Achieving Fairness in the Doha Development Round

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Abstract

The question addressed in this article is how the fairness of the global trading system as embodied in the GATT/WTO is to be assessed. Opinions about what constitutes fairness differ widely, and there is surely no incontrovertible yardstick. But it should be possible to be clearer about the criteria that are appropriate and what they mean in more operational terms. Why fairness is a condition of the agreements among governments that form the global trading system is first discussed. It is then suggested that fairness can best be considered within the framework of two concepts: equality of opportunity and distributive equity. It is argued that the criterion of maximum economic efficiency is not a primary yardstick of fairness, and though it is relevant in choosing among alternative ways of realizing fairness, it is not without its own limitations. There is a discussion of what equality of opportunity and distributive equity mean when applied to the commitments that governments make in the global trading system. For this purpose, these commitments are divided into four categories: those relating directly to market access; those concerning supporting rules designed to prevent cheating in market access commitments or to facilitate trade flows; those relating to procedures for the settlement of disputes or the use of trade remedy measures; and those relating to governance of the system. Finally, some comments are offered about fairness in the Doha Development Round, focusing in particular on the central issue of market access.

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INTRODUCTION

How are nations to judge the fairness of the agreements that may be reached in the Doha Development Round? In modifying the global trading system as embodied in the GATT/WTO, will these agreements make it fairer? Given the self-interested bias that nations—like individuals—suffer from, there can be no answer that satisfies all. But perhaps we can be clearer about the concepts that should underlie attempts at an impartial assessment.

Some might say that the question is not relevant. Anti-globalization advocates see capitalism, on which the trading system stands, as inherently unfair. Others believe that it is simply what the most powerful governments want that matters. In challenging the institutional condition on which the trading system is based, the first view takes the issue entirely off the board. The error in the second view is that it ignores the voluntary character of participation. The system depends on consent, however reluctantly given; and in the absence of some acknowledgement of concepts of fairness, it is unlikely that the system could be sustained. It is, of course, true that the more powerful exercise greater influence and that the weak are often obliged to compromise. Though, in principle, a country is free to withdraw from the GATT/WTO, its loss of rights like MFN treatment or access to the dispute settlement machinery is a deterrent. So it is quite possible for an individual country to emerge worse off from a particular round of negotiations and to find itself with no choice but to accept the worsened status. This said, it remains true that if the idea of fairness is persistently violated, that will undermine the cooperation on which the system rests.

For us, fairness in inter-governmental trade relations turns around familiar issues of the market access accorded by trading partners and their commercial practices—and even their social standards—as they affect trade. We suggest that these can best be considered within a framework composed of two criteria: equality of opportunity and distributive equity. Equality of opportunity is an instrumental criterion that we value because of its consequences; it facilitates the reaching of agreements among governments that may promote mutually advantageous trade. Distributive equity has, for most of us, a deontological element; we value it for its own sake. As discussed below, virtually the whole problem of defining these criteria becomes one of assigning operational meaning to them.

Though it dominates much of the commentary on the Doha Development Round, the economists’ yardstick of efficiency does not figure as a third possible measure. With its origins in utilitarian philosophy, the efficiency criterion

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1 This article draws heavily on Brown and Stern (2005).
addresses the maximization of global welfare, not fairness among nations. But no matter how great the gain in global welfare, no nation will voluntarily support trade agreements that may leave it little, or no, better off. The efficiency criterion is, however, of large secondary importance in making choices about alternative ways of realizing fairness. But even in this more confined role, its limitations as a yardstick for policy should be borne in mind; it needs to be qualified when market failures are present, when adjustment costs are large, or when the concern is with dynamic economic growth and not static resource allocation.

For the purpose of discussing our two criteria, we have classified the rules and procedures that compose the trading system into four categories: those that deal directly with market access, such as tariff schedules or service agreements; those that support market access agreements by outlawing conduct that annuls or impairs these agreements or that simply facilitate the flow of trade; those that relate to procedures for the settlement of disputes or the use of trade remedy measures; and those that concern the governance of the system (about which we say nothing in this article).

EQUALITY OF OPPORTUNITY AND MARKET ACCESS

Central to the realization of equality of opportunity in market access has been the negotiation of reciprocal gains in access. Supported by the Most-Favored-Nation (MFN) principle and by national treatment, this was at the core of the trading system as it evolved among the developed countries after WW2 (and indeed since the mid-19th century). Today, however, these three ideas all appear more ambiguous and uncertain. National treatment is fraught with difficulties in definition and interpretation, as we indicate later in our discussion of equality of opportunity and supporting rules. The MFN principle has been losing its clarity as the number of bilateral and regional trade agreements, all presented ostensibly as free trade arrangements, has multiplied. This is gradually, but persistently, eroding the value of multilateral trade negotiations in realizing equality of opportunity. A clearer definition of what qualifies as a free trade agreement—opening up the prospect of challenging bilateral trade agreements under the dispute settlement machinery—might act as a deterrent. In this section, we focus on the ambiguities in reciprocity as a guide toward negotiating equality of opportunity in market access.

GAINS IN ACCESS

Equivalence of gains in market access over the whole range of products and services subject to negotiation, has long ceased to be easily measurable. In recent negotiations among developed countries, however, some rough equivalence appears to have been realized because these countries engaged in a balanced
exchange of concessions in the same sectors or sub-sectors. But between developed and developing countries—as evidenced in the Uruguay Round—the same correspondence was absent, both because of differences in the structure of production and because of the trade barriers accumulated from past relations. Large trade-offs across sectors proved necessary, making the assessment of reciprocity in market-access gains inherently more complex and uncertain. But further, major changes in the regime of supporting rules—some of which affected market access—were incorporated in the bargain and this only deepened the uncertainty and heightened the partiality that swirled round assessments.

Despite its flaws, the idea of reciprocity continues to be of great value in advancing equality of opportunity; it lies at the nexus of negotiations about gains in market access. The more reciprocity is sought within sectors or sub-sectors, the easier it is to perceive. But in the Doha Development Round, cross sectoral trade-offs will remain inescapable. Some clarity could nevertheless be restored to the idea of reciprocity if market access negotiations were assessed quite separately from those relating to rule-making and procedural justice. As discussed below, these latter are to be judged by quite other standards of fairness than those that apply to market access.

INITIAL CONDITIONS

Equivalence of gains in market access negotiated during a multilateral round does not assure countries of equality of opportunity in access. Countries enter into negotiations with many differences in the level and profile of their trade barriers. Historically, successive rounds of multilateral negotiations among the developed countries have lessened the absolute differences in barriers, at least in non-agricultural goods and some services.

Between the developed and the developing countries, however, large differences are present today. As has long been pointed out, the trade barriers of the developed countries contain a bias against many of the products in which the developing countries have a current comparative advantage. The array of measures impeding imports of agricultural products is the most obvious instance. There is a long history—still continuing—of barriers against labor-intensive manufactures like textiles and apparel. Tariff escalation by degree of processing likewise restricts opportunities for trade. A study of the IMF and World Bank on trade restrictiveness presents confirming evidence. (IMF and World Bank, 2004). It indicates that, if the preferential programs of the OECD countries are left aside, the low-income countries faced greater MFN trade barriers in OECD countries than do other developed countries (and this is before allowing for the fact that many OECD countries are members of customs unions or free trade areas (FTAs) in their regions).
On the other side of the coin, the picture among developing countries is more complex. While some countries have relatively low trade barriers, many still apply quite high barriers to numerous products and to services. A number of developing countries have bound most of their tariffs, but many have bound relatively few; and most have done so at relatively high levels. So many countries have accepted only limited formal obligations in granting market access. If there is a bias in their trade barriers, it leans toward the restriction of foreign trade in their national economies. But it may also be questioned whether the profile of tariffs in individual countries always reflects a considered view of comparative advantage or disadvantage, viewed either in static or in dynamic terms.

The gradual lessening of these biases in the trade barriers of countries, both developed and developing, is a condition of realizing full equality of opportunity in market access at some time in the future. In the Doha Development Round, agreement on a framework for long-term reform of agricultural trade, lowering the tariffs and subsidies of developed countries more than those of others, would a step toward reducing the bias in their trade barriers. The across-the-board lowering of tariffs on non-agricultural trade by developing countries would be another step. In our view, less-than-full reciprocity in reductions has to seek possible justification, not in realizing equality of opportunity, but on grounds of distributive equity.

**DISTRIBUTIVE EQUITY AND MARKET ACCESS**

Does fairness demand that equality of opportunity in market access be modified in some degree to satisfy distributive equity? There are at least two grounds for supporting this position. First, it can be argued that there is need for some correction to allow for the disadvantageous economic conditions in which the poorer countries find themselves. Even if equality of opportunity is realized in a legal, or formal, sense, some countries may be unable to take advantage of the opportunities because of their early stage of development. Second, the great disparity in levels of living among countries and the very large numbers of people living in extreme poverty convince many that the governments of rich countries have a moral obligation to assist the poor in alleviating their poverty. The most visible expression of this obligation is the provision of foreign aid. Since trade is also seen to play a part in economic betterment, it is identified as another means of pursuing the same end.

But what does distributive equity mean in the context of the global trading system? The system is not intended to be a vehicle for resource transfers. It is an arrangement for facilitating international commercial relations that governments find to be mutually advantageous. So it can only contribute toward distributive equity if it is biased in favor of the growth of commercial activity in the poorer
countries. Since the core of such activity consists in the spread and multiplication of productive enterprises in these countries, this implies the international pursuit of measures that accord these enterprises preferred status in their foreign or domestic markets.

Favorable access to foreign markets has, in fact, been accorded to developing countries through the Generalized System of Preferences and through the other non-reciprocal preferential arrangements that the rich countries manage. However, leaving aside the least developed countries, most developing countries have enjoyed only limited benefits from these arrangements. Rates of utilization have been quite low, perhaps mainly because of restrictive rules of origin. (UNCTAD, 2003) Moreover, substantial improvement in these arrangements appears unlikely. The export success of some developing countries alone militates against this; and the developed countries have also shown a strong preference for regional or bilateral trade agreements with particular developing countries. It seems probable that, instead of gains in preferential access, most developing countries could expect to benefit more through the elimination of the bias in developed countries’ MFN trade barriers. It should be noted, however, that while this would realize greater equality of opportunity in market access, it would not contribute to distributive equity. An exception to these statements has to be made in regard to the least developed countries. The fragmentary evidence does suggest that the more generous preferential arrangements accorded these countries do have quite significant beneficial effects in promoting their commercial activity.

The other way of according more favorable treatment to developing countries within the GATT/WTO regime is to allow the protection of domestic markets in order to promote economic growth. This is more controversial since there is no uniformity in causal beliefs about the effectiveness of protection in promoting growth, and it is evident that much protection has served other, more sectional purposes. But this only argues for careful assessment of proposed protectionist measures.

It would seem that, at least in its origins, one rationale for the less-than-full reciprocity applied to developing countries in the negotiation of across-the-board tariff reductions, was the promotion of economic growth. It may be questioned, however, whether the maintenance of higher tariffs across-the-board is the most efficient way of realizing this aim. It may tend to bias the economy against trade and to constitute an inferior substitute for exchange rate adjustment. It may thus be preferable to utilize measures more selectively, directly assisting firms in specific lines of production which offer the prospect of increasing returns over time. The exclusion of specified products from across-the-board tariff reductions, as proposed in the Doha Development Round, is one such measure. Certain existing rules of the GATT/WTO could also usefully be revised to serve the same end. Article XVIII allows countries to alter their tariff commitments on
infant industry grounds. But the relevant part of the Article has been little used because of its highly restrictive conditions, and some relaxation of the conditions could render the Article more relevant. Likewise, the Agreement on Subsidies and Countervailing Duties, while recognizing that domestic subsidies may play an important role in the economic development programs of developing countries, makes no explicit allowance for this in the operational provisions of the Agreement. This could be corrected in any redefinition of the subsidies that are permissible.

EQUALITY OF OPPORTUNITY AND SUPPORTING RULES

The agreements to reduce trade barriers directly affecting market access are supported by other rules like those relating to customs procedures, the application of sanitary and phytosanitary standards, technical barriers to trade, the use of quantitative restrictions, and subsidies. Some of these rules partly serve to enhance market access in that they facilitate trade and reduce transaction costs. But they also meet the need of trading partners to reassure themselves that the value of the negotiated concessions on direct trade barriers will not be emasculated by other domestic regulations or practices. Underlying the formation of these rules has again been the criterion of equality of opportunity. Countries have sought equivalent treatment.

These supporting rules, however, have never been easy to negotiate because they have to accommodate the diversity that exists among countries in their institutions, business practices and social policies. It is not enough that the rules assure countries of some equality of treatment in trade with each other; the rules need also to be seen as fair—or at least acceptable—within countries if they are to be successfully applied.

Difficulties may arise even when there may be no large differences of opinion about the fairness of a proposed rule. Practical and technical complexities—as, for example, in the technical barriers to trade—may make progress slow. But where proposed rules impinge on different national preferences for social or economic policy, it may prove much harder to agree on their fairness. These preferences may be rooted in strongly held, but different, normative or causal beliefs that make it extremely difficult, or impossible, for countries to agree on what constitutes equality of opportunity. These set limits on the extent to which trade rules can fairly and effectively intrude into national economies.

Until recently, developing countries have been weak, and peripheral, actors in rule-making. The rules have largely emerged from negotiations among the developed countries and have tended to suit their circumstances. Some have been inclined to defend this bias on the grounds that the rules are, in any event,
welfare enhancing since they modernize legal and administrative systems and promote the integration of countries into the global economy. This judges the rules by the economists’ efficiency criterion, and whether the assertion is true or not, it implies an approach that is not consistent with the character of the WTO as a system of rules based on consent given voluntarily.

For many developing countries, a major criticism of some of the rules generated by the Uruguay Round has been that they placed constraints on their development policy options. With the exclusion of most of the “Singapore issues” from the Doha agenda, the possibility of further encroachment appears to have at least been lessened. But other rules remain on the agenda where some rebalancing is possible. We have already mentioned the subsidy rule. In the review of TRIPS and other rules, greater attention also needs to be paid to the protection of domestic policy options that may contribute to national development. Of course, from the viewpoint of their trading partners, it is a legitimate concern that developing countries should subscribe to rules that protect the market-opening commitments they have made. But it also seems true that the appropriate line of division between trade and development measures has not yet been satisfactorily drawn in the WTO agreements.

Many developing countries have also complained that there has been insufficient appreciation of the practical problems that they face in the implementation of new rules. On this score, a major problem lies in the great diversity in conditions that exists among countries. They range from long established nations with central bureaucracies capable of supporting a functioning market economy to those with short histories as independent states and with weak central bureaucracies; and there are also some whose extremely small size gives rise to large administrative diseconomies. The diversity has been recognized in some degree by the provisions attached to rules that allow for special and differential treatment (SDT). However, the mostly time-limited exemptions, with usually modestly longer times for least developed countries, have appeared insufficient for numerous countries. It is only realistic that the differences be adequately recognized in the calibration of the time allowed for implementation of rules.

Among the developing countries, there are, in our view, a number whose state institutions or economic size do not equip them to undertake fully all the obligations of the multilateral trading system. These are composed of the least developed countries together with some other, small, low-income countries. Proposals have been made that such countries should be exempted from all but the core WTO disciplines, like MFN treatment, tariff bindings, the eschewal of quantitative restrictions, dispute settlement procedures and trade remedy measures. The alternative of developing criteria for each and every rule which countries have to meet in order to qualify for exemption, is a more cumbersome
approach and results in more WTO oversight, but may be tactically easier to implement because no list of countries has to be agreed on.

PROCEDURAL JUSTICE

Even if agreement can be reached on the fairness of adopted rules, this does not assure fairness in their application. Conflicting parties may have quite different interpretations of the rules, being influenced not only by raw self-interest but also by different normative and causal beliefs. The most that can be accomplished on this score is to ensure that the procedures for the interpretation and application of the rules are themselves fair. In a number of the WTO’s agreements, close attention is, in fact, given to the task of establishing such procedural justice. This, of course, is the main content of the dispute settlement arrangements but it also bulks large in the measures which countries can take to address “unfair” trade.

Most would agree that the dispute settlement machinery established as part of the Final Act of the Uruguay Round has generally worked quite well. A number of developing countries have used the machinery, and it has proved important in resolving disputes among the leading trading nations. The task of adjudication is, however, a difficult and delicate one, for the adjudicators have to be careful not to go beyond what constitutes the consensus view on the intent of the rules. With this proviso, the fairness of the dispute settlement machinery turns on whether its procedures are equitable. On this score, a practically important inequity is the inability of many of the smallest and poorest countries to utilize the process because of their lack of legal and informational resources. (Hoekman and Mavroidis, 2000)

The problem is different in regard to trade remedy measures. While GATT/WTO has long allowed countries to take defensive action against predatory pricing, the subsidization of imports, or import surges, the freedom to do so has lent itself to abuse. It has been hard to assuage the fears of actual or alleged abuse because use of the measures depends on administrative decisions taken within the importing countries. Nonetheless, more precise definition of the criteria and procedures that countries would be obliged to follow could again help in restricting the scope for administrative discretion. What might do yet more to enhance procedural fairness—though perhaps achievable only in the longer run—would be the transfer of the semi-judicial function to more independent bodies.

CONCLUSION

The hope is that the Doha Development Round will result in a fairer global trading system as embodied in GATT/WTO. While any attempt to define
fairness teaches humility, we have suggested that it can be considered within the framework of two criteria: equality of opportunity and distributive equity.

Equality of opportunity is realized when there is reciprocity in the reduction of trade barriers, when there is adherence to MFN treatment, when any biases in initial conditions are removed, when the rules supporting market access are not only seen as equivalent but are also consistent with national preferences within countries, and when procedural justice is respected, especially in such matters as dispute settlement and the use of trade remedy measures.

Distributive equity in the context of the global trading system has meaning only in one particular sense. It derives from the fact that the global trading system is not a vehicle for income transfers but an arrangement for furthering mutually advantageous commercial relations among countries. Since trade can help in promoting commercial activity in the poorer countries, distributive equity turns around the question of whether the trading system gives preference to the efficient growth of production in these countries through their sales in foreign or domestic markets.

We have observed that the global trading system at present falls well short of meeting these criteria in several respects. There is ample scope for improvement in the Doha Development Round.

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