

# Introduction

This special issue is the result of a symposium held September 12–13, 2002, entitled “The United States, the Doha Round, and the WTO: Where do we go from here?” The symposium was sponsored by the American Bar Association (ABA) Section of International Law and Practice (SILP) and co-sponsored by the Georgetown University Law Center.

The objective of the symposium was to bring together experts from government, academia, private trade attorneys, international organizations, the private sector, and non-governmental organizations (NGOs) to assess the current situation in the international trade system and U.S. trade policy and to discuss the key issues and ideas for moving forward. The symposium was divided into three basic topic areas: (1) key issues at the Doha Round of World Trade Organization negotiations (an evaluation of the round at a midpoint between the Doha and Cancun Ministerials, agriculture negotiations, “rules” negotiations, and developing country demands); (2) institutional issues at the World Trade Organization (WTO) (institutional change and reform, dispute settlement, the relationship between WTO rules and negotiations, and domestic regulation); and (3) U.S. trade policy (Trade Promotion Authority, labor and trade, environment and trade, concerns over investment agreements, and the role of regional and bilateral trade agreements).

Reflecting the title of the symposium, a key theme across the panels and for the panelists was ambivalence and uncertainty. Indeed, speakers identified a number of sources of uncertainty confronting trade policymakers. It was noted that the phenomenon of globalization is still unfolding and continues to bring about rapid and often unpredictable changes in societies, trade flows, and investment flows, while allowing technology, ideas, and problems to spread quickly throughout the world (as the Asian financial crisis and the recent break out of Severe Acute Respiratory Syndrome (SARS) reminded us).

For trade policymakers the challenges of responding to and shaping globalization – Herculean in the best of conditions – have been exacerbated in recent years by the global economic downturn and the accompanying increase in pressures to curtail cross-border trade.

At the same time, the WTO has undertaken a new, ambitious set of trade negotiations. One element of the complexity of the situation at the WTO is reflected in the fact that, technically, there is not even a “Doha Round,” but a “Doha Development Agenda.”

Because many of the easier issues in the multilateral trading system have already been addressed to a significant extent in previous rounds, a number of more difficult and complex

## INTRODUCTION

issues must now be addressed. These issues include liberalizing tariffs and nontariff barriers in the most sensitive sectors, balancing intellectual property protection with basic public health needs, undertaking the next stage of reforms in agriculture, creating rules for investment and competition policy, and updating “special and differential” treatment for developing countries. In part, as a result of the difficult issues and the ambitious agenda, as well as the large number of countries involved, deadline after deadline has been missed.

In addition, the fuller emergence of developing countries as a powerful force (or, more accurately, as powerful *forces*) in the WTO is adding further uncertainty. Many developing countries have claimed that their interests have not been addressed adequately in the past and have begun demanding a greater role and a greater share of the benefits at the WTO. Some of these demands even appear to challenge fundamental premises of the WTO system and appear to suggest skepticism about the benefits of liberalized trade.

In short, the time is past when agreement of the Quad countries was not only a *necessary* but also more or less a *sufficient* condition for progress in the WTO. The impact of this phenomenon so far is unclear; while developing countries played pivotal roles in launching the Doha Round, the number of issues and voices has made progress more difficult.

Speakers on various panels also commented that challenges facing the WTO do not exist only in the negotiating round, but also pervade the institution. As the number of actively participating countries and the number and technical nature of the issues have grown, the WTO institutions have faced increasing strains. As the panel on the WTO as an institution discussed, conflict over internal and external transparency has grown. As panel member Richard Steinberg pointed out, because these conflicts are often proxy battles for power and influence, they are not easy to resolve.

Concerns also exist about the WTO dispute settlement system, which many believe is engaged in international judicial activism and is not showing appropriate deference to domestic regulatory authorities. In recent years, the United States has accumulated an impressive record of losses at WTO dispute settlement, particularly in the area of trade remedy laws. Some have argued that WTO dispute settlement decisions in the safeguards area have essentially eviscerated the Safeguards Agreement: no challenged safeguard has yet to be upheld. And others are concerned that the WTO, particularly the Appellate Body, is using concepts of substantive international law to create new obligations within the system. The panel on WTO dispute settlement discussed the problems inherent in a system with, essentially, a judicial branch but without a workable legislative check for when the judicial branch oversteps its authority or gets it wrong.

All of this occurs amidst increasing divisiveness and anxiety in public attitudes toward trade and globalization. Some of these attitudes are driven by phenomena that are by-products of globalization and the success of WTO agreements and other international trade agreements. The increased mobility of capital and the speed of trade means that trade flows can dislocate firms and their workers more rapidly than ever before. Globalization of sourcing means that these dislocations may be connected to trade and investment with countries possessing very different legal regimes, regulatory environments, and labor market standards than the United States and other developed countries. The reduction in basic trade barriers means that economic distortions in one market caused by regulations formerly considered to be solely a matter of domestic regulation can have a direct impact on competitors in other markets (for example, the global steel industry and agriculture subsidies).

Further, globalization and the development of international law and institutions has meant that the United States increasingly is required to shape, guide, and occasionally

confront the international systems and rules it helped to create but no longer controls (for example, numerous losses in WTO dispute settlement and unprecedented challenges against the United States under investment agreements). Increasingly, these international rules are affecting regulatory areas traditionally viewed as purely domestic, raising concerns among environmental, consumer, and labor groups, and others.

The panel on domestic trade policy and the role of the Congress discussed how, at the national level, trade traditionally has been a bipartisan issue in the United States. The discussion revealed a number of perspectives on the deterioration of this bipartisan approach since the successful votes on China Permanent Normal Trade Relations (PNTR) and the major new Caribbean and African preferential trade programs in 2000. Perhaps because of the increasingly ambivalent, and in some cases hostile, attitudes toward trade and increasing partisanship, trade has become a more divisive issue. The debate over fast track/Trade Promotion Authority spanned two years and was a bitterly partisan battle. Some have suggested that the fast track victory was too costly. Many of the deals arrived at in order to pass fast track legislation will make meaningful trade liberalization under that framework more difficult. And because the legislative victory in the U.S. House of Representatives relied upon a shaky coalition, debate on the tough issues may essentially have been postponed rather than resolved.

The perspectives shared at the symposium indicate that the uncertainty facing the WTO and U.S. trade policymakers is likely to continue, if not grow. Globalization – the economic integration of markets – is here to stay and will continue to transform and expand (although perhaps with periodic setbacks). Heading into Cancun, the WTO negotiations appear to be stalled. While most observers predict that the Cancun meeting will result in a positive declaration of progress, the answer as to whether meaningful progress has been achieved will have to be carefully examined. Many speakers offered the view that there are no clear paths to regaining real momentum in those negotiations. Issues, such as institutional problems in the WTO and concerns about WTO dispute settlement, do not appear on track to be addressed speedily, in part, because many countries do not share the concerns of the United States. The role of developing countries in the WTO will only increase over time, making progress in the WTO more difficult, both because of the sheer number of players needed for agreement and because of the increased diversity of issues, interests, and basic assumptions at play.

Finally, controversy in the United States over trade policy is likely to grow over time. The inevitable dislocations caused by trade will continue to occur and may increase (albeit with swifter adjustments). The new public concern over international trade and financial institutions shows no signs of abating; and the possibility for conflicts between domestic law and international rules will only grow. Finally, numerous signs indicate that some in the United States intend to keep trade a partisan issue.

Against this backdrop of uncertainty, however, another theme emerged from the symposium – guarded optimism. Indeed, while it is easy to focus on differences, especially given the wide variety of opinions held by panelists, there was a very high level of commonality among the diverse panelists on critical issues.

Of central importance, most panelists and audience members seemed to share in a commitment to the WTO and, thus, to progressive liberalization of world trade within a rules-based system. While panelists questioned how the WTO would be able to withstand the stresses on the organization and whether the WTO could be reformed to function better, there seemed to be agreement of the basic value of the WTO and the need to continue to

## INTRODUCTION

develop the organization and deepen the commitments under it. There seems to be general agreement—the WTO is simply too important to fail.

The commitment to the WTO and to the international rules-based trade and investment system was evident in discussions over the interface between international rules, emanating from the WTO agreements or investment agreements, and domestic regulation. The discussions on these issues involved some of the sharpest disagreements. Yet, for the most part, the panelists generally favored the continued growth of the international rules-based system, albeit tempered by significant disagreement over the content, means of enforcement, and limits of that system in relation to domestic law.

The discussions revealed considerably more concern about the WTO dispute settlement system and the more aggressive proposals for reform. Nevertheless, with a few notable exceptions, symposium participants seemed to believe that, on balance, the WTO dispute settlement system was worth keeping and that the serious problems surrounding it could be addressed without replacing the basic system.

Considerable skepticism was expressed about the Doha Round; whether the agenda was overly ambitious or too limited to facilitate trade-offs on agriculture, whether progress could be made on the tough issues, the focus on development and whether trade policy should be an instrument of development, and whether deadlines would ever be met. Yet, the prevailing view seemed to be that at the end of the day (or, more likely, at the end of a few tumultuous years), the Doha Round would be successfully concluded. Moreover, the panelists seemed to be optimistic that the Doha Round would involve significant global reforms of interest to all countries, including in the critical area of agriculture. On the very controversial issues of labor market standards and environmental regulation, it is useful to note the high-level of commonality on these issues. In 2000, the ABA and Georgetown held another symposium addressing critical trade issues of the day. At that time, the symposium discussions revealed significant disagreement about whether labor and environmental issues should be addressed in trade agreements at all, let alone on how they should be addressed. Just two years later, it was almost a foregone conclusion that a linkage exists between trade, investment, and labor market standards and between trade rules, investment agreements, and environmental regulation. How to address these issues remains controversial, but there no longer seems to be significant disagreement in the United States that they need to be addressed and that it is appropriate to address them in trade agreements in some fashion.

While much of the trade debate in the United States has focused on the labor and environmental issues, this fact tends to obscure significant and widespread agreement in some areas. A strong bipartisan majority exists in the United States in favor of trade liberalization in a rules-based framework. Since passage in 2000 of the China PNTR bill, African Growth and Opportunity Act, and the expansion of the Caribbean Basin Initiative, U.S. trade policy had been moving forward, rebuilding its bipartisan foundations. It is not yet clear what long-term impacts will result from the partisan approach taken for the fast track legislation. It is important to consider, however, common to most of the broad spectrum of viewpoints at the symposium was support for the WTO and a belief in the benefits that trade and globalization can bring to the world - so long as they are properly structured and supervised. While it is a time of great uncertainty, it is also a time of great opportunity for the multilateral trading system and U.S. trade policy.

The volume that follows includes summaries of the panel discussions from the symposium and papers by a variety of individuals, with diverse interests and backgrounds. It is the hope

## INTRODUCTION

of the symposium organizers that these materials will add to the trade debate, help address some of the uncertainty that currently pervades trade policy, and lead to ideas that promote creative and solid solutions. Hand in hand with the relentless changes and innovations brought by globalization, trade policymakers must engage in relentless and innovative efforts to shape and improve the rules of the international trading system. We hope that this volume will contribute to that endeavor.

The symposium was organized by four individuals—Warren Maruyama, Partner at Hogan and Hartson, Tim Reif, Chief Trade Counsel for the House Ways and Means Committee Democrats, Viji Rangaswami, Trade Counsel for the House Ways and Means Committee Democrats, and Mike Castellano, Trade Counsel for the House Ways and Means Committee Democrats and Trade and Tax Counsel to the Honorable Sander Levin. The symposium organizers offer thanks to all of the panelists who provided their time and insights: to Jennifer Dabson and Norma Rosad, at the ABA SILP, who provided invaluable logistical support and really made the symposium a reality; to Georgetown University Law Center for hosting the symposium; to the rapporteurs, Elissa Alben, Alex Amdur, Sarah Carter, Marcia Dixon, and Caroline Nguyen, who prepared summaries of the panel discussions; and to Michael Aguilar, Cori Cudabac, and their team at *The International Lawyer*, who once again did such a professional and speedy job of pulling together this volume.

