



Global Governance,  
Regionalisation and Regulation:  
The Role of the EU  
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## Markets and Institutions: How to Manage the Governance Gap at the WTO?

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## The WTO, the Governance Gap and the Legitimacy Issue

(Richard Higgott)

'The WTO as trade regulator, is at the heart of global governance ... the international trading system and its benefits belong to us all – it is an international public good and the WTO is the only instrument that can be used to deliver the global public good of non-discriminatory multilateral trade.' (Pascal Lamy, 'Humanising Globalisation', Santiago, January 30, 2006)

### Introduction

This paper concerns the role of the WTO as a vehicle for enhancing the development of norms and institutional processes that not only meet the aims of its core business—the progressive liberalisation of trade, but also adapts its structures and new instruments (such as the Dispute Settlement Mechanism) in such a way that it contributes (along with other key institutions) to the governance of the contemporary global order. Whether it can do this or not is dependent on a number of key factors. I propose a *heuristic* working definition that allows us to identify two key strands of 'governance' that any institution needs to address if it is to meet this remit. Following that, I discuss the WTO as an instrument of global governance.

### The Theory and Practice of Global Governance

'Governance' is an over-used and under-specified cliché in the modern policy sciences. It has become a hosting metaphor identifying non-traditional actors (non-state actors such as NGOs and networks) that participate as mobilising agents broadening and deepening policy understanding beyond the traditional international activities of states and their agents. Yet in some key areas of the global cooperative agenda we are witnessing the deterioration of collective governance capacity. Global governance questions resist the technocratic fix and pose major political and ethical questions about the appropriate manner in which policy is made, decisions are taken and implemented and resources are distributed.

For the global policy community the delivery of public goods via collective action problem-solving leads to what I call global governance Type I (GGI). By contrast, scholarly interest, focusing on issues of institutional accountability, greater citizen representation and justice leads to a looser global governance Type II (GGII). But without the enhancement of GG II, the prospects of the continuance of GG I will become unsustainable.

At the core of the quest for legitimacy is the relationship between the market and the theory and practice of governance. This entails a more or less permanent struggle over the continued pace of economic liberalisation. This is a *political* struggle about the distribution of global wealth, not merely a technical economic one about how best to produce that wealth. The struggle has become increasingly vocal since the growth of the anti-globalisation backlash in the closing years of the 20<sup>th</sup> century. Global governance is no administrative 'science' to accompany economic 'science'. It is a contested political process. Here I work with two 'understandings' of global governance. I take global *governance* (economic governance) to be those arrangements—across a spectrum from weak to strong in influence—that various actors attempt to put in place to advance, manage, retard, control, regulate or mitigate economic globalisation.

• **Global Governance I: An Economic Theory of Governance (GGI):** The enhancement of effectiveness and efficiency in the delivery of global public goods via collective action problem-solving. It is underwritten by the emergence of a technocratic-cum-managerial elite and in which the role of international institutions as instruments of transaction cost reduction, policy coordination and compliance for the mitigation of the risks attendant on an open and deregulated global economy are increasingly important.

But, there is a need for:

• **Global Governance (GGII):** The emergence of systems of representation and accountability allowing for the enhanced legitimation and democratisation of policy-making in global, as opposed to national, contexts. GGII reflects an assumption that as the role of the nation-state as a vehicle for democratic engagement becomes more problematic, the clamour for democratic engagement at the global level has become stronger.

For GGII to be acceptable to a large group of principal actors in global politics and at the same time remain supportive of GGI—there has to be understanding of the fundamental differences between unrealisable conceptions of cosmopolitan global democratic governance and realisable systems of accountability that can have political purchase in global public policy. Exercises to enhance the accountability of global governmental actors that do not take seriously notions of what philosophers call 'procedural fairness' will do nothing to fundamentally alter the asymmetrical structural nature of global power.

This has several implications. First, we can expect that the nature of what constitute 'global public goods' will continue to be strongly contested. They cannot be assumed in the manner reflected in the quotation from Pascal Lamy at the beginning of this paper. Second, both the ability and political will of the US to offer self-binding hegemonic leadership, underwriting multilateralism as a principal institutional form of global governance, will continue to be problematic. Without reform, resistance amongst global 'rule takers' to hegemonic order will grow. Legitimacy must be embedded in shared norms (usually of elites, but wherever possible of wider national publics, of the major state actors) and be underwritten by judicial instruments (such as the ICC and increasingly the dispute settlement mechanism of the WTO). It should also be enshrined in negotiation practices that are not only efficient (GGI) but also open and inclusive (GII).

Multilateralism as an instrument for generating legitimacy in the 21<sup>st</sup> century is and will be, as Robert Keohane notes, 'contingent'. Hence, we should adopt a twofold understanding of legitimacy as both a *normative* and a *sociological* concept. Again, following Keohane:

'[N]ormatively, an institution is legitimate when its practices meet a set of standards that have been stated and defended. . . . In the sociological sense, legitimacy is a matter of fact. An institution is legitimate when it is accepted as, and worthy of being obeyed, by relevant audiences. When the relevant audiences believe in a particular normative theory, normative legitimacy tends to coincide with sociological legitimacy'<sup>1</sup>

This is a statist view of legitimacy. However, using a definition such as this allows us to ask hard questions about the legitimate status of an intermediate institutional global public good such as the WTO for example. Is it, and its actions, legitimate? We may answer 'absolutely so' if we can answer both the normative and the sociological question in the affirmative. The answer is 'only partially so' if we can only answer in the affirmative to the normative component of the definition of legitimacy. Absolute legitimacy requires the existence of GGI *and* GGI. If only GGI is present we can expect no more than partial legitimacy. But it is unrealistic to look for absolute legitimacy for international institutions. GGI and GGI have never existed in perfect combination. In the absence of absolute legitimacy (that is both normative and *positive* sociological definition of legitimacy) it may be necessary to search for a lower order institutional 'accountability'.

What are the implications of this theoretical digression for the WTO? On the basis of empirical evidence from previous Multilateral Trade Negotiation Rounds there are clearly questions to be asked about both the normative and sociological legitimacy of the WTO. These are not simply questions about the adjustment problems that arise with the creation of a new organisation. Rather they reflect a number of longer term structural problems pertaining to (i) the continuation of increasingly dysfunctional decision-making procedures and the issue of to whom the WTO is accountable; (ii) the broader question of legitimate functions and roles for the WTO given the manner in which the move from GATT to WTO has widened its remit in a way not appreciated at its birth.

In order for the legitimacy of the WTO as an intermediate institutional public good to be recognised we need to inculcate a feeling amongst most contributing actors (and not just the key ones) a view that, if not legitimate in a sociological sense, the WTO is at least acting legitimately in the normative sense and is at least 'accountable' not only to states in a traditional international relations understanding but also to those wider reaches of civil society that now demand greater voice in global public policy.

This requirement is especially important given the changing nature of multilateralism in the 21<sup>st</sup> century. To date, the WTO operates primarily by the conventions of power politics delivering coerced decision-making, false consensus and inequitable outcomes. But the movement from cooperative regimes to increasingly 'legalised' systems of governance—epitomised nowhere better than in the shift from GATT to the WTO—has raised the stakes on the legitimacy question at the WTO. By extension it has increased the range of actors with a right to 'voice'. If governance increases the expectations of compliance on the part of the governed, then it also raises expectations of accountability and superior levels of justification for the decision taken on the part of the institutions (and their agents) seeking compliance from the governed. If these expectations are not met, the longer term legitimacy of the WTO will remain problematic.

The second half of this paper addresses some of these conceptual issues in the context of the Doha Development Agenda (DDA) negotiations. The addition of the 'development dimension' to a round of trade liberalising negotiation demonstrates how procedural issues of legitimacy and accountability are not only substantive policy questions of economic well-being. They are also philosophical-cum-political questions. As such they require philosophical-cum-political solutions as much as economic ones.

## The Doha Round, 'Development' and the Politics of Legitimacy

The WTO is not a development institution. It is a trade liberalising institution within which many of its principle practices are in fact *contra* development. Note here, accommodating to the needs of developing countries is not the same as being anti-trade as much as it is to recognise the limits of a one-size-fits-all approach. Putting 'development' at the centre of Multilateral Trade Negotiations (rhetorically if not in reality) required a change of thinking that has not been apparent in

<sup>1</sup>Robert Keohane, 'The Contingent Legitimacy of Multilateralism' November 16, 2005:2.

the current negotiations. For the DDA to be a development round required the majors to recognise that it is only they who could take it forward since it is they who have the power to make concessions of a meaningful nature. But adjustment burdens mostly fall on developing countries, as the rules that emerge reflect the status quo in industrial countries.

Moreover, developed countries have not kept to their side of the bargain from the Uruguay Round. The developing countries expected agricultural reform, instead they got TRIPS, TRIMS and GATS. This has both ethical and policy implications for the WTO now that it is embroiled within the broader context of 'development'. A failure to honour commitments established in the Uruguay Round have led to developing country scepticism of the role of the WTO as an agent for development and the Doha Round as a development round. The DDA is based neither on development principles such as a ready acceptance of preferences and the right to some protection as part of a wider industrial/development strategy for developing countries. Rather, the negotiations are based on assumptions of reciprocity stemming from the theory of club goods, not a theory of public goods predicated on non-rivalry and non-excludability. This is a key element of the legitimacy problem facing the WTO.

Appropriate levels of national protection, at crucial stages in their development, were the prerogative of the now-developed countries. In theory there should be no reason why the same privileges should not be extended to developing countries. In practice, there are at least four reasons why they are not:

1. There is a stand-off between developed country economic theory and developing country understandings of that theory. Orthodox trade theory does not concede the 'appropriateness' of domestic 'development strategies' in an era of globalisation and many developing countries believe that the estimates of the benefits obtainable from trade liberalization offered in many economic models (especially CGE models) do not lead to the net economic benefits for developing countries predicted in these models.
2. Moreover, many models are oblivious to the political difficulties faced by developing countries offsetting lost tariff revenues with taxation from consumption (notwithstanding improved welfare implications). In a development context, revenue from tariffs is often both monetarily more significant and with fewer political consequences and economic difficulties than trying to secure taxes in informal economies.
3. The economic debate is also bogged down in discussions of power politics in the contemporary global order; India, China and Brazil may, in *economic* terms, be considered developing countries; but they are also major players in global *political* terms. The USA and Europe are reluctant to consider them developing countries for the purposes of negotiations and the granting of trade concessions.
4. Getting the strong to live by their own rules is not easy. Indeed, were we to succeed in democratising decision making in an institution such as the WTO, this could possibly lead to the major players 'abandoning' the institution for other courses of action as in growing attraction to bilateral and regional PTAs.

## The WTO, Global Public Goods and the Legitimacy Question

The 'legitimacy question' is more important now than at any time in the life of the post World War Two multilateral trade regime. This is due in no small part to the shift from a relatively informal, albeit rules-based agreement, amongst contracting parties (GATT) to a formal organisation with greater policy reach and influence (WTO). So, what is to be done?

**Firstly, the WTO needs to treat 'deliberative democracy' seriously.** This represents one way of revealing, and maybe addressing, the manner in which the WTO operates primarily by the conventions of power politics delivering coerced decision-making, false consensus and inequitable outcomes. Enhanced deliberative democracy—the development of 'ideal speech situation' which ensures inclusive, free, rational, symmetrical and non-coercive discussion with no limits on the remit of the discussion—would reduce power asymmetries and help secure a fairer bargaining process. The obvious retort here, especially amongst the 'trade policy community' is bound to be that no decisions would ever be taken if such a system were to prevail. Maybe, but many Multilateral Trade Negotiations participants do not accept that the deliberative process as currently constituted is produced through deliberation rather than power politics. For developing countries, both the psychologically negative impact of Green Room processes and the asymmetrical deals that result are a test of commitment.

For some WTO analysts and practitioners the only way beyond this impasse is the creation of some kind of 'consultative board' not dissimilar to the UN Security Council. But this does not find much support within the developing world. Indeed, the one thing that WTO decision-making processes have in their favour is that they are, theoretically at least, consensus based. Weighted preferences would shatter the myth of sovereign equality amongst members and institutionalise the omission of many developing countries from the consultation processes.

The process in train since the Seattle WTO Ministerial Meeting has been characterised by a concerted attempt by developing countries to enhance their deliberative impact in the WTO on a number of fronts; epitomised in the growth of coalitions. This does not mean that inbuilt structural disadvantages have gone. Limited financial and human resources

work against developing country participation. Increased capacity for developing countries usually means becoming more adept at articulating their interests through the prism of the liberal trade paradigm with its settled (hegemonic) rationalist, state-centred, but also market-driven norms. This is also, of course, the language of business groups and experts, comfortable with this paradigm and by extension, largely competent in the technical language of the WTO. This empathy and expertise ensures a high degree of access to and influence over the trade policy community as illustrated in the effectiveness of the pharmaceutical industry lobby and the Coalition of Service Industries on TRIPS and GATS in the Uruguay Round. On the other hand, most civil society actors, especially those with a 'development focus' are not regarded as sources of detached 'expert knowledge' on the international trade regime. Rather they are seen as antagonists and activists. As a consequence, the decision-making processes of the WTO will remain contested domains of legitimacy.

**Secondly, establish the principle of 'procedural fairness'.** A cliché maybe, but we need to increase the 'voice' of the South in the WTO. Voice is the ability and opportunity to *both* (i) formulate and articulate policy *and* (ii) have the opportunity to advance such policy. But generating 'voice' on new ideas is constrained not only by capacity, but also by the residual strength of existing ideas within the core epistemic and political groupings. Liberal economic trade theory privileges 'abstracted rationality' at the expense of 'contextual rationality' and the embedded political contexts of policy-making. But, for many developing country policy-makers, contextual rationality is privileged. Ironically greater socialisation into the discourse of liberal trade could turn out to be one of the most useful ways of minimising Southern voices on the issue of the legitimacy of the WTO. If not, then the gradual learning curve that has seen the self-empowerment of developing countries as negotiators, in the absence of procedural fairness, may prove to be a serious obstacle to collective action problem-solving in general and the role of Northern-inspired providers of global public goods in particular. In the absence of procedural fairness the temptation by developing countries to thwart the aspirations of the developed countries is only likely to grow.

Collective action problems require negotiated outcomes and these are secured in *political activity* between the principal actors. This is not simply a technical issue of bridging the participation gap. Nor is it just an issue of how to incorporate new actors into the multilateral spaces (especially civil society actors) traditionally occupied by states. These are all necessary conditions of enhancing GG II but they are not sufficient conditions. Thus, for many poor countries no deal may be better than a bad deal. This is a position that those wishing to advance the role of the WTO, both short term through the completion of the Doha round, and longer term as an instrument of rational global economic governance, need to avoid. This requires both procedural and outcome justice. *It requires GGII as well as GGI.* Institutional rule-makers (from the developed world) tend to privilege GGI while rule-takers (developing country government officials and civil society actors) tend to privilege GG Type II. *Thus the possible difference between success and failure in a negotiation will revolve around the degree to which the principle of justice and fairness underwrite any bargain.* 'Justice as process' is every bit as important for developing world rule-takers as is 'justice as outcome'.

But because power asymmetries rather than procedural fairness remain the key to explaining outcomes in WTO negotiations, the WTO is seen by many as a vehicle for the advancement of so-called goods that, rather than being global, serve the interests of the developed world first. Power asymmetries in negotiation processes are damaging those principles that underwrite multilateralism-indivisibility, non-discrimination and diffuse reciprocity.

**So what strategies are there for addressing the governance issue in a body like the WTO?** One strategy is to continue attempts to allow greater participation by non-governmental actors and increase the capabilities of the developing states in the inter-governmental process by concerted WTO-friendly capacity building. But this route is slow and, judged by results, not particularly effective. Moreover, WTO supported capacity building is unambiguous in its aims. As the Doha Declaration makes clear the aim of technical assistance for capacity building is to '... assist the developing countries ... in transition to adjust to WTO rules and disciplines, implement obligations ...' (p. 17).

A second strategy is to attempt to create a 'new multilateralism' for the 21<sup>st</sup> century; one that changes assumptions of global order and attempts to alter policy outcomes *from below*. It contrasts with what we might call the multilateralism of the 20<sup>th</sup> century, in which international institutions extended their remit geographically (by widening institutional membership), functionally (by deepening coverage of issues) and inclusively (by the cooption and socialisation of recalcitrant actors into the dominant neo-liberal market mode) *from the top*. The challenge is now to *combine* the legitimate welfare and regulatory roles of states with economic models that continue, more or less, to revolve around liberalised (and progressively globalising) private sector activity and in so doing, improve our ability to enhance, and in some instances consolidate, existing or nascent patterns of legitimacy and *accountability*. Thus the problems we have to address if we are to enhance GGII are how do we disaggregate democracy and accountability and how do we, or can we, separate the notion of legitimacy from accountability? Put as a question, is it possible to think about global accountability when there is no global democracy?

Being 'accountable' assumes the presence of 'norms of legitimacy', but this is not the same as being democratic<sup>2</sup>. In much contemporary analysis of global governance democracy and accountability have, all too often and all too wrongly, been conflated. In theory, institutions such as the IMF and the World Bank are accountable to the governments that have created them and in an increasingly participatory mode to the developing countries they aim to assist. It is in this second sense, with the implications of the empowerment of traditionally weaker actors, that accountability as participation and representation is often conflated and confused with full scale democracy. It is this confusion that, often wrongly, leads us to challenge the legitimacy of the international institutions. Can they be legitimate, and in part accountable, without being democratic by the yardstick of the 'domestic analogy'?

The rhetoric of illegitimacy has become increasingly powerful in the hands of the anti-globalisation movements. In many ways the international institutions are indeed accountable, and often more accountable than many of the NGOs that criticise them. But they are not accountable in a way that satisfies those who equate legitimacy with democratic theory underwritten by the domestic analogy.

The 'legalisation' of an institution can give the traditionally smaller, weaker powers a stronger hand to play, thus developing countries have a strong preference for formalised, rule-governed processes of decision-making within an institution that has a specifically defined mandate underwritten by judicial instruments rather than the informal, less prescriptive and flexible approaches favoured by developing countries. It should be noted that it is in the rules of behaviour that the developing world wants more regulation. Paradoxically, in the actual issue areas of interest to the WTO, they complain that the excessive regulation has the effect of minimising their policy space. It is here that we see the different understanding between the developed and developing world on the role of 'rules'.

This makes the understanding of accountability complex, but no less important for that. For too long, and drawing on the domestic analogy, accountability has been equated with democratic accountability, which in turn has been equated with widening participation. In order to take GGI forward, we should not dream of instant and unattainable global democracy but rather identify conditions for the operation of a variety of accountability mechanisms. Three things can improve accountability:

1. *The improvement of standards and the acceptance of norms of behaviour that are considered fair and just.* This is difficult. But there are signs of, if not a new consensus on the evolution of democratic norms, then at least a growing unacceptability of entrenched and exacerbating patterns of inequality in the global economic order.
2. *Enhanced information provision and transparency.* This is emerging strongly. Modern communications and their global diffusion make transparency an important political tool. We are at the beginning, not the end of this process.
3. *The ability to apply sanctions in issue-specific contexts.* This has implications for sovereignty. But the WTO dispute settlement mechanism is an example of how this can happen.

Enhancing our capabilities in these areas should be at the core of an agenda to enhance GGI. This is not abstract political theorising. Successful, albeit gradually enhanced, such activities will eventually cast massive policy shadows. Without them the longer term legitimacy of bodies such as the WTO will come under greater challenge than is the case today.

## Conclusion

The unsatisfactory and contested nature of the decision-making process, as much as substantive trade issues, challenges the legitimacy of the WTO as a vehicle for 21<sup>st</sup> century global economic governance. There is a democratic deficit. Most of those affected by WTO rules have no input into the process and current institutional structures enhance rather than mitigate this situation. How the WTO does things, as much as what it does, is important. This paper has offered a couple of 'middle range' suggestions of a reformist nature that might make a longer term positive difference. But in the immediate term we are left with the 'Doha Dilemma'—the seeming incompatibility of trade liberalisation and the preservation of 'development policy space'.

Little or no advance in the 'new areas' in the DDA will leave the developed countries dissatisfied; conversely, too much advance will enhance the likelihood that developing countries will walk away from the DDA. For the 'development element' of the Doha Round to work, and for the developing countries to stay the course, a *de facto*, if not *de jure*, multi-speed process in the implementation of WTO disciplines is needed. Yet were this to happen this would only create a further dilemma. While it may make things easier for developing countries in meeting WTO obligations, the disadvantage of this approach is that it would certainly undermine their overall input into the policy process of the WTO.

<sup>2</sup> The discussion of accountability presented here draws on Ruth Grant and Robert Keohane 'Accountability and the Abuses of Power in World Politics' *American Political Science Review*, 99 (1) 2005: 1-15.

## The Governance Gap between Markets and Institution: The Cases of the EU and the WTO

(Jean-Pierre Lehmann with Fabrice Lehmann)

From the inhuman barbarities that occurred in Europe during the first half of the 20th century, after World War Two there arose in the West a novel supranational institutional framework, infrastructure and rule of law. Indeed, probably the greatest institutional innovations of the second half of the 20th century were the European Economic Community\* (EEC) and the General Agreement on Tariffs and Trade (GATT), which later metamorphosed into the World Trade Organisation (WTO).

On the face of it, both institutions have been an astonishing success. However, there can be little doubt that since its establishment in 1995 the WTO has undergone a number of crises and is in a state of drift. The same is true of the EU following its establishment in 1993. This institutional "drift" arises from an increasingly yawning governance gap; indeed, the gaps that have emerged in both the EU and the WTO have certain striking parallels.

This policy brief analyses the following elements behind the crises and drift:

- The lack of a sense of institutional legitimacy in respect to both EU and WTO;
- The absence of a unifying project;
- The failure on the part of many of the key member states of the EU and of the WTO to undertake necessary domestic and regional reforms;
- The rise of economic nationalism in the face of globalism; widespread crises of community, identity and insecurity in Europe and in the broader global society;
- The lack of coherence, credibility and efficiency between institutions.

### The EU and the WTO – Parallel Institutional Crises and Drift

#### *Backlash and (il)legitimacy*

**Constitutional backlash in the EU:** The rejection of the EU's constitutional treaty has created much uncertainty as to present and future formal institutional objectives. One of the striking features of the current wave of Euro-disillusionment is a shift in perceptions throughout the core countries in which the EU is increasingly perceived as a symbol of the negative forces of economic liberalism and globalisation. This can be attributed to the poor economic conjuncture of the past years during which a direct correlation is being made between unemployment and European institutional development. EU institutions, like the WTO, are perceived as remote and incredibly hard to understand. Eastern enlargement has forced through the imperative of much needed institutional reform aimed at greater democracy and efficiency; one that would generate enhanced accountability of politicians through a clearer identification of roles. However, a democratic deficit remains as does the importance of clearly outlining where exactly distinctive economic policy remits lie: at the national or supranational level; member states, the Council of Ministers, the Brussels Commission or the Strasbourg Parliament?

#### **The Great Globalisation and WTO Backlash**

It was almost exactly a decade after people were rejoicing at the collapse of the Berlin Wall in November 1989 that they were out in great mass violently protesting against globalisation and world trade at the WTO ministerial meeting in Seattle. The WTO has become deeply unpopular and the backlash remains quite virulent, including in many political circles.

A major contributory factor to the drift and perceived illegitimacy of the WTO is the striking contrast between the policies and words of mercantilism and the principles of liberalism that the WTO is held to represent. When trade negotiations were a purely secluded affair carried out in backrooms and away from the public glare, this contradiction mattered little. However, for various reasons, including the rise of civil society and the internet, global trade negotiations have now become publicly globalised.

#### *The lack of a common vision and goal*

**Absence of a unifying project in the EU:** The Lisbon agenda was identified by the European Council as a catalyst for a European revival. But an imprecise definition of the common interest and an inadequate identification of the challenges arising from the diversity of European national economic structures, particularly with regard to labour market institutions, imply that the agenda does not appear to be going anywhere fast. The Lisbon strategy agreed upon in 2000 was devised for a relatively homogeneous set of high income countries. Enlargement entails a far more diverse group for which the definition of a common set of objectives and policies is proving to be elusive. This is particularly pertinent to the reform process of labour market institutions and the sustainability of social models: to reach the same goals, those of shared peace and prosperity, policy priorities clearly do not fall into 'one-size-fits-all' prescription patterns and must be chosen on a national-specific basis in conformity with international commitments.

**Absence of a unifying project in the WTO:** Although it was, with the benefit of hindsight, probably a mistake to have named the Doha Round the Doha *Development* Agenda, it is nevertheless the case that "development" could have featured as a major unifying project for the WTO. In fact, the reality and great paradox are that five years after the Doha "Development" Agenda was launched, relations between developed and developing countries have arguably reached a nadir not seen since the seventies.

\* The European Economic Community (EEC) became the EC (European Community) and subsequently was established as the European Union (EU) in 1993.

The North, as much as the South, stands to gain immensely from the development of the developing countries. Richer developing nations such as India, Pakistan and Brazil provide a potentially fast expanding market for Western corporations precisely at a time when their own markets are contracting due to rapidly aging and diminishing populations. For many reasons, therefore, the project of a development agenda could have been a great unifying factor in the global community, which, in turn, should have given the institution the legitimacy it has come to lack. Failure to have done so represents a great lost opportunity.

#### ***Supranational institutions and economic reform***

**Economic reform and the internal market in the EU:** An ambitious programme of EU economic reform that brings institutions in line with the phenomenal uptake of corporate and technologically driven global markets requires first and foremost national structural reform measures. The Commission can focus its attention on the specific areas where it can play a leading and concrete role: the strengthening and smooth functioning of the twenty-year-old common market with the added use of settlements emerging from the European Court of Justice.

In terms of markets and governance, the two big issues the Commission is attempting to tackle are those of deregulation of the services sector and the opening up of energy markets. Creating a cooperative EU energy market strategy can be identified as a priority that supersedes current multilateral ambitions within the WTO. The same can be said of the services directive which, although incomplete, is far more advanced than anything being proposed under the GATS schedules. Evaluating the evolution of the services directive within the EU could serve as an interesting benchmark for global integrative dynamics. A further priority that is closely related to services should be to guarantee the free and legal flow of workers within the EU regardless of their origin and occupation; something a majority of national legislatures have yet to achieve and is the worst case of protectionism within the EU.

**The WTO and national and regional economic reforms:** With few exceptions, the process of reforms in the domestic and regional economies of both North and South have been stalled or greatly diluted. Countries such as China and Chile, where reforms have been successfully implemented, stand out as sterling exceptions. In India, the picture is decidedly mixed. The process of reform initiated in 1991 has been promoted and sustained. However, India's growth rate could easily be increased. Much of India's poverty and that of its neighbours is home-grown. The excellence of India's rhetoric on the global stage contrasts with the reality at home and in the neighbourhood. Economic reform cannot take place at the global level without it occurring simultaneously at national and regional levels.

#### ***Globalism versus the rise of economic nationalism***

**Ever widening and deepening in the European Union:** The level of public scepticism is currently so deep within a majority of existing member states that doubts are being raised as to the EU actually being a force for stability and prosperity.

The Community system's strength is being strongly tested by the global economy. The expansion of market forces and cross-border social mobility has diffused European perceptions of community and identity but not necessarily towards recognised institutions of community at the European level. The issues most citizens really care about – social welfare, taxation, healthcare, pensions and education – have essentially remained national. The fact that the European Union is having such difficulty creating a sense of community and consoling concerns of identity and insecurity illustrates how much more daunting this will be on the global scale. It is in the area of the global labour market and the current institutions (including the WTO, but also the ILO) that the greatest governance gap exists. While the current process of globalisation has indeed seen some improvement in the cross-border movement of goods, capital and some services, the playing field, as emphasised, remains very tilted against the developing world. No market can function without a community and a sense of community.

Institutional efforts to deepen and preserve unity hit a wall with the constitutional debacle last year; the main challenge ahead is that of creating and managing prosperity and unity in enhanced diversity. In contrast to a deepening and widening European Union, one is seeing a deepening and widening of European economic nationalism.

**Implications for the WTO:** The early 1990s marked the victory of the market economic system over the command and control economic system and import-substitution. Visceral economic nationalism in developing countries was in large part directed at what was seen as predatory multinational corporations. As companies from developing countries such as Chile, Brazil, Mexico, India and China gain confidence in their management capabilities and increase goals in the globalisation strategies, they will be increasingly present in the mergers and acquisitions arena. The way the trend is going at present this may end up being a business version of the "clash of civilisations". Rather than serve as a model of liberalism, Europe is engaging in and thereby legitimising economic nationalism, which will seriously undermine the WTO.

#### ***Institution building and global governance***

**The EU and international institution building:** The present international trade structure has for a large part been shaped by the EU, and trade is arguably the only international arena in which the EU applies its full economic and political clout. But the EU is finding it increasingly difficult to define a common agenda on global economic matters. The degree of trade preference heterogeneity is high among member states.

In the EU the governance gap between institutions and markets is especially increasingly visible in the fundamental policy and philosophical differences between the open trade countries primarily in northern Europe and the protectionists, championed by France, in southern Europe. Should the EU, under the strains and challenges of globalisation, withdraw from its historical responsibilities of strengthening the multilateral framework then there is little prospect of seeing a plausible actor fill this void in the immediate future. The result would be a greater gap in global economic governance.



**Global institutional incoherence:** The idea in Bretton Woods was to establish not only solid international institutions, but also coherence between them. The bridge was to be found in the spirit of multilateralism. Multilateralism has not been particularly conspicuous, coherent or influential in the global arena for many of the post-war decades. The United Nations has been a particular source of immense disappointment.

Although the post-war multilateral order was constructed primarily by the United States, it has often been Washington that has most undermined multilateralism. In contrast, the European Union has been a champion of multilateralism. While multilateralism may reign in the spirit of the EU, the absence of an effective common foreign and security policy (CFSP) has significantly emasculated the EU's potential clout. Although the EU has shown a reasonable degree of unity vis-à-vis the United States in respect to the environment and the international court, the unilateral war undertaken by the United States against Iraq threw the proverbial cat among the EU policy pigeons. The collateral damage caused by the war in Iraq to the global order may end up being far greater than is currently imagined.

### The EU and the WTO: Future Perspectives and Prospects

**The EU:** Some new form of 'settlement' – a 'globalisation settlement' – is going to have to emerge within an institutional setting that achieves a greater balance in restraining negative market externalities without dampening market dynamism. A clearer junction between short term risks and medium to long term gains is going to have to be articulated within this process while taking into account the existence of very different European social models. This should include as a priority a strong and convincing political commitment to sustained human capital formation under the Lisbon or any other agenda. This is the governance gap that will have to be filled between markets and institutions in the EU if it is to remain a vibrant and credible force for the welfare of its peoples and regain its status as an enlightened driver for a fair multilateral economic legal framework. The EU needs to be open, educated, innovative, flexible and dynamic.

**The WTO:** There have been very positive developments in the global trading environment since the establishment of the WTO in 1995: the great increase in membership, the installation and practice of the dispute settlement mechanism, the much more active participation of developing country companies in the global market and global supply chain, and many other dynamics. But the WTO has failed to act as an inclusive force. Whereas trade is a force that should unite people and societies, in fact great divisions have occurred.

There is in the early 21st century a governance gap, which is quickly approaching the proportions of a chasm, between markets and institutions. The present situation is unsustainable.

### The Imperative of an Ambitious Agenda

The EU and the WTO are currently suffering from acute problems, resulting in a combination of crises and an overall sense of drift. The current juncture marks the end of what the Indian historian B.K. Pandey referred to as the "Vasco da Gama era of history", which began in the late 15th century and witnessed the ascendancy of Europe over the rest of the planet. The governance gap between markets and institutions is arguably the greatest current deficit in the global order, also the greatest opportunity. Narrowing the gap will not be easy and may take a long time. If the drift can be ended and a sense of direction set, that will already be a very considerable achievement.

The following recommendations address the striking governance gap highlighted in this brief between markets and the institutions of the EU and the WTO:

- To enhance institutional legitimacy: The policies – and their adherent effects – of both the EU and the WTO require clarification, consistency, transparency, honesty (as opposed to hypocrisy) and better education of and communication to the public.
- To foster a unifying project: The EU needs both a collective project, something along more realistic versions of the Lisbon Agenda and which facilitates the development of policies that respect and conform to national diversities – policies chosen on a national specific basis in conformance with international commitments. At the multilateral level of the WTO, a much more rhetoric-free agenda for creating a far more inclusive global trade environment conducive to growth, development, wealth and welfare-creation.
- Economic reform: National structural reforms of both WTO and EU members (as well as candidate countries) must be made a priority for sustained economic growth. At the supranational level, the EU Commission must focus on the deregulation of the services sector through the evolution of the services directive, advocate the importance of free movement of labour amongst EU citizens, and focus on the creation of a cooperative open EU energy market strategy. At the WTO level, greater recognition must be given to the primacy of domestic governance reform.
- To curb economic nationalism, fears of insecurity and identity claims. In the EU, efforts must be made to develop a sense of community on a European-wide level. EU prosperity and unity need to be created and managed to counter the enhanced diversity within the EU as a result of both a deepening and widening of the EU and globalisation. At the WTO, the establishment of the global market must involve the creation of a global community (village).
- Institution building and global governance: The drift both within the EU and especially in global governance arises in good part from the lack of coherence, credibility and efficiency between institutions. This must be addressed.
- A 'globalisation settlement' needs to emerge within an institutional setting to achieve a greater balance in restraining negative market externalities without dampening market dynamism. Furthermore, a strong political commitment to sustained human capital formation needs to be given priority.

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