions could take place.⁴⁵ Progress on the ITA was far from smooth; the European Council refused to accept it and coverage issues remained difficult to resolve due to ongoing EC-US disagreements.⁴⁶ The Commission had managed to gain further concessions insofar as the US agreed to reduce tariffs on a number of products such as alcoholic beverages (including cognac) and this may have ultimately helped to secure French agreement because of the positive effect on their exports.⁴⁷ Brittan had also managed to persuade the US to include some of the previously excluded products in the draft text and, in other cases, the US agreed to reduce tariffs on products that they didn’t want included in the ITA, in exchange for the EC accepting tariff cuts on “recorded music on CD-ROMs”.⁴⁸ Perhaps Barshefsky was right when she complained that the EC was “schizophrenic...How can you say you’re for the ITA, that you want to take a leadership role, that you want broad product coverage, and then say, but gee, on software, most of it really shouldn’t be covered”.⁴⁹

⁴³ A Friedman, the International Herald Tribune of 9th December ‘WTO Entry for Beijing Is Priority : EU Pushes for Talks On China Trade Status’ at <http://www.iht.com/IHT/ECON/96/af120996.html> accessed 6th July 2006

⁴⁴ G De Jonquieres, L Kynge and F Williams the Financial Times of 9th December, page 24 ‘Doubt over IT trade pact as EU calls for a wider deal’

⁴⁵ J Kristiansen, the Moscow Times of 15th December 1996 ‘Technology Agreement Lifts WTO’ at <http://www.themoscowtimes.com/stories/1996/12/15/048.html> accessed 6th September 2006. Meeting account by the International Institute for Sustainable Development in ‘Sustainable Developments Vol 3 No 3 10th December 1996 ‘WTO Ministerial Conference Highlights’ at <http://www.iisd.ca/wto/sdvol3no3.htm> accessed 6th July 2006, also at <http://www.ictsd.org/ministerial/singapore/story10-12-96.htm> accessed 25th March 2008

⁴⁶ European Council refusal from the CNN World News 10th December ‘European Council rejects computer tariffs pact’ at <http://www.cnn.com/WORLD/96/12/10/briefs/trade.htm> accessed 6th July 2006. EU and US disagreements from A Friedman, the International Herald Tribune ‘EU Takes Step Back on High Tech Pact’ (at <http://www.iht.com/IHT/ECON/96/af121196.html> accessed 6th July 2006

⁴⁷ L Elliott the Guardian of 13th December page 21, ‘Americans use whisky to lure EU into ending trade tariffs’. Also I King, the Guardian of 13th December page 21 ‘Scotch makers distil the news with caution’ quotes spokesman for Guinness (owners of Bells, Johnny Walker’s and Dewars [Scotch] whisky), saying that “the deal was only of ‘symbolic benefit’ although he hoped it would encourage other countries, particularly Chile and Japan, to increase the pace of tariff reform”. Information on exports from H Cooper and B Bahree, the Wall Street Journal of 13th December pA2 ‘Nations Agree to Drop Computer Tariffs. Some High Tech Firms See Pact as a Boost for Trade in Markets World Wide’ also see the ICTSD report ‘WTO Ministerial Conference Highlights. 11 December 1996’ at <http://www.ictsd.org/ministerial/singapore/story11-12-96.htm>. Accessed 6th July 2006

⁴⁸ G De Jonquieres and F Williams, the Financial Times of 11th December page 4, ‘Information technology deal is close’

⁴⁹ A Reyes, Asiaweek 13th December 1996 ‘The WTO’s Competing Agendas’ at <http://www.asiaweek.com/asiaweek/96/1213/cs1.html> accessed 6th July 2006

There was no final agreement signed in Singapore partly because of unresolved concerns over flexibility, nevertheless, 29 members did agree to sign the ITA, which prompted the WTO to say that it had been “concluded” therein.⁵⁰ Leon Brittan was to remark that it was “the most important success” of the Ministerial and that it would “be a huge advance for the world economy”.⁵¹ Although one report said that the agreement would include all the products that the US had previously been concerned about *keeping out of the Agreement*; “capacitors, digital photocopiers, fibre optic cables, computer monitors and software, telecommunications equipment, graphic display tubes and semi-conductors” this was not the case.⁵² The agreement covered neither fibre optics nor photocopiers (of which there was no mention).⁵³ The significant achievement of the ITA negotiations was that the potential signatories already “accounted for well over 80% of world trade in these products”.⁵⁴ The ITA, and the BTA together meant that tariffs were being abolished on “more than \$500 billion a year of trade”.⁵⁵ The only catch is revealed in the Annex at Section 4:

⁵⁰ Flexibility concern from Malaysian Ministry of International Trade and Industry ‘Update on the ITA’ at www.miti.gov.my/wto3.html accessed 15th February 2004. The twenty nine members which agreed to sign were Australia, Canada, the EC, Hong Kong, Iceland, Indonesia, Japan, Korea, Norway, Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu, Singapore, Switzerland, Turkey and the USA. Further information from the Commission in Bulletin 12-1996 says that by treating the Community as one country, it was actually “thirteen countries (which concluded) a conditional agreement on (the) ITA” at <http://europa.eu.int/abc/doc/off/bull/en/9612/p104012.htm> accessed 6th July 2006. WTO’s note that the agreement had been ‘concluded’ was from the WTO’s ‘Information Technology Agreement Introduction’ at http://www.wto.org/english/tratop_e/inftec_e/itaintro_e.htm accessed 5th September 2006

⁵¹ From R Savill the ‘Electronic Telegraph’ issue 569 of Friday 13th November 1996 ‘Europe and US agree pact on high-tech trade’ at <http://www.telegraph.co.uk/htmlContent.jhtml?html=/archive/1996/12/13/wtrade13.html> accessed 5th September 2006/

⁵² Report that the agreement would cover all the products was from the ‘Bridges Coverage of the WTO Ministerial’ of 12 December at <http://www.ictsd.org/ministerial/singapore/story12-12-96.htm> accessed on 6th July 2006. The Bridges report does, however, say that the Agreement would only exclude “software carrying sound recordings and films”, presumably trying to appease the French who may have been concerned that the ITA could become an audio visual agreement through the back door. See Petiteville 2003: 131 on audio-visuals as a “cultural exception” and Hylton 1999: 9 on the perceived pressure on cultural objectives from the information society in general. Further information from the International Trade Administration of the US Department of Commerce sourced at

http://www.mac.doc.gov/Tcc/DATA/commerce_html/TCC_2/WTOInformation.html on 6th September 2006

⁵³ In a discussion paper of 12th March 1999 by the Canadian Parliament’s Research Branch (by D Dupras of the Law and Government Division) on ‘Information Technologies in the WTO’, it says that the agreement covered only computers, telecom equipment, semi-conductors and manufacturing of semi-conductors, software and scientific instruments, which seems a little selective. Sourced at

<http://www.parl.gc.ca/InfoComDoc/36/1/FAIT/Studies/References/wto/note11-e.htm> on 6th September 2006. Meanwhile, C Hardie the Electronic News of March 31st 1997 ‘Most high-tech countries agree to lower tariff bars - World Trade Organization’s Information Technology Agreement - Industry Trend or Event’ comments that it also included “certain consumer electronics”. Sourced at http://www.findarticles.com/p/articles/mi_m0EKF/is_n2161_v43/ai_19288319 on 6th September 2006

⁵⁴ From WT/MIN(96)16

⁵⁵ A Friedman, the International Herald Tribune of 13th December 1996, page 1, ‘Trade Ministers Agree on Global High-Tech Accord’

“Participants shall meet...no later than 1 April 1997...(and)...will implement the actions foreseen in the Declaration provided that participants representing approximately 90 percent of world trade in IT products have...notified their acceptance”.

This meant that there was still further work to do in order to encourage countries to sign up although seven additional countries had already agreed to join in principle.⁵⁶

Charlene Barshefsky remained upset by the Commission’s stance and there is some inherent sympathy for her view.⁵⁷ Firstly, the Commission appeared to want membership in the Semiconductor Council more than an ITA (hence they could be accused of holding the ITA hostage to it) and, furthermore, the EC then asked for additional concessions in order to make the agreement acceptable to Council.

Barshefsky may also have been concerned about possible backlash directed at her and her office against the agreement on alcoholic beverages and/or audio-visuals.⁵⁸ There were already concerns about the EC’s import regime for wines and spirits from the US, making it appear that there was general dissatisfaction that the concessions made by the US on grain spirits, in order to achieve EC agreement on the ITA, had not been reciprocated.⁵⁹

Needing commitment from more countries meant that a series of meetings facilitated by the US and the EC continued through January 1997 during which disagreements persisted. Essentially, the Commission was still angling for concessions, wanting the US to cut tariffs on ‘sensitive items’ as the EC had to cut tariffs on semiconductors.⁶⁰ The Commission eventually backed down; agreeing to eliminate duties by 1999 while the US agreed to cut nuisance tariffs.⁶¹ At the same time, the resistance of Malaysia

⁵⁶ From B Fliess and P Sauvé ‘Of Chips, Floppy Disks and Great Timing’. Full reference at footnote 7. The seven additional countries were Mexico, India, Malaysia, Brunei, Philippines, Thailand, Czech Republic

⁵⁷ H Cooper and B Bahree the Wall Street Journal of 13th December 1996 page A2 ‘Nations Agree to Drop Computer Tariffs’

⁵⁸ Although she was thanked by the Executive Vice President and Chief Operating Officer of Microsoft for her and her team’s “tireless efforts and excellent work in galvanizing support for this landmark trade agreement” in a Press Release of 12th December 1996. Press Release sourced at

<http://www.microsoft.com/presspass/press/1996/Dec96/ita.msp> accessed 6th September 2006

⁵⁹ from the ‘USTR National Trade Estimate – the European Union’ 1999 sourced from

http://www.ustr.gov/assets/Document_Library/Reports_Publications/1999/asset_upload_file136_2820.pdf on 6th July 2006

⁶⁰ See Fliess and Sauvé (full reference footnote 7).

⁶¹ Although these would not have been on sensitive products, suggesting that the US was able to hold its ground.

(along with Thailand, India and the Czech Republic) was faltering and they “apparently agreed the initial list of products for which tariffs will be eliminated” which meant that the 90% target would be reached.⁶² On 3rd March 1997, the WTO issued a Press Release saying that the Agreement could now be signed.⁶³ The final meeting of the ITA group, on 26th March, had 25 participants representing 92% of global IT trade.⁶⁴

The Commission and the US decided to press for more. The next Quad Ministers meeting agreed to “work together to broaden participation in the agreement...(and)...jointly pursue...expansion of product coverage and review of non-tariff measures in the context of this fall's review of the agreement (‘ITA-II’).⁶⁵ This was confirmed by a WTO Press Release, which said that fourteen countries had already submitted wish lists in this regard.⁶⁶ They were led by the US and EC whose comprehensive lists included, “panel displays, power supplies, optical scanners, electronic transformers, color televisions, radio-cassette players, loudspeakers, VCRs, navigational position systems, and air traffic control systems”.⁶⁷ However, certain of the WTO’s developing country members were of the opinion that, because some of the products seemed to have only a tangential link to IT, they could experience domestic unrest if ITA-II went ahead. Furthermore, because it was only the lists from the EC and US, which contained such products, countries may have been concerned that this could pave the way for a wider-ranging agreement.

⁶² F Williams, the Financial Times of 4th February 1997 page 3, ‘Optimism on IT tariff deal’

⁶³ “Ruggiero cites progress in the Information Technology Agreement” at

http://www.wto.org/english/news_e/pres97_e/pr69_e.htm accessed 6th July 2006

⁶⁴ The 1997 General Report of the European Commission on Common Commercial Policy (at

<http://europa.eu.int/abc/doc/off/rg/en/1997/enx60397.htm> accessed 6th July 2006

⁶⁵ Chair’s statement from the meeting of April 30th and May 2nd in Toronto at

<https://tspace.library.utoronto.ca/retrieve/1070/quad30.html> accessed 6th July 2006

⁶⁶ WTO Press Release of 16 February 1998 (“More information technology products proposed for tariff elimination” at http://www.wto.org/english/news_e/pres98_e/pr90_e.htm accessed 6th July 2006. Lists had been received from Australia; Canada; the European Communities; Hong Kong, China; Israel; Japan; Malaysia; Norway; the Philippines; Singapore; Switzerland; Chinese Taipei; Turkey; and the United States and these had been submitted to the 12th February meeting of the Committee of Participants on the Expansion of Trade in Information Technology Products (sourced from the press release).

⁶⁷ J Parry TechWeb, 12th February ‘US and Europe ruffle feathers in World Trade Organisation’ at <http://www.techweb.com/wire/story/TWB19980212S0016> accessed 15th February 2003

In spite of this, both the Commission and the US remained optimistic that wider product coverage could be achieved and they would be working together in order to make it a reality.⁶⁸ For all their good intentions, though, a WTO Press Release of 17th July revealed that negotiations on the ITA-II had been suspended, primarily because of disagreements “between the EU and Malaysia regarding the coverage of consumer electronics, and the EC and US over the inclusion of fibre optics and computer monitors”.⁶⁹ A further press release from the WTO later in the year said that the Committee would continue to try to make headway and that, at their end of year meeting, members would be asked to consider an additional “200 ITA-II products... a revised ...draft agreement...and a list of some 20 products to be annexed to the draft agreement, whose coverage under the ITA would be confirmed”.⁷⁰ As expected, from the negative reaction to an extension already stated by Malaysia, consensus was not achieved at that meeting with evident concern continuing over coverage and flexibility issues.⁷¹

That there are no other WTO Press Releases on the IT area until 16th July 1999 is instructive. At that point, a symposium was held “to discuss trade prospects and issues facing the information technology sector” where, once again, there were a large number of people from industry but no agreement was forthcoming.⁷² Although the Secretariat issued periodic updates on implementation, there were no further steps forward to

⁶⁸ From the Report of the Senior Level Group to the US-EU Summit of May 18th 1998 (at <http://www.eurunion.org/partner/summit/Summit9805/mta9805.htm> accessed 6th July 2006

⁶⁹ Press Release 17th July (‘ITA-II Talks Suspended’ at http://www.wto.org/english/news_e/pres98_e/pr110_e.htm accessed 6th July 2006. Differences between the countries from the ICTSD Bridges Report, Vol.2 No. 5 p6 of July-August 1998 ‘WTO News in Brief’ (at <http://www.ictsd.org/English/BRIDGES2-5.pdf> accessed 6th July 2006. The agreement does cover monitors, which are defined as “display units of automatic data processing machines with a cathode ray tube with a dot screen pitch smaller than 0,4 mm not capable of receiving and processing television signals or other analogue or digitally processed audio or video signals without assistance of a central processing unit of a computer as defined in this agreement”, although this possibly does not cover computer monitors.

⁷⁰ Press Release of 27 November 1998 ‘Final ITA II Package to be considered on 11 December’ at http://www.wto.org/english/news_e/news98_e/ita2pr.htm

⁷¹ from WTO News 14th December 1998 ‘Participants Agree to resume ITA-II Talks in February 1999 at http://www.wto.org/english/news_e/news98_e/ita2pr.htm accessed 6th July 2006, also B Driessen and M Bordalba ‘International Trade Developments, Including Commercial Defence Actions XV: 1 July 1998 – 31 December 1998’ (1999: 461-465) at <http://www.ejil.org/journal/Vol10/No2/sr1-01.html#TopOfPage> accessed 26th July 2006

⁷² from Press Release of the same name at http://www.wto.org/english/news_e/pres99_e/pr130_e.htm accessed 6th July 2006. Industry representatives attending the symposium came from “countries...including Canada, Chinese Taipei, Costa Rica, Czech Republic, Estonia, European Communities, India, Israel, Japan, Malaysia, Philippines, and the United States”, with speakers from “Motorola, Hewlett Packard, IBM, Macronix, Alcatel, Hitachi, Ericsson, Nortel Networks, and Telsa Telekomikace (from the Czech Republic)”. Although few of these could be said to be ‘developing’ countries, and none are from Africa. See also http://www.wto.org/english/tratop_e/inftec_e/itinfi_e.htm for links to the papers discussed therein

achieving an ITA-II within this timeframe.⁷³ The 1999 annual report of the Committee makes this explicit;

“The issue of the review of product coverage was placed on the agenda...No discussions took place on the matter, but the Chairman noted that delegations were continuing consultations...and he encouraged delegations to continue their efforts”.⁷⁴

In late 2000, the ITA Committee looked at non tariff barriers to IT products and agreed a one year work programme in this area although there were no steps taken to extend the scope of the agreement.⁷⁵ On the occasion of the ten year anniversary of the ITA in March 2007, the Director General of the WTO commented that the ITA had been “a major success” but, again, this was not to herald meaningful work towards an ITA-II.⁷⁶

The Basic Telecommunications Services Agreement (BTA)

Negotiations on telecommunications date back to the Uruguay Round where ‘value added’ services were discussed as part of the GATS agreement; the conclusions of which were eventually to form an Annex to the GATS.⁷⁷ However, this annex did not include several important areas i.e. “basic voice, data transmission, mobile telephony or satellite services” so the EC along with eighteen other parties said they would continue discussions at the end of the Round.⁷⁸ The Decision on Negotiation makes clear that these negotiations would be voluntary although they would have the broad aim of

⁷³ on 6/7/99 [G/IT/1/Rev10] and again on 20/9/99 [G/IT/1/Rev11]

⁷⁴ G/L/332 issued on 14 October 1999

⁷⁵ Document G/IT/19 circulated 13th November 2000

⁷⁶ From WTO News Item 28th March 2007 ‘Lamy says ITA success is inspiration to Doha negotiators’ at http://www.wto.org/english/news_e/news07_e/symp_ita_march07_e.htm accessed 31st January 2008.

⁷⁷ see http://www.wto.org/english/tratop_e/serve_e/12-tel_e.htm for the full text, accessed 6th July 2006

⁷⁸ Quote from Braga, C, Fink, C and Hoekman, B (2002) ‘Telecommunications-Related Services: Market Access, Deeper Integration and the WTO’ HWWA Discussion Paper Number 158 sourced at http://www.hwwa.de/Forschung/Publikationen/Discussion_Paper/2002/158.pdf accessed 15th June 2006. The other countries were Australia, Austria, Canada, Chile, Cyprus, European Communities and their member States, Finland, Hong Kong, Hungary, Japan, Korea, Mexico, New Zealand, Norway, Slovak Republic, Sweden, Switzerland, Turkey, United States. Report of continuing discussions from C Raghavan, SUNS Online, ‘Basic Telecoms and Nagging Doubts’ October 6th 1995 at <http://www.sunsonline.org/trade/areas/communic/10060095.htm> accessed 6th July 2006

liberalising trade in basic telecoms under GATS. Furthermore, they would be comprehensive “with no basic telecommunications excluded *a priori*”.⁷⁹

Discussions in the EC on telecommunication services had been going on for some considerable time before the end of the Uruguay Round. Robert Kaiser (2001: 5) suggests that the thinking about liberalization “start(ed) in the mid-1980’s...following the examples of the United States, Great Britain and Japan”. However, the process of this thinking, in the EC, seemed to begin in 1980 with the Commission’s ‘*Recommendations on Telecommunications*’ (COM(80)422) of 1st September wherein the Commission noted the importance of “a competitive, low-cost telecommunications network” throughout the Single Market.⁸⁰ After this there was a further Communication to the Telecommunications Council on ‘*Lines of Action*’ in COM(83)573, which sought to allow “the progressive development of a common community policy for telecommunications” followed by another Communication in 1984 (COM(84)277), which proposed ways of helping the industry kick start some initiatives in order to regain their competitiveness.⁸¹ This thinking went further in 1987 with a ‘*Green Paper on the development of the Common Market for Telecommunications services and equipment*’ (COM(87)290), which concluded that telecoms in the EC needed to be both overhauled and liberalised.⁸²

Tracking developments back through, there was a great deal of interest in this field within both the Council and the Commission. The Council Resolution of 19th November 1992 on ‘*The Promotion of Europe-wide Cooperation on Numbering of Telecoms*’ cites the Council Resolution of 30 June 1988 on ‘*The development of the Common Market for telecommunication services and equipment*’, which advocated the development of services, followed by the Commission Directive of 18 June 1990 on ‘*Competition for Telecommunications Services Providers*’, then the Council Directive of 28 June 1990 on ‘*The Establishment of the Internal Market for Telecommunications*

⁷⁹ adopted on 15th April 1994 at Marrakech (at <http://www.jurisint.org/pub/06/en/doc/52.htm>, also http://www.wto.org/english/tratop_e/serv_e/telecom_e/tel22_e.htm accessed 6th July 2006

⁸⁰ COM(80)422 of 1st September 1980. Text at http://aei.pitt.edu/5047/01/001353_1.pdf accessed 1st February 2008

⁸¹ COM(83)573 of 29th September 1983 at http://aei.pitt.edu/1359/01/telecommunications_COM_83_573.pdf accessed 1st February 2008 ‘*A progress report on the thinking and work done in the field and initial proposals for an Action Programme*’. COM(84)277 of 18th May 1984 at http://aei.pitt.edu/3673/01/000295_1.pdf accessed 1st February 2008

⁸² 1997 Special Edition of Information Society Trends at <http://europa.eu.int/ISPO/docs/services/trends/docs/overview97.pdf> accessed 6th July 2006

Services through the Implementation of Open Network Provision'.⁸³ This latter document set out the Council's view of the "very great importance" that it attached, not only to continuing the development of European telecoms but also recognising their value internally and externally (for European participation in other markets). The next Resolution, 93/C213/01 of 22 July 1993, was a '*Review of the situation in the telecommunications sector and the need for further development in that market*', which set down the main aims of future telecommunications policy and, perhaps most importantly, instructed the Commission: "To prepare, before 1 January 1996 the necessary amendments to the Community regulatory framework in order to achieve liberalization of all public voice telephony services by 1 January 1998".⁸⁴

Because of the level of liberalisation that had already taken place, it would suggest that the European Union was in a strong position (as regards both policy making and in the experience of making the policy work) to get its views across once negotiations in this area started under the aegis of the WTO. Negotiations commenced on 30 April 1994 (Niemann, 2004: 390) coordinated by a Negotiating Group with a deadline of April 1996.⁸⁵ Just like the Information Technology Agreement, it was important for the Commission to build a supportive coalition in order to ensure that the most countries possible would give their support. To this end, there were a number of parallel discussions taking place i.e. in forums other than the WTO, throughout the period of the negotiations.

At the same time, it was critical that the Commission continued crafting its own policies for the liberalisation of the internal telecoms market, setting targets for the member states.⁸⁶ With this aim in mind, on 25th October 1994 the Commission issued a Green Paper Part One on '*The Liberalisation of Telecommunications Infrastructure and Cable Television Networks*'⁸⁷. This set out the importance of telecommunications for enabling the European economy to compete with those of the US and Japan. It was noted,

⁸³ Council Resolution 92/C318/02 found in full at <http://www.ero.dk/93EAB0E2-133D-4A0E-9DBB-43094D18870E.W5Doc>. The website of the European Radiocommunications Office. Accessed 6th July 2006. Kaiser (2001: 7) also mentions the Commission Directive 88/301/EEC on 'Competition in the Markets in Telecommunications Terminal Equipment' as starting off this liberalization process. Full text of the latter document at full text at http://www.dcmnr.gov.ie/files/Comms_Reg_1990_387.doc accessed 6th July 2006

⁸⁴ See the full text at <http://europa.eu.int/ISPO/infosoc/legreg/docs/93c21301.html> accessed 6th July 2006

⁸⁵ See Braga et al (2002) (full reference at footnote 78). Information here from http://www.wto.org/english/tratop_e/telecom_e/telecom_history_e.htm accessed 6th July 2006

⁸⁶ E Tucker, Financial Times 26th October 1994, page 3, 'Brussels pushes hard on telecoms'

⁸⁷ full text at http://aei.pitt.edu/archive/00001093/01/telecom_cable_gp_part_1_COM_94_440.pdf accessed 6th July 2006

however, that this initiative “was certain to be resisted fiercely by countries anxious to protect national telecommunications monopolies including Spain, Portugal, Greece, Belgium and Italy” suggesting that it would not be easy to put together a supportive internal coalition.⁸⁸ The next initiative came about on 22 December 1994, when the Council issued a ‘*Resolution on the principles and timetable for the liberalisation of telecommunications infrastructures*’, which continued to advocate full liberalization to a 1 January 1998 deadline.⁸⁹

The G7’s Information Society Conference in February 1995 discussed the BTA. Once again, several Commissioners were present and the Competition Commissioner’s speech at the Panel Discussion on Regulatory Framework and Competition Policy, centred exclusively on telecom liberalisation. He informed the other attendees that, as has already been shown, much work had already been carried out and, for the Community, “1998 is the deadline”.⁹⁰ This was a clear line in the sand to the other players – as we have set a date for the full liberalisation of our markets; you should follow.⁹¹ The Commission’s leadership in this area, including its firm adherence to a specific date, may have been why the May Quad meeting reacted differently to the BTA than they did the ITA, wanting to complete negotiations before April the following year in order to move towards a “global information infrastructure”.⁹² Therefore, both the G7 and the Quad were very supportive of the work in the WTO, and the Commission’s efforts towards facilitating an agreement, from the outset. Even developing countries seemed to recognise possible advantages for attracting foreign investment and their stance was supported by the World Bank which noted, “Investment in telecoms in the developing world must double...if unfulfilled and growing demand for...services is to be met”.⁹³

⁸⁸ J Wolf the Guardian of 25th October page 19, ‘Liberalise telecoms infrastructure call by EC’

⁸⁹ Council resolution is 94/C 379/03, full text at <http://europa.eu.int/ISPO/infosoc/legreg/docs/94c37903.html> accessed 16th July 2007

⁹⁰ Karel van Miert’s statement to the Information Society Conference entitled ‘Universal Service will not be compromised by full telecoms liberalisation’ at http://www.europa.eu.int/ISPO/docs/intcoop/g8/is_conf_95_miert.pdf accessed 15th May 2005

⁹¹ As was reported on the previous page, this deadline had been set in 1993.

⁹² May 3-5 in Whistler, Canada. Chairman’s statement at <http://www.g8.utoronto.ca/trade/quad26.html> accessed 15th May 2005

⁹³ Positive reactions from the developing countries from A Cane, the Financial Times of 21st July, page 4, ‘WTO rings the world’s number’. World Bank comments from the Financial Times of October 3rd 1995, Survey Section on Telecommunications page 1

The Commission submitted its first offer in early October 1995.⁹⁴ This reiterated the implementation date of January 1998 i.e. binding the EC liberalization deadline into the WTO.⁹⁵ There were exceptions, however – Ireland would have until 2000 and Spain, Portugal and Greece would have until 2003 to liberalize their markets. This flexibility in provision made it much more likely that an internal consensus would hold and the Commission could build on this internal arrangement to make progress externally. Following this offer, a High Level Group meeting on Telecommunications was held within the WTO in an effort to set down some basic principles, which could be expanded upon in further negotiations with the objective being for significant commitments to liberalization.⁹⁶

The next Quad meeting again clearly supported the Commission's proposal saying that significant headway was sought prior to the Singapore Ministerial.⁹⁷ An opportunity to cement agreement bilaterally between the EC and US was afforded by the 'New Transatlantic Agenda' and priority was given to furthering all the services negotiations to meet the timetable already set.⁹⁸ The evidence suggests that, at this juncture, the Commission and the USA were standing firm in their joint resolution to proceed on schedule. This also shows that there was powerful political support for progress within the WTO from the EC-US bilaterally, the G7 and the Quad (and from some, at least, of the developing countries) to achieve an agreement, although there were still time constraints to achieving a critical mass of support. Leon Brittan expressed this concern later in the year, "We are due to complete negotiations on telecommunications liberalization in April...and to my knowledge only Singapore has even completed the questionnaire (on scope)...if we don't get enough participation the agreement won't

⁹⁴ F Williams, the Financial Times of 4th October 1995 p8 'EU offers pledge on liberalizing telecoms'

⁹⁵ Pages 2 and 3 of the Press Review of the Commission's Information Society issue 42 5-17/10/95 at <http://europa.eu.int/ISPO/docs/services/trends/docs/42.pdf> accessed 15th May 2005

⁹⁶ The meeting was, (according to A Cane the Financial Times of 21st July 1995 page 4 'WTO rings the world's number') held on 6th October 1995 in the context of Telecoms 95 "the huge trade show and seminar". Objectives from the Press Release at http://www.wto.org/english/news_e/pres95_e/pr9511_e.htm entitled 'High Level Meeting of the Negotiating Group on Basic Telecommunications, 6 October 1995: Statement by the Director General of the WTO' accessed 25th July 2006

⁹⁷ Quad meeting of October 21st and 22nd in Ripley, Yorkshire. Chairman's statement at <https://tspace.library.utoronto.ca/retrieve/1076/quad27.html> accessed 25th July 2006. Leon Brittan was chairing this meeting, which may explain why the Quad was so supportive.

⁹⁸ 'New Transatlantic Agenda' launched at the EU-US Summit in Madrid on December 5th 1995 and contained in the Joint EU-US Action Plan. Text from the full text at http://ec.europa.eu/comm/external_relations/us/action_plan/3_trade_economy.htm accessed 25th July 2006

have either the width or breadth necessary to be effective”.⁹⁹ However, the US was expressing a preference for an interim agreement if they could not get full sign up by the end of the April deadline so their enthusiasm had not waned.¹⁰⁰

Although the external consensus may have been holding up, it appeared that the internal consensus was not. Brittan thought that in order to encourage agreement the EC should make a revised telecoms offer even though it would negatively affect Belgium, France, Italy, Portugal and Spain. This resulted in accusations from various member states that the Commission was giving away valuable negotiating ground without anything guaranteed in return.¹⁰¹ This may have been made worse as the Commission position had been circulated as a draft offer rather than in a neutral document.¹⁰² It seemed, by then, that Leon Brittan was optimistic of bringing Belgium, France and Spain around to his point of view so was not particularly concerned about possible short-term negative views in Council. Furthermore, he continued to push for progress in the Quad as well as in WTO.¹⁰³ At the Quad meeting in April 1996, Ministers once again affirmed their desire for an early conclusion to the negotiations.¹⁰⁴ They asked WTO members, and committed themselves, to submitting “best MFN-based” revised offers by the end of the month.¹⁰⁵ This suggested that any outstanding problems could be swiftly ironed out in spite of the short time left until the deadline.¹⁰⁶

Perhaps the Quad was unduly optimistic. On March 26th, Renato Ruggiero had made a speech to the negotiators, at their meeting, on the importance placed on the issue by the WTO and the wider community, reminding those present of the 30th April deadline and advising the “37 full participants” in the group that “only 24 (of them) had so far

⁹⁹ T Bardacke, the Financial Times of 12th December 1995, page 6 ‘EU urges Asean telecoms liberalization’

¹⁰⁰ G de Jonquieres, the Financial Times of 13th February 1996, page 8 ‘US looks for quick telecoms pact’

¹⁰¹ G de Jonquieres, the Financial Times of 13th March page 5, ‘EU split over liberalizing telecoms’

¹⁰² A Reuters report in the Financial Times of March 26th 1996, page 5 ‘EU to match offers to open up telecoms’, says that the foreign ministers “agreed to make a better offer on opening telecommunications networks in world trade talks if other countries did likewise”, thus addressing the concerns about ‘giving ground before receiving anything in return’.

¹⁰³ A Dawkins and G de Jonquieres, the Financial Times of 19th April page 5, ‘Quad nations seek unity on telecoms’

¹⁰⁴ Meeting which took place in Kobe, Japan on 21 and 22 April 1996

¹⁰⁵ From the Chairman’s statement at <http://www.g8.utoronto.ca/trade/quad28.html> accessed 25th July 2006

¹⁰⁶ Idea that disagreements could be dealt with quickly from W Dawkins, the Financial Times of 22nd April page 4, ‘Quad nations near accord on telecoms’, Short timescale noted by F Williams and G de Jonquieres, the Financial Times of 25th April page 6, ‘WTO close to a deal on telecoms liberalization’

submitted first offers (and) only 7 of these have so far submitted revised or improved offers” ergo, it was crucial that more was done very quickly.¹⁰⁷ The US was concerned that the negotiations were failing because of the lack of solid market opening commitments being made; a clear warning that more needed to be done if they were going to stay at the table.¹⁰⁸ The decisive end came when the USA backed out of negotiations in April “claiming that the market opening by other nations didn’t add up to an acceptable package” and because “the required ‘critical mass’ of membership (to prevent free riding) had not been achieved”.¹⁰⁹ There was concern, from the other participants, that the US would remove satellite services from its offer, which was confirmed on 29th April prompting Brittan to remark that it was “a deep disappointment and an unpleasant surprise”.¹¹⁰

Ruggiero embarked on a salvage operation for the Agreement. The WTO Press Brief for 1 May reported that he had suggested a one-month standstill period from January to February 1997 to revisit the offers and further develop positions, whilst keeping the original offers on the table. At the same time, the date of 1st January 1998 would be when the Agreement would be finalised. Meanwhile, “a group on basic telecommunications reporting to the WTO’s Council for Trade in Services would...start work before the end of July”.¹¹¹ This meant that although there would be a hiatus, work would continue with a new deadline. Leon Brittan termed the failure to reach agreement a “missed opportunity” adding that he “regret(ted) and deplore(d)” the US’s actions.¹¹² This seemed to be indicative of a wider dissatisfaction on the part of WTO members, feeling that the US had stymied progress and this led to bitterness amongst the other

¹⁰⁷ see full text PRESS/45, 22 March 1996 ‘WTO Director-General’s statement on basic telecommunications negotiations’ at http://www.wto.org/english/news_e/pres96_e/pr045_e.htm, accessed 25th July 2006

¹⁰⁸ F Williams, the Financial Times of 23rd March page 3, ‘Time Tight for Global Telecoms Agreement’. The US named the main culprits, in this article, as “Japan, Canada and a host of developing countries in Asia and Latin America as well as Israel and South Africa”

¹⁰⁹ First quote from European Business News of 12 February 1997 at http://www.hri.org/news/europe/ebn/1997/97-02-12_ebn.html accessed 25th July 2006. Second quote from Braga et al (2002) – see footnote 78 for full reference.

¹¹⁰ Concern about the removal of satellite services from F Williams and G de Jonquieres, the Financial Times of 27th April 1996 page 2, ‘WTO telecoms talks stall over satellites’, also F Williams, the Financial Times of 29th April 1996, page 1, ‘US balks at signing global deal on telecoms’. Quote from Brittan from F Williams the Financial Times of 30th April 1996, page 6, ‘US telecoms stance angers trade partners’

¹¹¹ PRESS/48 of 1st May 1996 ‘WTO’s Basic Telecommunications Negotiations result in substantial offers: re-examination in early 1997’ at http://www.wto.org/english/news_e/pres96_e/pr048_e.htm accessed 25th July 2006

¹¹² F Williams, the Financial Times of 1st May 1996 page 5 ‘Agreement on telecoms pact deadline’.

participants with a concern that this might spill over into the wider arena of multilateral policy making in the WTO.¹¹³

Although the US had pulled out, the Commission continued to work on its own policies to support liberalization in the internal market. On 16th January 1996, the Commission issued a *'Directive Amending Directive 90/388/EEC with regard to mobiles and personal communications'*, which aimed to bring competition in to the field of mobile telephony, as had already been the case for fixed line telephony.¹¹⁴ This was followed on 12th March by a *'Commission Communication on Universal Service for Telecommunications in the Perspective of a Fully Liberalised Environment'*, which addressed: "practical issues...for the future development of universal service; and...to place universal service for telecommunications in the broader context of the information society".¹¹⁵ A day later, on 13 March 1996, the Commission issued a *'Directive Amending Directive 90/388/EEC with regard to the implementation of full competition in telecommunications markets'*, specifically because the previous Directive had excluded public telephone services from being opened up to competition.¹¹⁶ On 11th September, the Commission issued another draft Directive on the minimum standards to be adhered to by telephone companies after January 1st when the market would be fully opened.¹¹⁷ A further *'Commission Communication on Europe at the Forefront of the Global Information Society – A Rolling Action Plan'* was circulated in November 1996 and this acknowledged the importance of completing the negotiations on the Basic Telecommunications Agreement in the WTO.¹¹⁸ Afterwards came a *'Green Paper on Numbering Reform'* and a *'Commission Communication on Assessment Criteria for National Schemes for the Costing and Financing of Universal Service in Telecommunications and Guidelines for the Member States on Operation of*

¹¹³ Feeling that the US had stymied progress from F Williams, the Financial Times of 2nd May page 4, 'US keeps rest of world hanging on the line'. Bitterness noted by T Buerkle, the International Herald Tribune of 2nd May page 15, 'A Setback for WTO Agenda'. Concern about spillover of these negative effects from the Financial Times editorial of 7th May 1996 page 15, 'World trade at risk'

¹¹⁴ 96/2/EC, full text at <http://europa.eu.int/ISPO/infosoc/legreg/docs/962ec.html> accessed 25th July 2006

¹¹⁵ COM(96)73 full text at <http://europa.eu.int/ISPO/infosoc/telecompolicy/en/d8.htm> accessed 25th July 2006

¹¹⁶ 96/19/EC full text at <http://europa.eu.int/ISPO/infosoc/legreg/docs/9619ec.html> Also see E Tucker the Financial Times of 15th March 1996 page 2, 'Let there be phones for all, says Brussels'

¹¹⁷ COM(96)491 'Proposal for a European Parliament and Council Directive on the application of open network provision (ONP) to voice telephony and on universal service for telecommunications in a competitive environment' (replacing 95/62/EC) <http://europa.eu.int/ISPO/infosoc/legreg/docs/96419.html> accessed 25th July 2006. Also N Buckley the Financial Times of 12th September 1996, page 2, 'Brussels sets phone service standards'

¹¹⁸ Green Paper sent to the Council, Committee of the Regions and ECOSOC, COM(96)607 at <http://europa.eu.int/ISPO/infosoc/legreg/rollcomm.html> accessed 25th July 2006

Such Schemes'.¹¹⁹ The Commission, then, demonstrated its commitment to achieving agreement by making sure that its own framework was in place and ensured, as far as possible, there would be no backtracking from the consensus position or the deadline previously set.

In the meantime, meetings were taking place to try to get discussions back on track. The Quad remained strongly supportive of an agreement prior to the Singapore Ministerial, and it seemed that this political pressure had a positive effect in that both the EC and US agreed to submit revised offers beforehand.¹²⁰ In addition, the US satellite communications industry itself was also keen for an agreement, seemingly prepared to open up to competition in spite of US Government concerns.¹²¹ The TABD too had joined the chorus in support of achieving an agreement.¹²² Spain, meanwhile, had agreed to full liberalization of its telecoms markets by 1998 and this seemed to encourage the US to get back to the negotiating table, particularly as they had been concerned that the Spanish telecommunications company was "taking advantage of its monopoly to finance its ambitious expansion in Latin America".¹²³

The WTO Secretariat hoped that the Singapore Ministerial would act as a political push to the continuing negotiations.¹²⁴ The EC, US and the Slovak Republic provided a practical 'push' by tabling new offers, as the former two had promised at the Quad meeting earlier in the year.¹²⁵ The new Commission offer formalized Spain's liberalisation commitment, as well as setting out a timetable for liberalizing mobile telephone services also for 1998 (excepting Ireland and Portugal) and lifted restrictions

¹¹⁹ Green Paper on Numbering reform COM(96)590 of 20th November 1996 at <http://europa.eu.int/ISPO/infosoc/telecompolicy/en/d7.htm> accessed 25th July 2006. Assessment Criteria COM(96)608) of 27 November 1996 (at <http://europa.eu.int/ISPO/infosoc/telecompolicy/en/com96608.htm> accessed 25th July 2006.

¹²⁰ Seattle Quad meeting on 27-28 September full text of Chairman's Summary at <https://tspace.library.utoronto.ca/retrieve/1072/quad28.html> accessed 25th July 2006

¹²¹ A Cane and G de Jonquieres, the Financial Times of October 22nd, page 6, 'Global telecoms deal comes closer'

¹²² TABD, meeting on 8th-9th November 1996 in Chicago (see Chicago Declaration at <http://static.tabd.com/manilaGems/1996ChicagoCEORreport.pdf> accessed 25th July 2006

¹²³ Spain's agreement to liberalisation from N Dunne, the Financial Times of 11th November page 6, 'US, EU closer on telecoms and IT accord'. US encouraged to return to the table from a Reuters report in the International Herald Tribune of 12th November 1996 page 19, 'Compromise On Telecoms Is Closer; EU Official Says'

¹²⁴ Idea that Singapore would provide a political push from the WTO Press brief on 'Basic Telecommunications' at http://www.wto.org/english/thewto_e/minist_e/min96_e/telecoms.htm accessed 5th June 2004

¹²⁵ Parts of all the offers can be found at http://www.wto.org/english/tratop_e/serv_e/telecom_e/telecom_highlights_commit_exempt_e.htm#country

on satellite telephony services.¹²⁶ That this was agreed by Council suggests that Belgium, Greece and Italy had fallen into line with the rest of the EC, as Spain had previously. The US, meanwhile, included submarine cables and satellite services in their revised offer.¹²⁷ Arne Niemann (2004: 379-407) detailed how the Commission persuaded Spain to accept this revision. He concluded that not only did the liberal members of the Article 133 Committee persuade the Spanish into accepting that some market loosening was inevitable but also the Commission conducted a two-pronged attack. Essentially, Spain's monopoly provider wanted to join a European association (p399-400) and the Commission only allowed this on the basis that they would be prepared to make concessions for the WTO negotiations (p400). The result was that "in early November, Spain agreed to a deal...to drop all its market access and foreign ownership restrictions as of 30 November 1998" (p400) thus allowing forward progress. The Commission was to finally give its approval to the alliance in March 1997.¹²⁸

The Singapore Ministerial did not provide a 'push' to developments here. The WTO Secretariat's own report reveals that the negotiators had only needed to meet informally within the Ministerial.¹²⁹ As a result of the ongoing work, Council was able to consider the Draft Agreement text on 14th February 1997 where it gave the Commission its endorsement for them to complete the negotiations.¹³⁰ In spite of this, and in spite of apparent enthusiasm on the part of the US, discussions in the WTO went to the wire, with Washington delaying its verdict until the last minute. Leon Brittan remarked that with the number of substantially revised offers on the table, there was the potential for "a massive liberalization of the world telecoms market which it would be crazy not to grab with both hands" suggesting that the US should be content with what had been achieved.¹³¹ Ultimately the revised offers may have proved decisive; "On 15 February 1997, 69 Members of the WTO agreed to open their basic telecoms markets to

¹²⁶ F Williams, the Financial Times of 13th November page 3, 'EU improves telecoms talks offer'

¹²⁷ F Williams, the Financial Times of November 14th 1996, page 7 'US and EU revise telecoms stance'

¹²⁸ E Tucker reported that the Commission had given its approval for the agreement in the Financial Times of 21st March 1997, page 2, 'Go-ahead for telecoms deal') and says that it was signed by British Telecom, Deutsche Telekom, France Telecom, Telecom Italia and Telefonica.

¹²⁹ 'History of the Telecommunication Negotiations' at

http://www.wto.org/english/tratop_e/telecom_e/telecom_history_e.htm accessed 25th July 2006

¹³⁰ EU Bulletin 1-2/1997 Council conclusions on the 'Draft Agreement on Basic Telecoms Services in the WTO Framework' at <http://europa.eu.int/abc/doc/off/bull/en/9701/p103024.htm> accessed 25th July 2006

¹³¹ F Williams and M Nakamoto, the Financial Times of 15th February page 3. 'Telecoms pact waits for US verdict'

competition, thus liberalising over 90% of global trade in telecoms services (93%)”.¹³² The agreement had wide support from the member states as it covered universal telecommunication services but left out broadcasting, which would have risked difficult negotiations on the cultural exception.¹³³

Coming into force on 5 February 1998, with the proviso that it was “accepted by all members concerned”, the Fourth Protocol of GATS, which the Agreement became, is very brief. This is because it is the agreed schedules attached to it, from each signatory country, which detail what the Agreement means in practice. In a WTO Press Release, Ruggiero offered his congratulations to those governments who took part saying they had “put their faith in the multilateral process of the WTO, and the WTO has delivered”.¹³⁴ Leon Brittan was to say later that he had also put his faith into the private sector, in the shape of the US Coalition of Service Industries, which had helped greatly in efforts to reach agreement, particularly because they had built bridges between US and EC industries, all lobbying for completion of the Agreement.¹³⁵ Charlene Barshefsky also wrote a letter to the Chairman of the CSI after the Agreement came into force noting that their support had encouraged the US to implement the agreement.¹³⁶

It was accepted, however, that, as with the ITA, this Agreement was only the first step. The Chairman of the French Telecommunications Regulatory Authority (ART) was among those who acknowledged that there was “an unquestionable need for specific

¹³² From the DTI (UK) page on International ICT Policy ‘Market Liberalisation in the Telecommunications Sector. Why Liberalise?’ at <http://www.dti.gov.uk/sectors/ictpolicy/economtopical/econommarketlib/page13581.html> accessed 26th July 2006, also N Bannister the Guardian of 15th February page 24, ‘Global telecom pact is set for signing today’

¹³³ From Leon Brittan’s ‘exchange of views’ with the Committee on External Economic Relations of the European Parliament on 18th March 1997 at <http://www.europarl.eu.int/dg3/sdp/newsrp/en/1997/n970318.htm> - 6 accessed 25th July 2006

¹³⁴ WTO Press Release 17th February PRESS/67 - ‘Ruggiero congratulates Governments on landmark telecommunications agreement’ – “This deal goes well beyond trade and economics” at http://www.wto.org/english/tratop_e/serv_e/telecom_e/telecom_e.htm, Press Release link accessed 15th May 2005

¹³⁵ Thanks given in a speech to the Coalition of Service Industries in Washington DC on 24th September 1998 at http://www.globalservicesnetwork.com/csi_annual_meeting_britta.htm accessed 15th May 2005. The idea of ‘bridge building’ would seem to be disputed by the fact that “Brussels...threatened to file a complaint against the US at the WTO because of restrictions which its telecoms licensing body intends to impose on European companies that want to set up telecoms operations” (N Tutt the European of 17-23 April 1997, page 17).

¹³⁶ Letter dated 11 February 1998 from <http://www.uscsi.org/publications/papers/5paper2.htm> accessed 25th July 2006

regulation...at world level...to complement the general rules of competition”.¹³⁷

Perhaps the agreement didn't go far enough; Parliament asked the Commission, at the Seattle Ministerial to extend the BTA and encourage more countries to sign up to it.¹³⁸

It is probably true to say that telecommunications and information technologies were developing so fast that there was growing convergence. The Commission was to identify this later in the year noting that the advent of digital technology meant that the same platforms could be used for different purposes and telephones, computers and television were becoming more integrated.¹³⁹

This was tantamount, in many ways, to accepting that both the ITA and the BTA were out of date before they had even come into force. Although the BTA is now part of the Services negotiations opened in 2000, there have been no changes made to it at the time of writing.

The Financial Services Agreement (FSA)

Discussions on the Free Movement of Capital, an important aspect of the FSA, began in the EC with Treaty of Rome Article 67, which said that capital should be moveable “to the extent necessary to ensure the proper functioning of the common market”. However, although directives covering this area were issued in 1960 and 1962 it was not until the ‘*Communication from the Commission to the Council: Programme for the Liberalization of Capital Movements in the Community*’ (COM(86)0292) in 1986 that there was any effort to ensure that developments in the capital market kept up with the pace of developments in goods and services.¹⁴⁰

¹³⁷ From ‘Communications and Strategies’ Number 44, 4th quarter 2001 pp195-209 at <http://www.idate.fr/an/publi/revu/num/n44/opinion.pdf> accessed 15th May 2005

¹³⁸ From the European Parliament resolution on the Communication from the Commission to the Council and the European Parliament on the EU Approach to the Millennium Round (COM (1999)331), issued 26th November 1999 and reprinted at from <http://www.cb3rob.net/~merijn89/nieuws/99-11-26-1.html> accessed 25th July 2006

¹³⁹ COM (97) 623) of 3 December 1997 ‘*Green Paper on the Convergence of the Telecommunications, Media and Information Technology Sectors, and the Implications for Regulation. Towards an Information Society Approach*’ (full text at <http://europa.eu.int/ISPO/convergencegp/greenp.html> accessed 25th July 2006

¹⁴⁰ Information on early Directives from ‘Free Movement of Capital – General Framework’ at <http://europa.eu.int/scadplus/leg/en/lyb/l25001.htm> accessed 25th July 2006

Multilateral negotiations on the Financial Services Agreement began in the Uruguay Round, but agreement was not reached by the conclusion of the Round, even though seventy six countries had made offers in one or more financial services fields (Dobson and Jacquet, 1998: 81). The Commission was one of the parties that continued negotiating on the basis of the '*Decision on Financial Services*' agreed therein.¹⁴¹ The WTO Secretariat made it clear that these talks should take place over six months after GATS had entered into force (i.e. to the end of June 1995).¹⁴² After this, it was agreed that members would be able to revisit all of their commitments. The first full meeting of the Committee on Trade in Financial Services, under Canadian chairmanship, met on 28th March 1995 with the express aim of achieving a revised agreement within the given six-month timescale.¹⁴³ However, the first sign that perhaps things would not go smoothly was at the third meeting of that Committee on 18th May where "one delegation", probably the US for reasons which will become clear later, put on record that,

"Although it appreciated the efforts of other participants in the negotiations to improve their offers, it was still a long way from the goal. The offers of many countries failed to remove significant barriers to access to their markets and to national treatment in their markets. Not all countries had tabled revised offers and some commitments made bilaterally had not yet been reflected in the schedules".¹⁴⁴

Perhaps in an effort to overcome US cynicism about the process, Leon Brittan sought the G7's endorsement and, after discussion at the Halifax Summit in June 1995, the G7 committed itself to liberalizing the financial services area.¹⁴⁵ After that meeting, Brittan commented that a multilateral approach was the best way forward, considering bilateralism "of more use for political posturing at home than for creating new business abroad".¹⁴⁶ This was also supported internally as the '*Commission Report on Treatment*

¹⁴¹ Accessed at http://www.wto.org/english/tratop_e/serv_e/17-finsr_e.htm 25th July 2006

¹⁴² Secretariat view from 'The Results of the Financial Services Negotiations under the GATS' at http://www.wto.org/english/tratop_e/serv_e/finance_e/finance_fiback_e.htm accessed 25th July 2006. Six month timescale from the WTO Press Release on Financial Services at http://www.wto.org/english/thewto_e/minist_e/min96_e/financia.htm accessed 25th July 2006

¹⁴³ Minutes circulated as S/FIN/M/1

¹⁴⁴ see para 6, S/FIN/M/3

¹⁴⁵ Meeting held between 15th and 17th June in Halifax, Nova Scotia. Results page at from <http://www.g8.utoronto.ca/summit/1995halifax/communiquemarket.htm> accessed 25th July 2006

¹⁴⁶ Leon Brittan, Financial Times 19th June, page 18, 'Why apathy must not prevail'

Accorded in 3rd Countries to Community Credit Institutions’ made clear by concluding that a multilateral solution, through successful FSA negotiations, would be preferable to bilateral agreements because of the likelihood of MFN arrangements for establishment and operation.¹⁴⁷ However, although the G7 conclusion may have been a political push to the Committee, the US still thought progress was insufficient.¹⁴⁸ This boiled over at the next Working Group meeting at the end of June where, despite the Commission making it clear it could confirm its commitments on an MFN basis; the US decided that the undertakings made by the other participants remained insufficient.¹⁴⁹ It responded by withdrawing its MFN commitments for new market entrants from 1st July even though it guaranteed to protect existing foreign financial operations. The Commission seemed shocked by this and advised the other delegations to lobby the US into agreeing with the majority. The other two members of the Quad were strongly supportive of the Commission, Japan commenting that it could not comprehend why the US would risk a string of MFN exceptions from others as a result. Because of what had happened, the Committee agreed to meet the following day when, although there was significant discussion about the revised offers, the US remained unconvinced in the merits of continuing negotiations saying that they would not propose any dates for future negotiations nor suggest any possible content of such meetings.¹⁵⁰

Brittan led a damage limitation exercise; making an effort to defeat the US’s “obstructionism” by agreeing an interim deal to keep the current agreements on the table and to try to build on these in order to make more progress while minimizing losses.¹⁵¹ The plan entailed members agreeing to open their financial services markets on an MFN basis, secondly, to reaffirm their best offers and, lastly, to establish a fixed time period for market opening at the end of which time commitments could be revisited.¹⁵² In order to achieve such agreement, a “diplomatic campaign” had to be fought by Brittan and his

¹⁴⁷ COM(95)303 final of 29th June 1995

¹⁴⁸ SUNS Online of 26 June 1995 ‘US wants more on financial services from others’ at <http://www.sunsonline.org/trade/areas/finance/06260095.htm> accessed 25th July 2006

¹⁴⁹ Meeting of 29th June 1995 S/FIN/M/5/Rev 1

¹⁵⁰ Minutes circulated as S/FIN/M/6

¹⁵¹ Commission leading the damage limitation exercise from C Barfield, Journal of Commerce July 19th 1995 ‘Financial Talks – Let’s Try Again’ reproduced at

http://www.aei.org/publications/pubID.5360.filter.all/pub_detail.asp accessed 6th September 2006. US obstructionism noted by the Financial Times editorial section on page 15 of the 3rd July issue ‘Salvaging a services deal’. Commission pushing ahead from F Williams the Financial Times of 1st July page 2, ‘EU in move to salvage financial services pact’

¹⁵² F Williams the Financial Times of 1st July page 18 ‘EU launches late plan to save global pact on financial services’

office both internally and externally.¹⁵³ He approached this by conducting a major lobbying exercise, seeing “ambassadors from Japan, South Korea, Thailand and India”, as well as EC ministers, and asking Ruggiero for his support in GATS Council.¹⁵⁴ The success of this was shown at the July 1995 meeting where there was significant support for Brittan’s interim agreement, as he had predicted.¹⁵⁵ This had set the improvements, in offers already made, in stone rather than letting them drop back to the levels of commitments made at the start of the process. The Commission was also hopeful that the US would make its own revised MFN commitment over the months ahead, thus not shutting the door if improvements to the status quo could be negotiated. It was agreed to go ahead, prompting an effusive press release from the WTO Director General:

“Seldom has the cause of multilateralism so evidently succeeded... Naturally, with one major trading partner unable to improve the commitments it made in 1993 or to offer non-discriminatory access to its market, this must be a second-best result. But... the commitments which have been taken are substantial”.¹⁵⁶

In spite of Ruggiero claiming the commitments made by the agreement were “substantial”, there was still more work to be undertaken by the Commission and the rest of the Working Group if the US stuck to their guns that market access had to be absolutely reciprocal on an MFN basis. Nevertheless, at the tenth meeting of the Group in July the Chairman commented that, thanks to the Commission’s leadership, the agreement was “the best that could have been hoped for”.¹⁵⁷ At that meeting it was made clear that this interim agreement would last until the end of 1997 but it was hoped that a permanent agreement could be established before then that the US would be prepared to sign.¹⁵⁸

¹⁵³ C Southey the Financial Times of 6th July page 5 ‘Brittan plea on financial services’

¹⁵⁴ C Southey the Financial Times of 8th July page 2 ‘EU talks up hope of financial services deal’

¹⁵⁵ Meeting held on 26th July 1995, minutes circulated as S/FIN/M/9

Brittan expecting success from P Lewis the New York Times of 25th July 1995 ‘Financial Services Agreement is Expected by End of Week’ at

<http://query.nytimes.com/gst/fullpage.html?res=990CE7DF153FF936A15754C0A963958260> accessed 30th January 2008.

The opening quote reads “Europe’s chief trade negotiator predicted today that more than 70 countries would agree by the end of the week on the world’s first agreement liberalizing trade in financial services

¹⁵⁶ ‘WTO Director-General Hails Financial Services Accord’ Press/18, 26th July 1995 at

http://www.wto.org/english/news_e/pres95_e/addpr3.htm accessed 25th July 2006

¹⁵⁷ 28th July (S/FIN/M/10)

¹⁵⁸ JEI Chronology of US-Japan Relations and Japanese Economic Developments in 1995’, JEI Number 8, March 1st 1996 at <http://www.jei.org/Archive/JEIR96/9608fapx7.html> accessed 15th May 2005

An opportunity for the Commission to encourage bilateral commitment came with the launch of the 'Joint EU-US Action Plan' where both sides agreed to encourage financial services liberalisation and to try to secure a permanent financial services arrangement.¹⁵⁹ In this way, pressure was kept up to ensure agreement and compliance by the US at the G7 meeting in Lyons in June 1996. It was agreed there, by all sides, to "relaunch talks in Singapore on financial services so as to reach significant, balanced and non-discriminatory liberalisation commitments by December 1997".¹⁶⁰ Political pressure notwithstanding, the gap between the tenth and eleventh meetings of the Committee on Trade in Financial Services was eight months long, and the purpose of the second meeting was simply to check that countries were formally accepting the Protocol to the GATS. This meant that progress would not be made until the following year. The September 1996 Quad meeting was accepting of this fact although the language used in the Chairman's Summary suggests that a firm outcome was wanted once the talks restarted.¹⁶¹ The TABD was also hoping that the Singapore Ministerial could encourage further action to ensure a completed FSA (as well as a BTA) as soon as possible.¹⁶² However, the Singapore Ministerial did not prove particularly influential in encouraging progress, as the timetable had already been set before it took place. The Ministerial Declaration says only that the negotiations should; "resume...in April 1997 with the aim of achieving significantly improved market access commitments with a broader level of participation in the agreed time frame".¹⁶³ There is no suggestion, then, that the pace could or should somehow be quickened.

At the Group's meeting of April 1997, the Commission was still expectant of more offers coming in and aimed a barbed comment at the USA that "last-minute surprises should not be allowed".¹⁶⁴ That the WTO also wanted no 'surprises' was shown when the Chairman read a message from the Director-General, who expressed his confidence that the negotiations were now near the end point. Fortunately for the Commission, it appeared as if the US would do more to ensure agreement was reached; at the meeting an

¹⁵⁹ Trade text at http://europa.eu.int/comm/external_relations/us/action_plan/3_trade_economy.htm accessed 25th July 2006

¹⁶⁰ 22nd Western Economic Summit Lyons 27-29th June 1996 (see full report at <http://europa.eu.int/abc/doc/off/bull/en/9606/p000608.htm> also at

<http://www.g8.utoronto.ca/summit/1996lyon/communique/eco2.htm> both accessed 25th July 2006

¹⁶¹ Quad meeting Washington 27th and 28th September 1996. Chairman's Summary (at

<http://www.g8.utoronto.ca/trade/quad29.html>) accessed 25th July 2006

¹⁶² Meeting 3rd November, see <http://128.121.145.19/tabd/media/1996ChicagoCEORreport.pdf> for the full report

¹⁶³ WT/MIN(96)/DEC

¹⁶⁴ Meeting report circulated as S/FIN/M/13

offer was promised although, once again, the US wanted to see further progress made. No doubt influenced by Brittan, the Quad continued to express firm support for continuing efforts to reach agreement.¹⁶⁵ At the May 1997 meeting of the TABD, the Chairman of the CSI (so important to both Brittan and Barshefsky in the BTA) advocated a practical approach, asking CSI members to support the work of “the Financial Leaders Group (which was) working on several fronts” to help lobby WTO members and to encourage them to submit liberalisation commitments.¹⁶⁶ Therefore, once again, multinational business was pushing for a positive outcome. The G8 Ministers meeting continued its political support to the process hoping for completion of negotiations by the end of the year.¹⁶⁷

The Commission was able to report at the June meeting of the Negotiating Group that they had completed the Single Market in terms of financial services and had thus achieved “full mutual recognition without any restrictions”.¹⁶⁸ This showed that the internal EC consensus was never in doubt about reaching a conclusion here. Both the Commission and the US then agreed to submit revised offers by 14th July; the Commission commenting that early submission would act as encouragement to other members to do the same. At the July meeting, the Commission confirmed that it had submitted its offer at the end of June and that it was offering reciprocity on a full MFN basis.¹⁶⁹ The revised offer also removed some further restrictions for foreign companies seeking to operate in the Single Market including “the requirement that non-EU banks satisfy an ‘economic needs’ test before they can obtain a licence to operate in Austria”.¹⁷⁰ The US’s offer, submitted earlier that week, would also give competition rights to foreign companies although, as might be expected, the US still wanted other

¹⁶⁵ Meeting in Toronto from April 30th – May 2nd 1997 noted in the Chair’s Statement (at <http://www.g8.utoronto.ca/trade/quad30.html> accessed 25th July 2006

¹⁶⁶ TABD meeting held 13th May 1997 in Brussels, report at <http://static.tabd.com/manilaGems/MYM97.pdf> accessed 25th July 2006. The Financial Leaders Group was a coalition of industry leaders with members from the US, EU as well as Canada, Switzerland, Hong Kong and Japan.

¹⁶⁷ Summit Statement from Denver of June 29 1997 at http://www.g8.fr/evian/english/navigation/g8_documents/archives_from_previous_summits/denver_summit_-_1997/confronting_global_economic_and_financial_challenges.html accessed 25th July 2006

¹⁶⁸ Meeting 5th June 1997 minutes circulated as S/FIN/M/14

¹⁶⁹ Meeting 17th July, Minutes circulated as S/FIN/M/15. Also see S Thoenes Financial Times 2nd July 1997, page 6 ‘EU offers to end financial services curbs’

¹⁷⁰ M Reynolds, *the International Financial Law Review* of August 1997 ‘EU Makes New Offer on Financial Services to the WTO’ at <http://www.iflr.com/?Page=10&PUBID=33&ISS=11950&SID=510349&SM=&SearchStr> accessed 28th January 2008

offers to be improved as a result.¹⁷¹ The outcome of the meeting was that twelve offers were received, one offer would come later in the day (Venezuela) and although a number were still outstanding, including India and ASEAN members, there seemed to be a general commitment that they would be eventually submitted.¹⁷² In spite of the delay, the Commission remarked that discussions had been fairly positive and the offers already received constituted a good first step in the negotiation. More new offers were tabled at the November meeting although the US delegate remarked that they "would have expected to be in a more intensive negotiating stage at this point", an observation backed by the Chairman who called for further, and urgent, progress.¹⁷³

In an effort to promote the benefits that would result, the WTO Secretariat issued the results of a study showing that investors preferred to invest in countries with liberalized markets, or that had made commitments to this end for the future.¹⁷⁴ Interestingly, the article goes on to say that the report was issued to coincide with the annual World Bank and IMF meeting in Hong Kong where it was expected that the Commission along with the US would push for an agreement in the WTO by year-end. This suggests that the Commission was exploiting opportunities given by the other Bretton Woods institutions to further the possibility of an agreement. This may not have been the success that was anticipated as, at the negotiating group's October meeting, only five new offers had been tabled and the Commission commented ruefully "there was still a long way to go".¹⁷⁵ The November meeting, however, brought a glimmer of light to the proceedings as eight new offers were submitted along with five revised offers, making a total of 32 although, by now, time was very short until the deadline.¹⁷⁶

¹⁷¹ F Williams the Financial Times of 15th July, page 6 'US lifts financial services hopes'

¹⁷² Twelve offers received from Australia, Bahrain, Canada, the EC, Hong Kong (China), Hungary, Japan, Norway, Slovak Republic, Switzerland, Turkey and the USA. Offers mentioned at the meeting as being outstanding were from Brazil, Czech Republic, Egypt, Israel, Korea, Macau, New Zealand, Peru, Philippines, Poland, Romania and ASEAN. Also see F Williams in the Financial Times of 18th July page 4, 'EU warns Asia on financial services deal'

¹⁷³ September 1997, minutes circulated as S/FIN/M/16. New offers submitted from the Czech Republic, Ecuador, Korea, Macau, New Zealand and Singapore

¹⁷⁴ G de Jonquieres, the Financial Times of 22nd September page 4, 'WTO in liberalization appeal'

¹⁷⁵ Minutes circulated as S/FIN/M/17. Five new offers received from Egypt, Iceland, Kenya, Nigeria and Slovenia

¹⁷⁶ Minutes circulated as S/FIN/M/18. Eight new offers from Costa Rica, Israel, Mauritius, Peru, Philippines, South Africa, Tunisia and Uruguay. Five revised offers from Canada, Ecuador, New Zealand, Slovak Republic and Slovenia. Malaysia may have been one of the countries expected to submit an offer, F Williams, Financial Times 12th November page 6, 'Malaysia pressed on key offer in WTO talks' said that intensive discussions were ongoing with them

In what would prove to be the start of decisive progress, at the first December meeting 13 additional offers were tabled bringing the total to 45 offers, with three revised offers.¹⁷⁷ The Commission was still concerned over the timing but the US continued their efforts to bring the negotiations to a satisfactory conclusion. Ruggiero spoke to the delegates urging them not to allow “the best (to) be the enemy of the good”, comments which were said to be aimed particularly at the US.¹⁷⁸ Brittan must have been delighted that the negotiations could be concluded on 12th December meeting where eleven additional offers were received, making 56 in total, and 28 revised offers were circulated prior to the meeting.¹⁷⁹ The US delegate commented that, along with the ITA and BTA, the completion of the FSA represented; “A triad of solid, global market-opening agreements (with) commitments (covering) over 95 per cent of world trade in financial services, with new and improved offers from 70 countries...a truly global deal”. Brittan would later put the size of the market in monetary terms; “equity trading...represents US \$14.8 trillion in 1996...Total banking assets...amounted to US \$41.2 trillion in 1995...Total insurance premiums...amounted to US \$2.1 trillion in 1995”.¹⁸⁰ At the end of the meeting, Ruggiero was on hand to thank the 102 countries, which had agreed to open their markets.

This was not, however, the end of the story. Talks continued to be difficult as the US wanted developing countries to commit to greater market opening.¹⁸¹ Fortunately, though, this did not go on for long; the US presumably heeding Ruggiero’s words of the previous month. The agreement was finally signed on 30th December and Brittan was happy with what this represented for the multilateral trading system.¹⁸² The European Commission’s

¹⁷⁷ Meeting held December 8th 1997, minutes circulated as S/FIN/M/19. Thirteen new offers from Bulgaria, Chile, Cyprus, Dominican Republic, Ghana, Jamaica, Kuwait, Malaysia, Mexico, Nicaragua, Pakistan, Poland and Senegal. Three revised offers from Australia, Hungary and Switzerland.

¹⁷⁸ F Williams, the Financial Times of 9th December 1997, page 8 ‘WTO chief issues plea’

¹⁷⁹ Meeting held 12 December 1997, minutes circulated as S/FIN/M/20. New offers received from Bolivia, Brazil, Colombia, El Salvador, Honduras, India, Indonesia, Malta, Romania, Sri Lanka and Thailand. A list of all the offers and their status is given on pages 3, 4 and 5 of those Minutes.

¹⁸⁰ From his speech of September 24th 1998 to the US Coalition of Service Industries on ‘Europe’s Prescriptions for the Global Trade Agenda’ accessed at http://www.uscsi.org/publications/papers/luncheon_keynote_sir_leon.htm on 6th September 2006

¹⁸¹ C Denny the Guardian of 13th December (page 24, ‘Global pact in balance as United States digs in’

¹⁸² That the Agreement was eventually signed on 30th December is sourced from the WTO’s page on ‘Understanding the WTO: The Uruguay Round’ at http://www.wto.org/english/thewto_e/whatis_e/tif_e/fact5_e.htm accessed 12th April 2008. Also see Pierre Sauvé and James Gillespie ‘Financial Services and the GATS 2000 Round’ a Brookings-Wharton Paper on Financial Services 2000 pp 423-452 at http://muse.jhu.edu/demo/brookings-wharton_papers_on_financial_services/v2000/2000.1sauve.html where they say that the FSA “represents without a doubt one of the hallmark achievements of the Uruguay Round” accessed 29th January 2008

General Report on Common Commercial Policy of 1997 referenced its own importance in achieving this agreement on financial services which, in the end, was to cover in excess of 95% of financial services trade.¹⁸³ It seems fair to conclude that the Commission's activism helped to bring about this agreement; "the best case of successful extensive liberalization in the financial services industry".¹⁸⁴

Financial Services, as with Basic Telecommunications, is part of the GATS negotiations opened in 2000. However, although a number of proposals have been tabled, there has been no extension to the agreement and it has been suggested that the developing countries are unenthusiastic about signing up to any new commitments in the area.¹⁸⁵

Conclusions

It was shown that the Commission had been thinking about information technology for some time before the end of the Uruguay Round and there was a clear appreciation of the need for a multilateral initiative at an early stage; using the G7 to provide a political push towards wider agreement. Nevertheless, in spite of their aim for a multilateral agreement, bilateral agreement between the EC and US was seen as a prerequisite. Significant involvement from industry (considering the companies who were represented at the G8 conference, and also TABD) suggested that they would help to lobby the US to ensure purposive action. The importance of bilateral agreement can also be demonstrated by the fact that there was no discussion of the ITA at ASEM or SOMTI and little effort, until the final stages, to develop a supportive internal consensus within the Council of Ministers.

¹⁸³ Found at <http://europa.eu.int/abc/doc/off/rg/en/1997/enx60397.htm> accessed 25th July 2006

¹⁸⁴ From 'The EU Experience in Financial Services Liberalisation: A Model for GATS negotiations?' by P Bongini of the Société Universitaire Européenne de Recherches Financières (SUERF) SUERF Studies 2003/2 at <http://www.suerf.org/download/studies/study20032.pdf> accessed 29th January 2008

¹⁸⁵ See, for example, S/FIN/W/43 of 8th June 2005, a communication to the Group from 12 countries (including the EU) on the importance of further liberalisation in the Doha Round. This appears to have been the most recent paper circulated to the Group (as of February 2008). Suggestion that it is the developing countries who are least enthusiastic about this area from the International Chamber of Commerce's Policy Statement of 4th May 2004 'A business view of the benefits of opening trade in financial services' at <http://www.iccwbo.org/policy/financial/id592/index.html> accessed 29th January 2008

The question of trade-offs was very important here with the Commission's persistent efforts to join the Semiconductor Council and, once this was achieved, their wish for further concessions from the USA in order to bring the Council of Ministers on board at the Singapore Ministerial. Council had already agreed, two months earlier, that the Commission was able to negotiate with third countries on removing excise duties in IT so perhaps the internal coalition was not as jeopardized as French objections, and European Council rejection, might suggest. The Commission's consensus building strengths came to the fore after Singapore, ultimately persuading Malaysia, and others, to weaken their stance and conclude the negotiations. There was a limit to this at the end of the process as it did not build agreement for an ITA-II. This was partly because of the wide range of goods listed; many of which it would be difficult to classify as pertaining to 'information technology', such as video cassette recorders. Developing countries seemed concerned not only about possible domestic unrest if this went ahead, but also that a wider agreement outside the scope of pure 'IT' might be the eventual aim. This hints again at the growing importance of getting the developing countries on board in order to achieve a supportive consensus in the WTO.

With Basic Telecommunications, the Commission had been looking at policymaking in this area since 1980 and the date for full liberalisation, January 1998, had been set in July 1993. This suggests that internal policy drove multilateral agreement at least as much as the Uruguay Round negotiations may have done. As two of the nineteen parties seeking to continue to negotiate after the Round, the US and EC were very closely aligned in their wish to see an Agreement in this area and were supported by the Quad, the G7, the World Bank and at least some of the developing countries as well as influential industry bodies such as the CSI, from the outset. The flexibility in the Commission's first offer seemed to have helped keep the supportive consensus within Council and this base agreement was built on, possibly by using the Article 113 Committee as was the case with Spain, to enable the Belgian, Greek, Italian and Spanish governments to agree to a revised offer. That this was successful is shown by Council's positive reception of the draft Agreement text in February 1997 and their strong message to the Commission to complete the negotiations.

Although the US was to eventually drop out at the negotiation stage, this did not change the internal timetable and no additional concessions were offered to them, unlike the trade offs the Commission secured as recompense for their agreement to the ITA. Ruggiero put together a rescue package for the negotiations and Quad support together with Spanish liberalisation (and industry lobbying) along with new offers brought the US back to the table and ensured that deadlines were kept. Once again, the Singapore Ministerial did not provide a political push to developments in this area and, also, the Commission was not required to embark on such a major PR venture as it had to do with the ITA. However, Commission enthusiasm and activism was not enough to achieve any further progress once the Agreement had been signed.

With the final case study, the Financial Services Agreement, multilateral negotiations again began in the Uruguay Round and countries agreed to continue these talks, with a very short timescale, when the Round finished. It was likely that there was a general wish not to lose the seventy six 'offers' that had already been tabled. From the outset there was strong G7 and TABD endorsement coupled with a permissive internal coalition. However, once again the US pulled out, concerned that commitments made by the other participants were insufficient and Brittan took the initiative of getting the negotiations back on track. This necessitated consensus building activity, to the same level as the ITA negotiations had demanded, and with bilateral pressure being kept up through the EU-US Action Plan, together with multilateral pressure through the G7, TABD, the 'Financial Leaders' Group' and the Quad, not forgetting the WTO, there was an eventual commitment from the US to continue negotiations. Once again, nothing appeared to have been offered to the US as a trade-off. However, by the time negotiations had re-started, the deadline had, from necessity, slipped to 1997 and even the Singapore Ministerial process could not change the timing back.

In spite of the US and EC making revised offers in July 1997, there was still a lot of work necessary to get agreement by December. Perhaps it was, with hindsight, inevitable that concluding the negotiations would prove difficult considering the end result covered a bigger percentage of trade – at over ninety five percent – than the other two agreements. This may also have been why Leon Brittan exercised such a high level of personal leadership to ensure its successful completion.

All three cases detailed here are very different in tone. With the ITA, although it appeared that the US and EC wanted a positive outcome, in the end it seemed as if only the US was prepared to make concessions in order to see an agreement delivered. With the BTA, it first looked as if the US and EC were standing side-by-side, but in the end it was the Commission and Renato Ruggiero that had to push for the work to be completed when the US pulled out of the negotiations. In the case of the FSA, again the US stopped the negotiations and the Commission was responsible for getting them back on track. However, it is also clear that there are a number of similarities as well as differences.

The Commission showed it was able to energise different groups to support its initiatives and, thus, to achieve a supportive external coalition. There is a very clear indication from what has been shown that the Commission used the G7, TABD, CSI and the Quad, at different times, to ensure that progress was made. As well as these groups, Leon Brittan was also happy to lobby other WTO members individually to facilitate favourable outcomes (particularly in the ITA and FSA but also in the BTA). The Commission also showed itself able to use trade-offs when it wanted to assure the coherence of the internal coalition (in the ITA) but showed a marked reticence to use them for the benefit of the external coalition (BTA and FSA) perhaps assured that the US position was more posturing than a genuine threat to eventual consensus. The lack of political impact of the Ministerial process on these negotiations is another area of commonality; this suggests that 'real' work was done in the task area negotiations rather than through the Ministerials and was unaffected by the difficulties of achieving consensus in the larger forum.

Although not all of the negotiations were the same in this regard, the Commission was also able to think on its feet, i.e. without consulting Council, in policy entrepreneurship (the interim arrangement in the FSA) and in exercising significant policy leadership, expertise perhaps, in order to facilitate agreement. Amongst other characteristics that the Commission demonstrated was in using the Article 113 Committee to encourage Spanish agreement to a liberalized market (BTA) and ensuring the first telecoms offer gave enough flexibility to keep a strong internal coalition in place. The Commission also proved adept at using either bilateral agreement with the US to drive developments in WTO (ITA) or use the push provided by the Single Market to facilitate multilateral

solutions (BTA) or to work within the multilateral system from the start (FSA). Perhaps most notably in the ITA, the Commission also seemed less worried about possible fragmentation of the internal consensus, leaving it unaddressed until the last moment of negotiations. This may have been because the Commission was confident of eventual Council agreement or because it was using the threat of veto to extract more concessions from the US. Either way, it shows that explicit Council permissiveness was not a necessary prerequisite to negotiations even after Ruling 1/94.

A note of caution can be sounded about future progress, however. Concerns expressed by developing countries about widening agreements, especially ITA-II, suggest that sectoral negotiations might not be as successful in the later time period. If these countries were worried about their domestic audiences and felt that the Quad would push wider agreements on them without their explicit consent, they could decide not to participate. Due to the nature of the Single Undertaking, meaning that all countries would have to adhere to the Agreement even if they did not negotiate it, they could seek to ensure that no negotiations proceeded to Agreement stage.

The success of the initiatives here has been shown to be due to a combination of the different roles and responsibilities that the Commission exercises and the positions of the interests that they have to satisfy over time and issue. This will be explored in the next Chapter where conclusions will be drawn from Chapters Three and Four before the analysis moves on to consider Lamy's tenure as Trade Commissioner in Chapters Six, Seven and Eight. Conclusions from the two time periods will then be drawn in Chapter Nine.

CHAPTER FIVE

The European Commission in the WTO from Marrakech to Seattle – Evaluation

Introduction

As has been shown in the previous Chapters, acting on a global stage invokes particular difficulties for the Commission in that it has to exercise its roles and responsibilities in order to satisfy different interests. Firstly, the Commission has to reach an internal consensus in order to develop a mandate proposal for WTO negotiations. Secondly, the Commission then has to submit this proposal, and take a steer from, the Article 113/133 Committee, COREPER and the General Affairs Council (GAC). Thirdly, when the Commission begins negotiations, it confronts the views of the other WTO members.

The two preceding chapters highlighted the range of the Commission's roles and responsibilities within WTO negotiations, from 1996 to 1999 looking at the political Ministerial processes in Chapter Three and the more technocratic sectoral negotiations in Chapter Four. The two chapters showed the different levels of politicization within each of those negotiating environments and the resultant difficulties of achieving consensus. Chapter Three highlighted that there was more complexity, and politicization, in the Ministerials, which impacted upon the success of the Commission in building supportive coalitions. The evolving dispersal of interests between the Quad and the developing countries were shown in tabular form to draw attention to areas of possible conflict. Chapter Four, meanwhile, went into much greater detail about the mechanics of specific negotiations by looking at three case studies; the Information Technology Agreement (ITA), the Basic Telecommunications Services Agreement (BTA) and the Financial Services Agreement (FSA). Analysing these sectoral negotiations showed that although there might have been less politicization in the smaller forums, there was more risk of defection and there were a number of occasions where the Commission had to either extract concessions to ensure that the internal consensus would hold, or to encourage negotiations back on track as a policy

entrepreneur. It was also shown that the Singapore Ministerial had very little influence on the rate of progress or on the level of consensus achieved within these negotiations.

The purpose of this Chapter, then, is to look further at the empirical evidence on the evolving nature and 'mix' of the Commission's roles and responsibilities and the extent to which they were supported or modified by the interplay of the interests. It will also assess whether the growing level of politicization had a negative impact on the Commission's ability to pursue its agenda, and to reach a satisfactory conclusion on the policy issues within its purview. It will not suggest the Commission fulfilled one of its roles and responsibilities and none of the others. The Commission has aspects of all of these within its external trade portfolio, as Chapter One made clear. The purpose is to see which was the dominant mode of activity and to what effect and extent the Commission was able to achieve its aims, or the aims of its mandate, in so doing.

Overview

Although it might have been expected, by the Court's ruling of 1/94, that the Commission could become more 'reined in' and conflict could result between Council and the Commission impacting on the Commission's roles and responsibilities, this was not the case in practice. Council continued to expect the Commission's input in terms of suggesting policies and positions. This can be seen in the document preparing the Millennium Round where COM(1999)331 was used to define negotiating positions in all areas, not just those falling strictly within Commission competence. This suggests that the practicalities of dealing with negotiations overrode the political implications to the ruling and that Council needed the Commission to bring its experience in negotiating in these areas to the table (supported by interviewees 4, 6, 7 & 8). As it was, the Commission appeared to maintain a supportive consensus with Council (and Parliament) over the period. There is evidence for this in Brittan escaping censure in spite of his efforts to push for the 'Millennium Round' above other issues that Council appeared to think were more important. This different emphasis was clearly visible in the Council and Commission statements to the Singapore Ministerial and between what the Commission tried to achieve in Geneva, compared to what Council and Parliament wanted them to achieve. It has also been shown that Brittan's views matched the WTO Secretariat's expectations about the need to cement in the authority of the new

organisation by building on what had been achieved in the Uruguay Round to develop the WTO's agenda over a wider range of topics. This meant that Brittan had significant support from the WTO Secretariat in pursuing progress in the sectoral negotiations as well as in his quest for a new Round. This manifested itself in a close professional relationship between Brittan and Ruggiero.

Perhaps the overriding impression of the evidence amassed here about Brittan's years as Trade Commissioner, is that the issue of agriculture was pretty much off the agenda, at least externally. The prospect of new negotiations on agriculture was one of the reasons behind Brittan's strong advocacy for a Millennium Round: that agriculture could be bundled together with other issues to enable trade offs. Considering that the view of the Cairns Group remained in direct conflict with the Commission's and Council's views and as it had also been difficult to gain consensus on reform in Council at the end of the Uruguay Round, it could be considered sensible to espouse a wide ranging agenda to talks.

The other issue that becomes more evident, especially through Chapter Three, is of the growing politicisation of the trade field. Firstly, there is evidence from the Singapore Ministerial that the developing countries were unhappy with the level of commitments they had made at the end of the Uruguay Round, as was shown by the dispersal of preferences. They were concerned that having new items added to the WTO agenda would leave them further estranged from the multilateral trading system. Secondly, NGO mobilisation against the WTO, compared to the GATT, appears to have become more widespread judging by the street demonstrations in Geneva. This may have been precipitated partly by the widespread concern, amongst NGOs, about the implications of the MAI to developing countries and, leading on from that, a growing understanding of the WTO's mandate. This increased politicization is not only visible within the Ministerials but suggested at the end of the ITA negotiations where the developing countries chose not to participate in discussions that might extend the WTO's agenda. This seems to be due to general concern about new issues and their technical and financial capacity to engage in them and a wider anxiety that the developed countries might try to strongarm them into a broader agreement (supported by interviewee 8).

These issues and the effects that they had will be tracked in the analysis below.

Roles and responsibilities

The Commission as expert

Rometsch and Wessels (1994) identified this as one of the Commission's primary functions. As detailed in Chapter One, the Commission is not a technocracy, although this is what Jean Monnet had in mind when he developed the European infrastructure. Nevertheless, it does exercise policy leadership in external trade because it is asked to do so in the Treaty of Rome and because it is responsible for negotiating within the WTO. This section will pull out from the previous Chapters not only where the Commission was able to act as an expert, but also suggest where this was most and least successful.

With the 1/94 ruling, and the fall out following the Uruguay Round (see Chapter Two), it could have been thought that the Commission would be subject to rollback of its competence from the member states insofar as the Court made a ruling on its competence not just its practice (see Meunier and Nicolaïdis, 1999). At the very least, it might be expected that the Commission's expertise in all fields, especially where issues fell under 'mixed competence', might be questioned. This could have been exacerbated because the Commission's status in the WTO was different from its status in GATT i.e. that it was a WTO member in its own right and was able to speak on behalf of the member states in meetings, which may have encouraged the Council to further assert its authority on the Commission.¹ However, as has been shown, this was not the case. There was also no evidence of a concerted effort on the part of the member states to actively change Commission policy in the WTO as set out by Brittan after the 1/94 Ruling even after Geneva when it appears that Council expected more than it got in terms of the results it had been seeking. The Commission was still given the freedom to continue as it was in a supportive, if not necessarily permissive, environment.

¹ See 'The European Communities and the WTO' at http://www.wto.org/English/thewto_e/countries_e/european_communities_e.htm accessed 15th May 2007

This can partly be explained by the nature of the internal consensus. For example, in Chapter Three, there was no unanimity on labour standards, with the UK and Germany being very much against pursuing this in the WTO and in Chapter Four there were mixed views on the prospect of signing a finalized ITA at Singapore as well as revising offers in the BTA. Although there was no progress on trade/labour links in the WTO over this time, and indeed Brittan seemed to walk away from pursuing it after the Singapore Ministerial, the other negotiations continued and were later finalized. Brittan, then, was able to make significant progress as an expert, in spite of member state concerns, where issues were not contested or politicized most notably in the sectoral negotiations. A further issue area where the Commission was unable to ensure adherence to its position was in the replacement of Renato Ruggiero. In this example, the Council was unable to agree on one of the two candidates and thus the EC as a whole failed to speak with a single voice (Holland, 2002).

The Commission's role as 'expert' both internally (in the EC) and externally (as the 'voice of Europe' in the WTO) also gave it the status in WTO to carry out a salvage exercise for the Financial Services Agreement. Brittan's rationale was to keep the new agreement on the table, making sure there was no slippage, at the same time as demanding forward progress as an incentive to bring the US back to the negotiations. Ruggiero was to remark later that this demonstrated significant policy leadership on the part of the Commission, perhaps as much of a public statement about the strong alignment of preferences between the WTO Secretariat and EC as it was about progress.² The Commission was not, however, always successful. Although it strongly pushed WTO work on trade and environment, there was no effort to 'upgrade' the existing Working Group at Singapore, for example by changing its terms of reference or by setting firm targets for its work leading to an Agreement. Externally, the US remained unsure of the benefits of a new Round. Furthermore, developing countries and NGOs criticized the European position of supporting a new Round and of pursuing an MAI, particularly as Brittan had made his support for both explicit. On the basis of this evidence, the technocratic approach, together with the supportive internal negotiating environment, was valuable in holding together the internal consensus, and facilitating

² From a speech by Ruggiero to a Conference on Trade in Services, 2nd June 1998, 'Towards GATS 2000: A European Strategy' at http://www.wto.org/english/news_e/sprr_e/bruss1_e.htm accessed 26th March 2008.

the signature of the sectoral agreements, but did not help to formulate political decisions (Ruggiero's replacement), develop a strong line in Ministerials (support for the MAI) or promote a spirit of inclusivity with the developing countries.

The Commission as government

The suggestion by Rometsch and Wessels (1994: 217) was that this potential outcome was a direct contradiction of the above model, and would see the Commission "develop into the 'government', the head of which would be elected by, and...responsible to the European Parliament". Unsurprisingly, then, Chapter One noted that there were a number of governmental aspects to the way the Commission works within the WTO and it was pointed out, again in Chapter One, that a number of the functions they hold in external trade are wholly independent of the Council, for example, import relief, competition and diplomatic representation.

Examples have been given, within the preceding Chapters, of the Commission acting in a 'governmental' way. The Commission was authorized to sign the Final Accord from Singapore on behalf of the Community and the Member States thus cementing its internal legitimacy in the WTO and it was able to issue a number of position papers to General Council, prior to the Seattle Ministerial, emphasizing its external legitimacy.³ Perhaps the most obvious example of the Commission as a Government is Brittan's hosting of the G7 Information Society conference in February 1995. This had not happened before, and has not since, and demonstrates significant leadership on Brittan's part as well as perhaps highlighting his personal status as an ex-senior Cabinet member in the UK, which gave him additional credibility, one supposes, to lobby world leaders to attend. The purpose of this conference was to garner support for an ITA and the 'core principles' defined therein were influential within the final Agreement, making it a very worthwhile enterprise.

³ Trade facilitation, services, trade and competition, government procurement, TRIPs, trade and environment, duty-free market access for LDCs, the 'EC Approach to Possible Decisions at Seattle', trade and investment, the TBT agreement, agriculture, 'Capacity Building and Coherence in Global Economic Policymaking' and electronic commerce

The other example of governmental status is the position of the EC in the Semiconductor Agreement, which formed one of the conditions to the EC's agreement to the ITA. In addition, the TABD had referred to the Commission, along with the US, as "a government" in terms of what it wanted both sides to achieve bilaterally. Similarly, it could be said to be 'governmental' that Brittan was able to pursue his aim of a Millennium Round even when Council and other players (notably the US) were unenthusiastic. This is because it suggests a level of autonomy at the negotiating table akin to what might be expected from a WTO member government. There is more general evidence, too, that the Commission was able to act quasi-governmentally in the sectoral negotiations, where Brittan continued to push for favourable outcomes on the ITA, BTA and FSA, particularly insofar as he encouraged the Quad and G7 to come on board with the initiatives he was suggesting.

This may indicate that the Council was concerned with other issues at the time, which had encouraged them to give the Commission a long leash with regard to the more specialist issues that were being debated in the WTO. There is evidence for this in the Press Releases from the sixty two GAC meetings from January 1995 to August 1999 as WTO issues featured strongly in only fifteen.⁴ However, the Commission's lack of agency can be shown in the Council's continued insistence that the cultural exception be upheld and on the 'multifunctionality' of agriculture; stopping Brittan from pursuing his free market ideals. Furthermore, although the ITA, BTA and FSA were eventually signed, there was an acceptance that the former two needed urgent updating because they did not reflect the speed of development in electronic communications. That the Commission could not encourage this to take place may be further evidence of its lack of governmental status. In terms of labour standards, too, the Commission was not allowed to be 'governmental' in the same way as it was not allowed to be an 'expert'. In this example, just as there was a fragmented internal consensus, so was there a fragmented external consensus. Additionally, many developing countries, said at Singapore that they would not accept labour standards on the agenda.

⁴ Press releases accessed from the portal at http://www.consilium.europa.eu/cms3_applications/Applications/newsRoom/loadbook.ASP?target=2001&infoTarget=before&MAX=101&BID=71&LANG=1&cmsId=349 on 12th March 2008. The GAC meetings where WTO matters featured heavily were held on 6/2/95, 6/3/95, 17/7/95, 2/10/95, 29/4/96, 1/10/96, 25/11/96, 9/12/96, 20/1/97, 14/2/97, 24/3/97, 12/12/97, 30/3/98, 18/5/98, 21/6/99

In conclusion, although the Commission could have been said to have acted governmentally or quasi-governmentally in certain circumstances, this seems to be more because of Council acquiescence or focus on other issues rather than the Commission having a governmental status in itself. The Chapters also showed that the Commission was much less successful where work areas were politicized or contested (in terms of there being a fragmented internal and/or external consensus) such as in the ITA-II or in labour standards.

The Commission as administrator

In Chapter One it was argued that administration is akin to a secretariat function or a civil service/bureaucracy and suggests that the Commission can be viewed as fulfilling that in terms of policy implementation. This also comes back to Meunier and Nicolaïdis' (1999) contention that the Council sought to rollback responsibility from the Commission after the end of the Uruguay Round with the result that the Commission might be seen to be more of an administrator within external trade over time.

It could be hypothesised that if Council was concerned that the Commission would become more influential in the world trade field, through the creation of the WTO, and it wanted to guard against this, that there could be a reconfiguration of the Article 113 Committee to ensure that the Commission was 'locked in' to adhering to the Council's preferences in the negotiation process (as the Committee is the Council's eyes and ears at this stage, see Smith, 1994: 256). Such a reaction may have been predicted in the wake of the 1/94 Ruling. However, on the basis of the evidence both Council and the Commission carried on as they had prior to Ruling 1/94. Ruling 1/94 was valuable to Council only in political not practical terms and although there might be informal rollback (in terms of Treaty responsibilities), this had no bearing on effective pursuit of the Commission's roles and responsibilities in external trade (supported by interviewees 1, 4, 5 & 7).

In the field of labour standards, the Commission had very little agency in that there was little that could be achieved over the objections of the developing countries, as well as the objections of the UK and Germany. It would appear that Brittan let the matter drop after the Singapore Ministerial although he was not censured by Council for so doing, suggesting that Council either tacitly agreed with the line he took or that Council appreciated that progress could not be made at that time. Limits to the Commission's agency also became clear at Geneva as, in spite of exerting political pressure, there was no explicit mention of trade/investment, trade/labour, trade/ competition or government procurement in the Final Declaration, nor any mention of a future Round, which was Brittan's primary objective. In addition, the cultural exception had to be maintained, with particular concern about the impact of the ITA expressed by Council, so there was a limit to the amount of liberalisation that Brittan could propose. It is also the case that the Commission had less agency when it came to choosing a successor for Renato Ruggiero; unable to encourage a clear consensus in favour of one or other of the candidates.

The Commission's position with regard to labour standards, the cultural exception and the replacement of Ruggiero shows it is more administrative when the content of negotiations is politicised. This is because of the difficulties establishing consensus internally and externally. However, although the Commission had those administrative aspects to its roles and responsibilities, these did not seem to reduce the perception of its authority by its partners in Europe or the WTO. Brittan was able to exert individual leadership in the ITA, BTA and FSA, and had the G8 firmly on-side in the ITA. These successes counter, at least to some extent, any negative opinion. Whether the Commission would become more administrative due to the increasing politicization of the trade field, will be shown in the course of the next three Chapters.

The Commission as coalition builder

Building coalitions, as was detailed in Chapter One, is essential to ensure 'buy in' from the member states to European initiatives. In the WTO, the Commission has to work to build coalitions both internally and externally in order to garner support for policies and make agreements hold. There are a number of factors, which influence their success in this regard, for example whether the internal negotiating context or the external

negotiating context is permissive or supportive on the Commission to achieve certain goals. The environment is also affected by the interplay of the interests and this will be explored later.

Internally, the Commission seemed to be working closely together over this period. That the Environment Commissioner supported the overall Commission aims in Singapore, and the Employment and Social Affairs Commissioner co-wrote a Communication with Brittan on *'The Trading System and Internationally Recognised Labour Standards'* suggests the College was, on these issues at least, well aligned with Brittan's objectives.⁵ The Commission's relationship with Council also seemed very supportive in that Council appeared content to go along with the Commission's proposals even after Ruling 1/94 and shared the Commission's wish to extend the WTO's remit to new areas. Even when Council did not get what it wanted at Geneva, it did not encourage the Commission to build supportive coalitions in the policy areas it identified as key. At the same time, the European Parliament seemed to be becoming more active in the field, although it appeared to be fighting an internal battle between pursuing a social agenda and a commercial one. As its views were taken on board by the Commission in COM(1999)331, its informal role appears more influential than its formal role.

Brittan was instrumental in encouraging over 100 American and European businesses to participate in the TABD, which he had helped to set up as a "framework for enhanced cooperation between the transatlantic business community and the governments of the European Union and United States".⁶ The TABD's website suggests that the ultimate objective would be for a barrier free transatlantic market place – which would impact on the WTO because there would be more incentive for the US and EC to negotiate deals bilaterally rather than multilaterally. The importance of the TABD is shown in Brittan leading the EC delegation to the inaugural meeting along with the Industry

⁵ COM(96)0402

⁶ From the TABD website, www.tabd.com, accessed 15th May 2007 TABD was in existence to: "facilitate closer (bilateral) economic relations (and) to focus governments' attention on issues where consensus exists between the transatlantic business community and identify specific actions required from government to achieve this aim" Found at www.useu.be/DOCS/tabd.html, written in November 1996, accessed 4th August 2006

Commissioner (again, a sign of a solid internal coalition).⁷ However, the existence of this forum would not stop the US pulling out of the BTA and FSA negotiations and it might be noted that congratulatory messages were sent from both the Commission and the USTR to the CSI following the successful completion of the BTA, rather than to TABD. TABD did not, then, live up to this proposed status as it could not break the deadlock so the bilateral, political process to define positions in the WTO remained important.

Externally, Brittan showed he was able to use the Quad and the G8 (amongst others) in order to gain support and this seemed to work well over the duration with clear mandates supporting the Commission's perspective on the sectoral negotiations. This support did not, however, enable Brittan to push through the ITA-II, though. Brittan also succeeded in building a supportive coalition to put the 'Singapore Issues' onto the WTO agenda, in spite of opposition against new items from the developing countries. Few LDCs appeared to be participating or to want to participate in the ITA, BTA and FSA, meaning that there was little effort expended to build consensus with them, and supportive NGOs around them, in Working Group meetings.⁸ Their lack of involvement at Working Group level may have helped to increase their suspicion at Ministerial level that the Commission had wider ambitions than seeing these Agreements signed. This also fits with the growing political problems of getting civil society on board with the WTO agenda, which was shown by the public demonstrations at Geneva and at the G8 meeting in June 1999. There were also significant concerns about the MAI, and the Commission's efforts to move negotiations to the WTO, as well as with the preparations for Seattle. Whether this level of contestation would grow and how the Commission would respond will be shown in future Chapters.

⁷ From the DG Enterprise website, TABD section at www.europa.eu.int/comm/enterprise/enterprise_policy/business_dialogues/tabd/tabdoverw.htm accessed 4th August 2006. The first meeting took place in Seville on November 11 and 12th 1995

⁸ None in the ITA, Bangladesh and Senegal in the BTA and Senegal in the FSA

Interests

The purpose of considering interests here is, as was detailed in Chapter One, to isolate and examine the three different levels of interests, which affect the Commission's roles and responsibilities in external trade. To clarify, the first is the internal Commission interest, the second is the internal Council of Ministers interest and the third is the global (WTO) interest. All of these can act individually or together to influence the Commission in external trade. As none are unitary actors, there can often be conflict within or between them. In addition, the positions of each are unstable and can change over time and in response to different stimuli. We might expect that the interests became more constraining on the Commission over time, and this would be reflected in the growing politicisation of the trade field or that the growing politicization of the trade field would encourage the interests to constrain the Commission.

Politicization is a two-edged sword. Although politicization can keep issues off the table, it might also delay the acceptance or implementation of policies, which are considered positive by some of the players. For example, the Multilateral Agreement on Investment, mentioned in Chapter Four, was being negotiated in OECD to "provide a broad multilateral framework for international investment with high standards for the liberalisation of investment regimes and investment protection and with effective dispute settlement procedures".⁹ This was for the benefit of OECD members, none of which are developing countries. However, transferring it to the WTO, especially if it was under the Single Undertaking, suggested that it might apply to all countries and allow "corporations and investors to sue governments directly for cash compensation in retaliation for almost any government policy or action that undermines profits" and although large exporter and industry groups thought it would be a positive step, it did not go ahead.¹⁰ Because of this, it is important to consider the level and effect of politicization through this time period as well as the ways in which this was reflected in the needs and wants of the interests.

⁹ From the OECD webpage on the Multilateral Agreement on Investment found at http://www.oecd.org/document/35/0,2340,en_2649_201185_1894819_1_1_1_1,00.html accessed 13th May 2007

¹⁰ The US pressure group Public Citizen 'Everything you wanted to know about the MAI but didn't know to ask' at <http://www.citizen.org/trade/issues/mai/articles.cfm?ID=5626> accessed 13th May 2007 For an example of an endorsement of the MAI, see the Press Release of the Canadian Alliance of Manufacturers and Exporters of December 5, 1997

The Commission interest

The report of activities of the European Union in 1995 reveals that work in EMU, the single currency and job creation was prioritized throughout the year by all of the institutions. The same report of 1996 suggests that it was again, EMU, social policy, growth and employment and industrial competitiveness, which were the key areas of work.¹¹ Jacques Santer's overview of the 1997 report highlights EMU, employment and the Amsterdam IGC and enlargement and the 1998 report is almost identical; focusing on the importance of Agenda 2000 and the Single Currency along with growth, competitiveness and employment.¹² This was also the case in 1999 where the emphasis was given to enlargement, the new financial framework, the euro and competitiveness, along with CFSP.¹³ Therefore, the Commission as a whole was less concerned with the WTO than it was with the issues mentioned here over this time period. This was likely to have been why the internal (Commission) consensus was permissive.

It has already been noted that part of Brittan's success in achieving agreement to a broadened WTO agenda at the Singapore Ministerial was to do with agriculture being off the table at the time. The '*Communication on Agenda 2000 - for a stronger and wider Europe*', which had been developed following a request from the Madrid European Council in December 1995 showed that this would not be the case in the long term.¹⁴ This document not only gave the Commission position on the ten applicant countries waiting to join the European Union but also set out the changes it felt were necessary to the Common Agricultural Policy; this position would form the basis for negotiations in Seattle. The Cairns Group criticized the EC position as it felt agriculture would still not come fully under WTO rules.¹⁵ Only Denmark, Ireland, Sweden and the UK supported the "general thrust" of the agricultural reform (Daugbjerg and Swinbank,

¹¹ 1995 Summary found at <http://europa.eu/generalreport/en/1995/summary1.htm> accessed 9th February 2008. 1996 Summary found at <http://europa.eu/generalreport/en/1996/summary1.htm> accessed 9th February 2008.

¹² General Report of 1997 at http://europa.eu/abc/history/1997/index_en.htm accessed on 7th August 2006. General Report of 1998 at <http://europa.eu/generalreport/en/1998/x0000.htm> accessed 25th March 2008

¹³ Full text at <http://europa.eu/generalreport/en/1999/index.htm> accessed 7th August 2006

¹⁴ Background to Agenda 2000 from the SCADPLUS archive at <http://europa.eu/scadplus/leg/en/lvb/160001.htm> accessed 7th August 2006. Agenda 2000 was issued as COM(97)2000 on 16th July 1997

¹⁵ From Bridges Monthly Vol 3 no 3 April 1999 "Agricultural Subsidies Again Emerge as Top Priority of WTO Round" at <http://www.ictsd.org/ministerial/seattle/bridgesmonthly3-3.htm> accessed 5th February 2008

2007: 13) with the latter saying that Agenda 2000 addressed current commitments but not future ones (Egdell and Thomson 1999: 121, Coleman and Tangermann 1999: 402 and Daugbjerg 1999: 424). Although, then, Brittan was very successful over this time period, because agriculture would be discussed in the future, there would likely be an impact on Pascal Lamy's tenure as Trade Commissioner.¹⁶ The extent of the impact will be assessed over the following Chapters.

Internal preferences over this timescale were also convergent showing the Commission as a whole was supportive of further efforts to extend the WTO's agenda and saw the benefits of multilateralism to address problems. This is evidenced by Pdraig Flynn and Leon Brittan undertaking joint work on labour standards; Ritt Bjerregaard supporting Brittan's stance on environmental work in the WTO also by Martin Bangemann driving the development of TABD with Brittan. It was also likely that the Commission as a whole was content with Brittan exercising policy leadership (and hosting the G8 meeting in Brussels, for example) because of possible negative implications of Ruling 1/94. Brittan making recommendations outside the sphere of 'Commission competence' would give them, as a group, more authority. This is outside the scope of the thesis but a logical inference from the evidence nonetheless. Because Brittan was not censured for dropping labour standards after Singapore, the internal environment was clearly permissive and unpoliticized.

The evidence also suggests that in using both internal means to ensure support for initiatives (such as the 113 Committee in the BTA), bilateral pressures (with the US) and multilateral pressure from G8, the Quad and others to ensure support, Brittan was able to exercise a high level of influence on the international stage. This is further demonstrated by his close friendship with Ruggiero who commended Commission 'leadership' in negotiations. Brittan managed to drive the Singapore Ministerial to accept a Declaration outlining a number of areas of future work, in spite of developing country disagreement with the inclusion of new items on the agenda and he achieved general commitment to a Millennium Round even though the US was in favour of holding bilateral rather than multilateral talks.

¹⁶ UK perspective sourced from the Second Report of the Select Committee on Agriculture from the UK House of Commons printed 16th February 1998 at <http://www.publications.parliament.uk/pa/cm/199798/cmselect/cmagric/311ii/ag0205.htm> accessed 7th August 2006

The member state interest

The IGC, culminating in the Treaty of Amsterdam signed in October 1997, had concluded that "The Council, acting unanimously, may extend the application of Article 113 of the EC Treaty to international negotiations and agreements concerning services and intellectual property insofar as they are not already covered by that article". This allowed Council to empower the Commission to take action in other areas, at the same time as being sure that the Commission continued to follow its preferences. The Treaty also concluded that there would henceforth only be one Commissioner for each Member State and, before the Union exceeded twenty members, there would be a meeting with the aim of undertaking "a comprehensive review of the composition and functioning of the institutions". This seems motivated by efficiency arguments; the Commission could not be as useful or effective if it became too large and unmanageable. The risk would be that a large Commission trying to work for a large Council could precipitate 'policy paralysis' (Croft et al, 1999:84) where neither the Commission nor Council would be able to agree a position due to the wide variety of perspectives, making the formation of an internal coalition at Commission or Council level almost impossible. Because Council expressed concern of the dangers of policy paralysis, this supposes that such an eventuality would not be in their interest. As it was, even in areas subject to shared competence, according to the 1/94 Ruling, Council relied upon the Commission to propose ways forward. The similarity between the mandate and COM(1999)331 is firm evidence of this.

Some commentators have suggested that the Treaty of Amsterdam was not very successful for the Commission (Moravcsik and Nicolaïdis, 1999: 70, Dehousse, 1999: 9) suggesting that the Council was constraining the Commission at this point. However, because the Commission was given a pivotal and "empower(ing)" role in developing proposals for closer cooperation between particular states (Philippart and Edwards, 1999: 97) and Council could agree to extend the Commission's competence (Young, 2000: 100), this cannot be considered a failure for the Commission. Furthermore, because the Council still wanted and expected a steer from the Commission, it could be argued that the political rhetoric in the Treaty did not extend to the practical aspects of negotiating (supported by interviewees 5, 6 & 9). It has also been shown that Council attention was focused on other areas and WTO negotiations were not a political priority

over the time period. This explains why Council was supportive of the Commission pursuing its own policy preferences even when they differed from Council; such as Brittan's pursuit of agreement to a Millennium Round.

The previous chapters detailed what the positions of the Council and the Parliament were on various issues in the WTO and showed that their interests were generally closely aligned with the Commission's. Convergence was especially strong in the sectoral areas with a high priority given to completing the ITA, BTA and FSA. Both Council and Commission wanted to extend the WTO's competence and authority and this is further evidence of a supportive environment. Although Parliament seemed to be more active in trade policy, and had some informal importance to the process, they still had no specific role in inputting to trade policy development, even though the Treaty of Amsterdam increased their power "by more than doubling the number of Treaty articles that employ co-decision" (Caporaso 2003: 375).

The WTO interest

It is clear from Brittan's and Ruggiero's strong professional relationship that they both wanted to see the WTO exert increased authority in the trade field by radically expanding its agenda as well as its visibility; to this end the WTO, Commission and Council seemed to be in complete agreement. In these terms, the outcome of the Singapore Ministerial must have seemed positive, in that so many new work items were mentioned in the Declaration, as well as a clear commitment to a new Round.¹⁷ This was achieved in spite of concerns expressed by the developing countries, which must have given the Commission, Council and the WTO Secretariat hope that consensus to develop these new work areas could be relatively easily achieved. However, the Geneva Ministerial was a wake up call in that although the Council of Ministers (for one) had wanted agreement on a wide agenda to take forward to Seattle as a basis for the next Round, there was very little substance to the Declaration. Additionally, the Ministerial was accompanied by public demonstrations for the first time, thus affecting the negotiating atmosphere and, perhaps, alluding to things to come. In many ways the Geneva Ministerial didn't only fail as a step forward, it also made a step backwards in

¹⁷ Even if trade-labour rules were not elaborated

that there was no mention of a definitive future Round as there had been in the Declaration from Singapore. Perhaps this was thought to be no more than a temporary aberration and the Seattle Ministerial would put the WTO back on track. This might be the reasoning behind Ruggiero's later proposal that the WTO's remit should be widened, covering education and health. Otherwise this demonstrates a distinct lack of appreciation for what had happened in Geneva and ignored indications that the WTO internal consensus was not as strong as might have been believed from the results of Singapore. However, the Singapore Declaration showed there was no room for complacency on the part of the Commission or the rest of the Quad. Work on Transparency in Government Procurement and Trade Facilitation was "exploratory", the Trade and Environment Group would continue its current work, services negotiations were ongoing but there were no new proposals and, finally, negotiations on investment and competition would only take place if there was "explicit consensus" i.e. if all members agreed. Therefore, there was very little of substance in the Singapore Declaration and nothing to suggest that the developing countries had changed their position against new work items. The likelihood of developing countries engaging with any of these negotiations seemed lessened at Geneva and was likely to remain so for the Seattle Ministerial. This will be discussed in later Chapters.

That elite bargaining would continue to drop in importance was hinted at by the fragmented internal consensus, making it difficult to build agreement around any particular work item, especially with the added complexity of the Single Undertaking. It was suggested that the outcome of the Singapore Ministerial had actively encouraged the formation of the Commonwealth Group of Developing Countries with the aim of helping members to be more proactive and effective and assisting them to implement their commitments and, as well as this, commodity prices were dropping giving countries a further incentive to work together.¹⁸ This might have suggested that

¹⁸ In a paper by S. Rudder of the Permanent Mission of Barbados to Geneva '*The Commonwealth Group of Developing Countries in Geneva: A Mechanism for Capacity Building*' produced for the CTA International Seminar on 'Meeting the Challenge of Effective ACP Participation in Agricultural Trade Negotiations: The Role of Information and Communication' held in Brussels on November 27th-29th 2002 sourced at <http://www.cta.int/ctaseminar2002/documents/rudder.pdf#search='WTO%20Geneva%201997'> accessed on 9th August 2006. The members were Bangladesh, Barbados, Botswana, Brunei Darussalam, Cameroon, Ghana, India, Jamaica, Kenya, Lesotho, Malaysia, Mauritius, Mozambique, Pakistan, Nigeria, Singapore, South Africa, Sri Lanka, Tanzania, Trinidad and Tobago, Uganda, Zambia and Zimbabwe. That commodity prices were dropping is found in UNCTAD's 1997 '*Trade and Development*' report at http://www.unctad.org/en/docs/tdr1997_en.pdf#search='WTO%20Geneva%201997' accessed 9th August 2006

developing countries could be persuaded to go along with a future EC agricultural position if they were able to achieve greater market access. Bilateral measures seemed to be becoming less effective too. Although there were mechanisms in place to facilitate closer working between the US and the EC, both sides often seemed to be working against each other as much as with each other over the time frame. This is most evident in the sectoral negotiations where, first, the EC tried to extract more concessions from the US before it agreed to sign the ITA in spite of seemingly working closely together beforehand in order to develop the proposal, secondly, the US pulled out of the BTA negotiations even though the Quad supported them and then also pulled out of the FSA. However, this did not seem to adversely affect progress, except in the very short term by delaying the signing of certain of the Agreements. This suggests that, partly, opposition was a political manoeuvre designed to facilitate more concessions from other parties (which was ultimately the case in the ITA) and also that although there may have been differences on particular issues, there was still a collective desire between the EC and US that the WTO became stronger and more authoritative over time. Perhaps, then, although it appeared that the two sides were fighting opposite corners, there was enough common ground to facilitate agreement on the wider issues. However, cracks were to appear in the bilateral relationship leading up to Seattle as the US was still keen on a limited Round, whereas the EC continued with its efforts to achieve a wide-ranging agenda. This may well have been because agriculture was going to feature and the need for trade-offs and bargains was inevitable.

Conclusions

The Commission's ability to act as an expert does not seem to have been contested internally over the period, in spite of Ruling 1/94. There are a number of clear examples of policy leadership exercised by the Commission within the evidence, particularly in Chapter Four. The internal atmosphere was also supportive, with a notable exception of the political debates surrounding Ruggiero's replacement as Director-General and with labour standards. In Working Groups, it was shown that the Commission had a great deal of influence, even under difficult circumstances, but in the Ministerials (because of the breadth of the agenda and the sheer number of players) the Commission seemed far less influential. Although Brittan achieved a commitment to

launch a Millennium Round, agreement could not be guaranteed and there was no clear agenda developed at the Geneva Ministerial.

In terms of appearing like a government, in Rometsch and Wessels' (1995) second categorization, again there is evidence (the semiconductor agreement and various position papers submitted to General Council prior to Seattle) that the Commission held this status within particular work areas. However, there is no evidence to show that the Commission gained more powers from Council over this period, and there is no indication that they were able to encourage agreement within the Ministerials because of their status. It is possible that the Commission's status worked against it in terms of the concern expressed on the part of the developing countries that the Commission would try to drive the WTO agenda to benefit itself and not others.¹⁹

There is little evidence to suggest that the Commission performed more of an administrative role, i.e. that it had much less agency, over this time period than it did, for example, in the Uruguay Round (see Chapter Two). It is not visible, in any case, that this was the outcome of the 1/94 Ruling. With certain problematic areas such as labour standards and the replacement of Ruggiero, the Commission was almost sitting on the sidelines unable to influence the debate. Although it seems to have tried to gain consensus in both of these areas, perhaps especially in the latter case, it was not able to do so. It was also shown in the BTA case that the Article 113 Committee worked with the Commission rather than against it, to ensure that Spain accepted the terms of the revised telecoms offer. This re-emphasizes the supportive internal consensus prevailing for the Commission at this time.

Building coalitions was important over both of these chapters, again helped by a supportive internal context with evidence of wide internal 'buy in' over this period. Brittan also proved adept at using influential external sources to support initiatives. The setting up of TABD and ASEM might have been expected to add to that process although there appeared to be limits with both committees. Efforts at coalition building

¹⁹ It was thought possible by interviewee 8 who also recognised that countries would have been unwilling to agree to more than a baseline agreement because further negotiations might come under the Single Undertaking.

were critical after Singapore and certainly after Geneva to encourage the developing countries to come on side yet this did not happen to any great extent.

In sum, these years were marked by a permissive Commission consensus and supportive Council consensus, and relatively supportive external consensus i.e. the internal relationships within and between both the Commission and the Council were strong, and the collective aim of the WTO Secretariat, the Quad, the Commission and Council was to make the WTO stronger and have an increased profile by building on what had been achieved at Marrakech. However, the table of preferences showed that this wish was not shared by the developing countries either at the Singapore or Geneva Ministerials. Furthermore, continued proposals to widen the agenda with the MAI, for example, risked further antagonising the developing countries as Pakistan and India had pointed out previously.

This evidence seems to point to a general, but not exclusive, North-South split in the WTO with the South wanting no new items on the agenda and wanting time to be able to implement the agreements from Marrakech, while the developed countries, epitomised by the Quad, sought a wider agenda. Although this difference was noticed early on in the WTO, it will be seen in future chapters whether it had a bearing on the policy process. In terms of increasing the level of politicization surrounding the WTO, NGOs seem to have started to view the WTO as a threat. This was possibly because of the debates surrounding the MAI, which involved a number of groups from a number of different countries, helped by the growth of the Internet, making information easier to disseminate and access globally (Cooper and Hocking, 2000: 366-7).²⁰ A simple search reveals a number of internet-based or internet-using organisations dedicated to disrupting the Geneva Ministerial and/or making efforts to stop the MAI being transferred to the WTO.²¹ Although this would not be likely to affect the Ministerial

²⁰ Also see 'The Internet as a Tool for Global Campaigns' by N Buxton of CAFOD, 22nd July 2002, for the Digital Divide Network reproduced at <http://www.globalpolicy.org/ngos/role/policymk/internet/2002/0722tool.htm> accessed 9th August 2006.

²¹ For example: Earth First Number 46 January 1998 at http://www.eco-action.org/efau/issues/1998/efau1998_02.html accessed 9th August 2006, Public Citizen, 'Anti-MAI/WTO resolutions in the US and around the world' at <http://www.citizen.org/trade/issues/mai/articles.cfm?ID=7615> accessed 9th August 2006, Salzburg Action Forum Against the MAI, incitement to action at <http://www.cb3rob.net/~merijn89/nieuws/terr.html> accessed 9th August 2006, Corporate Europe Observer 'Leaked document reveals EU attempts to push MAI-like investment agreement in WTO' at <http://www.corporateeurope.org/mai/eu/index.html> accessed 9th August 2006

process as such, it would affect the negotiating environment in terms of increasing participants' awareness of politicization. This is an issue that will recur through the rest of the thesis.

The following three Chapters will cover Pascal Lamy's term in office from 1999 to 2003. The Commission in which Brittan played a part had finished ignominiously with a mass resignation. Whether this would affect what Lamy could achieve internally (because the Council might have used the opportunity to 'claw back' responsibilities and Parliament might also have tried to intervene in the trade area) and build on externally (because if the Commission became more of an administrator it might prove difficult to encourage coalition building), will be shown. Lamy's tenure starts with the continuing build up to the Seattle Ministerial for which Brittan had done a great deal of preparatory work. Lamy's stance within that Ministerial, and onwards to Cancún, will be assessed. In particular, analysis of the issues affecting the Commission's roles and responsibilities and the evolving preferences of the interests, will be detailed to facilitate comparison with this time period in Chapter Nine.

CHAPTER SIX

The Trade Negotiations Framework from Seattle to Cancún

Introduction

The purpose of the following three Chapters is to look at the way Pascal Lamy handled the trade portfolio from 1999 until the end of the Cancún Ministerial in 2003, in the face of what appeared to be increasing politicisation of the trade field amid the increasingly dispersed preferences of the interests. This Chapter is focused on the high political level of the WTO, which is the Ministerial process, while Chapter Seven will look at three case studies to show the methodology and practice used by Pascal Lamy to pursue agreement and to highlight the ways in which the Commission view intersected or diverged with the internal and/or external interests in these sectoral negotiations.

This Chapter will fulfil the same function as Chapter Four for Leon Brittan's tenure as Trade Commissioner in that it will trace the evolving nature of the Commission's roles and responsibilities and the difficulties of developing a permissive or supportive internal and external consensus through the Ministerial process in the WTO. The Chapter will also track the growing politicization over the period in order to assess whether this impacted on the Commission's roles and responsibilities and negatively influenced their ability to satisfy the interests. This is important in the light of the previous Chapters where it was made clear that the interests are not static and can be constraining, supportive or permissive on the Commission not only according to different work areas but within work areas. This Chapter will, then, set out how far the Commission was able to achieve progress both on its own agenda (and where this differed from that of the Council) and with its mandate in the timeframe given above.

Once again, this chapter uses a series of tables to show the dispersal of preferences in terms of expressing the Commission's positions vis-à-vis the other Quad members, the LDCs and also, in this Chapter, the G20, which was to become influential over the time period discussed herein. In addition, the theme of trade-labour initiatives, so important to Brittan and discussed at Singapore yet still unresolved at the end of Chapter Four, will highlight the problems of consensus building.

Essentially, it will be shown that there was a good deal of continuity in the Commission's roles and responsibilities. This may be partly due to path dependence, particularly since Brittan's document setting out Commission views on the Millennium Round, COM(1999)331 continued to be used as the basis of Commission policy throughout this period.

Overview

Pascal Lamy was officially confirmed as a Commissioner following the series of hearings of all the Commissioners-delegate by the European Parliament.¹ His holding of the trade portfolio was officially confirmed at the first Commission meeting on 18th September 1999.² It appeared that Lamy had been given "a smoother ride than expected" at his hearing given that there were no questions asked about his supposed "misconduct in two controversial episodes during the years he worked for former Commission President Jacques Delors".³ This supportiveness on the part of Parliament may have been because Lamy's stated priorities seemed to be consistent with theirs. At the Hearing, Lamy had given his priorities as: pursuing an MAI; upholding the cultural imperative (interestingly not mentioned in COM(1999)331, which could suggest a French bias on Lamy's part); supporting the multifunctional nature of agriculture in Europe; ensuring that the WTO "preserv(ed) the balance between trade interests and social, cultural and environmental interests" such as would "reflect(ing) universal

¹ These Hearings began on 30 August and finished on 7th September 1999. See EU Bulletin 9/99 at <http://europa.eu.int/abc/doc/off/bull/en/9909/p110004.htm> accessed May 15th 2007. However, the Hearings actually appear to have finished on the 8th with the hearing of Neil Kinnock (sourced from the Parliament's news index for 1999 at <http://www.europarl.eu.int/dg3/sdp/newsrp/en/1999/index.htm> accessed May 15th 2007)

² See EU Bulletin 9/99 at <http://europa.eu.int/abc/doc/off/bull/en/9909/somma00.htm> accessed 15th January 2004

³ BBC, September 3, 1999, 'MEPs continue commission probe' at <http://news.bbc.co.uk/1/hi/world/europe/437223.stm> accessed 15 January 2004. In fact, there was a question asked by Nick Clegg, then a UK MEP, about his role in "the Flécharde affair (a butter export scam)"

values”, and for “every effort” to be made in order to include social issues on the agenda (including, one can presume, trade and labour linkages, which will become important later).⁴ It can be noted that there was little time between Lamy taking office and the Seattle Ministerial in order for him to become familiar with the extent of the portfolio. This would manifest itself in a conflict between the Commission and member states over biotechnology at the Ministerial.

The Third WTO Ministerial - Seattle, 30th November – 3rd December 1999

The Lead Up

In one of the first speeches Lamy gave once appointed as Trade Commissioner, he presented an outline of what were, to him, the most important aspects of EC trade policy needing advancement in the WTO.⁵ As the majority of his points, again, reflect strands in COM(1999)331 it is clear that he was not revisiting what had been agreed prior to his term of office. However, the priorities he listed in that speech were not the same as those he had confirmed to Parliament during his Hearing (i.e. he failed to mention the MAI, the cultural exception, the environment or social issues), which suggests that tension might arise between the two later, especially if Parliament sought to become more influential in the trade field after practically forcing the resignation of the previous Commission. Another potential source of conflict, this time between the Commission and the Council, that came to light at an early stage was that Lamy appeared to see agriculture differently from his predecessors in that he wanted to input into agricultural policy making.⁶ At his first Press Conference, Lamy seemed to suggest there was room for negotiation on Agenda 2000 rather than that it was to be defended at all costs (ibid). In COM(1999)331, although the same thing may have been meant, it had been phrased slightly more diplomatically; “the...reform of the CAP within the framework of Agenda 2000 would constitute essential elements in defining the Commission’s negotiating mandate for the... WTO” (page 8). The Agriculture Council was to conclude that there was a “need to take an offensive line in support of the

⁴ Full text from the Parliament’s news report of 2nd September 1999 at <http://www.europarl.eu.int/dg3/sdp/newsrp/en/1999/n990902.htm#3> accessed 15th January 2004

⁵ Speech of 15th September 1999, ‘Globalisation: a win-win process’ at http://europa.eu.int/comm/archives/commission_1999_2004/lamy/speeches_articles/spla01en.htm accessed 5th January 2006

⁶ G de Jonquieres, the Financial Times of 2nd October 1999 page 6, ‘Brussels may consider more open farm trade’

European agricultural model as reformed by Agenda 2000” thus Lamy’s advocacy of more flexibility in agricultural negotiations did not seem to be supported by Council.⁷

This first press conference was in the margins of a meeting of EC foreign ministers, the purpose of which was to agree a common position prior to the Seattle Ministerial. Although Ministers seemed to agree on the merits of a wide agenda, there was still no agreement on what to do about trade/labour rules. General consensus appeared to be emerging that a looser collaboration with ILO might be more palatable to the wider WTO membership, which was in line with the Commission’s stated position in COM(1999)331 i.e. that because agreement for a WTO Working Group was not going to be achieved, the establishment of a “joint WTO/ILO high level meeting on trade, globalization and labour issues” (p23) should be pushed instead. Lamy continued to advocate discussion of labour standards in the WTO saying this was necessary to, “convince European public opinion that trade liberalization was beneficial”.⁸ Therefore, he might have wanted a more ambitious outcome than was expressed in COM(1999)331. An EC position was still being sought on 13th October so Lamy’s pushing was not encouraging a supportive coalition amongst the member states.⁹

As well as differences between the stances of member states on labour standards, there were also concerns about differences of opinion between the US and the EC on the breadth of the agenda. Interestingly, Romano Prodi recognised this as a problem, commenting that a bilateral meeting prior to Seattle was necessary since “divisions between the US and EU could weaken the global trading system”.¹⁰ This was a clear signal that they had different ideas on the next Round – the EC sought a comprehensive agenda while the US wanted a much more limited agenda, centring on agriculture and services. Pascal Lamy submitted a paper to the Commission meeting later in the month expressing concern about the US’s “negative” approach to a wide-based trade Round.¹¹ Prodi’s entrepreneurship might hint at there being more involvement from him in the Trade portfolio.

⁷ Meeting 27th September from EU Bulletin, 9/99 at <http://www.europa.eu.int/abc/doc/off/bull/en/9909/p104021.htm> accessed 17th January 2006. Acknowledged by Council official interviewees 5, 6 & 9

⁸ G de Jonquieres, the Financial Times of 11th October 1999 page 8 ‘Conflict averted on labour rights’

⁹ N Buckley, the Financial Times of 14th October, page 15, ‘Brussels fails to find a common line’

¹⁰ P Norman, G de Jonquieres and M Smith, the Financial Times of 16th October page 8 ‘Prodi seeks Clinton’s support for trade round’

¹¹ Financial Times editorial of 18th October 1999 page 6, ‘EU doubts on US backing for new trade round’

The question of labour standards re-emerged in a later Lamy appearance before the European Parliament revealing that there was still no agreed position with just over a month to go until the Ministerial. Lamy admitted that trade-labour “was ‘the issue which is most polarizing governments and opinions’”.¹² Perhaps if Lamy had stood by the wording in COM(1999)331 the topic could have been depoliticized and thus made more palatable for the member states (in the Council) and the developing countries (at the WTO) to accept. Notwithstanding internal divisions, the draft Final Declaration for Seattle was discussed at a WTO meeting on 21st October.¹³ This new version referred to the ‘multifunctionality’ of agriculture (to appease the EU, Norway, Switzerland and Japan [Ahnliid, 2005: 141]) and to the possibility of revisiting anti-dumping rules (another of Japan’s major concerns). In spite of this “virtually everything in the document is in square brackets signalling disagreements”, which must have sounded warning bells in the Commission, knowing that internal and external divisions would jeopardise the chances of agreement in Seattle, risking a delay in the launch of a new Round.¹⁴

The EC eventually agreed a position at the end of October, and the negotiating mandate was apparently accepted without debate at the Council meeting.¹⁵ Leon Brittan’s COM(1999)331 was the guiding principle for the mandate’s development; from the insistence on negotiations being conducted under the Single Undertaking to the three year duration of the Round. This suggests path dependency with a lack of reappraisal of Brittan’s aims and their validity and currency. The mandate also set out Council’s view of the importance of preserving the cultural imperative, again sought duty free access for LDC goods, said that SME needs should be considered with regard to trade facilitation and clarified that Agenda 2000 would form the basis of the EC negotiations on agriculture at Seattle, which might have sanctioned a little room for manoeuvre. With regard to labour standards, Lamy sent a letter to the WTO General Council

¹² N Buckley, the Financial Times of 17th October 1999 page 14 ‘Lamy wary on labour issues and the WTO’.

¹³ F Williams, the Financial Times of 22nd October 1999, page 16, ‘Envoys discuss key document for WTO talks’.

¹⁴ The full version of this 19th October draft, with the square brackets clearly visible, can be found at <http://www.ictsd.org/English/Declaration3.pdf> accessed 15th October 2005.

¹⁵ N Buckley, the Financial Times of 25th October 1999 page 7 ‘EU agrees trade talks position’. The minutes have been reproduced at <http://www.france.attaac.org/a2985>, catalogued as PRES/99/318, issued on 2nd December 1999 accessed 15th November 2004. Although this is not an ‘official’ source, there appear no reasons to suspect that these are not as authentic as the site claims.

detailing Council's proposal for 'a Joint ILO/WTO Standing Working Forum on Trade, Globalization and Labour Issues', which he said he "fully expect(ed)" to be agreed at Seattle.¹⁶ However, as Morocco, for the Group of 77, categorically refused to accept trade and labour linkages as a WTO issue, as the developing countries had done previously at the Singapore Ministerial, it remained unlikely that consensus would be forthcoming and there seemed to be little bridge building underway to ensure agreement, or, at least, to quell dissent.¹⁷ Given the disagreements evident in the negotiating text, Council's conclusions on preparations for Seattle in November expressed, unsurprisingly, "serious concern at the lack of progress made so far".¹⁸ This was echoed by the Presidency, which noted that in spite of the Green Room process again being employed, ongoing disagreements on "agriculture and implementation" were standing in the way of consensus.¹⁹ Just like events in the Uruguay Round, and as suggested in the previous Chapter, the main protagonists in the agricultural arena, at this point, were the Commission and the Cairns Group "where the acceptance of the multifunctional role of agriculture has been linked to far going (sic) demands on liberalisation" (ibid).²⁰ However, the internal consensus seemed to be supportive on the Commission with the Council's and Commission's positions aligned (alongside the European Parliament).²¹

Even towards the end of November, the WTO was no closer to agreeing an agenda or a declaration for Seattle.²² The EU Presidency, and no doubt the Commission as well, seemed to have been hoping that the new Director General Mike Moore would have presented his own draft, but this had not been forthcoming and the October draft, with all the square brackets, was still current.²³ As well as the problems that this draft would cause, the Presidency had been privy to information that the negotiating environment

¹⁶ Sent 30th October, circulated to the General Council on 5th November 1999 as WT/GC/W/391

¹⁷ Reuters, the Financial Times of 9th November page 16 'Attempt to get labour on WTO agenda rejected'.

¹⁸ EU Bulletin 11-99 at <http://europa.eu.int/abc/doc/off/bull/en/9911/p105016.htm> Accessed 15th October 2005

¹⁹ <http://presidency.finland.fi/netcomm/news/showarticle2028.html> Accessed 15th October 2005

²⁰ This cleavage was also reported by F Williams the Financial Times of 22nd November page 10, 'Agriculture stalls WTO agenda'. Interviewee 3 commented that there were other countries outside the Cairns Group equally supportive of reform.

²¹ Except, perhaps, for public access to the dispute settlement system, and greater emphasis on social issues. Issued 18th November 1999 at <http://europa.eu.int/abc/doc/off/bull/en/9911/p105016.htm> accessed 15th October 2005

²² Presidency News Report of 25th November at (<http://presidency.finland.fi/netcomm/news/showarticle2112.html>) accessed 15th October 2005

²³ Probably because Mike Moore, just like Pascal Lamy, was very new to the post

might become highly politicized by “some 80,000 demonstrators and over 3,000 NGOs” coming to Seattle (ibid). Another outstanding problem had been the lack of support for the EC initiative on duty free access for products from LDCs. As late as 29th November, Lamy was still calling for agreement and without the developing countries on board, it would prove difficult (as it had done in Geneva) to achieve consensus for any further initiatives (Schott 2000: 7, Arai 2000: 46).²⁴ In addition, preferences of the main groups of members were very dispersed on matters raised by the mandate as will be shown in the tables beginning overleaf.

The Seattle Ministerial

These tables show the distribution of preferences in order to ascertain how likely it was that there would be a successful outcome for the Commission in areas they considered important.²⁵ They outline what the different players sought from Seattle in terms of new issues, *trade/investment, trade/labour, trade/environment* and whether they thought a new Round was necessary. The final column identifies each country’s main concerns in as simplistic terms as possible for the purposes of comparison. For ease of reference, the same LDCs looked at in Chapter Three will be looked at again here. There were, however, no individual statements from Bangladesh, Cambodia, Chad, Maldives, Myanmar or Tanzania so the first table will be a summary of the statements that were given by the individual countries who did submit statements, together with the statements from the various groups of developing countries that were also represented.

²⁴ Also from the Commission Spokesman’s midday briefing of 29th November 1999 at http://www.hri.org/news/europe/midex/1999/99-11-29_midex.html accessed 15th October 2005

²⁵ In terms of what the Commission wanted, not in terms of the majority WTO view.

The LDCs

Table 6.1 The positions of the least-developed countries (LDCs) in the Seattle Ministerial.

	New	Trade/ investment	Trade/labour	Trade/ environment	New Round?	Concerns
Burundi WT/MIN(99)/ST/122	Study		No	No		Capacity/ transitional periods/SDT
Gambia WT/MIN(99)/ST/138						Implementation/ market access
Lesotho WT/MIN(99)/ST/75					Possible	SDT/links between Bretton Woods insts Implementation
Madagascar WT/MIN(99)/ST/66	Trade, development and debt links					
Malawi WT/MIN(99)/ST/142	Study	Study				Implementation/ SDT
Mozambique WT/MIN(99)/ST/65	No					Market access/ Capacity
Nepal WT/MIN(99)/ST/85	Study		No	No		Accession/ transitional periods
Senegal WT/MIN(99)/ST/61	No				No	Implementation
Sierra Leone WT/MIN(99)/ST/120	No		Promoting adhesion should be guiding principle			Marginalization/ Food security
Solomon Is. WT/MIN(99)/ST/115	Compensation ²⁶					Market access/debt/accession
Sudan WT/MIN(99)/ST/132						Marginalisation/ Accession
Togo WT/MIN(99)/ST/76	Development issues					Implementation/ SDT
Uganda WT/MIN(99)/ST/78				No		Debt/Export subsidies
Zambia WT/MIN(99)/ST/117	Study		(ILO)	No		Capacity/ Implementation/ Market access
G77 WT/MIN(99)/ST/22	Elimination of tariff peaks			No		Implementation/ SDT
LDC Group WT/MIN(99)/ST/17	Movement of natural persons		No	No	No	Implementation/ SDT
SADC WT/MIN(99)/ST/43						Capacity/ SDT

²⁶ The Solomon Islands commented that customs duties generated 50% of government revenue so there needed to be a compensatory mechanism to remedy this loss brought about by liberalization.

Comparing the tables from Seattle and Singapore, it can be noted that there is much less focus here on specific issues, with a correspondingly greater focus on the problems being experienced, many of which do not appear to have been addressed to the satisfaction of the developing countries up to this point. This is evident from the considerable level of concern over implementation and transitional periods for this implementation, which was mentioned by eight countries and two groups, showing that additional effort needed to be made to help these countries to fully implement their obligations under the Marrakesh Agreement (as Senegal had also said at the Singapore Ministerial). The next most important issue, as seen by these countries, was special and differential treatment (SDT), effective use of which would enable them to play a fuller part in the WTO. This was mentioned by three countries and three groups. Market access was the next most frequently raised issue, by four countries (as opposed to two countries at the Singapore Ministerial), which could suggest Lamy's, or rather Brittan's, initiative to allow duty free market access for products from the least developed countries might be used by the Commission as an incentive to allow other items onto the WTO agenda. However, Zambia commented in their Statement that unless issues of technical and financial capacity were addressed, other supportive mechanisms would not have the desired effect. No support is evident either for pursuing an agreement in trade-labour or in the trade-environment areas and there were no coalitions in favour of carrying out work on any new work items. Therefore, the collective preference was on the need to address problems in the multilateral system, rather than proceed with additional work items. This table shows that the Commission's support for a wide ranging agenda for the next Round would not be supported by the developing countries, because of an emergent coalition against new work items, different from what was noted at Geneva. It also shows that, unless there were suitable trade-offs, progress in the WTO could not be assured.

The G20 countries.

The balance between players was starting to shift in the WTO prior to Seattle and the core countries, which would become the G20 (also the G22 or the G20+) and which held their inaugural meeting in Germany on December 15th and 16th 1999, would achieve a position of influence in the WTO policy initiating and making arenas.²⁷

Therefore, this is a new table, tracking the preferences of the main participants; Argentina, Brazil, China, India and South Africa. As China did not give a statement to the Seattle meeting, their position has been taken from the Group of 77's Marrakech Declaration.²⁸

Table 6.2 The positions of the G20 countries in the Seattle Ministerial.

	New	Trade/ investment	Trade/labour	Trade/ environment	New Round?	Concerns
Argentina WT/MIN(99)/ST/153						Market access/ agriculture
Brazil WT/MIN(99)/ST/5					Yes	'Unfinished business' from the UR/ integration of developing countries/agriculture
China	Ensuring equable distribution of benefits in WTO		No			Debt/SDT
India WT/MIN(99)/ST/16	E-commerce/IT		No	Yes	Yes	Anti-dumping/ subsidies/ implementation
S. Africa WT/MIN(99)/ST/45	"Inclusivity and effective process" in WTO				Yes	Implementation/ unfinished business

Although the table has a number of blank spaces, reflecting no preferences being given, it would seem that there was majority support amongst this group for a new Round. However, there was much less of a consensus as to the most important issues to be tackled therein. It is not evident, from this table, that the Group's views would become much more homogeneous in what they sought from the WTO, at least not beyond the inclusion of developing countries (Brazil and South Africa, and perhaps China) and

²⁷ For further information on the G20 see their website at <http://www.g20.org/Public/AboutG20/index.jsp> accessed 12th September 2006. The Communique from the inaugural meeting can be found at http://www.g20.org/Public/Communiqués/Pdf/1999_germany.pdf accessed 12th September 2006.

²⁸ Marrakesh Declaration of the Group of 77 and China from their meeting of 14-16 September 1999 sourced at <http://www.unctad-10.org/preprocess/marrakech.en.htm> accessed May 13th 2007

agriculture (Argentina and Brazil). The emphasis of the latter on agriculture was perhaps inevitable, given their membership of the Cairns Group yet might exert a strong influence on the outcome of negotiations if the other G20 members followed their lead.

The Quad countries

Table 6.3 The positions of the Quad countries in the Seattle Ministerial.

	New	Trade/ investment	Trade/labour	Trade/ environment	New Round?	Concerns
Canada WT/MIN(99)/ST/13	Working Party on Globalisation/ Transparency	**	*	*	Yes	Agriculture
EC WT/MIN(99)/ST/3	ILO-WTO Forum/ Integrated environmental policy	Yes	Yes	Yes	Yes	Improved dialogue with civil society/ Devel't focus
Japan WT/MIN(99)/ST/26 WT/MIN(99)/ST/44 ²⁹	Accelerated accession process/globalisation	Yes		?	Yes	Implementation/ E-commerce
USA WT/MIN(99)/ST/12	Trade facilitation/ transparency		Yes	Yes	Yes	Agriculture/ E- commerce

From this chart, the area where there is the strongest preference is in having a new Round although, in common with the G20, there is little specific agreement on the main issues to be addressed. There seemed to be a little common ground between the Commission's and Canada's proposals on the ILO-WTO 'Forum' although Canada wanted a much more wide-ranging remit for the Group to include input from UNEP and IMF. It is likely that seeking agreement with Canada was of low priority to the Commission considering Canada's concern with agriculture, unsurprising considering Canada was a member of the Cairns Group, wanting "the elimination of export subsidies, the drastic reduction of trade-distorting domestic subsidies and substantial improvements in market access" as an outcome.³⁰ The Commission is aligned with Japan in wanting an Agreement on trade and investment and with the US in wanting

* Canada's main proposal was for a "working party on globalization to ensure that the WTO works in coordination with UNCTAD (UN Conference on Trade and Development), the ILO (International Labour Organization), UNEP (UN Environment Programme), the IMF (International Monetary Fund) and others" (from Canada's statement to the WTO Ministerial, WT/MIN(99)/ST/13).

²⁹ Japan made two statements to the Seattle Ministerial. The first was from the Minister for Foreign Affairs (26) and the second from the Minister of International Trade and Industry (44). As both seem equally relevant, they have both been assessed for the purposes of compiling this table.

³⁰ Befitting Canada's status as a member of the Cairns Group

agreement on labour standards but there is scant agreement elsewhere. The lack of a clear supportive coalition on any policy issue (aside from a new Round) meant that the Quad was not in a position where they could exert leadership by pushing through initiatives and agreeing trade-offs. This suggests that the developing countries, particularly on transitional periods and implementation where there was a relatively strong consensus, might be able to drive the policy process at Seattle.

The negotiations

Because of the diversity of Quad positions, the start of the Seattle meeting saw both the Commission and the US seeking support for their own policy initiatives in order to try and build a consensus around them.³¹ This was partly because, as the Finnish Presidency had already announced, Mike Moore was not circulating his own, compromise text.³² The Commission was convinced its draft would gain the upper hand, ostensibly because of the US's "hardline...stance on labour standards" insofar as it was advocating the use of sanctions to ensure standards were improved, whereas the EC negotiating mandate specifically rejected this approach.³³ The Commission was also continuing to canvass the Quad and other developed countries to allow duty free market access for the LDCs even though, at the same time, the EC wanted to "resist agricultural liberalization".³⁴ There was a view that this duty free access proposal was unlikely to rally much support from the developing countries anyway as it might not include sensitive products such as sugar and textiles, in other words – there would be little for the developing countries in any such deal but perhaps (nevertheless) more for them in the European than the US package.³⁵ However, no agreement emerged and the lack of progress was exacerbated by the negotiating atmosphere, which was less than conducive given the sheer numbers of demonstrators on the streets.

³¹ Rather than trying to gain consensus with each other.

³² L Elliott, the Guardian of 1st December 1999, page 15, 'US and EU jostle to steer talks'

³³ L Elliott, the Guardian of 3rd December 1999, page 16, 'Who wants what from the talks' said that one of the reasons why the US wanted to push labour standards was because the Trade Unions wanted this and "union support (was) vital to (the Democrats) in next year's presidential race".

³⁴ The Financial Times editorial of December 2nd page 20, 'Time to make the case'

³⁵ L Elliott, J Vidal, the Guardian of 3rd December, page 16, 'Sense of desperation drenches Seattle air'

As well as the fragmented external consensus, there was a significant disagreement, causing damage to the internal consensus, on biotechnology. This was because Lamy agreed to participate in a WTO biotechnology working group early on in the Ministerial:

“European officials were visibly ill at ease answering questions about the EU’s unexpected change of heart regarding the establishment of a biotechnology working group within the WTO. Journalists and non-governmental organisations even questioned the Commission’s authority to make the proposal, which seems to have come as a considerable surprise not only to NGOs, but to several EU members as well”.³⁶

The suggestion to establish a biotechnology group had come from Canada and Japan (which might suggest that there had been some kind of bargain that they might agree on duty- and tariff-free access to their markets for the developing countries if the EC committed itself to this) along with the US.³⁷ Whether Lamy was aware of the furore this would cause or not, the episode did not have a happy ending. The Commission was, in the end, “slapped down” by environment and trade ministers who were concerned that it could put in doubt the UN biosafety protocol scheduled for signature in January 2000.³⁸ It appeared that Lamy had not consulted beforehand with the Article 133 Committee “and it soon became clear that he had seriously underestimated the strength of feeling of European Ministers”.³⁹

³⁶ The ICTSD Bridges report of 2nd December ‘Piecemeal Progress Made in WTO Negotiating Groups’ (at http://www.unc.edu/~swblack/BridgeRep_1202.rtf accessed on 15th August 2005 also http://www.ictsd.org/ministerial/seattle/wto_daily/991202_eng.htm accessed 20th February 2008

³⁷ M Khor Third World Network of 26th October 1999 ‘Biotech proposals for Seattle undermine Biosafety’ at <http://www.twinside.org.sg/title/mk4-cn.htm> accessed on 15th October 2005

³⁸ F Williams and G de Jonquieres, the Financial Times of 3rd December 1999, page 13, ‘Europeans block biotech move’

³⁹ J Vidal, the Guardian of 3rd December page 17, ‘Outrage as EU cedes regulation of GM foods’. In the end, the Cartagena Protocol on Biosafety was agreed in Montreal on January 29th 2000. L Freeman GeneWatch (Vol 16 No 6, November-December 2003 ‘Levelling the Playing Field’ at <http://www.gene-watch.org/genewatch/articles/16-6freeman.html> accessed 15th October 2005) pointed out that, at least with hindsight, “(the) collapse (of the Seattle meeting) proved helpful to the Montreal meeting...in 2000. The time was ripe for a consensus to be reached concerning GMO trade, and for a body outside of the WTO to establish this consensus” – making it one of the few positive outcomes from Seattle. Richard Tapper of the UK Food Group (on ‘The Cartagena Protocol on Biosafety’ at <http://www.ukabc.org/cartagena.htm> accessed 2nd January 2006) commented that, in fact, the EU delegation “strongly defended the precautionary principle (as per the wishes of both the Council and the European Parliament) and supported the Protocol throughout the negotiations”, thus it would appear that the Commission redeemed itself in the eyes of those who criticised its line in the WTO.

This was not the main problem for the WTO as a whole, however. Differences with the agenda and priorities meant that, ultimately, negotiations in Seattle failed with no Final Declaration being issued. Lamy's explanation to the European Parliament was that "the conference ran out of time" because there were only two days to discuss the negotiating text.⁴⁰ This would not have been a factor if there had been political will to come to an agreement on the major issues prior to the meeting so preparation would have been more comprehensive (suggested also by Martin and Pangestu, 2003:1 and interviewee 9). Other parties, however, stated different contributory factors, which seem equally valid: that the Quad could not agree on priorities so was unable lead a coalition building process (seemingly likely given the chart showing the dispersal of Quad preferences); that the agenda was too wide and because the US did not accept that the developing countries continued to experience problems with implementation, or the "clumsy, brazen chairing by Barshefsky" (Peterson, 2001: 64) were but a few.⁴¹ This was in addition to suggesting that the US was wrong in trying to 'strong arm' members into accepting trade-labour linkages (see also Tay, 2002, Peterson, 2001) or that the EC sought to avoid negotiating their position on agriculture (Sharpston, 2000:37). This latter point tallies with what Charlene Barshefsky (the USTR) said in the Press Conference immediately following the Ministerial, that the EC was wholly responsible for the failure because of "its refusal to compromise on...export subsidies".⁴²

⁴⁰ From his speech to Parliament on 'World Trade Organisation Ministerial Conference in Seattle Appraisal and prospects' on 13th December 1999 at http://europa.eu.int/comm/archives/commission_1999_2004/lamy/speeches_articles/spla08_en.htm accessed 15th October 2005

⁴¹ The ICTSD 'Bridges' report of 8th December (Volume 3. Number 47, accessed through the portal found at <http://www.newsbulletin.org/getbulletin.CFM?SID=> on 15th September 2005. The comment about failure attributed to the Quad was from Kofi Annan, UN Secretary General at UNCTAD from BRIDGES Weekly Trade News Digest, Vol 4 No 6 15th February 2000 'UNCTAD X Underway In Bangkok' at <http://www.gene.ch/gentech/2000/Feb/msg00031.html> accessed 15th September 2005. Also J Vidal the Observer of December 5th 1999 'The real battle for Seattle' quotes a British trade official as saying "The best thing now might be for the talks to collapse to the allow the total reform of the WTO", at <http://www.guardian.co.uk/world/1999/dec/05/wto.globalisation> accessed 20th February 2008. Farrands (2003: 250) suggested, however, that the Seattle demonstrations were principally about TRIPs.

⁴² R Weissman, the Multinational Monitor of December 1999, Vol.20 No.21 'Democracy is in the Streets' at <http://multinationalmonitor.org/mmm1999/mmm9912.07.html>

In spite of Barshefsky's assurances that she would abstain from Green Room processes unless absolutely necessary, allegedly preferring the openness of Working Groups, the negotiating process seemed, in practice, to be no more inclusive than it had been in previous Ministerials.⁴³ Green Room meetings appear to have been held and were roundly criticized (Schott and Watal, 2000: 286, Hawken, 2000:50). There were warnings that this system had broken down *prior* to Seattle when eleven developing countries submitted a statement complaining about the arbitrary nature of the process.⁴⁴ Those countries that did not participate in decision-making had significant concerns about Green Room meetings (Arai, 2000:62) heralding suggestions that a "more efficient...equitable" (Schott, 2000:33) and inclusive decision making structure needed to be put in place.⁴⁵ Whether, though, this would be at all possible must have been a moot point – the Financial Times editorial of 6th December 1999 suggested that one of the reasons Seattle failed was because of the number of members.⁴⁶

Another reason often cited for the collapse of the Ministerial, especially by anti-globalisation campaigners, is that the mass public demonstrations caused the meeting to become much more politicized (Barfield, 2001:3-4, for example, also Moon, 2004: 24). US President Bill Clinton in his introductory speech put a positive spin on it, saying that the presence of protestors meant civil society's voice could be more influential on trade issues.⁴⁷ He could be said to have had some influence on the level of their attendance in the first place; in early November he had made a speech in which he remarked that he would be happy to see demonstrators at the Seattle Ministerial. He was directly quoted as saying that he "wanted everybody who thinks this is a bad deal to come...I want everybody to get all this out of their system".⁴⁸ Lamy, in a speech to the American Chamber of Commerce in Brussels, agreed that the attention from civil society was positive and would prevent "trade experts from the EU and the US clinch(ing) a deal behind closed doors and then ask(ing) the other WTO partners to sign on the dotted

⁴³ From ICTSD Bridges report of 2nd December 'Piecemeal Progress Made in WTO Negotiating Groups' (at http://www.ictsd.org/ministerial/seattle/wto_daily/991202_eng.htm accessed 20th February 2008)

⁴⁴ The countries were Bolivia, Cuba, Djibouti, the Dominican Republic, El Salvador, Guatemala, Honduras, Mauritius, Panama, Paraguay and Uganda according to the Bridges Weekly Trade Digest (Vol 3 No 45, 15th November 1999 'Agreement on Ministerial Declaration eluding negotiators before Seattle')

⁴⁵ B Lal Das, The Seatini Bulletin Volume 3, No. 3 of 15th February 2000 'Full participation and efficiency in negotiations' at <http://www.seatini.org/bulletins/b03-03.htm> accessed 5th October 2005

⁴⁶ page 18, 'Disaster in Seattle'

⁴⁷ From his speech at the opening lunch to the Round from <http://www.staff.city.ac.uk/p.willets/PIE-DOCS/CLNT1299.HTM> accessed 5th January 2006

⁴⁸ M Suzman, the Financial Times of 6th December 1999 page 8, 'US domestic concerns sank Seattle'

line.⁴⁹ Given that there had been no agreement to move the October draft of the Declaration on, and little effort to build bridges between members, it would seem more accurate to suggest that the Ministerial broke down because of what went on inside (Bergsten, 2000) rather than because of what was going on outside (Hawken, 2000: 27-8).

Whatever the weighting of the explanations as to why Seattle failed, the evidence shows that the EC, with the Commission as its voice, played only a small part in the breakdown. Rather, a combination of factors was at work. Issues were brought up in Seattle within the purview of the internal interest (the problems of being responsive in agriculture), the Council interest (the debacle surrounding biotechnology) and the WTO interest (in the Green Room processes, the demonstrations and the lack of Quad agreement) and the Commission had to fight its way through or around all of them. In its report of the Seattle Ministerial, the Commission appeared to have taken some time to reflect on the major issues that had precipitated failure. They accepted that the lack of agreement between the Quad was a factor, as was general public concern over trade liberalization (a way of explaining the mass demonstrations).⁵⁰ They concluded that the EC's remit to cover global governance in the Singapore Issues along with environmental issues, social issues, sustainability and transparency constituted the right agenda although there must have been questions as to how to encourage a supportive coalition for this amongst the developing countries.

The Commission's view fitted with that of the European Council, which continued to press for a new Round as soon as possible, with the suggestion that any reform of the WTO, as demanded by the developing countries, could wait until then.⁵¹ The European Parliament, however, seemed to be slightly more sceptical of the Commission's position, commenting that the WTO needed to have some kind of watchdog body "to ensure transparency and democratic accountability" (although they did not [at this point] suggest how this should be structured) and, as if either turning its back on multilateralism or seeking a return to the technocratic procedures used by Brittan, asked

⁴⁹ 29 February 2000, (at http://europa.eu.int/comm/archives/commission_1999_2004/lamy/speeches_articles/spla14_en.htm accessed February 3rd 2005)

⁵⁰ EU Bulletin December 1999 at <http://www.europa.eu.int/abc/doc/off/bull/en/9912/p104024.htm> accessed February 3rd 2005

⁵¹ In the same issue of the Bulletin at <http://www.europa.eu.int/abc/doc/off/bull/en/9912/i1025.htm> and also at <http://www.europa.eu.int/abc/doc/off/bull/en/9912/p104023.htm> accessed February 3rd 2005

the Commission to pursue more agreements bilaterally.⁵² It also, either with significant delusions of grandeur or with a wish to undermine the Commission, asked the Director General of the WTO (although this would have to be presented to him by the Commission) to suggest to them how to “prevent procedural or organisational shortcomings from hampering... political discussions” within the WTO. Perhaps Parliament was finally exerting the pressure expected since the resignation of the previous Commission.

The Fourth WTO Ministerial – Doha, 9th – 14th November 2001

The Lead Up

If hopes of quick agreement to a new Round were resting with the General Council of the WTO, meeting before the end of December, they would be dashed. Although the EU held meetings in mid-December with Canada and the US (in an attempt to, at least, agree a Quad position), there seemed to be little sign of progress.⁵³ Failure to reach agreement was not just a Quad ‘problem’ which was why the General Council agreed to put discussions about the future on hold until the following year.⁵⁴

Although Lamy confessed to the European Parliament in January 2000 that there needed to be urgent discussions in the WTO on how its working arrangements might be improved, he reiterated his belief that this should be done in the framework of a new Round.⁵⁵ His lack of compromise was again shown in a speech to the American Chamber of Commerce on February 29th where he made it explicit that the existing, widened agenda would stand.⁵⁶ Lamy’s statements suggest he was, in the main, content

⁵² Again in the same issue of the Bulletin at page 104025 accessed February 3rd 2005

⁵³ The Trade Policy Monitor of December 1999 ‘Seattle: The Price of Failure’ accessed through the search portal at <http://www.thunderlake.com/arch.html> on February 3rd 2005

⁵⁴ ‘General Council defers post-Seattle discussion until early 2000’, WTO Press Release 17 December 1999 from http://www.wto.org/english/news_e/news99_e/gcseat_e.htm, accessed on February 3rd 2005

⁵⁵ This account detailed by the Japan Machinery Centre for Trade and Investment, ‘What are the options after Seattle?’, Pascal Lamy’s presentation to the European Parliament on 25th January at http://www.jmcti.org/2000round/EU/lamy/00_1_25.htm accessed on February 3rd 2005

⁵⁶ ‘Keeping Pace with the Global Economy: The Challenge for the Multilateral Trading System’, Speech to the American Chamber of Commerce 29th February 2000 at http://europa.eu.int/comm/archives/commission_1999_2004/lamy/speeches_articles/spla14_en.htm These sentiments were repeated in a speech to the Confederation of British Industry on 6th July (full text at http://europa.eu.int/comm/archives/commission_1999_2004/lamy/speeches_articles/speech000707.htm, where Lamy commented “I was rash enough, or tired enough, in Seattle to describe the WTO as a medieval organisation...the WTO needs improved transparency, management, and organisation, including of future

with the way the WTO worked. Indeed, he was quoted saying that, as far as the WTO was concerned, he felt the problem “n'est pas qu'on a trop de gouvernance internationale, c'est qu'on n'en a pas assez”.⁵⁷ This insistence that the agenda was still valid meant that the Council's negotiating strategy for the next Round did not change.⁵⁸ A very small concession that the EU would be ‘flexible’ on trade-labour and trade-environment with the proviso that members were also ‘flexible’ reflected the difficulties being experienced in getting new work items onto the agenda – using them as a carrot (or stick) was presumably seen as most effective. Although the Council of Ministers and the Commission shared a joint aim for a Round to take place as soon as possible, it was acknowledged that the time was not yet ripe.⁵⁹ This could well have been because of the impending US Presidential elections in November and because there was still no sign that the Quad's preferences had aligned, which meant there could be no assurance that what happened in Seattle wouldn't simply be repeated.⁶⁰

Perhaps in a response to the demonstrations in Seattle (Hocking 2004: 266), the Commission issued a discussion paper on ‘*The Commission and NGOs: Building a Stronger Partnership*’ in January 2000 and, on the basis of this, started consultations with civil society in April.⁶¹ The key structure within this partnership was the Contact Group of NGOs.⁶² The aim of the DG Trade – Civil Society Dialogue was to “develop a

Ministerial conferences....But we must not let institutional reform get in the way of launching a new Round” all accessed on February 3rd 2005 . Also reported by G de Jonquieres, the Financial Times of 7th July page 12, ‘Lamy warns UK against joining NAFTA’

⁵⁷ Interview in “Les Echos”, n° 18157 of 22 May 2000 entitled ‘Mondialisation : Pascal Lamy dénonce un déficit de gouvernance internationale’ reproduced at http://europa.eu.int/comm/archives/commission_1999_2004/lamy/speeches_articles/intla01_fr.htm

⁵⁸ ‘EU Trade Meeting Sets Up Negotiating Position’ from Bridges Weekly Trade News Digest, Vol 4 No 11 of 21st March 2000 at <http://www.gene.ch/gentech/2000/Mar/msg00046.html> Mandate reconfirmation detailed at <http://www.parliament.the-stationary-office.co.uk/pa/ld199900/ldselect/ldcomcom/76/7614.htm> accessed May 5th 2005

⁵⁹ from A Croft, the Indian Express of Monday March 20th 2000 ‘EU makes up mind, to stick to trade proposals’ at <http://www.expressindia.com/fe/daily/20000320/fco20085.html>, also reproduced in a Reuters report for New Zealand at http://onenews.nzoom.com/onenews_detail/0.1227.11647-1-9.00.html accessed 15th March 2006

⁶⁰ e.g. by G de Jonquieres, the Financial Times of March 20th 2000, page 6, ‘EU doubt on early trade round’

⁶¹ The paper was from the 1999-2000 Annual Report of the Platform of European Social NGOs at www.socialplatform.org/module/filelib/finalreport1999_2000.doc accessed 5th March 2006. Report of the consultation was from Bridges Weekly Trade Digest Vol 5 No 18, 15 May 2001 ‘Trade and sustainable development on the agenda at EC’ at <http://www.ictsd.org/html/weekly/15-05-01/story6.htm> accessed 15th October 2005 also ‘EU-Civil Society Trade Consultations’ in ACTSA Trade and Development Update Vol 1 Issue 1 May 2000 at <http://www.actsa.org/Trade/TDU/0101.htm> accessed 4th March 2006

⁶² Current contact group details can be found at <http://trade-info.cec.eu.int/civilsoc/contactgroup.cfm> accessed 5th March 2006. Groups participating were Association of European Chambers of Commerce and Industry – EUROCHAMBRES, Bureau Européen des Unions de Consommateurs – BEUC, Coopération Internationale pour le Développement et la Solidarité – CIDSE, Eurocommerce, European Trade Union

confident working relationship among all stakeholders interested in trade policy, to ensure that all contributions...can be heard” (Hocking 2004, *ibid*). This may have been because the Commission wanted additional support for new policy initiatives in the WTO as a trade-off for commitments in agriculture (De Bièvre, 2006: 859). The views that this Group held would become important although, as Hocking points out later (page 273), this was not without tension in terms of the different policy areas that each wanted to see being pursued.

The Commission was still thinking about how it might demonstrate more flexibility by floating an idea, in early 2001, to make the investment and competition agreements plurilateral rather than multilateral.⁶³ This may be an example of Commission policy entrepreneurship – gambling that the Council would agree if a win-win result could be achieved. Another way of demonstrating its commitment to the developing countries was to get the Commission and then Council to agree on the ‘*Everything But Arms (EBA) Regulation*’ (Regulation (EC) 416/2001), in February 2001. This granted duty-free access to imports from the LDCs on most products although there were limits on rice, sugar and bananas.⁶⁴ However, the Commission had forced changes to the proposal; moving the date for liberalisation for bananas and rice from 2004 to 2006 (bananas) and 2008 (rice).⁶⁵ As the developing countries would welcome it, the ACP countries would not because it went beyond arrangements set out in the Cotonou Agreement.⁶⁶ Policy entrepreneurship was not the only tool at the Commission’s disposal in order to achieve a consensus in favour of opening a new Round. Parliament expressed concern about the text of a negotiating mandate for an interregional agreement with MERCOSUR and Chile and asked for it to be amended in order to “eliminate any notion of making the conclusion of the new association

Confederation – ETUC, Foreign Trade Association – FTA, The European Services Forum – ESF and UNICE (previously mentioned)

⁶³ Flexibility suggested from G de Jonquieres, the Financial Times of 30th January page 14, ‘WTO gets ready to shrug off aftermath of Seattle’. Plurilateral agreements from C Raghavan, the Third World Network of 30th January 2001 ‘EC ‘trial balloon’ on investment, competition in new Round’ at <http://www.twinside.org.sg/title/balloon.htm> accessed 15th August 2005

⁶⁴ From the European Commission’s ‘Generalised System of Preferences – EBA’ page at http://ec.europa.eu/trade/issues/global/gsp/eba/index_en.htm accessed 15th August 2005

⁶⁵ From EurActiv.com Thursday 18th January 2001 ‘Commission Compromise on Everything But Arms Initiative’ at <http://www.euractiv.com/en/trade/commission-compromise-arms-initiative/article-114582>

⁶⁶ B. Wilkinson, TWN 1st March ‘Caribbean to lose in EU’s ‘Everything-But-Arms’ deal’ at <http://www.twinside.org.sg/title/arms.htm> accessed 25th April 2008

agreement...conditional on the completion of the WTO Round negotiations".⁶⁷ The text of those mandates is not accessible but the notion of using a bilateral agreement as leverage for a multilateral one, as the Commission tried to do in this case, has been raised before. Another potentially positive development was that, following the Presidential elections, a new administration was in the White House including an old personal friend of Lamy's, Robert Zoellick, replacing Charlene Barshefsky as USTR.⁶⁸ If the two could agree priorities, they might be able to pull the WTO in a particular direction.

The European Parliament's resolution on the WTO negotiations suggested that their views had not evolved much since Seattle, although there was much less on social aspects than had hitherto been the case.⁶⁹ Their position gave paramount importance to transparency and for closer relationships between the WTO and other international bodies, including NGOs. Support for the previously agreed stance on agriculture remained unchanged, even though it had been a factor in the Seattle failure. The European Council also discussed the WTO promoting multilateralism rather than bilateralism and noted that the Commission needed to play a more active role in order that it might gain support for a wide agenda in the next Round.⁷⁰ This seems an acknowledgement that bridge building before Seattle might have assured a more successful outcome and seemed to allow, if not sanction, Commission efforts to pursue plurilateral agreements, if this was the way to achieve agreement from the developing countries.

It was to become more evident that the Zoellick-Lamy relationship was having a positive effect after the US-EU meeting under the Transatlantic Declaration in June 2001. The outcome confirmed that both sides shared a "desire to launch a new round" even if there was no clear evidence that the aims of each side had radically changed, thus not ruling out a repeat of Seattle.⁷¹ The aim appeared to be for them both to drive agreement by the Quad on the scope of the Round by developing a bilateral deal that

⁶⁷ EU Bulletin 3-2001 at <http://europa.eu.int/abc/doc/off/bull/en/200103/p106104.htm> accessed 15th August 2005

⁶⁸ Financial Times editorial of 12th March, p27 'Banana fudge'

⁶⁹ EU Bulletin 3-2001 at <http://europa.eu.int/abc/doc/off/bull/en/200103/p106039.htm> accessed 15th August 2005

⁷⁰ European Council discussions at <http://europa.eu.int/abc/doc/off/bull/en/200103/i1002.htm>. Proposal for multilateralism rather than bilateralism at <http://europa.eu.int/abc/doc/off/bull/en/200103/i1033.htm> accessed 13th May 2006

⁷¹ EU Bulletin June 2001 at <http://europa.eu.int/abc/doc/off/bull/en/200106/p106076.htm> accessed 13th May 2006

they could persuade other countries to sign up to.⁷² Their joint effort appeared to have been fruitful with the July G8 meeting firmly agreeing on the merits of a new Round, which might be centred on the developing countries yet “ambitious, balanced and inclusive...reflecting the needs of all WTO members”.⁷³ Mike Moore greeted this with some scepticism, noting that it would take more than the developed countries to encourage the launch of a Round; the developing countries also had to agree.⁷⁴ This was not to be forthcoming. When the LDCs set out their ambitions for a Round in the Zanzibar Declaration, their preference was for a narrow, focused agenda.⁷⁵ They saw the key items as addressing marginalisation and “enhance(ing) LDCs' effective participation in the multilateral trading system”; very similar to the concerns that some had raised in Singapore.⁷⁶ In spite, then, of a seemingly growing consensus on the part of the Quad to pursue a wide agenda at Doha, there was an equally strong consensus on the part of the less developed members, to pursue a Round with, at most, a very limited agenda which reflected their views at Seattle. Earlier in the month, a UN group had called on the WTO to launch a Development Round at Doha, arguing that this would redress the balance of benefits going mainly to the wealthier countries; this might be why the Zanzibar Declaration highlights that “any future negotiations (must be) based on an agenda accommodating LDCs interests”.⁷⁷

As well as the problems forging an external consensus, there were problems forging an internal one; mainly because the uneasy truce in the Council of Ministers on agriculture seemed to be eroding. France, in particular, was getting cold feet about agreeing to negotiations even intimating that the decision could well have to wait until the

⁷² Bridges Weekly News Digest, ‘EU, US Moves Closer as WTO Gathers Senior Officials on Doha prep’, Vol 5, No 24, 26th June 2001 at <http://www.ictsd.org/html/weekly/26-06-01/story3.htm> accessed 13th May 2006.

Also F Williams, the Financial Times of 1st August p9 ‘WTO ‘makes progress’ on Qatar agenda’

⁷³ From the G8 Communique from Okinawa on 23 July 2000 at

<http://www.g8.utoronto.ca/summit/2000okinawa/finalcom.htm> accessed 15th February 2008

⁷⁴ From ‘D-G Moore Welcomes G8 statement on launch of new Trade Round’. WTO News Item of 23 July 2000 at http://www.wto.org/english/news_e/news00_e/g82000_e.htm accessed 15th February 2008

⁷⁵ C Denny, the Guardian of 26th July, p28 ‘WTO takes reality check’. Zanzibar Declaration sourced at <http://www.un.org/esa/ffd/themes/lde-4.htm> accessed on 15th July 2005, also at

http://www.unido.org/userfiles/timminsk/Zanzibar_Declaration.pdf accessed 13th May 2007. The document was developed during the LDC Trade Ministers’ Meeting on 22-24 July 2001

⁷⁶ Quote from Bridges Weekly Trade News Digest, ‘LDCs say ‘Not Ready’ for New Round’, Vol 5 No 29 at <http://www.ictsd.org/html/weekly/31-07-01/story3.htm> Unwillingness to contemplate a new Round from M Khor of TWN on 28th July ‘LDC Ministers not prepared to negotiate on new issues’ at <http://www.twinside.org.sg/title/prepared.htm> accessed 15th May 2006

⁷⁷ From ICTSD Bridges Weekly Trade News Digest Vol 5 No 25 3rd July 2001 ‘Expert Panel Calls for WTO Reform and Launch of Development Round’ at <http://www.ictsd.org/html/weekly/03-07-01/story2.htm> accessed 20th February 2008.

following year because of possible threats to the outcome of the May elections.⁷⁸

Domestic pressures, then, especially in the contentious field of agriculture, could not be ignored, as had been the case in the Uruguay Round.

Perhaps in an effort to distance themselves from their support of discussing social issues in the WTO, the Commission approved COM(2001)416 on '*Promoting core labour standards and improving social governance in the context of globalisation*' in July. The extract from the EU Bulletin does not refer to the WTO at all; rather it talks about discussions being internal to ILO, apart from a vague reference to the need for "a regular international dialogue" on trade/labour issues along with wider social concerns.⁷⁹ The Commission also seemed to have taken on board Canada's proposal from the Seattle Ministerial, wanting to begin an "international dialogue with...ILO and the WTO...UNCTAD, the World Bank, and the UNDP".⁸⁰ This was, perhaps, an effort to ensure that "International efforts to secure minimum labour standards (were) not allowed to muddy the agenda of the next round of trade liberalization talks" although it seemed unlikely whether Parliament, given their previous position on trade/labour issues, would agree to this.⁸¹

The first draft of the Doha Ministerial Declaration circulated on 26th September did not receive a great deal of support from delegations.⁸² The Commission commented that the wording on environment, investment and competition, in particular, were unacceptable. This might be put down to political posturing as it was reported that the EU had been forced to make significant concessions to ensure commitment from the developing countries, including reducing the agenda.⁸³ The WTO Secretariat seemed to think that the draft Declaration for Doha was much less contested than that for Seattle as it was nine pages long with only six pairs of square brackets, suggesting that problems could

⁷⁸ M Mann and G de Jonquieres, the Financial Times of 8th September p6 'France shows nervousness over trade round launch'

⁷⁹ Extract from the EU Bulletin 7/8 2001 at <http://europa.eu.int/abc/doc/off/bull/en/200107/p106036.htm> at http://sed-trade-forum.ictilo.org/eng/Papers/eu/5_COM_2001_416_final.pdf both accessed 13th May 2007

⁸⁰ The Bridges Weekly Trade Digest 'EU labour standards strategy', Vol 5 No 28, 24th July 2001 at <http://www.newsbulletin.org/getbulletin.CFM?SID=> accessed 13th May 2007

⁸¹ M Mann, the Financial Times of 18th July, p10 'EU urges full speed on new trade round'

⁸² Sustainable development lacking in draft declaration' in Bridges Trade News Weekly Digest, Vol 5 No 33, 2nd October 2001 at <http://www.ictsd.org/weekly/01-10-02/story1.htm> accessed 15th September 2006

⁸³ C Denny, the Guardian of 28th September p27, 'WTO pares down trade agenda'

be resolved in the Ministerial even if not beforehand.⁸⁴ Meanwhile, the European Parliament clarified that it still sought a wide agenda and wanted the negotiations to take on board the views of civil society (although how this would be done was not detailed) and for the WTO to become more transparent, through the foundation of “a parliamentary assembly”, a more refined view of the ‘watchdog’ they had sought in the aftermath of Seattle, which might have the added advantage of ensuring they had more say in external trade.⁸⁵ As far as the content of their agenda was concerned, social issues (particularly labour standards) were very much to the fore. Therefore, it seemed clear that the Commission’s position on labour standards, as expressed in COM(2001)416, would not be supported by Parliament. Council’s conclusions, meanwhile, were much closer to the Commission’s, and absolutely in line with the existing mandate.⁸⁶

The second version of the Ministerial Declaration was circulated in October and it would appear, from the lack of discussion, that the EU was happier with its content. However, NGOs continued to be sceptical that there was any meaningful commitment to a ‘Development Round’.⁸⁷ Lamy seemed aware of this criticism and, as if to defuse it, had been offering money to help the developing countries meet their WTO obligations “and...indicated (the EU’s) readiness to open its markets wider to their textiles imports” to a range of countries beyond the LDCs (who already benefited from EBA) suggesting he had taken on board the need for flexibility to meet the expectations of the developing countries in a broader sense, perhaps again searching for the right combination of carrot and stick so the WTO agenda could be widened.⁸⁸

⁸⁴ From WTO Ministerial Conference Briefing Note: ‘The Doha Ministerial: culmination of a two year process’ sourced at http://www.wto.org/english/thewto_e/minist_e/min01_e/brief_e/brief02_e.htm accessed 20th February 2008. This also shows the efforts made internally to address some of the developing countries concerns prior to the Ministerial

⁸⁵ EU Bulletin 11-2001 at <http://europa.eu.int/abc/doc/off/bull/en/200110/p106028.htm> accessed 15th August 2006

⁸⁶ EU Bulletin 11-2001 at <http://europa.eu.int/abc/doc/off/bull/en/200110/p106030.htm> accessed 15th August 2006

⁸⁷ Oxfam suggested that the draft was still too oriented to the developed countries (from the ‘Oxfam position on 27 October draft Doha Ministerial Declaration’ at http://www.oxfam.org.uk/what_we_do/issues/trade/doha271001.htm accessed 17th July 2006. Christian Aid said that countries were being pushed into supporting a new Round or risking having their aid revenues cut from Article of 2nd November ‘WTO latest: poor countries face threats and intimidation’ at <http://www.christian-aid.org.uk/campaign/trade/dohanew2.htm> accessed 16th July 2006

⁸⁸ G de Jonquieres and F Williams, the Financial Times of 9th November page 10 ‘Poor countries raise hurdle at WTO’

The Doha Ministerial

The atmosphere in Doha would be far more conducive to reaching agreement and allowing bargains to hold than Seattle had been, if nothing else because the Final Declaration was already advanced in its development. In addition, the events of 9/11 in New York appeared to have discouraged travel (Yergin and Stanislaw, 2002: 379-380).⁸⁹ Possibly Friends of the Earth were closer to the mark by saying that the lack of demonstrators was because very few representatives from NGOs had been allowed entry to Qatar and this was in addition to the expense of getting there in the first place.⁹⁰ There is, however, some evidence of NGO direct action during the Ministerial although not at the level seen in Seattle.⁹¹ The calmer negotiating environment raised the issue that perhaps the WTO could use elite-bargaining in order to gain agreement; with the resultant opportunity for technocratic leadership on the part of the Commission.

Once again, the tables below show the distribution of preferences within the Ministerial, in the same way as tables were produced for previous Ministerials, in order to ascertain how likely it was that there would be a successful outcome for the Commission. The structure of the previous tables has been reproduced here. Given the Zanzibar Declaration, and seemingly further efforts on the part of the developing countries to work together to agree positions, it is instructive to note the extent to which there are similarities within their Statements to the Doha Ministerial.

⁸⁹ Also Alan Beattie, the Financial Times of 9th November page 10 Anti-globalisation warriors shift their ground'

⁹⁰ From FOEI's Link Magazine Issue 99 at <http://www.foei.org/publications/link/99/e992223.html> Also see C Hodson of CNN.com 'Doha Talks: Same Again or a New Era?' of 7th November 2001 at <http://edition.cnn.com/2001/WORLD/meast/11/06/qatar.hodson/> both accessed 12th September 2006

⁹¹ See the Indymedia UK webpage 'Protest in Doha Tonight' 10th November 2001 by Thatcher Collins at <http://www.indymedia.org.uk/en/2001/11/15915.html> accessed 12th September 2006

The LDCs

Table 6.4 The positions of the least-developed countries (LDCs) in the Doha Ministerial.

	New issues	Trade/ investment	Trade/ labour	Trade/ environment	New Round	Concerns
Bangladesh (WT/MIN(01)/S T/40)	Movement of natural persons				Possibly	Market access/Rules of origin/ <i>Implementation</i>
Burundi (WT/MIN(01)/S T/127)	Technology transfer/ Zanzibar Declaration				Probably not	Market access/ SDT
Gambia (WT/MIN(01)/S T/53)	Cotonou waiver	Yes			Probably not	Technical assistance/ Representation/ NTBs
Lesotho (WT/MIN(01)/S T/52)	Cotonou waiver				Possibly	Market access/ NTBs/SDT
Madagascar (WT/MIN(01)/S T/88)	Zanzibar Declaration/ WGs on Trade and transfer of technology/ Trade and debt	Yes (trade/ finance)			Probably not	Debt/ Market access/ Technical assistance
Malawi (WT/MIN(01)/S T/121)	Infrastructure assistance/ structure of commodity markets/ Technology transfer				Possibly	Implementation/ Market access
Mauritius (WT/MIN(01)/S T/66) ⁹²	Work programme on small, vulnerable developing economies/ Cotonou waiver					Extension for incentives to export firms/ Financial assistance
Mozambique (WT/MIN(01)/S T/84)	Non-trade conditionalities	Yes (not a priority)		Yes (not a priority)		Implementation/ SDT/ Rules of origin
Myanmar (WT/MIN(01)/S T/109)	Standstill clause on trade barriers	Yes			Possibly	Implementation/ Future work programme/ Assistance for LDCs
Nepal (WT/MIN(01)/S T/148)	Zanzibar Declaration				Possibly	Marginalisation/ Accession process
SADC (WT/MIN(01)/S T/138)	Work programme for small economies/ WGs on Trade and transfer of <i>technology</i>		(See Decl. from Singap ore).			Implementation/ Agriculture/ Market access.
Senegal (WT/MIN(01)/S T/38)	Market access for tourism, health, professional and construction services					Implementation/ Market access/ SDT

⁹² By Mauritius on behalf of Small, Vulnerable Developing Economies including Small Island Developing States (SIDS)

Sierra Leone (WT/MIN(01)/S T/133 Rev.1)	No	No	No	No	Possibly	Marginalisation/ TRIPS/ Technical assistance
Solomon Is. (WT/MIN(01)/S T/115)	Cotonou waiver	No	No	No	Possibly	Representation in Geneva/ Accession/SDT
Tanzania (WT/MIN(01)/S T/23)	Technology transfer	Study	Study	Study	No	Development/ capacity building/TRIPs
Togo (WT/MIN(01)/S T/59)					Possibly	Implementation/ agriculture/SDT
Uganda (WT/MIN(01)/S T/111)	Trade and transfer of technology/ trade and debt	Yes (trade/ finance)	Study	Study	Possibly	Marginalisation/ Implementation/ TRIPs
Zambia (WT/MIN(01)/S T/123)	WTO structure	Study	Study	Study	Probably not	Marginalization/ Implementation/ Agriculture

In spite of the assumption that the developing countries were working more closely together in the lead-up to Doha, there is little evidence of aligned preferences. This suggests that Seattle did not herald a level of co-working to any great extent.

Furthermore, the Commission may have been able to act to draw together a coalition around its own position and encourage adherence to it at Doha. However, there is no wholehearted endorsement of a new Round here even though the vast majority of countries expressed an opinion (excepting only Mozambique and Senegal).

The main concerns were implementation (from eight countries) and SDT and market access (from six); exactly the same as at Seattle, with, seemingly, no progress being made towards resolution in the two intervening years. There is generally more support for trade-investment rules, than there was at Singapore, although this is not strong. This might have been seen as a way of demonstrating the 'flexibility' that the Commission had called for earlier although not on trade-labour or trade-environment where there was scarcely any support for further WTO activism. Interestingly, although there were only five suggestions for 'new issues' at Seattle, here most countries suggested at least one initiative. Although their interests are dispersed, technology transfer was mentioned by five countries. This might suggest that the developing countries were becoming more enthusiastic about using the WTO to discuss matters of interest to them, rather than being negative about others aspirations for new work items.

Table 6.5 The positions of the G20 countries in the Doha Ministerial.

	New issues	Trade/ investment	Trade/ labour	Trade/ environment	New Round	Concerns
Argentina (WT/MIN(01)/ST/16)				No		Market access/ Implementation/ Agriculture/
Brazil (WT/MIN(01)/ST/12)					Yes	Implementation/ Agriculture/subsidies & tariffs
China	(Singapore issues are important but capacity restraints)		No			Decreasing participation of developing countries in world trade/ Implementation/ Need to address issues of concern to developing countries
India (WT/MIN(01)/ST/10)		Study	No	No	No	Agriculture/ Services/ market access
S. Africa (WT/MIN(01)/ST/7)	Modernization of WTO/ Globalisation & linkages	Study	Study	Study		'Rebalancing' WTO rules/TRIPS/ Agriculture/tariffs & subsidies

The difference in perspective from Seattle is quite noticeable with only Brazil, at Doha, calling for a new Round and India failing to express a view in support of trade-environment work as they had done at Seattle. Furthermore, only two countries now emphasize the need to do something more for the developing countries; China and South Africa although two of the others talk about problems with implementation and market access, which suggests there is still a coalition to support further effort in this direction.⁹⁴ The strong consensus position here is on agriculture with now four out of the five countries saying that more needed to be done. However, there is no consensus on new issues (with only one proposal) and a general negative, where any opinion has been given, on trade/labour and trade/environment.

⁹³ China did not make a statement at the Doha Ministerial so China's position has been taken from the G77 and China Declaration on the 4th Ministerial Conference, Geneva 22nd October 2001 reproduced at <http://www.cptech.org/ip/wto/doha/g77+china.html> accessed on 13th May 2007

⁹⁴ China's position has been extrapolated from the G77 position, which is a grouping of developing countries so it is logical that this is emphasized in the document.

Table 6.6 The positions of the Quad countries in the Doha Ministerial.

	New issues	Trade/ investment	Trade/ labour	Trade/ environment	New Round	Concerns
Canada (WT/MIN(01)/ST/13)	Growth and development/ Coherence		Yes		Yes	Agriculture/ Services/ Implementation/ Market access
EC (WT/MIN(01)/ST/4)	Sustainability	Yes		Yes	Yes	Implementation/ Development/ TRIPs
Japan (WT/MIN(01)/ST/9)	Anti dumping	Yes		Yes	Yes	Agriculture/ Services/ Trade and sustainable development/ Health aspects of TRIPs
USA (WT/MIN(01)/ST/3)	Growth and development				Yes	Implementation/ Agriculture/Market access/ Health aspects of TRIPs

Although, once again, the Quad is aligned in its wish for a new Round, in the other areas the members are not so closely positioned. It is also still evident that the Commission wanted a wider agenda than the US, the latter which was also noticeably reticent on trade-investment, trade-labour and trade-environment work.⁹⁵ What is also interesting is that Canada was now the only Quad member to advocate explicitly the pursuance of trade/labour efforts. Although it appears that agriculture is the area where there is a strong coalition (minus the EC), Japan was considered strongly protectionist whereas Canada and the US wanted more openness. These differences may have been why Lamy again emphasised in his Statement that “we will only succeed in Doha if there is flexibility, on the part of all participants” or it risked another failed Ministerial. There is little evidence of any post-Seattle “change of spirit” in the Quad, with development issues assuming a new importance (Stiglitz and Charlton, 2004: 496) although the Commission later suggested that a development focus to the Declaration was their idea.⁹⁶

⁹⁵ This is important because in ‘WTO Ministers close rank on new development Round’ the Washington Trade Daily of October 15th 2001 cited Zoellick as saying “both Washington and Brussels have worked hand-in-hand toward the launch of a new round this year” sourced from <http://www.tradeobservatory.org/headlines.cfm?refID=16822> accessed on 13th May 2007. Furthermore, the G8 had appeared to be aligned in their quest for an ambitious agenda for the next Round.

⁹⁶ From the European Commission’s ‘Doha Development Agenda’ page of Trade Issues at http://ec.europa.eu/trade/issues/newround/doha_da/index_en.htm accessed 20th February 2008

The negotiations

Although it might have been thought that lessons about the lack of openness and transparency in decision making procedures may have been learnt from Seattle, the management of the Ministerial still seemed to rely more on exclusivity than inclusivity. Six groups, on each of the perceived key issues had been convened under 'Friends of the Chair' in order to address developing countries' concerns.⁹⁷

"These 'Friends of the Chair' were not elected - in fact, developing countries were not even consulted...the heavily criticised Green Rooms had been replaced by even less transparent 'Green Men'".⁹⁸

After these 'Friends of the Chair' reported back, there was a general discussion on issues not covered by the groups including labour standards. Once again, the differences between developed and developing countries was highlighted, with some developed countries wanting an explicit reference to WTO work in the area alongside the ILO while a number of the developing countries refused to accept changes to the text, some wanting to take out references to the ILO and some wanting it to be completely removed because the wording had already been decided in Singapore.⁹⁹ There were reports that the developed countries tried, in the meetings, "to extract the maximum amount of concessions from the weak...for the minimum cost" rather than demonstrating any real commitment to development objectives.¹⁰⁰ This suggests that a lack of will for a development Round and implies that it would continue to be difficult to persuade developing countries to embark on any negotiations.¹⁰¹

⁹⁷ The six key issues were TRIPs, agriculture, implementation, environment, Singapore issues and 'rules'

⁹⁸ WDM Press Release 'Doha: It's deja-vu all over again' by B Coates, 12 November 2001 at <http://www.wdm.org.uk/news/presrel/current/dejavue.htm> accessed 15th August 2007

⁹⁹ WTO report of 11 November at http://www.wto.org/english/thewto_e/minist_e/min01_e/min01_11nov_e.htm accessed 15th August 2007

¹⁰⁰ C Denny, the Guardian of 12th November p21-2 'Developed World Accused of Bully Boy Tactics in the WTO'

¹⁰¹ C Denny, the Guardian of 14th November p26, 'Europe isolated by WTO'

Fortunately, however, there would be an incentive to move forward when the long awaited waiver for the banana regime in the Cotonou Agreement, was agreed by the WTO so allowing a preferential trade agreement on bananas, from the ACP countries to the EC, to continue; at least until the EBA arrangements kicked in.¹⁰² That this was a precursor to achieving agreements in the WTO was highlighted in the same article;

“The 78 ACP countries (56 of which are Members of the WTO) had previously threatened to oppose any new trade negotiations - especially on Singapore issues, environment and labour - unless the EC waiver request was approved”.

Although this was a positive, there was also a negative likely to outweigh this gain, damage the internal consensus and contribute to the difficult negotiating environment. France, as it had threatened before, refused to give its assent to the agricultural negotiations agenda, specifically the part which said that negotiations would aim towards ‘phasing out’ all farm export subsidies.¹⁰³ This could have had the effect of holding agricultural negotiations hostage to making gains in other areas, also exacerbating the tensions between the EU and the Cairns Group along with the G20.

A new draft of the Declaration was circulated in the morning of the final day of the Conference. CIDSE, one of the Commission’s Contact Group members, made the comment that although this version was worse than an earlier draft, countries did not wish to be seen to be a barrier to consensus and force the collapse of this Ministerial.¹⁰⁴ This must have had the desired effect as WTO members eventually agreed to launch a new three-year duration Round.¹⁰⁵ France’s opposition was somewhat mollified by “a

¹⁰² Bridges Weekly Trade News Digest ‘EC-ACP Cotonou Waiver Finally Granted’, Vol 5 No 39, 15th November 2001 at <http://www.ictsd.org/weekly/01-11-15/story2.htm>

¹⁰³ France’s position is detailed in G de Jonquieres and F Williams, the Financial Times of 14th November, page 14 ‘Trade talks falter as France blocks farm subsidy deal’. Page 7 of COM(1999)331 said that there were certain issues that would be raised and, with this in mind, “the Community should pursue an active market access policy with a view to eliminating barriers to entry in certain third country markets, export subsidies (including export credits) and state trading enterprises”, which suggests that all members realised that the question of export subsidies would be raised. This is further detailed in the negotiating mandate which says “The Union is willing to continue to negotiate in the process of reducing trade barriers...as well as (in) both domestic and export support”. The aim to ‘phase out’ export subsidies, with no fixed timescale, is so weak, that it seems unlikely that France took this stance for anything other than domestic political reasons.

¹⁰⁴ Acronym stands for Coopération Internationale pour le Développement et la Solidarité from the CIDSE Assessment of the Fourth WTO Ministerial Meeting at <http://www.cidse.org/en/tg1/AssDoha.htm> accessed 15th December 2005

¹⁰⁵ G de Jonquieres, the Financial Times of 15th November, page 1 ‘WTO agrees to launch trade round’

qualification” to the agricultural agenda along with “a stronger WTO commitment to negotiate on trade and environment” (ibid).¹⁰⁶ The eventual agreement reached was, in the end, wide ranging perhaps because the meeting was extended by one day, allowing agreement to be reached on suitable wording for the agriculture clause or perhaps because the amended draft dealt much more with developing country concerns than the previous had done, containing more references to SDT, building capacity and technical assistance.¹⁰⁷ Perhaps, also, the Commission had been able to attract developing countries onside because of EBA. Furthermore, it was agreed that negotiations on the Singapore Issues would only begin on the basis of an “explicit consensus” at the next Ministerial meeting in Cancún. The Chairman was called upon to interpret this wording and concluded that it would “give each member the right to take a position on modalities that would prevent negotiations from proceeding after the Fifth Session of the Ministerial Conference until that member is prepared to join in an explicit consensus”.¹⁰⁸ This made it clear that the Declaration was, at least with the Singapore Issues, a statement of what might happen as opposed to what would happen.¹⁰⁹ In spite of this, Robert Zoellick was to comment that Doha “had removed the stain of Seattle” from the WTO.¹¹⁰

¹⁰⁶ That the outcome would not be “prejudged”.

¹⁰⁷ Agricultural clause wording from a paper by L Jolly, the Senior Economist of the International Sugar Corporation in a paper submitted to the 12th Informal Consultation between the World Association of Beet and Cane Growers and the ISO Council dated 26th November 2001 at <http://www.sugaronline.com/iso/store/speeches/jolly3.pdf#search='doha%202001'> accessed 12th September 2006. Suggestion that this was due to the development focus was from the Day Five and Six Report of the Doha meeting by the Australian Government’s Department of Foreign Affairs and Trade at http://www.dfat.gov.au/trade/negotiations/ministerial/doha_13_141101_report.html accessed 12th September 2006. B Coates of the World Development Movement (“WTO Ministerials: Doha 2001”) said that the additional day meant that “several delegations (had) already caught their flights home” at <http://www.wdm.org.uk/news/blogs/wto2001/index.htm> accessed 15th April 2008

¹⁰⁸ Chairs speaking notes at http://www.wto.org/english/thewto_e/minist_e/min01_e/min01_chair_speaking_e.htm accessed 12th September 2006. Additional citation from the Report of the Meeting by J Madeley for the DFID ‘Developments’ (the international development magazine) ‘WTO members agree new trade round’ at http://www.developments.org.uk/data/16/id_wto.htm accessed 12th September 2006. This was possibly because of the position of India, see the South Centre’s 14th November’s piece ‘Doha ‘Development Agenda’ Launched’ at <http://www.southcentre.org/info/doha/doha9/doha9%20.htm> accessed 12th September 2006

¹⁰⁹ See also the Europaworld (issue 56) article of 9th November 2001 ‘Is Doha Doomed?’ at <http://www.europaworld.org/issue56/isdohadoomed91101.htm> accessed 12th September 2006, noting the problems of achieving consensus

¹¹⁰ From V Shiva for the Global Policy Forum ‘Doha: Saving WTO, Killing Democracy’ at <http://www.globalpolicy.org/socecon/bwi-wto/wto/2001/1204dem.htm> accessed 15th April 2008

The Conclusions of the Doha Ministerial

There were three papers issued at the end of the Doha meeting: a draft *Ministerial Declaration* (WT/MIN(01)/DEC/W/1), a draft *Declaration on the TRIPs Agreement and Public Health* (WT/MIN(01)/DEC/W/2) and a *Draft Decision on Implementation Issues and Related Concerns* (WT/MIN(01)/DEC/W/10).¹¹¹

The key paragraphs of the Doha Declaration were the sixth, which confirmed the WTO's support of sustainable development, linked trade to environment issues and also upheld the use of the precautionary principle, and the eighth, a very brief paragraph on labour standards, which showed that the debate had not moved on since Singapore; "We reaffirm our declaration made at the Singapore Ministerial Conference regarding internationally recognized core labour standards. We take note of work under way in the International Labour Organization (ILO) on the social dimension of globalization".¹¹² Even where some of the issues covered in the Declaration had not been set as specific targets by the Commission, or were not in the mandate, in most cases the wording is so vague that there appears little for member states to be concerned about. The section on WTO Rules is a little more difficult to assess in terms of judging whether this was positive because the focus appears to be on subsidies and regional trade agreements. It is not clear whether the Commission would be supportive of this initiative (especially as these issues do not feature in COM(1999)331) although there is no end date given for completion of negotiations.

Although, then, the work programme looks very "broad and balanced", to cite section 11 of the Declaration, in the end much is based on the commitment to 'study' issues rather than immediately move forward to begin negotiations. Discussion of this terminology would continue to Cancún and beyond and will feature strongly in the following chapter. Perhaps it was hoped that developing countries would engage with the new Round as it now had a strong development focus and the *Decision on Implementation Issues* suggested that some of the longstanding concerns raised by them (some of which had already been tackled in Doha) might be resolved before the next

¹¹¹ The WTO Report of 14th November (at http://www.wto.org/english/thewto_e/minist_e/min01_e/min01_14nov_e.htm accessed 12th September 2006)

¹¹² Text of the Agreement can be found at at http://www.wto.org/english/thewto_e/minist_e/min01_e/mindecl_e.htm accessed 12th September 2006

Ministerial.¹¹³ Although Amrita Narlikar (2004: 420) later suggested that the consensus to a widened agenda at Doha was facilitated by “flawed...procedures” (presumably Green Rooms) and “sowed the seeds for collapse at Cancún”, this seems unlikely because of the nature of the Doha document; geared as it was towards ‘study’ with little substance on the likely nature and duration of negotiations.

The European Commission’s information page seems to overplay the significance of what happened at the Doha Ministerial, presumably because it was for public rather than internal consumption. It suggests that the Declaration and related decisions:

“Takes the WTO into a new era. Not only will the WTO continue to improve conditions for worldwide trade and investment; it will also, through enhanced and better rules, be able to play a much fuller role in the pursuit of economic growth, employment and poverty reduction”.¹¹⁴

This fits with the tone of the Commission’s official report of the meeting which was somewhat self-congratulatory.¹¹⁵ In services, “the EU’s objectives were fully realised” and negotiations on geographical indications for wines and spirits “was an EU priority”.¹¹⁶ The Council seemed less enamoured with Doha, agreeing only, “the results of the conference as a whole were satisfactory”.¹¹⁷ However, Portugal had problems accepting the wording on textiles in the declaration on implementation and Council reiterated how important it was to continue to discuss labour standards and globalisation, showing that the ghost of labour standards could still not be laid to rest. The European Parliament, which issued their resolution a month later (although it is mentioned here for narrative clarity) in spite of Doha achieving nothing of note in terms of labour standards or on any structural changes to the WTO, seemed generally content

¹¹³ See the WTO page on the Doha Implementation Decision Explained at

http://www.wto.org/english/tratop_e/dda_e/implem_explained_e.htm accessed 20th February 2008

¹¹⁴ “The Doha Development Agenda” in the European Commission’s Trade Issue pages;

http://europa.eu.int/comm/trade/issues/newround/doha_da/index_en.htm accessed 20th February 2008

¹¹⁵ EU Bulletin 11-2001 at <http://www.europa.eu.int/abc/doc/off/bull/en/200111/p106028.htm> accessed 20th February 2008

¹¹⁶ This did not feature as a ‘priority’ in the mandate or in COM(1999)331.

¹¹⁷ Council conclusions, adopted on 14th November (<http://europa.eu.int/abc/doc/off/bull/en/200011/p106029.htm> accessed 12th September 2006)

with the outcome.¹¹⁸ It simply remarked that there should be more transparency and that consideration should be given to a parliamentary assembly. That the internal coalition held together, and the Parliament and Council accepted a less than satisfactory outcome, could be seen as significant 'win' for the Commission.

Interestingly, after Doha, at a meeting with civil society representatives, Lamy tried to suggest that his commitment to labour standards was of greater priority than he had demonstrated thus far (including in his statement to the Doha meeting), although whether it meant that he would continue to promote labour standards in the WTO on his own volition went unsaid.¹¹⁹ He remarked that the Commission "had wanted a clearer articulation of the role of the WTO with regard to the ILO" and, instead, this was implicit in the Declaration rather than explicit.¹²⁰ This appeared to be a thinly veiled attempt to encourage civil society representatives to be supportive of his efforts, rather than criticise the EU for failing to address social issues although it ignored the Commission's position, upon which the mandate was based, as set out in COM(1999)331.¹²¹

The Fifth WTO Ministerial – Cancún, 10th-14th September 2003

The Lead Up

After Doha, Lamy must have been pleased that the OECD was actively lobbying for his proposal for duty and tariff free access for products from the developing countries as there had been insufficient progress on this issue in the WTO.¹²² On the negative side,

¹¹⁸ 13th December 2001 in <http://www.europa.eu.int/abc/doc/off/bull/en/200112/p106024.htm> accessed 12th September 2006

¹¹⁹ Presentation on 'What next for our dialogue with civil society?' (from http://europa.eu.int/comm/archives/commission_1999_2004/lamy/speeches_articles/spla89_en.htm accessed 3rd January 2006. Statement to the meeting, as cited earlier, Statement accessed via the portal at http://www.wto.org/english/thewto_e/minist_e/min01_e/min01_statements_e.htm on 12th November 2005

¹²⁰ These remarks were given pride of place in the ILO January 2002 newsletter at http://www.us.ilo.org/archive/news/2002/ilowatch_0201.cfm accessed 14th November 2005

¹²¹ This need to encourage a supportive relationship with civil society partners might have resulted from an open letter to Pascal Lamy on 11th May 2001, wherein a coalition of ninety nine NGOs from nineteen European countries "sharply criticiz(ed) the EU's stance in the WTO in pushing for 'a comprehensive new WTO trade round focusing on investment and competition'" from C Raghavan, the Third World Network on 11th May 'European Civil Society denounces EC's WTO stance' at <http://www.twinside.org.sg/title/european.htm> accessed on 6th August 2005

¹²² Report from the OECD Ministerial meeting in Paris of 15th –16th May 2002 in EU Bulletin 5-2002 at <http://europa.eu.int/abc/doc/off/bull/en/200205/p106033.htm> accessed 10th November 2005

the Commission was concerned about the US Farm Bill, which had been criticised by the Cairns Group for going against the Doha Declaration on abolishing farm subsidies.¹²³ Although the Deputy USTR expressed his willingness to negotiate on agricultural reform, suggesting there might, after all, be an opportunity to make progress on this at Cancún, Lamy was sceptical “whether (he) can speak in the name of the United States”, speculating whether the US would really be prepared to open this up for debate.¹²⁴ In spite of this, another important step towards a positive outcome at Cancún was when President Bush finally achieved fast-track authority from Congress at the end of July. Lamy agreed that this “removes an important roadblock to the Doha Development Agenda... Now we have to... generate real momentum in these negotiations”.¹²⁵ This optimism was shared by the WTO as, once Fast Track was in place, decisions taken at Cancún would hold rather than risk protracted internal ratification. This also added an incentive for Lamy to continue to bridge-build with Zoellick.¹²⁶

Despite the optimism about transatlantic relations, the internal consensus was reported to be fragile again on CAP reform particularly between the UK and France.¹²⁷ Lamy urged quick reform, attempting to guard against too much entrenchment of positions. Under the Commission’s new plan, “aid would be more de-coupled from production and linked to compliance with environmental, safety and animal welfare standards” – this was argued to be more in line with the ‘multifunctionality’ argument advanced in the WTO and showed a linkage between internal reforms giving an external capacity to act. In spite of this, tensions with France were to become more explicit with President Chirac commenting that he would be prepared to veto talks on agricultural reform in

¹²³ Information about the Farm Bill from ICTSD Bridges Weekly Trade News Digest of 22nd May (vol 6 no 19) ‘Despite Internal Trade Spats, OECD Members Advocate Free Trade’ at <http://www.ictsd.org/weekly/02-05-22/story6.htm> accessed 14th November 2005. Criticism levied by Cairns

Group in ICTSD Bridges Weekly Trade News Digest of 22nd May (vol 6 No 19) ‘Cairns Group Joins In Criticism Of Us Farm Bill’ at <http://www.ictsd.org/weekly/02-05-22/wtoinbrief.htm> accessed 14th September 2005

¹²⁴ BBC News, Thursday 16th May ‘Protectionism ‘may hurt growth’ at <http://news.bbc.co.uk/1/hi/business/1991787.stm> accessed 15th September 2005

¹²⁵ The Commission Spokesman’s Briefing of 2nd August 02 at http://www.hri.org/news/europe/midex/2002/02-08-02_midex.html, also see P Blustein International Herald Tribune 29th July, page 1, ‘Bush wins battle for trade powers’

¹²⁶ WTO Press Release of 2nd August Press/308 at http://www.wto.org/english/news_e/pres02_e/pr308_e.htm accessed 15th September 2005

¹²⁷ The Bridges News Digest of 9 October vol 6 no 34 ‘Split On EU’s Ag Policy Reinforced By British Minister’s Comments’ at <http://www.ictsd.org/weekly/02-10-09/story3.htm> accessed 15th September 2005

Europe and, thus, in the WTO.¹²⁸ The WTO expressed ‘disappointment’ at the lack of progress on agriculture and with the lack of political will to make a breakthrough.¹²⁹ The concern could have been exacerbated by emerging details of the EU’s new agricultural aid regime, which would also cover “olive oil, tobacco and cotton”, the latter of particular interest to the developing countries and so liable to draw criticism, and affect the negotiating environment, in the WTO.¹³⁰

The European Parliament’s resolution on Cancún was, once again, in line with existing Commission views.¹³¹ The main exceptions were that it specifically asked the Commission to ensure that a Parliamentary Assembly was set up and sought further action on sustainable fisheries, trade defence instruments (there was an acknowledgement in the mandate that this might be of interest to developing countries) and for a unit to be set up allowing cheaper access to the DSU for developing countries (again, there was a suggestion in the mandate that “decisions could...be taken on improvements of the DSU”, although this does not cover Parliament’s points specifically). Council’s conclusions on Cancún also broadly fit with the mandate although did not mention the Singapore issues, perhaps an acknowledgement that without substantial changes to agricultural support, which would not happen, no progress could be made.¹³² On the same day as it gave conclusions for Cancún, Council also issued its conclusions on the Commission Communication on ‘*Promoting Core Labour Standards and Improving Social Governance in the Context of Globalization*’ (COM(2001)416 final).¹³³ Council agreed there should be “incentives to promote core labour standards”, including corporate responsibility measures, alongside increased dialogue and monitoring but, just as the Communication did not, Council did not mention WTO had a role in this regard.

¹²⁸ I Black, A Osborn and C Denny, the Guardian of 21st June page 7 ‘Agriculture – Chirac Threat to veto reform of farm subsidies’

¹²⁹ G de Jonquieres, the Financial Times of 23rd June page 9 ‘Ministers fail to break deadlock on farm trade’

¹³⁰ I Black, the Guardian of 27th June page 15 ‘EU agrees to agriculture shake-up’

¹³¹ Bulletin 7/8-2003 at <http://europa.eu.int/abc/doc/off/bull/en/200307/p106043.htm> accessed 15th November 2005.

¹³² Same issue of the Bulletin (7-8/2003) at p106044 also accessed 15th November 2005. As the mandate does not appear to have been formally changed, this suggests that the new issues were not of much import in determining the Commission’s position in Cancún

¹³³ Same issue of the Bulletin (7-8/2003) at p106045 (accessed same date)

Negotiations on agriculture continued between the US and EC with Lamy and Zoellick agreeing to work to reach a common view. This was achieved, finally, in August 2003.¹³⁴ The joint position was then tabled at an informal WTO meeting, which may have been a way for the EU to defuse the acrimonious exchanges with the Cairns Group, or as a way to bypass domestic pressures on both sides.¹³⁵ In reality, however, there seemed little of substance in the outcome as it “outline(d) broad principles but contain(ed) no specific figures or target dates” and there was no effort to eliminate export subsidies, as had been set out at Doha.¹³⁶ Perhaps the most useful initiative was a single formula for cutting agricultural tariffs although this, in itself, was unlikely to encourage countries to sign up, which might adversely affect progress in negotiations in other areas.¹³⁷ Lack of support for the US-EC proposals became clear a day later when India officially rejected them for not going far enough while Japan and Switzerland criticized them for being too radical.¹³⁸ This seemed to galvanise other countries to express their opinions and was to culminate in the emergence of the G20 as a separate and distinct group within the WTO (Kerremans, 2006: 185). The G20’s response to the paper sought a complete removal of subsidies and noted that this had delayed the preparation of an agricultural draft for Cancún.¹³⁹ Washington and Brussels would then label the G20 responsible for the ‘impasse’ on agriculture by “making demands on rich countries but offering nothing in return”.¹⁴⁰

¹³⁴ See Briefing on the ‘EU-US Agriculture Framework Agreement’ from the Centre of North American Studies dated September 12th 2003 at <http://cnas.tamu.edu/publications/AgWTO803.PDF> accessed May 13th 2007 also in Europaworld of 15th August 2003 ‘EU US joint approach on agricultural questions’ at <http://www.europaworld.org/week140/euusjoint15803.htm> accessed 13th May 2007

¹³⁵ Report of informal meeting, which took place on 13th August is at ‘Agriculture: Real negotiations start as EU US table joint modalities text’ ICTSD Bridges Weekly Trade News Digest Vol 7 No 28 21st August 2003 at <http://www.ictsd.org/weekly/03-08-21/story2.htm> accessed 13th May 2007. Details of position in G de Jonquieres, the Financial Times of 31st July, page 8 ‘EU and US to seek common ground on farm trade’. This is also supported by an article by C Rammanohar Reddy, The Hindu of September 22nd 2002 ‘Road to Cancún Collapse’, which says that the EU-US proposal was worded so that “it would leave their subsidy mountain largely intact but open markets for their agricultural exports in the rest of the world” (sourced at <http://www.hindu.com/biz/2003/09/22/stories/2003092200090200.htm> on 13th May 2007)

¹³⁶ G de Jonquieres, the Financial Times of 14th August page 8, ‘US and EU unveil plan to cut farm trade subsidies’

¹³⁷ See also The Economist Special Report on World Trade talks September 6th 2003, pp73-75

¹³⁸ India rejection in C Denny and A Osborn, the Guardian of 14th August p18, ‘Farm deal puts WTO talks at risk’ Japan and Switzerland concern in G de Jonquieres, Financial Times 16th August page 7, ‘US-EU farm proposals leave WTO members in dilemma’

¹³⁹ F Williams, the Financial Times of 22nd August page 8, ‘Rifts over farm trade add to delay on Cancún plans’

¹⁴⁰ L Elliot and C Denny, the Guardian of September 13th p21 ‘Crisis talks as poor nations stand firm’

The Cancún Ministerial

Once again, for ease of comparison, the preferences of each country have been given in a table to show whether the Commission was likely to obtain an outcome close to what it wanted from the Cancún Ministerial. As there was now to be a development focus to this Round, alongside a commitment to address implementation issues, it would seem likely that the developing countries would be more willing to consent to additional negotiations, particularly for the Singapore issues, as these were being strongly pushed by the Commission (see the following Chapter).

*The LDCs*¹⁴¹

Table 6.7 The positions of the least-developed countries (LDCs) in the Cancún Ministerial.

	New issues	Singapore Issues	Concerns
Burundi (WT/MIN(03)/ST/1 26)	No		Simplification of rules of origin/ implementation, market access and SDT/agriculture
Chad (WT/MIN(03)/ST/1 12)	Mandatory and binding SDT obligations	Yes?	Market access/agriculture/cotton
Fiji (for Small, Vulnerable Economies) (WT/MIN(03)/ST/8 7)		Clarification should continue	Lack of resolution of outstanding concerns/SDT/preferences
Lesotho (WT/MIN(03)/ST/8 2)	No		Keeping to deadlines/ amendments to TRIPs/ agriculture.
Madagascar (WT/MIN(03)/ST/5 2)			Reduction of poverty/encouragement of investment/ technical assistance and greater market access
Mauritius (for the African Union) (WT/MIN(03)/ST/6 9)			Poverty/infrastructure/SDT
Malawi (WT/MIN(03)/ST/1 31)	Compensation for agricultural liberalisation		Improved financial and technical assistance/affordable access to medicines/ agriculture.
Mozambique (WT/MIN(03)/ST/7 4)	Food security	Study	Keeping to deadlines/addressing implementation and SDT/ increased technical assistance
Myanmar (WT/MIN(03)/ST/1 05)		Study	Reciprocity/greater market access/ technical assistance.

¹⁴¹ As Bangladesh's statement (WT/MIN(03)/ST/35) was concerned solely with membership issues, and neither Gambia nor Nepal made a statement, these three countries have not been listed here.

Senegal (WT/MIN(03)/ST/78)	Cotton		TRIPs/SDT/elimination of agricultural subsidies
Sierra Leone (WT/MIN(03)/ST/15)		Insufficient capacity	SDT/greater market access and supply-side constraints/technical and financial assistance
Solomon Is. (WT/MIN(03)/ST/68)			Flexibility/SDT/fisheries
Tanzania (WT/MIN(03)/ST/79)			Agriculture/ transparency/SDT
Togo (WT/MIN(03)/ST/138)	Cotton	Premature	Market access/elimination of imbalances and SDT/agriculture
Uganda (WT/MIN(03)/ST/75)	Extend geographical indicators/ market access for services	Insufficient capacity	Market access/ elimination of subsidies/ compatibility in environmental rules
Zambia (WT/MIN(03)/ST/16)			Provision of opportunities for growth and development/ responsiveness to needs of developing countries/ transparency in WTO

There are fewer 'new issues' proposed here than there were at Seattle, so much less evidence here that the developing countries were trying to take over the agenda with matters of collective interest. There is also a clear lack of will for negotiations on the Singapore Issues, which suggests that trade-offs, if made by the Commission, were not very successful. Eight countries raised concerns on the need for agriculture to be incorporated into WTO rules and also for a level playing field in terms of subsidies reflecting, and adding to, the debates between the Cairns Group/G20 and the EU/US. The same number of countries mentioned SDT provisions, which were still unresolved from Singapore. Furthermore, seven countries mentioned market access as a particular problem, again as six countries had done both at Singapore and Doha. This suggests very little in the way of a concrete effort towards a Development Round as the issues of greatest concern to the developing countries were still seemingly unaddressed.

Table 6.8 The positions of the G20 countries in the Cancún Ministerial.

	New issues	Singapore Issues	Development focus?	Concerns
Brazil WT/MIN(03)/ST/ 28			Yes	Agriculture
China WT/MIN(03)/ST/ 12	Equal participation in WTO		Yes	Market access/agriculture/SDT and implementation
India WT/MIN(03)/ST/ 7		No	Yes	Implementation/agriculture/tariffs & NTBs/ the 'Transfer of Trade' and 'Trade, Debt and Finance' working groups/cotton
S. Africa WT/MIN(03)/ST/ 43			Yes	Structural issues/agriculture

There is strong consensus evident here on having a development focus to the next Round combined with a perceived need to reach agreement on agriculture. Further to that, the theme of equal participation is also important; India mentioned the need for inclusivity in decision making for both this and preparatory processes for future Rounds. The G20 was primarily concerned that simply calling the Cancún Ministerial the start of a 'Development Round' would not be good enough. India said that unless there was substantial improvement in addressing matters of concern to developing countries (especially implementation) they "would be forced to conclude that the "development" element in the Doha Development Agenda is only rhetoric". Brazil agreed that development dimensions needed to be fully integrated "into the core" of the WTO not stuck on the edges as only this would ensure that developing countries could "genuinely benefit" (China) from the WTO. Perhaps because of the outstanding issues in the way development was dealt with, there is no agreement here on incorporating the Singapore Issues in the WTO agenda

¹⁴² This time it was Argentina, which did not make a statement in Cancún. It has not been included in the table however as it was a member of the Cairns Group it seems likely that it would have agreed with any general position on agriculture.

Table 6.9 The positions of the Quad countries in the Cancún Ministerial.

	New issues	Singapore Issues?	Development focus?	Concerns
Canada WT/MIN(03)/ST/9	Rules to “strengthen the flow of trade”		Hand in hand with envt'l protection, health and human rights	Greater cooperation between agencies/agriculture/market access for goods and services
EC WT/MIN(03)/ST/5	Tariffs in textiles	Yes	Yes being careful not to be confrontational	Market opening/NAMA/trade and environment
Japan WT/MIN(03)/ST/22 WT/MIN(03)/ST/23 ¹⁴³	Single formula for NAMA	Yes	Yes and to do this we need to improve “the governing system” of the WTO	Agriculture
USA ¹⁴⁴	Ensuring trade/envt mutually supportive	On the basis of explicit consensus	Yes	Missed deadlines (TRIPS and public health, SDT, implementation, DSU,NAMA)/ Capacity building/CAP reform

Although it is difficult to reach a definitive conclusion on the Quad position, they were not strongly aligned over what they sought from the Round, or even on including the Singapore Issues in the WTO agenda. The criticisms levied at the Quad at Seattle and Doha, and the problems that this might have created for their leadership of the consensus-building process, could be repeated here. In spite of the G20's comments about the need for action rather than rhetoric, Lamy said that the development Round was “a genuine process” although he continued that this ‘process’ was “to address the needs and concerns of all WTO members, including developing countries” suggesting that this was not necessarily primarily aimed at the LDCs. Although the Commission did not comment on trade/labour, as neither did Canada nor Japan, the Presidency did

¹⁴³ There are two statements from Japan to the Cancún Ministerial. The first is from the Minister of Economy Trade and Industry (22) and the second is from the Minister for Foreign Affairs (23). Both are equally relevant so have been used for the purposes of compiling the table

¹⁴⁴ In spite of requests to the WTO Secretariat and to the USTR's office (twice) I have not been able to source the statement from the USA to the Cancún Ministerial. Therefore, this is based on the results of the 2003 Meeting of APEC Ministers responsible for Trade held in Khon Kaen Thailand on 2-3 June. Statement of the Chair at http://www.apec.org/apec/ministerial_statements/sectoral_ministerial/trade/2003_trade.html accessed 20th February 2008. It has also noted the 2002 Economic Leaders' Declaration from Los Cabos, Mexico on 27th October at http://www.apec.org/apec/leaders_declarations/2002.html accessed 20th February 2008 where the WTO was discussed in some detail (and which is also cited in the first document).

bring it up again, saying “our final objective is to spread welfare around the globe... We need a major effort from all parties to assure... social conditions linked to the fundamental labour rights” although it must have been clear by now that there was no chance at all of success in the WTO context.¹⁴⁵

The negotiations

The meeting started on 10th September and, in the same way as at Doha, four ‘Friends of the Chair’ were chosen to deal with specific issues although the Groups that they presided over would be open to all.¹⁴⁶ News circulated that the Commission had produced an internal paper “planning to... remove all mention of eliminating export subsidies from the... final declaration” although Lamy had also suggested that WTO members eliminate export subsidies on cotton and allow free market access from the least developed countries, suggesting that the Commission would not propose such an absolutist measure.¹⁴⁷ Lamy’s call for the elimination of such subsidies was, anyway, seen as without substance; the EU did not subsidize cotton exports and already gave cotton from LDCs free access through the EBA.

Although a further draft Ministerial Declaration was circulated, consensus would not be easy to reach.¹⁴⁸ Progress on agriculture was, again, holding up proceedings as the US and EC had still not succeeded in building any bridges with their agriculture draft.¹⁴⁹

Although the rumour above was unsubstantiated, the Commission said now that it would only agree to eliminate export subsidies in areas “of particular interest to

¹⁴⁵ From the Statement from Italy on behalf of the Presidency of the EU WT/MIN(03)/ST/6 11th September 2003 at http://www.wto.org/english/thewto_e/minist_e/min03_e/statements_e/st6.doc accessed 21st February 2008

¹⁴⁶ WTO report of 10th September at http://www.wto.org/english/thewto_e/minist_e/min03_e/min03_10sept_e.htm accessed 15th August 2005. However, the problems with capacity, considering some delegations were extremely small, would no doubt mean that not all countries could have a representative in all groups thus making very little difference whether they were ‘open’ or ‘closed’.

¹⁴⁷ Rumour about removing reference to export subsidies from L Elliott and C Denny, the Guardian of 11th September page 16, ‘EU reneges on pledges to third world’. Lamy’s suggestion on cotton found at the Bridges Daily Update of 13th September issue 4 ‘New Ministerial Text to be issued today’ (http://www.ictsd.org/ministerial/cancun/wto_daily/ben030913.pdf) accessed 5th March 2006

¹⁴⁸ See http://www.ictsd.org/ministerial/cancun/docs/draft_cancun_minist_text_rev2.pdf for the complete draft Declaration, accessed 15th November 2005. Consensus issues raised in WTO’s report of the 13th September meeting at http://www.wto.org/english/thewto_e/minist_e/min03_e/min03_13sept_e.htm accessed 15th November 2005

¹⁴⁹ Bridges Daily Update of 14th September issue 5 ‘At the Eleventh Hour, divergence all over again’ (at http://www.ictsd.org/ministerial/cancun/wto_daily/ben030914.pdf) accessed 9th March 2006

developing countries” (ibid) although there was no suggestion as to what this might mean in practice and it must have inflamed the Cairns Group (as interviewee number 3 seemed to suggest).¹⁵⁰ Other barriers to achieving consensus were that the Singapore issues section of the draft Declaration proposed that negotiations should begin in all areas except trade and competition (much to the chagrin of the EC) and the reference to ‘explicit consensus’, had been removed (unpopular with the developing countries, as supported by interviewee 8). On the final day of the conference, the EC started to seek four sets of talks on the Singapore issues rather than bundling them together.¹⁵¹ It must have been clear, though, that (once again) this would not compensate for the lack of any significant movement on agriculture. Nevertheless, surprisingly, Chairman Derbez had concentrated on the Singapore issues in meetings which had continued through the night although this would ultimately prove to be a waste of time as no agreement was forthcoming.¹⁵²

Explanations for the failure of the Ministerial are as varied as the reasons given after the failure of Seattle. They range from accusations of “the sheer bloody mindedness of Lamy and the EU in insisting that the WTO dance to its tune” to problems brought about by the inclusivity of the process meaning that more developing countries were involved in decision making and less quick to give up concessions.¹⁵³ Other contributory factors cited include the lack of transparency and non-participatory structure to NGOs who “deluged poor countries with muddle-headed positions and incited them to refuse all compromise” to general North/South tensions.¹⁵⁴ Perhaps the

¹⁵⁰ There is no clear cut answer to why the Commission may have chosen to do this, except, perhaps, to pacify the French. After all, the results of Doha had been agreed with the only concern being Portugal’s views on textile tariffs.

¹⁵¹ G de Jonquieres and F Williams, the Financial Times of 15th September page 6, ‘Last –ditch bid to get trade talks on track’

¹⁵² WTO Report of the 14th September meeting at

http://www.wto.org/english/thewto_e/minist_e/min03_e/min03_14sept_e.htm accessed 15th October 2005

¹⁵³ Quote about Lamy and the EU from C Melamed of Christian Aid’s feature on ‘The Collapse of the WTO talks’ of 16th September 2003 at <http://www.christianaid.org.uk/cancun/030916feature.htm>. accessed 15th July 2007. Issues about inclusivity in ‘The Cancún WTO Ministerial Meeting September 2003: What Happened? What Does It Mean For Development?’ at

<http://www.cafod.org.uk/archive/policy/cancunanalysis20030924.shtml> submitted for the UK’s International Development Select Committee accessed 15th July 2005

¹⁵⁴ Lack of transparency brought up by Martin Khor Third World Network 21st September 2004 ‘Behind the Collapse of the Cancún Ministerial’ at <http://www.twinside.org.sg/title2/gtrends0301.htm> accessed 13th May 2007 Criticism of NGOs from ‘The WTO Under Fire’ in the Economist September 18th 2003 reproduced at <http://www.globalpolicy.org/soecon/bwi-wto/wto/2003/0918underfire.htm> accessed 13th May 2007. General North South tensions mentioned as a factor in the January 2004 US General Accounting Office report ‘The World

developing countries simply ran out of patience with the 'development round' given that they had been waiting since Singapore to have some of these issues of importance resolved.¹⁵⁵ Furthermore, the seeming consensus on agriculture from the Cairns Group alongside the G20 and the developing countries meant there was a highly politicized negotiating environment.¹⁵⁶ The Commission also identified agriculture as precipitating failure along with non-agricultural market access, the Singapore issues, development and "outstanding issues".¹⁵⁷ That agriculture, specifically the CAP, would be a barrier to agreement was recognised long before the meeting and articulated by one of the members of the Commission's Contact Group, the BEUC, which commented in September that supporting the CAP in Cancún was "defending the indefensible".¹⁵⁸

Although it was thought that the European Parliament might give Lamy a "particularly rough ride" for failing to get agreement in Cancún and for stressing the importance of investment over the need to reduce agricultural subsidies, Parliament's resolution on Cancún was supportive of the Commission.¹⁵⁹ Although it "regretted" the failure of the meeting it commented that the "EU had acted with great unity" and expressed its "satisfaction" with the Commission's stance. Once again, just as happened after Doha, this represents a major 'win' for the Commission as it managed to keep Parliament on side. The European Council's comments were made in October and also expressed "regret" at the outcome but said that the EC should be ready to restart the negotiations and, to this end, it suggested that the Commission should "reflect on the EU strategy and...explore...the possibility for future progress in the DDA", perhaps a tacit acknowledgement that in order to achieve success in Hong Kong (the site of the next

Trade Organisation. Cancún Ministerial Fails to Move Global Trade Negotiations Forward; Next Steps Uncertain' at <http://www.gao.gov/new.items/d04250.pdf> accessed 13th May 2007

¹⁵⁵ As noted in the charts showing preference dispersal

¹⁵⁶ A note on the significance of the G20 is found at BBC News, Monday 15th September 2003 'World Trade Talks Collapse'. This says "For once, a coalition of developing countries, led by Brazil, China and India, worked as a bloc to counter-balance the weight of the much richer US, EU and Japan" (found at <http://news.bbc.co.uk/1/hi/business/3108460.stm> accessed on 13th May 2007)

¹⁵⁷ EU Bulletin of 9-2003 (at <http://europa.eu.int/abc/doc/off/bull/en/200309/p106041.htm> accessed 16th September 2005

¹⁵⁸ BEUC Press Release of 9th September 'EC in Cancún – Swimming with boots on' (ref 026/2003)

¹⁵⁹ Quote on 'rough ride' from T Buck, the Financial Times of 16th September page 9, 'Lamy returns home to face anger and disappointment'. Importance of investment over cutting subsidies from G de Jonquieres, the Financial Times of 16th September, page 21, 'Crushed at Cancún: failure leaves a divided WTO facing marginalisation as countries turn to bilateral deals'. Parliament's supportive conclusion in the EU Bulletin 9-2003 at p106041 accessed 15th November 2005

Ministerial), the mandate would have to be rewritten and/or the expectations downgraded.¹⁶⁰

Conclusions

This chapter, which is concerned with the trade policy framework through Lamy's tenure as Trade Commissioner, has shown that Lamy was able to keep the internal consensus intact (or, at least, as intact as was necessary) all through this timeframe. Despite Prodi's input to relations with the US and the outcomes of Seattle and Cancún; neither the rest of the College, Parliament nor Council directly criticized the Commission for its stance (except in biotechnology in Seattle). This meant that Lamy was able to pursue his preferences (e.g. the Singapore issues) even where there appeared little or no chance of gaining agreement amongst the wider WTO membership. One reason for the lack of progress might have been that Lamy failed to revisit COM(1999)331 as the basis for Commission positions, even in Cancún. Although it may have been prudent to do this for Seattle, because he was relatively new to the portfolio, it is open to question whether it continued to be a good idea into Doha and Cancún particularly given the antipathy of other members to the Singapore issues, for example, and significant diversity of opinion in agriculture, especially in Cancún where the Cairns Group, G20 and many of the developing countries were clearly in support of greater liberalisation.

It is significant that there was little progress made with the WTO agenda over this time, rather it became clearer that progress would become even more difficult in the future because of the entrenched positions on agriculture indicated by the growing influence (perhaps even homogeneity) of the G20 and the Cairns Group. Similarly, the lack of progress on some of the issues of interest to developing countries would suggest that would become a factor in the future. It is also instructive to note the internal and external problems that accompanied the arrival of agriculture back into the WTO. Progress seemed to be significantly delayed in the Ministerials because of the fragmented internal and external consensus and the idea of having a short deadline for the Round, as had been suggested at the outset, vanished. This also meant that although

¹⁶⁰ EU Bulletin 10-2003 at <http://europa.eu.int/abc/doc/off/bull/en/200310/i1021.htm> accessed 15th November 2005

efforts had been made by Lamy to come to joint agreements with Robert Zoellick of the US, particularly on agriculture but also in other areas like the scope of the Round, these efforts came to naught because they were unable to get wider agreement from the other players. This is indicative of the 'sense of stagnation' going through the WTO at the end of Cancún alluded to at the beginning of the Chapter.¹⁶¹

The following chapter will explore these points in much more detail by looking at the negotiations on the Singapore Issues over the time period. Chapter Eight will draw some conclusions about Lamy's and Brittan's tenure and Chapter Nine will then return to a more comparative evaluation by drawing some conclusions by looking specifically at the Commission's roles and responsibilities and the evolving positions of the interests over the two time periods.

¹⁶¹ See Walden Bello 'The Crisis of the WTO and the Crisis of the Globalist Project: Update on the WTO and Global Trends' (Revised version of a presentation at the Hemispheric and Global Assembly against the FTAA and the WTO held in Mexico City on May 12-13, 2003. A brief version was also delivered at the Transnational Institute Fellows Meeting in Amsterdam on May 16, 2003, and at the Jakarta International Peace Conference on May 18-21, 2003.) at <http://www.ifg.org/analysis/wto/cancun/bellowto.htm> accessed 13th May 2007

CHAPTER SEVEN

Case Studies in the Trade Negotiations Framework: From Seattle to Cancún

Introduction

This Chapter looks at case studies during the period of Pascal Lamy's tenure as Trade Commissioner to see how the Commission exercised its roles and responsibilities in task areas outside the more formal Ministerial process. This chapter will cover the period from the lead up to the Seattle Ministerial to the immediate aftermath of the Cancún Ministerial. As was the case in Chapter Four, the aims and objectives of each negotiation will be much more specialized than those covered in the chapters focusing on the trade policy framework in general yet it will be shown that there is still a need for the Commission to balance the various interests that are at play. Chapter Four suggested that the sectoral negotiations in Leon Brittan's time seemed relatively free of the politicization evidenced in the Ministerials and we will see whether this remains the case here. If not, this might affect the Commission's ability to exercise its roles and responsibilities as well as to satisfy the interests.

Once again, because of the sheer number of issues that the Commission was taking forward, it is not possible to look at the negotiations for all areas in the necessary depth. Therefore, this Chapter will focus specifically on three case studies, which will be three of the four Singapore Issues (investment, competition, government procurement, excluding trade facilitation) that Lamy tried to advance over his tenure. These issues had been high in Brittan's priorities both in the lead up to, and follow-on from, the Singapore Ministerial. In spite of many developing countries trying to block new negotiations, there was a great deal of political support for such initiatives on the part of the Council of Ministers and the European Parliament, as well as some of the Commission's Contact Group members (such as UNICE). It is because of the existence of this supportive coalition that three of the Singapore Issues have been chosen as case studies.

Although the Commission sought to negotiate these issues as a single package, this did not mean that it was agreed by the WTO to treat all four uniformly. At the Ministerial meeting in Singapore, Working Groups were established for the first three, and the Trade in Goods Council was asked to look at the latter.¹ As far as investment and competition were concerned, the Ministerial Declaration stated that the existence of the groups would not “prejudge whether negotiations will be initiated in the future” and, furthermore, that the General Council would “determine after two years how the work of each body should proceed”, which would only be on the basis of “explicit consensus” amongst the membership. The group on government procurement, meanwhile, would conduct a study of national policies in order to develop an eventual agreement. Because the trade facilitation group was dealt with differently, i.e. that it was the only Group for which a Working Group was not established, and because the basis for these meetings would be “informal”, according to the appropriate General Council Minutes, making the necessary information difficult to access, this will not be used as one of the case studies.²

The appropriateness of this approach is confirmed by the Commission’s acceptance, post Cancún, that the Singapore Issues could be unbundled and considered on their own merits. At Cancún, and at least in the immediate aftermath, there was no effort to push forward with WTO work on any of the Groups, including trade facilitation. This further suggests that nothing is lost by not considering it within this work.

¹ Sourced at http://www.wto.org/english/thewto_e/minist_e/min96_e/wtodec_e.htm on 12th September 2006

² Meeting of 5th June and 8th July 1998 minutes referenced G/C/M/34

Figure 7.1 below sets out when each negotiation started, what each was to do and when discussions ended.

Figure 7.1 Brief Overview of the Case Studies

NAME	BEGAN	MAIN TOPIC	LAST MEETING
Trade and Investment	2 nd June 1997	To “conducts(s) analytical work on the relationship between trade and investment”. ³	11 th June 2003
The Interaction Between Trade and Competition Policy	7 th July 1997	“To study various aspects of this issue, with the participation of all WTO Members”. ⁴	27 th May 2003
Transparency in Government Procurement	23 rd May 1997	“To conduct a study on transparency in government procurement practices, taking into account national policies and, on that basis, to develop elements suitable for inclusion in an appropriate agreement”. ⁵	18 th June 2003

Trade and investment

In the ‘*EU Approach to the Millennium Round*’, the Commission clearly appreciated that work in trade and investment had to be made acceptable to the other WTO members, and, in order to do this, the methodology needed to be different from that used to pursue the development of the ill-fated MAI.⁶ Perhaps the insistence on a framework, in which individual sovereignty would be maintained, was an effort to this end. Also in COM(1999)331, the Commission recognised the need for flexibility for individual countries even though this did not extend to developing special and differential treatment (SDT) provisions in this field. On the contrary, the Commission thought that if the promotion of sustainable development was paramount, there would be no need for SDT measures. The eventual negotiating mandate was, as might be

³ From the WTO’s page on ‘Trade and Investment’ at http://www.wto.org/english/tratop_e/invest_e/invest_e.htm accessed 9th April 2008

⁴ From the WTO’s page on ‘The Interaction between Trade and Competition Policy’ at http://www.wto.org/english/tratop_e/comp_e/comp_e.htm accessed 9th April 2008

⁵ From the WTO’s page on ‘Transparency in Government Procurement’ at http://www.wto.org/english/tratop_e/gproc_e/gptran_e.htm accessed 9th April 2008

⁶ COM(1999)331, issued on 8th July 1999

expected, very similar to the Commission's position in COM(1999)331.⁷ Essentially, Council agreed with the Commission's objectives, even though they thought an agreement should also set out "investors' responsibilities" and put greater emphasis on "access to investment opportunities and non-discrimination, protection of investment, and (a) stable and transparent business climate" although most, if not all, had already been mentioned by the Commission. This proposed work area was later supported by Parliament, which shows that there was a strong and supportive internal consensus.⁸

However, indications of the level of external dissent with this initiative could be seen in the October 1999 report from the Trade and Investment Group to the General Council just as Lamy was getting his feet under the table.⁹ The report clearly shows the contested nature of the most basic principles, even after three years of work.¹⁰ Even smaller groups of countries who had been discussing this (perhaps most notably APEC) and who had committed to working in this area through the WTO could not achieve consensus, and the US, in particular, remained unconvinced of the merits of a WTO agreement.¹¹ It was also difficult for Lamy to use the views of industry to encourage the US to come on board as TABD, for one, was also said to be openly sceptical of the benefits of an investment agreement in the WTO.¹² The conclusions of their meeting tend to refute that, however, as they read; "Governments should seize the opportunity (afforded by the Seattle Ministerial)...to push forward the process of developing...high

⁷ Which was agreed on 26th October 1999 - see full text at <http://www.france.attac.org/a2985>, accessed 16th January 2006

⁸ Resolution on the Commission Communication to the Council and Parliament on the EU Approach to the Millennium Round (COM(1999)331) 18th November 1999 at <http://europa.eu.int/abc/doc/off/bull/en/9911/p105017.htm> accessed 5th October 2005

⁹ Issued on 22nd October as WT/WGTI/3

¹⁰ The issues which needed to be resolved were: the definition of investment; the interface with TRIMS and GATS work; Government intervention; domestic versus multilateral policy solutions; FDI and its relationship to economic growth and development; FDI and technology transfer; negative effects; costs and benefits; OECD Guidelines for Multinational Enterprises and the need for WTO involvement in this area and the use of the dispute settlement mechanism in investment disputes

¹¹ This is interesting because, according to the Chairman's Statement from the ASEM Economic Ministers' Meeting, the EC's parallel forum to APEC, held on 9th and 10th October 1999 nothing was said about the importance or otherwise of investment in the WTO (see

http://europa.eu.int/comm/external_relations/asem/min_other_meeting/eco_min2.htm) This is in spite of the outcome of the ASEM SOMTI V meeting of 7th and 8th July 1999, where a strategic report from the Asia-Europe Vision Group was tabled, giving as its first priority to move ASEM forward, "trade liberalisation and investment promotion, including both multilateral issues and other measures to facilitate and encourage Europe-Asia two-way trade and investment flows, taking into account different levels of development" (see the Co-Chairs' Summary at http://europa.eu.int/comm/external_relations/asem/min_other_meeting/somti5.htm)

¹² Corporate Europe Observer Special Report on the outcomes of the TABD meeting of 29th and 30th October 1999 in November 1999 'Doing Business in Berlin' at <http://www.corporateeurope.org/tabd/berlinbusiness.html> accessed on 21st July 2005

standard rules for investment” suggesting, at least, gentle pressure from transatlantic business towards opening negotiations, even if not from the US government itself.¹³

Given the stance of the US government, it is not very surprising that it proved difficult for the Commission to include trade and investment on the agenda for Seattle.¹⁴

However, papers had been submitted to the Ministerial from five countries plus the Commission showing that there was an emergent interest in this issue even if not yet a firm consensus.¹⁵ The Commission paper itself was an amalgam of COM(1999)331 and the mandate with one difference; that international rules on FDI “must respond to the concerns expressed by civil society concerning their impact on the environment and labour conditions”, which could almost suggest that it was an effort to address trade-labour and trade-environment issues by the back door.¹⁶ The other papers were strongly supportive of negotiations being launched although Poland’s acknowledged the need for certain flexibilities, for the developing countries, to be included.¹⁷ It cannot be said that the Commission was “the strongest supporter” (see footnote 14 for this source) – next to some of the other papers it even looks a little lukewarm. In spite of this small coalition, however, it was clear from the first meeting convened in Seattle to address the ‘Singapore Agenda and other issues’ that no agreement was possible – instead there were polarized opinions ranging from a number wanting negotiations to begin to others wanting the study process to continue.¹⁸ Although those present were asked to try to find consensus it can be assumed that this was unsuccessful, as the Singapore Issues were not discussed again as a whole package after the first day. The draft Seattle Declaration, which was the basis for discussions, had outlined both the option to begin negotiations, in Paragraph 41, and the option for continuing with the existing work in

¹³ Conclusions of the TABD meeting at <http://static.tabd.com/gems/1999BerlinCEORReport.pdf> accessed 5th October 2005

¹⁴ ICTSD Bridges Daily Update on the Seattle Conference 3rd December 1999, Issue 4 reproduced at www.unc.edu/~swblack/BridgeRep_1203.rtf accessed on 21st July 2005

¹⁵ Japan (WT/GC/W/239), Switzerland (WT/GC/W/263), Korea (WT/GC/267), Hong Kong, China (WT/GC/268), Poland (WT/GC/277) and Costa Rica (WT/GC/W/280)

¹⁶ WT/GC/W/245

¹⁷ Although this need for flexibility seems to have been recognised by the Commission in COM(1999)331, at least in part; “a bottom-up approach to the question of admission (of international investors to a market), based on commitments undertaken by each Member, is the way to allow for the flexibility that many WTO Members require”.

¹⁸ From the daily WTO Briefing Notes of 1st December at http://www.wto.org/english/thewto_e/minist_e/min99_e/english/about_e/resum01_e.htm accessed 3rd November 2005

Paragraph 56.¹⁹ Because no consensus emerged, and because the meeting broke down without issuing a Final Declaration, work simply continued as before. The Commission commented later that the outcome of the Ministerial showed “confirmation of the validity of the aims... (of) the EU, which... included rules to govern globalisation in... investment” although this seems to be premature since there was no sign of general agreement.²⁰

At the February 2000 General Council meeting, the Commission was still not managing to achieve ‘explicit consensus’ on any of the key issues.²¹ A further barrier to progress was that there would be no additional money in the kitty for technical assistance, which had caused, in the words of the Chairman, “a gross imbalance between the core funds currently available... and the needs of members”. At the next meeting, the Commission tried to clarify its position vis-à-vis national rules and sector coverage by suggesting that the GATS model, whereby countries specified sectors where they would be prepared to open their markets, could be applied to a multilateral agreement in this area.²² This would ensure that national rules could still be applied to sectors not covered in the lists. A further paper was written to address some of the arguments (twelve are detailed) that had been taking place within the group, in an attempt to move forward from discussing semantics.²³ However, Malaysia argued that a stable investment infrastructure could not be considered without “political stability, macroeconomic stability, a sound regulatory framework, including protection of intellectual property rights, the provision of incentives (and) joint research and development and investment in human resources” suggesting these interrelationships meant it would be practically impossible for most developing countries to be able to participate.²⁴ Strangely the Commission commented that the Working Group did not

¹⁹ Draft Declaration of 19th October 1999, reproduced at <http://www.ictsd.org/English/Declaration3.rtf> accessed 5th October 2005

²⁰ EU Bulletin of December 1999 at <http://europa.eu.int/abc/doc/off/bull/en/9912/p104024.htm> accessed October 2005

²¹ Meeting 7th and 8th February, Minutes circulated as WT/GC/M/53

²² Commission paper for the Working Group was circulated on 16th June (as WT/WGTI/W/84) entitled, ‘Checklist of issues, Agenda item IV: Advantages and disadvantages of entering into bilateral, regional and multilateral rules on investment, including from a development perspective’, subtitled ‘Impact of international investment rules on current national policies’

²³ With the same title as the previous (although subtitled ‘Some ideas on flexibility and non-discrimination’) submitted by the Commission to the Working Group on 9th October 2000 as WT/WGTI/W/89

²⁴ See Dunning and Narula 2004: 39-40 on the anti-competitive nature of incentives and subsidies in investment, which would mitigate against a ‘stable... infrastructure’

exist to reach consensus, although how it felt 'explicit consensus' could be achieved on a wider level, if the Group itself could not, was left unsaid. The Commission also acknowledged that a multilateral investment agreement was not a panacea for all the ills of a particular country in itself and that there needed to be other measures taken to address "education, infrastructure, transparency and stability". The role of a multilateral agreement, then, was seen as complementary to internal efforts and could not replace them. This, as Malaysia had already pointed out, had implications for the 'real' level of technical assistance needed to support such transformation, in addition to the assistance needed solely for any new investment regime.

The Commission also failed to make headway at the October meeting and it was clear that issues were not coalescing; in fact, there seemed to be a growing focus on complexity.²⁵ The Commission was part of this, mentioning the importance of local capacity building, "effective competition policy and adequate protection of IPRs in order to enhance and encourage technological transfers and spillovers", surely hugely problematic for the developing countries.²⁶ Once again, questions were raised as to the value of a multilateral agreement, suggesting that a level playing field might have the opposite effect by acting as a disincentive to investors. There were questions as to how countries might achieve their development targets and even a suggestion that these negotiations were similar to those of the MAI although the Commission was quick to interject that the comparison was inappropriate due to the "major differences...in...institutional context, participation, aims and level of ambition".

The TABD, meanwhile, seemed to be becoming more enthusiastic about the possibility of an agreement and asked the WTO to give preparation for it "more emphasis" although it remained silent as to what this might involve.²⁷ It concluded that although a full agreement might be a longer-term aim, there could be some effort to achieve a 'softer' agreement with a narrower scope.²⁸ This may have been a good idea but it was not acted upon at the time. In the Group's Annual Report to the General Council for the year 2000, once again even the definition of investment was disputed and possibilities

²⁵ Meeting held on 11th October (minutes circulated on 31st October as WT/WGTI/M/12).

²⁶ 'Some ideas on flexibility and non-discrimination' circulated 9th October 2000 as WT/WGTI/W/89

²⁷ TABD had met in Cincinnati on November 16th-18th and, in its Recommendations (see

<http://static.tabd.com/gems/2000CincinnatiCEORreport.pdf> accessed 5th October 2005

²⁸ This suggestion was repeated in their Mid Year Report from Washington DC on May 15th 2000, but does not appear to have been seriously considered at this juncture

of consensus remained distant.²⁹ Section 31 could be said to sum up the deliberations thus far: “Support was expressed for the view that there was a lack of evidence on the benefits of multilateral investment rules” this was followed by an acknowledgement that “no convincing case had been made that a multilateral agreement could help countries better achieve their developmental objectives”. Issues of transparency also loomed large, as well as questions regarding the interface between transparency and IT. It seemed, then, that not only was the Commission’s mandate not responsive to these concerns, in that it was not changed to take account of them, but the Commission was failing its promise in COM(1999)331 to “make the launch of this negotiation acceptable to our WTO partners”.

It was reported that, in an effort to get around this impasse, the Commission might seek to pursue a plurilateral agreement as it had apparently suggested to a number of developing countries that agreements on both investment and competition could take this form.³⁰ This is an example of the Commission as policy entrepreneur – gambling that any agreement was better than none - facilitating Council acceptance. As it was, issues had not demonstrably moved on in the first meeting of the Group in 2001 and it was again accepted that investment could not be considered in a vacuum.³¹ This time it was Canada, which highlighted the interaction of a considerable number of factors including; “effective education and training of workers and management...efficient(t) ...capital markets, the existence of competitive domestic markets, secure access to international markets, the availability of mechanisms to facilitate economic adjustment, and tax and regulatory policies” all deemed necessary to ensure a positive environment for investment. In a further effort to move forward, the Commission presented a paper on the nature of technical assistance that would be needed, which distinguished between assistance to improve capacity for attracting FDI and the assistance needed to enable countries to participate in negotiations and to transpose the results into their legislation.³² This, however, did nothing to encourage agreement. At the next meeting

²⁹ circulated on 27th November 2000 as WT/WGTI/4, agreed at the meeting of 16th November (minutes circulated at WT/WGTI/M/13 on 7th March 2001)

³⁰ C Raghavan in the North South Development Monitor of 31st January 2001 ‘Trojan horse to get investment and competition in the new Round’ reproduced at <http://www.twinside.org.sg/title/trojan.htm> accessed 21st July 2005

³¹ Meeting 7/8 March 2001 (minutes circulated as WT/WGTI/M/14 dated 30th April

³² WT/WGTI/W/102, ‘Technical assistance and capacity building’ dated 23rd May, accessed through the document search portal of the WTO

of the Group, there were further significant discussions on mergers and acquisitions and transfer of technology, Malaysia and the US both disagreeing with the Commission's line.³³

Lamy recognised that the problems with the US needed to be addressed if any progress was to be made in the Working Group and, ultimately, at Doha. Following a meeting in Washington on 16th and 17th July 2001, it was reported that there was, finally, "rapprochement" between the two sides.³⁴ The July Statement of the Genoa G8 summit seemed supportive of WTO action in the field of trade and investment, which might have been due to this understanding.³⁵ However, at the General Council's final meeting prior to Doha, the consensus among the developing countries seemed to be that the educative process in the Working Group should continue rather than that negotiations should be launched. The Commission view was that the Group had "bent over backwards to integrate all possible development aspects" within the draft and they felt that there was a strong likelihood that negotiating modalities could be agreed.³⁶ This might reflect the efforts of the Commission to get countries to support a plurilateral agreement although it seems more likely to be a statement of wish, rather than a statement of fact, that there could be any consensus within the Group, let alone in the wider forum of a Ministerial, to gain agreement to start negotiations.³⁷

It is hard to imagine that there was any surprise on the part of the Commission when, at the first meeting in Doha on the Singapore Issues, positions remained very much akin to those expressed in the preparation phase and, indeed, similar to what had been said at the Seattle Ministerial.³⁸ Some countries wanted negotiations to begin, allowing the

³³ Meeting on 13/14 June 2001 (Minutes circulated as WT/WGTI/M/15 on 10th August

³⁴ ICTSD-Bridges weekly trade review 5:28 of 24th July 2001 'EU's New Strategy on Labour, EU-US Draw Closer on Investment' at <http://www.ictsd.org/html/weekly/24-07-01/story2.htm> accessed 1st November 2005

³⁵ The Statement acknowledged that "open trade and investment drive global growth and poverty reduction" and that this is what was behind the G8's decision "to support the launch of an ambitious new Round of global trade negotiations..." even though it is not clear from this whether the new Round would actually include negotiations on investment. Meeting of 22nd July reproduced at <http://archives.cnn.com/2001/WORLD/europe/07/22/summit.text/> accessed 4th August 2005

³⁶ Discussion took place at the General Council meeting held 31st October and 1st November, minutes circulated as WT/GC/M/71. The developing countries which supported this position were Barbados, Haiti, Honduras, Kenya, Indonesia, Pakistan, Philippines, Sri Lanka, Tanzania and Uganda, Costa Rica seemingly the only party to say this should be advanced at Doha

³⁷ Particularly considering that scope was still contested.

³⁸ See report at http://www.wto.org/english/thewto_e/minist_e/min01_e/min01_10nov_e.htm accessed 4th November 2005

possibility for developing countries to opt out at the end; other countries said they weren't ready to negotiate on these issues at all, while others made their agreement and participation conditional on progress in other areas. On the second day, the Chair reported that developing countries were still unwilling to negotiate on investment and competition and said, simply, about meetings on the third day that discussion "had not been 'very comforting'".³⁹

However, the trade and investment section in the Doha Final Declaration is substantive even though it is not clear how progress could be made considering many of the highlighted issues had been debated since the group was inaugurated.⁴⁰ The Declaration acknowledged the importance of investment and agreed, "Negotiations will take place after the Fifth Session of the Ministerial Conference on the basis of a decision...by explicit consensus" thus re-emphasizing the need to achieve a supportive coalition at least, as a first step, within the Working Group itself. The importance of technical assistance was acknowledged in the Declaration with the WTO agreeing to work with other donors to ensure that needs were met. The final paragraph set out a comprehensive list of the areas, which needed to be agreed by the Group prior to Cancún. The extent of this is significant: "Scope and definition; transparency; non-discrimination; modalities for pre-establishment commitments based on a GATS-type, positive list approach; development provisions; exceptions and balance-of-payments safeguards; consultation and the settlement of disputes between members".⁴¹

Therefore, the Doha Declaration gave specific instructions to the Group as to what had to be achieved, what had to be taken into account and the basis upon which work could proceed after the Ministerial, acknowledging in so doing that there was very little agreement at the present time.⁴² Surprisingly, the Commission, commenting on the framework suggested at Doha, said that this was "a completely new objective"; rather strange considering this was what the Group had been building up to since the

³⁹Report of the second day's meeting at http://www.wto.org/english/thewto_e/minist_e/min01_e/min01_11nov_e.htm accessed 4th November 2005 Report on the third day's meeting at

http://www.wto.org/english/thewto_e/minist_e/min01_e/min01_12nov_e.htm accessed 4th November 2005

⁴⁰ Circulated November 20th 2001 as WT/MIN(01)/DEC/1. Some reasons for this are given in the previous chapter

⁴¹ Although, of course, the Group had been meeting for five years and were still no closer to agreement on these very basic principles so it beggars belief that it was thought they would be able to do this in two more years.

⁴² In spite of, it must be remembered, negotiations having been conducted since 1996

Singapore Ministerial, the aim of which had been set out in both COM(1999)331 and the mandate.⁴³

At the first meeting of the Group in 2002, the Commission commented that it was “important not to arrive so much at common positions but at a common understanding” of them, perhaps reflecting a change of negotiating style.⁴⁴ They submitted a further two papers; the first was a ‘*Concept paper on the definition of investment*’ which suggested that definitions needed to include two distinct aspects of investment i.e. money changing hands (dynamic) for a particular asset (static).⁴⁵ Once again, it seems unlikely that drawing attention to interlinkages would facilitate agreement of definitions, considering how contested they were proving to be. The second ‘*Concept paper on transparency*’, looked at the importance of procedural as well as information transparency and suggested that the developing country members should consider what help they needed in the fields of infrastructure, human resources and regulatory capacity to enable them to set up publication, notification systems and enquiry points (possibly electronically).⁴⁶ However, the administrative structures needed to ensure such transparency were not discussed.⁴⁷

At the following meeting, there were further, but again unresolved, discussions on transparency and flexibility.⁴⁸ The Commission led the debate by introducing a new ‘*Concept paper on Modalities of Pre-establishment*’ saying that the GATS model provided a good basis to work from.⁴⁹ The most important thing, according to the Commission, was that countries had to be supported in order that they might maximise their capacity to attract FDI and technical, and primarily financial, assistance had to address this. This had already been made clear in the Doha Declaration. Their ‘*Concept Paper on non-discrimination*’ expanded COM(1999)331, setting out the Commission’s views on transparency by covering the principles of MFN and non-discrimination and the stage of FDI to which they applied (pre- or post-establishment).⁵⁰ The paper also

⁴³ From <http://europa.eu.int/abc/doc/off/bull/en/200111/p106028.htm> accessed October 2005

⁴⁴ Meeting on 18th-19th April (minutes circulated as WT/WGTI/M/17 on 31st May)

⁴⁵ WG/WGTI/W/115 circulated on 16th April 2002

⁴⁶ WG/WGTI/W/110 circulated 27th March

⁴⁷ Considering there was no extra technical assistance money available, it seemed likely that this suggestion would get short shrift from the General Council

⁴⁸ Meeting held 3rd-5th July minutes circulated as WT/WGTI/M/18)

⁴⁹ WG/WGTI/W/121 circulated 27th June

⁵⁰ WG/WGTI/W/122, also circulated 27th June

attempted to identify possible exceptions to MFN and national treatment although Brazil remarked that these exceptions were “only hypothetical and not (considered) as a necessary ingredient in a possible multilateral framework on investment”. Perhaps this continued disagreement inspired the Foreign Trade Association (FTA), one of the members of the Commission’s Contact Group, to sound a cautionary warning about expectations for success in Cancún, noting that progress in the Singapore Issues and ‘explicit consensus’ depended on progress in other areas like textiles and agriculture.⁵¹

At the penultimate meeting of the Group, the formal review of the seven issues, as set out in the Doha Declaration, was completed.⁵² The WTO, in the front page of the ‘Investment’ section on their website, acknowledged the importance of this meeting in keeping to the Doha timescale.⁵³ However, there was still no consensus as to what this meant for negotiations in practice. The Commission continued to try to structure the discussion by circulating a ‘*Concept paper on development provisions*’, which again argued that due consideration of flexibility, meant there was no need for SDT, and a ‘*Concept paper on consultation and settlement of disputes between members*’, saying that the DSU should be used for investor-state disputes where other mechanisms had failed.⁵⁴ The consensus view on the first paper was that there needed to be an agreed definition of the scope before development provisions could be defined although China pointed out that however narrowly the scope was defined, it was still unlikely that developing countries would agree to embark on negotiations. New Zealand, Malaysia and India spoke out strongly against the second paper, while Pakistan and Morocco thought that such discussions were premature. India nailed its colours to the mast by stating its belief that the DSU should not be used by private parties engaged in disputes with states. Furthermore, they declared that investment had no place in the WTO as it was not to do with trade.⁵⁵ The question of technology transfer was also raised, and the Commission tried to pre-empt discussions by saying this was in the purview of the Working Group that had been set up at Doha, not this group.⁵⁶ The evidence shows that

⁵¹ In their August 2002 Bulletin, vol 2 number 2 at http://www.fta-eu.org/en/new/bulletin/bulletin02_2002.htm accessed 15th January 2006

⁵² Meeting held on 16-18 September (minutes circulated as WT/WGTI/M/19 on 3rd December

⁵³ From http://www.wto.org/english/tratop_e/invest_e/invest_e.htm accessed 1st August 2005

⁵⁴ The two papers are WG/WGTI/W/140 circulated 12th September, WG/WGTI/W/141 circulated 11th September

⁵⁵ At the same time, Malaysia pointed out this had been one of the reasons why the MAI failed

⁵⁶ In the paper submitted to that Working Group, the EC had urged members to concentrate on three main issues: to arrive at an agreed understanding on “the definition of technology transfer”, to establish how

the Commission was still not managing to 'sell' this to the other members of the Working Group and the prospect of a consensus within the Ministerial, when one could not be achieved within the Group itself, remained small.

The Council of Ministers showed that they remained strong supporters of achieving an agreement on trade and investment in their seven '*Conclusions on trade and development*'.⁵⁷ They agreed that a number of measures were needed in order for poverty reduction through trade to be realized of which one was to achieve an increased level of FDI by making markets more attractive. Perhaps this was also a tacit reminder to the Commission that it should go back to basics in justifying the importance of this work to the other members. The Commission continued to pursue consensus in the final meeting of the Group for the year although it did not go back to basics; it submitted a further '*Concept paper on balance-of-payments safeguards*', which proposed mechanisms that could be resorted to if there proved to be a problem with capital flows in the event of "balance of payments crises".⁵⁸ This paper seemed to have more to do with the issues that had been brought up in Doha and ignored the level of contestation around the key concepts. Furthermore, the issue of flexibility continued to prove difficult to resolve. India, particularly, felt a multilateral agreement on investment would prevent countries keeping 'policy space' and this was indicative of a wider lack of consensus on this point.⁵⁹ The Commission's position was that regulation capacity would be maintained because the structure was only a legal framework. Once again, this (somewhat semantic) view did not attract widespread support. Although an informal meeting had been held afterwards to allow delegations to discuss the work programme and the annual report, there was no new 'checklist of subjects to be covered' or any attempt to focus the attention of the Group on particular issues. Therefore, it would appear that the Commission had appreciated that the Group would not reach consensus on the outstanding issues, at least not before Cancún.

technology transfer occurred and, finally, to define under what conditions technology transfer was optimised. This could, he felt, result in improved technology flows to the developing countries and, because the factors influencing one were similar to the factors influencing the other, increased FDI could also result.

⁵⁷ Issued in November 2002, at <http://europa.eu.int/abc/doc/off/bull/en/200211/p106020.htm> accessed 15th November 2005

⁵⁸ Last meeting of the Group held on 3-4 December (minutes circulated as WT/WGTI/M/20 on 6th February). Concept paper on balance of payments safeguards circulated as WG/WGTI/W/153 on 28th November.

⁵⁹ Argentina, China, Cuba, Djibouti, Egypt, Kenya, Pakistan and Venezuela all expressed support for India's view

Nevertheless, at the first formal meeting of the Group in 2003, the Commission submitted a *'Concept paper on Policy Space for Development'*, in an attempt to further clarify the scope countries would have for independent action under a multilateral agreement following discussion at the previous meeting.⁶⁰ The introduction clarified that the GATS approach could be shown to "accommodate domestic policies" and disputed the arguments either that foreign investment 'crowded out' domestic investment or that there would be insufficient policy space to allow country-specific legislation. The first country to disagree was India, which commented that developing countries could not use the flexibilities of the GATS approach when negotiating because of: a) the progressive nature of GATS; b) pressure from the developed countries, and, c) IMF and World Bank stipulations. In addition, their attempts to renegotiate what was on the lists had proved difficult and did not, in India's opinion at least, constitute 'policy space'. Once again, this perspective was indicative of the gap between developed and developing countries with the other Quad members broadly supporting the paper and the developing countries broadly disagreeing with it.⁶¹ The Commission's frustration boiled over later in the meeting, accusing certain (nameless) countries of stating positions, which were "tactical" and repetitive. Again, this would hardly encourage countries to rally round in support of the Commission's stance and continued to ignore the extent of the opposition.

In terms of facilitating an internal consensus and pushing for a strong external consensus, on 30th April the European Social Forum (ESF), another Contact Group member, sent a letter to Pascal Lamy calling for trade and investment negotiations to be launched in the WTO.⁶² Although they felt that this would send a strong message that governments were ready to develop a strong foundation for FDI, ESF accepted that investors would still need to know "the host government's attitude to business in general...the financial infrastructure, the quality of public governance (and) the quality of the administration that affects legal security and stability", all requiring high levels of

⁶⁰ Meeting held on 14th -15th April (minutes circulated as WT/WGTI/M/21 on 28th May) Concept paper for policy space for development circulated as WT/WGTI/W/154 ' on 7th April

⁶¹ In support were the Quad members plus Australia, Chile, Costa Rica, Korea and Switzerland. Against were Brazil, China, Cuba, Djibouti, Egypt, India, Indonesia, Jamaica, Kenya, Malaysia, Philippines, Thailand and Venezuela There were other delegations who, although they did not specifically disagree with the paper, sought clarifications on it: Argentina; Chinese Taipei; Colombia; Peru; Poland and Uruguay

⁶² At http://www.wto.org/English/forums_e/ngo_e/esf_agree_trade_inv_e.pdf accessed 15th March 2006

resources for the developing countries beyond those solely involved in implementing the Agreement. As far as dispute settlement was concerned, the ESF made it clear that they would prefer the DSU to apply to all parts of the agreement, ignoring the problems other countries had already mentioned with investor/state relations. The letter commented on the “good atmosphere” in the Working Group, which, considering the Commission’s outburst in the previous meeting did not appear to reflect the actual situation.

At the last meeting of the Working Group prior to the Cancún Ministerial, the meeting progressed to discussing whether negotiations on investment could commence.⁶³ Once again, as at the previous meeting, there was a distinct split between the developed and the developing countries, which did not seem to constitute an ‘explicit consensus’ as required by the Doha mandate.⁶⁴ The Commission was, however, responsible for the paragraph closing the Minutes, which said, “The harvest of the Group was impressive”, although how this could have been concluded given the level of contestation even to the terminology is difficult to fathom.⁶⁵ On the same day a Hearing took place at the European Parliament on ‘WTO, Agriculture, TRIPS and the Singapore Issues’ at which the President of EuroCommerce (another of the Commission’s Contact Group members) spoke. He felt that a trade and investment agreement would increase investment by minimising risk, although he acknowledged, correctly, that agreement “might be difficult to achieve”.⁶⁶ This would seem to have been in line with the European Parliament’s own perspective.⁶⁷ As well as a lack of agreement between the group members in general on the definitions, there was also no agreement on them

⁶³ 10th and 11th June (Minutes circulated as WT/WGTI/M/22 on 17th July

⁶⁴ with support for this coming from the Quad and also Australia, Chile, Chinese Taipei, Hungary, Hong Kong, Japan, Norway, Poland and Switzerland and a negative view being expressed by Cuba, India, Indonesia, Kenya and Malaysia while countries seeking further clarifications were Argentina, China, Morocco and Thailand

⁶⁵ At the same time as this meeting, a group of four NGOs were also holding a Press Conference to protest about efforts to open investment negotiations at Cancún. Third World Network, the Centre for International Environmental Law (CIEL), the International Union of Foodworkers and ActionAid strongly disagreed that this would be a positive step for developing countries (from K Raja Corporate Europe Observer Geneva 10th June 2003 ‘NGO’s voice opposition to WTO investment negotiations’ at <http://www.corporateeurope.org/investmentwatch-archive/articles/twn13june.html> accessed 15th January 2006 However, the representatives also acknowledged “it was clear that no consensus exists on if or how to approach the issue of whether to begin negotiations on investment” suggesting, almost, that their public stance was not necessary.

⁶⁶ From the ‘Contributions’ paper to that Hearing at http://www.europarl.eu.int/hearings/20030611/itre/contributions_en.pdf accessed 15th March 2006

⁶⁷ European Parliament Resolution on the Fifth WTO Ministerial Conference of 3rd July (at <http://europa.eu.int/abc/doc/off/bull/en/200307/p106043.htm> accessed October 2005

between the EC and the US. Lamy highlighted that “the EC want(s) to limit it to foreign direct investment and the US want(s) to also include portfolio investment”.⁶⁸ The two could not, then, jointly encourage wider agreement in Cancún as at Seattle.

However, according to Corporate Europe Observer, perhaps the key relationship pushing agreement was not the Commission/US but the Commission/Japan. They noted a report suggesting that “the EU and Japan...have agreed to deliberately avoid any detailed discussions on what a future investment pact should cover so not as to antagonize any wavering WTO members, leaving the scope of an agreement to be determined in the negotiations”⁶⁹. This seemed a risky strategy; gambling that WTO members could be persuaded to give their support when there was evidently no consensus in the Working Group.

A session on ‘Investment in the WTO - Myths and Realities’, organised by seven lobby groups and held as part of the 2003 WTO Public Symposium, revealed that NGOs were likely to come out solidly against an investment accord. At that meeting, Martin Khor of TWN commented that, were this agreement to go ahead, developing countries would “be exposed to financial instability from free capital flows and...their ability to place performance requirements on firms and to have industrial policy would be curbed”.⁷⁰ He urged against any efforts on the part of the supporters to “artificially create...a consensus” prior to Cancún.⁷¹ The Commission delegate (bravely!) said that a multilateral agreement would rationalise the 2000 bilateral investment treaties (BITS) and encourage investment by clarifying rules, promoting transparency and providing a predictable environment. India was of the opinion, meanwhile, that the plethora of BITS would not disappear and Oxfam stated that even the World Bank couldn’t see how more investment would take place because of such an agreement thus challenging

⁶⁸ From TWN News Service of 12th June ‘European Parliament Hearing Discusses Singapore Issues’ at <http://www.twinside.org.sg/title/twninfo27.htm> accessed on 21st July 2005

⁶⁹ From ‘Corporate Conquistadors in Cancún’ InvestmentWatch Info Brief of July 2003 reproduced by Corporate Europe Observer at <http://www.corporateeurope.org/mai/conquistadors.html> accessed 15th March 2006. The footnote for this gives the source as “U.S., EU Service Industry Groups Diverge on WTO Investment Pact”, International Trade Daily, June 18th 2003.

⁷⁰ WTO Public Symposium on 16th, 17th and 18th June 2003 on the theme ‘Challenges Ahead on the Road to Cancún’ - see programme at http://www.wto.org/english/tratop_e/dda_e/symp_devagenda_prog_03_e.htm accessed on 12th August 2005 TWN report of that meeting reproduced at <http://www.corporateeurope.org/investmentwatch-archive/articles/twn17june.html>, ‘WTO Symposium Debates Investment Issue’ accessed 26th March 2006

⁷¹ Using such methods as defining procedure rather than substance, by ignoring developing country positions in draft agreements or by pushing an agreement through a Green Room process

one of the central tenets of the Commission's argument. The ESF, at the same meeting, felt that it was the negative position taken by NGOs that risked an unsuccessful conclusion to the negotiations thus perpetuating a 'bullying' relationship from strong to weaker countries. They felt that the arrangement envisaged under this Agreement would give the weaker countries more opportunity to "put their view across together", although if that had been seen to be the case, perhaps the Working Group would not have been so conflict-ridden and the definitions would have been less contested.

Under the final heading of the Group's 2003 Report, it is pointed out that some members "felt that...deliberations had revealed the extent to which the substance, implications and rationale of a prospective multilateral investment framework were still unclear", which seems to be a good summation of the progress to that date.⁷² The report continues that there were a number of different opinions being expressed with no clear consensus to launch negotiations. This was a further reminder that explicit consensus could not be expected at the Ministerial. However, the Commission's position was still supported by some of their Social Partners, for example Eurochambres, the FTA and UNICE even though it was not supported by others, notably CIDSE.⁷³ Notwithstanding the influential internal coalition achieved by the Commission, it is possible that the Council of Ministers had continued to consider the likelihood of obtaining explicit consensus. When Council issued its conclusions on the preparation of the Cancún meeting, although it "stressed that the DDA established a comprehensive programme" it did not mention investment specifically.⁷⁴

⁷² Report of the Working Group to General Council, 2003 circulated on 11th July 2003 as WT/WGTI/7

⁷³ Eurochambres September 2003 'Position Paper on *The WTO Ministerial Conference in Cancún 10-14 September 2003*' at http://www.eurochambres.be/PDF/pdf_trade/Global%20Chamber%20Platform%20PP%20Cancun.pdf accessed 15th March 2005 FTA expressed their view in their 2003 position paper *'FTA Position Regarding the WTO Investment Agreement'* sourced from http://www.fta-eu.org/doc/unp/opinion/en/position_paper_investment_logo_en.pdf accessed on 15th March 2005 On 18th July, UNICE issued a brochure on the Doha Development Agenda, *'Cancún. Moving Forward Together'* (at <http://www.unice.org/1/FFEJDNHAKNHAHFEKJNJIDMHMPDB69DP6WN9LI71KM/UNICE/docs/DLS/2003-02316-EN.pdf> accessed on 1st November 2005. CIDSE (International Cooperation for Development and Solidarity) *'Global Trade at the Service of Human Development: A position paper on the occasion of the 5th WTO Ministerial Conference in Cancún, Mexico 10th-14th September'* at http://www.cafod.org.uk/archive/policy/CIDSE_CI_Cancun_Paper.pdf accessed 10th March 2006

⁷⁴ Meeting on 21st July 2003 from EU Bulletin 7/8-2003 at <http://europa.eu.int/abc/doc/off/bull/en/200307/p106044.htm> accessed on 15th October 2005

As far as the external consensus was concerned, serious disagreement about the Singapore Issues still raged at the July WTO General Council meeting.⁷⁵ Divergent views ranged from, on one hand, Japan's assertion that "Ministers agreed (in Doha) that negotiations would take place after Cancún", thus relegating the primacy of the 'explicit consensus' concept, to Kenya and Cuba, which "did not believe that conditions were right for... negotiations". This chasm between perspectives seemed intractable particularly as the Singapore Issues were being treated as one. Bangladesh pointed out that each Singapore Issue had "a separate identity and merit" but this remained obscured in favour of the 'package deal'. This difference of opinion along North/South lines was again put into sharp focus following the submission of a paper from Bangladesh for the LDC Group and fifteen other countries.⁷⁶ The suggested text on investment for the Cancún Declaration therein highlights the wide-ranging disagreements on scope, definition, the involvement of the DSU, discrimination, transparency, incentives and BITS. This text was discussed at the August General Council meeting along with the draft Ministerial Declaration.⁷⁷ The Philippines commented that many developing country members had already rejected the draft investment text and Argentina added that there were still a number of outstanding issues to address such as investor obligations and SDT. Lamy later said that the Commission would consider the problems raised by the developing countries and was prepared to table "a project that brings a certain number of general rules, which could be adopted in those developing countries wishing to do so without obliging those countries who do not wish to do so to apply them".⁷⁸ The Commission may have thought they could progress this outside the working group, perhaps in a Green Room process or as a separate plurilateral exercise.

⁷⁵ Meeting on 24th and 25th July, minutes circulated as WT/GC/M/81)

⁷⁶ WT/GC/W/514 of 28th August from Bangladesh (on behalf of the LDC Group), Botswana, China, Cuba, Egypt, India, Indonesia, Kenya, Malaysia, Nigeria, Philippines, Tanzania, Uganda, Venezuela, Zambia and Zimbabwe entitled '*Paragraphs 13, 14, 15 and 16, Dealing with Singapore Issues of the Draft Cancún Ministerial Text contained in JOB(03)/150/REV 1*'.

⁷⁷ Meeting on 25th, 26th and 30th August (minutes circulated as WT/GC/M/82

⁷⁸ Meeting on 2nd September 2003, from MEP Eryl McNally of the East of England at <http://www.erylmcnallymep.org.uk/plenaryspeeches.htm#2nd%20July%202003:%20Investment%20and%20competition> accessed 21st July 2005

As if to support the earlier contention that the Council of Ministers may have recognised that agreement would, perhaps, not be forthcoming at Cancún (see the previous page), their Statement to the Ministerial said only that “As far as the Singapore Issues are concerned we ask all partners to support the launching of new negotiations, because we are convinced this will help to accelerate growth in all countries”, which did not make it seem that they thought these negotiations would, realistically, go ahead.⁷⁹ It was also the case that the Ministerial Declaration from Cancún did not mention trade and investment although the Derbez Draft contained one section on investment written wholly in line with the Commission’s thinking.⁸⁰ Using this methodology, the Group would be asked to “intensify the clarification process” and to develop negotiation modalities including SDT provisions (that the Commission had seemingly been trying to ignore throughout. The Group would also have been asked to clarify the relationship between this and the single undertaking, once again revealing a lack of appreciation that negotiations had been ongoing since 1996 and had still not managed to clarify terminology. The final part stated that these modalities would be adopted by General Council by a specified date, thus also ignoring the principle of ‘explicit consensus’. This was far removed from what the developing countries had argued in Group meetings prior to Cancún and it is unsurprising that there was no agreement given to open negotiations.

The ESF Daily news from the Ministerial followed the progress of trade and investment in the negotiations.⁸¹ On 11th September it was reported that, for the Japanese, investment was the “deal breaker” possibly concerned that any dilution of the proposal would compromise benefits. On 12th September, “the idea of optional participation to a final Agreement on Investment (had) been floated” however, the Commission did not give this initiative any support. It was also stated that the US wanted to limit an investment agreement to transparency although, again, neither the EC nor Japan would agree. On 14th September, a Green Room meeting took place chaired by Mr Derbez who asked members to show some “flexibility” on the Singapore Issues. Lamy reportedly left the meeting to consult with the Member States, who gave him

⁷⁹ From the Statement of Italy on behalf of the Presidency of the European Union WT/MIN(03)/ST/6 dated 11th September 2003, once the Ministerial had started, suggesting some last minute negotiations as to its content.

⁸⁰ Found at http://www.wto.org/english/thewto_e/minist_e/min03_e/draft_decl_rev2_e.htm, presented to the Conference on 13th September 2003, accessed on 12th August 2005

⁸¹ ESF Daily News from Cancún at www.hkcsi.org.hk/reports/cancun/09Daily_ESF_Newsletter_1-6.doc

permission to drop trade and investment and trade and competition. However, the African Union refused to agree to negotiations being opened on any of the four so the meeting ended.

That there were no further meetings of the Group after Cancún shows that the gap between the developed and developing countries could not be bridged. Although Lamy appeared to believe in the importance of such work, he did not pursue it further.

Trade and Competition

The Commission's work in this area began because of the *OECD Recommendations on Restrictive Business Practices Affecting International Trade* from 1967 onwards. These Recommendations "encouraged informal contacts, mostly for the purposes of consultation and information sharing on specific competition cases (Damro, 2004:200). It appears to have been Leon Brittan who suggested that competition rules should be multilateralised in 1992 (Damro, 2006:221) and the EC began to lead in this area so the informal relationships set up through the OECD system could become binding. At the same time, the US held the opposite view perhaps because they thought it might impinge on their use of anti-dumping rules (Jawara and Kwa, 2003:41).

The 'EU Approach to the Millennium Round', COM(1999)331, clarified that a WTO agreement in this area was one of the Commission's key aims (pp11-12), in order to tackle anti-competitive behaviour by businesses, promote closer relationships between competition authorities and minimize costs because of the application of different legislation.⁸² Four parts to the Agreement were proposed along with a "development dimension" suggesting SDT could comprise transitional periods and flexibilities in application rather than any distinct measures.⁸³ This is very similar to what was detailed in the negotiating mandate, although it suggested that an agreement should cover "anti-competitive practices with a significant impact on international trade and investment" and adhere to the key WTO principles of transparency and non-discrimination.⁸⁴

⁸² Therefore, very much an extension of SEM ideals.

⁸³ Core principles; common approaches (on hard core cartels, abuses of dominance and international mergers); cooperation mechanisms (e.g. "notification, consultation and surveillance") and dispute settlement

⁸⁴ Given to the Commission on 26th October 1999 (sourced from <http://www.france.attac.org/a2985>)

The 1999 report from the Working Group to the General Council seems to show more progress and less disagreement than in the investment negotiations at this stage; although this could reflect the drafting skills of the Secretariat as there were evidently a number of outstanding issues requiring resolution just as there had been with the trade-investment agreement.⁸⁵ Such areas included the interface with other WTO rules and the trade and investment work; objectives and principles; elements for inclusion in WTO rules; unilateral, bilateral and multilateral rules; measures to promote the development of necessary capabilities; principles of transparency; “approaches to a mandatory requirement for competition legislation”; possible notification procedures; international cooperation mechanisms; cartels and antidumping. Perhaps Section 37 of the paper summarizes the position, “the Group was in an exploratory and educative process and was still a long way off (from being able to) gauge the need for multilateral rules”.

Work going on in APEC suggested timeliness on the part of the WTO in considering competition issues as APEC members might be expected to push forward work in WTO and their experiences of implementing such policies could be shared. The Economic Leaders Group had agreed ‘*APEC Principles to Enhance Competition and Regulatory Reform*’, which covered all areas of competition although the principles were voluntary, flexible and allowed exceptions.⁸⁶ That APEC was moving in a similar orbit to the WTO was not enough to generate a supportive consensus within the Working Group. The draft Declaration for the Seattle Ministerial highlighted the lack of agreement as two possible options were detailed.⁸⁷ The first was that negotiations *will* (italics mine) focus on four issues: (i) main issues, (ii) developing common positions, (iii) modalities for cooperation and, (iv) SDT provisions, with an associated “educative and analytical process” taking up to two further years. The second option, although clear that negotiations would not be opened, suggests either that the group would continue with the Singapore mandate or with the current mandate “building on the work undertaken to

⁸⁵ Issued on 11th October (WT/WGTP/3) on the basis of the three meetings of the Group held in 1999 (on 19-20 April, 10-11 June and 14 September) and two Symposia held on 17th April and 13th September in conjunction with UNCTAD and the World Bank.

⁸⁶ APEC Economic Leaders meeting on 13th September 1999 (Declaration at http://www.apecsec.org.sg/apec/leaders_declarations/1999.html accessed 10th October 2005)
APEC Principles for Regulatory Reform at http://www.apecsec.org.sg/apec/leaders_declarations/1999/attachment_-_apec.html accessed 15th October 2005

⁸⁷ Sent to Members on 19th October 1999 as JOB(99)/5868/Rev 1 (reproduced at <http://www.ictsd.org/English/Declaration3.pdf> accessed 3rd October 2005)

date” and then either “present a final report” or “present concrete findings” to the next Ministerial. One of the problems was a lack of agreement (in spite of APEC’s work) between the Commission and the US, which was highlighted at the TABD meeting in late October. The Commission failed to receive support for competition going on to the Seattle agenda as “negotiations on competition policy are regarded unrealistic by the TABD as a whole”.⁸⁸ The conclusions from the meeting itself were even starker, commenting that it “seems to be impossible” to develop a common line “on whether or how this issue should be negotiated within the new Round” and so advocated the continuation of the educative process.⁸⁹ The ESF felt that this lack of agreement was indicative of a need for harmonization of competition regimes between the EC and US although it seemed more an issue of different perspectives than a lack of harmonization.⁹⁰

Eight papers had been submitted on this issue to the Seattle Ministerial conference.⁹¹ The Commission’s paper, ‘*The EC Approach to Trade and Competition*’, contained nothing different from what had been set out in COM(1999)331 and the negotiating mandate, suggesting that their views had not evolved even though the level of contestation seemed to be high. Turkey, Cuba and Kenya thought negotiations should be delayed while the others supported their beginning as soon as possible. As

⁸⁸ Corporate Europe Observer, November 1999 ‘Doing Business in Berlin’ at <http://www.corporateeurope.org/tabd/berlinbusiness.html> accessed on 21st July 2005

⁸⁹TABD meeting in Berlin on 29th and 30th October at <http://static.tabd.com/gems/1999BerlinCEOReport.pdf> accessed 5th October 2005. That the TABD failed to mention trade-competition at their Cincinnati meeting of November 16th-18th 2000 (see the ‘*TABD Recommendations*’ at <http://static.tabd.com/gems/2000CincinnatiCEOReport.pdf> accessed 15th November 2005) and again in their *Mid Year Report* from Washington DC on May 15th 2001, (reproduced at <http://static.tabd.com/gems/MYM01.pdf> accessed 5th October 2005), suggests that their position remained unchanged

⁹⁰ESF letter to Pascal Lamy of 23rd November 1999 on their ‘Preliminary Views on Trade and Competition Policy’ sourced at http://www.esf.be/pdfs/documents/position_papers/competit.pdf accessed on 15th March 2005. Damro (2007: 891) says that the US-EU agreement on competition was signed in 1991 and was the EU’s “first international agreement on competition policy”. The Europa site, meanwhile, suggests that cooperation in competition regimes between the EU and US had been going on since 1996 (from <http://europa.eu.int/scadplus/leg/en/lvb/l26101.htm> accessed 17th January 2006). In particular, in 1999, “cooperation was very close and fruitful, and facilitated... growing convergence” and the two sides also “strengthened their contacts with respect to combating global cartels during 1999 and concluded administrative arrangements allowing for the possibility of attending key meetings in individual cases of mutual concern”. This is sourced from the ‘*Report from the Commission to the Council and the European Parliament on the application of the Agreement between the European Communities and the Government of the United States of America regarding the application of their competition laws 1 January 1999 to 31 December 1999*’ COM(2000) 618 final. According to the site, this cooperation would continue through the time period covered by this thesis.

⁹¹ Apart from the EC (WT/GC/W/191), papers were also circulated from Cuba (WT/GC/W/389), Japan (WT/GC/W/308), Kenya on behalf of the African Group (WT/GC/W/300), Korea (WT/GC/W/298), Norway (WT/GC/W/310), Poland (WT/GC/W/293) and Turkey (WT/GC/W/250)

suggested by the draft Declaration, there was no agreement as to whether negotiations should take place following Seattle. The WTO briefing notes from the Ministerial show that no consensus was forthcoming and it was noted that a positive outcome was by no means assured as the Commission was the most enthusiastic member of the Working Group.⁹²

The nature of the support from the Council of Ministers before Seattle and support from the European Parliament afterwards suggested that the internal consensus on competition policy would remain supportive.⁹³ The external consensus was not. At the first post-Seattle meeting of the Group, the Chairman identified nine priority areas that needed consideration, suggestive of the general lack of conviction of the need for a WTO Agreement in this area.⁹⁴ Of particular note is the need to use “concrete examples” to support arguments, avoiding theoretical debate, and for SDT provisions to be developed; going against the Commission’s stance in COM(1999)331. The Commission introduced a paper in an effort to clarify the relationship between competition law and “domestic economic reform”, which accepted developing countries might experience difficulties in drawing up a law and in designing an appropriate agency to meet their needs (and acknowledged that flexibility needed to be built in).⁹⁵ The Commission’s view that there was no need for SDT provisions persisted; their position was that there would not be a high development and set up cost and any cost would be offset by the added value gained from being able to cooperate and collaborate

⁹²Briefing note of 1st December meetings at

http://www.wto.org/english/thewto_e/minist_e/min99_e/english/about_e/resum01_e.htm accessed 15th March 2005 and Briefing note of 2nd December meetings at

http://www.wto.org/english/thewto_e/minist_e/min99_e/english/about_e/resum02_e.htm also accessed 15th March 2005.

Questionable outcome suggested by ITCSD Bridges Daily Update on the Seattle Conference on 3rd December 1999, Issue 4 reproduced at www.unc.edu/~swblack/BridgeRep_1203.rtf accessed on 21st July 2005

⁹³ ‘Resolution on the EU Approach to the Millennium Round’ 18th November 1999 from EU Bulletin 11-99 at <http://europa.eu.int/abc/doc/off/bull/en/9911/p105017.htm> accessed on 15th October 2005. ‘Council conclusions on preparation for the third WTO Ministerial Conference’ EU Bulletin 6/99 at <http://europa.eu/bulletin/en/9906/p103021.htm> accessed 15th October 2005

⁹⁴ Meeting held on 15-16 June 2000 (minutes circulated as WT/WGTCP/M/11. The list is as follows: “Relating national treatment, MFN and transparency to competition” and vice versa; Methodologies to facilitate “cooperation and communication” and the provision of technical assistance; Defining the relationship between competition policy and WTO objectives to facilitate trade; Considering “other relevant issues pertaining to the subject”; Using “concrete examples” to support arguments; Emphasizing the ‘development dimension’, which would include “benefits, challenges...downsides... in implementing competition policy...including the problems...in establishing competition agencies...enforcement...benefits and costs”; Developing a ‘competition culture’, which could include an “exchange of national experience”; Elucidating “practical aspects of competition policy”, and, Clarifying the interface between trade and competition.

⁹⁵ WT/WGTCP/W/140

with other members. A number of members expressed reservations about the Commission's approach. Hong Kong China was particularly critical about the lack of emphasis on flexibility and both Pakistan and, notably, the US questioned whether a focus on the core principles (the aim of the Commission's paper) was enough and openly speculated as to whether the WTO was the right place to pursue this issue anyway.

The Commission continued its activism by submitting a further paper on '*A Multilateral Framework Agreement on Competition Policy*' to the next meeting of the Group, clearly trying to identify the necessary elements of an agreement.⁹⁶ This document was a more comprehensive explanation of COM(1999)331 with a few procedural additions so it was not indicative that there had been much blue sky thinking in order to address the concerns expressed up to that date.⁹⁷ The paper clarified that signatories would be expected to have a competition authority with appropriate powers and status and to have domestic systems for dispute resolution. Considering many countries acknowledged that they did not yet have the necessary infrastructure, it seems odd that the Commission wanted them to have all of it in place prior to signing. This almost suggests an acceptance that reaching agreement was not a short-term but a long-term aim. In the end, nine members (including the Commission) expressed support for this position with Pakistan and India accepting the principle.⁹⁸ Three countries raised issues of capacity although Pakistan noted there was scant prospect of additional funding; perhaps of concern considering the Commission's prerequisites apparently for all countries including developing countries.⁹⁹ The US, meanwhile, clarified that although it felt trade and competition was important, "it remained an open question as to whether the WTO was the appropriate institute (sic) in which to initiate the development of rules on competition in a multilateral context", meaning it was still not categorically supportive.

⁹⁶Paper on '*Multilateral Framework Agreement on Competition Policy*' is WT/WGTCP/W/152. Meeting held on 2nd and 3rd October 2000 (Minutes circulated on 5th November 2000 as WT/WGTCP/M/12

⁹⁷ Which is unsurprising since neither COM(1999)331 nor the mandate went into procedural detail.

⁹⁸ Canada, EC, Hungary, Japan, Korea, Norway, Switzerland, Pakistan and India

⁹⁹ possibly recalling the discussions at the General Council meeting in February 2000 cited in the earlier case study

The Group's 2000 report to General Council acknowledged that any trade and competition agreement would impact on issues such as investment and TRIMs, suggesting that the issue of 'policy space' (so important in the trade and investments case study would be equally important here.¹⁰⁰ There was also a wider question as to whether there would be any added value for developing countries in implementing an agreement, questioning whether those countries would be able to see any "dynamic efficiency gains or gains in productivity". The Commission's paper for the March meeting of the Group, meanwhile, focused on the principles of non-discrimination and transparency. This centred on using the TBT Agreement as an example of how basic principles could be included, particularly on the acceptance of exclusions and measures to help SMEs or to protect state-owned businesses.¹⁰¹ Once again the US expressed its lack of conviction by making a number of negative remarks, for example, how cooperation could be seen as 'voluntary' and (under such circumstances) whether it would be possible to apply WTO rules. The US also openly speculated, together with Hong Kong China, upon why the Commission had deemed the WTO as the best place for a competition agreement. India and the Philippines were similarly negative about the need for an Agreement to ensure cooperation between competition authorities. Therefore, the Commission still had a substantial amount of work to do in order to encourage consensus within the Working Group.

The Commission's next two papers to the meeting in July detailed the "fundamental values" to which all Members could subscribe – i.e. the need for transparency, non-discrimination and protection against hard-core cartels.¹⁰² These first two did not, it was suggested, require harmonized competition legislation, enforcement practices or institutional structures. This may have been a way to acknowledge that a previous paper, in calling for a significant level of infrastructure to be in place prior to signature was overly ambitious. The rest of the first paper discussed coverage and definitions and clarified that any Agreement would exist to "support the application of competition law", not interfere with any other policy area nor make any statement about a country's

¹⁰⁰ WT/WGTCP/4 of 30th November

¹⁰¹ Commission paper WT/WGTCP/W/160 on 'Principles of non-discrimination and transparency' The Working Group meeting took place on 22nd-23rd March 2001 (minutes circulated as WT/WGTCP/M/14)

¹⁰² WT/WGTCP/W/174 on the 'Implications of a competition law for developing countries' and WT/WGTCP/W/175 on 'Regional competition arrangements'. Meeting held on 5th-6th July 2001 (minutes circulated as WT/WGTCP/M/15)

openness to investment.¹⁰³ Considering both the 1999 and 2000 Reports had admitted the possibility, if not the actuality, of overlap between competition and investment (amongst other areas), it appears the Commission was trying to back pedal by denying this possibility. Once again, a general, but not exclusive, North-South divide seemed to be evident.¹⁰⁴ Hong Kong China thought that the Commission had failed to consider the extent of costs and had not considered countries, which did not want a “comprehensive competition law” although many of the countries supporting the EC thought that the Agreement would help countries to design and implement a policy to suit.¹⁰⁵ The second paper clarified that the Commission supported no specific design for regional competition arrangements but, for “effectiveness”, they had to include technical assistance, case-specific cooperation and an exchange of experience between competent authorities.¹⁰⁶ It seems premature for the Commission to have addressed such issues, when there was still a lack of agreement about the general principles.

Lamy’s July meeting with Robert Zoellick in Washington was, at least partly, designed to encourage the USA to be more positive towards the idea of putting trade-competition on the agenda.¹⁰⁷ It was reported afterwards that the US had changed its tune since the somewhat acrimonious March Working Group meeting. However, this was still not enough to encourage a supportive coalition on this issue. The 2001 report to the General Council acknowledged that some countries remained uncommitted although it also emphasized that the importance of addressing anti-competitive cartels was clear from the evidence received from both the World Bank and OECD, which had both commented on the increased level of such practices and noted the negative effects “on the economies and development prospects particularly of poor countries”¹⁰⁸ There had been a suggestion that the work be divided into two areas – domestic and international

¹⁰³ This clarified a point in COM(1999)331 which had said an agreement could cover “common approaches on anticompetitive practices with a significant impact on international trade and investment”, suggesting that there was some overlap between trade/investment/competition.

¹⁰⁴ This proposal seemed well received by Canada, Chile, Colombia, Hungary, Japan, Korea, Morocco, Norway, Pakistan, the Russian Federation, South Africa, Switzerland and Ukraine, but not by Egypt, Hong Kong China, India, Indonesia, Kenya, Malaysia, the Philippines, Singapore, Thailand, Zambia and Zimbabwe

¹⁰⁵ Although the Commission had previously opined that each country would need a competition structure in place prior to signing an agreement.

¹⁰⁶ It is not clear, for example, that APEC’s arrangements included these elements

¹⁰⁷ The ICTSD-Bridges weekly trade review 5:28 of 24th July 2001(‘EU’s New Strategy on Labour, EU-US Draw Closer on Investment’ at <http://www.ictsd.org/html/weekly/24-07-01/story2.htm> accessed 1st November 2005

¹⁰⁸ WT/WGTCP/5 of 8th October 2001

competition policy – with negotiations taking place either in the first only, or in both areas with developing countries being able to opt out.¹⁰⁹ The main problem noted was that one third of WTO members still did not have a competition policy, which may have been why they remained uncertain of the benefits of a multilateral policy.¹¹⁰

The Council of Ministers' conclusions on the latest state of preparations for Doha mentioned nothing at all about competition, suggesting either that they were content with the Commission's stance and/or the progress to date or that there were more pressing objectives to achieve.¹¹¹ At the WTO General Council meeting prior to the Ministerial, the general consensus seemed to be that the study process should continue.¹¹² Interestingly, although the Commission remarked that it had "bent over backwards to integrate all possible development aspects" in trade and investment, government procurement and trade facilitation, it did not mention that it had done so in competition policy. This may have been because the Commission was content with what was going on in the Group or because it had, in effect, given up efforts to achieve more than a baseline consensus on the most general principles.

Although there was no agreement to launch negotiations on trade and competition policy in Doha, the final version of the Declaration had substantive sections on the 'Interaction between trade and competition policy'.¹¹³ The first paragraph stated that there was a strong case to pursue the work and continued that Ministers "agree that negotiations will take place after the Fifth Session of the Ministerial Conference on the basis of...explicit consensus", meaning that the ability of each member to express a preference before negotiations went ahead could not be overlooked. Paragraph 24 said the WTO would work together with other donors to maximise the effectiveness of technical assistance and paragraph 25 gave a list of issues that the Group would be asked to focus on prior to the Cancún Ministerial including, "core principles...modalities for voluntary cooperation; and support for progressive

¹⁰⁹ Although there is no indication in the Report as to where this suggestion came from.

¹¹⁰ See the Report of the Working Group meeting of 5-6 July 2001 (WT/WGTCP/M/15), page 31 where the Commission says that an agreement would exist to "assist Members in implementing effective competition policies and in related institution-building processes"

¹¹¹ Council conclusions on latest state of preparations for the Doha Ministerial Conference of 29th and 30th October at <http://europa.eu.int/abc/doc/off/bull/en/200110/p106030.htm> accessed 1st November 2005

¹¹² General Council meeting on 31st October and 1st November, minutes circulated as WT/GC/M/71

¹¹³ Issued on 20th November 2001 (WT/MIN(01)/DEC/1

reinforcement of competition institutions in developing countries through capacity building". This was probably the best the Commission could have hoped for, given the broadly negative view of the Working Group towards opening negotiations. It would also give the Commission more time to build the necessary 'explicit consensus' before Cancún.

Perhaps seeking to address the concerns of the developing countries at an early stage, the Commission submitted a paper on '*Technical assistance*' to the first meeting of the Working Group in 2002 saying they foresaw assistance being targeted at five main areas in order to support competition policy.¹¹⁴ However, as if to admit that this was only the first step towards their goals, the Commission went on to detail the long term aims of establishing a 'competition culture' in countries, encompassing "the judiciary...the business community and...the public in general". It further reiterated that cooperation between competition authorities was key and the multilateral context, in which an Agreement would operate, meant that cooperation could be significantly widened from that in existing bilateral or regional arrangements. This proposal makes a WTO Agreement look like the tip of an iceberg in terms both of aim and eventual agenda and it is surprising that there were no negative responses minuted in the meeting report.

A further paper on '*Domestic and international cartels*' was circulated by the Commission to the next meeting explaining the effects that they could have on an economy, for example placing restrictions on the transfer of technology – suggesting possible overlap between this group and the Working Group on Trade and Transfer of Technology.¹¹⁵ Critically, the Commission saw an Agreement as a complement to, and not a replacement of, existing bilateral and regional arrangements in line with the Group's Report of 1999, cited earlier), thus questioning (implicitly) this particular

¹¹⁴Paper circulated as WT/WGTCP/W/184. Meeting held 23rd to 24th April 2002 (minutes circulated as WT/WGTCP/M/17) The five main areas identified were countries without a horizontal law; countries installing enforcement or authority measures for the purposes of the law; a 'European Competition Academy' (a virtual forum of "well known European institutions and universities, which had particular knowledge in relation to the development/competition policy interface"); "residential seminars" for competition authority officials from developing countries and exchange programmes for officials

¹¹⁵ Paper circulated as WT/WGTCP/W/193 for the meeting on 1st and 2nd July 2002 (minutes circulated as WT/WGTCP/W/193)

aspect of added value to this agreement.¹¹⁶ Perhaps aware that so many countries had yet to develop competition law, the penultimate Group meeting of 2002 opened with an assurance from the Commission that although an agreement would mean all members would be committed to establishing a competition framework, this did not mean that a competition law was necessary, at least in the short term, especially if regional arrangements filled that gap, although there was an open question about how comparability could be assured.¹¹⁷ The Commission accepted that it had so far failed to detail SDT but confirmed that no cooperation would be sought outside the commitment to the main issues at least at present. Perhaps this indicated an appreciation that the ambition in COM(1999)331 would be unlikely to happen given the lack of a supportive consensus in the WTO and that the best that could be hoped for would be a baseline agreement that could be built on.¹¹⁸ The Commission also clarified that notification would only be expected where decisions had the potential to directly affect the competition agreement although the US commented that as all decisions by their courts had the potential to change existing legislation, they might face a major burden; this was accepted by the Commission. Hong Kong China and India, meanwhile, continued to express concern about financial costs.

Perhaps apprehensive that 'explicit consensus' was still not forthcoming, the Commission submitted a paper reflecting discussions on core principles to the last Working Group meeting in November held (primarily) to agree the Annual Report.¹¹⁹ The Commission confirmed it was aiming for a rigorous system, which would deter cartels and other anti-competitive behaviour and noted that technical assistance would be required to address capacity constraints and to give advice and guidance on the content of the necessary legislation. However, it assured members that there would be no attempt to harmonize the content of domestic legislation in the WTO, again

¹¹⁶ The text in the 1999 Report to the General Council from the Group is on page 17 and comments that a multilateral competition agreement would "augment and reinforce bilateral and regional initiatives" not that it would replace them.

¹¹⁷ Meeting held on 26th and 27th September 2002 (minutes circulated as WT/WGTCP/M/19)

¹¹⁸ To reprise, COM(1999)331 suggested that, firstly, SDT was unnecessary if there were "transitional periods and flexibility in the rules" and that cooperation should include, apart from hard-core cartels, "criteria for assessment of vertical restrictions or abuses of dominance with a foreclosure effect (and) principles for cooperation on export cartels and international mergers".

¹¹⁹ WT/WGTCP/W/222 setting out the core principles and "how these principles would operate in (and what they would mean for) domestic competition laws (considering) members had different legal traditions and administrative systems". Paper circulated for the Working Group meeting of 20th November (minutes circulated as WT/WGTCP/M/20)

suggesting comparability would be difficult, and it accepted that there needed to be more work to develop dispute settlement mechanisms. The annual report of 2002, meanwhile, was structured differently from the others, in five substantive parts in accordance with paragraph 25 of the Doha Declaration, and seemed akin to the Commission's view, being much more positive in outlook.¹²⁰ The first section on core principles ends, "Delegations should...adopt a more positive stance" and the section on hard-core cartels reads, "the importance of the issue...was self-evident", even though members had not agreed that it was 'self-evident' why this needed to form part of a WTO agreement.

The next meeting of the Working Group did not take place until February 2003.¹²¹ The Commission once more reiterated that it wanted to concentrate on defining a set of principles to which all members could subscribe and said it could not see any basis for countries to be exempted.¹²² As far as scope was concerned, the Commission agreed it would be better if countries had systems, which were not solely concerned with the adverse effects of cartels (i.e. along the lines of COM(1999)331) but only in this area would there probably not be a transition period.¹²³ Thailand questioned the relationship between a competition law and the vaunted "ability to deal with cartels", suggesting that it still remained unconvinced. After this meeting, the ESF sent a letter to Pascal Lamy in which they "express(ed) their support" for the work being undertaken in the Working Group and suggested developing "a basic set of competition standards" which could then be used to "benchmark" competition authorities and as principles in the setting up phase.¹²⁴ The ESF also called for establishing further commonalities between

¹²⁰ Annual Report to the General Council circulated as WT/WGTCP/6 on 9th December. The Doha declaration had set out the core principles; provisions on hard-core cartels; modalities for cooperation, and, "support for progressive reinforcement of competition institutions in developing countries through capacity building"

¹²¹ Meeting held on 20th and 21st 2003 (minutes circulated as WT/WGTCP/M/21)

¹²² His argument was that no specific model was advocated and that agencies could be multipurpose if capacity was an issue. The only criterion was that the competent authority had to be able both to implement and enforce competition law and "be a credible and real partner for international cooperation" and peer review. The Cuban delegate pointed out that many developing countries had neither competition legislation nor a competent body so this was premature. She also said there should be further consideration given to SDT to enable countries to build appropriate legislation and bodies at their own pace to fit their own needs without being "subject to time constraints".

¹²³ However, how long it would take to set up a credible 'competent authority' was not mentioned; it could obviously not be instantaneous upon signing the agreement if one of the purposes of signing it was meant to help countries that did not have a competition authority, to put one in place. This was also pointed out by the Cuban representative.

¹²⁴ Letter sent on 20th May, 'ESF Call for Progress Towards a Multilateral Agreement on Trade and Competition' found at http://www.wto.org/English/forums_e/ngo_e/esf_agree_trade_comp_e.pdf accessed on 3rd May

the EC and US and suggested that this would facilitate the launch of “substantive multilateral negotiations...at...Cancún”. It is difficult to see how such standards would be enforceable unless cited in the Agreement’s text (with an association to the DSU), which would also give more room for dissent.¹²⁵ It is also difficult to see, given the politicized environment and the insistence on the part of the developing countries that they did not want to open negotiations in new areas, how improved relationships between the Commission and the US would automatically facilitate ‘explicit consensus’ at Cancún.

At the last meeting of the Group in May 2003, the Nigerian delegate, expressing concern that developing countries views had not been taken on board, read out lists of areas he felt needed clarification.¹²⁶ These were elaborated upon by other delegations, leaving a list of some fifty outstanding issues.¹²⁷ It deserves highlighting that the existence of this list put the ‘explicit consensus’ sought at Cancún seemingly out of reach. The Commission, however, almost ignored these concerns by saying that they needed to be dealt with within a negotiation not prior to a negotiation. This might confirm, as suggested before, that the Commission was planning to seek agreement only on the bare principles in order to establish ‘explicit consensus’ prior to beginning negotiations. The Commission later introduced a paper on ‘*Dispute Settlement and Peer Review: Options for a WTO Agreement on Competition Policy*’ and opined that the DSU could be used to assess whether national competition laws adhered to the ‘core principles’.¹²⁸ However, individual competition authority decisions, patterns of decisions, and complaints from individuals or firms would not be subject to the DSU. The Commission also remarked that peer review, because it was “non-conflictual”,

2006. It must be borne in mind that “Standardisation is not a simple technical activity but is influenced by political, economic and administrative factors. With the search for standards that are international, and increasingly comprehensive, standard setting must cater for an ever increasing range of players. Thus, it is little wonder that the formal standards setting processes of e.g. the International Standards Organisation (ISO)...tend to be extremely slow at times”. From K Jacobs, R Proctor and R Williams at the University of Edinburgh School of Informatics ‘Users and Standardisation – Worlds Apart?’ at <http://www.cogsci.ed.ac.uk/~mp/papers/standardsView-96/draft.doc> accessed 6th October 2006

¹²⁵ The British Standards Institution, the oldest standards body in the world, in their Website section on ‘What is a standard?’ notes that “Standards are designed for voluntary use and do not impose any regulations. However, laws and regulations may refer to certain standards and make compliance with them compulsory”. (found at http://www.bsi-global.com/British_Standards/Standardization/what.xalter accessed 3rd May 2006)

¹²⁶ Meeting held on 26th- 27th May 2003. Minutes circulated as WT/WGTCP/M/22

¹²⁷ Some are much wider than the strict competition remit of this case study so they have not been elaborated here.

¹²⁸ WT/WGTCP/W/229,

would be positive for both developing and developed countries. The paper attracted negative comment from India, China and Hong Kong China. The Commission presented a further paper on '*Flexibility and Progressivity*', which was not discussed in any depth but seemed to be a genuine effort to focus squarely on the administrative and technical infrastructure 'basics' and how these might best be applied for the developing countries.¹²⁹ This included suggesting individual time periods and implementation plans to be drawn up for each LDC with the developed countries having the "responsibility" to support their efforts. In order to achieve this, there would almost need to be individual negotiations in each case; bringing up issues of technical capacity in the beneficiaries.

The European Consumers' Association (BEUC), another of the Commission's Contact Group members, was supportive of the Commission's stance. Their '*Priorities for Cancún*' urged the advancement of competition policy negotiations noting the importance to consumers.¹³⁰ BEUC also demanded that technical and financial assistance be tied to commitments from the destination countries to open particular sectors of their markets although they made a small concession that developing countries should have the framework regulations in place first. UNICE too was supportive; expressing a perspective practically identical to the Commission's.¹³¹ Further, UNICE identified six elements for inclusion into an Agreement, again very similar to what the Commission had proposed.¹³² Eurochambres, however, was less

¹²⁹ Paper on '*Flexibility and progressivity*' circulated as WT/WGTCP/W/234

It is suggested that it covered 'the basics' as this document sets down the general criteria for the legislative and administrative requirements for a competition framework. For example, only on hard-core cartels would there be a "substantive provision" and all the other policy areas would be left to the individual members. Also laws and regulations should be made available but this could be by any means, that there should be no interference in the competition authority's decision making and that permitting a judicial review did not set down what kind of body had to conduct that review. In addition, it acknowledged that regional bodies might well satisfy these requirements so countries were under no obligation to develop a national strategy and that policy exclusions and exceptions would be allowed if they were transparent and predictable.

¹³⁰ '*BEUC Priorities For Cancún*' BEUC/X/028/2003 of 30th June, <http://www.beuc.org/1/GNKLGFEDBFDNPKDDGAFOIBDNNPDB69DW1A69DW3571KM/BEUC/docs/DLS/2003-01533-01-E.pdf> accessed 16th January 2006

¹³¹ Brochure of 18th July, on the Doha Development Agenda, '*Cancún. Moving Forward Together*' (at <http://212.3.246.117/1/BIJNHQICGDHGMOFDCLMDDKEPDB69DP6WN9LI71KM/UNICE/docs/DLS/2003-02316-EN.pdf> accessed 16th January 2006) Interestingly, an e-mail from UNICE on 12 December 2005 said that their positions on the Singapore Issues were "subtly different" from those of the Commission although quite how they differ is difficult to identify.

¹³² The principles of "transparency, non-discrimination and procedural fairness"; action against hard core cartels; voluntary cooperation and ensuring confidentiality; institutional strengthening and transition periods; voluntary peer review, and, the DSU being used to assess the compliance of national legislation.

optimistic and advocated careful consideration as to whether a plurilateral agreement might be more “realistic”.¹³³ Similarly, the FTA position paper on Cancún, although agreeing that the WTO was “an appropriate forum” for the work, suggested consideration should be given to establishing a plurilateral agreement probably because of the difficulties in achieving consensus.¹³⁴ Meanwhile, the European Parliament, as before, continued to support the Commission, whilst ignoring the level of dissent within the WTO suggesting their preferences were strongly in alignment with the Commission’s.¹³⁵ However, when the Council of Ministers issued its conclusions on the preparation of the Cancún meeting, competition was not mentioned specifically although there was no effort to change the Commission’s mandate to take account of this.¹³⁶

At the Group’s next meeting, and the last meeting before the Cancún Ministerial, in August, Argentina, Hong Kong China, Sri Lanka and the US called for a ‘soft agreement’ on trade and competition.¹³⁷ This would be much less broad in scope, encourage voluntary cooperation and establish a system for peer review. It may have been that this idea was expressed too late to give it a realistic chance of success at Cancún although the Commission’s mandate had remained unchanged so it was still negotiating the Singapore Issues as a package. As in the case of investment, the August paper from Bangladesh for the LDC Group and fifteen other countries made it clear that there were a number of areas where further clarification was necessary – non-discrimination; the relationship with bilateral and regional arrangements; transparency; definitions and criteria for ‘hardcore cartels’, the burden of information provision and the scope of application of the DSU again suggesting that ‘explicit consensus’ would not be achievable in Cancún.¹³⁸

¹³³ Eurochambres position paper 2003, ‘*The WTO Ministerial Conference in Cancún 10-14 September 2003*’ at http://www.eurochambres.be/PDF/pdf_trade/Global%20Chamber%20Platform%20PP%20Cancun.pdf

¹³⁴ ‘*FTA Position on the Fifth Ministerial Meeting in Cancún*’ at <http://www.fta-eu.org/doc/unp/opinion/en/0316attachment.pdf> accessed 15th March 2007

¹³⁵ On 3rd July 2003, the European Parliament, as before, agreed, “that...competition... should form part of the formalised negotiations” (from EU Bulletin 7/8 2003 at

<http://europa.eu.int/abc/doc/off/bull/en/200307/p106043.htm> accessed on 15th October 2005

¹³⁶ Meeting of 21st July 2003 from EU Bulletin 7/8-2003 at

<http://europa.eu.int/abc/doc/off/bull/en/200307/p106044.htm> accessed on 15th October 2005

¹³⁷ Meeting held on 25th, 26th and 30th August (WT/GC/M/82, accessed 1st November 2005. This ‘soft’ agreement could be said to be more akin to the TABD position than the EU position.

¹³⁸ WT/GC/W/514 of 28th August from Bangladesh (on behalf of the LDC Group), Botswana, China, Cuba, Egypt, India, Indonesia, Kenya, Malaysia, Nigeria, Philippines, Tanzania, Uganda, Venezuela,

That the Ministerial Declaration from Cancún did not mention trade and competition is instructive. However, the Derbez Draft of the Declaration that was presented to the Ministerial for agreement on 13th September 2003 did have a section (number 15) on competition. This began by acknowledging the “valuable work” of the Group and went on to agree to continue the work being undertaken with the aim of modalities being submitted to General Council by a date to be specified, acknowledging that the concerns expressed by the developing countries were insurmountable at the present time.¹³⁹

Once again there were no further meetings of this Group after Cancún. Thus the gap between the developed and developing countries proved intractable and even the ‘soft agreement’ was not pursued. Although, then, the Commission had approached the issue slightly differently - in that it appeared to want only an agreement on the principle of having an agreement – this was no more successful than the methodology employed for trade and investment i.e. seeking an ‘explicit consensus’ in the Working Group itself.

Transparency in Government Procurement

The WTO Agreement on Government Procurement (AGP) was signed in 1979 to enter into force from 1981. It was then amended in 1987 and an extension of scope and coverage was signed on 15th April 1994 to enter into force on 1st January 1996. As of 1st February 2005 it only had thirteen signatories (including the EC as one), none of which were developing countries. The complexity of the AGP, and the difficulties of working out what is and what is not covered, is acknowledged by the WTO in its ‘Overview of the AGP.’¹⁴⁰

Zambia and Zimbabwe entitled ‘Paragraphs 13,14,15 and 16, Dealing with Singapore Issues of the Draft Cancún Ministerial Text contained in JOB(03)/150/REV 1’.

¹³⁹ Once again, the Daily ESF Newsletter from Cancún (at www.hkcsi.org.hk/reports/cancun/09Daily_ESF_Newsletter_1-6.doc, accessed 7th May 2006) should be read in conjunction with this.

¹⁴⁰ At http://www.wto.org/english/tratop_e/proc_e/over_e.htm (accessed 18th January 2006)

“When reading the schedules...to ascertain whether a particular procurement contract is covered by the Agreement, it is important to check...not only whether the procuring entity is covered, the threshold level and, if the contract is for a service, whether the service is covered, but also the General Notes at the end of most parties’ schedules, which provide for a number of exceptions”

Therefore, although an AGP existed in the WTO, it suffered from limited scope, limited applicability (because of the number of signatories) and many exceptions. It was this, which created the incentive for the Commission to seek to develop a multilateral Agreement on Transparency in Government Procurement (ATGP). However, in COM(1999)331, the Commission was not specific about the work to be undertaken in this Group. It noted that the AGP needed to be modernized and made more attractive but acknowledged that this transparency Group was only one of three dealing with procurement issues, all of which were important in order to achieve the necessary liberalisation. The mandate to the Commission for the negotiations set out more comprehensively what this particular Group should achieve; a multilateral agreement with a wide scope covering both goods and services and all levels of government.

The Group’s 1999 report to the General Council shows a lack of agreement on even the most basic principles in the same way as the trade and investment case study (detailed earlier in the Chapter).¹⁴¹ At this stage, then, it appeared that concrete policy recommendations were a long way off. This was also in spite of ongoing work in APEC on government procurement, which could have acted as a push towards a multilateral agreement.¹⁴² Although APEC noted that acceptance of their principles “should not and will not prejudice the WTO discussions on GP nor the positions taken by member economies in the WTO” and even though only a ‘best endeavour’ initiative, it could be

¹⁴¹ Minutes circulated on 12th October (WT/WGTGP/3), on the basis of the Group’s meetings on 24-5th February, 28th June and 6th October. The contested basic principles were: the definition of transparency; the definition of government procurement; clauses on exceptions, concessions, flexibility and transitional periods; bidding mechanisms; scope and methodology of providing information on national legislation and procedures; bribery and corruption; interface between government procurement disputes and the WTO DSU, and, the need for, and methods of, appropriate technical assistance.

¹⁴² 2nd September 1999, the APEC Government Procurement Experts Group issued their ‘*Non Binding Principles on Government Procurement*’ (accessed through http://www.apec.org/content/apec/apec_groups/committees/committee_on_trade/government_procurement/resources/overview.htm] on 31st October 2005

anticipated that the APEC members in WTO may have been supportive of the Commission's efforts to develop an agreement.

As if to show that this might be the case, the report of the Group's meeting in October 1999 highlighted that the Commission was not alone in wanting an agreement in this area; the US was also particularly keen on progress.¹⁴³ As further emphasis, the Commission, the US, Australia and Japan all submitted proposed Agreement texts – the US saying this was because of the level of agreement in the Group. Lest they be lulled into a false sense of security that this might be more easily achieved than agreements on the other Singapore Issues, eleven countries said that these drafts exceeded the Group's mandate as the 'study phase' had not been completed and general principles remained undefined.¹⁴⁴ In spite of this, the Chairman backed the Commission, arguing that if some members wished to actively pursue an agreement at Seattle, informal meetings could be held in order to develop a draft Agreement.¹⁴⁵ The TABD meeting in Berlin later in October was also supportive, hoping that the US and EC would be able to "achieve adoption of a universally subscribed ATGP". Furthermore, the CEO Report of the meeting commented that it was TABD, which claimed credit for this initiative in the first place.¹⁴⁶ The WTO Director General was also firmly behind these efforts, in a way that was not evident in the previous case studies. A statement made by Mike Moore to the General Council read; "decisions in Seattle to move to (an) agreement... would be a modest start albeit with a profound message".¹⁴⁷ A more explicit message came from APEC too; that it would "make efforts to reach agreement on transparency in government procurement at Seattle" which might have assured that the APEC members backed the achievement of this common goal in Working Group meetings.¹⁴⁸

¹⁴³ Meeting on 6th October 1999 Minutes circulated as WT/WGTGP/M/9

¹⁴⁴ Brazil, Cuba, Egypt, Honduras, India, Indonesia, Malaysia, Pakistan, Philippines, Thailand and Turkey

¹⁴⁵ Although how this could get mass support was not made clear.

¹⁴⁶ 'Doing Business in Berlin' November 1999 at <http://www.corporateurope.org/tabd/berlinbusiness.html> accessed on 21st July 2005

¹⁴⁷ on 3rd November (paper circulated as WT/GC/29)

¹⁴⁸ as reported by New Zealand in the General Council Special Session of 23rd September 1999, minutes circulated as WT/GC/M/49

Once again, the Commission and the Contact Group appeared to be in broad agreement. The ESF forwarded a position paper for the Millennium Round, seeking a wider agreement on public procurement with any agreement on transparency as only a first step; perhaps not the best thing to advocate if there was any discontent within the Working Group at all.¹⁴⁹ The Commission also submitted a paper to the Working Group very much in line with ESF's view.¹⁵⁰ In tones, which must have worried their detractors, the Commission noted that although the Group's mandate covered transparency only, procurement distortions meant a wider scope to the discussion was necessary. The attachment is again written as an agreement, in spite of criticisms raised at the previous meeting about exceeding the Group's mandate, although it appears not to have been officially circulated at Seattle.

There were very few texts on government procurement submitted to the Seattle Ministerial and those that were, were extremely positive again suggesting that this might be a political push towards agreement.¹⁵¹ The Commission submitted two papers for Seattle; '*The EC Approach to Government Procurement*' which said that the Ministerial should "endorse the results...(already achieved) and – if necessary – mandate the WTO to...complete the work...within a given timeframe" and the '*EC Approach to Possible Decisions in Seattle*', which seemed to backtrack from the previous paper, no longer anticipating a possible formal agreement in Seattle and instead advocating "taking the time to get the elements right".¹⁵² Either the Commission accepted that agreement was inevitable, and thus a delay didn't matter, or they realised that agreement wasn't as likely an outcome as they had previously anticipated.

¹⁴⁹ in the '*ESF Declaration of the European Service Industries for the Third WTO Ministerial Conference towards the Millennium Round*' of 25th October 1999 at http://www.esf.be/pdfs/documents/position_papers/seattle.pdf accessed 12th March 2005

¹⁵⁰ 5th November 1999 on '*Elements for an Agreement on Transparency in Government Procurement*' (WT/WGTGP/W/26)

¹⁵¹ The US - WT/GC/W/289 of 4th August, Venezuela - WT/GC/W/305 of 13th August 1999, Hungary, Korea, Singapore and the US - WT/GC/W/385 of 9th November 1999

¹⁵² '*EC Approach to Government Procurement*' circulated as WT/GC/W/192 dated 1st June 1999, '*EC Approach to Possible Decisions in Seattle*' circulated as WT/GC/W/232 dated 6th July 1999

Although it was in the mandate for the Commission to pursue, the European Parliament in their '*Resolution on The EU Approach to the Millennium Round COM(1999)331*', failed to mention anything about transparency in Government procurement so did not seem to see it as a priority issue.¹⁵³ Problems in obtaining a supportive external consensus are signified by the four choices for possible progress presented to members in Seattle as outlined in the Draft Declaration.¹⁵⁴ Paragraph 44 says that "negotiations *shall* (italics mine) take place to conclude an agreement", for possible adoption at the Fourth Session. Paragraph 58 offers two options but these are variations on the idea that the group should continue its work with a view to developing negotiation modalities. Paragraph 76, meanwhile, says that Ministers "adopt the agreement...attached". The WTO's own briefing notes, reveal a distinct lack of appreciation of the absence of consensus within the Working Group. The wording highlighted that there was a great deal of commonality even though questions remained on "the scope of the transactions that would be covered...the treatment of single tendering practices...domestic review or challenge procedures and the applicability of WTO procedures for settling disputes between governments".¹⁵⁵ However, as has already been shown in the previous case studies, there was no agreement in the Singapore Issues group set up at Seattle to pursue negotiations in any of the areas and, as the meeting failed, work simply continued as before.¹⁵⁶

At the Group's next meeting in June, the Commission seemed to backtrack from the level of certainty it had previously expressed and set out very specifically what it wanted from an agreement.¹⁵⁷ Regarding 'definition and scope', it thought an agreement should cover all levels of government, purchasing by state-owned enterprises, both goods and services and that there should be a minimum threshold level below which transparency would not apply.¹⁵⁸ On 'procurement opportunities,

¹⁵³ Meeting 18th November 1999 '*Resolution on the EU Approach to the Millennium Round*' from EU Bulletin 11-99 at <http://europa.eu.int/abc/doc/off/bull/en/9911/p105017.htm> accessed 15th October 2005

¹⁵⁴ As before, this can be found at <http://www.ictsd.org/English/Declaration3.pdf>

¹⁵⁵ at http://www.wto.org/english/thewto_e/minist_e/min99_e/english/about_e/17proc_e.htm accessed on 24th October 2005

¹⁵⁶ In addition, transparency in government procurement was seemingly not thought very important by the ICTSD as none of the BRIDGES Daily Updates of the Ministerial mention it at all. The Seattle section from which all BRIDGES Updates from each day of the Ministerial can be accessed is at <http://www.ictsd.org/ministerial/seattle/index.htm> accessed 15th March 2006

¹⁵⁷ Meeting of 7th June 2000 minutes circulated as WT/WGTGP/M/10

¹⁵⁸ Some of these issues had not been included in COM(1999)331 or in the mandate, suggesting that the Commission's views were evolving internally

tendering and qualification procedure', it recommended that the agreement give general principles about how much information was needed on procurement tenders and where this information should be sited. Finally, on 'time periods', the Commission suggested that this should depend on the nature of the procurement and on other information that companies might need, such as why their bid was not successful and applicable laws and regulations.¹⁵⁹ At the September meeting, the US commented that APEC already acknowledged the principle of domestic review of procedures as imperative to ensuring transparency.¹⁶⁰ This prompted the Commission to ask one of the main objectors, Malaysia, how it had assumed the transparency requirements demanded by APEC if it did not support what was proposed in the WTO. In response, Malaysia revealed that countries were "more relaxed" about APEC requirements as they were not binding and only required best effort. Therefore, not only was it proving difficult to achieve a supportive external consensus but also APEC was not providing as much of a 'push' towards agreement as might have been thought.

At the first meeting of the Group in 2001, India said that because of coordination difficulties, an Agreement should be limited to goods procured by "central or federal government departments" and services should be outside the scope.¹⁶¹ This was practically the polar opposite to the Commission's stated position. To add to the impact of this threat to agreement in Doha, Malaysia later commented that it would be "unable to agree to anything on government procurement in the Qatar negotiating agenda".¹⁶² This gives further evidence that the external consensus was fragmented in spite of US-EC agreement.¹⁶³ The state of the internal consensus was also unclear because when the Council of Ministers issued their conclusions on '*The latest state of preparations for the WTO Ministerial Conference*' they said nothing specific about transparency in government procurement, except if it can be considered to come under the general

¹⁵⁹ As in the trade and competition case study.

¹⁶⁰ Meeting held 25th September 2000 (WT/WGTGP/M/11)

¹⁶¹ Meeting held 4th May 2001 (WT/WGTGP/M/12)

¹⁶² Malaysia's view was shared by 16 island economies, (Antigua and Barbuda, Barbados, Dominica, Dominican Republic, Fiji Islands, Grenada, Haiti, Jamaica, Maldives, Mauritius, Papua New Guinea, St Kitts and Nevis, St Lucia, St Vincent and the Grenadines, Solomon Islands and Trinidad and Tobago) in their paper of 6th August 2001, submitted to the General Council in the context of preparations for Doha (paper circulated as WT/GC/W/441, 'Issues of concern to small economies')

¹⁶³ 4th May 2001 (WT/WGTGP/M/12)

heading of “strengthening the rules” on trade.¹⁶⁴ Perhaps they appreciated there was little chance of achieving explicit consensus, or that there were more important issues to try to achieve.

The Commission must also have been concerned when, at the last meeting of the General Council before the Doha Ministerial, there was a great deal of dissatisfaction expressed with the draft declaration.¹⁶⁵ Tanzania, for the LDC Group, went so far as saying there was “no basis” for seeking negotiations in this area. A number of other countries also spoke out against pursuing negotiations.¹⁶⁶ Before Doha, the TABD expressed their continuing support and welcomed the “concordance” of the EC and US on this issue.¹⁶⁷ However, TABD made it clear that they saw this as a step towards “market access...based on MFN and national treatment principles...covering all eligible areas” rather than as a standalone agreement in its own right. If the developing countries suspected that agreeing to open negotiations on transparency in government procurement would eventually lead to requests for open access to markets, it seems highly unlikely that they would have supported any forward movement at all.

According to the WTO’s website, there were no papers specifically on government procurement submitted to the Doha Ministerial. Section 26 of the Doha Declaration said that work would continue to achieve an agreement within the Working Group.¹⁶⁸ The text made clear, however, that any agreement would only be concerned with transparency and not market access, shutting the door to any widening of the agenda on the part of the Commission. The meeting concluded “we agree that negotiations will take place after the Fifth Session of the Ministerial Conference on the basis of a decision to be taken, by explicit consensus... on modalities of negotiations”, exactly the same wording as for the two other case studies.

¹⁶⁴ at their meeting on 29th and 30th October 2001 (from the EU Bulletin 10-2001 at <http://europa.eu.int/abc/doc/off/bull/en/200110/p106030.htm> accessed 1st November 2005

¹⁶⁵ Meeting held 31st October and 1st November 2001 (minutes referenced as WT/GC/M/7

¹⁶⁶ Also Brunei Darussalam, Egypt, Haiti, India, Jamaica, Kenya, Sri Lanka and Uganda

¹⁶⁷ TABD meeting in Brussels on November 16th (CEO Report at

<http://static.tabd.com/gems/2001DCBrusselsCEORreport.pdf> accessed 2nd November 2005

¹⁶⁸ Doha text assessed at http://www.wto.org/english/thewto_e/minist_e/min01_e/mindecl_e.htm on 25th October 2005

In their report of the Doha meeting, the Commission seemed to be putting a very positive spin on the outcome of the work on transparency in government procurement and said negotiations would start after the Cancún Ministerial.¹⁶⁹ Perhaps, as in trade and competition, they were expecting to be able to get an agreement on the general principles, which might be enough to ensure the opening of negotiations. This wish became clearer at the next substantive meeting of the Group where the position of the Commission along with Canada and the US was that any outstanding issues could only be dealt with in the context of a negotiation, rather than as part of the ongoing study process.¹⁷⁰

Following a comment by the Commission (that agreeing the fundamentals would “provide the Group with a springboard to move on to the next stage”), India expressed its horror of the “threat” that the Commission was expecting to use an agreement in this area to further rules on market access and remarked that this would impact negatively on support received for this initiative from the developing countries. The Commission clarified that it was simply suggesting that the work done by the group this year could feed into the next year’s work, and confirmed that it supported the current mandate including the scope limited to transparency.¹⁷¹ The last substantive meeting of the Group in 2002 saw the Commission leading discussions in this area.¹⁷² It, along with Australia, Japan and Switzerland, thought that the time was now ripe to decide what transparency requirements should be built into an agreement. Failure to do this, they argued, risked Ministers being unable to agree the modalities at Cancún. The Commission accepted, however, that, to achieve this, further efforts needed to be made to develop a consensus on the key principles. Egypt suggested that this would not be easy considering that there was still no agreement on “definition and scope, procurement methods, time-periods, domestic review procedures and the application of (the DSU)”.¹⁷³

¹⁶⁹ EU Bulletin of November 2001 at <http://www.europa.eu.int/abc/doc/off/bull/en/200111/p106028.htm> accessed 31st October 2005

¹⁷⁰ Meeting on 29th May 2002. Minutes circulated as WT/WGTGP/M/14

¹⁷¹ Whereas COM(1999)331 stated that the Commission did want to move on from a transparency agreement to include market access and national treatment

¹⁷² Meeting on 10th and 11th October. Minutes circulated as WT/WGTGP/M/15

¹⁷³ This was also supported by India, Malaysia, Pakistan and the Philippines.

In terms of domestic review procedures, the Commission thought that there should be an independent “judicial or...administrative” body but that implementation of these administrative requirements should not be prescriptive. In addition, there should be an enquiry point in every country to provide information about relevant rules and regulations – this was supported primarily by Brazil, Korea and Switzerland. Pakistan disagreed, commenting that because of the wide variety of government departments involved, it would be difficult to achieve. This is similar to the argument about coordination expressed by India and shows that discussion was not moving fast. In addition, the Commission supported the association of this agreement to the DSU in order that there might be common interpretations of the policy requirements. Once again this highlighted the North South cleavage in the debate and the danger of this being the “deal breaker”, as Pakistan later commented.¹⁷⁴

There was a general view from the ‘Southern countries’, at the first meeting of the Group in 2003, that the Agreement ought to be confined to goods only.¹⁷⁵ This was disputed by the Commission, the US and Chinese Taipei, arguing that the rules governing both types of procurement were similar if not identical. The Commission set out some specifics on the level of independence of the review body and the review and challenge procedures, even though it did not expand on SDT provisions.¹⁷⁶ Malaysia, once again, warned that ‘explicit consensus’ would not be given at Cancún; “domestic review procedures and application of the DSU had nothing to do with transparency and were therefore outside the scope of a transparency agreement”. This position was supported by Egypt, India and Pakistan. In later discussion about the DSU, the Commission said that transparency and procurement rules were closely aligned and had to be dealt with together (which was different to what had been agreed at the Doha Ministerial). Furthermore, the Commission argued that if enforcement provisions were not developed, the Agreement would be seen as “merely a general list of requirements”. This seems to ignore the situation that there was no ‘Agreement’ at all, and that if the Ministerial outcome had made it clear that the agreement should focus on transparency,

¹⁷⁴ The Commission view was supported by Chinese Taipei, Hungary, Japan, Switzerland and the US but not by Egypt, India, Malaysia and Pakistan (along with China and Nigeria).

¹⁷⁵ Meeting held 7th February (WT/WGTGP/M/17) The ‘Southern countries’ in this scenario are Malaysia, Venezuela, India, Pakistan, and Egypt

¹⁷⁶ Paper of 3rd February on ‘Domestic Review Mechanisms related to transparency in government procurement’ (WT/WGTGP/W/39)

then the Commission's argument about needing further procurement rules (at least rules that needed to be discussed within this group) did not hold water.

Perhaps aware of the problems with the transparency issue, the Commission submitted a further paper on the '*Positive Effects of Transparency in Government Procurement and Its Implementation*' to the final meeting of the Group before Cancún commenting that the meeting, "would be the last step of the Working Group's study phase and...on the next occasion, following the Cancun Ministerial Conference, Members would have a negotiating mandate".¹⁷⁷ This seems remarkably assured, although with dubious foundation, which was again pointed out by Malaysia (which had, after all, already said at a previous meeting that it would not give its approval for this in Cancún). Perhaps the statement more reflected the Commission's anxiety that decisions might be postponed in Cancún. Later in the meeting, the Commission said that it expected this agreement to apply equally to central, federal, regional and local tiers of government much to India's consternation. In addition, the Commission wanted the agreement to apply to all procurements above a certain threshold rather than procurements above a certain threshold and open to foreign bidders, as Malaysia had previously sought.¹⁷⁸ There were also issues raised about costs, especially as "The representative of Malaysia stated that the European Communities tied the provision of technical assistance to an eventual agreement on transparency in government procurement or to the demonstration of a readiness to negotiate", perhaps seeking agreement by slightly shady means, very close to BEUC's previous suggestion on competition.

The Group's Annual Report to the General Council of 2003 seems to have been written in order to achieve a general agreement on the principle of an Agreement, i.e. in order to encourage a low level 'explicit consensus'.¹⁷⁹ The report says that the majority of members felt that the benefits of transparency were incontestable, although the way to achieve this transparency was the subject of significant argument, proposing that opening negotiations would be the best way to address this cleavage. It could be construed from the WTO's briefing notes for the Cancún Ministerial, that it would be

¹⁷⁷ Paper on the '*Positive Effects of Transparency in Government Procurement and Its Implementation*' (WT/WGTGP/W/41). Meeting held on 18th June 2003. Minutes circulated as WT/WGTGP/M/18.

¹⁷⁸ Rather going against the statement that they would not "seek to limit countries' ability to decide which procurement opportunities would be open to foreign bidding".

¹⁷⁹ Report dated 15th July 2003, referenced WT/WGTGP/7

possible to gain explicit consensus solely on the basis of whether members recognised that the work area was important.¹⁸⁰ However, the Report highlighted that it would be difficult for countries to give 'explicit consensus' if they had no idea what the eventual agreement might look like, which made it difficult to estimate costs, furthermore the level of divergence of views in any areas made a commitment to negotiation difficult. In spite of the problems with the external consensus, the Commission was supported internally by UNICE, whose brochure on the Doha Development Agenda seemed to mirror the Commission's own position, as well as the ESF, even though other Contact Group members did not express their views on this issue.¹⁸¹ UNICE's rationale did not disguise European self-interest commenting on the value of the market as well as the advantages European companies would have if they could compete on a global level for contracts. In spite of this influential support, once again, in the Council of Ministers' conclusions on the preparation of the fifth WTO Ministerial Conference, transparency in government procurement is not mentioned. This seems almost an acknowledgement that explicit consensus would not be forthcoming at Cancún.

¹⁸⁰ Briefing notes accessed at http://www.wto.org/english/thewto_e/minist_e/min03_e/brief_e/brief09_e.htm on 25th October 2005

¹⁸¹ UNICE's brochure entitled '*Cancún. Moving Forward Together*', (at <http://www.unice.org/1/FFEIDNHAKNHAHFEKJNJIDMHMPDB69DP6WN9LI71KM/UNICE/docs/DLS/2003-02316-EN.pdf> accessed on 1st November 2005. ESF Press Statement of 3rd September 2003 'European Services Businesses Call Upon All WTO Members to ensure success in Cancún' at http://www.esf.be/pdfs/documents/press_releases/ESF%20Press%20Statement%20on%20Cancun%20final.pdf accessed 1st November 2005 and others. BEUC's view, for example, was that transparency in government procurement was not a priority. Although they advocated unbundling the Singapore Issues, doing away with investment negotiations and continuing to work urgently on competition policy, they did not make any suggestions as to how to proceed with these government procurement negotiations (BEUC/X/028/2003, 30th June 2003, '*BEUC Priorities for Cancún*' at <http://docshare.beuc.org/4/PJHBKPCDAKAMOKBHMLCJLMHLPDB69DW1A69DW3571KM/BEUC/docs/DLS/2003-01533-01-E.pdf>, BEUC/X/032/2003, 10th July 2003 '*A Consumer's Agenda for Cancún WTO Ministerial Conference*' at <http://docshare.beuc.org/3/PJHBKPCDAKAMOKBHMLCJLMHLPDB69DW12W9DW3571KM/BEUC/docs/DLS/2003-01558-01-E.pdf> and, in addition, BEUC/X/047/2003, 3rd November 2003, '*WTO Multilateral Trade Negotiations After Cancún. Preliminary Views*' at <http://docshare.beuc.org/5/PJHBKPCDAKAMOKBHMLCJLMHLPDB69DPNAW9DW3571KM/BEUC/docs/DLS/2003-02638-01-E.pdf>.) Similarly Eurochambres, in its position paper of 2003, '*The WTO Ministerial Conference in Cancún 10-14 September 2003*' at http://www.eurochambres.be/PDF/pdf_trade/Global%20Chamber%20Platform%20PP%20Cancun.pdf also failed to mention anything about transparency in government procurement. This is the same as the FTA in its '*FTA Position on the 5th Ministerial Meeting in Cancún*' of July 2003 at http://www.fta-eu.org/doc/unp/opinion/en/fta_pos_cancun_en.pdf and even CIDSE (and Caritas Internationalis) in their '*Global Trade at the Service of Human Development. A Position Paper on the Occasion of the 5th WTO Ministerial Conference in Cancún, Mexico 10-14 September 2003*' (undated) at http://www.cafod.org.uk/archive/policy/CIDSE_CI_Cancun_Paper.pdf simply says that none of the Singapore Issues should be progressed, rather than making TGP significant. (all papers accessed 8th May 2006)

The draft Ministerial text was discussed at the last meeting of General Council prior to Cancún where concerns were raised that countries with a negative opinion on TGP had not been invited to assist in drafting the relevant wording.¹⁸² The Philippines concluded that the only alternative to dropping the issue was to continue the educative work in the Group. This theme was continued in the August paper from Bangladesh for the LDC Group and fifteen other countries, as for the previous two case studies, which highlighted the outstanding issues needing resolution and concluded that the educational process had to continue in order to address the outstanding areas of dissent.¹⁸³ This added weight to Malaysia's position that "explicit consensus" would not be forthcoming in Cancún, even on the base principles of an agreement. According to the WTO, there were no other papers specifically on this matter circulated for the Cancún Ministerial.¹⁸⁴

Although the declaration from Cancún did not contain a reference to negotiations in the area of transparency in government procurement, paragraph 17 of the Derbez Draft said that Ministers agreed to "commence negotiations on the basis of the modalities set out in Annex D to this document".¹⁸⁵ Annex D confirms that this agreement would only deal with transparency so domestic preferences could still be exercised. In addition, as the developing country members had wanted, "any coverage of the agreement beyond goods and central government entities is not prejudged". There would be thresholds, below which value the agreement would not apply, no commitment to refer to the DSU and an assurance that it would not, in any case, be used to challenge individual contracts. The Annex also refrained from prescribing any structure for the domestic review mechanisms. In addition, development priorities would be considered and SDT would include transitional periods and higher thresholds. There was also an acknowledgement that technical assistance and capacity building would be necessary both during and after the negotiations. Although this paragraph confirmed negotiations

¹⁸² Meeting on 25th, 26th and 30th August (minutes circulated as WT/GC/M/82, accessed 2nd November 2005)

¹⁸³ WT/GC/W/514 of 28th August from Bangladesh (on behalf of the LDC Group), Botswana, China, Cuba, Egypt, India, Indonesia, Kenya, Malaysia, Nigeria, Philippines, Tanzania, Uganda, Venezuela, Zambia and Zimbabwe entitled 'Paragraphs 13,14,15 and 16, Dealing with Singapore Issues of the Draft Cancún Ministerial Text contained in JOB(03)/150/REV 1'. Areas of dissent included definitions, scope and coverage, methods and procedures of procurement, domestic review, recourse to the DSU and development issues.

¹⁸⁴ In an e-mail dated 13th February 2006

¹⁸⁵ Presented to the Conference on 13th September 2003 Sourced at

http://www.wto.org/english/thewto_e/minist_e/min03_e/draft_decl_rev2_e.htm accessed 12th August 2005, as before

would be launched, which would obviously not be popular, the content of the proposed Agreement seemed to be a better reflection as to the needs and wants of the Group. Nevertheless, 'explicit consensus' was not reached.

The ESF's 'Daily News' from Cancun is instructive here, primarily because they note on 12th September that "Transparency on Public Procurement (sic) seem(s) not to have raised much controversy", although on the final day of the meeting, the African Union would not accept negotiations opening on any of the Singapore Issues, even though investment and competition had both been dropped.¹⁸⁶

At the first General Council meeting after Cancún, there was still discussion as to whether an agreement in transparency in government procurement could be salvaged.¹⁸⁷ The minutes show that "Members would continue to explore the possibilities of agreements on a multilateral approach on...transparency in government procurement and that this work would take place at the level of the General Council". However, there are no records of any subsequent meetings of the Transparency in Government Procurement working group, or any working papers, or any notes, suggesting that the differences that had persisted since the Singapore Ministerial eventually proved insurmountable and that the Commission had failed to achieve consensus on the way forward.

The Singapore Issues as a Package

The Commission's plan (to negotiate all the Singapore Issues as part of the Single Undertaking, as a package) stayed the same through Seattle to Cancún, even though, as has been shown, there was no evidence to suggest that an 'explicit consensus' on all of them, or indeed any of them, was going to be easily achieved. In order to counteract this, at least with the groups on Trade and Competition and Transparency in Government Procurement, the Commission appeared to try and achieve explicit consensus on a very basic 'do you want it or don't you' level. Although this had the advantage that it ignored the need for Working Group agreement on every aspect that might potentially have been covered in a negotiation, it seems to have ignored the spirit

¹⁸⁶ at www.hkcsi.org.hk/reports/cancun/09Daily_ESF_Newsletter_1-6.doc accessed 7th May 2006

¹⁸⁷ on 15th and 16th December 2003 (minutes circulated as WT/GC/M/84)

of 'explicit consensus' as well as the need for agreed negotiating modalities. In addition, the complaint from countries about costs and the insistence on SDT also seems to have been ignored.

Even in 2003 the Commission was still convinced that the 'package deal' approach would pay off. It circulated a paper to the WTO General Council in February, which opened with the statement that "The Singapore Issues, which until the WTO Fifth Ministerial are in the stage of "clarification", but for which negotiations will commence after Cancún, are a key element of the DDA and part and parcel of the Single Undertaking".¹⁸⁸ It suggested that flexibility should be paramount although noted that care needed to be taken to ensure negotiations would begin on all four Singapore Issues. Further to this, both Lamy and Fischler produced a note for the March meeting of the College in which they confirmed that launching negotiations on the Singapore Issues was a priority.¹⁸⁹ Although they acknowledged that it had not proved easy to get members on board, they hoped countries would see the merits of progress although how they would do this, when they had not already done so, is not addressed. On 30th June (perhaps realising the impossibility of achieving 'explicit consensus') the BEUC, in their '*Priorities for Cancún*' paper, said, for perhaps the first time, that the Singapore Issues should be unbundled and efforts to reach agreement to open investment negotiations should be abandoned.¹⁹⁰ As the Council of Ministers had not mentioned any of the Singapore Issues in their note on the preparation of the Cancún Ministerial, it appears that they might already have understood that negotiations would not begin.

¹⁸⁸ Circulated on 27th February 2003 (as WT/GC/W/491) on '*Singapore Issues – The Question of Modalities*'

¹⁸⁹ (SEC(2003)317) on March 19th 2003 entitled '*Information sur les progrès des négociations de l'OMC concernant l'agenda de développement de Doha*' (at <http://www.tradeobservatory.org/library.cfm?refID=25878> accessed on 26th October 2005

¹⁹⁰ '*BEUC Priorities For Cancún*' BEUC/X/028/2003 of 30th June, <http://www.beuc.org/1/GNKLGFDBFDNPKDDGAFOIBDNNPDB69DW1A69DW3571KM/BEUC/docs/DLS/2003-01533-01-E.pdf> as before

A rejoinder to the Commission's February paper to General Council was circulated on 8th July from twelve countries.¹⁹¹ This opens by saying that negotiations should not be considered inevitable after Cancún and the idea of 'explicit consensus' should not be ignored. They also argued that the Singapore Issues should be unbundled, to be considered on their own merits, and more focus given to SDT provisions.¹⁹² In case there might be any doubt that the developing countries would not go along with an 'explicit consensus', CAFOD pointed out "since the beginning of June 2003, seventy-seven developing countries (including over half of the WTO's developing country members) have said they do not want negotiations on the Singapore Issues to be agreed in Cancún".¹⁹³ The ESF daily news from Cancún makes interesting reading on the progress of the Singapore Issues through the Ministerial.¹⁹⁴ First they note that more countries, particularly from Latin America, were beginning to support negotiations being opened on all of them. However, because agreement was not unanimous, the mandate was eventually changed on the final day allowing the Commission to drop trade and investment and trade and competition. Ultimately, however, this was not enough as there was still no agreement on pursuing negotiations on the other two issues.

The European Council had asked the Commission, in October 2003, to see whether the negotiating strategy should be changed in order to make more progress with the DDA.¹⁹⁵ In their response a month later, the Commission made a proposal that they could be removed from the single undertaking and/or negotiated separately, suggesting that their view was gradually evolving; this also fitted in with BEUC's position (although they wanted to lose the investment negotiations).¹⁹⁶ However, this was not

¹⁹¹ WT/GC/W/501 entitled '*Comments on the EC Communication on the modalities for the Singapore Issues*' from Bangladesh, Cuba, Egypt, India, Indonesia, Kenya, Malaysia, Nigeria, Pakistan, Venezuela, Zambia and Zimbabwe

¹⁹² This also fits with the 'G77 and China's *Declaration on the Fifth WTO Ministerial Conference*' dated 22nd August 2003 sourced at <http://www.g77.org/doc/docs/FinalG77Decl-22aug-5thWTO.pdf> accessed on 13th May 2007. This suggests that the developing countries were not unanimously against the Singapore Issues in principle, rather the problems that such countries faced in beginning negotiations.

¹⁹³ Aligned with CIDSE, one of the Commission's Social Partners, hence mentioned here. Webpage 'Singapore Issues in the WTO: What do developing countries say?' Details where and sometimes what was said by a number of developing countries. Sourced from

<http://www.cafod.org.uk/archive/policy/singapore20030714.shtml> accessed on 7th May 2006

¹⁹⁴ ESF Daily News from Cancún at www.hkcsi.org.hk/reports/cancun/09Daily_ESF_Newsletter_1-6.doc

¹⁹⁵ From EU Bulletin 10-2003 at <http://europa.eu.int/abc/doc/off/bull/en/200310/i1021.htm> accessed on 15th October 2005.

¹⁹⁶ '*Communication from the Commission to the Council and to the EP on Reviving the DDA negotiations – the EU perspective*', adopted on 26th November 2003, from the EU Bulletin 11-2003 at <http://europa.eu.int/abc/doc/off/bull/en/200311/p106022.htm> accessed on 15th October 2005). BEUC's paper on '*WTO Multilateral trade negotiations after Cancún – Preliminary Views*' circulated on 3rd November

wholeheartedly agreed by the Social Partners. In their letter to Pascal Lamy on 1st December, Eurochambres regretted the problems being experienced with the Singapore Issues and reiterated its position that they should be negotiated under the Single Undertaking. However, they agreed to accept plurilateral agreements in one or more of the areas so as to ease the blockage on negotiations.¹⁹⁷ This was also supported by ESF, which argued that a plurilateral solution might be found for investment and competition even though they preferred the idea of pursuing these within the Single Undertaking.¹⁹⁸

The Commission revealed that they would, finally, unbundle the Singapore Issues at the General Council meeting in December 2003.¹⁹⁹ The proviso was that “the Doha mandate stood in its entirety”, progress was wanted “on all Singapore Issues” and they were, “in any event, part of the work programme”. What this meant in practice seemed to be that they would be unbundled but, apart from that, nothing had changed even though the chances of obtaining an ‘explicit consensus’ on any was still unlikely. The US also expressed support for unbundling commenting that efforts shouldn’t be made to agree on four before one was agreed.²⁰⁰ However, as the Commission appeared not to want to change the substance of the Singapore Issues, neither were other countries prepared to budge from their positions. African trade ministers meeting in Kigali, Rwanda on 27th and 28th May 2004 issued a statement on the WTO post-Cancún making it clear that that they would not support any future negotiations on investment, competition or transparency in government procurement.²⁰¹ That there were no further meetings of any of the Working Groups it can be assumed that, even with unbundling, the Commission was still unable to put together a supportive consensus in the WTO.

2003 as BEUC/X/047/2003 sourced at <http://www.beuc.org/1/DCHHAHICPKMPLDNPNIODNINPDB69DPNAW9DW3571KM/BEUC/docs/DLS/2003-02638-01-E.pdf> accessed on 15th March 2005

¹⁹⁷ Entitled ‘Eurochambres post-Cancún reflections on EU trade policy’ at http://www.eurochambres.be/PDF/pdf_trade/letter_to_Lamy_final.pdf accessed 15th March 2005

¹⁹⁸ ‘New ESF Priorities for the DDA’ 5th November 2003 at http://www.esf.be/pdfs/documents/position_papers/ESF%20New%20Priorities%20for%20the%20DDA.pdf accessed 15th March 2005

¹⁹⁹ Meeting 15th – 16th December 2003. Minutes circulated as WT/GC/M/84

²⁰⁰ From the Statement by Ambassador Linnet Deily to the WTO General Council meeting on December 15th 2003 reproduced at <http://geneva.usmission.gov/press2003/1217Deily.pdf> accessed 13th May 2007

²⁰¹ From TWN Info Service on WTO Issues 31st May 2004 ‘African ministerial meeting on WTO welcome dropping three Singapore Issues from work programme’ at <http://www.twinside.org.sg/title2/twninfo115.htm> accessed 15th May 2007

Conclusions

In the Trade and Investment Working Group, it would appear that the Commission tried hard to ignore the level of contestation; this was such that even the definitions were not agreed to all participants' satisfaction. The Commission did not help to achieve a supportive consensus even within the Group by failing to make solid SDT provisions, which might have brought the developing countries on-side. The Commission might also have done well to play down the interlinkages between trade and investment and other policy areas, making it seem as if going ahead with negotiations would be a huge burden. What made it worse was that there was an acknowledged lack of funds to give developing countries support. Furthermore, although there appeared to be a supportive internal consensus, with Council and Parliament broadly agreeing on the priorities, there was notably no push from APEC or even wholesale Quad buy in, which might have helped to facilitate external agreement.²⁰² There was also no obvious push from the WTO itself. Even with the level of contestation evident from the Working Group, the Commission's mandate was not changed to reflect the different circumstances.

With the Trade and Competition negotiations, the Commission again seemed to try to ignore the level of contestation in the Working Group even though the evidence shows that the scope of the Agreement continued to be debated. The Commission similarly failed to develop SDT provisions so did not encourage developing countries to come on side. They possibly even caused more friction within the Group by highlighting the complexity of the interlinkages with other policy areas and then failing to identify *measures to simplify or explain them (supported by interviewees 1 and 4)*. There was longstanding debate as to the extent and nature of the legal and physical infrastructure required prior to signature. Although the Commission seemed to change its mind on this, there was still general confusion as to the prerequisites for each policy issue and how the costs would be met, bearing in mind the lack of technical assistance money as stated in the previous case. In spite of the fact that APEC had been doing similar work in this area, not only did this not act as a push on the WTO but also the US did not want an agreement in the WTO so did not try to bring the dissenters in the Working Group into line. Internally, the consensus appeared relatively supportive although, in the same

²⁰² Only Japan appeared to be extremely supportive of the Commission's efforts

way as in the previous case study, perhaps not wholly energised to support the Commission. The fragmented nature of the external consensus, though, could not be overcome.

In the Agreement on Transparency in Government Procurement, again even the basic definitions of the scope remained contested from the period before Seattle to Cancún and afterwards. However, in this case, the Commission was supported externally by the US, Japan and a very positive APEC. The Chairman of the Working Group also allowed informal meetings to take place prior to Seattle with the aim of achieving agreement and this was supported by the WTO Secretariat. Perhaps the Commission realised that an agreement on transparency wasn't wide enough hence hoping, until Doha discounted it, for the agreement to also cover market access and procurement at every tier of government be that national, federal, regional or local. Disagreements made it clear there would be no 'explicit consensus' to begin negotiations. Even the influential support of the US and Japan could not override the general concerns. In addition, support from the Council of Ministers and Parliament seemed muted on this issue over this period.

The cases here are, perhaps with the short term exception of the Transparency in Government Procurement Working Group, very similar. The evidence from this Chapter has shown politicization had percolated through into the sectoral negotiations. There may be a number of reasons for this. The first is that progress had not been made in agriculture to the satisfaction of all WTO members (supported by interviewees 8 and 10). At the last meeting of the General Council before Cancún, Brazil made the comment that "unless there was clear, comprehensive progress on agriculture... members might run some risks at Cancún", and the FTA pointed out that there needed to be significant progress on both agriculture and textiles, suggesting that the Singapore Issues may have been hostages to fortune.²⁰³ Secondly, the positions of the developing countries, although in no way identical, strongly suggested that they would not be prepared to give their agreement to open negotiations in any new areas, and this is evident from the tables of preferences in the previous chapter. Thirdly, there seemed to

²⁰³From the minutes of the General Council meeting 24th and 25th July 2003 (Minutes circulated as WT/GC/M/81)

have been very few opportunities for the Commission to exercise policy leadership in the WTO and expect the other members to go along with what they proposed. Even in the 'Transparency in Government Procurement' Group, where there was strong support from the rest of the Quad, this did not facilitate eventual agreement.

The Commission consensus appears to have been supportive over the duration; the Competition Commissioner was later to remark that it was "a disappointment" when Cancún failed.²⁰⁴ However, although Lamy seems to have been enthusiastic about pursuing the Singapore Issues, the Council of Ministers may have acknowledged before the Commission that 'explicit consensus' would not be forthcoming at Cancún and so (even though they appeared generally supportive) failed to mention it in their key preparatory document. If this was the case, it does not seem unreasonable to expect that they might have changed the Commission's mandate so as to unbundle the Singapore Issues prior to Cancún (suggested too by interviewee 6). It is also of interest that where some members of the Commission's Contact Group had expressed reservations about the Commission line that was being taken for Doha or, especially, Cancún, these seemed to be ignored. This suggests that the Group was used by the Commission when it was supportive but ignored when it was not. Furthermore, some of the proposals (like the BEUC's suggestion that EC technical assistance should be given on the basis of market opening) were highly politicized and could have had an impact on the negotiating atmosphere were this picked up on by the negotiating partners. As it was, the preferences of the external interests were fragmented on each of the Singapore Issues meaning that there could be no supportive consensus; explicit or otherwise.

The lack of success evident here could be related to the Commission failing to grasp the right combination of its different roles and responsibilities. It could also be that the nature of the interests that the Commission has to satisfy has evolved yet the Commission's response has not been recast to reflect this. This will be explored in the following Chapter where the evidence from Chapters Six and Seven will be analysed. A comparison between this time period and that of Leon Brittan's (from Chapters Three, Four and Five) will then be made in the concluding Chapter Nine.

²⁰⁴ From a speech by Mario Monti, the Competition Commissioner, on 'EU Competition Policy after May 2004' to the Fordham Annual Conference on International Anti-Trust Law and Policy in New York on October 24th 2003 at <http://www.eurunion.org/news/speeches/2003/031024mm.htm> accessed 9th April 2008

CHAPTER EIGHT

The European Commission in the WTO from Seattle to Cancún - Evaluation

Introduction

It has been shown in the preceding Chapters that there are a number of problems confronted by the Commission in exercising its roles and responsibilities effectively in external trade. Consensus is demanded at all levels in order for policy initiatives to proceed through the Commission internally then Council and, finally, within the WTO both in the more high political ministerial processes and the technocratic sectoral negotiations. At the end of Chapter One, and in Chapter Two, we anticipated that the extent to which the Commission was able to make progress would depend upon the level of agency that it is given by Council; the room for manoeuvre it has to ensure trade offs and the level of politicization surrounding each issue. Progress was also thought to be dependent upon the Commission's ability to align the preferences of the diverse interests and to innovate and act as policy entrepreneur in order to respond to these challenges in the context of politicization and change.

In the same way that Chapters Three and Four were structured, Chapters Six and Seven focused on the Ministerial process and then the Working Group negotiations in order to detail discussions in the WTO from 1999 to 2003. These chapters showed evidence of the increasingly politicized environment and the difficulties of putting together a supportive consensus. In Chapter Six the level of fragmentation of preferences within the Ministerial process was demonstrated through the tables outlining the positions of the LDCs, G20 and the Quad. Chapter Seven went into detail about the mechanics of sectoral negotiations by assessing the progress of three case studies: Trade and investment; Trade and competition and the Agreement on Transparency in Government Procurement. These chapters showed how politicization had increased both at Ministerial level and had percolated through to the Working Group level. In addition there was more scope for defection within Working Groups because the principle of

'explicit consensus' meant that each member could give a view as to whether negotiations began or not.

The purpose of this Chapter is to look further at the empirical evidence from the previous two Chapters of the evolving nature of the Commission's roles and responsibilities and the extent to which they were supported or modified by the constellation of interests centred on internal Commission dynamics, the member states and the WTO. The Chapter will consider this by, firstly, looking at the roles and responsibilities of the Commission over this time period and, secondly, at how the evolution of key interests impacted upon their exercise of these roles and responsibilities.

Overview

There has been a strong element in these Chapters of path dependency, which can be shown by Lamy continuing to base his position on Leon Brittan's '*Communication to the Council and European Parliament on the EU Approach to the Millennium Round*' (COM(1999)331), rather than developing a different draft, which might have been more closely allied with his own views. This could have been a pragmatic approach, considering that decisions were being made about the Seattle Ministerial immediately after Lamy gained the portfolio. In this sense, it may have made more sense to Lamy to concern himself with interpreting the ways and means of achieving the objectives, rather than redefining the objectives themselves. What is not clear, though, is why Lamy continued to use COM(1999)331 as a basis for the Commission position after Seattle; not just for the Doha meeting but also for Cancún and appeared to make no effort to encourage the Council to change the Commission's mandate even when it appeared evident that 'explicit consensus' would not be forthcoming.

It may have been the case that because there was a fragmented internal consensus on the thorny questions of agriculture, trade-labour and trade-environment, there was no political will in the Commission or in Council to attempt a revision. This might also explain why, in spite of clear evidence in Chapter Seven that there was merit in suggesting that each Singapore Issue should be considered individually, or that 'softer'

agreements should be sought, there was no effort made by the Commission to do this prior to Cancún.

The fragmented internal consensus, and the arrival back on the agenda of agriculture, might also be blamed for the level of direct criticism that Lamy attracted on his approach to agricultural policy making by Council, by the Contact Group and third countries and on his efforts to put in place a working group on biotechnology in the WTO (by Council and environmental groups). Indirect criticism arose from the Commission's stance in the three working groups detailed in Chapter Seven (by the Parliament, third countries and some members of the Contact Group) and there were also questions raised on the Commission's philosophy on labour standards (by Council and Parliament, for different reasons) and on the EBA initiative (from European farmers). Whether this meant that the negotiating environment was very different from Brittan's tenure as Trade Commissioner, and whether this encouraged Lamy to attempt less during his time as a result, perhaps with implications for future Trade Commissioners, will be discussed in Chapter Nine.

As before in Chapter Five, it must be noted that the purpose here is not to suggest the Commission fulfilled one of its roles and responsibilities and none of the others. The Commission has aspects of all of these within its external trade portfolio, as Chapter One made clear. The purpose is to see which was the dominant mode of activity and to what effect and extent the Commission was able to achieve its aims, or the aims of its mandate, in so doing.

Roles and responsibilities

Commission as expert

In spite of conflict between the Council and the Commission (in the examples given above), politicisation, personality changes and more players to consider in the field, there is no evidence of 'clawback' of Commission competence on the part of the Council. There was also no evidence of a concerted effort by the member states, or by

the interests, to actively change Commission policy in external trade either in the Ministerial process or in the sectoral negotiations. This is partly because of the fragmented nature of opposition, as was suggested earlier. It is an example of the Commission's technocratic approach that COM(1999)331 was the basis for the mandate (even though Lamy's arrival meant that this could have been revisited). Therefore, although the competence issue may not have been fully resolved, with some areas still officially falling under 'mixed competence' after the Nice Treaty of 26th February 2001, the Council remained dependent on the Commission's expertise to develop policy proposals and to elaborate the ways and means to carry them out.

The EBA initiative is another good example of the Commission acting as an expert as it brought about an hitherto unexpected role in that Lamy was able to input into agricultural decision making, something that even Brittan had been unable to achieve although he had tried to seek agreement for it.¹ The EBA had an additional use, as a 'carrot' to encourage acceptance of negotiations on the Singapore Issues by the developing countries, except that this proved unsuccessful. What is particularly important here is that the internal (Commission) view was more firmly cemented than before, particularly as those holding the agriculture and trade portfolios had traditionally been seen as rivals.

The Commission also used its position as expert, after Seattle, to inaugurate the DG Trade-Civil Society Dialogue. This would provide another authoritative aspect to the Commission's position by allowing it to cite other supporters of a particular viewpoint, and thus increase its negotiating credibility. However, as the Commission appeared to practically ignore the Contact Group if members stood against their position (for example, when the FTA and Eurochambres said plurilateral agreements on trade and competition would stand a greater chance of success) it would appear that this was an exercise primarily to benefit the Commission rather than being a policy development forum. This can be at least partly explained by the fragmented consensus in the Contact Group; for example with trade and investment where negotiations were wanted by FTA

¹ G de Jonquieres Financial Times 2nd October 1999, page 6, 'Brussels may consider more open farm trade'

and UNICE but not CIDSE or BEUC. Nevertheless, the Commission had the authority and the expertise to enable it to put this group together and to encourage engagement with the trade portfolio.

The Commission's 'expert' status was not, however, without its detractors. Internally, Parliament wanted labour standards to be pursued even though the Commission made clear in COM(1999)331 that there was "no realistic prospect of consensus for the establishment of a working group within the WTO". Because of Parliament's informal position in determining trade policy, even after the resignation of the previous Commission, the Commission was able to continue without taking account of these concerns. Externally, the Commission attracted criticism from WTO members by its insistence, within a February 2003 paper to the WTO General Council that negotiations would begin for all the Singapore Issues after Cancún. Twelve countries responded that this was by no means inevitable; and considering there had to be 'explicit consensus' which was not even achieved in the Working Groups on some of the basic principles, it seemed unlikely that this could be a realistic expectation unless 'package deals' could be put together or the nature of the agreements sought changed to become plurilateral or, at least, unbundled.

The example above seems to show that although Lamy did not favour the technocratic approach in Ministerials he did use it in Working Groups. This could be because the more political process in the Ministerials meant that there could be more trade-offs, which would facilitate agreement – one reason for the relative success of the Doha Ministerial (interviewees 2, 6, 9 & 10). Although the developing countries did not seem to accept agenda setting by the developed countries where this was not in their interest, within the Ministerials, it may have been felt that by the Commission adopting a position of 'expert', countries might be persuaded into explicit consensus. There is evidence for this in the number of papers circulated by the Commission to each Working Group in an effort to encourage agreement.

Unfortunately, for the Commission, its 'expert' stance in the Working Groups, and its insistence on continuing to advocate negotiations beginning on 'the package' of Singapore Issues, was entirely unsuccessful. This may have been due to path dependency in terms of demonstrating a staunch belief in 'the way things are done' but, if so, it backfired. Given the difference in nature of these negotiations, in terms of them coming under the Single Undertaking, and that they were being developed at the same time as agricultural negotiations were taking place, this should not have been a surprise. The technocratic approach, then, was definitely showing its limitations up to Cancún given the politicization of trade negotiations in the WTO.

Commission as Government

Because of what was going on in the EC, and globally, it might be expected that the Council would concentrate on the more political issues and leave the Commission to demonstrate its capacity for policy leadership in the WTO, almost like a *defacto* government. In terms of 'high politics', the early years of the 21st Century were characterised by the invasions of Iraq and Afghanistan and terrorist bombings in the USA, and of foreign targets elsewhere.² Internally, the Euro was fully introduced in January 2002, with progress towards this taking up much Council time, and a great deal of effort continued to be put into the enlargement project.³

As noted in the first Chapter, and in Chapter Six, that the Commission sat at the table with representatives of Heads of States in WTO Ministerials and Working Groups is indicative of its quasi-governmental status. In addition, its work to build bridges with the US in a critical bilateral Washington meeting in July 2001 primarily concerned with trade and competition and again in August 2003 on agriculture showed how important it was as a player on the global stage, even if it could not use the outcomes to build a supportive coalition. There is some further evidence that the Commission was able to

² Most notably the atrocity of September 11th 2001, where aeroplanes were flown into New York's World Trade Center towers, which caused 2,986 fatalities. An example of the bombing of foreign targets is, the Bali nightclub bombing of October 12th 2002, where 202 people were killed and 209 injured

³ BBC Business News Wednesday 2nd January 2002 'Euro cash switch hailed a success' at <http://news.bbc.co.uk/1/hi/business/1736938.stm> accessed 10th March 2008

act quasi-governmentally in certain areas, particularly in the sectoral negotiations encompassed by the Singapore Issues, where it continued to push for a specific outcome in spite of significant opposition from other parties. However, the Commission appears to have been impeded from making any substantial progress by a failure on the part of the Council to seriously address the demands for significant agricultural reform so, to some extent, the Singapore Issues were held hostage pending such concessions, which were not forthcoming. Although the Commission was, then, able to act as a 'government' in the area of the Singapore Issues, it was reduced to being an 'administrator' in agriculture – unable to make headway because of the position of the Council and the strictures of the mandate allowing it little flexibility and/or the ability to be a policy entrepreneur.⁴

There is not much evidence that Lamy was able to count on the overt support of the Quad and G7/8 or APEC as Brittan was. Although APEC agreements seemed to shadow much of the work being done on the Singapore Issues, this did not mean that their agreements would translate to the legally binding nature of the WTO and, as such, would not stop defection by its members against the Commission view (perhaps, most notably, by Malaysia). Similarly, the OECD lobbied for EBA but did not seem to have a profound effect on getting this principle accepted by other WTO members. It is important to note, though, that the Commission's governmental status, within the Quad was not challenged. That the Commission was not always successful in getting the Quad 'on side' in negotiations, and thus using them to help build a supportive coalition in favour of an initiative, cannot detract from their visibility as a player in that forum.

Although the Commission was able to function in these governmental and quasi-governmental ways, this did not mean that the Council was necessarily being permissive. The Council was content with putting the key elements of what it wanted in the mandate based, as has been shown, on COM(1999)331, and then allowing the Commission to decide on the ways and means to achieve the objectives set out within it. *Because the Council acquiesced to the Commission operating in this manner, this tends*

⁴ Although this was Fischler's and not Lamy's responsibility. It was clear that Agenda 2000, as it had been painful for Member States to negotiate, was not going to be changed quickly.

to cast doubt on the idea that the Commission has been “ever more constrained” by its mandate (Nicolaidis and Meunier, 1999:498).

The Commission was, however, thwarted in its efforts to be ‘governmental’ in the area of labour standards, in the same way as it was not allowed to be an ‘expert’ either. Lamy seemed to have been left behind by Canada’s proposal in Seattle (see Chapter Seven), which expounded on the merits of setting up a Committee on Globalisation with representation from the ILO, WTO, UNCTAD, UNEP and IMF, amongst others. Perhaps this showed an element of path dependency as, at the time following the line set out in COM(1999)331, the Commission was still looking at a ‘Standing Working Forum’ between the WTO and the ILO instead of a more wide-ranging body. The EC position changed on 21st March when it agreed that it might be prepared to be more flexible on trade-labour issues and eventually moved to echo Canadian opinion on 24th July. At this point it was impossible for the Commission to be seen as leading this policy area. One might argue that this vision of the Commission as a leader is a prerequisite to seeing it as ‘governmental’ within external trade.

Commission as Administrator

It has already been pointed out that the Commission was acting more like an administrator in that it had very little agency with regard to agricultural issues. Lamy had authority in agricultural policy only through EBA, and had to simply convey the messages given to him by Council to the Ministerials due to the insistence on Agenda 2000 being the ‘front line’ of Council’s position. Although the bilateral meeting on agriculture with the US might have suggested more of an ability to innovate, as the multifunctionality aspect was still upheld, the meeting seems to have echoed existing Council views and, in any case, did not attract a supportive consensus because either it was too radical or too tame (Losch, 2004: 336).⁵ Lack of progress in agriculture had the effect of log jamming negotiations as insufficient flexibilities were built into the

⁵ Also shown by the Commission’s information brochure on ‘EU Agriculture and the WTO. Doha Development Agenda Cancún - September 2003’ at

http://ec.europa.eu/agriculture/external/wto/backgrou/cancun_en.pdf accessed 21st April 2008

mandate. Furthermore, because of a lack of political will for reform due to domestic pressures (France, for example), change was seen by Council as less desirable than maintaining the status quo. Domestic pressures also seem to have affected Portugal's view of the textile wording in the Doha Declaration, which might have given rise to greater concern on the part of the developing countries, for whom textiles were such an important product. Agriculture was, at least partly, to blame for the breakdown of talks in Seattle and for the emergence of the G20 at Cancún.

Lamy was also unable to encourage any weakening of the cultural imperative as no audio visual issues were discussed over this time period; perhaps he did not want to be active in this area anyway considering what he had said to the Parliament at his Hearing. Before Doha, implementation issues had also delayed forward progress on the Singapore Issues. Parliament had tried to use the Commission as an administrator, which was suggestive of them exerting the authority within the structure as expected since being instrumental in the demise of the previous Commission. They asked the Commission to facilitate a discussion between them and the WTO Director-General on how to "prevent procedural or organisational shortcomings from hampering... political discussions" within the WTO although this was clearly not in Parliament's remit.

There is no evidence here to suggest that the Commission let significant issues disappear, in an effort to evade their mandate, except perhaps for trade environment linkages, which seemed to become much less important as time moved on and trade/labour, although, as was said earlier, their stance entirely reflected COM(1999)33 I even if much of Council, and Lamy at the beginning of his tenure, seemed to want more than this. Furthermore, a shortage of money for technical assistance given through the WTO meant that although, in a number of cases, the Commission could say what it thought necessary for each country in terms of infrastructure, it had no way to ensure that financial support would be forthcoming. This gave a much more administrative orientation to the Commission's roles and responsibilities in such discussions in Working Group meetings. This lack of money was difficult given the level of support necessary because of the interlinkages between the Singapore Issues and other policy areas, which suggested that a high level of

financial assistance would prove necessary at the implementation, even if not at the signing stage.

There did not appear to be any reduction in the perception of the Commission's authority by its partners in Europe or in the WTO because of its lack of agency in these areas. It seems highly unlikely that countries would have changed their views on the Singapore Issues, or on labour standards, if Council had been sitting at the table rather than the Commission. The lines to distinguish where the Commission was acting as a 'government' and where it was acting as an 'administrator' are often blurred because the level of agency that the Commission possesses can change over time and different individuals have different perspectives. Although, then, the Commission may have been acting as an administrator in agriculture, it is unlikely that other countries around the table altered their perceptions of the Commission in response.

In sum, there is little evidence of the Commission being more confined to its role as an 'administrator' or that it was becoming more administrative over time. In agriculture, though, it had very little room for manoeuvre because of the lack of agency it was given. Within the politicized environments of the Ministerials and Working Groups there often seemed little the Commission could do to exert any influence on what was going on in the different forums. This is not because they were acting in an administrative capacity, rather that they could not take any particular stance to encourage agreement in terms of acting as an expert, working in a quasi-governmental way or building a supportive coalition. This is shown by the number of factors, which contributed to the failure of Seattle and to Cancún, in which only a small part was played by the Commission. It suggests that path dependence meant the Commission was almost reduced to an observer; seeing that its methodology did not work but unable to do anything about it.

Commission as coalition builder

The Commission's lack of success in achieving what it wanted here through coalition building could be because of the wider issue of politicization of the negotiating process both within the Ministerials and the Working Groups. This is shown by the dissatisfaction on the part of many developing countries with 'traditional' agenda setting processes and with the Green Rooms, particularly post-Seattle. This was not helped by the mass public demonstrations on the streets. Dymond and Hart (2000:32) remark that although demonstrations did not kill the Seattle meeting directly, indirectly they did make "politicians skittish...of publicly supporting a new round of negotiations" and this could go some way towards explaining the failure of Seattle to launch a Millennium Round. This shows further evidence of path dependency, this time on the part of the WTO, by continuing with plans for Seattle regardless of the deep-seated problems evident in Geneva that had not been resolved. The developing countries were also unenthusiastic about negotiations being opened in new areas and this is clear from the tables of preferences. It is highly unlikely, given this view, that negotiations on the Singapore Issues would have launched in Cancún, even with a supportive consensus evident in the Working Groups, as many countries would not have given 'explicit consensus' to further expand the WTO's agenda under the Single Undertaking.

Nevertheless, as pointed out before, there seemed to be a relatively supportive internal consensus over the time period excepting in agriculture and labour standards. In Chapter Seven, the Commission's position of negotiating the Singapore Issues as a single package remained unchallenged by member states. Even after Cancún, Council seemed content to wait for the Commission's suggestions about how to push negotiations forward. As well as Council consensus, the Commission consensus also seemed extremely supportive with the traditional antipathy between the Agriculture and the Trade Directorates put aside in an effort to obtain a positive outcome for them both; at least once the transition periods had been extended in the EBA. Indeed, Franz Fischler and Pascal Lamy appeared to be working closely together both in the run up to,

and follow on from, Cancún.⁶ However, Lamy's efforts to build a supportive coalition in Council to revisit the decision made in COM(1999)331 on labour standards proved unsuccessful in spite of his contention that this would assure the European publics that the WTO continued to be "relevant". Apart from, perhaps, the Singapore Issues (which seemed to be eventually almost ignored by Council) the mandate remained unchanged and there was no defection from the agreed position by Commission or Council.

Externally, efforts to build coalitions were much less successful. First, there were continuing problems with agriculture, in that the same tensions emerged as in the Uruguay Round with the Commission on one side and the Cairns Group on the other.⁷ As for the Singapore Issues, particularly trade and investment and competition, the US did not agree with the line that the Commission was pursuing. This disagreement manifested in the undignified jostling for position in Seattle with each trying to attract support for their individual drafts. This was not helped by the lack of a consensus Declaration text from Mike Moore. Perhaps it was the case that the WTO leadership was "inept" (Dymond and Hart, 2000: 22) due to the amount of effort put in to resolve the leadership question. This would help to explain why there had been no effort to produce even a discussion paper setting out the main areas of dissent and suggesting ways to resolve, or at least work through, them. However, because of the other contentious issues that were raised in Seattle a consensus agricultural draft may not have saved the Ministerial from failure. With the Singapore Issues, the Commission

⁶ Particularly clear in Lamy's presentation to the EP plenary meeting on 'The European Approach to the WTO Agriculture Negotiations' on 10th February 2003, where he outlined the modalities for the agricultural talks in the absence of Fischler (at http://ec.europa.eu/comm/archives/commission_1999_2004/lamy/speeches_articles/spla152_en.htm), Franz Fischler commenting at Cancun, "I regret that it was impossible to reach consensus on the Singapore Issues" (from the South Centre Bulletin 64/65, 'Cancun a 'political shock' to the European Union' at <http://www.southcentre.org/info/southbulletin/bulletin64-65/bulletin%2064-65-11.htm>) and both of them commenting on the results of an independent French study on the openness of the EC market to farm product imports, which included consideration of products from third countries, developing countries and the LDCs from *Europaworld* 1st September 2003 (at <http://europaworld.org/week138/studyshows1803.htm>, full report at http://trade-info.eec.eu.int/doclib/docs/2003/july/tradoc_113490.pdf, both accessed 15th March 2006)

⁷ However the US was less able to play a major role in this because of the passing of the 2002 Farm Bill. As was noted at the time, the \$10bn aid package that President Bush was putting together, "would not be enough to offset the damage inflicted on Africa's small farmers" considering the value of the domestic bill was \$190bn in subsidies particularly for "wheat, corn, cotton and other basic crops" (from an article in the LA Times by W Vieth, May 27th, 2002 "USA - Farm Bill will export misery to Africa" sourced at <http://www.corpwatch.org/article.php?id=2615>)

appeared to change its mind as to the nature of 'explicit consensus' and tended towards gaining agreement on the bare principles hoping that would be enough, which it was not.

Even post-Seattle, though, attempts to 'sell' the Singapore Issues to the developing countries, even when emphasizing the possibility of developing plurilateral not multilateral agreements (a good example of their policy entrepreneurship), proved unsuccessful. In the main, this was because of a lack of a suitable agricultural 'trade off' giving little incentive for other countries to accept additional items on the agenda (supported by interviewees 2, 6, 9 & 10 as above). Once again, this emphasizes the importance of the internal consensus and the need for the Commission's positions to be supported by Council; this almost repeats points made in the Kennedy Round of GATT (supported by interviews 6 & 9).

Interests

As defined in Chapter One, there are three general 'interests' that have a bearing on the Commission's roles and responsibilities in external trade. These are the internal Commission interest, the internal Council of Ministers interest and the global (WTO) interest. All of these interests can act individually or together to influence the Commission. In addition, none are unitary actors so there are often conflicts within as well as between them. The other important factor to note is that their positions are not stable and can change over time and in response to different issues.

The Commission interest

In the mid-term review of the Prodi Commission in 2002, it was noted that "the most important achievement of this Commission on the trade front to date was its pivotal role in launching the Doha Development Agenda at the WTO Ministerial Conference in

November”.⁸ This had been after “two years of pace-setting since Seattle” (*ibid*) thus suggesting the Commission interest was allied towards achieving this aim. The review notes that internal and external agreement on the EBA initiative had been achieved, along with successful completion of the Cotonou Agreement.⁹ Indicative of the Commission as a “multi-organisation” (Cram, 1999: 49), the Cotonou Agreement is heralded as a success in both Development and Trade policy areas, suggesting that there was overlap between the two DGs, with regard to developing countries.

Problems with structure exacerbate policy problems. It was noted by the European NGO Confederation for Relief and Development (CONCORD) in their Strategic Plan in December 2004 that, “consistency between the various EU policies that affect developing countries (development, trade, migration, external relations, etc) remains no more than a pious hope”.¹⁰ Although, when Romano Prodi became President, there had been efforts to rationalize portfolios, in particular by combining the Humanitarian and Development portfolios into one; this did not have a positive effect in the trade field.¹¹ For example, Lamy and Poul Neilson both had responsibility for ACP – Neilson for “EU relations” and Lamy for “trade policy” although Lamy would also be expected to “draw on the appropriate geographical services of the other external relations services” as well.¹² This would be unlikely to help with policy coherence.

⁸ 4th June 2002, ‘Closing the gap between rhetoric and reality’ at <http://europa.eu.int/rapid/pressReleasesAction.do?reference=MEMO/02/124&format=HTML&aged=0&language=en&guiLanguage=en> accessed 5th May 2006

⁹ The Cotonou Agreement governs relationships between the ACP countries and the EC. It was signed on 23rd June 2000 in Cotonou, Benin. Sourced from the Introduction to the Cotonou Agreement by DG Development at

http://ec.europa.eu/development/geographical/cotonouintro_en.cfm?CFID=35077&CFTOKEN=45fdae22a0c68874-F4B75829-EF20-C8D3-3170A9869CBD1C30&jsessionid=2430ed82aed53d6c5a5d accessed 11th March 2008. This agreement replaced the Lomé Agreement, which ran from 1975-2000. The Cotonou Agreement expires in 2020.

¹⁰ Sourced from www.bond.org.uk/pubs/eu/concplan.doc accessed 5th May 2006

¹¹ i.e. replacing the portfolio division between Bonino (Humanitarian aid) and Pinhero (Development) by Neilson

¹² EUROSTEP is another NGO network on European development cooperation. Its paper on the July 1999 restructuring was sourced from http://eurostep.antenna.nl/detail_pub.phtml?page=pubs_position_coherence_rescom accessed on 5th May 2006

Perhaps this lack of appreciation of the two policy areas persuaded Lamy that he would be able to make headway on the Singapore Issues, even though the Commission persistently came up against the developing countries' refusal to negotiate. Looking at this from a development rather than a trade perspective, it has been shown that there were significant overlaps between what Lamy was asking for, and other areas of the economy, which highlighted the importance of considering this development aspect. Nowhere was this emphasized to a greater extent than with Malaysia's comments on the proposed trade and investment agreement, which was said to require the pre-existence of "political stability, macroeconomic stability, a sound regulatory framework, including protection of intellectual property rights, the provision of incentives, joint research and development and investment in human resources..." making it difficult for most if not all developing countries to be able to participate. This lack of coherence may also have been reflected in Lamy's lack of appreciation for the need to develop specific SDT provisions for the Singapore Issues; going beyond transitional periods. However, in spite of vehement objectors like Malaysia, Lamy did not radically alter his viewpoint on the Singapore Issues; the internal consensus was thus strong enough to withstand such 'shocks' and to maintain the course that Brittan had set in COM(1999)331, a further example of path dependency. Perhaps this problematic explains why CAFOD, for one, blamed the failure of Cancún on the Singapore Issues, whereas Pascal Lamy did not.¹³

It has already been noted that Lamy worked very closely with Fischler both in EBA and at Cancún. EBA allowed duty free access to the Single Market for practically all goods from the least developed countries with the exception of rice, bananas and sugar, for which duty would be gradually phased out (following internal Commission discussions

¹³ CAFOD's paper in 'The WTO. The Role of the EU post-Cancún' Submission to the European Union Committee, House of Lords (UK) Subcommittee A (Economic and Financial Affairs, Trade and External Relations) January 2004 accessed via the link from http://www.cafod.org.uk/policy_and_analysis/public_policy_papers/trade/eu_and_wto_post_cancun_on_15th_May_2006. Lamy seemed to be at pains not to blame anything specific for the failure of Cancún and, indeed, failed to mention the Singapore Issues as a factor at all in his speech to the European Institute in Washington of 4th November 2003 'Trade Crisis' (at <http://europa.eu.int/rapid/pressReleasesAction.do?reference=SPEECH/03/514&format=HTML&aged=0&language=EN&guiLanguage=fr> on 15th May 2006

the latest phase-out of September 2009 for rice).¹⁴ As Fischler was concerned that EBA would “derail” any efforts to drop rice and sugar subsidies, which Spain and Portugal would not support, he asked for the longer phase-out period.¹⁵ Because EBA gave Lamy the opportunity to input into agricultural policymaking it was likely he was happy with this arrangement; as he told the Oxford Farming Conference about the WTO, “I share responsibilities with Franz Fischler on the agricultural side”.¹⁶ The Agriculture and Trade Commissioners also worked together in the lead up to, and aftermath of the Cancún Ministerial holding a joint press conference prior to its launch and at a further conference at the end of the Ministerial, alongside Romano Prodi. For example, on the G20’s proposal for the abolition of export subsidies, they commented it was, given the difficulties that the Council had in agreeing any agricultural line, in a “space odyssey” and “asking for the moon”.¹⁷ Immediately after the failed Cancún Ministerial, Fischler expressed his disappointment that the Singapore Issues weren’t progressed, as Lamy pointed out that “An agreement on agriculture was within reach”.¹⁸

Although this meant there was a supportive internal consensus within the Commission for achieving the goals, this did not help in encouraging a consensus on a revised agricultural policy in Council, nor did it (or could it) encourage consensus in the WTO on the Singapore Issues.

¹⁴ From the European Commission’s Generalised System of Preferences ‘Everything But Arms Initiative’ at http://ec.europa.eu/trade/issues/global/gsp/eba/index_en.htm accessed 12th March 2008

¹⁵ P Chapman, European Voice 11th January 2001 ‘Fischler turns up heat on Lamy over trade deal for poor nations’ at <http://www.europeanvoice.com/archive/article.asp?id=12306> accessed 12th March 2008

¹⁶ From Pascal Lamy’s speech to the Oxford Farming Conference on 4th January 2001 ‘Special Treatment for Agriculture. The Way Ahead’ at http://ec.europa.eu/archives/commission_1999_2004/lamy/speeches_articles/spla44_en.htm accessed 12th March 2008.

¹⁷ Space Odyssey quote from Deutsche Welle of 7th September 2003 ‘EU Moots Lowering (Some) Trade Barriers’ at <http://www.dw-world.de/dw/article/0,,964094,00.html> accessed 12th March 2008. ‘Asking for the moon’ quote from ‘The Hindu Business Line’ Thursday September 11th 2003 ‘Agriculture holds key to success at Cancún’ by G Srinivasan at <http://www.thehindubusinessline.com/2003/09/11/stories/2003091102600100.htm> accessed 12th March 2008. Also found in the Guardian of Friday September 5th 2003 ‘EU Farm Chief Slams Poor Nations’ Demands’ A Osborn and L Elliott at <http://www.guardian.co.uk/uk/2003/sep/05/world.politics> accessed 12th March 2008

¹⁸ Statements after Cancún by Lamy and Fischler. From the press conference closing the World Trade Organisation’s 5th Ministerial Conference in Cancún, 14 September 2003. News Release 57/03 at <http://www.eurunion.org/news/press/2003/2003057.htm> accessed 12th March 2008

The member state interest

The sense of *déjà-vu* must have been palpable when the same problems that had emerged in Council before the Uruguay Round came up again here, essentially the cultural issue and agriculture. The debacle on the biotechnology working group at Seattle may have showed, as one commentator put it, “the risks of shifting more negotiating power to the European Commission in the field of foreign economic policy” but Council did not change the Commission’s mandate as a result nor did it appear to seek to ‘clawback’ any authority from the Commission.¹⁹ Even though the Seattle Ministerial failed, this still did not prompt a revisit of the targets set for the negotiations, although it seems clear from the tables of preferences that the developing countries would be highly unlikely to agree to open negotiations on the Singapore Issues - certainly not as a package.

Doha, though, seemed to bring a hearty measure of optimism – there was, after all, an agreement to a wide-ranging development Round – perhaps Council believed that the good intentions set out in that agenda would be achievable, in spite of ongoing debates on agriculture and the insistence on ‘explicit consensus’ prior to negotiations opening on the Singapore Issues. At Cancún, however, it was shown that substantive disagreements remained on agriculture, particularly as the Cairns Group and the G20 were pushing for further liberalisation, and additional efforts were necessary if that meeting was not to end in failure.²⁰ It is important to note that although there had been an effort to make some changes to European agricultural policy prior to Cancún, these were insufficient for the G20 making it difficult to move forward.²¹

¹⁹ From the ‘Corporate Europe Observer’, Issue 6 April 2000 ‘Intergovernmental Conference 2000: Business and the Amsterdam Leftovers’ at <http://www.corporateeurope.org/observer6/igc.html> accessed 12th March 2008

²⁰ The Food and Agriculture Organisation also recognised that “agriculture was one of the major contentious issues” alongside US cotton subsidies. From ‘Overview of Developments in the Doha Round’ at http://www.fao.org/trade/negoc_under_dda_en.asp accessed 12th March 2008

²¹ From the Global Trade Negotiations Homepage of Harvard University ‘Agriculture Summary’ at <http://www.cid.harvard.edu/cidtrade/issues/agriculture.html> accessed 12th March 2008. Also the European Movement page on ‘The EU and the Doha Round of World Trade Talks’ at <http://www.euromove.org.uk/index.php?id=6525> accessed 12th March 2008

The main concession made by the Council, through the Article 133 Committee, was to drop two of the Singapore Issues (investment and competition) at the final meeting.²² However, this agreement to drop two issues was “pending the outcome of the negotiations on the rest of the agenda”.²³ The 133 Committee seemed, then, to be demanding that the Commission achieve concessions elsewhere before final agreement on the fate of the two Singapore Issues could be reached. In the end this effort at reaching consensus was thwarted because, as was mentioned, the African Union refused to accept negotiations on the remaining two issues and Korea and Japan refused to accept them being unbundled. Although Council may have shared the other delegates’ “surprise” when the Chair refused to negotiate further on the Singapore Issues, because their stance on agriculture would not have been supported by all present, there would seem to have been nothing gained by continuing the meeting.²⁴

It is important to note that Parliament appeared to become more influential in trade policy although it was still not in a position where it could dictate policy positions to the Commission. Parliament was not successful in achieving more of a social focus to the WTO negotiations; nevertheless it did achieve the convening of a WTO Parliamentary Conference. According to Erika Mann, MEP (who wrote about this for the Steering Group on the WTO Parliamentary Conference, and who was instrumental in Parliamentary discussions), this came about because of what happened at Seattle, at the end of which a conference was held with representatives from all the Parliaments present.²⁵ There it was agreed to set up a Standing Parliamentary body of the WTO. A further conference was arranged in Geneva in 2001, at Doha, in Geneva again in 2003, and then at Cancún.²⁶ Lamy was seemingly supportive from the outset, telling

²² As Lamy put it, in his email updates from Cancún, “drop two and keep two” (reproduced on the Cercle de Cooperation website at www.cercele.lu/article.php3?id_article=353&tpl= accessed 15th May 2006

²³ C Raghavan ‘Process and Substance Caused Failure in Cancún’ of 16th September 2003 for the Third World Network at <http://www.twinside.org.sg/title/5420a.htm> accessed 15th May 2006.

²⁴ C Raghavan ‘Process and Substance Caused Failure in Cancún’ of 16th September 2003 for the Third World Network at <http://www.twinside.org.sg/title/5420a.htm>, accessed 15th May 2006

²⁵ See the paper dated 28th August 2003 at www.erikamann.com/scripts/getdata.php3?DOWNLOAD=YES&id=89 accessed on 15th May 2006

²⁶ Also on 24-26 November 2004, and again in December 2005 at Hong Kong. For further information on these meetings, and proposals for the future involvement of the European Parliament in the WTO, see P Berg and G Schmitz (2006) ‘Strengthening Parliamentary Oversight of International Trade Policies and Negotiations: Recent Developments in Canada and Internationally’ 9th February 2006, paper PRB 05-68E

Parliament in January 2000 that “members of Parliament must be more closely involved in the deliberations taking place within the WTO in order to strengthen the democratic control of this work”.²⁷ Perhaps reflecting this new-found role for the European Parliament, Lamy also said to them, after Cancún, that the Commission was “responsible as negotiators to you and to the Council”.²⁸ This suggests that, internally, their informal role was more influential than their formal role, and it highlights their evolution as an influence in external trade. However, in spite of their growing status internally, there is no evidence to suggest that Parliament used this as a means of changing the Commission’s mandate or *modus operandi*.

The WTO interest

The Seattle Ministerial was to become the most visible example of the failure of the coalition building process within the WTO (Danaher and Burbach 2000: 7), specifically because “never before had countries come together to start a negotiation and failed to do so” (Schott, 2000: 5). The combined impact of the factors given at the end of the account in Chapter Six meant that there must have been a general awareness that urgent work needed to be done to address the chief concerns of the developing countries or risk long-term deadlock. From further evidence in that Chapter it is shown that the WTO Secretariat felt the failure of Seattle acutely, and it might be expected that this acted as a spur to achieve consensus in the future. Criticism was levied at the WTO after Seattle from a number of sources; the BBC, for example, commented that the WTO had been inexorably “tarnished”.²⁹ The Third World Network noted that one of the main factors in the failure was “the ineptness, bordering on incompetence, on the

from the Parliamentary Information and Research Service accessed at <http://www.parl.gc.ca/information/library/PRBpubs/prb0568-e.htm> on 15th May 2006

²⁷ From Lamy’s report to the European Parliament on 25th January 2000 ‘What are the options after Seattle?’ reproduced at http://trade.ec.europa.eu/doclib/docs/2004/november/tradoc_120137.pdf accessed 15th April 2008

²⁸ Lamy’s presentation (SPEECH/03/429) to the Parliamentary Plenary Session on the Ministerial Conference of the WTO in Cancún, held in Strasbourg on 24th September 2003 at <http://europa.eu/rapid/pressReleasesAction.do?reference=SPEECH/03/429&format=HTML&aged=0&language=EN&guiLanguage=en> accessed 15th May 2006

²⁹ From BBC News Online, R Pigott, 4th September 1999 ‘WTO tarnished by Seattle Failure’ at http://news.bbc.co.uk/1/hi/special_report/1999/11/99/battle_for_free_trade/549794.stm accessed 15th May 2006

part of the secretariat and its Director-General".³⁰ As was noted earlier in this chapter, there was no draft declaration circulated by Moore for consideration at that meeting and perhaps, after what had happened in the Geneva Ministerial, Moore should have realised earlier that without consensus the meeting would be unsuccessful.³¹

After the Seattle meeting, Charlene Barshefsky, as Chairperson, asked Moore to "consult with delegations and discuss creative ways in which we might...(achieve) ...consensus (and) develop an improved process".³² In early February, Moore reported to General Council on a number of bilateral meetings that he had held in order to take this forward.³³ However, he did not make a statement on draft texts for the following Ministerial until 27th September 2001 suggesting that it had proved difficult for him to achieve consensus for negotiations to go ahead.³⁴ Even though Doha was considered a success, in that the Ministerial Declaration stated the intention of developing a wide range of work areas, there seemed very little substance behind that intent. Furthermore, after Doha, Moore had to conduct a further PR exercise in order to get work started.³⁵ This suggests that the WTO was struggling with a fragmented consensus and could achieve little else than what looked like vague promises (interviewee 8).

³⁰ C Raghavan 'Seattle WTO Ministerial Ends in Failure' at <http://www.twinside.org.sg/title/deb2-cn.htm> accessed 20th September 2006. Perhaps it is instructive that in his speech to the Parliamentary Forum in Seattle, Moore commented that, in terms of his position as Director-General, he was "not really a Director, even less am I a General. I am, I guess, a navigator, a facilitator and a public servant". (found at http://www.wto.org/english/news_e/pres99_e/pr159_e.htm accessed 19th May 2006)

³¹ Moore was to say later (in his 2003 book) that he had only just installed his senior management team at the time of Seattle and had not had the opportunity to develop his own draft although, considering he knew he was going to take over at that point, it seems a little strange that he wasn't prepared enough to hit the ground running. That Moore should have realised this before comes from M Fleshman Africa Recovery Vol 13 No 4 4th December 1999 'WTO impasse in Seattle spotlights iniquities of global trading system' at <http://www.un.org/ecosocdev/geninfo/afrec/vol13no4/1wto1.htm> accessed 19th May 2006

³² From his post-Seattle statement of 7 December 1999 at http://www.wto.org/english/news_e/pres99_e/pr160_e.htm accessed 19th May 2006

³³ The full text of his statement to General Council on 7th February can be found at http://www.wto.org/english/news_e/pres00_e/pr166_e.htm accessed 19th May 2006

³⁴ WTO Press/248 27th September 2001 'Moore praises draft texts, urges Governments to move forwards' at http://www.wto.org/english/news_e/pres01_e/pr248_e.htm accessed 19th May 2006

³⁵ In his 'informal end of year message', (Moore outlines successes of 2001, roadmap for 2002') Moore cited Zoellick saying Doha had "removed the stain of Seattle" (Press/265, 20th December 2001 at http://www.wto.org/english/news_e/pres01_e/pr265_e.htm accessed 19th May 2006. PR exercise revealed in Press/269 of 22 January 2002 'Moore meets ministers, senior officials in Doha follow-up' says, as well as Lamy, he met Ministers from Mexico, South Korea, Canada and the U.S. and was planning to meet "senior officials from India, Japan and Pakistan in the coming days" (at http://www.wto.org/english/news_e/pres02_e/pr269_e.htm accessed 19th May 2006)

Supachai Panitchpakdi of Thailand replaced Moore on 1st September 2002, because of the term sharing agreement and it remained to be seen whether he would be more supportive of the developing countries' agenda within the WTO, and most importantly, whether he would be more able to build a supportive consensus amongst members.³⁶ Supachai clearly exercised personal leadership as, in an effort to reach a resolution on the cotton issue at Cancún, he chaired the appropriate Working Group although he, like Moore, did not develop a consensus draft for the Ministerial and, ultimately, Cancún also ended in failure. There was a question raised as to whether, given his "softly softly" approach he might be unable "to engineer the confrontations so often needed to break deadlocks".³⁷

As well as changing personalities at the top of the WTO, although probably not in response to them, the context had become much more politicised, particularly with the growing activism of the developing countries and their wish to influence the agenda. Warden Bello called the mood of developing countries in Seattle "mutinous" noting that many issued strong statements that they would not give their agreement to any Declaration if the Green Room process continued.³⁸ Their attitude remained much the same at Doha, with their wish for, and agreement on, 'explicit consensus', before negotiations could commence on the Singapore Issues at Cancún. Greenpeace International reported:

"Several delegations...flatly stated that they would walk out...without an additional ...statement from the Chairman...that these negotiations were not proceeding and (would) require a consensus decision in two years to proceed".

³⁶ As had been agreed in September 1999.

³⁷ 'Softly softly' approach from ABC News (Australia) Wednesday 8th October 2003 'WTO chief risks 'lame duck' status as talks collapse' at <http://www.abc.net.au/news/stories/2003/10/08/962809.htm> accessed 12th March 2008. 'Need to engineer confrontations' from T Crampton, International Herald Tribune September 10th 2003 'Low Expectations for Cancún Meeting: Agriculture at the heart of Trade Talks'. at http://www.ihl.com/articles/2003/09/10/summit_ed3_.php accessed 12th March 2008

³⁸ From his article in Business World of 6 December 1999 'Debacle in Seattle. A Blow-by-Blow Account' found at <http://www.tni.org/archives/bello/debacle.htm> accessed 20th May 2006

Cancún also heralded the birth of the G20, which, along with the Cairns Group, provided a strong front against the perceived lack of agricultural liberalization on the part of the EC and other adherents to the 'multifunctionality' argument.³⁹

In terms of factors working against a strong WTO line, it is clear that the EC and US were not necessarily mutually supportive of each other, as they had been in the past and could not encourage other countries to build a consensus position. Rather, there had been a number of difficult trade disputes between them in the post-Seattle period (on steel, for example) and, in spite of the personal friendship of Zoellick and Lamy, the bilateral relationship did not return to that prevailing in the Tokyo and Uruguay Rounds, possibly because of the difference of opinion on the need for a wide ranging Round (Taylor, 1986, McDonald, 2000).⁴⁰

Conclusions

This time period for the Commission was marked by a supportive internal consensus, except in agriculture and labour standards, and a constraining (because it was so fragmented) external consensus. Internally, COM(1999)331 formed the basis for the Commission's mandate for the Ministerials from Seattle through to Cancún, and Lamy did not issue a revised version, or ask Council to change the mandate in any significant way, even after the failure of Seattle. In addition, Council seemed content to leave the methodology as to how to proceed with negotiations to the Commission, whose position remained uncontested by Council either collectively or individually apart from with biotechnology at Seattle. Although Parliament became involved to a greater extent in the WTO over this period, it did not use its new role (in the Parliamentary Forum), or the part it played in the resignation of the previous Commission, as leverage to force changes to the mandate.

³⁹ 'Greenpeace Comments and Annotations on the WTO Doha Ministerial Declaration' January 2002 at <http://archive.greenpeace.org/earthsummit/docs/Dohafinal.pdf> accessed 21st May 2006. ICTSD 'Trade and Environment Issues at Cancún. Background note June 2003' suggests that the 'Friends of Multifunctionality' were Japan and Norway alongside the EC and Switzerland at <http://www.ictsd.org/issarea/environment/resources/TE-Cancun.pdf> accessed 21st April 2008

⁴⁰ Information on the steel dispute, starting in March 2002, can be found at <http://news.bbc.co.uk/1/hi/business/3259749.stm> accessed 21st April 2008

In terms of the Ministerials, Seattle is the ultimate example of weak external cohesion in that the meeting failed to agree a Declaration or even agree the way forward to achieve a consensus. However, even the statements of intent in the Doha Final Declaration were unlikely to be progressed to their fullest extent, given the antipathy of the developing countries to negotiating in any new areas and the lack of will on the part of Council to change their position on agriculture as substantially as required. Lack of progress on agriculture and the lack of 'explicit consensus' on the Singapore Issues would together bear a large chunk of the blame for the failure of Cancún. This may have been compounded by the lack of consensus drafts for Ministerial meetings as well as by a lack of meaningful trade-offs being proposed. In addition, although much may have been expected from APEC's parallel work, this did not build consensus within the WTO and the Quad's preferences were also not aligned through the period showing the Commission's quasi-governmental role had not helped to achieve a supportive consensus. Therefore, any wish that the Commission may have had to achieve progress was limited internally by the entrenchment of agriculture negotiations and because no suitable bargains could be put together to encourage wider agreement externally. This was the case even though the internal context was generally permissive.

Although the WTO working groups may have provided a sound basis for Lamy to begin plurilateral negotiations on the Singapore Issues, there seemed to be less of a focus for the Commission on arriving at consensus within those Groups, except on the very basic modalities for negotiation (which was not achieved either). The insistence on negotiating them as a package, under the Single Undertaking, was a disincentive for countries which were not prepared to open negotiations on them all. Coalition building may have been a more successful approach to take than the 'expert' approach in the Working Groups; particularly by focusing on the key elements such as terminology and coverage as well as SDT issues. The Commission may have been helped by the WTO Secretariat stepping in to try to address problems, as it seemed Mike Moore might try in the TGP negotiations, but this was not done and the Groups did not make headway. Although the developing countries have been highlighted (see the tables of preferences, for example), it is important to note that the 'North-South' split in the WTO is not an absolute. India and Pakistan, for example, did not want agreements in the field of trade-

investment or trade-competition but were happy to discuss transparency (interviewee 8). Costa Rica maintained its support of all of the Singapore Issues whilst the Dominican Republic spoke eloquently on the need for developing countries to adopt an agreement on trade-investment. Their general view about not having new items on the agenda appears to have been the same at the beginning of this account as it was at the end. However, these countries did become prepared to demonstrate their strength of feeling, and their collective interest, by threatening to walk out of Ministerials and made it clear that they would not agree to negotiations being opened in areas where they did not have an interest.

Another factor in the lack of progress evidenced in these previous Chapters, was that a number of NGOs appeared to have become more militant over the timescale, and the Seattle demonstrations must be seen as the culmination of that. This could have been because of collective mobilization against the MAI, and that when the MAI negotiations came to an end in the OECD, and it was suggested that they might be transferred to the WTO, NGO focus shifted in that direction. Although there were not such wide demonstrations in Doha and at Cancún, there was still a civil society presence which appears to have impacted on the politicization of the environment.

This chapter has clearly shown that there were a number of factors explaining the lack of progress made by the Commission from Seattle to Cancún and that this was affected by the Commission's roles and responsibilities as well as the preferences (over issue and over time) by the interests. The conclusions that can be drawn from this, particularly in the light of the conclusions from the previous set of chapters (in Chapter Five), will be further explored in Chapter Nine.

CHAPTER NINE

Conclusions

Introduction

The central assumption forming the basis of this thesis was that the extent to which the Commission could carry out its obligations in external trade depended upon the interaction of four forces: roles, responsibilities, interests and change. In order to address this assumption, we initially identified the roles and responsibilities that the Commission held both in general terms and then specifically in external trade and identified, too, the constellation of interests to which the Commission had to respond. The thesis then tracked the evolution of those forces primarily through the methodology of process tracing, in order to consider the impact of change and politicization; focusing on the GATT Rounds and then the WTO. The material on the WTO fell naturally into two time periods, which allowed for an empirical investigation based on process tracing. The two time periods were Leon Brittan's tenure as Trade Commissioner in the WTO from 1997 to 1999 and Pascal Lamy's from 1999 to 2003; ending at the failed Ministerial in Cancún, which was the last Ministerial meeting for which Lamy held that position.

Looking at the results achieved by the two Commissioners, detailed in Chapters Five and Eight, might suggest that Brittan was more effective at exercising the full range of roles and responsibilities, and at aligning the interests, than Lamy was. After all, Brittan managed to achieve the signature of the Agreements detailed in Chapter Four when Lamy achieved agreement on none of the three that he was trying to advance during the period. However, in many ways the Geneva Ministerial might be said to have failed, as did Seattle. Brittan presided as Trade Commissioner in the former and was instrumental in much of the preparation for the latter. Lamy was the Commissioner who negotiated in Seattle and was then to negotiate in the failed Cancún Ministerial. In this respect, their level of success in the political process of Ministerials is similar. However, the balance of continuity and change between the two time periods is very different and

suggests that the Commission failed to adapt because of path dependence and 'lock in' as outlined in the Introduction.

At the end of Chapter One, the research questions were transmuted into positive propositions about what we expected to find as we further investigated the Commission's role(s) in the GATT and the WTO. The propositions provided a broad conceptual framework for the investigation and were further appraised and refined following Chapter Two when the Commission's evolving roles and responsibilities in GATT were discussed. Therefore, this Chapter will return to those propositions in order to examine them in the light of the evidence that has been amassed over the previous six Chapters. The discussion will focus on what we expected and what we found in a broad, horizontal sense, reflecting on the content of previous Chapters.

The European Commission's Roles in the WTO

The proposition at the end of Chapter One suggested that within the GATT and the WTO we would find traces of all four key Commission roles: expert, government, administrator and coalition-builder. We also expected that the 'mix' of these roles would vary across levels of activity, across issues and across time, and that reconciling the roles would be a key aspect of the Commission's 'self-management'. This proposition brings into play a number of issues including the nature of Commission agency and autonomy. At the end of Chapter Two we further suggested that the level of agency that the Commission has is dependent upon the flexibility it is given by Council, the room for manoeuvre it has to ensure trade offs and the level of politicization surrounding each issue. Because negotiations take place in a dynamic environment, this means that the nature of the interests is of critical importance.

Commission as Expert

Although the Quad consensus did not look firm from Geneva onwards, the sectoral negotiations that Brittan presided over showed a high level of elite bargaining led by the Commission between itself and the US, the G7 and the Quad amongst others. This is not something that Lamy was able to echo because the fragmented preferences of the Quad had become evident both at Ministerial and sectoral levels; elite bargaining as a policy

motor, then, was definitely on the wane. Brittan was also able to demonstrate his status as expert by developing COM(1999)331, which was the basis for the negotiating mandate even at Cancún. However, Brittan was unable to encourage support for the Commission's stance in politically sensitive areas such as Ruggiero's replacement, within the Council of Ministers, or to develop a strong line in Ministerials for the MAI or labour standards, to give but two examples. This shows that Brittan had most agency to act as an expert, internally and externally, where the subject areas were not contested and less, or very little, where matters were deemed politically sensitive by Council or within the WTO.

Lamy was able to push for EBA so appeared to have more formal input into agriculture policy than Brittan did. However, Lamy could not encourage wider buy-in to EBA within the WTO Ministerial process, highlighting that the external WTO interest was not aligned on this issue even though the internal interest was strong. Lamy was also able to act as an expert, allowing him to set up the DG Trade-Civil Society Dialogue following Seattle. However, the preferences within the Contact Group were shown to be widely dispersed and this did not help the Commission build a more supportive consensus externally for the sectoral negotiations. The problems confronted by Lamy in exercising expertise in the sectoral negotiations may have been mitigated had the negotiation mandate been changed or Lamy had urged more flexibility on the part of Council. This could have been achieved by unbundling the Singapore Issues or negotiating them as 'softer' agreements (as suggested by UNICE) or plurilateral agreements, which had proved more successful for the sectoral negotiations assessed over Brittan's tenure.

Commission as Government

Because of the role that the Commission has in the WTO, we might expect that the Commission's governmental status would be more noticeable in the Ministerials than within the sectoral negotiations. That Brittan signed the Singapore Final Declaration and achieved agreement from the Council and the US (as well as the WTO Ministerial) to a new Round of trade talks suggests he was able to exercise a governmental role at some level. The Semiconductor Agreement also stated that the Commission would be treated like 'a government' within that infrastructure. However, although this indicates an

amount of autonomy and authority, there was no evidence to suggest that Brittan achieved more of a governmental status over the time he was Trade Commissioner – nor does it suggest that the Commission's status was rolled back to make it less governmental.

Lamy, too, signed off the Doha Final Declaration and seemed to get a more solid agenda for the new Round by so doing. The Commission's position in the Quad was not contested, even though Lamy was unable to get the Quad to give unqualified support for the Singapore issues just as he was unable to develop a shared vision for the Seattle or Cancún Ministerials (and Brittan was unable to do in Geneva). Perhaps most importantly, as was noted in Chapter Two in the Uruguay Round, because agriculture was being discussed in the WTO and was highly contested, this significantly impacted upon the Commission's ability, under Lamy, to act in a governmental way. Firstly, Council had a great deal of difficulty arriving at a consensus and this limited the room for manoeuvre that they were prepared to give the Commission (commenting, for example, that Agenda 2000 was the 'frontline' of their position). Secondly, the level of interest and enthusiasm for seeking a more liberal approach in agriculture from the EC was a priority for a number of third countries, which seemed to want an agreement here prior to commencing negotiations in other areas. Thirdly, the level of politicization that resulted because of agriculture meant it became much more difficult for the Commission to seek trade-offs. Although it may have wanted to use agreement from other countries to pursue the Singapore issues, before it committed to any flexibility on agriculture, the Singapore issues were also highly contested and subject to 'explicit consensus' as well as the Single Undertaking.

Commission as administrator

The 1/94 Ruling had no effect on the day-to-day relations between the Council and Commission as the Commission continued to suggest policy positions even in areas subject to mixed competence. There is no reason to suspect that this was different after Brittan left the Commission except that Lamy did not ask for the mandate to be re-written and so did not write his own version of COM(1999)331. In the field of labour standards, though, both Brittan and Lamy had far less room to manoeuvre. Brittan appeared to jettison labour standards from the agenda after Geneva suggesting he did

not think it was in his interest to try to pursue an issue where a strong internal or external consensus was not forthcoming. Lamy simply had to withdraw from labour standards once he realised that there would be no chance of the developing countries agreeing to pursue it, just as Brittan had noted earlier. Why Lamy thought he could get an agreement on labour standards is unclear; perhaps he felt that the Council and the WTO would commit to this because of the need to get civil society on board with the agenda.

Although there is no evidence to suggest the Commission was becoming more of an administrator over time, for Lamy agriculture was back on the table. In spite of the Commission interest appearing to be supportive, Council was constraining because of the level of contestation including domestic pressures (particularly in France). Rather than the Blair House negotiations and re-negotiations taking place after the Uruguay Round was allegedly completed; with Lamy the Seattle and Cancún Ministerials never got to this stage as they both failed before agreement could be reached. For Brittan, the internal consensus was the main problem with agriculture at the endgame of the Uruguay Round. Lamy had to contend with the fragmentation of both the internal and external consensus rallying against the EC position in Agenda 2000. Even the EBA initiative was unsuccessful as a bargaining chip to encourage developing country agreement at Doha or Cancún. This may have been made more acute because the 'carrot' of more technical assistance money, if the developing countries agreed to go ahead with the Singapore Issues, could not be used because of a shortage of WTO funds for that purpose.

Commission as coalition builder

Under both Brittan and Lamy as Trade Commissioners, the Commission was shown to have worked closely together over the duration; the Commission interest, then, seemed broadly supportive, or even permissive, of what the Trade Commissioners sought to do in the WTO. Council was also relatively supportive over the tenures of both Commissioners; broadly agreeing with the priorities given by the Commission although, perhaps, not putting enough pressure on the Commission to ensure that the external consensus was as strong as possible or giving them as much agency as was

needed where agriculture was concerned. However, the external consensus was very fragmented.

Whereas Brittan was also able to encourage support from the Quad, G7 and the CSI, as well as from all the signatories to the ITA, BTA and FSA, Lamy was not. This is partly because of the fragmentation of the Quad's positions spilling over into the sectoral negotiations as well as the Ministerials. It is also because of the Single Undertaking (as explained before), which did not affect the sectoral negotiations that Brittan pursued. Furthermore, the politicization surrounding the agricultural talks affected the politicization of the WTO at all levels. Neither Brittan nor Lamy were able to develop coalitions where the debate was too politicized. For Brittan there was the problematic choice of a replacement WTO Secretary General or encouraging the wider WTO membership to support his initiative to allow duty free market access for goods from the LDCs. For Lamy there were labour standards and the Singapore issues. Although Brittan 'just' had to contend with the subjects themselves, Lamy also had to contend with agriculture influencing the whole environment.

Both Lamy and Brittan missed the importance of what had happened at the Geneva Ministerial where there appeared to be a cleavage between countries of the North and South. Post-Geneva there needed to be significant coalition building prior to the Seattle Ministerial and, because there was not, Seattle failed. Lamy had the excuse that he was new to the portfolio but Brittan did not. Furthermore, Brittan also appreciated that agriculture was coming back to the agenda and his experiences at the end of the Uruguay Round might have been expected to inform his actions. The number of square brackets persisting on the negotiating mandate by the time of the Seattle meeting suggests that they did not. Lamy not only failed to recognise what had happened in Geneva but did not pick up on the general dissatisfaction of the developing countries following the Doha Ministerial, which was strongly suggestive of the Cancún Ministerial also failing. This fragmented external consensus meant that coalition building had a new importance over Lamy's tenure but this was not recognised.

The European Commission's responsibilities in the WTO

We anticipated that we would encounter questions relating to the Commission's ability to carry out its responsibilities – in other words, how the Commission fulfils the functions entailed by the roles. As with the roles themselves, it was shown in the previous chapters that the Commission's ability to fulfil its responsibilities varied across levels of activity, issue areas and time. This suggests that the institutional structures, which facilitate role performance, need to be addressed here. This leads to discussion on role conception and performance, and thus the institutional, political or personal constraints that may be encountered by Commission leaders in achieving success. Chapter Two noted that there appeared to be a gap between the Council's conceptions of the Commission's role performance, which had been brought into sharp contrast at the end of the Uruguay Round heralding Opinion 1/94.

Earlier we suggested that Brittan seemed more successful than Lamy because of what he managed to achieve within the sectoral negotiations, but we also highlighted that there were factors affecting the Commission's success that Brittan simply missed and it is those delivery and institutional aspects that we need to focus on here. Even though the Commission was shown to have remained unaffected by Ruling 1/94, it still had to build coalitions and facilitate decision making in often highly contested policy areas in order to ensure policy delivery took place internally and externally. This was less of a problem for Brittan, except with the cultural exception issues inherent in the ITA, but much more of a challenge for Lamy because of agriculture.

Brittan had anticipated the member states' positions well judging by the alignment of COM(1999)331 to the eventual negotiating mandate. Even in areas subject to mixed competence, the Commission line was generally taken including the suggestion that the new Round be of three years duration. Council, at this point, was permissive on the Commission developing this document and then supportive of the aims and objectives contained therein. On this basis, Council's views on the Commission's role performance must have been positive; contrary to what they appeared to be after the Uruguay Round. As Brittan was an ex-senior politician perhaps it is to be expected that he would know what other senior politicians would be prepared to accept. Lamy did not revisit the mandate or COM(1999)331 so was in the position of having to follow

something he did not necessarily agree with. This was very obvious in the field of labour standards where Lamy wanted much more activism from Council so to get civil society back on board with the trade agenda after the demonstrations in Geneva. Failing to revisit the mandate meant Lamy could not account for the problems that developing countries were experiencing or propose bargains or plurilateral agreements.

Even if the mandate had been changed it was clear prior to the Seattle meeting that the Commission's negotiating partners in the WTO wanted to make significant headway on agriculture. Lamy was unable to deliver this and had to suffer the defeat of the Singapore issues at Cancún because of it. Council was locked into a battle on agriculture; pitching (simplistically) the North against South (Ahnlid, 2005). Because the member state interest is paramount, and veto power demands consensus, there was no way to develop a supportive coalition in Council. Therefore, the failure of the Cancún Ministerial was better for Council as it was able to keep the status quo on agriculture. The Commission's room for manoeuvre was thus severely curtailed because of the lack of institutional flexibility in politicized negotiations, adversely affecting the Commission's fulfilment of its responsibilities. Brittan had more scope here because the level of politicization in the sectoral negotiations was far less than in the Ministerials, which gave him a greater ability to exercise technocratic leadership. Lamy's efforts at acting as an 'expert' were entirely unsuccessful because of the level of contestation on the basic principles, which the Commission seemed to ignore. This did not, however, prompt Council to try to rein the Commission in showing, again, that Council's conception of the Commission's role remained the same.

The WTO's institutional structure is also important here as it is within this that the European Commission has to work. The 'birth defects' that were discussed in Chapter Two become important as Green Room preparatory processes and consensus-based rule making had not changed from GATT to the WTO. Developing countries had been critical of Green Rooms at the Singapore Ministerial yet the process had not been changed at Cancún. Brittan had not made any effort to change this and although Lamy had said that the WTO was 'medieval' after Seattle, and again after Cancún, he insisted that the necessary institutional changes could only take place in the context of a new Round. It seems more than unfair to be prepared to continue to exclude many developing countries from rule-making unless they agree to a broad agenda for a

Round; almost blaming them for the Commission's failure to exercise its responsibilities.

In both Brittan's and Lamy's terms of office as Trade Commissioner, progress in Ministerials was less than might have been expected from the relative success of the Uruguay Round. Although the results of the Singapore Ministerial seemed to be generally supportive of what the Commission was trying to achieve, Geneva was not. Then, in Lamy's tenure, Seattle and Cancún both failed. This was made worse because of the nature of the Single Undertaking where all members had to agree to implement agreements even where they had not negotiated them. This impacts countries without local delegations as they would not have the capacity to attend many (if any) negotiations.

Changes between GATT and WTO are not just about procedures as the alignments have also changed. The preferences of the Quad, which had been so important to drive agreements in GATT, were shown to be becoming less cohesive over time. The spill over of politicization into the Working Groups also meant that elite driven processes were not as effective as they had been in Leon Brittan's tenure. Agricultural negotiations, which became entrenched, repeated the battles seen in the Uruguay Round, this time between the Cairns Group, joined by the G20 against the 'Friends of Multifunctionality', of which the EC played a major role. New coalition building efforts were important here (as well as changes to the mandate) but because the Commission was not encouraged to do so, even once it seemed Cancún would fail, there was no response. This was not helped by the continued use of COM(1999)331.

There is no 'quick fix', then, for ensuring that the Commission is able to deliver the responsibilities connected to its roles but rather a number of value judgements need to be made as to 'best/worst' case scenarios prior to any changes taking place.

Interests and the European Commission in the WTO

It was expected that the interests would play a key part in shaping the Commission's combination of roles and condition the extent to which the Commission was able to fulfil its responsibilities. The degree to which the interests would be 'permissive', 'supportive' or 'constraining' was seen as key as was the combination of interests at three levels: within the Commission, within the Council of Ministers and within the GATT/WTO context.

Both Leon Brittan and Pascal Lamy were able to keep the internal consensus aligned over this time; reflecting a high level of internal support. This was especially true with the Ministerial process. Even where the results from these meetings were less than successful, Council seems to have let this pass without censure and neither Trade Commissioner was encouraged to change their stance by the College or by Council. With the sectoral negotiations, Chapter Four clearly shows Council supportiveness throughout. Although Council was not necessarily as supportive in Chapter Seven, and dropped mention of the Singapore issues prior to Cancún, this does not suggest a lack of support rather an appreciation that without radical changes to the agricultural position, there would not be a supportive external consensus for the Singapore issues. This is further demonstrated by Lamy not being told to drop them or consider unbundling them (until the closing hours of the Cancún Ministerial when this was conditional on progress in other areas).

Part of the reason for Brittan's success was because agriculture was off the agenda over the duration, which allowed him more agency and room for manoeuvre. That he did not achieve agreement for duty free access for products from the LDCs being included in the Ministerial Declaration from Singapore was indicative of the impact of further agricultural talks within the WTO that Lamy would have to deal with. Furthermore, four of the countries who rejected Brittan's initiative were Member States, suggesting that Brittan had not worked hard enough to achieve a supportive internal consensus beforehand and alerting him to, as in the Uruguay Round, Council's fragmentation over agriculture. Within the sectoral negotiations, Brittan made more headway by mobilising the G7 and other influential country groups to give their support and because they did not come under the Single Undertaking. This became extremely important when the US

left the negotiating table (on FSA, for example) and Brittan had to launch a salvage exercise to ensure successful completion of the agreement. He may have been able to do this because of his senior Cabinet experience in the UK that gave him the credibility to invite leaders around the table. Lamy did not have domestic political experience, although because of the agricultural negotiations polarizing even the Quad, it is unlikely that any such manoeuvre would have been successful.

The incentive for Brittan to achieve a new Round of talks in the Singapore Ministerial may have been because agricultural negotiations would be coming back to the WTO and he foresaw a need for the Commission to develop package deals and trade-offs, just as they had done at the end of the Uruguay Round. Lamy could not take advantage of this, though, because of the level of politicization that was to surround those negotiations. The WTO interest could not have been aligned in order to be permissive or supportive so it was very much constraining. This was partly because the preferences of the developing countries seemed to have coalesced to some extent over the period; especially in Cancún with the G20 lining up on the side of the Cairns Group in calling for greater agricultural liberalisation and because the Quad's preferences were dispersed meaning they could not lead a coalition building exercise. The environment may well have been made more supportive if the EC had been able to show some flexibility in agriculture but the constraining internal consensus meant that was not possible.

Brittan also had the explicit support of Ruggiero about increasing the authority of the WTO whereas although Lamy might have thought Moore would intercede with the ATGP, as he seemed to be enthused about the possibilities of an agreement, he did not. This was not a factor in the Ministerials, though. Perhaps more might have been achieved in the Ministerials had there been evidence of WTO leadership over the duration. From Seattle onwards there were no consensus drafts covering all areas to encourage agreement. Although Chairman Derbez tried to achieve agreement on the Singapore Issues at Cancún, this was not successful possibly because of the clear message from the developing country members of the Working Groups that negotiations should not go ahead. Therefore, although the internal Commission and Council interest seemed to be generally supportive of Brittan and Lamy (although not in agriculture), Lamy was not able to encourage more support for the Commission view

from external sources and his ability to achieve manoeuvre by using any policy space was minimized due to the contentious and politicised nature of agriculture.

Change and Politicization

We expected the interaction of roles, responsibilities and interests to be linked to and conditioned by processes of change, both within and outside the Commission and the EC. In particular, we would expect changes in Commission structure and leadership, changes in the alignment of Member States and changes in the political context for GATT/WTO negotiations to be significant. More specifically, we anticipated that changes in institutional structure and membership and changes in the level of politicisation around trade negotiations would play a key role in the capacity of the Commission to develop a stable mix of roles and responsibilities and to balance competing interests in the pursuit of its aims, and thus to link with issues such as innovation, path dependency and entrepreneurship.

It did not take a change from GATT to WTO to politicize the trade environment. As soon as GATT Rounds became more than negotiations on tariff reductions (i.e. from the Kennedy Round); the level of politicization increased, elite bargaining became progressively less significant and civil society became increasingly aware of global trade and its impact on the poor. That politicisation was not entirely due to the transition is evidenced by a protest of more than 500,000 people in Bangalore in October 1993 against the Uruguay Round.¹ Although Mike Moore may have commented that “The Uruguay Round was launched in the silence of public apathy” it did not end that way.²

The difficulty of reaching agreement was made worse once agriculture was incorporated with a view to bringing it under GATT disciplines. In the Uruguay Round, noteworthy disagreements in agriculture could have caused the negotiations to fail especially when France threatened to withhold its agreement to the Final Accords. However, it was not just France, which jeopardized the successful conclusion of Seattle

¹ From the ‘Stop the War Coalition’ ‘Neoliberal Governance and Social Resistance: A Chronology of Events’ compiled by C Buckley for ‘The Commoner’ Spring/Summer 2003 found at <http://www.commoner.org.uk/07buckleytable.htm> accessed 2nd April 2008

² From Moore’s speech of 28th September 1999 to the Council on Foreign Relations in Washington DC entitled ‘Challenges for the Global Trading System in the New Millennium’ at http://www.wto.org/english/news_e/spmm_e/spmm08_e.htm accessed 3rd April 2008

or Cancún but a whole host of other players. The Cairns Group had been seeking agricultural liberalisation since the Uruguay Round and the developing countries had waited for their major concerns to be addressed since the Singapore Ministerial. There is little evidence that changes in the Commission's leadership made much of a difference, unlike as suggested in the opening Chapter: Jacques Delors had very little impact on the Uruguay Round (in fact, he stood in the way of the MacSharry plan that was so instrumental in achieving success at Blair House); Jacques Santer's tenure as President seemed to have little effect on external trade and, although Romano Prodi recognised that agreement between the US and EC was essential prior to Seattle, this made no difference to the outcome. This lack of input could be due to the extent and technical nature of the trade portfolio (as was outlined in Chapter One). It has also been shown that treaty changes or other policies had little effect on the Commission in carrying out its roles and responsibilities. For example, *Opinion 1/94* appeared to have no impact on the Commission's work at all and although Amsterdam may not have been considered a success for the Commission it did not appear to change the day-to-day relationships between Council and the Commission as neither did the Nice Treaty.

The greatest impact of politicization is linked to the transition between GATT and WTO and this was the prime limitation to the Commission's ability to innovate and act as a policy entrepreneur. Lamy later remarked that one of the main outcomes of the Uruguay Round was that although the developing countries made the same commitments as all other members, because their institutional infrastructure needed significant upgrading, it was not going to be easy for them to meet their obligations.³ This would also have a knock on effect in terms of what they wanted from the WTO such as greater market access and no new items on the agenda (especially items that were subject to the Single Undertaking such as the Singapore Issues or which might be said to impact on their competitive advantage such as labour standards) except, perhaps, for matters of concern to them. It was the Commission's failure to properly appreciate this that precipitated failure at Seattle and Cancún. At the same time, the developed countries (such as the Quad), along with the WTO Secretariat, sought to widen and deepen the agenda of the WTO. This extended to areas such as the MAI, which caused

³ Lamy's speech to the First Annual Lecture of the European Foreign Affairs Review, Brussels 8th November 2000 'Challenges confronting the world trade system today' at http://ec.europa.eu/archives/commission_1999_2004/lamy/speeches_articles/spla36_en.htm accessed 3rd April 2008

a great deal of negative interest from NGOs. Furthermore, bringing agriculture into the WTO fragmented both the internal and external consensus. The Commission's efforts towards widening and deepening the agenda would result in almost inevitable conflict between the developed and the developing countries. Agriculture is suggestive of further conflict between the EC and agricultural exporters further limiting the Commission's room for manoeuvre and its ability to develop innovative solutions to problems because of the extent of cleavages.

Policy Implications

The evidence evaluated here shows a great deal of continuity in how the Commission fulfilled its roles and responsibilities over time as was anticipated in the Introduction to this thesis. However, in so doing, the Commission failed to take account of the significant changes within the negotiating environment particularly with regard to the growing politicization, evident since the Kennedy Round of GATT and growing since the birth of the WTO. Although the Commission's roles and responsibilities did not, and have not, come under threat from the Council of Ministers, as might have been predicted, a supportive internal interest is not enough to enable headway to be made in negotiations. Even if elite bargaining remained plausible as a way to dictate the negotiating agenda, as it seems to have done in the Tokyo Round of GATT, the fragmented preferences of the Quad would make it impossible to build a supportive coalition in that forum. Furthermore, the views of the developing countries with regard to WTO priorities, suggests preferences are becoming ever more difficult to align. If the Commission had recognised the problems at the Geneva Ministerial, or at least at Seattle, they may have been able to develop a response although the entrenched debates surrounding agriculture meant that such initiatives might not have had a great effect. Even the EBA was insufficient as a bargaining chip to encourage the developing countries to accept the status quo in European agriculture making significant change to the CAP essential before further progress can be made.

It was not just agriculture (or the Singapore Issues), which showed that the trading system had changed since GATT. Unlike the Marrakech Agreement, the Final Declarations of the WTO Ministerials lacked substance partially reflecting the cleavages between North and South. In spite of this, there was no suggestion that the developing countries should be further integrated into the system, for example by participating in decision making. Instead the somewhat opaque 'Green Rooms' and 'Green Men' continued to play a part; this would continue in the Hong Kong Ministerial.⁴ Lamy's view that such procedures could only be altered in the context of a new Round was not generally supported. As the developing countries had been waiting since Singapore to see issues such as SDT and market access addressed, it is little surprise that they failed to engage with this proposal, just as there was little surprise that they would not give their 'explicit consensus' to begin negotiations on the Singapore issues at Doha, or would have done at Cancún. This means it would be necessary to ensure the external interest is aligned before policies can be advanced and that failure to address this might risk policy paralysis.

Coming back to the central contentions that were outlined in Chapter One and then Chapter Two, we can conclude from the evidence that the Commission being able to exercise its roles and responsibilities in the WTO depends upon:

i) A clearly aligned internal interest allowing the Commission flexibility and room for manoeuvre to enable it to be a policy entrepreneur and propose innovative solutions to problems in order to relieve logjams where they occur in negotiations. This seems to be becoming increasingly more difficult (especially since the Uruguay Round) as interests are clearly fragmented. Agriculture, labour standards and audio-visuals are three areas where there have been evident cleavages.

⁴ From TWN Info Service on WTO and Trade Issues, 21st December 2005, 'How the WTO's Hong Kong Ministerial Adopted Its Declaration' at <http://www.twinside.org.sg/title2/twninfo336.htm> accessed 12th April 2008. This document says that at Hong Kong there were a number of "Green Room... meetings to which a select few were invited.... There will be no records or minutes.... Who said what, indeed which countries were invited or were present, will not be known or at least will not be made public. For all intents and purposes these were "non meetings." The WTO spokesman referred to the Green Room meetings in terms of: "If the Green Room does exist, and if there was a meeting....." Yet, the leaders of the conference kept congratulating themselves for the "transparent, inclusive and bottom-up" process".

ii) A negotiation mandate, which reflects the situation on the ground. There is a need for the Commission to act as a 'critical friend' to Council by giving a realistic appraisal of the likely success or otherwise of different initiatives.⁵ The Treaty of Lisbon (2007) sets out that the Commission has competence in CCP and also "exclusive competence for the conclusion of an international agreement when its conclusion is provided for in a legislative act of the Union or is necessary to enable the Union to exercise its internal competence, or insofar as its conclusion may affect common rules or alter their scope", which suggests that the Commission might have more say when it comes to achieving agreements in the future. The UK's Law Society in its guidance concludes that the initiatives set out in the Treaty will make "The EU's international policies...more predictable and carry more weight on the international stage".⁶

iii) Addressing the problems experienced by developing countries. It was shown in the analysis that failure to ensure agreement from the developing countries meant that initiatives had little chance of being progressed. In order to facilitate this, then, there needs to be consideration of appropriate measures to assimilate these countries into the global economy. A number of measures might be appropriate here such as further technical and financial assistance, greater market access commitments and additional SDT measures. Many countries have been asking for help since the Singapore Ministerial and it seems appropriate to address them now on a country by country basis in collaboration with other multilateral agencies. Similarly, the Green Room process needs to be changed, before further talks, in order to give the maximum assurances of transparency to the most members.

iv) Sensitivity to the structure of WTO negotiations, in particular whether or not they take place under the Single Undertaking. In order to get buy-in from as wide a constituency as possible, consideration should be given to negotiating plurilateral agreements or for multilateral agreements to be more 'best endeavour' in nature. There is an obvious impact on the WTO as an institution becoming less multilateral and a clear effect on the Single Undertaking, however, failure to consider this might exacerbate existing North-South cleavages and lead to policy paralysis because the

⁵ In the way that the Commission acted as 'critical friend' to the Council advising on enlargement in *Agenda 2000*

⁶ From The Law Society Guide to the Treaty of Lisbon, January 2008 at http://lawsociety.org.uk/documents/downloads/guide_to_treaty_of_lisbon.pdf accessed 15th April 2008.

WTO interest cannot be aligned. The scope of agreements should also be made clear before negotiations are opened.

v) An acceptance on the part of Council members that the European view of agriculture is highly unlikely to be accepted by the Cairns Group and the G20 and steady yet progressive change is necessary. This ultimately demands consideration of the perceived value of the WTO for the EC - is it prepared to engage with the WTO or is it not?

Contribution to research

The thesis shows that, within the external trade portfolio, the Commission assumes a number of different, and sometimes conflicting, roles and responsibilities and the 'mix' of these is significant as was suggested at the outset. Although Meunier and Nicolaïdis (1999) highlighted that trade was "the longest and deepest integrated policy in the EU" (p478) this did not mean that the Commission was, though GATT or the WTO, able to get what it wanted as a 'government' or that it could build coalitions easily in every area that it wanted to progress. Furthermore, the relationship between Council and the Commission, which seemed to be given primacy by Meunier and Nicolaïdis, was not as important in terms of making progress in the WTO as the relationship between the Commission and the rest of the WTO membership.

The growing politicization of the trade field meant it was increasingly necessary for the Commission to listen to the rest of the WTO members in order to identify the opportunities for progress. That they failed to take heed of the warnings at Geneva, which led to the failure in Seattle and then in the aftermath of Doha, resulting in further failure at Cancún, suggests that this was not something the Commission or Council did very effectively. Internally, however, and in spite of Opinion 1/94, this work has shown that Council did not "rollback" (1999:477) the Commission's roles and responsibilities within external trade after the Uruguay Round. Although, formally, Opinion 1/94 enshrined the principle of 'shared competence', the Commission was still responsible for all aspects of the trade portfolio, which extended to proposing Council policy in shared competence areas as indicated by COM(1999)331. Clearly, the formal effects of this Opinion were a lot greater than the practice surrounding it. Nevertheless, it has been shown that COM(1999)331 was not

'future proof' and did not meet with the requirements of the other WTO members, particularly once it became clear that the developing country members were unhappy with the focus on task expansion rather than at addressing existing problems in Seattle. That Lamy persisted with using the document as the basis for the Commission's positioning even up to Cancún, is a demonstration of path dependence with its associated characteristics of 'self-reinforcement' and resistance to change.

Path dependence is also instructive when looking at the Seattle Ministerial itself and at the aftermath to Doha and Cancún. Meunier and Nicolaïdis (1999) may not have suggested that the Seattle Ministerial was a watershed in terms of backlash on the part of the developing countries with the WTO but clearly another contribution made by this work is to reveal the interlinkages between WTO Ministerials, and the negotiations surrounding them, especially in the way the interests were grouped. This explicit interlinkage means that the outcomes of Seattle and Cancún should not have been as much of a surprise to the European Commission as they seem to have been. Inevitably, this has implications on future negotiations in the WTO. Whether agreement can be reached in the future seems a moot point considering that the Doha talks are still continuing. The report from the latest Agriculture and NAMA negotiations (as of August 2008) is that there remains no agreement on modalities even though Green Room processes had been employed thus minimizing the level of dissent that would occur in a wider and more inclusive forum.⁷ It has been shown, then, that not only are there indications of path dependence on the part of the Commission and Council but also within the WTO. This has manifested in an inability to develop new ways of working (such as institutional restructuring to abandon the Green Room process) and thinking (on ways to reach agreement) to reflect the highly complex and 'messy' reality of many players and many ideas. This is the case even though the existing patterns have been shown to be "manifestly inefficient" and widely criticised (Pollack, 2005:363).

⁷ From JOB(08)/96 NAMA negotiating group. Report by the Chairman on 12th August also JOB(08)95 Committee on Agriculture Special Session. Report by the Chairman on 11th August

The methodology of using process tracing has shown, in the way that the Introduction outlined, the motivations behind and the impact of a wide range of Commission activities, and related them to the ways in which key interests were arrayed. The narrative showed the evolution of the Commission's roles and responsibilities in external trade, the growing politicization of the trade field and the related difficulties of arriving at consensus in both the 'high political' and latterly the sectoral negotiations (partly because of the Single Undertaking). The Commission changed its approach very little even when it became evident that there were major disagreements with the agenda on the part of the WTO membership. Further evidence was that forward progress was simply not being achieved even in the smaller sectoral groups. This shows the level of continuity on the part of the Commission and its failure to take into account the changes that had taken place in the trade field as indicative of 'lock in'. Historical institutionalist concepts have therefore highlighted, as we suggested in the Introduction, the importance of the 'mix' of roles, responsibilities, continuity and change alongside the choices that have been perpetuated over time (such as COM(1999)331) together with unanimity rules backing the status quo (agriculture).

In terms of future research, there is clearly further scope to expand this work both in and outside external trade. Consideration could be given, in particular, to looking at development or competition policy (where the Commission also has distinctive roles and responsibilities) and assessing the 'mix' of the Commission's roles and responsibilities in that policy area. The Commission's roles and responsibilities might also be examined as they play out in other institutions such as within the United Nations. There are opportunities to look at Peter Mandelson's handling of the Trade portfolio now that Pascal Lamy has left the Commission and thus continue the work after the Cancún Ministerial. It would be interesting to see whether the lessons Lamy learnt as Trade Commissioner have been reflected in his work now he is the Secretary General of the WTO, especially with reference to agriculture and relationships with the developing countries. Another possible area of research would be to explore the 'formal' and 'informal' roles and responsibilities of the Commission in external trade more closely over time. It may be this has evolved and become more important perhaps as a response to Euroscepticism and the lack of will on the part of Council to transfer further formal responsibility to the Commission. Related to this, the implications of moving to 'best endeavour' in the WTO might also be examined and,

in the future, it would be instructive to see whether the Treaty of Lisbon lives up to the Commission's expectations. Finally, a version of the methodology deployed here might work elsewhere, such as in the study of the roles and responsibilities of US Trade Representatives. All of these are worthy avenues for further research.

Bibliography

- Ackrill, R. (2000) 'CAP Reform 1999: A Crisis in the Making?' *Journal of Common Market Studies* Vol.38:2 pp343-353.
- Action Committee for the United States of Europe (1969) *Statements and declarations of the Action Committee for the United States of Europe, 1955-67. Joint European Series No. 9.* (London: Chatham House and PEP).
- Ahnlid, A. (2005) 'Setting the Global Trade Agenda. The European Union and the launch of the Doha Round'. In Elgström, O. and Jonsson, C. (eds) *European Union Negotiations: Processes, Networks and Institutions.* (London: Routledge) pp130-147.
- Allen, H. (1960) *The Anglo American Predicament* (New York: St Martins Press).
- Andersen, S. and Eliassen, K. (eds) (1993) *Making Policy in Europe.* (London: Sage).
- Arai, H. (2000) 'Some Reflections on the Seattle Ministerial: Toward the Relaunching of a New Round'. In Schott, J.(ed) *The WTO After Seattle* (Washington DC: Institute for International Economics) pp59-64.
- Arnall, A. and Wincott, D. (eds) (2002) *Accountability and Legitimacy in the European Union* (Oxford and New York: Oxford University Press).
- Arts, B., Noorthmann, M. and Reinalda, B. (eds) (2001) *Non-State Actors in International Relations* (Aldershot, Burlington, Singapore and Sydney: Ashgate Press).
- Balaan, D. (1999) 'Agricultural Trade Policy'. In Hocking, B. and McGuire, S. (eds) *Trade Politics – International, Domestic and Regional Perspectives.* (London and New York: Routledge) pp52-66.
- Baldwin, R. (2000) 'Pragmatism Versus Principle in GATT Decision-Making: A Brief Historical Perspective'. In the WTO Secretariat (ed) *From GATT to the WTO: The Multilateral Trading System in the New Millennium* (The Hague: Kluwer Law International) pp35-44.
- Baldwin, R. (2006) 'Failure of the WTO Ministerial Conference at Cancún: Reasons and Remedies'. *The World Economy* Vol.29:6 pp677-696.
- Barfield, C. (2001) *Free Trade, Sovereignty, Democracy. The Future of the World Trade Organisation* (Washington DC: The AEI Press).
- Baun, M. (1996) *An Imperfect Union. The Maastricht Treaty and the New Politics of European Integration* (Boulder: The Westview Press).
- Bayne, N. and Woolcock, S. (eds) (2003) *The New Economic Diplomacy: Decision making and negotiation in international economic relations* (Aldershot: Ashgate Press).

Bayne, N. (2003) 'Bilateral Economic Diplomacy: The United States'. In Bayne, N. and Woolcock, S. (eds) *The New Economic Diplomacy: Decision making and negotiation in international economic relation*. (Aldershot: Ashgate Press) pp163-180.

Bellamy, R. and Warleigh, A. (1998) 'From an Ethics of Integration to an Ethics of Participation: Citizenship and the Future of the European Union.' *Millennium* Vol.27:3 pp447-470.

Bellamy, R. and Warleigh, A. (eds) (2001) *Citizenship and Governance in the European Union* (London and New York: Continuum).

Bellier, I. (1997) 'The Commission as an Actor: An Anthropologist's View'. In Wallace, H. and Young, A. (eds) *Participation and Policy Making in the EU*. (Oxford: Clarendon Press) pp91-115.

Bennett, A. and Elman, C. (2006) 'Qualitative Research: Recent Developments in Case Study Methods'. *Annual Review of Political Science* 2006 Vol. 9, pp455-476.

Bergsten, C. Fred (2000) 'Fifty Years of the GATT/WTO: Lessons from the Past for Strategies for the Future'. In The WTO Secretariat (ed) *From GATT to the WTO: The Multilateral Trading System in the New Millennium* (The Hague: Kluwer Law International) pp45-56.

Bermann, G., Herdegen, M. and Lindseth, P. (eds) (2000) *Transatlantic Regulatory Cooperation* (Oxford: OUP).

Bernard, N. (2002) *Multilevel Governance in the European Union*. (The Hague, London and New York: Kluwer Law International).

Bhagwati, J. (2000) 'Fifty Years: Looking Back, Looking Forward'. In The WTO Secretariat (ed) *From GATT to the WTO: The Multilateral Trading System in the New Millennium* (The Hague: Kluwer Law International) pp57-65.

Blackhurst, R. (2000) 'The Capacity of the WTO to fulfil its Mandate'. In Krueger, A. (ed) *The WTO as an International Organisation* (Chicago and London: University of Chicago Press) pp31-58.

Blackhurst, R. (2001) 'The WTO and the Global Economy'. In G Thompson (ed) *Governing the European Economy* (London, Thousand Oaks and New Delhi: Sage) pp527-544.

Bostock, D. (2002) 'COREPER Revisited'. *Journal of Common Market Studies*, Vol.40:2 pp215-234.

Bouwen, P. (2002) 'Corporate Lobbying in the European Union: The Logic of Access'. *Journal of European Public Policy*, Vol.9:3 pp365-390.

Bovens, M. (1998) *The Quest for Responsibility, Accountability and Citizenship in Complex Organisations* (Cambridge: Cambridge University Press).

Bretherton, C. and Vogler, J. (2000) 'The EU as Trade Actor and Environmental Activist: Contradictory Roles?' *Journal of Economic Integration*, Vol.15:2 pp163-194.

Brittan, L. (2000) *A Diet of Brussels* (London: Little, Brown and Company).

Bromley, S. (2001) 'The EU and International Economic Governance'. In Thompson, G. (ed) *Governing the European Economy* (London, Thousand Oaks and New Delhi: Sage) pp269-302.

Brown, C. (2001) *Understanding International Relations* (Second edition). (Basingstoke and New York: Palgrave Macmillan).

Busch, A. (2000) 'Unpacking the Globalization Debate: Approaches, Evidence and Data'. In Hay, C. and Marsh, D. (eds) *Demystifying Globalization*. (Basingstoke and New York: Palgrave) pp21-48.

Cameron, F. (1997) 'Where the European Union Comes In: From the Single European Act to Maastricht'. In Regelsberger, E., de Schoutheete de Tervarent, P. and Wessels, W. (eds) *Foreign Policy of the European Union From EPC to CFSP and Beyond*. (London: Lynne Reiner) pp99-108.

Canovan, M. (1996) *Nationhood and Political Theory* (Cheltenham and Northampton, MA: Edward Elgar).

Capoccia, G and Kelemen, R.D. (2007) 'The Study of Critical Junctures: Theory, Narrative, and Counterfactuals in Historical Institutionalism' *World Politics*, Vol.59:3 pp341-369.

Caporaso, J. (2003) 'Democracy, Accountability and Rights in Supranational Governance'. In Kahler, M. and Lake, D. (eds) *Governance in a Global Economy: Political Authority in Transition*. (Princeton: Princeton University Press) pp361-385.

Casson, M. (1986) *Multinational and World Trade: Vertical Integration and the Division of Labour in World Industries* (London: Allen and Unwin).

Cerny, P. (2000) 'Restructuring the Political Arena: Globalization and the Paradoxes of the Competition State'. In Germain, R. (ed) *Globalization and its Critics. Perspectives from Political Economy*. (Hampshire and New York: Macmillan) pp117-138.

Christiansen, T. (1996) 'A Maturing Bureaucracy? The role of the Commission in the Policy Process'. In Richardson, J. (ed) *European Union Power and Policy Making* (London: Routledge) pp77-95.

Christiansen, T. (2001) 'The European Commission. Administration in turbulent times'. In Richardson, J. (ed) *European Union: Power and Policy Making* (Second Edition). (London: Routledge) pp95-114.

Christiansen, T. and Kirschner, E. (eds) (2000) *Committee Governance in the European Union*. (Manchester and New York: Manchester University Press).

- Christiansen, T. and Piattoni, S. (eds) (2003) *Informal Governance in the EU*. (Cheltenham and Northampton, MA: Edward Elgar).
- Chrysochoou, D., Tsinisizelis, M., Stavridis, S. and Infantis, K. (1999) *Theory and Reform in the EU* (Manchester and New York: Manchester University Press).
- Cini, M. (1996) *The European Commission* (Manchester: Manchester University Press).
- Cini, M. (1997) 'Administrative Culture in the European Commission: The Cases of Competition and Environment'. In Nugent, N. (ed) *At the Heart of the Union – Studies of the European Commission* (Basingstoke: Macmillan) pp71-88.
- Cini, M. (2002) 'The European Commission'. In Warleigh, A (ed) *Understanding European Institutions* (London and New York: Routledge) pp41-60.
- Cline, W., Kawanabe, N., Kronsjö, T. and Williams, T. (1978) *Trade Negotiations in the Tokyo Round. A Quantitative Assessment*. (Washington DC: The Brookings Institution).
- Cloutier, M. (1999) 'New Issues, New Actors in EU Commercial Policy Making' in Hocking, B. and McGuire, S. (eds) *Trade Politics. International, Domestic and Regional Perspectives*. (London: Routledge) pp179-193.
- Cogburn, D. (2003) 'Governing Global Information and Communications Policy: Emergent Regime Formation and the Impact on Africa.' *Telecommunications Policy* Vol.27:1-2 pp135-153.
- Coleman, W. and Tangermann, S. (1999) 'The 1992 CAP Reform, the Uruguay Round and the Commission: Conceptualising Linked Policy Games' *Journal of Common Market Studies* Vol.37:3 pp385-405.
- Collins, R. (1997) 'Broadcasting and Audio-Visual'. In Stavridis, S., Mossialos, E. et al *New Challenges to the European Union: Policies and Policy-Making* (Aldershot: Dartmouth Publishing) pp329-355.
- Commission of the European Communities *European Governance: A White Paper COM(2001)428final, 25.7.2001, Brussels*.
- Cook, P. and Kirkpatrick, C. (1996) 'Globalization, Regionalisation and Third World Development' *Regional Studies* Vol.31:1 pp55-66.
- Coombes, D. (1970) *Politics and Bureaucracy in the European Community – A Portrait of the Commission of the EEC* (London: PEP/Allen and Unwin Ltd.).
- Cooper, A. and Hocking, B. (2000) 'Governments, Non Governmental Organisations and the Recalibration of Diplomacy.' *Global Society* Vol.14:3 pp361-376.
- Cosgrove-Sacks, C. (assisted by Scappucci, G.) (ed) (1999) *The European Union and Developing Countries*. (Basingstoke: Macmillan and New York: St Martin's Press).

- Costello, C. (1999) 'The EU in the World Trade Organisation' in Cosgrove-Sacks, C. (assisted by Scappucci, G.) (ed) (1999) *The European Union and Developing Countries*. (Basingstoke: Macmillan and New York: St Martin's Press) pp336-346.
- Coulam, R. and Smith, R. (eds) (1985) *Advances in Information Processing in Organizations* (London: JAI Press Inc).
- Cram, L. (1997) *Policy-Making in the European Union: Conceptual Lenses and the Integration Process* (London: Routledge).
- Cram, L. (1999) 'The Commission'. In Cram, L., Dinan, D. and Nugent, N. (eds) *Developments in the European Union* (Basingstoke: Macmillan) pp44-61.
- Cremona, M. (2000a) 'Flexible Models: External Policy and the European Economic Constitution'. In De Búrca, G. and Scott, J. (eds) *Constitutional Change in the EU – From Uniformity to Flexibility?* (Oxford and Portland: Hart) pp59-94.
- Cremona, M. (2000b) 'EC External Commercial Policy after Amsterdam: Authority and Interpretation within Interconnected Legal Orders'. In Weiler, J. (ed) *The EU, the WTO and the NAFTA* (Oxford, OUP) pp5-34.
- Croft, S., Redmond, J., Wyn Rees, G. and Webber, M. (1999) *The Enlargement of Europe*. (Manchester: Manchester University Press).
- Croome, J. (1995) *Reshaping the World Trading System. A History of the Uruguay Round*. (Geneva: World Trade Organisation).
- Cunnane, J. and Stanbrook, C. (1983) *Dumping and Subsidies. The law and procedures governing the imposition of anti-dumping and countervailing duties in the European Community*. (London and Brussels: European Business Publications).
- Curtin, D. (2007) 'Holding (Quasi-) Autonomous EU Administrative Actors to Public Account'. *The European Law Journal* Vol.13:4 pp523-541.
- Curtis, T. and Vastine, J. (1971) *The Kennedy Round and the Future of American Trade*. (New York and London: Praeger Publishers).
- Curzon, G. and Curzon, V. (1970) *Hidden Barriers to International Trade*. (London: Trade Policy Research Centre).
- Curzon, G. and V. (1976) 'The Management of Trade Relations in the GATT'. In Shonfield, A., Curzon, G. and V., Warley, T. and Ray, G. *International Economic Relations of the Western World 1959-1971 Volume I Politics and Trade* (London, New York and Toronto: Oxford University Press for the RIIA) pp141-283.
- Dalton, R. and Eichenberg, R. (1998) 'Citizen Support for Policy Integration'. In Sandholz, W. and Stone Sweet, A. (eds) *European Integration and Supranational Governance* (Oxford and New York: Oxford University Press) pp250-282.

- Dam, K. (1970) *The GATT. Law and International Economic Organisation*. (Chicago and London: The University of Chicago Press).
- Damro, C. (2006) 'Institutions, Ideas and a Leadership Gap: The EU's Role in Multilateral Competition Policy'. In Elgström, O. and Smith, M. (eds) *The European Union's Roles in International Politics. Concepts and Analysis*. (Oxfordshire and New York: Routledge/ECPR) pp208-224.
- Damro, C. (2007) 'EU Delegation and Agency in International Trade Negotiations: A Cautionary Comparison'. *Journal of Common Market Studies* Vol. 45:4, pp883-903.
- Danaher, K. and Burbach, R. (eds) (2000) *Globalize This! The Battle Against the World Trade Organisation and Corporate Rule*. (Maine: Common Courage Press).
- Daugbjerg, C. (1999) 'Reforming the CAP: Policy Networks and Broader Institutional Structures'. *Journal of Common Market Studies* Vol.37:3 pp407-428.
- Daugbjerg, C. and Swinbank, A. (2007) 'The Politics of CAP Reform: Trade negotiations, institutional settings and blame avoidance.' *Journal of Common Market Studies* Vol.45:1 pp1-22.
- Davenport, M. (1989) *The Charybdis of Anti-Dumping: A New Form of EC Industrial Policy? RIIA Discussion Paper 22*. (London: RIIA).
- De Bièvre, D. (2006) 'The EU Regulatory Trade Agenda and the Quest for WTO Enforcement'. *Journal of European Public Policy* Vol.13:6 pp851-866.
- De Búrca, G. and Scott, J. (eds) (2000) *Constitutional Change in the EU – From Uniformity to Flexibility?* (Oxford and Portland: Hart).
- Deeken, J. (1993) 'Regional Policy and the European Commission: policy entrepreneur or Brussels bureaucracy?' Paper submitted for the European Union Studies Association Biennial Conference 27th-29th May 1993, Washington DC
- De Gucht, K. (2003) 'The European Commission: countdown to extinction?' *Journal of European Integration* Vol.25:2 pp165-168.
- Dehousse, F. (1999) *Amsterdam: The Making of a Treaty*. (London: Kogan Page).
- Dell, S. (1963) *Trade Blocs and Common Markets* (London: Constable).
- Demaret, P. (2000) 'The Respective Powers of the European Community and Member States in Transatlantic Regulatory Co-operation'. In Bermann, G.A., Herdegen, M. and Lindseth, P. (eds) *Transatlantic Regulatory Co-operation* (Oxford: OUP) pp431-449.
- Deniau, J. (1967) *The Common Market*. (London: Barrie and Rockliff).
- Dent, C. (1997) *The European Economy. The Global Context* (London and New York: Routledge).

Desai, M. and Redfern, P. (eds) (1995) *Global Governance. Ethics and Economics of the World Order* (London and New York: Pinter).

de Swaan, A. (1973) *Coalition Theories and Cabinet Formations. A study of formal theories of coalition formation applied to nine European Parliaments after 1918* (Amsterdam, London and New York: Elsevier Scientific Publishing Company).

Devuyst, Y. (1995) 'The European Community and the Conclusion of the Uruguay Round'. In Rhodes, C. and Mazey, S. (eds) *The State of the Union Volume 3 – Building a European Polity?* (Boulder: Lynne Reiner) pp449-467.

Dinan, D. (1999) *Ever Closer Union – An introduction to European integration*. (Basingstoke: Macmillan).

Dixon, C., Drakakis-Smith, D. and Watts, H. (eds) (1986) *Multinational Corporations and the Third World*. (Kent and Australia: Croom Helm).

Dobson, W. and Jacquet, P. (1998) *Financial Services Liberalization and the WTO* (Washington DC: Institute for International Economics).

Docksey, C. and Williams, K. (1997) 'The European Commission and the Execution of Community Policy'. In Edwards, G. and Spence, D. *The European Commission* (Second Edition). (London: Cartermill International Ltd.) pp125-153.

Drake, H. (2000) *Jacques Delors – Perspectives on a European Leader* (London and New York: Routledge).

Duff, A. (ed) (1993) *Subsidiarity within the EC* (London: The Federal Trust).

Duff, A. (2001) 'The Treaty of Nice: From left-overs to hangovers'. A briefing note on the outcome of the Intergovernmental Conference and European Council of Nice, 7-11 December 2000. January 2001.

Dunkley, G. (2000) *The Free Trade Adventure. The WTO, the Uruguay Round and Globalism. A Critique* (London and New York: Zed Books).

Dunn, R. and Mutti, H. (2004) *International Economics* (Sixth edition) (London and New York: Routledge).

Dunning, J. and Muchielli, J-L. (eds) (2002) *Multinational Firms. The Global-Local Dilemma* (London and New York: Routledge).

Dunning, J. and Narula, R. (2004) *Multinational and Industrial Competitiveness: A New Agenda* (Cheltenham and Northampton, MA: Edward Elgar).

Dür, A. and Zimmerman, H. (2007) 'Introduction: The EU in International Trade Negotiations' *Journal of Common Market Studies* Vol.45:4 pp771-787.

Dymond, B. and Hart, W. (2000) 'Post-Modern Trade Policy: Reflections on the Challenges to Multilateral Trade Negotiations After Seattle' *Journal of World Trade* Vol.34:3 pp21-38.

Edwards, G. and Spence, D. (1997) *The European Commission* (Second edition). (London: Cartermill International Ltd.).

Egan, M. and Wolf, D. (1999) 'Regulatory Oversight in Europe: The Case of Comitology'. In Joerges, C. and Vos, E. (eds) *EU Committees: Social Regulation, Law and Politics* (Oxford and Portland: Hart) pp239-258.

Egdell, J. and Thomson, K. (1999) 'The Influence of UK NGOs on the CAP' *Journal of Common Market Studies* Vol.37:1, pp121-131.

Eleftheriadis, P. (1998) 'Begging the Constitutional Question' *Journal of Common Market Studies* Vol.36:2 pp255-272.

Elgström, O. and Jonsson, C. (2000) 'Negotiation in the European Union: bargaining or problem solving?' *Journal of European Public Policy* Vol.7:5 Special Issue pp684-704.

Elgström, O. and Jonsson, C. (eds) (2005) *European Union Negotiations: Processes, Networks and Institutions* (London: Routledge).

Elgström, O. and Smith, M. (eds) (2006) *The European Union's Roles in International Politics. Concepts and Analysis* (Oxfordshire and New York: Routledge/ECPR).

Elman, C. and Elman, M. (eds) (2001) *Bridges and Boundaries: Historians, Political Scientists and the Study of International Relations*. (Massachusetts: MIT Press).

Elliott, K. (2000) 'Getting Beyond No...! Promoting Worker Rights and Trade'. In Schott, J. (ed) *The WTO After Seattle* (Washington DC: Institute for International Economics) pp187-204.

Elsig, M. (2002) *The EU's Common Commercial Policy. Institutions, interests and ideas*. (Aldershot and Burlington: Ashgate).

Elsig, M. (2007) 'The EU's Choice of Regulatory Venues for Trade Negotiations: A Tale of Agency Power?' *Journal of Common Market Studies* Vol.45:4 pp927-948.

Endo, K. (1999) *The Presidency of the European Commission under Jacques Delors. The Politics of Shared Leadership* (Oxford: Macmillan Press and New York: St Martin's Press).

Evans, J. (1971) *The Kennedy Round in American Trade Policy. The Twilight of the GATT?* (Cambridge, USA: Harvard University Press).

Falk, R. (1999) *Predatory Globalization. A Critique* (Oxford and Malden, USA: Polity Press).

Falleti, T. (2006) 'Theory Guided Process Tracing: Something Old, Something New' *APSA-CP, Newsletter of the Organized Section in Comparative Politics of the American Political Science Association* Vol.17:1 pp9-14.

Farrands, C. (2003) 'Globalizing Intellectual Property Management'. In Kofman, E. and Youngs, G. (eds) *Globalization: Theory and Practice* (Second edition) (London and New York: Continuum) pp249-260.

Featherstone, K. (1994) 'Jean Monnet and the Democratic Deficit in the EU' *Journal of Common Market Studies* Vol.32:2 pp149-170.

Featherstone, K. and Ginsberg, R. (1996) *The US and the EU in the 1990's. Partners in Transition* (Basingstoke: Macmillan).

Feketekuty, G. and Stokes, B. (eds) (1998) *Trade Strategies for a New Era. Ensuring US Leadership in a Global Economy* (New York: Council on Foreign Relations).

Feldman, S. (2003) 'Paradoxes of institutionalization: the depoliticization of Bangladeshi NGOs' *Development in Practice* Vol.13:1 pp5-25.

Fligstein, N. and McNichol, J. (1998) 'The Institutional Terrain of the EU'. In Sandholz, W. and Stone Sweet, A. (eds) *European Integration and Supranational Governance* (Oxford and New York: Oxford University Press) pp59-91.

Føllesdal, A. and Koslowski, P. (eds) (1998) *Democracy and the European Union* (Heidelberg: Springer).

Fouilleux, E. (2004) 'CAP Reforms and Multilateral Trade Negotiations: Another View on Discourse Efficiency.' *West European Politics* Vol.27:2 pp235-255.

Freestone, D. and Davidson, J. (1988) *The Institutional Framework of the European Communities*. (London: Croom Helm).

Frennhoff-Larsen, M. (2007) 'Trade Negotiations Between the EU and South Africa: A Three Level Game'. *Journal of Common Market Studies* Vol.45:4 pp857-881.

Frost, E. (1998) 'Gaining Support for Trade from the American Public'. In Feketekuty, G. and Stokes, B. (eds) *Trade Strategies for a New Era. Ensuring US Leadership in a Global Economy* (New York: Council on Foreign Relations) pp65-82.

Ganesan, A. (2000) 'Seattle and Beyond: Developing Country Perspectives'. In Schott, J. (ed) *The WTO After Seattle* (Washington DC: Institute for International Economics) pp85-87.

George, A. and Bennett, A. (2005) *Case Studies and Theory Development in the Social Sciences*. (Massachusetts: MIT Press).

George, A. and McKeown, T. (1985) 'Case Studies and Theories of Organizational Decision Making'. In Coulam, R. and Smith, R. (eds) *Advances in Information Processing in Organizations*. London: JAI Press Inc. pp21-58.

- George, S. (1995) 'The European Commission: Opportunities Seized; Problems Unresolved'. Paper presented to the European Community Studies Association, Charleston, South Carolina May 11th-14th 1995.
- Germain, R. (ed) (2000) *Globalization and its Critics. Perspectives from Political Economy*. (Hampshire and New York: Macmillan).
- Ghosh, P. (ed) (1984) *Multinational Corporations and Third World Development* (London and Westport, Connecticut: Greenwood Press).
- Ginsberg, R. (2001) *The European Union in International Politics. Baptism by Fire*. (Maryland: Rowman and Littlefield).
- Gladden, E. (1956) *Civil Service or Bureaucracy?* (London: Staples Press Limited).
- Glick, L. (1984) *Multilateral Trade Negotiations. World Trade after the Tokyo Round* (New Jersey: Rowman and Allenheld).
- Goldstein, J. (1996) 'International Law and Domestic Institutions. Reconciling North American Unfair Trade Laws.' *International Organisation* Vol.50:4 pp541-564.
- Goldstein, J. (2000) 'International Institutions and Domestic Politics: GATT, WTO and the Liberalisation of International Trade'. In Krueger, A. (ed) *The WTO as an International Organisation* (Chicago and London: University of Chicago Press) pp133-152.
- Golt, S. (1974) *The GATT Negotiations, 1973-75: A Guide to the Issues* (London: British North American Committee).
- Guay, T. (1999) *The United States and the European Union. The Political Economy of a Relationship* (Sheffield: Sheffield Academic Press).
- Haaland Matlár, J. (1998) 'Democratic Legitimacy and the Role of the Commission'. In Føllesdal, A. and Koslowski, K. (eds) *Democracy and the European Union* (Heidelberg: Springer) pp65-80.
- Haas, E. (1968) *The Uniting of Europe: political, social and economic forces 1950-1957* (California: Stanford University Press).
- Hallstein, W. (1972) *Europe in the Making* (London: George Allen & Unwin Ltd.).
- Hamilton, F. (1986) 'The Multinationals: Spearhead or Spectre?' In Dixon, C., Drakakis-Smith, D. and Watts, H. (eds) *Multinational Corporations and the Third World* (Kent and Australia: Croom Helm Ltd.) pp1-24.
- Hamilton, V. (1978) 'Who is Responsible? Towards a Social Psychology of Responsibility Attribution'. *Social Psychology* Vol.4:4 pp316-328.

- Harriss, J. (2002) *Depoliticizing Development: the World Bank and social capital* (London: Anthem Press).
- Hawken, P. (2000) 'Skeleton Woman Visits Seattle'. In Danaher, K. and Burbach, R. (eds) *Globalize This! The Battle Against the World Trade Organisation and Corporate Rule* (Maine: Common Courage Press) pp14-35.
- Hay, C. and Marsh, D. (eds) (2000) *Demystifying Globalization* (Basingstoke and New York: Palgrave).
- Hay, C. and Wincott, D. (1995) 'Structure, Agency and Historical Institutionalism' *Political Studies* Vol.46:5 pp951-957.
- Hayes, J. P. (1993) *Making Trade Policy in the European Community* (Basingstoke: Macmillan).
- Hayes-Renshaw, F. and Wallace, H. (1997) *The Council of Ministers*. (Basingstoke: Macmillan).
- Hayes-Renshaw, F., Van Aken, W. and Wallace, H. (2006) 'When and Why the EU Council of Ministers Votes Explicitly'. *Journal of Common Market Studies* Vol.44:1 pp161-194.
- Heidensohn, K. (1995) *Europe and World Trade* (London and New York: Pinter).
- Held, D. and McGrew, A. (eds) (2003) *The Global Transformations Reader* (Cambridge, Oxford and Malden: Polity Press).
- Held, D., McGrew, A., Goldblatt, D. and Perraton, J (1999) *Global Transformations* (Oxford: Polity Press).
- Henderson, D. (2000) 'International Agencies and Cross-Border Liberalisation: The WTO in Context'. In Krueger, A. (ed) (2000) *The WTO as an International Organisation* (Chicago and London: University of Chicago Press) pp97-130.
- Henig, S. (1980) *Power and Decision in Europe. The Political Institutions of the European Community* (London: Europotentials Press).
- Hennis, M. (2001) 'Europeanization and Globalization: The Missing Link'. *Journal of Common Market Studies* Vol.39:5 pp829-850.
- Heretier, A. (1999) 'The European Polity, Deadlock and Development' in Joerges, C. and Vos, E. (eds) *EU Committees: Social Regulation, Law and Politics* (Oxford and Portland Hart) pp273-280.
- Hine, R. (1985) *The Political Economy of Foreign Trade: An introduction to the trade policies of the EEC* (Brighton: Harvester-Wheatsheaf).

Hindley, B. (1999) 'New Institutions for Transatlantic Trade?' *International Affairs* Vol.75:1 pp45-60.

Hindley, B. and Nicolaïdis, E. (1983) *Taking the New Protectionism Seriously* (London: Trade Policy Research Centre).

Hirst, P. (2000) 'Democracy and Governance'. In Pierre, J. (ed) *Debating Governance: Authority, Steering and Democracy* (Oxford and New York: OUP) pp13-35.

Hocking, B. (2004) 'Beyond Seattle: Adapting to the Trade Policy Process'. In Hocking, B. and McGuire, S. (eds) *Trade Politics* (Second edition). (London: Routledge) pp263-275.

Hocking, B. and McGuire, S. (eds) (1999) *Trade Politics. International, Domestic and Regional Perspectives* (London: Routledge).

Hocking, B. and McGuire, S. (eds) (2004) *Trade Politics* (Second edition). (London: Routledge).

Hoefnagels, M. (1981) 'Growth of International Organisations since 1945. Interpretations of Quantitative and Qualitative Evidence'. In Jutte, R. and Grosse-Jutte, A. (eds) *The Future of International Organisation* (London: Frances Pinter Publishers Ltd.) pp14-36.

Hoekman, B. (2002) 'Strengthening the Global Trade Architecture for Development: The Post Doha Agenda' *World Trade Review*, Vol. 1:1 pp23-45.

Hoekman, B. and Kostecki, M (1996) *The Political Economy of the World Trading System From GATT to WTO* (Oxford: Oxford University Press).

Holland, M. (2002) *The European Union and the Third World* (Basingstoke and New York: Palgrave).

Hooghe, L. and Marks, G. (2001) *Multilevel Governance and European Integration* (Maryland and Oxford: Rowman and Littlefield).

Hooghe, L. (2001) *The European Commission and the Integration of Europe. Images of Governance* (Cambridge, New York, Port Melbourne, Madrid and Cape Town: Cambridge University Press).

Hosli, M., van Deemen, A. and Widgrén, M. (eds) (2002) *Institutional Challenges in the European Union* (London and New York: Routledge).

Houben, H. (1999) 'The 113 Committee'. In Westlake, M. *The Council of the European Union* (London: John Harper) pp299-302.

Hudson, M. (2003) *Super Imperialism. The Origin and Fundamentals of US World Dominance* (Second edition). (London and Stirling, Virginia: Pluto Press).

- Hueglin, T. (1999) 'Government, Governance, Governmentality. Understanding the EU as a project of universalism'. In Kohler-Koch, B. and Eising, R. (eds) *The Transformation of Governance in the EU* (London and New York: Routledge/ECPR) pp249-266.
- Hull, C. and Rhodes, R. (1977) *Intergovernmental Relations in the European Community* (Farnborough: Saxon House).
- Humphrey, D. (1964) *The United States and The Common Market. A Background Study* (Revised edition). (New York, Washington DC and London: Frederick A Praeger).
- Hurrell, A. and Woods, N. (eds) (1999) *Inequality, Globalization and World Politics* (Oxford and New York: OUP).
- Hylton, J. (1999) 'Going Bananas! The World Trade Organisation and the impact of its rulings on national telecommunications'. Paper submitted to the Inter-Pacific Bar Association Annual Conference, Bangkok, Thailand. May 1st 1999.
- Irwin, D. (2002) *Free Trade Under Fire* (Princeton and Oxfordshire: Princeton University Press).
- Jackson, J. (1990) *Restructuring the GATT System* (London: Pinter Press).
- Jackson, J. (1999) *The World Trade Organisation. Constitution and Jurisprudence* (London and New York: Royal Institute of International Affairs).
- Jackson, J. (2000) 'Designing and Implementing Effective Dispute Settlement Procedures'. In Krueger, A. (ed) *The WTO as an International Organisation* (Chicago and London: University of Chicago Press) pp161-180.
- Jacobs, M., Novak, W. and Zelizer, J. (eds) (2003) *The Democratic Experiment* (Princeton and Oxfordshire: Princeton University Press).
- Jawara, F. and Kwa, A. (2003) *Behind the Scenes at the WTO. The Real World of International Trade Negotiation*. (London and New York: Zed Books).
- Jeffrey, C. (2002) 'Social and Regional Interests: ESC and Committee of the Regions'. In Peterson, J. and Shackleton, M. (eds) (2002) *The Institutions of the European Community* (Oxford and New York: OUP) pp326-346.
- Jenkins, R. (1989) *European Diary 1977-1981* (London: Collins).
- Joerges, C. and Dehousse, R. (eds) (2002) *Good Governance in Europe's Integrated Market* (Oxford and New York: OUP for Academy of European Law, EUI).
- Joerges, C. and Vos, E. (eds) (1999) *EU Committees: Social Regulation, Law and Politics* (Oxford and Portland: Hart).

Johnston, J. and Laxer, G. (2003) 'Solidarity in the age of Globalisation: Lessons from the anti-MAI and Zapatista Struggles' *Theory and Society* Vol.32:1 pp39-91.

Johnstone, B. (2002) *Discourse Analysis* (Oxford and Malden, MA: Blackwell Publishers).

Jørgenson, M. and Phillips, L. (2002) *Discourse Analysis as Theory and Method* (London, Thousand Oaks, New Delhi: Sage Publications).

Jungnickel, R. and Koopman, G. (1984) 'The Role of Multinationals in the NIEO'. In Ghosh, P. (ed) *Multinational Corporations and Third World Development* (London and Westport, Connecticut: Greenwood Press) pp294-301.

Jupille, J. and Caporaso, J. (1998) 'States, Agency and Rules: The EU in Global Environmental Politics'. In Rhodes, C. (ed) *The European Union in the World Community* (London: Lynne Rienner) pp213-229.

Jutte, R. and Grosse-Jutte, A. (eds) (1981) *The Future of International Organisation* (London: Frances Pinter Publishers Ltd.).

Kahler, M. (1995) *International Institutions and the Political Economy of Integration* (Washington DC: The Brookings Institute).

Kahler, M. and Lake, D. (eds) (2003) *Governance in a Global Economy: Political Authority in Transition* (Princeton: Princeton University Press).

Kaiser, T. (2001) "Multi-level governance and global market liberalization: The interdependence of national, European and multilateral telecommunications policies" Paper for EUSA Biennial Conference, 31st May – June 2nd 2001.

Kassim, H. and Menon, A. (2003) 'The principal-agent approach and the study of the European Union: promise unfulfilled?' *Journal of European Public Policy* Vol.10:1 pp121-139.

Katznelson, I. (2003) 'The Possibilities of Analytical History'. In Jacobs, M., Novak, W. and Zelizer, J. (eds) *The Democratic Experiment* (Princeton: Princeton University Press) pp381-401.

Keating, M. (1999) *The Politics of Modern Europe. The State and Political Authority in the Major Democracies* (Second edition) (Cheltenham and Northampton, MA: Edward Elgar).

Keohane, R. (2003) 'Sovereignty in International Society'. In Held, D. and McGrew, A. (eds) *The Global Transformations Reader* (Cambridge, Oxford and Malden: Polity Press) pp109-123.

Keohane, R. and Nye, J. (2003) 'Redefining Accountability for Global Governance'. In Kahler, M. and Lake, D. (eds) *Governance in a Global Economy: Political Authority in Transition* (Princeton: Princeton University Press) pp386-411.

Kerremans, B. (2006) 'Proactive Policy Entrepreneur or Risk Minimizer? A Principal-Agent Interpretation of the EU's Role in WTO'. In Elgström, O. and Smith, M. (eds) *The European Union's Roles in International Politics. Concepts and Analysis* (Oxfordshire and New York: Routledge/ECPR) pp172-188.

Kingsbury, B. (1995) *The Tuna-Dolphin Controversy, The World Trade Organisation and the Liberal Project to Reconceptualise International Law. Yearbook of International Environmental Law* (Oxford: Oxford University Press).

Klasing, A. and Christopher, M. (2003) 'Draft Report on European Trade Policy Development. Concerted Action on Trade and Environment'. Paper sponsored by the European Commission Research D-G, under contract number EVK2-CT-2002-20017 CAT&E October 2003.

Knodt, M. and Princen, S. (2003) *Understanding the EU's External Relations* (London and New York: Routledge).

Koch, K. (1969) *International Trade Policy and the GATT 1947-1967* (Stockholm: Almquist and Wiksell).

Kofman, E. and Youngs, G. (eds) (2003) *Globalization: Theory and Practice* (Second edition) (London and New York: Continuum).

Kohler-Koch, B. and Eising, R. (eds) (1999) *The Transformation of Governance in the EU* (London and New York: Routledge/ECPR).

Krueger, A. (1999) 'The Developing Countries and the Next Round of Multilateral Trade Negotiations.' *The World Economy* Vol.22:7 pp909-932.

Krueger, A. (ed) (2000) *The WTO as an International Organisation* (Chicago and London: University of Chicago Press).

Lamy, P. (2004) 'JCMS Lecture: Europe and the Future of Economic Governance.' *Journal of Common Market Studies* Vol.42:1 pp5-21.

Landau, A. (2000) 'The Agricultural Negotiations at the WTO: The Same Old Story Again?' Paper presented at the IPSA World Congress, Quebec, 1st – 5th August 2000.

La Palombara, J. and Blank, S. (1984) 'Multinational Corporations and Developing Countries'. In Ghosh, P. (ed) *Multinational Corporations and Third World Development* (London and Westport, Connecticut: Greenwood Press) pp7-29.

Laursen, F. (1999) 'Trade and Aid: The European Union in the Global System'. In Cram, L., Dinan, D. and Nugent, N. (eds) *Developments in the European Union* (Basingstoke: Macmillan) pp211-229.

Lenaerts, K. (1991) 'Some reflections on the Separation of Powers in the European Community'. *Common Market Law Review* Issue 28 pp11-35.

Lenaerts, K. and Verhoeven, A (2002) 'Institutional Balance as a Guarantee for Democracy in EU Governance'. In Joerges, C. and Dehousse, R. (eds) *Good Governance in Europe's Integrated Market* (Oxford and New York: OUP for Academy of European Law, EUI) pp35-88.

Lewis, J. (1998) 'Is the 'Hard Bargaining' Image of the Council Misleading? The Committee of Permanent Representatives and the Local Elections Directive.' *Journal of Common Market Studies* Vol. 36:4 pp479-504.

Lewis, J. (2000) 'The Methods of Community in EU Decision-Making and Administrative Rivalry in the Council's Infrastructure' *Journal of European Public Policy* Vol.7:2 pp261-289.

Lewis, J. (2002) 'National Interests: Coreper' in Peterson, J. and Shackleton, M. (eds) *The Institutions of the European Union* (Oxford, New York: Oxford University Press) pp277-298.

Lindberg, L. (1963) *The Political Dynamics of European Economic Integration* (California: Stanford University Press and London: Oxford University Press).

Lindberg, L. and Scheingold, S. (1970) *Europe's Would-Be Polity. Patterns of Change in the European Community* (New Jersey: Prentice-Hall).

Lindseth, P. (2002) 'The Democratic Disconnect'. In Joerges, C. and Dehousse, R. (eds) *Good Governance in Europe's Integrated Market* (Oxford and New York: OUP for Academy of European Law, EUI) pp139-163.

Lister, F. (1996) *The European Union, the United Nations and the Revival of Confederal Governance* (Westport and London: Greenwood Press).

Lord, C. (1998) *Democracy in the European Union* (Sheffield: Sheffield Academic Press),

Losch, B. (2004) 'Debating the Multifunctionality of Agriculture: From Trade Negotiations to Development Policies by the South' *Journal of Agrarian Change* Vol. 4:3 pp336-360.

Low, P. (1993) *Trading Free – The GATT and US Trade Policy* (New York: The Twentieth Century Fund Press).

Ludlow, P. (2007) 'The Emergence of a Commercial Heavy-Weight: The Kennedy Round Negotiations and the European Community of the 1960's.' *Diplomacy and Statecraft* Vol. 18:2 pp351-368.

MacBean, A. and Snowden, P. (1981) *International Institutions in Trade and Finance* (London: George Allen and Unwin).

Macleod, I., Hendry, I. and Hyett, S. (1996) *The External Relations of the European Communities* (Oxford: Clarendon Press).

Macmullen, A. (1999) 'Political Responsibility for the Administration of Europe – The Commission's Resignation' *Parliamentary Affairs* Vol.52:4 pp703-718.

Madeley, J. (1999) *Big Business, Poor Peoples: The Impact of Transnational Corporations on the World's Poor* (London and New York: Zed Books).

Marable, M. (2000) 'Seattle and Beyond. Making the Connection in the 21st Century'. In Danaher, K. and Burbach, R. (eds) *Globalize This! The Battle Against the World Trade Organisation and Corporate Rule* (Maine: Common Courage Press) pp82-84.

Martin, W. and Pangestu, M. (eds) (2003) *Options for Global Trade Reform. A view from the Asia-Pacific* (Cambridge: Cambridge University Press).

Martin, W. and Winters, L. (1995) *The Uruguay Round - Widening and Deepening of the World Trading System* (New York: The World Bank).

Mayne, R. (1970) *The Recovery of Europe: From Devastation to Unity* (London: Weidenfield and Nicolson).

Mazey, S. (2001) 'European Integration: Unfinished Journey or Journey without End?'. In Richardson, J. (ed) *European Power and Policy Making* (London: Routledge) pp27-50.

McDonald, A. (2000) 'Organisation and Management of a Complex, International, Economic Negotiation. Tokyo Round: Multilateral Trade Negotiations' *The World Economy* Vol. 23:2 pp 199-220.

Memedovic, O., Kuyvenhoven, A. and Molle, W. (1999) *Multilateralism and Regionalism in the post-Uruguay Round Era. What Role for the EU?* (Dordrecht: Kluwer Academic Press).

Mendez, R. (1995) 'The Provision and Financing of Universal Public Goods'. In Desai, M. and Redfern, P. (eds) *Global Governance. Ethics and Economics of the World Order* (London and New York: Pinter Press) pp39-68.

Menon, A. and Weatherill, S. (2002) 'Legitimacy, Accountability and Delegation in the European Union'. In Arnall, A. and Wincott, D. (eds) *Accountability and Legitimacy in the European Union* (Oxford and New York: Oxford University Press) pp113-131.

Messerlin, P. (1999) 'MFN-Based Freer Trade and Regulatory Free Trade: what role for the EU?'. In Memedovic, O., Kuyvenhoven, A. and Molle, W. *Multilateralism and Regionalism in the post-Uruguay Round Era. What Role for the EU?* (Dordrecht: Kluwer Academic Press) pp45-70.

Metcalf, L. (2000) 'Reforming the Commission: Will Organisational Efficiency Produce Effective Governance?' *Journal of Common Market Studies* Vol.38:5 pp817-841.

Meunier, S. (1998) 'Divided but United: European Trade Policy Integration and EU-US Agricultural Negotiations in the Uruguay Round'. In Rhodes, C. (ed) *The European Union in the World Community* (London: Lynne Rienner) pp193-211.

Meunier, S. (2000) 'What Single Voice? European Institutions and EU-US Trade Negotiations' *International Organisation* Vol.54:1 pp103-135.

Meunier, S. (2005) *Trading Voices. The European Union in International Commercial Negotiations* (Princeton and Woodstock: Princeton University Press).

Meunier, S. (2007) 'Managing Globalization? The EU in International Trade Negotiations' *Journal of Common Market Studies* Vol.45:4 pp905-926.

Meunier, S. and Nicolaïdis, K. (1999) 'Who Speaks for Europe? The Delegation of Trade Authority in the EU'. *Journal of Common Market Studies* Vol.37:3 pp477-501.

Meynaud, J. (1968) *Technocracy* (translated from the French by Barnes, P.) (London: Faber and Faber).

Michalopoulos, C. (1999) 'The Developing Countries in the WTO' *The World Economy* Vol.22:1 pp117-143.

Michelmann, H. (1978) *Organisational Effectiveness in a Multinational Bureaucracy* (Farnborough: Saxon House).

Miles, C. (1968) 'After the Kennedy Round.' *International Affairs* Vol.44:1 pp14-25.

Minshull, G. (1996) *The New Europe Into the 21st Century* (Fifth edition) (London: Hodder and Stoughton).

Moe, T. (1990) 'The Politics of Structural Choice: Toward a Theory of Public Bureaucracy'. In Williamson, O (ed) *Organisation Theory: From Chester Barnard to the Present and Beyond* (Oxford: Oxford University Press) pp116-153.

Monnet, J. (1978) *Memoirs* (New York: Doubleday).

Moon, B. (1996) *Dilemmas of International Trade* (Boulder, Colorado and Oxford: Westview).

Moon, B. (2004) 'From Seattle and Doha to Cancún: the Trade Agenda in the New Millennium'. In Hocking, B. and McGuire, S. (eds) *Trade Politics* (Second edition). (London: Routledge) pp23-35.

Moravcsik, A. (1998) *A Choice for Europe. Social purpose and state power from Messina to Maastricht* (London: UCL Press).

Moravcsik, A. and Nicolaïdis, K. (1999) 'Explaining the Treaty of Amsterdam: Interests, Influence, Institutions'. *Journal of Common Market Studies* Vol.37:1 pp59-85.

- Morris, R. (1998) 'Trade and the Environment'. In Feketekuty, G and Stokes, B.(eds) *Trade Strategies for a New Era. Ensuring US Leadership in a Global Economy* (New York: Council on Foreign Relations) pp284-298.
- Mouritzen, H. (1990) *The International Civil Service. A study of bureaucracy* (Aldershot and Brookfield: Dartmouth).
- Moussis, N. (2000) *Guide to European Policies* (Sixth edition) (Rixensart: European Study Service).
- Murphy, A. (1990) *The European Community and the International Trading System Vol. 2* (Brussels: CEPS).
- Murphy, A. (2000) 'In the Maelstrom of Change. The Article 113 Committee in the Governance of External Economic Policy'. In Christiansen, T. and Kirschner, E. (eds) *Committee Governance in the European Union* (Manchester and New York: Manchester University Press) pp98-114.
- Narlikar, A. (2003) *International Trade and Developing Countries: Bargaining coalitions in the GATT and WTO*. RIPE Series in Global Political Economy. (London and New York: Routledge).
- Narlikar, A. (2004) 'The Ministerial Process and Power Dynamics in the WTO: Understanding Failure from Seattle to Cancún'. *New Political Economy* Vol.9:3 pp413-428.
- Nedergaard, P. (1993) 'The End of Special Interests? The Political Economy of EC Trade Policy Changes in the 1990's'. In Norgaard, O., Pedersen, T. and Petersen, N. (eds) *The European Commission in World Politics* (London: Pinter) pp52-73.
- Newman, M. (2001) 'Democracy and Accountability in the EU'. In Richardson, J. (ed) *European Union: Power and Policy Making* (Second edition) (London: Routledge) pp357-374.
- Niemann, A. (2004) 'Between Communicative Action and Strategic Action: The Article 113 Committee and the Negotiations on the WTO Basic Telecommunications Services Agreement' *Journal of European Public Policy* Vol.11:3 pp379-407.
- Neunreither, K. (1972) 'Transformation of a Political Role: Reconsidering the Case of the Commission of the European Communities.' *Journal of Common Market Studies*, Vol.10:3 pp233-248.
- Neunreither, K. (2000) 'The European Union in Nice: A Minimalist Approach to A(n) Historic Challenge' *Government and Opposition* Vol.36:2 pp184-208.
- Nicoll, W. and Salmon, T. (1994) *Understanding the New European Community* (New York: Harvester Wheatsheaf).

- Nicolaïdis, K. and Meunier, S. (2002) 'Revisiting Trade Competence in the EU'. In Hosli, M., van Deemen, A. and Widgrén, M. (eds) *Institutional Challenges in the European Union* (London and New York: Routledge) pp173-201.
- Norgaard, O., Pedersen, T. and Petersen, N. (eds) (1993) *The European Commission in World Politics* (London: Pinter).
- Nugent, N. (1995) 'The Leadership Capacity of the European Commission'. *Journal of European Public Policy* Vol.2:4 pp603-623.
- Nugent, N. (ed) (1997) *At the Heart of the Union – Studies of the European Commission* (Basingstoke: Macmillan).
- Nugent, N. (1999) *The Government and Politics of the European Union* (Fourth edition) (Basingstoke: Palgrave).
- Nugent, N. (2001) *The European Commission* (Basingstoke: Palgrave).
- Nugent, N. (2002) 'The Commission's Services'. In Peterson, J. and Shackleton, M. (eds) *The Institutions of the European Union* (Oxford and New York: OUP) pp141-163.
- Nugent, N. and Saurugger, S. (2002) 'Organizational structuring: the case of the European Commission and its external policy responsibilities' *Journal of European Public Policy*, Vol.9:3 pp345-364.
- O'Brien, R., Goetz, A., Scholte, J. and Williams, M. (2000) *Contesting Global Governance. Multilateral Economic Institutions and Global Social Movements* (Cambridge: Cambridge University Press).
- Odell, J. (2000) *Negotiating the World Economy* (New York: Cornell University Press).
- Oxley, A. (2002) 'Australia and the EU – Trade and Environment – Diverging Perspectives'. In Saunders, C. and Triggs, G. (eds) *Trade and Cooperation with the EU in the New Millennium* (The Hague, London and New York: Kluwer Law International) pp107-112.
- Paemen, H. and Bensch, A. (1995) *From the GATT to the WTO: The European Community and the Uruguay Round* (Leuven: Leuven University Press).
- Palmeter, D. and Mavroidis, P. (2004) *Dispute Settlement in the World Trade Organisation* (Cambridge: Cambridge University Press).
- Patterson, L-A. (1997) 'Agricultural Policy Reform in the European Community: a three-level game analysis' *International Organization* Vol.51:1 pp 135-165.
- Perdikis, N. and Read, R. (2005) *The WTO and the Regulation of International Trade: Recent Trade Disputes between the European Union and the United States* (Cheltenham and Northampton, MA: Edward Elgar).

PEP (1968) *European Unity. Cooperation and Integration* (London: George Allen and Unwin Ltd).

Perraton, J. (2000) 'What are Global Markets: The Significance of Networks of Trade?' In Germain, R. (ed) *Globalization and its Critics. Perspectives from Political Economy* (Hampshire and New York: Macmillan) pp164-182.

Peters, B. Guy (1995) *The Politics of Bureaucracy* (Fourth edition) (New York: Longman).

Peterson, J. and Sjursen, H. (eds) (1998) *A Common Foreign Policy for Europe?* (London, USA and Canada: Routledge).

Peterson, J. and Bomberg, E. (1999) *Decision Making in the European Union* (Basingstoke: Macmillan).

Peterson, J. (2001) 'Get Away From Me Closer, You're Near Me Too Far: Europe and America after the Uruguay Round'. In Pollack, M. and Shaffer, G. (eds) *Transatlantic Governance in the Global Economy* (Lanham, Boulder, New York and Oxford: Rowman and Littlefield) pp45-72.

Peterson, J. (2001) 'The College of Commissioners'. In Peterson, J. and Shackleton, M. (eds) *The Institutions of the European Community* (Oxford and New York: OUP) pp71-94.

Peterson, J. and Shackleton, M. (eds) (2001) *The Institutions of the European Community* (Oxford and New York: OUP)

Petiteville, F. (2003) 'Exporting 'Values'? EU External Co-operation as a 'Soft Diplomacy''. In Knodt, M. and Princen, S. *Understanding the EU's External Relations* (London and New York: Routledge) pp127-141.

Philippart, E. and Edwards, G. (1999) 'The Provisions of Closer Co-operation in the Treaty of Amsterdam: The Politics of Flexibility in the European Union'. *Journal of Common Market Studies* Vol.37:1 pp87-108.

Pierre, J. (ed) (2000) *Debating Governance: Authority, Steering and Democracy* (Oxford and New York: OUP).

Pierson, P. (1996) 'The Path to European Integration – A(n) Historical Institutional Analysis' *Comparative Political Studies* Vol.29:2 pp123-163.

Pierson, P. (1998) 'The Path to European Integration – A(n) Historical-Institutionalist Analysis'. In Sandholz, W. and Stone Sweet, A. (eds) *European Integration and Supranational Governance* (Oxford and New York: Oxford University Press) pp27-58.

Pierson, P. (2000) 'Increasing Returns, Path Dependence and the Study of Politics'. *The American Political Science Review* Vol.94:2 pp251-267.

Pollack, M. (1998) 'The Engines of Integration? Supranational autonomy and influence in the EU'. In Sandholz, W. and Stone Sweet, A. (eds) *European Integration and Supranational Governance* (Oxford and New York: Oxford University Press) pp217-249.

Pollack, M. (2000) 'The End of Creeping Competence? EU Policy Making Since Maastricht' *Journal of Common Market Studies* Vol.38:3 pp519-538.

Pollack, M. and Shaffer, G. (eds) (2001) *Transatlantic Governance in the Global Economy*. (Lanham, Boulder, New York and Oxford: Rowman and Littlefield).

Prakash, A. and Hart, J. (eds) (2000) *Globalization and Governance* (London and New York: Routledge).

Preeg, E. (1998) 'From Here to Free Trade. The Quest for a Multilateral/Regional Synthesis'. In Feketekuty, G. and Stokes, B. (eds) *Trade Strategies for a New Era. Ensuring US Leadership in a Global Economy* (New York: Council on Foreign Relations) pp142-161.

Qureshi, A. (1996) *The World Trade Organization. Implementing International Trade Norms*. Manchester and New York: Manchester University Press.

Raboy, M. (2004) 'The World Summit on the Information Society and its Legacy for Global Governance'. *Gazette: The International Journal for Communication Studies*. Vol.66:3-4 pp225-232.

Ranieri, R. and Sorensen, V. (1994) 'The Frontier of National Sovereignty – History and Theory'. Paper prepared for the European Community Studies Association (ECSA) World Conference, 5th-6th May 1994.

Regelsberger, E., de Schoutheete de Tervarent, P. and Wessels, W. (eds) (1997) *Foreign Policy of the European Union From EPC to CFSP and Beyond* (London: Lynne Reiner).

Rhodes, C. and Mazey, S. (eds) (1995) *The State of the Union Volume 3 – Building a European Polity?* (Boulder: Lynne Reiner).

Rhodes, C. (ed) (1998) *The European Union in the World Community*. (London: Lynne Reiner).

Richardson, J. (ed) (2001) *Power and Policy Making in the EU* (Second edition). (London, USA and Canada: Routledge).

Richardson, J., Feketekuty, G., Zhang, C. and Rodriguez, A. (1998) 'US Performance and Trade Strategy in a Shifting Global Economy'. In Feketekuty, G. and Stokes, B. (eds) *Trade Strategies for a New Era. Ensuring US Leadership in a Global Economy* (New York: Council on Foreign Relations) pp39-64.

Rieger, E. (2000) 'The Common Agricultural Policy'. In Wallace, H. and Wallace, W (eds) *Policy Making in the European Union* (Fourth edition) (Oxford: OUP) pp373-399.

Robertson, A. (1973) *European Institutions. Cooperation, Integration and Unification* (London: Stevens).

Robertson, D. (2006) *International Economics and Confusing Politics* (Cheltenham and Northampton, MA: Edward Elgar).

Robertson, D. (2002) 'The European Union and Globalisation'. In Saunders, C. and Triggs, G. (eds) *Trade and Cooperation with the EU in the New Millennium* (The Hague, London and New York: Kluwer Law International) pp3-13.

Roederer-Rynning, C. (2003) 'Informal Governance in the CAP'. In Christiansen, T. and Piattoni, S. (eds) *Informal Governance in the EU* (Cheltenham and Northampton, MA: Edward Elgar) pp173-188.

Rometsch, D. and Wessels, W. (1994) 'The Commission and the Council of Ministers'. In Edwards, G. and Spence, D. *The European Commission* (Harlow: Longman) pp202-224.

Rugman, A. (2002) 'Multinational Enterprises and the End of Global Strategy'. In Dunning, J. and Muchielli, J-L. (eds) *Multinational Firms. The Global-Local Dilemma* (London and New York: Routledge) pp3-17.

Russell, A. (2001) 'Trade, Money and Markets'. In White, B., Little, R. and Smith, M. (eds) *Issues in World Politics* (Second edition). (Basingstoke and New York: Palgrave) pp35-54.

Saalfeld, T. (2000) 'Members of Parliament and governments in Western Europe: Agency relations and problems of oversight' *European Journal of Political Research* Vol.37:3 pp353-376.

Safadi, R. and Laird, S. (1996) 'The Uruguay Round Agreements: Impact on Developing Countries'. *World Development* Vol.24:7 pp1223-1242.

Sager, M. (1997) 'Regional Trade Agreements: Their Role and the Economic Impact on Trade Flows.' *The World Economy* Vol. 20:2 pp239-252.

Sandholz, W. and Stone Sweet, A. (eds) (1998) *European Integration and Supranational Governance* (Oxford and New York: Oxford University Press).

Sandholz, W. (2000) 'Globalization and the Evolution of Rules'. In Prakash, A. and Hart, J. (eds) *Globalization and Governance* (London and New York: Routledge) pp77-102.

Sasse, C., Pouillet, E., Coombes, D. and Deprez, G. (1977) *Decision Making in the European Community* (New York: Praeger Publishers).

Saunders, C. and Triggs, G. (eds) (2002) *Trade and Cooperation with the EU in the New Millennium* (The Hague, London and New York: Kluwer Law International).

Sbragia, A. (1998) 'Institution Building from Below and Above: The European Community in Global Environmental Politics'. In Sandholz, W. and Stone Sweet, A. (eds) (1998) *European Integration and Supranational Governance* (Oxford and New York: Oxford University Press) pp283-304.

Schmidt, S. K. (2000) 'Only An Agenda Setter? The European Commission's Power Over the Council of Ministers' *European Union Politics* Vol.1:1 pp37-61.

Schmidt, V. (1999) 'National Patterns of Government Under Siege. The impact of European integration'. In Kohler-Koch, B. and Eising, R. (eds) *The Transformation of Governance in the EU* (London and New York: Routledge/ECPR) pp155-172.

Schneiberg, M (2007) 'What's on the path? Path dependence, organisational diversity and the problem of institutional change in the US economy 1900-1950' *Socio-Economic Review* Vol.5 pp47-80.

Schott, J. (assisted by Buurman, J) (1994) *The Uruguay Round. An Assessment* (Washington DC: Institute for International Economics).

Schott, J. (ed) (2000) *The WTO After Seattle* (Washington DC: Institute for International Economics).

Schott, J. and Watal J. (2000) 'Decision making in the WTO.' In Schott, J (ed) *The WTO After Seattle*. (Washington DC: Institute for International Economics) pp 283-292.

Shaffer, G. (2001) 'The Blurring of the Intergovernmental: Public-Private Partnerships behind US and EC Trade Claims'. In Pollack, M. and Shaffer, G. (eds) *Transatlantic Governance in the Global Economy* (Lanham, Boulder, New York and Oxford: Rowman and Littlefield) pp97-123.

Sharpston, E. (2002) 'The Common Agricultural Policy'. In Saunders, C. and Triggs, G. (eds) *Trade and Cooperation with the EU in the New Millennium* (The Hague, London and New York: Kluwer Law International) pp29-40.

Shaw, J. (1996) *European Community Law* (Second edition) (London: Macmillan).

Shepard, B. and Hayduk, R. (eds) (2002) *From ACT UP to the WTO. Urban Protest and Community Building in an Era of Globalization* (London and New York: Verso).

Sherrington, P. (2000) *The Council of Ministers and Political Authority in the European Union* (London and New York: Pinter).

Sherrington, P. (2002) 'The Council of Ministers and the European Council'. In Warleigh, A. (ed) *Understanding European Institutions* (London: Routledge) pp25-40

- Shonfield, A., Curzon, G. and V., Warley, T. and Ray, G. (1976) *International Economic Relations of the Western World 1959-1971 Volume I Politics and Trade* (London, New York and Toronto: Oxford University Press for the RIIA).
- Shore, C (2000) *Building Europe: the cultural politics of European integration* (London: Routledge).
- Sidjanski, D. (2003) *The Federal Future of Europe. From the EC to the EU* (Ann Arbor: University of Michigan Press).
- Skogstad, G. (2001) 'The WTO and Food Safety Regulatory Policy Innovation in the EU' *Journal of Common Market Studies* Vol.39:3 pp485-505.
- Smith, M. (1994) 'The Commission and External Relations'. In Edwards, G and Spence, D. (eds) *The European Commission* (Harlow: Longman) pp249-273.
- Smith, M. (1998) 'Does the flag follow trade? Politicisation and the emergence of a European foreign policy'. In Peterson, J. and Sjurson, H. (eds) *A Common Foreign Policy for Europe?* (London, USA and Canada: Routledge) pp77-94.
- Smith, M. (1999) 'Regions in World Trade – the EU'. In Hocking, B. and McGuire, S. (eds) *Trade Politics – International, Domestic and Regional Perspectives* (London and New York: Routledge) pp275-289.
- Smith, M. (2001) 'The European Union's commercial policy: between coherence and fragmentation' *Journal of European Public Policy* Vol. 8:5 pp787-802.
- Smith, M. (2005) 'The European Union and the United States of America: the Politics of 'Bi-multilateral' Negotiations'. In Elgström, O. and Jonsson, C. (eds) *European Union Negotiations: Processes, Networks and Institutions* (London: Routledge) pp164-182.
- Smith, M. C. (2005) *A Civil Society? Collective Actors in Canadian Political Life*. (Ontario: Broadview Press).
- Smyrl, M. (1999) 'When (and How) Do the Commission's Preferences Matter?' *Journal of Common Market Studies* Vol. 36:1 pp79-99.
- Somerset, K. (2002) 'When the European Union is a Lobbyist: The European Commission and External Trade'. In Warleigh, A. and Fairbrass, J. (eds) *Influence and Interests in the European Union: The New Politics of Persuasion and Advocacy* (London: Europa) pp57-74.
- Sorsa, P. (1996) 'Sub Saharan Africa Own Commitments in the Uruguay Round – Myth or Reality?' *The World Economy* Vol.19:3 pp287-387.
- Spence, D. (2000) 'Plus ca change, plus c'est la meme chose? Attempting to Reform the European Commission', *Journal of European Public Policy* Vol.7:1 pp1-25.

- Sperling, J. and Kirschner, E. (1997) *Recasting the European Order – Security architectures and economic cooperation* (Manchester: Manchester University Press).
- Srinivasan, T. (1999) 'Developing Countries in the World Trading System: From GATT 1947, to the Third Ministerial Meeting of the WTO, 1999'. *The World Economy* Vol. 22:8 pp1047-1064.
- Stanbrook, C. (1980) *Dumping. A Manual on the EEC Anti-Dumping Law and Procedure* (Norfolk: European Business Publications).
- Stavridis, S., Mossialos, E., Morgan, R. and Machin, H. (eds) (1997) *New Challenges to the European Union: Policies and Policy-Making* (Aldershot: Dartmouth Publishing).
- Steenbergen, J., De Clerq, G. and Foque, R. (1983) *Change and Adjustment. External Relations of the EC* (Deventer: Kluwer Law and Taxation Publishers).
- Stevens, A. and Stevens, H. (2001) *Brussels Bureaucrats? The Administration of the European Union* (Basingstoke: Palgrave).
- Stiglitz, J. and Charlton, A. (2004) *An Agenda for the Development Round of Trade Negotiations in the Aftermath of Cancún* (London: Commonwealth Secretariat).
- Strange, S. (2003) 'The Declining Authority of States'. In Held, D. and McGrew, A. (eds) *The Global Transformations Reader* (Cambridge, Oxford and Malden: Polity) pp148-155.
- Swinbank, A. and Tanner, C. (1996) *Farm Policy and Trade Conflict* (University of Ann Arbor: Michigan Press).
- Swinbank, A. (1999) 'EU Agriculture, Agenda 2000 and the WTO Commitments'. *The World Economy* Vol.22:1 pp41-54.
- Tangermann, S. (1999) 'Europe's Agricultural Policies and the Millennium Round'. *The World Economy* Vol.22:9 pp1155-1178.
- Tay, S. (2002) 'After the Battle in Seattle; Civil Society and Governments; Environment, Labour and Trade'. In Saunders, C. and Triggs, G. (eds) *Trade and Cooperation with the EU in the New Millennium* (The Hague, London and New York: Kluwer Law International) pp77-106.
- Taylor, P. (1983) *The Limits of European Integration* (New York: Columbia University Press).
- Taylor, P. (1996) 'The EU in the 1990's: Reassessing the Bases of Integration'. In Woods, N. (ed) *Explaining International Relations since 1945* (Oxford and New York: OUP) pp283-308.
- Teasdale, A. (1993) 'The Life and Death of the Luxembourg Compromise' *Journal of Common Market Studies* Vol.31:4 pp567-579.

Temple Lang, J. (2002) 'How Much Do The Smaller States Need The European Commission? The Role of the European Commission in a Changing Europe' *Common Market Law Review* 39 pp315-335.

Tharukan, P. (1999) 'Towards the Millennium Round.' *The World Economy* Vol.22:9 pp1145-1154.

Thelen, K. (1999) 'Historical institutionalism in comparative politics'. *The Annual Review of Political Science* Vol.2 pp369-404.

Thompson, G. (ed) (2001) *Governing the European Economy* (London, Thousand Oaks and New Delhi: Sage).

Trebilcock, M. and Howse, R. (2001) *The Regulation of International Trade* (Second edition) (London and New York: Routledge).

Tugendhat, C. (1986) *Making Sense of Europe* (Middlesex, New York, Victoria, Ontario and Auckland: Viking).

Tvedt, T. (1998) *Angels of Mercy or Development Diplomats? NGOs and Foreign Aid* (Oxford: James Currey Ltd and New Jersey: Africa World Press).

van den Hoven, A. (2004) 'Assuming Leadership in Multilateral Economic Institutions.' *West European Politics* Vol.27:2 pp256-283.

van Ham, P. (2001) *European Integration and the Post Modern Condition. Governance, Democracy, Identity* (London and New York: Routledge).

Van Kersbergen, K. and Verbeek, B. (1994) 'The Politics of Subsidiarity in the European Union'. *Journal of Common Market Studies* Vol.32:2, pp215-236.

van Roozendaal, G. (2001) 'The Influence of Trade Unions on the Social Clause. Controversy in the ILO and its Working Party'. In Arts, B., Noorthmann, M. and Reinalda, B. (eds) *Non-State Actors in International Relations* (Aldershot, Burlington, Singapore and Sydney: Ashgate Press) pp161-176.

Van Schendelen, M. (1996) "'The Council Decides'": Does the Council Decide?' *Journal of Common Market Studies* Vol.34:4 pp531-548.

Vilella, G. (1999) 'Importance and role of supranational administration: the case of European Union administration.' *International Review of Administrative Science* Vol.65:2 pp211-219.

Vincenzi, C. (1996) *Law of the European Community* (London: Pitman).

Völker, E. and Steenbergen, J. (1985) *Leading Cases and Materials on the External Relations Law of the European Community (with emphasis on the CCP)* (Deventer, Netherlands: Kluwer Law and Taxation Publishers).

Vollaard, H. (2001) 'The De-Territorialisation of Political Authority by the EU'. In Arts, B., Noorthmann, M., Reinalda M. and B. (eds) *Non-State Actors in International Relations* (Aldershot, Burlington, Singapore and Sydney: Ashgate Press) pp93-108.

Wallace, H. (2000) 'The Policy Process'. In Wallace, H. and Wallace, W (eds) *Policy Making in the European Union* (Oxford: OUP) pp39-64.

Wallace, H. (ed) (2001) *Interlocking Dimensions of European Integration* (Basingstoke: Palgrave).

Wallace, H. and Wallace, W. (eds) (2000) *Policy Making in the European Union* (Fourth Edition) (Oxford: OUP).

Wallace, H. and Young, A. (eds) (1997) *Participation and Policy Making in the EU* (Oxford: Clarendon Press).

Warleigh, A. (ed) (2002) *Understanding European Union Institutions* (London and New York: Routledge).

Warleigh, A. (2002) *Flexible Integration. Which Model for the European Union?* (London and New York: Sheffield Academic Press for UACES/Continuum).

Warleigh, A. (2003) *Democracy in the European Union* (London, Thousand Oaks, New Delhi: Sage).

Warleigh, A. and Fairbrass, J. (eds) (2002) *Influence and Interests in the European Union: The New Politics of Persuasion and Advocacy* (London and New York: Europa).

Watkins, K. (1992) *Fixing the Rules. North-South Issues in International Trade and the GATT Uruguay Round* (London: Catholic Institute for International Relations).

Westlake, M. (1999) *The Council of the European Union* (London: John Harper).

Wiener, J. (1995) *Making Rules in the Uruguay Round of the GATT. A Study of International Leadership* (Aldershot, Brookfield, Singapore and Sydney: Dartmouth).

Wiener, A. (1998) *European Citizenship Practice: Building Institutions of a Non-State* (Colorado and Oxford: Westview Press).

Wilkinson, R. (2002) 'Global Monitor: The World Trade Organisation'. *New Political Economy* Vol.7:1 pp129-141.

Williamson, O. (ed) (1990) *Organisation Theory: From Chester Barnard to the Present and Beyond* (Oxford: Oxford University Press).

Winham, G. (1986) *International Trade and the Tokyo Round Negotiation* (New Jersey: Princeton University Press).

- Winters, L. (2001) 'European Union Trade Policy: Actually or just nominally liberal?' In Wallace, H. (ed) *Interlocking Dimensions of European Integration* (London: Palgrave) pp25-44.
- Witherell, W. (1997) 'Developing International Rules for Foreign Investment: OECD's MAI' *Business Economics* Vol.32:1 pp38-43.
- Wolff, A. (1998) 'Goals and Challenges for US Trade Policy'. In Feketekuty, G. and Stokes, B. (eds) *Trade Strategies for a New Era. Ensuring US Leadership in a Global Economy* (New York: Council on Foreign Relations) pp360-372.
- Wood, L. and Moore, K. (2002) 'Target Practice: Community Activism in a Global Era'. In Shepard, B. and Hayduk, R. (eds) *From ACT UP to the WTO. Urban Protest and Community Building in the Era of Globalization* (London and New York: Verso) pp21-34.
- Woods, N. (ed) (1996) *Explaining International Relations since 1945* (Oxford and New York: OUP).
- Woods, N. (ed) (2000) *The Political Economy of Globalization* (Basingstoke: Macmillan and New York: St Martin's Press).
- Woolcock, S. (1993) 'The European Acquis and Multilateral Trade Rules: Are They Compatible?' *Journal of Common Market Studies* Vol.31:4 pp539-558.
- Woolcock, S.(1997) 'Is The Single Market Still Credible?'. In Stavridis, S., Mossialos, E. et al. *New Challenges to the European Union: Policies and Policy-Making* (Aldershot: Dartmouth Publishing) pp225-246.
- Woolcock, S. (1999) 'The Multilateral Trading System into the New Millennium'. In Hocking, B. and McGuire, S. (eds) *Trade Politics – International, Domestic and Regional Perspectives* (London and New York: Routledge) pp25-39.
- Woolcock, S. (2000) 'European Trade Policy'. In Wallace, H. and Wallace, W. (eds) *Policy Making in the European Union* (Fourth edition) (Oxford: OUP) pp373-399.
- Woolcock, S. (2003) 'The ITO, The GATT and the WTO'. In Bayne, N. and Woolcock, S. (eds) *The New Economic Diplomacy: Decision making and negotiation in international economic relations* (Aldershot: Ashgate Press) pp103-120.
- World Wildlife Fund (2003) 'A League of Gentlemen. Who really runs EU Trade Decision-Making?' Report Commissioned by the WWF. November 2003.
- Yergin, D. and Stanislaw, J. (2002) *The Commanding Heights: The Battle for the World Economy* (Revised edition) (New York: Simon and Schuster).
- Young, A. (2000) 'The Adaptation of European Foreign Economic Policy: From Rome to Seattle' *Journal of Common Market Studies* Vol.38:1 pp93-116.

Young, A. (2002) *Extending European Cooperation: The European Union and the 'New' International Trade Agenda* (Manchester: Manchester University Press).

Zampetti, A. and Sauvé, P. (1996) 'Onwards to Singapore: The International Contestability of Markets and the New Trade Agenda' *World Development* Vol.19:3 pp333-343.

Online Journals and papers consulted (full references in footnotes)

Asiaweek
Brookings-Wharton Papers on Financial Services
Cooperation South
Corporate Europe Observer
CSIS Watch (Center for Strategic and International Studies)
Communications and Strategies
Developments (DFID)
Electronic News
Electronic Telegraph
EU Bulletin
European Journal of International Law
European Voice
Financial Times
Gene Watch
ICTSD Bridges News
Indian Express
Industry Week
International Financial Law Review
JEI News (from the Japan Economic Institute of America)
Journal of Commerce
Le Monde Diplomatique
Les Echos
London Review of Books
Moscow Times
Multinational Monitor
New York Times
The Commoner
The Economist
The European
The Guardian
The Hindu
The Independent
The International Herald Tribune
Seatini Bulletin
Seattle Times
Sunonline
TechWeb
Third World Economics
Trade Policy Monitor
Tradeweek In Review

Variety
Wall Street Journal
Washington Trade Daily

Organisations websites consulted (full references in footnotes)

ABC News (Australia)
ACP-EU Technical Centre for Agricultural and Rural Cooperation
Action for Southern Africa.
Asia-Pacific Economic Cooperation (APEC)
Association of South East Asian Nations (ASEAN)
Association pour la Taxation des Transactions pour l'Aide aux Citoyens
(attacFrance)
British Broadcasting Corporation (BBC)
British International Studies Association (BISA)
British Standards Institution (BSI)
Cairns Group
Canadian Parliament
Catholic Agency for Overseas Development (CAFOD)
Center of North American Studies
Cercle de Cooperation
Christian Aid
City University
Coalition of Service Industries
Coopération Internationale pour le Développement et la Solidarité (CIDSE)
Council of Ministers
CNN News
Department of Communications, Energy and Natural Resources, Ireland
Department of Trade and Industry, UK
Earth First
EC Delegation to Japan
Electronic Research Collections (connected to the US State Department)
European Services Forum (ESF)
European Trade Union Confederation (ETUC)
Eurochambres
European Commission
Europe-Asia Meeting (ASEM)
European Consumers' Organisation (BEUC)
European Movement UK
European Parliament
European Radiocommunications Office
EUROSTEP
Finnish Presidency site
Food and Agriculture Organisation (FAO)
Food First
Foreign Trade Association (FTA)
Friends of the Earth
G8
G20
G77

General Accounting Office, USA (GAO)
Global Policy Forum
Global Services Network
Greenpeace
Hamburg Institute of International Economics
Harvard University
Hellenic Resources Network (for Commission Spokesman's Briefings)
House of Commons Library
Indymedia
International Chamber of Commerce (ICC)
International Forum on Globalization
International Institute for Sustainable Development (IISD)
International Labour Organisation (ILO)
International Sugar Corporation
Japan Machinery Centre for Trade and Investment
Law Society
Microsoft
Ministry of Commerce (India)
Ministry of International Trade and Industry (Malaysia)
NATO Parliamentary Assembly
Organisation for Economic Cooperation and Development (OECD)
Oxfam
Parliamentary Information and Research Service (Canada)
Platform of European Social NGOs
Public Citizen
Salzburg Action Forum Against the MAI
Société Universitaire Européenne de Recherches Financières (SUERF)
South Centre
UK Food Group
US Department of Commerce
US Mission to the United Nations in Geneva
US Trade Representative
The White House
The World Trade Organisation (WTO)
Third World Network
Tokyo Club Foundation for Global Studies
TransAtlantic Business Dialogue (TABD)
Transnational Institute
Union of Industrial and Employers' Confederations of Europe (UNICE)
United Nations Conference on Trade and Development (UNCTAD)
United Nations Educational, Scientific and Cultural Organisation (UNESCO)
United Nations Industrial Development Organisation (UNIDO)
University of Edinburgh
University of Virginia
United States Council for International Business (USCIB)
University of Pittsburgh
University of Toronto
World Development Movement (WDM)
Yale University



