

# The WTO in Crisis

## *Why the trade crisis can be a blessing*

(Originally published, under the above title and subtitle, in the January 1-8, 2007, issue of America and reprinted here with the permission of America Press., Inc., [americamagazine.org](http://americamagazine.org))

By Robert A. Senser

International trade continues. So do trade negotiations, but with a very big exception. Those under the global umbrella of the World Trade Organization have collapsed. At the end of July the WTO's ruling general council agreed to an indefinite suspension of the "Doha development" round of negotiations launched five years ago in Doha, Qatar. "The round is not dead," said Kamal Nath, India's trade and industry minister. "It is definitely somewhere between intensive care and the crematorium."

Explanations for the breakdown abound. The United States blames the European Union for failing to cut its exorbitant subsidies to agricultural interests, and the EU blames the United States for the same thing. Both are right. But the deeper explanation is that WTO leaders, paradoxically, have been trying to do both too much and much too little.

At the 2001 Doha conference the trade ministers agreed in principle that the focus of the development round should be on the needs of developing countries. Nevertheless, they loaded the agenda with at least a dozen other major items (market access for non-agricultural products, trade and investment, and intellectual property rights among others) and dozens of minor ones, all contentious.. Subsequent summits – at Cancun in 2003, Geneva in 2004, and Hong Kong in December 2005 -- sought unsuccessfully to narrow the conflicting views among the organization's 149 members, especially between the developed and developing countries.

A clear example of the division between the rich and poor world was, and is, the WTO's standing agreement on Trade-Related Aspects of Intellectual Property Rights, or TRIPs, which promotes not free trade but global monopolies on patents, copyrights, industrial designs, trademarks, and other forms of intellectual property. Although global protection of property rights is necessary, TRIPs goes too far. Most notoriously, it overprotects and thereby feeds the opulence of the global pharmaceutical industry, to the point of restricting the right of developing countries to export to other developing countries the generic drugs they manufacture.

Even as the WTO has been taking on much too much, it has done far too little about deviating from the standard free trade model that it so diligently tries to implement. Developing countries, more united than ever, resisted that model – or mind-set,” as India’s Kamal Nath called it – as unfit for the development round. The resulting gap in positions, especially on agricultural issues, led to the breakdown in negotiations.

According to the metaphor of some free trade enthusiasts, promoting trade is like riding a bicycle -- you have to keep moving ahead, or else you'll tip over. Well, the WTO has tipped over. But the crisis can be a blessing. Global trade policy makers can now take the time to assess whether they have been moving in the right direction.

Here the influence of the United States as the world's economic superpower, and the world’s richest market for imports, is crucial. How the U.S. government exercises that influence is guided by the policies and procedures of a key trade law, the 304-page Trade Promotion Authority Act, enacted in 2002. It not only sets U.S. trade policies and the agenda for trade negotiations. It also enhances the President’s decision-making power on trade, notably by being able to speed trade agreements through Congress without normal committee hearings and without the possibility of amendments (that’s why the law was originally known as Fast Track).

The law expires on June 30 this year, and that too can be a blessing. It squeezed through the House at 3:30 one July morning four and a half years ago by a very narrow (215-212) margin and only after painful political arm-twisting,. Public opinion, never enamored by free trade as defined and implemented by both Democratic and Republican administrations, has soured further since then.

The shape of globalization depends largely on global trade and investment policy, and global trade and investment policy depends largely on the United States government. Hence the Congress and the White House will not be able to avoid taking a position on the controversial issues involved in formulating a new trade law, one more in tune with the American public.

What ought that position be? That is a multibillion-dollar question with no easy answers. Here are two studies that point to a few answers.

In the aftermath of the failed WTO summit in Cancun in September 2003, the secretariat of the Commonwealth countries -- a loosely organized group of 52 countries historically linked to the United Kingdom -- asked the Institute for Policy Dialogue at Columbia University to do a study of what a true "development round" would look like. The study concluded two years later

that the so-called Development Round did not deserve its name. In the book "Fair Trade for All: How Trade Can Promote Development," Joseph E. Stiglitz, professor of economics at Columbia, who founded and directs the Institute, and Andrew Charlton of the London School of Economics describe the findings of their research in the context of world trade policy

Most American economists and trade policymakers, as well as economics professors, have a taboo against connecting trade and fairness. As shown in poll after poll, most Americans do not share that mind-set. Precisely as economists, however, Stiglitz and Charlton make a major contribution by defying their profession's taboo. They insist that considerations of fairness -- or call it equity, or social justice -- belong at the heart of the international trading system and that trade agreements should be judged by whether they are fair and fairly arrived at.

That means, for example, that "*any agreement that differentially hurts developing countries more or benefits developed countries more* (say, as measured by the net gains as a percentage of GDP) *should be presumptively viewed as unfair*" (the italics are the authors'). Under the fairness standard, Stiglitz and Charlton find that the Doha round, and today's entire trading regime, is unfair -- loaded against the interests of developing nations. And they call the WTO, "by process and structure, a mercantilist institution, that has worked on a principle of self-interested bargaining."

Significantly, again contrary to prevailing economic doctrine, the authors hold that human rights issues legitimately belong on the WTO agenda. Among the issues they cite are government "restrictions on collective bargaining and the right to take collective action." Also: "Clearly when individuals are forced to provide labor services (e.g., when they are prisoners) or [businesses are] allowed to use child labor, costs of production may be lowered. As a global community, we do not want to provide economic incentives for such behavior. On the contrary, we want to discourage it."

Stiglitz and Charlton trace a good deal of today's trade inequities to decisions reached in 1993 at the end of the Uruguay trade round, which founded the WTO.. Those decisions "reflected, in large part, the priorities of developed countries." As a result, developing countries received only a small share of the gains of that round, and they also had to accept "a remarkable range of obligations and responsibilities" that still burden them. Little wonder that, in the years since then, governments and people in poor countries became increasingly disillusioned with promised benefits that never materialized.

There is a lot of room for argument about which WTO reforms are wise and feasible, but there should be none about the basic principle for a healthy trading system: that its rules should be fair.

A second major study worth wide attention is a project of the Canada-based International Institute of Sustainable Development (IISD). It focuses on the body of international law that covers foreign investors and investment – a legal area that stirred no public controversy until the late 1990s. At that time, the 29-member Organization for Economic Cooperation and Development (OECD) tried its expert hand at creating a binding set of international rules in this important area, and failed. When the contents of the draft, called the Multilateral Agreement on Investment (MAI), became public, it triggered a public outcry from more than 600 organizations across about 70 countries. The most telling objection was that it focused on the rights of investors and ignored their obligations.

Realizing that the multilateral route was perilous, governments then focused more on comprehensive bilateral (government-to-government) and regional free trade agreements that contain MAI-like provisions protecting investors. While the Doha round remains sidetracked, this negotiating route is all the more attractive for developed countries. The Economist in its August 5 issue explains why: “In a global trade round, the big players lock horns with each other....Outside the multilateral system, however, the biggest powers are free to pick off smaller economies one by one.” The President’s office of the U.S. Trade Representative has sought to take advantage of this opportunity. With two regional and eight bilateral free trade agreements already in force, it has intensified bilateral negotiations with several countries. Congressional votes on two of those new agreements, with Colombia and Peru, are scheduled for spring, and will provide an early sign of the new Congress’ attitude toward renewing the President’s fast-track trade authority.

Like the ill-fated MAI, investor protections in those treaties and agreements cover a large amount of ground, both in their broad definitions of foreign investment and in the generous protections given to those investments and their investors. “One-sided instruments,” Luke Eric Peterson, a senior IISD staff member, calls them. “They do a great job of protecting investment (property rights, contracts, intellectual property), but do not provide protection for other human rights, nor do they place countervailing responsibilities on foreign investors.”

In seeking a more balanced approach, the Institute has developed what it calls a Model

International Investment Agreement for Sustainable Development. Howard Mann, a co-author of the model, explains its chief objective: "It redirects international investment agreements away from a simple set of investment rights and government obligations to an inter-connected set of rights and obligations for investors and governments alike, with additional recognition of the role of civil society and local communities in this mix. No existing agreements do that."

The IISD is making developing countries aware of the model agreement, and concludes that the existing approaches "do not have a long-term future," says Mann. He adds: "One can argue about many of the details [of the model], but we believe that the fundamental principle is unassailable: it is never a good thing to have rights without obligations."

Ten years ago the first director general of the newly founded World Trade Organization, Renato Ruggiero, declared: "We are no longer writing the rules of interaction among separate national economies. We are writing the constitution of the single global economy." A grandiose vision. It needs to be brought down to earth by a vision of a diverse global economy based on rules that are fair and on rights that have corresponding obligations. The 110<sup>th</sup> Congress, reinforced by additional fair-trade-minded Senators and Representatives thanks to the November elections, will have a great opportunity to do just that.