

**The Mediating Role of the World Trade Organisation (WTO) Director General  
(DG) in Multilateral Trade Negotiations: The Case Study of the July 2008 WTO  
Ministerial Meeting**

**by**

**Thembekile MLANGENI**

**11376792**

**A mini-dissertation submitted in partial fulfillment of the requirements for the  
degree**

**Masters in Diplomatic Studies (MDIPS)**

**In the Department of Political Science at the**

**UNIVERSITY OF PRETORIA**

**FACULTY OF HUMANITIES**

**SUPERVISOR: Dr Mzukisi Qobo**

**Month and year**

**December 2014**

# The Mediating Role of the World Trade Organisation (WTO) Director General (DG) in Multilateral Trade Negotiations: The Case Study of the July 2008 WTO Ministerial Meeting

---

## **Abstract**

This research assesses the mediating role of the Director General (DG) of the World Trade Organisation (WTO) as Chair of the Trade Negotiations Committee (TNC). The departure point of this paper is that the character of the position of the TNC Chairperson lends itself to a mediating role, a crucial feature that is often underestimated. The paper looks at the precise features of the multilateral trade negotiations that qualify the DG as a mediator. The WTO is regarded as a Member driven organization consisting of 159 country members. The Chairs of various negotiating bodies within the WTO are expected to be impartial and objective, thereby ensuring transparency, inclusiveness in the consultative process and in decision making, while aiming to facilitate consensus.

The concepts of neutrality and partiality are analysed as determinants of failure or success in the exercise of the role of a mediator, in particular as this concerns the WTO negotiations. In this research I argue that poor conception of the mediatory aspect of this role is what has undermined progress in the negotiations. A literature review is offered in order to shed more light on the definition and meaning of the concepts of neutrality and impartiality as they relate to the role of the mediator. This also provides a contextual overview of the role of the WTO and the various actors that constitute it. I demonstrate here how these concepts can sometimes be used interchangeably and, more importantly, I highlight the misunderstanding in the application of these concepts in the field of mediation. The case study that this paper

focuses on is the July 2008 WTO Ministerial Meeting, which also serves as the backdrop to advance an argument that the lack of impartiality of the “mediator” in these negotiations was responsible for the failure of the July 2008 WTO Ministerial meeting.

Since the July 2008 Ministerial Meeting was a milestone towards the conclusion of the Doha Development Round in Multilateral Trade Negotiations, the failure of this Ministerial Meeting has had serious implications for the successful conclusion of the Round or inability of members’ interests to find consensus.

The research concludes that although the mediator cannot be completely neutral, this position requires impartiality. This particularly applies with respect to the process and content of negotiations, while at the same time assisting to facilitate consensus among members of the WTO.

## Table of Contents

Abstract.....	2
Chapter 1 – Introduction.....	7
Background .....	7
Research Problem .....	9
WTO Decision-Making Process .....	12
Disputes in WTO .....	13
Chapter 2 - Literature Review .....	15
Introduction .....	15
What is mediation?.....	15
What is the Role of the Mediator in a Mediation Process?.....	16
The Role of the Chair as a Mediator: The Meaning of an “Honest Broker” .....	17
Neutrality and Impartiality: Challenges faced by Mediation.....	20
Conclusion.....	21
Chapter 3 - Context Setting .....	23
Introduction .....	23
Background to Trade Negotiating Rounds and Structure of the WTO .....	23
From the Uruguay Round to the Doha Round .....	24
Various Rounds of Trade Negotiations .....	25
The Tokyo Round .....	26
The Uruguay Round (UR) .....	27
The World Trade Organisation.....	29
The Structure of the WTO .....	29
The WTO Agenda .....	34
Towards the Doha Round .....	36
Market Access Negotiating Issues .....	39

WTO Members: Most Active Groups and Alliances in Market Access Negotiations .....	41
Structural Reform in WTO.....	47
Chapter 4 - The Case Study of the July 2008 Ministerial Meeting from 21 July to 29 July 2008 .....	49
Introduction .....	49
Background .....	50
Overview of the July 2004 Framework .....	51
Agriculture .....	51
Non-Agriculture Market Access (NAMA) .....	55
A comparison of the 10 July 2008 text and the Lamy package .....	57
Agriculture .....	58
Non Agriculture market Access (NAMA).....	60
Conclusion.....	62
Chapter 5 - Application of Theory to the Case Study of the July 2008 WTO Mini Ministerial Meeting.....	64
Introduction .....	64
The Chair of the Trade Negotiations Committee (TNC) as a Mediator in the July 2008 WTO Ministerial Meeting.....	65
Context of the Negotiations.....	66
Managing the Process of Consultation and Decision Making .....	67
Ignorance .....	69
Arrogance.....	70
Partiality .....	71
Impotence .....	74
Haste .....	75
Inflexibility.....	76

False Promises.....	77
Conclusion.....	77
Chapter 6 - Conclusion.....	79
Introduction .....	79
Research findings.....	79
Theoretical and Policy Implications .....	82
Direction for Further Research .....	82
BIBLIOGRAPHY .....	83

## Chapter 1 – Introduction

This chapter provides background on the origin of multilateral trade negotiations and explains the complex circumstances under which trade negotiations take place at the WTO. The reasoning behind the argument that there is a need to acknowledge the mediating role of the DG in WTO negotiations is offered by means of unpacking the process of decision making and the kinds of disputes that emanate from such decisions. These kinds of disputes are differentiated from the disputes which may arise in preparation for and during Rounds of trade negotiations. The latter is the kind of disputes that this research puts the focuses on and asserts that there is no explicit in built system of dealing with such disputes in the WTO. Hence the need for a formally recognised mediating role for the Chair of the WTO trade negotiations.

In 2003 a group of experts was appointed by the then WTO DG (Mr. Supachai Panitchpakdi) to study and clarify the institutional challenges that the system faced and to consider how the WTO could be reinforced and equipped to meet these. They produced a report called the “Sutherland Report” which was launched in 2004. Though the essential purpose of the Report was to examine the functioning of the WTO, one of the recommendations made in the Sutherland report was that the role of the WTO DG should be further clarified (Sutherland 2004: 73). There was much vagueness as to aspects of the role that needed further clarification. The Sutherland Report is in support of a decision that was taken at the 2001 Doha Ministerial Conference of the WTO, to establish the TNC under the authority of the General Council (GC) that would establish appropriate negotiating mechanisms as required, and supervise the progress of the negotiations (WTO 2001: 46). The GC is the highest decision-making body in the WTO. No further clarification of the role of the DG in the TNC was provided. Yet this role is pivotal to the successful conclusion of a WTO negotiating Round.

## Background

The WTO was established on 1 January 1995. Its formation was preceded by the General Agreement on Trade and Tariffs (GATT 1947), which was a binding international treaty that provided rules for the international trading system. Since its

establishment in 1947, GATT has concluded a series of trade Rounds – a total of 8 in all – and these are underlined later in the discussion. The WTO establishes rules that govern the international trading system. These rules require an alignment with member countries trade practices and trade-related domestic policies. When the WTO was established, the developed countries sought to introduce more trade-related rules for negotiations. An analysis by Jawara and Kwa (2003: 3-4) indicates that the WTO obligations that are ascribed to member countries resulting from the introduction of such trade related rules reflect little awareness of development problems, and little appreciation of the capacities of developing and least developed countries to carry out the functions that other trade related measures/regulations require them to address. This is an important point to underscore as it is one of the fault-lines of negotiations between developed and developing countries, and a measuring yardstick of the DG's commitments as the Chair of the TNC. The view of developing and least developed countries has been that the outcomes of the previous trade negotiating rounds were imposed on them, mainly on the account of the power and influence of developed countries, and partly as a result of the weakness and inexperience of developing country negotiators at that time. For instance, the conclusion of the Uruguay Round in 1994 dealt mostly with tariff reduction on industrial products, while a protective mechanism for agricultural commodities was in place. This served to benefit the major developed countries. This is discussed fully in chapter 3.

Many developing countries had opposed the launch of another Round of tariff reductions. Instead, they called for a study that would look into the effects and implications of previous liberalisation in member countries, especially the developing world. Developing countries indicated that structural adjustments in their domestic economies had caused serious problems, including loss in market share, closing down of industries which in turn induced unemployment, and loss of government revenue (Jawara and Kwa 2003: 26). This structural adjustment took effect at the height of the debt crisis of the 1980s, presaging what later came to be known as Africa's lost decade.



The Trade Negotiation Round launched in November 2001 in Doha was then named the “Doha Development Agenda” (DDA). It was assumed that this will prioritise the development interests of developing countries, in particular to ensure the effectiveness of “special and differential treatment” for developing countries in the WTO. However, this was misconceived (Ismail 2009: 112-113). Further elaboration on this is offered in chapter 3.

Various negotiating issues were agreed at the Doha Ministerial Conference that launched the current Round of multilateral trade negotiations. These included a decision to establish the TNC, which operates under the authority of the GC. The Doha Declaration assigned the TNC to create subsidiary negotiating bodies to deal with various negotiating subjects. The TNC was chaired by the DG of the WTO, Pascal Lamy, giving him the authority to chair during trade negotiating rounds (WTO: 2012). It is in the context of this role that this thesis argues that the DG occupies a unique mediating role; and it is this role that the thesis casts an intense spotlight on, as it holds force for the success of the negotiations. How the DG sets the scene for negotiations and brings actors together has a decisive import for the progress of the negotiations. Like a maestro conducting an orchestra, the DG plays a pivotal role in ensuring convergence on varying negotiating interests and positions.

### **Research Problem**

International negotiations involve diverse players with diverging interests and objectives. There is also a great deal of complexity in conducting negotiations, as these negotiations stems from the political economy interests at domestic level and are influenced at different levels. As a result negotiators most often take cue from their political principals. Generally, bilateral and multilateral trade negotiations are carried out between governments. They are preceded by extensive consultations with domestic stakeholders - or political economy interests - regarding the precise character of a country’s negotiating position.

In some instances government coalitions like the Group of 20 (G20) at the WTO, are also formed and political influence cannot be avoided. In cases where a deadlock cannot be resolved, it is common that economic issues are escalated to political principals and sometimes presented as conflict situations. For example, this could be experienced where currency manipulation by a country can lead to distortion of trade and thereby result in trade conflict between governments.

The 2008 economic crisis precipitated by the United States (US) banking sector brought about a rise in protectionist measures, especially by developed countries. This includes provisions such as Buy America that accompanied the Troubled Asset Relief Programme that was introduced to bail out financial institutions, and later, real economy companies in the US, in the aftermath of the crisis. Such provisions were viewed by developing countries as subsidies that had an effect of crowding out non-subsidised exports from developing countries. This has led to developing countries also taking protective measures based on their own economic situations as they lacked large fiscal resources to bail out industries (Ismail 2009: 144-147). Developing countries were seen to increase tariffs of their sensitive products - up to the level of bound rates. This situation escalates trade tensions that also complicated the WTO negotiations.

This brief background sketched above is intended to demonstrate the complexity of trade negotiations. It is no wonder, for example, that the Doha round of multilateral negotiations has stretched for over a decade without conclusion. Research on the processes of negotiations is limited. This is more so on the role of the Chair of the TNC in facilitating harmonious or successful agreements against the backdrop of divergent interests.

This is a unique contribution this research seeks to make in the study of mediation, by casting more light in an area that has huge implications for global commerce but yet not always seen as a realm of mediation. Most of what has been published in the sphere of mediation has mostly concentrated on wars and military-political disputes.

However, some of the ideas generated in the field could prove fruitful in the domain of multilateral trade negotiations.

As it will be shown in the literature review, neutrality has been regarded as a prerequisite in assuming the role of the Chair/Mediator in any negotiation process that escalates and turns out to be a conflict. The Chair, as acknowledged by the WTO, “should be impartial and objective, ensuring transparency and inclusiveness in decision making and consultative process and aiming to facilitate consensus” (Landau et al 2007: 1-3).

On the negotiation process, Bercovitch and Jackson (2007: 61) state that both negotiation and mediation can involve formal and informal discussions/conversations, in a multilateral forum like the UN to embassy cocktail parties, in secret or in open, heads of states or by low-level officials, with closed or open-ended agendas. In any setting that dialogue may be conducted, impartiality remains an important requirement for success.

This research will provide evidence of the process of consultation by the WTO DG leading up to the July 2008 Ministerial – the core case study. This will demonstrate how the wider membership of the WTO was excluded from such consultations, and how the negotiated package came about as a result of the intervention by the Chair. Such intervention indicated non-neutrality on the part of the Chair, more importantly some WTO members viewed such intervention as partial hence it led to the rejection of the outcome by parties. It is precisely for this reason that Tallberg (2006: 39) states that: the Chair of the TNC is well placed to function as the “package deal engineer”. This is synonymous with the role of mediation. Yet this dimension is poorly understood within the WTO.

The overall perception amongst a large number of developing countries at the WTO was that the negotiating texts produced by the TNC Chair lacked balance and were

stacked against the interests of developing countries and biased towards those of the developed countries. This situation arises when there is a lack of comprehension of the role of the Chair as a “package deal engineer” or negotiator. Over the years in the history of decision making in the WTO, members have voiced a concern that bias of the Chair is an example which leads to inefficient outcomes (Ismail 2009: 87-89).

### **WTO Decision-Making Process**

Decision making in the WTO is based on bargaining, consultation and consensus. Negotiation and consultation are often held before a consensus text is arrived at. In the WTO context, consensus does not mean unanimity but it signifies that no delegation present has a fundamental objection to an issue, and therefore, there is sufficient ground for consensus. This has worked well for smaller countries, as it enhances their negotiating leverage, especially if they are able to form a coalition (Hoekman and Kostecki 2001: 56-57). However, it often happens that the views of many members are ignored by a few powerful members, ironically, in a rules based and consensus driven organization. This is often reflected in the language of the negotiating text, where it would reflect the views of the major powers. Consequently, WTO members would then have to negotiate a text that is already skewed against a number of them (Jawara and Kwa 2003: 72). For example the US and the European Union (EU) colluded and produced a text that would serve to open the markets of developing countries. This text was biased against a large number of developing countries, yet it became the basis of negotiations for Non Agriculture Market Access (NAMA) negotiations in the WTO.

It is in these instances that are common in multilateral trade negotiations. Mediation becomes necessary, not only to deal with divergent interests on complex trade negotiating issues but also with disputes over processes that endorse some texts to serve as basis or the starting point for negotiations. A special feature of trade negotiations or economic diplomacy is that they centre on trade-based economic objectives in domestic policies of WTO members, and may have an impact on political and legal issues; hence the process may take long and often requires management by a skilled negotiator.

## Disputes in WTO

One of the unique features of the WTO system is its dispute settlement mechanism which covers all disputes that arise under the implementation of WTO agreements. This is not to be confused with the mediating role of the DG as Chair of the TNC. These are post-agreement disputes, whereas the dynamics that characterize negotiations are towards reaching a consensus or an agreement. Often disputes that arise at the WTO stem from non-implementation of WTO agreements by members. Such disputes are often referred to the WTO Dispute Settlement Body (DSB), one of the crucial institutional features of the WTO. This mechanism assists countries in trade dispute against other members.

Though there are concerns over this system, it is a formal system that gives concrete meaning to the rules-based multilateral system, and is meant to protect the rights of the weak. A major problem of the dispute settlement mechanism is that the enforcement of its decisions is sometimes through the sanctioning of retaliatory trade restrictions which are based on the capacity of a member to retaliate against a member that has flouted the rules, and such retaliation is allowed by the WTO rules. This implies a withdrawal of concessions by a Member due to non-implementation or bending of rules by another Member. This then creates serious asymmetry as trade restrictions by large members may have real impact on the economy of smaller members, but trade restrictions by small members may have no real impact on developed members. Other obstacles for developing countries in using the system are cited as costs and problems in implementation of decisions. Jawara and Kwa (2003: 6-7). This process is legalistic.

This paper deals with disputes that arise out of a crucial ongoing function of the WTO, which is to negotiate trade agreements. These kinds of disputes may arise in preparation for and during a Round of trade negotiations. This does not refer to disputes over implementation of agreements but refers to disputes while agreements are being negotiated. This function of the WTO does not have an explicit in built system of resolving disputes that arise during this process.

The fact that the role played by the Chair is not formally recognized as mediation undermines convergence in WTO trade negotiations. In this research a case is made that; given the qualities of the role of the Chair, and the kind of responsibilities associated with this role - it is *de facto* a mediation role. Essentially, it concerns itself with reconciling disparate negotiating positions. If this role could be recognized as such, it would be better defined and clarified, and thus giving a fillip to progress in the negotiations. It is not that members do not recognize the role of the Chair, but there is no context of what it means. The value of this thesis is to provide a perspective on the importance of this feature and to suggest lessons/recommendations which could be considered in shaping the role played by the DG in trade negotiations.

## Chapter 2 - Literature Review

### Introduction

This section provides a brief background on what mediation is and dwells on the role and status of the mediator. This is discussed in the context of the key concepts of mediation, which are: neutrality and partiality. The concepts are critically assessed as challenges generally encountered in the mediation process. The literature review provided in this chapter shows that though these concepts can be used interchangeably, they refer to different types of actions. Overall, this review will indicate that if the interests of a mediator are aligned to one party in a dispute, a collapse of the negotiations might be inevitable.

### What is mediation?

Before we discuss the conduct of the mediator, it is important to explain what a mediator or the process of mediation entails. This will be useful to demonstrate the condition under which (this research assumes) characteristics of mediation took place in the context of the multilateral trade negotiations at the WTO in July 2008. Berridge (2010: 235) states that mediation is multilateral, necessary in long bitter disputes where parties are unable to compromise without seriously jeopardising the domestic positions of their leaders. He further states that mediation is needed the more when the parties retain the most profound distrust of each other's intentions, where cultural differences present an additional barrier to communication, and where at least one of the parties refuses to recognise the other.

Faure (1989: 415) defines mediation as a social process that occurs in the case of very particular situations, for the most part highly conflictual negotiations that result in deadlock. None of the parties involved in the conflict wishes to make any or any more concessions, but the stalemate is in itself very costly for both sides. This is the case in an open conflict, such as war, or in a mere refusal of any economic cooperation between two neighboring Countries.

Touval and Zaartman (2007: 437) define mediation as a form of third party intervention in a conflict. They differentiate mediation from other forms of third party intervention in that it is not based on direct use of force and is not aimed at helping one of the participants to win but to bring the conflict to a settlement acceptable to both sides and consistent with third parties interests.

The definitions provided in this study describe the conditions under which negotiations takes place, however, the definition provided by Faure above refers to a process between countries, and also to economic cooperation, and it could be more relevant to the situation that exist in multilateral trade negotiations at the WTO.

Overall, the definitions show that mediation is a special kind of negotiation designed to promote the settlement of a conflict. Important to note, though, is that the third party as the mediator must be precise, neutral and impartial in the dispute, both on process and outcome. In short, Berridge (2010: 235-236) further defines mediation as the active search for a negotiated settlement to an international or intra-state conflict by an impartial third party.

### **What is the Role of the Mediator in a Mediation Process?**

Landau *et al* (2007: 4-5) sets out conditions that would spell success for a mediation process: a Chair has to be impartial; he has to be firm especially at the start of the mediating process; set out his negotiating resources and bargaining power; clearly identify the parties to the dispute and ascertain who the representative of the group is; ensure that no one has been disadvantaged by the process; ensure that a stalemate exist, that could lead to a ripe moment to make parties realise that they would be better off with a negotiated settlement; the negotiating issues should be sufficient to allow for exchange of deals. However, in the process of mediation it is not always possible to ascertain from the start that a mediator is impartial and is able to conduct the process of mediation in a manner that would produce positive outcomes.



Kleiboer (2002: 372) suggests that the status of a mediator might give an indication of his neutrality and impartiality. He states that the institutional status of a mediator stems from the identity of a mediator's constituency. A mediator seldom acts as an individual, but usually as a spokesperson or representative of a national state or a non-governmental organization.

A mediator should not take their status of being an impartial and honest broker for granted. Partiality is influenced by many factors such as: nationality, religion, past affiliation etc. As such, there are cultural nuances involved. A mediator will be listened to cautiously when he delivers a difficult message with the substance of the message informed by a sophisticated understanding of the issues. The deftness of diplomacy plays a part: how, where, and when something is said matters as much as what is being said Brahim et al (2008: 7-8).

Other factors that might influence the role of the mediator include: the mediator's own motives, influence, diplomatic skill, and standing with the parties. Whatever the source of the mediator's influence relative to the parties, it will also be increased to the extent that it is allied to that of other states (Berridge 2010: 235-247).

The literature review would demonstrate that the status of a mediator greatly affect his role, therefore, neutrality and impartiality cannot be taken for granted in the process of mediation.

### **The Role of the Chair as a Mediator: The Meaning of an "Honest Broker"**

The decision of who will become the Chair of the TNC was heavily negotiated at the WTO, and agreed upon by all member countries. The Africa Group and the least developed countries initially preferred a Geneva-based country ambassador to be the Chair of the TNC; while the European Community (EU) and other developed

members supported that the WTO DG should also chair the TNC. This was possibly because the DG of the WTO was seen as more susceptible to capture than a diplomat who is independent. Developing countries, including the WTO Secretariat staff, had also expressed concern about the lack neutrality of the DG ahead of the Doha Ministerial meeting (Jawara and Kwa 2003: 221). This compounded the ambiguity of the role of the WTO DG in trade negotiations.

Reference to the “honest broker” in the earlier Sutherland report (see Chapter 1), clearly implies that the DG should be neutral. This is also a concept that is mostly applied to a mediator. Implicitly, therefore, the DG is expected to be a mediator. Furthermore, it is underscored in the report that technical competence and appropriate experience should be prerequisites in the appointment of the DG (Sutherland Report 2004:73-75). One of the key observations that the report makes is that there is a two-dimensional role to the functions of the DG: the first entails the functions of the DG as an administrative head of the WTO responsible to oversee the implementation of agreements, including the WTO Secretariat; and secondly, his function as a TNC Chair where he is expected to mediate in trade negotiations.

The multiple roles and the ambiguity this creates arise also from the expectation of WTO members of the role that the DG plays during the process of consultations and at the ministerial meetings. It has also not been made clear whether the process of consultations and negotiations at the WTO relate to the broad theme of mediation rather than just chairing or overseeing a negotiation. In this case, the literature review explores the assumption (in this study) that the WTO Chair fulfils the role of a mediator in the context of multilateral trade negotiations.

Bercovitch and Jackson (2007: 59-60) state that mediation is regarded in many ways as an extension of negotiation where parties to a dispute seek assistance of, or accept an offer of help, from a party not directly involved in the conflict to resolve their differences without invoking the authority of the law. The key difference between negotiations and mediation is that the mediator will then bring additional

resources to the process. The mediator often brings consciously or otherwise, communication possibilities, ideas, knowledge and other resources that are often used throughout the process to facilitate conflict resolution.

Do conditions for mediation exist in the WTO? Using the indicators highlighted above, later on this paper will assess whether or not these conditions exist in the WTO. It will identify the WTO Chair of the TNC as a mediator as opposed to just a Chair, and critically review some of the concepts that relate to the process of mediation and the conduct of a mediator, namely “neutrality and Impartiality”.

Hung (2002: 45) states that the main objective of the mediator is to be able to assist the disputants to communicate with each other in a rational and problem solving way that will lead to a consensual settlement, which is fair and equitable to all. This can only be achieved if a mediator is ‘neutral and impartial’ at all times as recommended in all codes of conduct for mediators. The WTO has a distinct lack of such a code of conduct; and there is no explicit conception of this role as a mediator role. This is a major conceptual lacuna in the WTO’s negotiating process. By having a Chair for the negotiations, the WTO should have immediately conceived of this role in its appropriate form – as a mediating role.

As discussed in this literature review, most definitions of mediation emphasise key concepts of mediation such as ‘neutrality’ and ‘impartiality’. In practice, it has been a challenge to fully understand what these terms precisely mean. Field (2000: 16) mentions that neutrality is a misleading myth about mediation as mediators do not often exercise their power in mediation in a way that is entirely neutral in respect of content and outcome. The literature review will shed light on what it means to be neutral and impartial as a mediator and whether it is possible in practice that a mediator can be neutral and impartial.

## Neutrality and Impartiality: Challenges faced by Mediation

The Oxford Thesaurus (1991) provides the following terms as the meaning of neutrality: unaligned, unaffiliated, impartial, unbiased, uncommitted and withdrawn. In turn the meaning of impartial is provided as: fair, just, neutral, and objective.

Faure (1989:415) constructed a model derived from the action of the mediator. He asserts, for example, that the contribution and position of the mediator in relation to the parties modifies the entire outcome of the negotiation. What this means essentially is that the mediator has an effect on the dynamics of negotiations or conflict resolution. Faure's model provides an analysis of the concepts of neutrality and impartiality. The question that arises is whether it is possible that a mediator can be neutral and impartial in search of a negotiated settlement. There is certainly no consensual view in academia or policy practice on this question, but at least there are indicative dimensions against which to measure a mediating process. These are discussed later in the chapter.

Faure (1989: 419) states that there is often a general confusion between the concept of neutrality and impartiality, as they are often used as synonyms; however they refer to different types of action. As Faure points out: "Impartiality means not favoring either party, to be neutral means not intervening in the situation, not influencing the result of the negotiation" (Faure 1989: 419). He brings a view that it is almost impossible for the mediator not to suggest any solution; in most cases the mediator introduces pressure, threats, arguments or even rewards that affect the outcome in some way. To effect movement in the negotiations, a mediator would initiate ideas that when executed would serve to bring about progress. Faure further states that: "Non-neutrality increases the likelihood of reaching an agreement, because it provides new means of action and incentives in the shape of rewards or threats of punishments such as withdrawing of support".

On the process of fostering agreements, Berridge (2001:41) points out that compromises in negotiations lead to imperfect agreements, in the same vein, negotiated agreements are a compromise; however, members would not compromise if they think that they are already disadvantaged by the process of a partial and non-neutral mediator.

Faure concludes by asserting that mediation is an activity that does not require impartiality and neutrality as conditions for success. The mediator has characteristics of a negotiator; he has his own set of goals and constraints, and may use a limited number of strategies and tactics. Through his or her intervention the process of negotiations may be modified, but if the mediator can be defined as the negotiator it would bring the process beyond what could be accepted and would result in the negation of the mediation process. Negotiators who have their interests connected to those of one party would lead a system to a collapse (Faure 1989: 425).

How can the rationale of a mediator be specified? The mediator should have characteristics of a negotiator but not necessarily align his interest with those of one party. Is this possible to achieve? Brahim et al (2008: 5-11) elaborate on the seven deadly sins of mediation that could prevail in a conflict situation and possibly result in violence or failure of a mediation process. These are ignorance, arrogance, partiality, impotence, haste, inflexibility and false promises (discussed further in chapter 5). He further mentions that agreements signed in bad faith unravel and have to be renegotiated, in other cases, those who have signed the agreement represent only a fraction of the actors whose consent and cooperation is required to bring peace to a war-torn area.

## **Conclusion**

It may seem that theory acknowledges the difficulty of the concept of neutrality and impartiality in mediation, but it has not been sufficiently understood in reality that the mediator cannot be neutral. Field (2000: 16) states that; “commentators on mediation are prepared to acknowledge that it is a reflection of misconceptions of the practice

and theory of mediation to consider the mediator as neutral”. This has not filtered adequately to impact sufficiently on the practice of mediation.

In practice, the status of a mediator tends to shadow the role that the mediator can play, while in theory, the mediator is expected to be neutral and impartial.

Pascal Lamy is the fifth DG of the WTO since its establishment in 1995. He was appointed to the current role as Chair of the TNC in 2005, and was re-appointed for a second four-year term starting in September 2009 (WTO: 2012). As a former European Trade Commissioner, could it be possible that his interests were closely aligned to those of the EU or the developed countries in general? Has this status tainted his role as the neutral and impartial mediator in multilateral trade negotiations and hence, led to the failure of these negotiations? This research also considers whether the status of the DG can influence the outcome of the negotiations. At the core, the paper examines the functions of the Chair of the TNC against the characteristics of a mediator. Before that, it is important to offer a contextual sketch of the WTO and the process of negotiations, a theme the next chapter turn to.

## Chapter 3 - Context Setting

### Introduction

This Chapter provides a more detailed background on the workings of the WTO, its structure, the nature of the WTO negotiations, and a summation of market access negotiation issues in the context of the Doha negotiations. The chapter also sheds more light on the various actors, groups and coalitions involved in these negotiations as well as their fundamental interests. The chapter concludes with an analytic assessment of the WTO negotiations, and highlights a need for the review of the structure of the WTO in light of the growing agenda of trade negotiations.

Such a review would address the central observation of this research that the role of the WTO DG could be better defined to reflect a mediating aspect, which is in any case crucial to the work of this office as well as for the efficiency with which the WTO takes decisions. As argued in this research, it is precisely the failure of the WTO DG to grasp the identity of his role as that of a mediator that widens the scope of disagreement over the negotiating agenda and accounts for lack of effectiveness in his role as the Chair of the TNC.

### Background to Trade Negotiating Rounds and Structure of the WTO

The WTO was established in 1995 as an outcome of the General Agreement on Trade and Tariffs (GATT) treaty which was concluded and adopted in 1947. The GATT, which became a framework for the rules-based global trading system only entered into force in 1948. There were initial negotiations preceding the creation of GATT, aimed at establishing a more formalised institution in the form of the International Trade Organisation (ITO) between 23 countries; consisting of 12 developed and 11 developing countries<sup>1</sup> (Hoekman and Kostecki, 2001: 38). This move was scuppered because of divergent views over its structure and remit of its decision-making, with countries such as the US reluctant to have an overarching and

---

<sup>1</sup> The founding Members to the GATT were Australia, Belgium, Brazil, Burma, Canada, Ceylon, Chile, China, Cuba, Czechoslovakia, France, India, Lebanon, Luxembourg, Netherlands, New Zealand, Norway, Pakistan, Southern Rhodesia, Syria, South Africa, the United Kingdom and the United States. China, Lebanon and Syria subsequently withdrew.

external institution that would impose rules that are binding on all without the possibility of an opt-out. Since GATT was established, its signatories were called Contracting Parties. Over the years the number of Contracting Parties (or members) has increased (see table 1 below).

### **From the Uruguay Round to the Doha Round**

As earlier noted, an attempt to create the ITO gave birth to GATT, which continued as the treaty that formed the basis on which world trade was regulated until it was superseded by the WTO in 1995. Hoekman and Kostecki (2001: 37-40) give a detailed background of the trade negotiating Rounds from GATT to the final Round, the Uruguay Round (UR), that took place between 1986 and 1993, and which culminated in a decision to establish the WTO. From the outset GATT was established as an inter-governmental treaty, with Contracting Parties. It was a compromise that arose from the failure to create a fully-fledged international organisation after the Second World War.

This international trade negotiations architecture emerged against the backdrop of the creation of a slew of international organisations that would help sustain peace after the Second World War, with John Maynard Keynes and Harry Dexter White as key architects of the new post-war institutionalism. The major challenge in this innovation was how to create conditions for an open global economy in the context where domestic interests sought to dominate (Rodrik 2011:67). The three pillars of this institutionalism would be a framework for supporting reconstruction and development in Europe through what later became known as the World Bank; an international monetary system; and an international trading regime.

The negotiations over a charter to establish the International Trade Organisation (ITO) did not advance further because the US Congress failed to ratify the agreement for its establishment, owing to acrimony between protectionists and liberal internationalists within Congress. The US would not allow to have an aspect of its domestic economic policy completely constrained by institutions that exist



outside the remit of its domestic policy making process. GATT then became a compromise that was negotiated between 23 countries (12 developed and 11 developing countries) as an interim agreement, which later became a default mechanism to facilitate international trade negotiations.

This was to allow for progress to be made towards trade liberalisation while also giving room to governments to “respond to social and economic needs at home” (Rodrik 2011: 69). Such social and economic needs can be broadly defined as political economy interests. When they are championed by specific interest groups, they make the work of the negotiator harder as these interests would have to be taken into consideration. This reality has remained the same in the WTO. GATT never had an institutional structure, but as more decisions were taken during the formal meetings of the contracting parties it became evident that an institutional structure was needed. Further, over time, the work of GATT became more complex as new issues were introduced in the negotiations. Over time, an institutionally grounded mechanism became a necessity.

### **Various Rounds of Trade Negotiations**

GATT entered into force in 1948. During this time there were 56 countries that signed the Havana Charter draft to establish the ITO. In 1949 a Round of tariff negotiations was held in Annecy, in 1950 the US abandoned efforts to seek congressional ratification of the Charter while during this period China withdrew from GATT. In 1951 an inter-sessional committee was formed, to organise voting by airmail or telegraphic ballot on some issues.

During this period (1955), the negotiations were based on the establishment of an international trade institution, but also various provisions of the GATT were modified including that the US was granted a waiver from GATT disciplines for certain agricultural policies. Japan also acceded to GATT during that time. In 1957 the European Economic Community was created. In 1960, the inter-sessional committee was replaced by the Council of representatives with broader powers and

responsibility for day-to-day management. From 1947-1994 the GATT Secretariat was known as the Interim Commission for the International Trade Organisation (ICITO). This was a United Nations (UN) body since the ITO negotiations occurred under the auspices of the UN.

From 1947 to 1994 there were several Rounds of negotiations that were held, namely: the Geneva Round, 1947; Ancey and Torquay Round, 1948; Geneva II and Dillon Rounds, mid-1950s; Kennedy Round, 1963-7; and Tokyo Round, 1973-9. The main objective of these rounds was to create freer trade through gradual liberalisation of markets for products. In the 1960s GATT succeeded in addressing some divergent interests in the trading system, with the reduction of tariffs being the greatest achievement by Member States. However, developing countries still had unfulfilled issues of key interest to them, and they also lacked leverage and the institutional capacity to effect change within the forum. These issues are discussed later in this chapter. Over the years it became apparent that a move from a forum to a more formal body was needed to deal with the complex challenges faced by members, more importantly to administer agreements entered into. A summation of select rounds that took place under GATT is provided below.

### **The Tokyo Round**

The Tokyo Round was launched in 1973 and concluded in 1979 (6 years) with ninety-nine countries involved. Ostry (2003: 175) points out that this Round was viewed as the longest and most difficult Round in the history of GATT at the time. The Doha Round could attain a similar status under the WTO. Though the objective of the Tokyo Round was clear, this was a traditional GATT negotiation aimed at expanding the liberalisation of trade through tariff reduction. Ostry (1997: 85-87) further points out that the Tokyo Round attempted to include negotiations on Non-Tariff Measures (NTMs). These measures are normally based on domestic policies and regulations within countries, unlike tariffs which are in the form of levying taxes on imports. NTMs include provisions on government procurement, regulation of product standards, specific health and safety standards. Most important for the US were the industrial and agriculture subsidies.

The US, in particular, was concerned with the use of domestic subsidies by the EU, which tended to result in excess production in the EU and increased exports to the US and other countries. This not only had the effect of lowering prices for farmers in targeted countries, but would ultimately result in the displacement of domestic industries of other trading partners. Hence this Round was termed as a battle ground between the US and the EU. Its preoccupation was with the interests of developed countries, something that became a dominant reality of GATT's existence. In the end, the EU did not make any compromises on the US demands that their agricultural subsidies, known as the Common Agricultural Policies (CAP), be reduced. Therefore, nothing much was achieved on that front.

An effort was also made by the US to strengthen the Dispute Settlement System of the GATT. The EU indicated that this was demanded by the US lobby to ensure that in cases where concessions made are not implemented; there should be some form of recourse for all members. The GATT Ministerial Round which was held after the Tokyo Round in 1982 failed to agree on an agenda for a new Round. The number of Member States acceding to the GATT was increasing and they continued to diverge in their negotiating positions. However, a work programme was created with a view to establish an agenda for new multilateral trade negotiations.

### **The Uruguay Round (UR)**

The UR was launched in 1986, another Ministerial Meeting was held in 1988 to review progress. Work undertaken on the review was completed in 1989. In the following year Canada introduced a proposal to create a Multilateral Trade Organisation that would cover GATT, the General Agreement on Trade in Services (GATS) and other multilateral instruments that were agreed in GATT. The Ministerial Meeting which was held at Brussels in 1990 failed to conclude the UR. It was only in 1993 at the trade talks held in Geneva that the UR was concluded, and after 7 years after it was formally launched.

The reason why subsidies persisted in international trade negotiations, and became a critical point for negotiations for many decades, can be traced to the special provisions that the major developed countries managed to secure for themselves. For example, in 1955 the US secured a GATT waiver for their agricultural support programmes while the EU was protected by their Common Agricultural Policy (CAP) measures. Because of this, agriculture became somewhat exempt from liberalisation, thereby limiting market access for many developing countries' agricultural products later. The UR became a watershed in that it set out a framework for liberalisation of agriculture (Ostry, 2007: 27).

What these measures underline is that developed countries have benefitted for many years from special treatment, and only undertook liberalisation of trade at their own pace and on their own terms. Sensitive sectors in the US and the EU were excluded from liberalisation, and as such agriculture was not a major contributor in various rounds of multilateral trade negotiations. Later in this section, it is shown how this created challenges in the trade negotiations, especially with the growing participation of developing countries and their push for developed countries to make far-reaching concessions on agriculture.

Ostry (1997: 175) points out the reason for the delays in concluding the UR as the "leftovers of previous Rounds - the potholes and roadblocks such as agriculture, textiles, trade remedy rules, some sensitive tariffs and a range of non tariff barriers". She mentions that finishing the unfinished business is often difficult. These were issues which were not concluded in the previous Rounds of negotiations. The other reason the round took longer to conclude was the inclusion of the so called "new issues" that were demanded by the US. These new issues were services, intellectual property and investment. The US demanded that these negotiating issues be included in order to allow for ease of concession on agriculture. In order for the US to make concessions on agriculture they needed assurance that they could, in return, make some gains on these new issues.

Though the direction towards trade liberalisation of trade by reducing or eliminating border barriers was clear, the difficulty was that these barriers mainly involved domestic policies or domestic legal systems. For instance, negotiations of a multilateral trade agreement on trade facilitation require alignment of domestic customs or border procedures to the multilateral agreement. This implies that there will be adjustment costs incurred in member countries that could even include changes in domestic policies. This serves to promote deepening of integration and globalisation which was not necessarily the objective of these negotiations.

### **The World Trade Organisation**

It was only in 1994 that the ministers signed the final Act establishing the WTO and embodied the results of the UR. The WTO became formally operational as from 1 January 1995, and with 117 countries that were signatories.

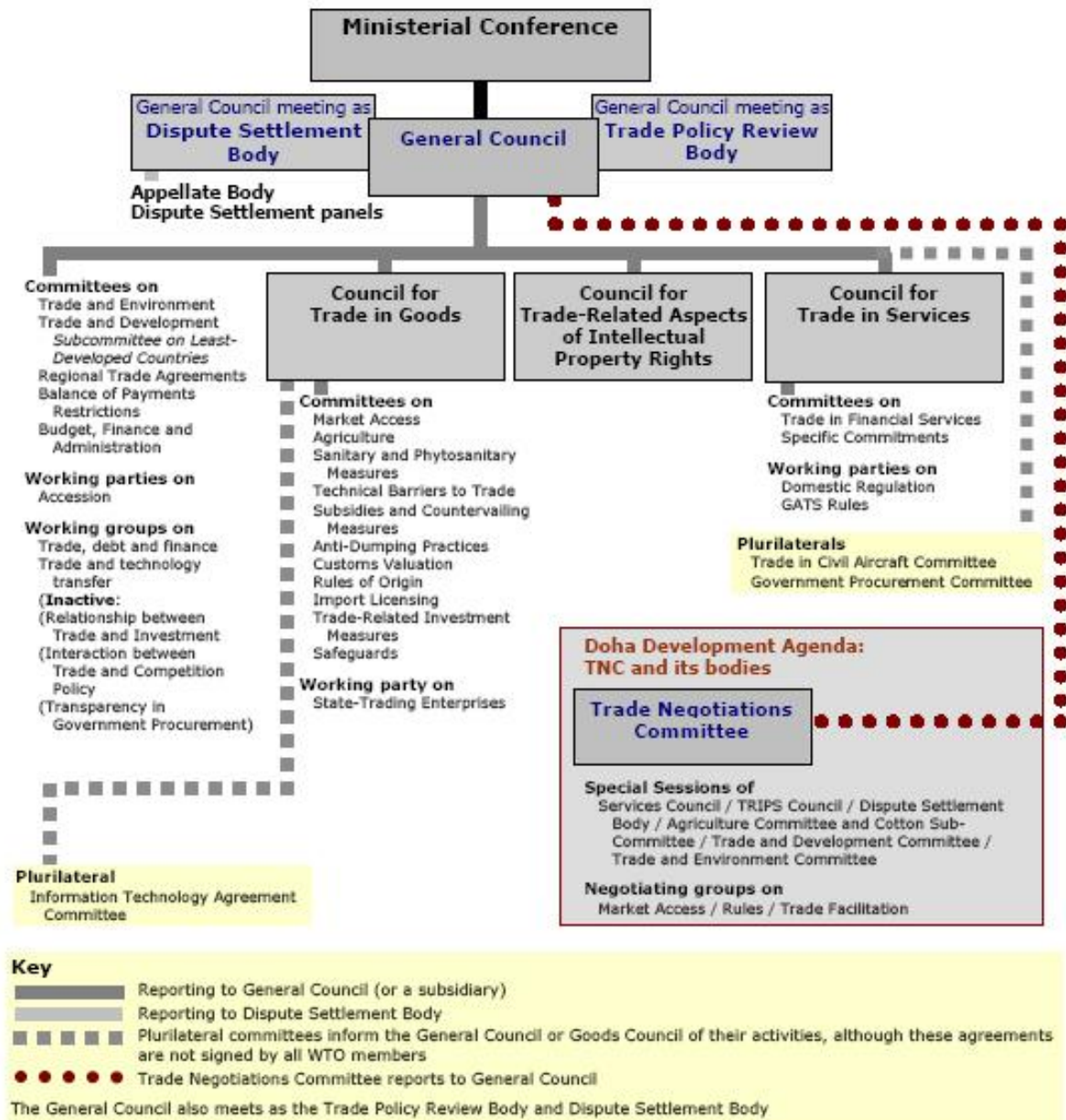
The WTO administers agreements that members negotiated and have agreed on. These agreements incorporate the GATT, the General Agreement on Trade in Services (GATS), Trade Related Aspects of Intellectual property (TRIPS), and other issue-specific agreements on anti-dumping, subsidies, import licensing etc. These rules apply to all WTO members. It further provides a forum for multilateral negotiations of trade related agreements.

### **The Structure of the WTO**

Comparatively, the WTO has a small secretariat with a limited budget, which means that it has to do more with limited capacities. The structure of the WTO is shown in diagram 1 below. The Ministerial Conference is the highest decision making body in the WTO. The GC reports to the Ministerial Conference, it is the highest decision making body in Geneva. It is represented by ambassadors from WTO members and it has the authority to act on behalf of the Ministerial Conference which only meets once in two years. The GC has 3 Subsidiary Councils which are: Council for Trade in Goods; Council for Trade Related Aspects of Intellectual Property (TRIPS); and Council for Trade in Services. These Councils comprise of various committees and

working groups. This paper focuses on the TNC, and more specifically on the market access trade negotiation groups that fall under the TNC. The TNC operates under the authority of the GC.

Diagram1. Structure of the WTO



Source: WTO

The highest authority of the WTO is the Ministerial Conference: all decisions are made by the membership as a whole either by ministers who meet at least once every two years, or by their ambassadors/ delegates who meet regularly in Geneva. The membership of the Ministerial Conference consists of all WTO members. It takes decision on all matters under any of the multilateral trade agreements. The second level of decision making is the GC, which meets either as the GC, or takes the form of the Dispute Settlement Body (DSB) or as the Trade Policy Review Body (TPRB).

All three are in fact the same meeting under different terms of references depending on the issue at hand, and they report to the Ministerial conference. At the third level the WTO has three councils: the Council for Trade in Goods (Goods Council), the Council for Trade in Services (Services Council) and the Council for Trade-Related Aspects of Intellectual Property Rights (TRIPS Council). These Councils are responsible for their respective areas of trade, they consist of all WTO members and they also have subsidiary bodies (Committees). There are other smaller bodies that report to the GC, they are referred to as Committees since the scope of their work is smaller but also consist of all WTO members. The subsidiary bodies dealing with plurilateral agreements do not consist of all WTO members but they keep the GC informed of their activities regularly (WTO: 2013).

The Subsidiary Councils deal with the administration and implementation of WTO agreements they enter into in “special sessions” under the TNC when negotiations are undertaken to negotiate new aspects of the agreement or to amend existing agreements. The Doha Development Agenda is overseen by the TNC, established in Doha November 2001 during the Ministerial Conference which launched the negotiations. It deals with negotiations normally undertaken in working groups and reports to the GC. It also convenes in special session when negotiations are taking place in these working groups which are: market access, development issues, WTO rules, trade facilitation, dispute settlement and environment.



Formally all these councils consist of the full membership of the WTO but officials participating in various councils and committees are not the same people because of different levels of seniority and different areas of expertise needed. Heads of missions in Geneva usually ambassadors represent their countries at the GC level. Diplomats stationed in Geneva will cover some of the meetings while governments send experts officials from capital cities to participate in highly specialised committee meetings (WTO, 2013).

The fourth Ministerial Conference held at Doha, Qatar, in 2001 produced as its outcome a Doha Declaration which also established the TNC and tasked it with creating subsidiary negotiating bodies to handle individual negotiating subjects. This trade negotiating Round is referred to as the Doha Development Agenda (DDA) as it was agreed in Doha that the objective was to improve the trade prospects of developing countries. What ultimately got many developing countries to agree to the launch of the Round was the reference to the development dimension as the intended outcome of the round. For them, this meant their development interests would occupy a pride of place in the Round. The Doha Ministerial Declaration which was developed in this process provided the mandate for negotiations.

The powers and duties of the DG are determined by members in the Ministerial Conference. In Doha it was agreed that the DG, Pascal Lamy, should also play a major role in the negotiating process. Therefore, the negotiations are overseen by the DG who then plays the role of the Chair of the TNC. In this research, the role of the DG is tested in the context of market access negotiations which are divided into Agriculture and Non-Agriculture (NAMA) negotiations. It was in this area that a possible trade off in market access issues could have led to the conclusion of the Doha Development Round in July 2008. As this thesis argues, the DG had a pivotal role to play in ensuring that outcomes are achieved satisfactorily if his role as a mediator was well-understood. Failure by the DG to perceive his role as that of a mediator led to the failure of the July 2008 Ministerial Meeting.

The TNC was established in Doha during the Ministerial Conference in November 2001, work continued in Geneva on the establishment of principles and practices that should govern its work and the work of the negotiating bodies. The DG was appointed as ex-officio Chair of the TNC until 01 January 2005 which was the deadline set for concluding the negotiations. The views of diplomats and delegates from the TNC meeting were that the naming of the DG as Chair of the TNC was an “exceptional arrangement” and not a precedent.

Developing countries, who included China and supported by the Africa Group and the Least Developed Country (LDC) group (groups within the WTO are elaborated later in this chapter), raised the issue that the WTO should take into account the systemic concerns of the DG assuming the chairmanship and the WTO Secretariat playing a role in the negotiations. They cautioned that these negotiations are an inter-governmental process and therefore in essence are supposed to be chaired by a government representative.

Some countries, such as the Philippines, insisted that the TNC should not interfere in the substantive discussions nor should it resort to the “friends of the Chair” (The US, EC, Japan and Canada) to facilitate or promote consensus; while the US indicated that Chairs of various bodies should be given “adequate flexibility”. The final language on principles and practices of the TNC indicated that “Chairpersons should reflect consensus, or where this is not possible, different positions on issues” (Raghavan, 2002).

### **The WTO Agenda**

The current agenda of the WTO extends well beyond tariff liberalisation (Hoekman and Kostecki, 2001). GATT was largely limited to agreements in tariff reduction, but as the Member’s average levels of tariffs were reduced over time, GATT focused more on Non Tariff Barriers (NTBs) and other domestic policies with impact on trade. These included, for example, trade facilitation, trade and environment, and competition policy. Limited progress was made during the UR, but the central feature

was that the progress was not so much in GATT but in the transformation of the multilateral trading system.

During this period, a shift in policy focus from border barriers to domestic regulatory and legal systems was also evident. Since most of these laws are not made public (not accessible to outsiders), a key element in any negotiation has been “transparency” (Ostry, 2007 book; 27). And the concept of the Single Undertaking was also confirmed. This concept means that nothing is ever agreed singularly in the negotiations unless the entire package of negotiating issues is agreed upon. Accordingly, when negotiations are launched this is done on the basis of a package of negotiating issues, and these cannot be picked apart and concluded without the rest being agreed upon. The basic principles between the old GATT and the WTO remained the same since they both operate by consensus and are member-driven to the extent that no negotiation can be concluded if not all members are in agreement, irrespective of the size of the country. However, the coverage of the WTO is wide.

According to Jawara and Kwa (2003: 7-8), other principles that the multilateral trading system is based on include: non-discrimination between members as trading partners, non-discrimination between the countries’ own products and imports, lowering of trade barriers over time through negotiations, predictability of trade rules, unfair trade practices should be discouraged and that the system should be more beneficial to less developed members by giving them more time to adjust, and that there should be greater flexibility and special privileges for developing countries.

In 2000 negotiations started on what was called the built-in agenda. It was so characterised to denote the fact that this agenda was determined at the end of the UR and covered issues that were excluded from liberalisation during the course of GATT, before the WTO came into effect. Essentially, this contained the unfinished business of the UR, and a continuation of the wheel of efforts to liberalise global trade through subsequent round of multilateral trade negotiations. Prominent amongst issues that constituted the built-in agenda were agriculture and services

negotiations. During the Doha Round, which was launched in November 2001, the focus appeared to have shifted from trade to development and the Common Agricultural Policy (CAP) of the EU became an issue in the negotiations. This time it was not just the US that had a concern about the EU's agricultural subsidies but developing countries also had an interest in this issue as their comparative advantage was largely in this economic sector.

### **Towards the Doha Round**

The first Ministerial Meeting after the establishment of the WTO was held in 1996 in Singapore. Ministers agreed to create working groups on trade and investment, trade and competition policy, and transparency in government procurement. They also agreed to undertake work on trade facilitation (Hoekman and Kostecky 2001: 37-40).

In a much publicised development, an attempt to launch a new Round of trade negotiations in Seattle failed in 1999. Developing countries were concerned that new negotiations would not be possible until the results of the Uruguay Round had been implemented. These became known as Implementation Issues over which they would be plenty of haggling between the developed and the developing countries. This Round could have confined negotiations within the built in agenda, which includes Agriculture and Services mandated during the Ministerial Meeting held in Geneva in 1998. All these issues were not resolved, which resulted in the meeting ending in a stalemate.

The Ministerial Meeting was further marred by demonstrations and riots, with NGOs protesting about various issues including the not so clearly defined role of the WTO in areas such as environment and labour (Wolfe 2004: 575). The proponents of these new issues (environment and labour) were mostly the developed countries, led by the US who was concerned that the lower environmental and labour standards were an unfair competitive advantage in many developing countries.

The Doha Round was eventually launched in 2001 in Doha, Qatar. This was the fourth Ministerial Conference where ministers agreed on a developmental mandate for negotiations. The DDA work programme was to place the needs and interests of developing countries at the heart of the work programme.

The Doha Round was launched amidst major disagreements. In preparation for and during the Hong-Kong Ministerial meeting in 2005 there were tensions over the liberalisation of Agriculture and Industrial goods known as NAMA. The manner in which the negotiations were organised aggravated tension among WTO members. Some of the points of tensions included but not limited to how consultations by the DG took place, especially as he engaged with a limited number of members; various meetings were held in parallel, thereby disadvantaging developing countries who had smaller delegations owing to resource constraints; the manner in which Chairs/Facilitators of meetings were appointed; the introduction of draft texts as the basis upon which members negotiate, but which were not widely agreed upon; and the use of tactics to force members to agree on positions they were sceptical of. In some instances such tactics included telephone calls by the DG to developing country capitals and sometimes with threats regarding the status of bilateral trade deals made especially by developed members to developing members (Wilkinson and Lee 2007 : 5). These problems were indicative of deeper challenges in the negotiating process. The next section discusses the general structure of the WTO, this will shed some light on the working of the WTO, more importantly on the TNC, an organ responsible for trade negotiations and chaired by the DG of the WTO. Table 1 below refers to various Ministerial Meetings which have taken place since the establishment of the WTO.

**Table1. WTO Ministerial Meetings**

<b>Ministerial Meetings</b>	<b>Year</b>	<b>Membership</b>	<b>Director General</b>
Singapore	9-13 December 1996	128 WTO Members	Mr. Renato Ruggiero (1995-1999)
Geneva	18-20 December 1998	133 WTO Members	Mr. Renato Ruggiero (1995-1999)
Seattle	30 November-03 December 1999	135 WTO Members	Mr. Mike Moore (1999-2002)
Doha	09-13 November 2001	143 WTO Members	Mr. Mike Moore (1999-2002)
Cancun	10-14 September 2003	146 WTO Members	Dr. Supachai Panitchpakdi (2002-2005)
Hong Kong	13- 18 December 2005	149 WTO Members	Mr. Pascal Lamy (2005-2013)
Geneva	21-29 July 2008	153 WTO Members	Mr. Pascal Lamy (2005-2013)
Geneva	30 November-02 December 2009	153 WTO Members	Mr. Pascal Lamy (2005-2013)
Geneva	15-17 December 2011	153 WTO Members	Mr. Pascal Lamy (2005-2013)
Bali	03-06 December 2013	159 WTO Members	Mr Roberto Carvalho de Azevedo

 Source: [www.wto.org](http://www.wto.org)

## Market Access Negotiating Issues

During the Doha Round, members were organised into different coalitions and very active in defending their positions. In market access, the negotiations centred on reduction of agriculture subsidies in developed countries and an increase in market access through a formula driven approach. This entails different commitments depending on the level of development of each member. A major achievement of the Ministerial Meeting in this area would have been to reach consensus on modalities for tariff reduction both in Agriculture and NAMA. The fact that the WTO membership is quite large and heterogeneous, and also that decisions are made by consensus rather than voting may make negotiations more difficult, while it may also give the smallest member the authority to object. Members are organised into coalitions and play an active role in developing proposals (Odell, 2009: 275). This section later identifies the alliances present in the WTO. These alliances are mostly aligned to specific trade negotiating issues, for example the NAMA-11 would be aligned to issues relating to NAMA. A brief overview of the negotiating issues is provided later.

The market access negotiating issues form part of the DDA which was launched in 2001, 21 subjects are listed mostly covering negotiations, implementation issues, analysis and monitoring under the following headings: Implementation related issues and concerns, Agriculture, Services, Market Access for Non-Agriculture products, Trade-Related Aspects of Intellectual Property Rights (TRIPS), Geographical Indications, Relationship between Trade and Investment, Interaction between Trade and Competition Policy, Transparency in Government Procurement, Trade Facilitation, WTO Rules, Regional Trade Agreements, Dispute Settlement Understanding, Trade and Environment, Electronic Commerce, Small Economies, Trade Debt and Finance, Trade and Technology Transfer, Technical Cooperation and Capacity Building, Least developed Countries, Special and Differential Treatment (WTO 2001: 1-9). However, this paper deals only with the market access issues namely Agriculture and NAMA.

In July 2004 a framework for negotiations (discussed in the next section) was developed which served as the basis for negotiations. In the negotiations on market

access members would be made to fall within one of several bands depending on the amount of domestic support offered to agricultural producers, the level of their bound duties in the tariff book and would then be bound by a different reduction/increase formula (Rolland, 2010: 95). Member States are categorised according to their level of economic development in order to allocate commitments that would not be onerous to them. For example, they would be grouped as developed, developing, and least developed countries. Most of the alliances formed by members also would follow the said categories unless there are issue based as in the Cairns Group where the alliance was based on an interest in agricultural exports. In the July 2008 Ministerial meeting a possible trade off seemed to be emerging between cuts in subsidies for some developed country and improved market access in developing countries.

Reduction of subsidies in agriculture referred to as agriculture reform in developed countries was one of the important issues for developing countries, they complained that developed countries sell their produce at low subsidised prices in world markets, which resulted in unfair competition as developing country producers could not compete against the surplus agricultural goods that the developed countries produce (Fergusson, 2011: 11).



## WTO Members: Most Active Groups and Alliances in Market Access Negotiations

In order to increase their bargaining power, WTO members form coalition/alliances; some countries tend to be members of more than one coalition depending on their position on a negotiating issue. The coordinators of these groups are normally invited to informal consultations by the DG or any other member wishing to consult; the coordinator of a coalition group will take responsibility to keep the members of the coalition informed and to take the position negotiated within the alliance.

This helps the smaller members to keep abreast of developments in consultations that include only a few members. The formal meetings that include all members are used as forums for exchanging views, putting country positions on record and ultimately for confirming decisions. The aim of the WTO Secretariat is that a breakthrough achieved among a few members can be acceptable to the rest of the membership. At the end, decisions are to be taken by all members on consensus (WTO, 2013). This section gives details only of the most active alliances/groups/coalitions in the negotiations on market access, there are other actors which feature from time to time in these negotiations, however; these actors have divergent interests and they play an important, active role in the negotiations.

All 153 members of the WTO participate in the TNC. The TNC convenes in informal mode to discuss negotiating issues. However, the view from the WTO Secretariat is that it tends to be too big as a forum for real negotiations. Therefore, smaller groups are consulted informally and when formal decisions have to be made the TNC convenes in formal session. Members are often organised in negotiating groups to discuss such issues. Narlikar (2012: 185) differentiates between bargaining coalition (a group of decision makers participating in a negotiation, who agree to act in concert to achieve a common end) and a consensus building coalitions (key players representing diverse and often opposing positions who often come together to try to find a middle ground). There are also groups of countries bound together as regional economic communities and regional trade agreements, these served as a springboard for collective bargaining in the GATT and the WTO.

**The EU** is a Group of 29 Member States, officially referred to as the European Communities (EC) is a Member of the WTO as are all Member States individually. It always speaks as one, though individual Member States hold seats in meetings (WTO, 2005). The EU's approach in the DDA Round was ambitious; they wanted wide ranging negotiations that would include the issues which were left unresolved from the last round, new issues. However, they viewed the DDA as being overly ambitious with the reduction of agricultural domestic support, the political sensitivity of the CAP presented a problem for the EU. By broadening the negotiating agenda, the EU hoped to secure benefits in other areas of negotiations to offset the political costs associated with concessions on agriculture. The EU agreed to CAP reforms as a result of internal pressure (the British, Dutch and Swedish governments wanted reforms) they framed this as a development issue and the need to move the Round forward. These reforms were more on changing the modalities of the EU subsidies rather than reducing them and did not apply to sensitive sectors like sugar, cotton, olive oil and tobacco. In NAMA the EU had a few tariff peaks and a higher average tariff than the US; therefore it favoured a formula that implied steeper cuts in high tariffs (Young 2007: 123-128).

As a result of low savings and fiscal deficit, the **US** experienced massive increase in trade deficit in the 1980s. The norm has been to blame unfair trade practices on the rest of the world and thereby pursuing aggressive market opening strategies in GATT and in bilateral engagement so that outcome would be skewed towards the US interests. This has also been the case in the late 1990s and 2000s; as a result the US negotiators did not have much to offer in concessions. It would be difficult for the US Congress to approve an agreement that offers a development outcome when much of the US trade deficit is with developing countries especially China, since some blame has been laid on the Chinese undervalued exchange rate. The US Congress expected that the trade rounds of negotiations would provide improvement in market access for the US in industrial products especially from developing countries that have higher average tariffs and to redress the perceived unfair trade practices of other countries. It is not in the US interest to redress the imbalances of

the previous GATT Rounds neither to ensure a developmental outcome (Scott 2007: 114). In previous negotiating Rounds the developed countries were able to secure special provisions for themselves like the waiver for Agricultural Support Programmes. This has been one of the issues of interest to developing countries.

The **US**, **EU** and **Japan** often form a coalition on issues of interest to them; especially where they share a common position often contrary to developing countries. The term “Developed Countries” often refer to them, though not necessarily limited to them.

**Developing Countries** have continued to form bargaining coalitions since the Uruguay round. Narlikar (2012: 186-187) recalls that coalition diplomacy has been a characteristic of the United Nations Conference on Trade and Development (UNCTAD), though the WTO had not come to acknowledge the reality that coalitions existed and can have a powerful voice. They have become fundamental to the working of the WTO. In the GATT, developing countries were powerful as their developed counterparts due to the consensus norm of decision making, however, in practice most decisions were actually made under “the shadow of power” where large economies were used effectively as invisible weighting of votes. Pulling together their economic power through coalitions offered developing countries a greater collective voice. In Doha, the role of developing countries changed as they agreed on a new Round, they had previously indicated that they will not support another Round of trade negotiations unless their interests are included in the agenda. Therefore, developing countries played a major role in setting the plan of action (Fergusson, 2006: 3). They continually had to guard against the inclusion of new issues into the WTO agenda and ensure that any new Round will address the problems of implementation from the UR and ensure a developmental outcome. However, it became clear that the interests of developing countries were different largely due to their level of liberalisation, hence the formation of different coalitions like the middle ground group.

**Middle Ground Group**<sup>2</sup>: This group is composed of developing countries mostly from Asia; they acted between the NAMA-11 and the Developed Countries by proposing compromises mostly on NAMA issues. The commonality among this group is the low tariffs and the low level of sensitive product lines in their tariff structure; hence they were able to concede on issues that the NAMA-11 could not compromise on.

**The NAMA-11**<sup>3</sup> is a group of Developing Countries led by South Africa on issues of Non-Agriculture Market Access. These countries seek flexibility by designating a percentage of their tariff lines as sensitive. This serves to limit market access opening for various reasons which are related to industrial development and economic growth in their economies.

**The G20**<sup>4</sup> This is an agriculture grouping of developing countries with offensive and defensive interests; their emphasis is on ambitious reforms (reductions) of agriculture subsidies in Developed Countries, greater liberalisation on agriculture trade and flexibility for developing countries. The objective of this group was to defend an outcome in the agriculture negotiations which would reflect the level of ambition of the Doha mandate and the interest of developing countries. They have been opposed to the EU and US approach to safeguard the agriculture subsidy regime while pushing for new issues to be discussed (Taylor 2007: 156-157).

**The G33** is known as “Friends of Special Products” this is a group of defensive developing countries pressing for flexibility for developing countries to undertake limited market opening in agriculture. These are proponents of the Special Safeguard Mechanism (SSM) to protect poor farmers from a surge in agriculture imports in their economies. They found that the SSM provided as the outcome of the

---

<sup>2</sup> Chile, Colombia, Costa Rica, Hong Kong, Mexico, Peru, Singapore and Thailand.

<sup>3</sup> Argentina, Brazil, Egypt, India, Indonesia, Namibia, Philippines, South Africa, Tunisia and Venezuela.

<sup>4</sup> Argentina, Bolivia, Brazil, Chile, China, Cuba, Ecuador, Egypt, Guatemala, India, Indonesia, Mexico, Nigeria, Pakistan, Paraguay, Peru, Philippines, South Africa, Tanzania, Thailand, Uruguay, Venezuela, Bolivian republic, Zimbabwe.

negotiations in the informal group was inadequate and did not accept a deal at the July 2008 Ministerial Meeting.

**The Cairns Group**<sup>5</sup> represents a group of agriculture exporting countries, lobbying for agriculture trade liberalisation in Developed Countries.

**The Group of 7**<sup>6</sup> (**G7**) was formed by the DG and it involves the most influential members of the WTO, it also serves as a consensus building coalition. This group played a vital role during the July 2008 Ministerial Meeting in trying to broker a deal as shown in the next chapter.

**30 participants**<sup>7</sup> **in the Green Room:** Selection of this group ensured that the full spectrum of member's views and interests were represented. However the DG indicated that where a solution has to be found i.e. the G7 would be necessary to provide solutions that would provide a way forward to the negotiations (Ahnliid, 2011: 73). The group is often criticised by the WTO members who would not qualify for inclusion citing that the outcome of the group would have to bind members who have not been party to the negotiations in this group. China, Brazil and India are viewed to represent the views of a large membership of developing countries. Japan and Australia are set to represent members with a defensive view in agriculture. Ahnliid (2011) views China, India and Brazil as strong developing country members who challenged the supremacy of the EU and the US during the Doha Negotiations.

**The Least Developed countries (LDCs)** as designated by the United Nations (UN) are the World's poorest countries.

---

<sup>5</sup> Argentina, Australia, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Guatemala, Indonesia, Malaysia, New Zealand, Pakistan, Paraguay, Peru, Philippine, South Africa, Thailand, Uruguay.

<sup>6</sup> EU, US, Japan, Australia, Brazil, India and China.

<sup>7</sup> Argentina, Australia, Bangladesh, Brazil, Canada, Chile, China, EU, Egypt, Hong Kong China, India, Indonesia, Japan, Korea, Lesotho, Malaysia, Mauritius, Mexico, Morocco, New Zealand, Norway, Pakistan, Philippines, Singapore, South Africa, Switzerland, Chinese Taipei, Thailand, Turkey, United States and Uruguay. According to the WTO about 40 Countries were represented in the Green Room during the July 2008 Ministerial Meeting.

The **Africa Group** represents all African WTO members. The LDCs and the Africa Group are not issue based but focus on the distinctive and specific issues that affect the members, for instance the LDCs concern in the WTO negotiations is the potential for existing trade preferences to be eroded by tariff reduction commitments in the DDA. Generally Africa has been marginalised in multilateral engagements. The WTO is one of the Multilateral Institutions where Africa can project ideas regarding development and actively participate in trade negotiations though in a limited way. Lee (2007: 139) states that the characteristics of economic diplomacy in the WTO and UNCTAD contrast sharply with characteristics of economic diplomacy in the G8, G20 (financial grouping) and the World Economic Forum (WEF) where African countries continue to play a limited role, if any part, in the negotiations, though development is part of the agenda. In the WTO the Africa Group coalition has ensured that Africa has at least the opportunity to influence decisions affecting the continent's development. This is important to the strategic and economic interests of Africa.

The coalitions discussed in this section and other coalitions existing in the WTO tend to influence the manner in which negotiations are undertaken and the workings of the WTO in general. Ministers agreed that the outcome of negotiations will be a single undertaking i.e. nothing is agreed until everything is agreed. At the end of the negotiations, members are expected to reach a comprehensive agreement which is a single package of multilateral commitments. This has been the modality for trade liberalisation in the WTO (Rolland, 2010: 66). Therefore, Consultation with all Member States through coalitions or representatives of groups is important to ensure that concerns of all members are considered in order to have a conclusion of a negotiating Round. Narlikar (2012:196) states that coalitions have moved from the periphery of the organisation into its core, with the potential to improve the efficiency of the negotiation process and make a contribution to the institutional development of the WTO. Though the coalition structures could also be reformed not only to stand firm on their positions but also to find a way build consensus, this issue is not a matter of discussion in this paper but as Hoekman (2012: 769) states: the structural

reform of the WTO is an issue that a wide spectrum including ex-WTO officials, negotiators, and a significant cross section of academics have been calling for.

### **Structural Reform in WTO**

With the launch of the Doha Round the DG was appointed to Chair the TNC, to oversee multilateral trade talks. However, his role was not defined as a result the preceding DGs spent their time and conducted consultations in different ways. In 2003 Dr Supachai put together a consultative board, chaired by Sutherland to examine the WTO and clarify the institutional challenges that the global trade system faced including the role played by the DG in trade negotiations and to consider how the WTO could be re-enforced and equipped to meet them.

All councils, committees and negotiating groups are chaired by a WTO member. The only exception is the TNC, which is chaired by the DG. The DG does not have a defined role in the agreement establishing the WTO. His role has been left to the Ministerial Conference to determine (Hoekman 2012: 747). Though the establishment and procedural issues of the TNC were disputed in Doha, not much has been done to give clarity to the role of the Chair of the TNC.

Proposals for reform in many aspects of the WTO have been made, including on the consensus practice and the single undertaking. Hoekman (2012: 769) indicates that changes have been made in other areas; however, there are strong reasons why these practices have become core WTO operating principles. However, the chairing of the TNC by the DG cannot be regarded as core principle as this has been a contested issue in the history of the WTO.

The WTO process is driven by Member States, the role of the WTO Secretariat in driving the process has not been considered carefully. Though members are more interested in outcome, the manner in which the structure operates has an impact on

the outcome. Process and substance are inextricably linked; Cottier (2007) refers to this as substance-structure pairing.

The structural debate at the WTO is long overdue; it has not been given attention though the agenda of trade negotiations has become complex. The nature of GATT and WTO negotiations focused more on tariff reduction, and this has made substantial contribution to opening markets and economic growth; however the same structure cannot be maintained for other trade related issues such as NTBs.

The Warwick Report (2007: 10) discusses challenges facing the World Trading System, one of which is defining the contested boundaries of the WTO for example; the important issue for developing countries is the reduction of agriculture domestic support in developed countries while of equal importance for developed countries is the reduction of industrial tariffs in developing countries. Added to that is the agenda on negotiations of trade rules and the trade related policies “Singapore Issues” that emerged during the Doha Ministerial Meeting. This raises important questions about the remit of the WTO and the manner in which the interests of all its members are retained.

This chapter has demonstrated that as the WTO membership has been increasing over the years, trade issues become complex. A defined role of the TNC Chair can assist in bringing about improvements in the structure and process of negotiations. Bernal (1999: 77) indicates that reforming the institutional structure and decision making process which ensures a balanced and adequate representation of members are matters that the DG should turn his attention to as a matter of urgency, he further states that there needs to be some decision making mechanism which stands between the chairing country, the DG and the membership. The next chapter on the case study of the July 2008 Ministerial Meeting shows how these issues including the undefined role of the DG might have been the reason for the failure of this meeting.



## Chapter 4 - The Case Study of the July 2008 Ministerial Meeting from 21 July to 29 July 2008

### Introduction

The purpose of the July 2008 ministerial meeting was to agree on modalities for Agriculture and NAMA. As such, it was regarded as the last effort to save the negotiations on the DDA. The DG, Mr Lamy was of the view that an agreement on modalities for Agriculture and NAMA would have accomplished almost 80% of the DDA objectives. There were other important issues within Agriculture and NAMA in the negotiating text issued on 10 July 2008 which were not on the agenda of the 2008 Ministerial Meeting, for instance the issue preference erosion for members who benefit from market access into developed country markets under the Generalised System of Preferences (GSP) and flexibility for the Southern African Customs Union (SACU) and also for the South America trade block - MERCOSUR. This chapter only discusses those agenda items which were the outcome of this Ministerial Meeting in Agriculture and NAMA, these outcomes were the content of the of the July 2008 package known as the Lamy package.

These outcomes document was called the Lamy package because these were proposed compromises from the Ministerial Meeting which was chaired by the WTO DG – Mr. Lamy. This package was not classified as a formal WTO document but circulated as a working document at the informal TNC attended by the WTO membership. This chapter relies on the statement presented by the DG to the TNC with regards to the outcome of the ministerial meeting and the subsequent comments and reviews by media and research institutions.

The Ministerial Meeting was composed of about 30 – 40 ministers who were invited to the ministerial meeting out of a total membership of 154 in 2008, however the Lamy 2008 Package emanated from a meeting of seven Ministers and DG Lamy. Khor (2008: 36) observed that there has never been a public list of the Ministers invited, nor the criteria for their selection, nor how they were invited or by whom. For

the first 2 days of the ministerial meeting negotiations took place in the green room of the WTO with all 30 Ministers invited but as no progress was evident in these meetings, DG Lamy created an inner group of seven Ministers, these were: the US, European Union, Brazil, India, China, Australia and Japan. The rest of the Ministers were kept waiting, however, all members were normally invited to the informal TNC meeting each morning only to air their views and comments on the continuing negotiations on modalities in Agriculture and NAMA. Despite being invited to the meeting, the Ministers were kept in waiting while only the group of seven Ministers negotiated. The discontentment with the process by the Ministers posed a weakness in the process of negotiations. If this process was well understood as a mediation process, the role of the Ministers and the concerns they raised would have to be considered by the mediator.

This chapter provides an account of the negotiating issues in Agriculture and NAMA by way of comparing the text used as the basis for negotiations during the ministerial and the text that was produced as a result of negotiations in the ministerial meeting. In doing so, it is important that a background to the process and an understanding of the mandate to the WTO members as tabled in the July 2004 framework should be unpacked. This forms the basis that give content to these negotiations as outlined briefly in the next subsections.

## **Background**

The July 2004 Framework which was adopted by the General Council on 1 August 2004, reaffirmed the decision taken at Doha in 2001 with regard to negotiations in Agriculture, NAMA and other areas; and the members commitments to give effect to such decisions. During the 2005 Ministerial meeting in Hong Kong members made commitments to give effect to the 2004 framework. On the spotlight in the agriculture negotiations were the EU export subsidies and the US cotton subsidies.

The EU offered a date of 2013 for the end of export subsidies, however the G20 represented by Brazil demanded a defined figure by 2010 which the EU indicated

that it will be progressive and achieved in substantial part by the end of the first half of the implementation period. The US indicated that there should not be an explicit decision on cotton but that the issue should be dealt with as part of the overall agriculture negotiations. The subsidies on cotton are regarded as having the most distortions in world trade, the offer at the Ministerial Meeting was that export subsidies for cotton would be eliminated by 2006 and trade-distorting domestic support reduced more ambitiously than the general formula agreed for in agriculture. However, when the second revision of the Ministerial draft declaration was presented, “will” was replaced by the best endeavour language of “should”, the commitment was transformed to a less binding language (Muralidharan 2005: 5450-5451).

The watered down commitments by developed countries did not offer much as a result the 2005 Hong Kong Ministerial still did not deliver on the development agenda that was envisaged. The developing countries only succeeded in standing firm and speaking in one voice to ensure a developmental outcome in the future. The next sections discuss the issues in market access namely Agriculture and NAMA as they were taken to the following Ministerial Meeting in 2008, this ministerial serves as the case study for this paper.

## Overview of the July 2004 Framework

### Agriculture

The framework of the Agriculture negotiations is built on the long-term objective of the WTO Agreement on Agriculture to establish a fair and market-oriented trading system through a programme of fundamental reform and to incorporate operationally effective and meaningful provisions for special and differential treatment for developing country members. This entails a system that would provide reforms while ensuring that there is flexibility in the concessions offered by developing countries and that commitments undertaken can be implemented in the domestic economies. Agriculture is of critical importance to the economic development of developing country members as they pursue agricultural policies that are supportive of their

development goals, poverty reduction strategies, food security and livelihood concerns (WTO, 2004: 1 (WT/L/579)).

One of the pillars in the Agriculture negotiations is the negotiations on cotton; the GC recognised the importance of cotton for a number of Developing Country producers and indicated that it should be expeditiously and ambitiously addressed. The four West African cotton producing countries who formed a coalition and called for cuts in cotton subsidies are Benin, Burkina Faso, Chad and Mali. However, the issue of cotton will not be addressed in this paper as it is of marginal importance to the core theme of the research, only the 2 pillars in agriculture negotiations which are tariff reductions and reductions in domestic support referred to as Overall Trade Distorting Domestic Support (OTDS) are discussed.

Box 1.

On OTDS, the WTO Framework (2004) states that the Doha Ministerial Declaration calls for "substantial reductions in trade-distorting domestic support". With a view to achieving these substantial reductions, the negotiations in this pillar will ensure the following:

- Special and differential treatment remains an integral component of domestic support. Modalities to be developed will include longer implementation periods and lower reduction coefficients for all types of trade-distorting domestic support and continued access to the provisions under Article 6.2.
- There will be a strong element of harmonisation in the reductions made by developed members. Specifically, higher levels of permitted trade-distorting domestic support will be subject to deeper cuts.
- Each such Member will make a substantial reduction in the overall level of its trade-distorting support from bound levels.
- As well as this overall commitment, Final Bound Total AMS and permitted de minimis levels will be subject to substantial reductions and, in the case of the Blue Box, will be capped as specified in paragraph 15 in order to ensure results that are coherent with the long-term reform objective. Any clarification or development of rules and conditions to govern trade distorting support will take this into account.

Developing countries view the reforms in agriculture as very important in these negotiations. The DDA called for substantial reduction in trade distorting domestic support in agriculture. The cuts in the level of subsidies provided in Developed Countries are to be made progressively such that higher levels of subsidies will experience deeper cuts than lower levels. This means that sectors with high subsidies will be cut by a higher percentage than sectors with low subsidies. Developed Countries agreed to cut domestic support programs using a three band methodology. As the largest user of domestic agricultural subsidies, the EU was placed in the highest band. The US and Japan were placed in the second band and

lesser subsidizing countries were placed in the third band. However, the actual percentage cuts that these bands represent remained subject to negotiations (Fergusson, 2011: 11).

**For tariff reduction a Single Approach: Tiered Formula**, is to be used to ensure that developed and developing country members meet all the objectives of the Doha mandate, the formula takes into account their different tariff structures. The July 2004 framework commits members to “substantial improvements in market access for all products” (for example some have tariffs that vary widely from product to product, others have more homogeneous rates), and it spells out key principles for the formula, aimed at expanding trade substantially.

The **Single approach** meant all members except least-developed countries have to make commitment in market access for all products. **Tiered and progressive**; the formula will be based on tiers or bands so that tariffs in higher tiers have steeper cuts. **Reductions from bound rates**; the bound rate is the tariff ceilings that members have committed in the WTO, rather than the actual or applied rates. Developing Countries are to be given special and differential treatment while for **sensitive products** - all countries (developed and developing) are to be allowed some flexibility in tariff reduction and treatment of these products.

Developing Countries will also be able to designate **Special Products (SPs)** for more flexible treatment on the basis of food security, livelihood security and rural development needs. However, it is not clear as to what constitutes concepts such as ‘livelihood security’ and how such criteria can be linked to special products category. A **Special Safeguard Mechanism (SSM)** to guard against import surges will be established for use by developing countries (Kalenga, n.d : 3).

The Framework further provided that LDCs, will have full access to all special and differential treatment provisions above, and are not required to undertake reduction

commitments. Developed members, and developing country members in a position to do so, should provide duty-free and quota-free market access for products originating from least-developed countries.

### **Non-Agriculture Market Access (NAMA)**

Annex B of the Framework (2004) contains the elements for future work on establishing modalities to reduce or as appropriate eliminate tariffs, including the reduction or elimination of tariff peaks, high tariffs, and tariff escalation<sup>8</sup>, as well as non-tariff barriers, in particular on products of export interest to developing countries through the use of a **Swiss Formula**. The Swiss Formula is a non linear tariff reduction formula applied on a line by line basis. The tariff cuts are calculated from bound rates, i.e. a legal commitment by a Member that tariffs cannot exceed, however, coefficients to be used in the formula are still the subject of negotiations.

Other elements of the mandate in NAMA relate to the issues concerning the treatment of unbound tariffs, the flexibilities for developing-country participants, the issue of participation in the sectoral tariff component and the preferences. Only issues which were subject to a possible trade off in the July 2008 Ministerial Meeting are explained in this document. These are: Flexibilities for developing countries, Anti-concentration clause and Sectorals.

**Flexibility for Developing Countries:** In the framework (2004), WTO members acknowledged that the use of the Swiss formula should take fully into account the special needs and interests of Developing and Least-Developed Country participants, including through less than full reciprocity in reduction commitments. The differentiated coefficients between developed and developing countries including longer implementation periods would ensure that Developing countries would offer less concessions and would also offer less than formula cuts for a certain

---

<sup>8</sup> Tariff peaks are regarded as tariff rates of above 15% and tariff escalation is the practice of increasing tariffs as value is added to a commodity.

amount of their tariff lines, some developing countries would keep a certain percentage of tariff lines unbound or not apply formula cuts for a certain percentage of tariff lines. This provision is referred to as the Paragraph 8 flexibilities.

The **Sectorals** elimination of tariffs for specific members, who forms a critical mass (simple majority) of producers and exporters of products in specific sectors, was recognised by the Framework as a possible area for negotiations. The aim is the elimination or harmonisation of tariffs in specific sectors. The GC instructed the Negotiating Group to pursue its discussions on such a component, with a view to defining product coverage, participation, and adequate provisions of flexibility for developing-country participants.

The concept of **Anti-Concentration Clause** was introduced by the developed countries led by the US and the EU; it states that the flexibilities available to developing countries shall not be used to exclude full chapters of the Harmonised Tariff Schedule from full formula reductions. This served to complicate negotiations as it was not part of the Framework but introduced at a late stage in the negotiations. Developing countries were opposed to expanding the clause to cover full chapters of the tariff book.

**On Non-Tariff Barriers (NTBs)** the Framework (2004) recognises that NTBs are an integral and equally important part of these negotiations and instructed participants to intensify their work on NTBs. All participants are encouraged to make notifications on NTBs and to proceed with identification, examination, categorization, and ultimately negotiations on NTBs. NTBs encompass issues in areas such as import licencing, quotas, import restrictions, conformity assessment procedures and technical barriers to trade.

The background to the negotiations and the July 2004 Framework provided in this chapter enables an understanding of the comparison of the negotiating texts and the



subsequent failure of the July 2008 Ministerial Meeting. The next section provides an analysis of the texts by way of a comparison of the text that formed the basis for the negotiations and the text that was an outcome of the negotiations from the Ministerial Meeting known as the Lamy Package.

### **A comparison of the 10 July 2008 text and the Lamy package**

When the talks collapsed there were a number of outstanding issues. Much of media attention was focused on agriculture and more specifically on issues that relate to the SSM. The SSM is a mechanism that should be made available to developing countries and triggered in cases of a surge in imports and swings in international prices of agricultural products. Outstanding issues on the agenda of the G7 were as follows: **Agriculture** – SSM, agriculture subsidies and Cotton subsidies; in **NAMA** – coefficients for tariff reductions, flexibilities for developing countries, anti-concentration and sectorals. This section will show how the interests of developed countries were catered for in the final text crafted by the DG, though not agreed in the negotiating groups. Some of these developed countries proposals were introduced at the last minute, and not adequately discussed by members.

A comparison of the text that was produced by the Chairs of the negotiating groups (10 July) and the compromise text by DG Lamy (25 July) is done in this chapter. The latter text is known as the Lamy Package; it was not given a document classification number but was distributed widely to WTO members. The July 10 texts produced by the Chairs of the agriculture and NAMA negotiating groups were imbalanced within themselves and in relation to each other and were viewed as being unfair to developing countries. The view from members was that the DG Lamy text was more biased considering what developing countries would concede compared to what they would gain. The next section provides a brief analysis of the compromise introduced by the Chair to the main issues during the Ministerial Meeting.

In the run up to the ministerial meeting as the negotiating text was negotiated, members often indicated what their views were not adequately reflected on the

negotiating text. Raja (2008: 3) provides an analysis of the preliminary reactions expressed by the G20 and the G33, while the groups show appreciation that some of the architecture and position of developing countries were incorporated into the text, however, the important elements of the text remain inadequately addressed and of great concern. Developing countries cautioned on the constant accommodation of developed countries' sensitivities and indicated that this will have a price on the level of ambition. They further called for a fair and balanced solution to the outstanding negotiating issues.

### Agriculture

This subsection provides a comparison of the texts in Agriculture. According to the (WTO, 2008: 2) the reductions in OTDS were to be applied according to the Tiered Formula reduction in the following way:

- (a) where the base OTDS is greater than US\$60 billion, or the equivalent in the monetary terms in which the binding is expressed, the reduction shall be [(75) (85)] per cent.
- (b) where the base OTDS is greater than US\$10 billion, and less than or equal to US\$60billion or the equivalent in the monetary terms in which the binding is expressed, the reduction shall be [(66) (73)] per cent.
- (c) where the base OTDS is less than or equal to US\$10 billion, or the equivalent in the monetary terms in which the binding is expressed, the reduction shall be [(50) (60)] per cent.

The square bracket indicated that the percentages are still up for negotiations. For the US the allowable ceiling for OTDS was US\$48.2billion. Lamy proposed a cut of 70% from this ceiling, which would result to US\$14.8billion. The US was prepared to agree to land at US\$15billion while India and Brazil had indicated that the US should at least reduce to US\$12billion. This was still far more than what the US was actually providing by way of subsidies; in 2007 the applicable/actual spending on OTDS was US\$8billion. This meant that the US could still have the flexibility to increase its OTDS to any level up to US\$14.8billion (Kaushik, Kaukab and Kumar 2008: 2)

Over and above this the US still attached conditions to this compromise. Kaushik, Kaukab and Kumar (2008: 2) state that the US wanted a “peace clause” on their trade distorting agricultural subsidies; this means that they needed an assurance that they will not be subjected to legal challenges arising from the demands to reduce these disciplines further. Furthermore, the developed countries wanted market access in NAMA and services particularly from emerging developing countries like India and Brazil. In market access for agriculture, Lamy proposed percentages between the two square bracketed figures; for example 70 percent was chosen as against the two square-bracketed figures of 66 percent and 73 percent.

The July 10 Text states that the **SSM** shall be invoked for all tariff lines. A price and volume based SSM shall be available, however a product cannot be subjected to a simultaneous application of price and volume based safeguards. Nor shall there be application of either of these measures if an SSG, a measure under GATT Article XIX, or a measure under the Agreement on Safeguards is in place.

A volume based SSM shall be applied on the basis of a rolling average of imports in the preceding three-year period (base imports) the 10 July 2008 texts sets the applicable triggers and remedies. Kaushik, Kaukab and Kumar (2008: 2) state that the DG Lamy package proposed that developing country members would be able to exploit extra remedies under the SSM only when import volumes surge by 40percent or more. This remedy would be applicable with a ceiling of 15percent current bound rates or by 15percent ad valorem points, whichever is higher. This could be invoked on a maximum of 2.5percent of tariff lines per year.

The G-33 warned that this could be a deal breaker. They had previously proposed that the use of the SSM would start at 10percent surge of import volumes, applicable with up to 30percent current bound rates or 30percent ad valorem points above the current bound rates. Accordingly, this would be invoked on 7percent of tariff lines for the remaining 93percent of tariff lines, and remedies would be added to post-Doha bound rates rather than applied rates, and in a way that does not breach pre-Doha

tariff ceiling. The G-33 urged that the members should discuss these issues with the interest of delivering a truly developmental outcome (G-33, 13: 14).

### **Non Agriculture market Access (NAMA)**

In NAMA four issues were covered by the DG Lamy package of July 2008. These were: Coefficients for tariff reductions; Flexibilities for developing countries; Anti-concentration Clause; and the Sectorals. On these issues the DG Lamy package relied on compromises already made by the Chair of the NAMA negotiating group.

On **Coefficients for tariff reductions<sup>9</sup> and flexibilities for developing countries** the DG Lamy package provided a middle ground on coefficients which were already in the 10 July 2008 text. The text proposed a coefficient between 7percent to 9percent for developed members; the package fixed a coefficient of 8percent for such.

For Developing Countries subject to the formula, the provision is provided in paragraph 7 of the 10 July text states as follows:

7. Developing members subject to the formula shall be granted the flexibility to choose to apply the coefficient and flexibilities in paragraph 7(a) or 7(b) or 7(c).
  - (a) Coefficient X in the formula and either:
    - (i) less than formula cuts for up to [12-14] percent on non-agricultural national tariff lines provided that the cuts are no less than half the formula cuts and that these tariff lines do not exceed [12-19] percent of the total value of a member's non-agricultural imports; or
    - (ii) keeping, as an exception, tariff lines unbound, or not applying formula cuts for up to [6-7] percent of non-agricultural national tariff

---

<sup>9</sup> Tariff reductions for industrial products are made using a simple Swiss formula, a coefficient is negotiated and plugged into a formula. It narrows the gap between high and low tariffs, known as harmonizing tariffs. A high coefficient will result in moderate reductions in tariffs whereas a low coefficient will result in sharp reduction of high tariffs in a member's tariff profile.

lines provided they do not exceed [6-9] percent of the total value of a Member's non-agricultural imports<sup>10</sup>.

(b) Coefficient Y in the formula and either:

- (i) less than formula cuts for up to 10 percent on non-agricultural national tariff lines provided that the cuts are no less than half the formula cuts and that these tariff lines do not exceed 10 percent of the total value of a member's non-agricultural imports; or
- (ii) keeping, as an exception, tariff lines unbound, or not applying formula cuts for up to 5 percent of non-agricultural national tariff lines provided they do not exceed 5 percent of the total value of a Member's non-agricultural imports<sup>11</sup>.

(c) Coefficient Z in the formula without recourse to flexibility.

The coefficients were provided as follows:

$x = [19-21]$ ,  $y = [21-23]$ ,  $z = [23-26]$  to be determined as provided in paragraph 7.

The Lamy package fixed coefficients of  $x = 20$ ,  $y = 22$  and  $z = 25$  for developing countries with flexibilities of 14 percent, 10 percent and zero in the numbers of lines of products respectively. Members were to choose one of the three options.

The following provision on the **Anti-concentration clause** was provided in the 10 July text: The flexibilities provided under paragraph 7 shall not be used to exclude entire HS chapters. In order to ensure tariff reduction in every chapter, without substantially limiting the flexibilities provided to developing members, this provision shall be understood to mean that full formula reductions shall apply to a minimum of

---

<sup>10</sup> It is understood that the options in sub-paragraph 7(a)(ii) (keeping tariff lines unbound or not applying formula cuts) may be combined but cannot together exceed the applicable percent of tariff lines and total value of a Member's non-agricultural imports.

<sup>11</sup> It is understood that the options in sub-paragraph 7(b)(ii) (keeping tariff lines unbound or not applying formula cuts) may be combined but cannot together exceed the applicable percent of tariff lines and total value of a Member's non-agricultural imports.

either [ X ] percent of national tariff lines or [ X ] percent of the value of imports of the Member in each HS chapter.

The Lamy text proposed figures of a minimum of 20 percent of national tariff lines and 9 percent of the value of imports of the Member in each tariff line.

The 10 July text states that **sectoral tariff reduction** component is another key element to achieving the objectives of paragraph 16 of the DDA. Such initiatives shall aim to reduce, harmonise or as appropriate eliminate tariffs, including the reduction or elimination of tariff peaks, high tariffs and tariff escalation, over and above that which would be achieved by the formula modality, in particular on products of export interest to developing members. Participation in sectoral initiatives is on a non-mandatory basis. However, for some members, sectoral initiatives that reach a critical mass of participation will help to balance the overall results of the negotiation on NAMA, which includes the coefficients in paragraph 5 and the level of flexibilities and related provisions of paragraph 7. We therefore welcome the advance indications of interests to date in certain sectoral initiatives by a number of members and the contribution that this has made to achieving agreement on modalities that can meet the Doha mandate.

The linkage of the sectorals to the degree of flexibilities or to extra points in the coefficients was proposed by developed countries in the run up to the ministerial, this was objected to by developing countries but was included in the Lamy text with a new obligation that certain countries listed in text were to participate in at least 2 sectoral initiatives. This contradicted the non-mandatory nature of sectoral initiatives.

## Conclusion

The mandate to the WTO members as tabled in the July 2004 framework was explained as it pertains to Agriculture and NAMA negotiations. This provided the basis that give content to these negotiations. This chapter has demonstrated that within the negotiating mandate, some issues were given priority, hence put in the

agenda of the Ministerial Meeting. A clear background to the process of consultation undertaken by DG Lamy during the July 2008 Ministerial meeting has been provided. This background served to demonstrate the factors that led to the discontent expressed by Ministers with the negotiating process. The outcome of the negotiations has been provided by way of a comparison between the text that formed the basis of negotiations and the outcome of the Ministerial Meeting. The next chapter will provide an analysis of the role that DG Lamy played as mediator in this process as it applies mediation theory to the case study of the July 2008 Ministerial Meeting.

## **Chapter 5 - Application of Theory to the Case Study of the July 2008 WTO Mini Ministerial Meeting**

### **Introduction**

In this paper, the role of the DG as a mediator is tested in the context of market access negotiations in the World Trade Organisation (WTO), and is most glaring against the backdrop of the July 2008 negotiating package. The Doha multilateral trade negotiations are divided into Agriculture and Non-Agriculture (referred to as NAMA) pillars. It was in this area that a possible trade off on market access issues could have possibly led to an agreement that could have served as an important milestone in the conclusion of the Doha Development Round. This is not to suggest that these negotiations were not fraught with deeply vested interests and therefore complex. However, it is important to highlight that it is in precisely this important area that the mediation role of the DG was found wanting.

As this thesis argues, the DG had a pivotal role to play in ensuring that outcomes are achieved satisfactorily if his role as a mediator was well-understood, first by the WTO as an institution, and by all WTO Member countries. In chapter 4 we observed that the Ministerial Meeting comprised of a limited number of Ministers, at roughly 40. While this Ministerial Meeting was convened in the hope of achieving a breakthrough in the Doha Round of global trade talks; members were not fully at ease with some of the issues in the Agriculture and NAMA text that were presented to Ministers as the basis for negotiations and ultimately for decision making. This demonstrates that this meeting started off at a point where some members could possibly unite against the proposed process, and this could have posed a threat to the negotiations. Zartman and Touval (2010: 231) indicate that, this dissatisfaction by members with the process and content of negotiations may reduce, to a great extent, the possible chances of cooperation among the parties in dispute.



This chapter applies mediation theory to the case study of the July 2008 Ministerial Meeting. It considers the role of the DG as the mediator in the content and process of consultations and decision making. More importantly, the role of the DG is assessed as it relates to the seven deadly sins of mediation in order to ascertain what could have possibly led to the failure of the July 2008 WTO Ministerial Meeting.

### **The Chair of the Trade Negotiations Committee (TNC) as a Mediator in the July 2008 WTO Ministerial Meeting**

This section identifies major challenges experienced in preparation and during the course of the Ministerial Meeting. The application of theory to the case study shows how these challenges could have possibly been addressed if the WTO recognised the role of the DG as a mediator in these negotiations. This role would compel the DG to undertake the process of negotiations and decision making in an impartial manner that would bring about cooperation and convergence among WTO members. However, the background discussion to the WTO issues (in chapter 2) underscored the fact that there has never been any clarification by the WTO of the role of the DG in the TNC. The conception of his role, therefore, is limited if not poorly understood. Tallberg (2006:117) acknowledges that the exercise of leadership by Chairs of multilateral negotiations has not been well researched generally in international cooperation. This is a crucial point, and the one that this thesis sought to cast a sharp spotlight on. This lacuna is all the more concerning given the vital role of such Chairs in the successful conclusion of negotiations.

In his work, Tallberg (2006) further presents a theory that provides answers to 3 questions that need serious consideration. These are: a) why states delegate powers of process control to Chairmen of international negotiations fora/institutions? b) What power resources do international leaders have? And c) when, why and how do negotiations Chairs wield influence over the outcomes of multilateral bargaining?

While this paper did not set out to answer any of these questions, the case study of the July 2008 Ministerial meeting serves as an example of the reality obtaining in

negotiating processes and how the role of the DG is expressed. To borrow from the rational institutionalist theory of formal leadership as articulated by Tallberg (2006:117), the Chair is:

*“empowered to fulfill certain functions agenda management, brokerage, and representation in international bargaining; identifies procedural control and privileged information as essential power resources of negotiation chairs, and isolates the **conditions** under which formal leaders shape the efficiency and distributional implications of multilateral bargaining”.*

According to the role assigned to formal leaders by the rational institutionalist theory what seems not to have been considered are the “conditions” under which the formal leaders are able to influence efficiency and distributional implications of multilateral bargaining. Though the Chair can be empowered to control the process of negotiations, there are conditions to be considered that could greatly influence their efficacy. For instance some members could be regarded as more powerful than others and therefore are able to influence the process to their favour. This is shown in the manner that the process has been undertaken and the way in which the negotiating agenda has been considered in WTO negotiations. In order for all members to reach an agreement on the basis of a single undertaking; the process of consultations should be coordinated in a manner that gives comfort to all members. This is important considering that the single undertaking is the cornerstone of WTO decision-making. This will ensure that issues that affect the smaller economies will be considered in a fair and transparent manner Wolfe (2009: 7-9).

### **Context of the Negotiations**

It was in April 2008 that the DG announced the preparation of the establishment of modalities in agriculture and NAMA and he gave assurance that the other issues will be advanced in the context of a Single Undertaking. Member countries were concerned about lack of improvement in other areas as there was never going to be an agreement on other issues at the same time as agriculture and NAMA. For issues of interest to developed members, the DG pushed for consultation on the sidelines of

the July 2008 ministerial, but this could not be done for issues of interest to other developing members.

For instance the issue of cotton subsidies was of interest to the Africa Group but it could not be discussed by the G7. This is one of the issues in which the Africa Group expected an early resolution. It affects members who are deprived of a fair chance to make sustainable living because of the cotton subsidies in developed countries. The issue of intellectual property though consulted on, could not be resolved within the limited time. Diverse members' interests and the complexity of the issues made the process complicated. This induced distrust on the part of some of the members who felt their issues were excluded in the process.

It is probable that the members of the G7 agreed on the issues that would form part of the July 2008 meeting only because they found comfort that the concept of Single Undertaking meant that the issues of interest to them would be discussed sometime before the conclusion of the Round. But there was no confidence from the members excluded from the process that issues of interest to them would still be on the agenda by the time the Round concludes. This raised issues of trust both in the process and in the content of the negotiations. It also raised questions as to whether the timing was right to convene such a Ministerial Meeting. When such questions arise, it is clear that confidence in the process is weak. It is against such ambiguities and moments of low trust that the role of the DG, as a mediator in negotiations, should have come out glaringly.

### **Managing the Process of Consultation and Decision Making**

Monheim (2013: 22- 27) discusses the importance of process management in multilateral negotiations. He states that multilateral negotiations involve states and the domestic constituencies which they represent. This is a political economy reality. He further discusses the realist view that multilateral negotiation can focus on other issues of interest such as the global jostling for power and its distribution among states. Significance of actors and the priority of interest tend to be viewed through

the prism of economic weight, for example, the size of markets, the gross domestic product, and trade surplus; as well as on the basis of political military power structure. This is a political economy – or power distributional – factor which tends to determine the member's attitude towards international cooperation. While this may often be the case, process management by multilateral institutions can often complement structural approaches and can greatly influence the outcome of negotiations.

Dube (2012: 5) concurs with this assertion and further states that key to understanding the failure of the DDA is to view it as the failure of the decision making process at the WTO, at the apex of which sits the DG. In cases where disputes arise during the negotiation process, all members are regarded as possessing the same power and authority. This authority is exerted towards the final stages of decision making. As stated in chapter 3, the role of the WTO Secretariat including that of the DG has not been clearly defined in corralling members towards a desirable outcome. It is in the final stages of decision making where the DG as a mediator would be required and/or expected to act as a mediator in leading the members towards consensus.

Decision making in the WTO is based on bargaining, consultations and finally consensus. Power relations are embedded in these processes, and the DG plays an important role – however subtle – in tilting the balance in favour of a particular set of actors. Negotiations and bargaining are often undertaken before a consensus text is arrived at. Moreover the principle of a Single Undertaking is used at the WTO, which means nothing is agreed until everything that was part of the negotiating agenda is agreed. This principle, with a large number of growing WTO membership make it difficult for negotiations to progress towards reaching a solution that is beneficial to all. It is a principle that lends complexity to negotiations, and thus requires the Chair to play the role of a broker.

Brahimi and Ahmed (2008: 2) state that the process of mediation is extremely difficult, whether the mediator can be referred to as a Broker or even a Chairperson. Success can be difficult to achieve while it can be easy to make mistakes with serious consequences. These mistakes are referred to by Brahimi and Ahmed as the deadly sins of mediation. It is possible that the mediator can commit these sins at any stage during the negotiating process and the manner in which they are created can threaten the interests of some members/parties to the negotiations. This could even lead members to reconsider any convergence of interests in agreements they might have committed to. Brahimi and Ahmed mention seven of the deadly sins of mediation as: Ignorance, arrogance, partiality, impotence, haste, inflexibility, and false promises. The following sub-sections give a summary of these deadly sins and briefly contrast them to the role of the WTO DG during the July 2008 Ministerial Meeting. This highlights the possible cause of the failure of the Ministerial Meeting.

### **Ignorance**

In a political situation Brahimi and Ahmed (2008: 5) refer to knowledge of a political map of the area. This requires the mediator to understand who the main actors are, what power and influence they have over the process. If the mediator cannot establish his political map a sin of ignorance would have been committed. In the case of the WTO Ministerial Meeting, the main actors were well known. These were the G7, though not fully representative but actually represented a wide spectrum of the membership. Ismail (2009:97) mentions that during the TNC meeting the African Ministers expressed a concern that the Africa Group was not represented by the G7. While the G33 supported the positions expressed by India and China in the G7 they further called for the issue of the SSM to be brought back to the negotiating group on Agriculture for a discussion by the WTO members. This situation indicates lack of transparency by the DG in the process of designating the members of the G7. He might have possibly assumed that the G7 represented views of all WTO members.

Monheim (2013: 317) states that transparency is indicated by the extent of information shared on content and process, while the salient indicators of inclusiveness entail direct participation or at least appropriate representation of all

countries. Integration of levels of participants in the negotiations and the extent to which organisers (in this case the WTO Secretariat) reach out to parties during the facilitation efforts is crucial. The communication of organisers; i.e. transparency and inclusiveness are important aspects in the negotiations. Not all WTO members were invited to the Ministerial Meeting and at the end only 7 members were involved in the actual negotiations of the final package. However, all members were normally invited to the informal TNC meetings that took place every morning during the negotiations process. This process allowed them to air their views and comments on the continuing negotiations on modalities in Agriculture and NAMA.

Ismail (2009: 98) states that the G7 was not supported by members who felt that their issues were not going to be considered in the agenda of the G7. This shows that the WTO DG had not fully determined the power and influence that the G7 members had over the members they represented, hence the call for issues to be taken back to the wider membership for discussion.

### Arrogance

(Brahimi and Ahmed 2008: 5) state that arrogance in mediation can be alleviated by considering views of different experts and participants in the process, even those who will not say exactly what the mediator wants to hear. Since negotiators represent governments who will have to implement the outcomes of the process, it is therefore, important that their concerns should be considered.

During the run-up towards the July 2008 Ministerial Meeting some developing country members raised concerns on process and also on the negotiating issues which were included in the text which formed the basis for negotiations. Their view was that some issues were not adequately discussed in the negotiating groups and therefore would not be forwarded to be considered for discussion in a Ministerial Meeting. For instance, in NAMA, the compromises made by the Chair as proposed by the middle ground group were not suitable for the NAMA-11 countries. Wolfe (2009: 5) indicates that selected Ministers were just invited to Geneva for

“consultations” where the outcome of such consultations would have to be accepted by the full membership. An example of such was the issue of sectorals in the NAMA negotiations (see chapter 4). These were included in the final text to be negotiated by Ministers; even though there were still disagreements among major countries within the G7; hence an agreement was not reached by Ministers on the text.

Dube (2012: 17) indicates that consensus building which involves negotiating and consultations before members are expected to take decisions is very important. Consensus building would then ensure that even if some members are not present during decision making they will be regarded to be on-board. At the WTO, even members who were invited to the Ministerial Meeting but not considered for decision making felt left out of the process because they could not trust that the issues of interest to them will be considered fairly.

### **Partiality**

In determining the **partiality or impartiality** of the mediator, the deftness of diplomacy plays a part. More importantly the participants’ perception of the mediator is considered to be important. The status of a mediator as being impartial and an honest broker cannot be taken for granted. Sometimes constructive criticism from the participants based on previous interaction can easily be perceived as evidence of partiality. This can work both for and against the mediator, but it is only when the mediator has been perceived as an honest broker, that he can be heard (Brahimi and Ahmed 2008: 7).

As discussed in chapter 2, according to Jawara and Kwa (2003: 3-4) some developing and LDCs were still of the view that the outcomes of the previous trade negotiating rounds were imposed on them as a result of their weakness and inexperience in trade negotiations at that time. For instance the Uruguay Round (1994) dealt mostly with liberalization or tariff reduction in industrial products while a protective mechanism for agricultural commodities was in place. This served to benefit mostly the major developed countries, many of whom had agricultural

subsidies in place. This is just one of the issues that make it difficult to trust the DG, and also erode the credibility of the WTO as an institution. Wolfe (2009: 6) states that WTO members have often regarded the Chair as a facilitator and have stressed that a bottom-up approach is important in the negotiating process to ensure that members give an indication of what is do-able instead of the Chair coming up with compromises which might not be acceptable to members.

Jones (2012: 129) indicates that in applying their powers of mediation and persuasion, Chairs must be able to convene small group meetings and compose negotiating drafts on their own personal responsibility. However, these should be sequenced in a particular order; timing should be strategic in order to move towards a consensus position. These meetings should also be inclusive enough to ensure that an emerging consensus can be taken to the larger WTO membership as the basis for an agreement. In the case of the July 2008 Ministerial meeting it seemed that the convening of the WTO meeting in small groups was more towards decision making than towards consensus building. There was a sense that the DG favoured a particular line of decision-making which was in favour of developed countries. On issues tabled for Ministers; as stated previously there was no consensus even among the group of seven members who were negotiating on the DG Lamy package. Some observers still regard the entire WTO decision-making process as overly dependent on fair and balanced leadership by the committee Chairs and the DG, which is seen as lacking (Jones 2012: 144).

Some of the developing country concerns in NAMA negotiations were that developing countries should not be made to pay more or to give more concessions than developed countries. This is in line with a major concern stated by Dube (2012:12), that though the WTO has more than 155 special and differential treatment provision for developing countries which form the development element of the WTO, they are ineffectual. The collusion by the EU and the US to seek additional extensive concessions from developing countries in NAMA erodes the development content of the Doha negotiations. While developed countries remain with high levels of



protection and distortions in global markets for products of export interest to developing countries (Ismail 2009: 93).

In analysing the concepts of neutrality and impartiality as determinants for success in negotiations (chapter 2), it has been recognised that the concepts are sometimes used interchangeably. However, a misunderstanding in the application of these concepts can lead to confusion in the process of negotiations. Chapter 2 indicates that though the Mediators are not expected to exercise their power in a manner that is completely neutral with regard to process, content and outcome, it is important that impartiality is demonstrated throughout the process of negotiations.

According to Moore (2012: 4), the issue of trust is strongly linked to impartiality in mediation, while the issue of neutrality has been brought into question in mediation theory. Though the mediator can bring in different approaches to deal with the conflict; they should remain impartial in order to present a fair view and make progress.

It might not have been possible to hold negotiations in plenary with all 153 members of the WTO. Therefore, from April to July 2008 the DG consulted with members in different formats, informally with heads of delegations, senior officials which were encouraged to attend meetings in Geneva, selected representative of negotiating groups and with selected Ministers. This could have ensured transparency and inclusiveness with a view that real negotiations are done in consultations and not in formal meetings. With all this consultation process undertaken what could have caused mistrust, lack of confidence by members and hence the failure of the ministerial meeting?

Amongst a number of factors that could have contributed to the failure of the Ministerial meeting, Ismail (2009:4) mentions the biasness of the NAMA group Chair in influencing negotiating outcomes against the developing countries and thus creating the basis for inefficient outcomes at each stage of the process. The

adoption of such an attitude by the DG led to lack of confidence by members throughout the process leading up to the Ministerial Meeting.

Ismail (2009: 76) further mentions attributes that a Chair has to possess in order to contribute to efficient outcomes in WTO negotiations. These are cited as being able to rise above his national interest and provide fair and unbiased judgment of compromises that are required to build convergence in the negotiations; resisting the influence from the more powerful members, build confidence among the members so that they take ownership of the process and offer solutions in a transparent step-by-step manner that will serve to unblock the impasse in the negotiations.

For Hanson (2008: 11-12) it was evident during the Ministerial Meeting that the US was comfortable with a formulation on the SSM along the lines of the DG's own compromise, while India and China supported the G33. The SSM was meant to be a mechanism made available to developing countries in order to guard against a surge in imports and declines in international prices of agricultural products. This mechanism was crucial as developing countries were expected to liberalise their agriculture tariffs, the use of the SSM should have been made simple, accessible and effective. The talks broke down over the technical issue of the condition to invoke the SSM and the applicability of the SSM. While there was no agreement or provisional agreement on the other issues still on the agenda, it was not possible for negotiations to proceed. This showed underlying concerns from developing countries that this has been one of the many issues where the Chair's compromise has been more suitable to the developed countries. This also prevented the G7 from resolving other issues that were of interest to developing countries.

### **Impotence**

Though participants might be willing to work with a mediator that is perceived to be honest and partial, it does not mean that they will consider adopting his suggestions. This shows the important but limited role that the mediator can play in the negotiating process. Brahim and Ahmed (2008: 8) refer to this situation depicting the mediator

as impotent or ineffective. In other cases the mediator's suggested solutions will not be supported if some negotiators feel that their legitimate interests and concerns have not been considered. In certain instances the proposed solution cannot be implemented.

Jones (2012: 145-146) indicates that there is always the difficulty of coordinating and balancing concessions among many members in a range of complex issues which poses a risk of uncertainty of outcomes. He further mentions that it is just a perception of developing countries that the WTO system is unjust; and that it has been less beneficial to designate the Doha Round as a Developmental Round. The consequence has been to weaken the commitments of developing countries to the principle of reciprocity. These are some of the factors that make it difficult for developing countries to trust the chairmanship of the DG and/or the system to be able to consider in an objective way the interests of developing countries.

However, in considering the views mentioned by Jones, it is important to recall that developing countries were largely sidelined in the early years of GATT. While developed countries possessed the same understanding and objectives of trade liberalisation; and their trade diplomats trusted the committee Chairs and the DG that the outcome of trade negotiations would be favourable to them. Scott and Wilkinson (2010: 150) point out that things are done differently now, because developing countries are stronger and possess technical capacity which enables them to prevent an unfair deal. They have a compelling case and their views are supported around the world.

### **Haste**

To gain a clear picture of the political map, the mediator's time and effort is often invested in the process. The proposed outcome of the mediation effort risk being rejected by negotiators for one or the other reason. It could be lack of confidence in the process or even in the mediator. (Brahimi and Ahmed 2008: 9) observes that this occurs mostly when the mediator hastily forges ahead with a small group of

participants. Brahim and Ahmed further observe that even within the few participants involved in the process, unwillingness to compromise maybe motivated by genuine reasons. Agreements that result from a hasty process are never regarded as conclusive and comprehensive. Therefore, it is crucial that the mediator should take time to consult and appreciate the concerns of all participants so that participants can all take ownership of the proposed outcome.

The Third World Network (2008: 2) state that in a letter written by the then Indian Minister to the WTO DG, a concern is raised that though senior official's meetings are generally convened in haste. These are only for issues of interest to developed countries. There is little concern to take similar initiatives for issues of interest to developing countries.

As a result, issues of interest to developing countries are often set aside for later discussion/negotiations. Hence, it becomes a challenge to reach conclusion even on those issues set up for negotiation in haste.

### **Inflexibility**

Often the mediator will invest time and effort to come up with a proposed outcome conceived under certain circumstances. However, the inability of the mediator to be **flexible** can run down the process or result in a rejected outcome (Brahimi and Ahmed 2008: 10). Flexibility by the WTO DG could only be demonstrated if members had shown their willingness to compromise. However with the US and the EU jointly closing ranks to accommodate each other's concerns and put pressure on developing countries, it would be difficult to show flexibility (Ismail 2009: 93). As a result the Chair would not have been able to show flexibility without an indication from members on what is do-able or even an indication of the members' red lines.

## False Promises

The mediator should be able to manage expectations from the outcome of the process and counter **false promises** (Brahimi and Ahmed 2008: 11). During the Ministerial meeting the outstanding issues were viewed by the DG to be relatively small hence there was provisional agreement in other areas pending the agreement on Agriculture and NAMA. Though members were close to finding a breakthrough, there were contentious issues parked aside which were still to be dealt with by way of negotiations (Scott and Wilkinson 2010: 149). However, the Lamy package that served as an outcome of the G7 process was not supported by India and Brazil and gained no legitimacy by a majority of members (Ismail 2009: 97). There was little or no hope that the issues parked for further negotiations would still be considered.

## Conclusion

This chapter highlighted challenges observed especially with regard to process, consultations and content of the negotiations in the ministerial meeting. The application of theory to the case study highlights the reality that members are faced with in multilateral negotiations, though the theme of chairing multilateral negotiations has not been extensively researched. There are lessons to be learned or guidance to be gained from mediation theory in general, if the role of the Chair in multilateral negotiations can be acknowledged as a mediation role.

The DG as a mediator should be able to appreciate the different levels of development of all members and consider their views with regard to the complex nature of the negotiating issues. The decision making stage is a crucial stage that is influenced by the process that precedes it. The level of inclusiveness and transparency to all will ensure that the DG receives buy in and support and is able to guide the negotiations to an outcome that is agreeable for all. This is one of the important factors that would qualify the Chair as a mediator in multilateral negotiations.

The DG has not effectively played his role to aid the process. As such negotiations began at a point where members would acknowledge the process as fair. This could

have been achieved if the DG as a mediator had been neutral and impartial, and would have led members to a position of trust. Moore (2012: 2) indicates that the events or the process that precedes the negotiation are important as the negotiations themselves.

Jones (2012: 140-141) observes that the culture of trade diplomacy was simple in the past where the DGs were trained as trade diplomats and could exert influence in trade negotiations, they played key roles in trade negotiations and could move negotiations towards consensus. However, this has recently been complicated by complex negotiating agendas and a number of countries with differing negotiating interests. This has also proved that the power of the DG in brokering trade agreements among members with different interests has diminished. Unlike in the past; mediation by the DG is not able to fully protect the trade interest of the major countries nor does it influence the outcome of negotiations. In this instance a possible solution would be to seek guidance from mediation theory and/or to acknowledge the role of the Chair in multilateral negotiations as a mediation role.

## Chapter 6 - Conclusion

### Introduction

The paper has undertaken an analysis of the mediating role of the WTO DG in multilateral trade negotiations. The focus has been on the July 2008 Ministerial meeting. The study identifies that the functions of the WTO DG have two dimensions. Firstly as an administrative head responsible to oversee the implementation of agreements and secondly, as a TNC Chair to coordinate and chair in multilateral trade negotiations. However, the WTO lacks a code of conduct to guide the process of negotiations and the conduct of the Chair. There is no conception of the role of the Chair as that of a mediator. The two dimensional role to the functions of the DG could be separated and clarified, such that the functions of the TNC Chair are expected to be of a mediation role. Once this role has been clarified and accepted, the concepts which relate to the process of mediation and the conduct of a mediator will be align to those of the discipline of mediation. This concept will assist the WTO as an institution to adopt a consultation and decision making process that is fair and equitable to all members. The study points out that though the DG has been given authority to chair the trade negotiations round as the Chair of the TNC which operates under the auspices of the GC; his role has never been clearly defined.

The study set out to identify the role that the DG plays in the process of consultations and during the Ministerial Meeting as equivalent to that of a mediator. The definition of a mediator has been unpacked as it relates to the concepts of neutrality and impartiality. The role of the mediator in multilateral trade negotiations has been discussed; and findings on the condition that may have contributed to the failure of the July 2008 Ministerial Meeting. Finally we draw lessons from mediation that could be applied in future processes that relate to chairing multilateral trade negotiations.

### Research findings

The structure of the WTO has been shown to identify the location and the role of the DG. This brings light as to the workings of the WTO with regard to consultation which

underpin trade negotiations. Background to the WTO trade negotiations rounds in the context of the Doha negotiations has been provided. This serves to bring light to the unfolding of negotiating issues over the years. A description of groups and alliances in market access negotiations is provided and the core issues they stand for. These coalition groups influence the manner in which negotiations are undertaken and decisions taken.

As multilateral trade negotiations involve a number of countries, the different levels of development in these countries serve as a source of their varied interests and objectives. This results in a complicated process of consultations and negotiations; adding to this complexity is the number and diversity of multilateral trade issues. Unresolved issues are often referred to political principals often as conflict situation. It is in these instances that the role of a mediator becomes crucial. This paper highlights a need for a review of the structure of the WTO in light of an increased agenda of trade negotiations. This review would then address the core observation of this research that the role of the WTO DG could be better defined to reflect a mediating aspect. The theme of mediation in multilateral trade negotiations has not been thoroughly researched and published; it is in this space that this paper attempts to make a contribution. In this paper I have argued that the role played by the WTO DG as a mediator in multilateral trade negotiations has implications on the success or failure of the negotiations. However, there is no understanding of this role at the WTO as that of a mediator.

If the role of the DG could be understood as that of mediation, the key concepts of mediation would most likely be adhered to. In addressing the key concepts of mediation as they related to the July 2008 Ministerial Meeting the paper refers to the seven deadly sins of mediation. A brief assessment of the role of the DG as mediator is done. The sins have been cited as ignorance, arrogance, partiality, impotence, haste, inflexibility and false promises. This research established that the DG has been guilty of most of these deadly sins.



In the analysis of the role that the DG played the research has concluded on the following: The DG might have assumed the G7 to be representative of members of the WTO but the lack of transparency in designating the G7 led to a discomfort which was exacerbated by the fact that not all issues were to be considered in the agenda of the G7. This constituted the sin of **ignorance** by the DG. Though some members were consulted, there was lack of consensus with regard to the issues that were to be discussed by the G7 and issues that would be negotiated on the sidelines and also those that would be discussed after the Ministerial Meeting. Members could not trust that the issues of interest to them would be considered fairly. This constituted **arrogance** on the part of the DG.

The paper has argued that the mediator cannot be completely neutral. However, in introducing different approaches to assist the process of mediations, it is important that he remains impartial. The biasness of the DG towards developed countries positions in most parts of the text as mentioned in the paper (chapter 5) led to lack of confidence in the process and in him as a mediator. Therefore the sin of **partiality** was committed. Over the years the WTO negotiating process has not considered fully the views of developing countries as a result, developing countries were forced to implement outcomes of agreements that they have not fully participated in negotiating. Developing countries have become vigilant in endorsing outcomes of agreements especially if they have not been party to. The DG had not considered that members like the Africa group would be worry of adopting an agreement that they have not negotiated and thereby creating a sin of **impotence**. During the run-up to the Ministerial meeting negotiating issues were to be resolved and meetings set up in haste to ensure that only a limited number of issues referred to Ministers. The issues discussed in these meetings were those of interest to developed countries to ensure that they are comfortable with the gains that will accrue to them. This led to dissatisfaction among developing countries; hence conclusions were not reached even for issues negotiated in **haste**. However, the DG could not have shown flexibility without an indication from members. The undertaking by the WTO that other issues of interest to developing countries will be considered at a later date once an agreement has been reached on modalities could easily be viewed by some as a **false promise**.

## **Theoretical and Policy Implications**

The status of a mediator can greatly affect his role. A mediator seldom acts as an individual, but as a representative of a national state or non-governmental organisation. The partiality of such a mediator will be influenced by a number of factors such as; nationality, religion, past affiliation etc. It is important to note that in the case of the WTO, it is highly likely that a mediator would be a representative of a national state with his interests generally aligned to those of his state. Therefore, his status could shadow his role as an honest broker. However, this paper has demonstrated that the reasons for the failure of the July Ministerial Meeting were more aligned to impartiality on the part of the DG.

When developing countries were inexperienced in trade negotiations, outcomes of negotiating rounds were imposed on them. This often led to failure of Ministerial Meetings i.e. when outcomes cannot be acceptable to all members. If the various DGs of the WTO at different times could understand their role as being that of mediators in this process; the key concepts of mediation could be considered and adhered to. The paper concurs with the view that not much has been published on chairing a multilateral trade negotiation. Therefore, this research brings a view that there are lessons to be learned from the field of mediation, since the conditions for mediation do exist in multilateral trade negotiations.

## **Direction for Further Research**

Mediation theory focuses mostly on conflict situations arising as a result of war, political and military disputes. A unique contribution that this paper seeks to make is the possible adoption of ideas from mediation theory to chairing a multilateral trade negotiation. This research has shown that the concept of mediation is relevant in the multilateral trade domain and even in economic diplomacy in general.

## BIBLIOGRAPHY

Ahnlid, A. 2011. Improving the Effectiveness of Multilateral Trade Negotiations: A Practitioner's Perspective on the 2008 WTO Ministerial Meeting. International Journal. 2012(17):65-89.

Bercovich, J. and Jackson, R. 2007. 'Negotiation or Mediation? An Exploration of factors Affecting the Choice of Conflict Management in International Conflict'. Negotiation Journal. 17(1) 59-77

Bernal, R.L. 1999. Sleepless in Seattle: The WTO Ministerial of November 1999. Social and Economic Studies. 48(3):61-84.

Berridge, G.R. 2010. Diplomacy Theory and Practice. Fourth Edition. United Kingdom, Palgrave Macmillan

Brahimi, L. and Ahmed, S. 2008. In Pursuit of Sustainable Peace: The Seven Deadly Sins of Mediation. New York University. Centre on International Cooperation.

Cottier, T. 2007. Preparing for Structural Reform in the WTO. Journal of International Economic Law. 10(3):497-508.

Dube, M. 2012. The Way Forward for the WTO: Reforming the Decision-Making Process. Johannesburg. South African Institute of international Affairs.

Faure, G. O. 1989. 'The Mediator as a Third Negotiator' in Markhof, F. M\_(ed) Process of International Negotiations. Austria: West view Press.

Fergusson, I.F. 2011. World Trade Organisation Negotiations: The Doha Development Agenda. Washington DC. Congressional Research Service.

Field, R. 2000. Neutrality and Power: myths and reality. ADR Bulletin: Vol 3: No 1.

Group-33. 2010. G33 Submission on the Special Safeguard Mechanism (SSM): Refocusing Discussions on the Special Safeguard Mechanism (SSM): Outstanding Issues and Concerns on Its Design and Structure (JOB/AG/7). Geneva.

Hanson, V. 2008. WTO Roundup. Trade Negotiations Insight. 7(9)11-12.

Hoekman, B. M. and Kostecki, M. M. 2001. The Political Economy of the World Trading System: The WTO and Beyond. Second Edition. Oxford. Oxford University Press.

Hoekman, B. 2012. Proposals for WTO Reform: A Synthesis and Assessment. In The Oxford Handbook on The World trade Organisation. Edited by Daunton, M. Narlikar, A and Stern, R.M. United Kingdom, Oxford University Press.

Hung, H. 2002. Neutrality and Impartiality in Mediation. ADR Bulletin: Vol 5: No 3.

Ismail, F. 2009. Reforming the World Trade Organisation, Developing Countries in the Doha Round. Geneva. CUTS International and Fiedrich Ebert Stiftung.

Jawara, F. and Kwa, A. 2003. Behind the Scenes at the WTO: The Real World of International Trade Negotiations. Bangkok. Zed Books Ltd.

Jones, K. 2012. Things Fall Apart: Doha and the end of Post-War Trade Consensus. World Economics. 13(10)125-149.

Kalenga, P. (n.d.) The WTO July (2004) Framework Agreement: Some Observations. Cape Town. Tralac working paper.

Kanaja, R. 2008. Agriculture: WTO Members react to Falconer's revised draft text. South-North Development Monitor. [Online]. 15 February 2008. Available from: <http://www.twinside.org.sg/title2/wto.info/twninfo20080212.htm>. [Accessed: 23 January 2014].

Kaushik, A. Kaukab, R and Kumar, P. 2008. A Brief Analysis of the July 2008 Lamy Package. Centre for International Trade Economics and Environment.

Kleiboer, M. A. 1996. Understanding Success and Failure of International Mediation. Journal of Conflict resolution. 40(2):360-389.

Landau, A. and Pfetsch, F. R. 2007. Chairing Negotiations in the World Trade Negotiations. Paper presented at the 3e Biennale International de la Negotiation "Strategies de negociation et risques: recherche et application". Paris.

Monheim, K. 2013. The Power of Process. A thesis submitted to the Department of International Relations for the Degree of Doctor of Philosophy. London School of Economics.

Moore, M. 2003. A World without Walls: Freedom, Development, Free Trade and Global Governance. United Kingdom. Cambridge University Press.

Moore, J. 2012. Mediation: What Does Success Depend Upon? London. King's College. Available from: <http://theriskyshift.com/2012/06/mediation-what-does-success-depend-upon>. [Accessed: 13 March 2014].

Muralidharan, S. 2005. WTO's Hong Kong Conference – II Development Deficit Agenda of Doha Round. Economic and Political Weekly. 40 (52): 5450-5453.

Odell, J.S. 2009. Breaking deadlocks in International Institutional Organisations: The WTO, Seattle and Doha. International Studies Quarterly (Forthcoming).

Odell, J.S. 2009. Breaking Deadlocks in International Institutional Organisations: The WTO, Seattle and Doha. International Studies Quarterly. 2009(53):273-299.

Ostry, S. 1997. The Post-Cold War Trading System – Who's on First?. London. University of Chicago Press.

Ostry, S. 2007. Trade, Development, and the Doha Development Agenda. In The WTO After Hong Kong, Progress in, and Prospects for, the Doha Development Agenda. Edited by Wilkinson, R and Donna Lee. New York. Routledge.

Raghavan, C. 2002. WTO Endorses TNC Principles and Practices and Negotiating Structures. Third World Network. Geneva. Internet: <http://www.twinside.org.sg/title/twe272a.htm>. Access: 24 July 2013.

Rodrik, D. 2011. The Globalization Paradox: Democracy and the Future of the World Economy. New York: WW Norton & Company.

Rolland, S.E. 2010: Redesigning the Negotiation Process at the WTO. Journal of International Economic Law. 13(1):65-110.

Scott, J. 2007. How the Poor Pay for the US Trade Deficit: and why it Matters for the Doha Development Agenda. In The WTO After Hong Kong, Progress in, and Prospects for, the Doha Development Agenda. Edited by Wilkinson, R and Donna Lee. New York. Routledge.

Scott, J and Wilkinson, R. 2010. What Happened to Doha in Geneva? Re-Engineering the WTO's Image While Missing Key Opportunities. European Journal of Development Research. 22(2)141-153.

Sutherland, P. 2004. The Future of the WTO: Addressing Institutional Challenges in the New Millennium. Switzerland: World Trade Organisation.

Tallberg, J. 2006. The Power of the Chair: Formal Leadership in International Cooperation. Paper prepared for the Third Pan-European Conference on EU Politics. Istanbul, 21-23 September 2006

Taylor, I. 2007. The Periphery Strikes Back? The G20 at the WTO. In The WTO After Hong Kong, Progress in, and Prospects for, the Doha Development Agenda. Edited by Wilkinson, R and Donna Lee. New York. Routledge.

Third World Network. 2008. Available from: <http://www.twinside.org.sg/title2/wto.info/twninfo20080711.htm>. [Accessed: 30 April 2014].

Touval, S. and Zartman, I.W. 2007. 'International Mediation'. in Crocker, C.A, Hampson, F.O. and Aall, P. (eds), Leashing the Dogs of War: Conflict Management in a Divided World. Washington DC. US Institute of Peace.

Warwick Commission. (2007) The Multilateral Trade Regime: Which Way Forward? United Kingdom. University of Warwick.

Wilkinson, R and Donna Lee. 2007. The WTO After Hong Kong: Setting the Scene for Understanding the Round. In The WTO After Hong Kong, Progress in, and Prospects for, the Doha Development Agenda. Edited by Wilkinson, R and Donna Lee. New York. Routledge.

Wolfe, R. 2004. Crossing the River by Feeling the Stones: Where the WTO is going after Seattle, Doha and Cancun. Review of International Political economy. 11(3):574-596.

Wolfe, R. 2009. Sprinting During a Marathon: Why the WTO Ministerial Failed in July 2008. Working Paper. Canada. Queen's University.



Wolfe, R. 2010. Sprinting During a Marathon: Why the WTO Ministerial failed in July 2008. Journal of World Trade. 44(1):81-126.

World Trade Organisation. 2001. Ministerial Declaration, WTO Ministerial Conference. Fourth Session, Doha, 9-14 November 2001: WT.MIN(01)DEC/W/1. 14 November 2001.

---. 2001. The Doha Declaration explained. Internet. {[http://www.wto.org/english/thewto\\_e/minist\\_e/min01\\_e/mindecl\\_e.htm](http://www.wto.org/english/thewto_e/minist_e/min01_e/mindecl_e.htm)}. Access: 13 September 2013.

---. 2004. Text of the July Package: Decision Adopted by General Council. WT/L/579. Geneva

---. Internet: {[http://www.wto.org/english/thewto\\_e/dg\\_e.htm](http://www.wto.org/english/thewto_e/dg_e.htm)} Access: 27 January 2012

---. The Doha Round. Internet.

{[http://www.wto.org/english/tratop\\_e/dda\\_e/dda\\_e.htm](http://www.wto.org/english/tratop_e/dda_e/dda_e.htm)}. Access: 24 July 2013.

---. Whose WTO is it Anyway? Internet:

{[http://www.wto.org/english/thewto\\_e/whatis\\_e/org1\\_e.htm](http://www.wto.org/english/thewto_e/whatis_e/org1_e.htm)}. Access: 24 July 2013.

---. Groups in the Negotiations. Internet:

{[http://www.wto.org/english/tratop\\_e/dda\\_e/negotiating\\_groups\\_e.htm](http://www.wto.org/english/tratop_e/dda_e/negotiating_groups_e.htm)}. Access: 24 July 2013

Young, A.R. 2007. Negotiating with Diminished Expectations: the EU and the Doha Development Round. In The WTO After Hong Kong, Progress in, and Prospects for, the Doha Development Agenda. Edited by Wilkinson, R and Donna Lee. New York. Routledge.

Zartman, I. W. and Touval, S. 2010. International cooperation: the extents and limits of multilateralism. Cambridge, Cambridge University Press.