

Understanding the GATT's wins and the WTO's woes

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Introduction

The WTO's predicament is a puzzle. Compared to other international organisations it is a huge success, yet the WTO is widely regarded as suffering from a deep malaise. Exhibit A is the inability to conclude a round of multilateral trade negotiations. The last one came in 1994; the current talks (the Doha Round) are in their ninth year and far from done.¹ Exhibit B is that most WTO members have lowered their trade barriers since 1994 – just not in the context of the WTO; they lowered them unilaterally and/or only against privileged partners.

This paper strives to identify the fundamental sources of the WTO's woes. Since accounts of the WTO's quandary stem largely from the contrast between the GATT's (oft romanticised) wins in the 20th century and the WTO's woes in the 21st, the point of departure must be identification of the fundamental sources of the GATT's successes. Two caveats:

- To concentrate on essentials, the reasoning is conducted at a high level of abstraction; details are skipped and generalisations are overly broad.

The paper lays particular stress on the distinction between woes whose sources are 'intrinsic' (i.e. victim-of-its-own-success arguments) and those that are extrinsic (i.e. the world-has-changed arguments).

- The historical narrative gives the false impression of rationality and foresight.

The GATT's evolution was driven by natural selection – many, many things were tried; those that worked were maintained, those that failed were dropped and usually forgotten. 1

¹ Wags used to refer to the GATT as the "General Agreement to Talk and Talk" but the slowness of WTO's Round has them referring to the current Round as "Doha (ha ha)".

use the vehicle of rationality to highlight the political economy forces governing the 'natural selection.'

The next section considers the sources of the GATT's successes. The subsequent section considers the changes that created the WTO's woes. The final section presents a summary and some concluding remarks.

Sources of the GATT's Success

The GATT's success in lowering tariffs relied on two political economy sleights-of-hand.

Trick 1: The tariff-cutting juggernaut

The first trick arranged tariff-cutting talks in a way that confronted old-fashioned protectionism with old-fashioned mercantilism. The key was the reciprocity principle – i.e. foreign tariffs fall only if domestic tariffs also fall. This enabled governments to counterbalance protectionist lobbies (who opposed domestic tariff cutting) with exporter lobbies (who didn't care directly about domestic tariffs, but who knew they had to fight protectionists in their own nation to win better foreign market access). In this way, GATT negotiations realigned the political economy forces inside each nation in a direction that favoured lower tariffs.

But this is not the end of the juggernaut's magic. The agreed tariff reductions cut away at political support for protection with domestic and foreign tariff reductions acting as the scissor blades. Domestic liberalisation downsized import-competing industries as firms shed workers, lost sales, or went broke. Foreign tariff cuts boosted output, employment and profits in export sectors. As political influence follows economic clout to some extent, the up-sizing of export interests and the down-sizing of import-competing interests tilted future political calculations

towards more liberalisation, although the induced entry and exit took years. In short, the reciprocal tariff cuts agreed at one GATT Round altered national political economy landscapes in a way that fostered continued liberalisation at the next GATT Round. Trade-induced economic growth also eased economic adjustment, thus rendering liberalisation easier politically.

The up-sizing of export interests and the down-sizing of import-competing interests tilted future political calculations towards more liberalisation

This mechanism is called the juggernaut effect since once the tariff-cutting ball starts rolling, it creates political economy momentum that keep it rolling until all tariffs in its path are crushed. At that point it runs out of ‘fuel’ and stops.² Plainly, the logic only applies to tariffs open to reciprocal negotiations. Sufficiently strong special-interest groups in key nations, e.g. agriculture, managed to keep their protection off the negotiating table until 1986, so the juggernaut had little effect on them.

The role of rules

This process of occasional Rounds lasted decades. To avoid backsliding – and to ensure the juggernaut never started rolling in reverse (as it had in the 1930s) – the Rounds “process” was embedded in a set of rules designed to make political reversals difficult for individual members. One particularly critical rule was the principle that a nation’s past tariff cuts were “bound” (previously agreed tariff levels were not open to further negotiation) and a nation’s partners could retaliate against any violation of bindings. The effect was to ensure that each nation’s mercantilists would be punished for any backsliding, thus giving them an incentive to push their government to respect the bindings.

A critical design element was the fact that this mercantilist-protectionist link did not depend on the nation’s own government – it was ‘enforced’ by retaliation decisions of foreign governments. After the first Round, governments no long had the luxury of unilaterally breaking

2 Juggernaut stems from a British mispronunciation of the Hindu deity of the Puri shrine, Jagannath, whose chariot – an enormous and unwieldy construction – requires thousands of people to get rolling. Once started, however, it rolls over anything in its path. See Baldwin (1994 p. 73) for an early presentation of the concept; Baldwin and Robert-Nicoud (2008) for a mathematical treatment.

the mercantilist-protectionist tie. Indeed many early GATT members never ratified the GATT. In the US case, Pauwelyn (2005 p.16) notes that “the GATT was provisionally applied (never actually entering into force) for forty-seven years.” Bindings plus retaliation teamed with the juggernaut’s protectionist-humbling magic meant that US protection fell despite the GATT’s uneven legal status.

More colloquially, the binding+retaliation rule kept a nation’s mercantilists harnessed to the anti-protection plough regardless of their own government’s stance.

Trick 2: Consensus with the don’t-obey don’t-object & MFN

As trade policy is so politically sensitive, the GATT opted for consensus as the basis for most decisions. There was no Security Council or Executive Board. Of course, consensus is typically a formula for gridlock, so how did the GATT avoid impasse despite a membership with attitudes towards trade as diverse as the US and UK on one hand and Burma, India and Czechoslovakia on the other?

The short answer is that not all members had to obey all rules. Countries whose markets were too small to matter globally – mainly the developing nations in the GATT’s first decades – were not expected to cut their own tariffs during Rounds. Nevertheless, the GATT’s principle of ‘most favoured nation’ (MFN) meant that their mercantilist enjoyed the fruits of whatever tariff cutting was negotiated among the big nations.

This trick fudged rather than solved the consensus problem. By turning membership into a “don’t obey, don’t object” proposition for developing nations, the GATT could be de facto run by a handful of large, like-minded nations despite the consensus principle and despite the numerical dominance of developing nations. These de facto leaders were called the Quad (US, EU, Japan and Canada). Deals and agendas were set via bilateral discussions and finalised in “Green Room” meetings; relatively few developing nations attended negotiating sessions in the 1970s and 1980s.

Dispute settlement: Adjudication with an escape hatch

An ancillary aspect of the GATT’s tariff cutting success was a dispute mechanism with an escape hatch. Disputes were brought before a Panel whose rulings were reviewed by a group of members that included the disputing parties. According to the consensus principle, the Panel ruling was only accepted if all parties agreed. This provided enormous wiggle room. While developed country members typically sought to

respect the rules, the consensus rule provided an “escape hatch” to be used in particularly difficult situations.³

This leaky dispute procedure facilitated progress in two ways.

- First, it allowed GATT members to be satisfied with ‘constructively ambiguous’ wording on many issues.

Rather than working until an absolutely unambiguous text could be agreed, the GATT members could papered over differences with ambiguous wording. The GATT’s quasi-legal dispute mechanism (with escape hatch) could be relied upon to settle disputes or at least to help frame future negotiations aimed at clarifying ambiguities – if and when such clarification proved important. Of course, if the members had extremely diverse preferences, the “escape hatch” would have become the “main exit” thereby rendering the rules useless – and indeed this is what happen to GATT disciplines on RTAs. But the don’t-obey-don’t-object feature meant that most disputes concerned nations who strove to comply in most cases.⁴

- Second, it forced large GATT members to privilege negotiations over litigation when it came to intra-Quad disputes.

A former GATT Ambassador from a Quad nation reacted to this assertion by saying that the informal rule-of-thumb was that a member could bring a panel on any dispute involving less than \$100 million of trade.

Refuelling the juggernaut and deepening don’t-obey-don’t-object

Thus described, the GATT seems like a brilliant piece of ‘mechanism design’ (as economists call sets of rules that induce collectively

beneficial behaviour by selfish individuals).⁵ The mechanism, however, required periodic tweaking and the evolution of these tweaks serves to illustrate the way in which the two pillars – juggernaut and don’t-obey-don’t-object – went hand in hand. Here I provide a line sketch of the changes, see the Appendix for more detail.

Instead of a free-ride on Quad liberalisation as in past Rounds, developing nations were confronted with a take-it-or-leave-it proposition.

The first tweak came with the Kennedy Round. The Quad agreed to strengthen reciprocity forces by shifting from the principal-supplier approach to a formula approach (see appendix) while at the same time making non-reciprocity explicit for developing nations. The second came in the Tokyo Round when the juggernaut was refuelled by adding new areas of interest to Quad exporters while at the same time deepening and broadening don’t-obey-don’t-object with the Enabling Clause and the Codes approach. The next refuelling came in the Uruguay Round. To maintain the interest of Quad mercantilists, TRIPs, TRIMs and Services were added to the agenda and these were balanced by putting agriculture and textiles barriers in the juggernaut’s path.

The Uruguay Round refuelling, however, could not employ the Kennedy and Tokyo Rounds’ approach to fudging the consensus problem by deepening don’t-obey-don’t-object. This would have unbalanced the package; developing nations would have opted out of TRIPs, TRIMs and Service while benefiting from agriculture and textile liberalisation. Indeed, rather than deepening the don’t-obey-don’t-object bargain, the Uruguay Round’s endgame tactics annulled it via the Single Undertaking and hardening of the dispute settlement procedures (DSU).

Creation of the WTO: Uruguay Round hardball

To put it bluntly, the consensus problem was overcome with a stick rather than a carrot. Instead of a free-ride on Quad liberalisation as in past Rounds, developing nations were confronted with a take-it-or-leave-it proposition. As Stoler (2008) explains it, the Quad used the creation of a new institution – the WTO – to confront all GATT members with a stark choice: sign the Single Undertaking at

³ While I am referring specifically to the ability to block a panel ruling, the general issue of the impact of allowing exceptions on agreements has been widely explored. See Hoekman and Leidy (1993) on the role of loopholes more generally, and Rosendorff and Milner (2001) for a detailed analysis of optimal escape clause issues.

⁴ One reason the rules were generally respected was that the Quad governments considered them useful tools in their battle against special-interest pleadings for policies the governments knew were not in their nation’s best interests. Quad governments knew that things like production and export subsidies were not generally in their nation’s best interest (especially if subsidy wars broke out); the GATT rules help them hold the line against powerful special interest groups.

⁵ The subject of the 2007 Nobel Prize in Economics to Leonid Hurwicz, Eric S. Maskin, and Roger B. Myerson. See www.nobelprize.org/nobel_prizes/economics/laureates/2007/ecoadv07.pdf.

Marrakesh and join the WTO, or remain in the old 1947 GATT and take the chance that it might be abandoned by the big players.⁶

Sources of the WTO's woes

The Uruguay Round's closing tactics changed the basis on which GATT's successes were built. In a political economy sense, the WTO and GATT are completely different international organisations. Specifically, the Single Undertaking and DSU pushed the WTO into decision-making's "impossible trinity" of consensus, universal rules, and strict enforcement.⁷

Experience teaches us that the only way to defeat the impossible trinity is the big-package tactic, i.e. to put together a big deal with something for everyone. The big-package, for example, is how the EU – which also faces the impossible trinity for major internal decisions such as Treaty changes – handles the trinity. Of course all GATT Rounds used a form of the big-package tactic, but acquiesce of most developing nations was bought with don't-obey-don't-object plus MFN free riding.

Two unintended consequences of Marrakesh make the big-package tactic much harder in the WTO:

- Due to the Single Undertaking and DSU, developing countries would have to obey. As a consequence, they would have to object to things that threatened their interests.

This political activation of many previously passive members created three sources of delays (see below). The second unintended

consequence concerned Non-Governmental Organisations (NGOs).

- As the Uruguay Round package included much deeper rules on 'behind the border barriers' (BBBs) and the DSU gave them teeth, new sets of special interest groups were politically activated.

This also created delays as the WTO had to come to grips with political influences largely unknown to the GATT.

These are the internal sources of the WTO's woes. These are address first, before turn to external sources of woe.

Internal sources of WTO woes

In a nutshell, the argument is that many of the WTO's current woes stem from the way the Uruguay Round endgame eliminated one of the world trade system's most effective consensus-building tools – don't-obey-don't-object.

Political activation of developing country members

The new take-it-or-leave-it approach was an abrupt change from the old live-and-let-live relationship that had marked North-South relationship in the GATT. This had important, unintended consequences. The most obvious was the political activation of developing country members who had previously been passive participants. This accounts for three sources of the WTO's woes.

Long learning curves

Participating in the WTO required the newly active members to learn about the WTO – its rules, procedures, and traditions – knowledge that few developing nations had in 1994. This took time.

A knock-on effect was the proliferation of coalitions. Under don't-obey-don't-object, a simple 'us versus the Quad', or North-South stance worked quite well. There was little to be gained from forming focused interest groups – for example, a coalition of rice exporters, or a coalition of clothing exporters – since most developing nations were unwilling to engage in reciprocal bargaining. The WTO changed this. Developing nations were now expected to 'pay' for new access and expected to play by the same rules, so coalitions became essential. Interest-based coalition-formation, however, was unexplored territory for many developing nations in 1994 and they faced a steep learning curve in figuring out their partners' interests as well as their own. This took time. Coalitions formed and reformed in a fluid fashion in the

⁶ Stoler was the principal US negotiator for the Marrakesh Agreement Establishing the WTO and Dispute Settlement Understanding (DSU).

⁷ Inspired by Mundell's exchange rate trilemma Ostry (1999) proposed a trade trinity on that Rodrik (2000, 2002) made rigorous. Elsig and Cottier (2010) follows Elsig (2002) in focusing on a triangle comprised of member-driven organization, the consensus principle, and the single undertaking; my triangles stresses the DSU in lieu of member-driven.

decade following the Single Undertaking (Patel 2007).

Asymmetric activation of defensive and offensive coalitions

While not a barrier to smooth operations in principle, the political activation of developing nations has worked that way in practice – at least up till now. The reason is that developing countries became asymmetrically active. Many more new defensive coalitions emerged (i.e. groups interested in preventing better access to their own markets) than new offensive coalitions (i.e. groups interested in getting better access to foreign markets). The reason is simple.

- The reciprocity principle and small size of most developing markets limited their ability to ask foreigners to open up their markets. Hence there was little to gain from new offensive coalitions.
- The consensus principle, by contrast, gave developing-nation coalitions a good deal of blocking, i.e. defensive power.

Naturally then, most new coalitions were defensive.

Quad leadership rejected

The Quad was also caught up in the law of unintended consequences – although this was not immediately apparent. In the years following Marrakesh, things worked as before. A few bits of leftover business were handled in the usual fashion (e.g. the 1997 Financial Services Agreement and Information Technology Agreement); the Marrakesh tactics seemed to have worked out well for the Quad. Congratulating themselves on a deft bit of diplomacy, the Quad got back into the juggernaut's driver's seat to start a new Round in 1999. They promptly ran into a brick wall.

At the 1999 Seattle Ministerial, the Quad tried to launch the 'Millennial Round' with an agenda based largely on Uruguay Round leftovers – issues that many members felt were biased towards the interests of Quad and agricultural exporters. Developing countries rejected this effort on almost every level; a bitter conflict ensued. As then USTR Charlene Barshefsky put it diplomatically: "We needed a process which had a greater degree of internal transparency and inclusion to accommodate a larger and more diverse membership" (Barshefsky 1999). The problem, however, was not the number of members – the Quad was outnumbered 4 to 1 at Marrakesh and still

did the deal. The problem was cancellation of don't-obey-don't-object.

The International Relations literature stresses the importance of agenda setters (Elsig 2009). While Seattle made it clear that the Quad could no longer play this role, its replacement was far from clear. One could not just add an extra chair or two in the Green Room for 'developing nations' and get on with driving the juggernaut forward. The South had fragmented in the 1980s and 1990s into complex, overlapping and intersecting groups. This greatly complicated the search for the right combination of agenda setters. This took a great deal of time.⁸

Political activation of new, private special interest groups

Marrakesh also unintentionally activated a broad range of new interest groups. The Uruguay Round agreement included new WTO rules on 'behind the border barriers' (BBBs) which often placed new international restrictions on domestic regulatory policies. This combined with the DSU meant that foreign judges were in a position to rule on domestic regulations. Such constraints on national health, safety and environmental standards elicited political activism from many NGOs – especially consumer groups and environmental groups.⁹ In Europe, for instance, consumers who had never heard of the GATT burnt tyres in the streets over the WTO's involvement in regulation of genetically modified organisms. In the US, some groups branded the WTO as a tool of multinational corporations bent on destroying the environment for profit. For an organisation that had operated for five decades in the "silence of public apathy" (Moore 1999), this new constellation of very loud and very active private pressure groups was a shock. WTO members and the Secretariat have come a long way in learning how to deal with these new special interest groups, but this took time.

The same moves also elicited bureaucratic backlash in many WTO members. The telecoms

8 Of course this is not the first time the GATT has shown creativity and flexibility in its search for the right set of agenda setters in face of changing geo-economic realities. At the start, it was the US and UK (often in conflict with each other). After the EEC formed and Japan joined the GATT, the Quad emerged. As developing country markets grew in the 1980s and 1990s, large developing nations – especially India and Brazil – came to have much greater influence. This is a merit of a vague decision making procedure – it allows flexibility.

9 The most obvious examples were the newly mandatory rules in the Technical Barriers to Trade (TBT) and Sanitary and Phyto-sanitary (SPS) Agreements, but even commitments under the General Agreement on Trade in Services (GATS) impinged on domestic regulation.

and financial regulators, for instance, did not appreciate the trade minister discussing their regulations with other nations. And they certainly didn't enjoy the thought that a WTO Panel might question their decisions and actions.

External sources of WTO woes

The changes in internal practices mentioned above were not the only source of WTO woes. Other changes in the world added new woes or interacted with the internal changes to deepen the affliction.

Fragmentation of the South and rise of new trade powers

A handful of developing nations experienced industrialisation and growth take-offs that had their GDPs doubling every decade and their industrial exports and imports growing at double digit rates annually. The WTO system was clearly working for these so-called emerging economies. But even this was not a homogenous group. China's spectacular trade growth – it went from near autarky to the world's largest exporter and second largest importer in 25 years – threatened import competing interest in many developing nations, including the other emerging economies. China clearly deserved a seat, but one could not say that whatever was good for China was also good for other emerging economies.

Another group of nations experienced low or negative income growth and their exports relied mostly on unilateral preferences granted to them by rich nations. For these nations, the WTO system was largely irrelevant; what mattered was their bilateral relationship with the main purchasers of their commodity exports. If anything, they feared further tariff liberalisation as this would erode the tariff preferences granted to them by the US, EU and Japan.

Liberalisation that would raise the world price of food would help the exporters while harming the importers

Income and growth traits, however, only crudely capture the kaleidoscope of interests that emerged once the Single Undertaking activated developing country members. Take the example of agriculture. Some developing nations – like Brazil and Argentina – are competitive food exporters while many others are net food importers. Some rich nations (e.g. the US and Australia) are food exporters while others are importers (e.g. the EU and Japan). Liberalisation that would raise the world price

of food would help the exporters while harming the importers. Or consider the liberalisation of clothing trade. When the issue was put on the agenda in 1986, most developing nations expected to benefit from it as their exports were highly competitive in rich-nation markets. China's decision to join the world economy in the early 1990s (and the WTO in 2001) dashed these hopes. As it turned out, China's hyper-competitiveness in labour-intensive products undercut gains that had been anticipated by most developing nations. Indeed, developing countries' tariffs on labour-intensive goods now mostly protect their firms from Chinese competitors, not Quad competitors. And the list goes on.

Unilateral liberalisation: Impact of the second unbundling

Another external source of WTO malaise stems from a rather paradoxical source – unilateral trade liberalisation by developing nations. When the Uruguay Round talks were launched in 1986 most developing nations believed they needed 'policy space' to nurture their industries. The import-substitution model of industrialisation told them to maintain high tariffs to shield their 'infant' manufacturing sectors from the competition of Quad exporters. As part of this, many sought to control the behaviour of multinationals that wanted to invest in their countries.

Starting from the mid 1980s (earlier for a handful of Asian nations), a very different strategy experienced fantastic success. This was premised on a radical change that occurred in the rich nations that I like to call the 'second unbundling'.¹⁰ Cheaper, higher quality and more reliable communications reduced the need to perform most manufacturing stages near each other. Rich-nation factories – which had hereto found it profitable to spatially bundle all production stages inside their home nation – now found it profitable to offshore the production of some production stages. Things that had been done in various production bays in the same factory to reduce delays and miscommunications could now be done in separate factories in different countries. The production bays became their own factories and were dispersed to locations that had factor prices and other characteristics better suited to the particular needs of the production stage. This was particularly marked in East Asia where

¹⁰ The first unbundling occurred as transport costs allowed factories to be spatially separated from consumers; mass international trade in final goods was the result. The second unbundling occurred when the factories themselves were spatially separated; mass trade in parts and components was the result. See Baldwin (2006) for details.

it has been called “Factory Asia” and across the US-Mexico border.

Some developing nations won large shares of the newly offshored production bays and consequently experienced rapid industrialisation. For such industrialisation, infant-industry tariffs and FDI restrictions were poison. Developing nations around the world – but especially in East Asian and Latin America – started lowering their tariffs unilaterally. Moreover, many of the Uruguay Round disciplines – which seemed so intrusive on their policy space in 1986 – became rather critical parts of their campaigns to attract offshored factories in the 1990s. Policy space, it turned out, was not just an empty concept; it actually hindered the industrialisation that came by joining international supply chains. This volte face on new disciplines helps explain why many developing nations embraced constraints in the context of North-South RTAs. These RTAs and WTO+ disciplines helped them join “Factory Asia” or its equivalent on other continents.¹¹

Why was unilateralism a problem for the WTO? The juggernaut is driven by mercantilist interest in foreign market access. If the emerging markets had joined the WTO leadership group with high tariffs, Quad exporters would have had something to fight for. In exchange, this would have given emerging nations plentiful mercantilist coinage to buy things they wanted from the Quad. Instead, developing countries joined the reciprocity game after having unilaterally lowered tariffs. Of course, the autonomous liberalisations were not ‘bound’ under WTO rules, but this mattered little. Quad exporters could see that the tariff cutting was politically optimal for developing nations, so even unbound tariffs were likely to stay low.

To put it crudely, developing nations “sold” the lowering of their import barriers to Quad companies in exchange for offshored jobs in manufacturing. There was, consequently, much less money to put on the Doha-Round table.

Lack of progress creates new problems

The GATT’s juggernaut trick trained mercantilist horses to pull the trade liberalisation plough. The Single Undertaking and DSU politically activated developing nations and thus gave

¹¹ This sort of industrialisation was particularly alluring to developing country governments since the offshoring company brought almost everything that was need – technology, management skills, a ready-made customer, etc. It took Korea and Taiwan decades to build up the dense matrix of capacities necessary to produce advanced industrial goods. By joining Factory Asia, Thailand for example, could have factories that turned out sophisticated parts and components in just months.

dozens of new nations an interest in the juggernaut’s direction and progress. In other words, it hitched a dozen new horses to the harness. The juggernaut’s progress naturally became erratic. The resulting slow progress, however, created a fresh set of woes – systemic regionalism.

Regionalism versus systemic regionalism

In the GATT years, regionalism was not a systemic issue. Up to 1986, serious regionalism was a European thing and a non-issue from a systemic perspective as it was initiated for geo-strategic reasons and Europeans were GATT stalwarts. Two other Quad members had a preferential deal – the US-Canada Auto Pact; this was motivated by economics but it was not viewed as a substitute for multilateralism.¹²

From 1986, one might have begun to worry that regionalism was substituting for multilateralism. The US and Canada started FTA talks, and the EU launched its Single Market programme. Fears were allayed because heightened regionalism was accompanied by heightened multilateralism – the Uruguay Round was launched in 1986.¹³

Since formation of the WTO in 1994, however, regionalism is a systemic issue (Krueger 2007, Bhagwati 2008). The two most worrying trends are:

- North-South RTAs, and
- Effective South-South RTAs.

The systemic threat to the WTO stems from political economics, not economics. Quad exporters – the mercantilist horse that dragged the WTO’s liberalisation plough for 60 years – may now view bilaterals as an easier way of getting what they would otherwise have had to fight for in the WTO.¹⁴

The second worrying trend is that the emerging trade powers – especially China, Brazil, India and the large ASEAN nations – count for an ever rising share of world income and trade, yet they have not really proved themselves to be WTO stalwarts. Moreover, they

¹² There were many other regional deals but they covered small fractions of world trade (e.g. New Zealand-Australia), were not actually implemented (e.g. the many Latin American and African agreements), or both.

¹³ According to Bergsten (1996), the threat of regionalism pushed the Quad to start the Round was the case, he claims, for the Kennedy and Tokyo Rounds.

¹⁴ We may already be seeing this. During the Doha Round, NGOs seem far more interested in WTO matters than do multinational corporations – a situation that was just the reverse during the Uruguay Round (Warwick Commission 2007).

are having a worryingly favourable experience with regionalism and unilateralism. In short, the mercantilist horses in emerging markets have yet to be harnessed to the juggernaut.

Summary and Conclusions

The WTO is a smash hit by the standards of international organisations. It presides over a rule-based trading system based on norms that are almost universally accepted and respected. Disputes are adjudicated by an international court whose rulings are almost universally implemented despite a lack of formal enforcement powers. Its membership is almost universal and it makes decision by consensus. Most importantly, it achieved its mission – the establishment of an open and rules-based trading system.

The GATT's success rested on two political economy pillars:

- The juggernaut mechanism.

To put it starkly, GATT did not work by directly fostering international cooperation; it worked by rearranging political economy forces within each nation so that each nation's government found it politically optimal to remove tariffs that they previously found politically optimal to impose. And such cuts created political economy momentum – weakening protectionists and strengthening mercantilists. 'Bindings' plus the threat of measured retaliation meant that the mercantilist-protectionist-link did not depend on a nation's own government between Rounds; it was enforced by retaliation decisions of foreign governments.

- The don't-obey-don't-object principle + MFN.

This allowed a consensus-based organisation of highly diverse nations to operate as if they were run by a small group of self-appointed, like-minded nations with big economies. Developing nations did not block progress as they were excused from tariff cutting and free riding (MFN) gave them a stake in completing Rounds.

The paper's central assertion

The central assertion of this paper is that many of the WTO's woes – and a great deal of the delays and difficulties in starting and concluding Doha – stem from the way the Uruguay Round's endgame eliminated one of the GATT's most effective consensus-building tools – don't-obey-don't-object. This pushed the WTO into decision-making's "impossible

trinity" (consensus, universal rules, and strict enforcement).

To defeat the impossible trinity, the WTO must employ the big-package-with-something-for-everyone tactic. However finding the right package is radically more difficult than it was in the days of the Quad because cancellation of don't-obey-don't-object activated a few dozen developing nations who were previously passive players in GATT Rounds. Moreover, the old agenda setting and negotiating practices from earlier Rounds had to be re-thought and revamped through a lengthy trail-and-error process.

When Doha concludes

When it comes to lowering trade barriers, the juggernaut may roll forward despite the consensus requirement. Indeed, WTO groupthink in May 2010 on what is needed to close the Doha Round fits comfortably into the juggernaut's magic hands. Some mercantilists want more and some protectionists think they have already given too much – exactly the sort of situation faced by the GATT at the end of every Round. Indeed, the GATT/WTO was designed precisely to strike such deals. One big difference is that it took a very long time to find the right set of "Green Room" nations to make the final trade-offs.

The way forward

Looking ahead, this paper's analysis of the GATT's wins and the WTO's woes suggests that getting the WTO to confront 21st century challenges in a timely manner will require a modification of at least one of the impossible triangle's corners. Doing another Doha will not work.

After all, assuming Doha does finish, the next Round is unlikely to be concluded before 2020 or 2025. That will not be soon enough to address the pressing problems facing the world trade system. It will not work, for instance, in sorting out conflicts between national climate policies and WTO rules, or updating trade rules to match modern commercial realities, or magnifying the trade system's contribution to climate adaption and mitigation. Solving the

consensus problem with the big-package tactic will not be fast enough.

There are at least three ways to weaken the impossible triangle.

- Striking plurilaterals (like the Government Procurement Agreement) erases the consensus and the universal-rules vertices but only for particular issues (Lawrence 2006).
- Signing RTAs erases the consensus and the DSU vertices but only for sub-groups of WTO members.
- Weakening the DSU, or restricting its authority to Marrakesh issues, erases the strict-enforcement vertex for all members but only for certain issues.

All three ways deserve greater study and the wisest path may involve a portfolio of all three. Absence explicit WTO reform, however, it is absolutely clear which will win. Over the past ten years, WTO members have “voted with their feet” for the RTA option. Without a reform that eases the impossible triangle, this trend is likely to continue – further eroding WTO centrality and possibly taking it beyond the tipping point where nations ignore WTO rules since everyone else does (Baldwin 2008).

This would put the world trade system back to power politics as usual – a 19th-century-style “Great Powers” trade system. The GATT/WTO would go down in future history books as a 70-year experiment where world trade was rules-based instead of power-based. This is a scenario that all WTO members should have an interest in avoiding. The first steps in avoiding it would be to identify and agree upon reforms that would buttress WTO centrality. What those steps might be is an important subject for future work.

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Appendix: Refueling the juggernaut and deepening “don’t obey, don’t object”

The first GATT Round, held in Geneva in 1947, had huge tariff-cutting success (Table 1, first row) in part because the tariff levels left over from the 1930s were so high and partly because it was the first turn of the juggernaut – the first time mercantilists were turned into free traders on a global scale. Subsequent Rounds saw diminishing returns (Table 1, rows 2 to 5) as the original supply of fuel, namely 1930-era tariffs, was burned off.

Kennedy Round

To keep the juggernaut rolling, the Quad switch to a stronger form of reciprocity, and – to avoid this creating consensus-driven gridlock – the don’t-obey-don’t-object principle was codified. Up to 1961, GATT Rounds saw pairs of countries negotiating bilaterally over tariff cuts; the negotiations were limited to goods for which each was the other’s principal supplier (MFN multilateralised these bilateral deals). Roughly speaking, this was a form of bilateral barter so the necessity of a ‘double coincidence of wants’ reduced the mercantilist powers that were brought to bear on protectionists. Only principal-supplier mercantilists were directly engaged. It did, however, have the appealing feature of making don’t-obey-don’t-object automatic. The developing nations were rarely the principle suppliers or buyers so they ask for little and were asked to do little.

For the Kennedy Round, the Quad shifted to a stronger form of reciprocity – a negotiating procedure that politically engaged more mercantilists. The new ‘formula’ approach committed nations to across-the-board tariff cuts (with exceptions), so a broader range of Quad exporters had a direct stake in the Round’s success. In other words, the formula approached harnessed more mercantilists to the liberalisation plough. In the end, it worked. The Kennedy Round produced the largest tariff cuts the GATT had seen (more than eight times more productive than its predecessor in terms of tariff points cut per month of negotiation; see Table 1, column 4).

One drawback, however, was the way that the formula approach cancelled the automatic don’t-obey-don’t-object. To restore this element the GATT’s success, GATT members

Table 1: Tariff cuts in the GATT Rounds, 1947 to 1994

	Start	Length (months)	Tariff cut	Tariff per month /a	Number of members /b	Number of DCs /c
Geneva I	1947	8	26.0	39.0	19	7
Annecy	1949	8	3.0	4.5	20	8
Torquay	1950	8	4.0	6.0	33	13
Geneva II	1955	16	3.0	2.3	35	14
Dillon	1960	10	4.0	4.8	40	19
Kennedy	1963	42	37.0	10.6	74	44
Tokyo	1974	74	33.0	5.4	84	51
Uruguay	1986	91	38.0	5.0	125	88

Source: Martin and Messerlin (2007)

Note: Average cuts in bound tariffs (Source: Preeg (1970), Baldwin (1986), WTO (1994, 2007)). Import weighted tariff cuts of industrial countries for industrial products (petroleum excluded). The five first figures refer to the average tariff cuts of the US only.

a/ Average tariff cut per year of negotiations.

b/ GATT members at the end year of the negotiations (source: WTO website).

c/ G-77 membership is taken as a proxy for defining 'developing' GATT members.

made it explicit in the 1965 principle of "non-reciprocity".¹⁵

Tokyo Round: Broadening agenda and deepening don't-obey-don't-object

The GATT's tariff-cutting successes created a new problem. How could the juggernaut keep up its momentum when exporters began to lose interest in fighting to further lower foreign tariffs that were already very low?

In reaction, the Quad decided to refuel the juggernaut – i.e. maintain the interest of Quad exporters – by broadening the agenda. The first additional fuel was beyond-tariffs issues on the Tokyo Round agenda – many of these involving new forms of protection that had arisen in the 1960s and 1970s to offset the pain of tariff cuts (Robert Baldwin 2009, 1970). The second additional element was a strengthening of rules.

To avoid gridlock, don't-obey-don't-object was substantially strengthened in two ways. First, many commitments in the new areas were put into plurilateral agreements (called Codes in GATT jargon). This way, the new rules were

¹⁵ Article XXXVI:8, described by Keck and Low (2004) thusly: "Non-reciprocity meant that developing countries would not be expected, in the course of trade negotiations, to make contributions inconsistent with their individual development, financial and trade needs."

negotiated only among the members willing to be bound by them (in practice this meant industrialised nations only). Second, the so-called Enabling Clause was adopted which had the effect of disabling many GATT discipline for developing nation.

The Uruguay Round and the Single Undertaking: The second refuelling

The second 'refuelling' came with the Uruguay Round's ambitious agenda which went far beyond the Tokyo Round's remit. New areas of interest to Quad exporters were put on the negotiating table, notably intellectual property issues (international respect of patents, copyrights, etc.), restrictions on foreign investment (local content requirements, etc.), and exported services issues (business services, financial services, etc); these came to be known as TRIPs, TRIMs, and services respectively. ¹⁶Additionally, two sectors still marked by import restrictions – agriculture and clothing – were put on the table to fuel the interest of agriculture exporters and low-wage exporters.

Importantly, this constellation of new issues directly contradicted the don't-obey-don't-object trick which had been so critical to

¹⁶ Trade-Related Intellectual Property issues (TRIPs) and Trade-Related Investment Measures issues (TRIMs). The US also had to adjust its negotiating authority (Trade Expansion Act of 1962).

GATT's earlier wins, although this point was not immediately obvious to the developing nations. The refuelling was a sort of "Grand Bargain" balanced along North-South lines (Ostry 2002). Northern exporters were to gain from new rules and new market access in TRIPs, TRIMs and Services; Southern exporters were to gain from freer trade in food and clothing. The Grand Bargain, however, was not consistent with don't-obey-don't-object; if developing nations were free to pick and choose, they'd benefit from the market openings in clothing and food (due to MFN). Quad exporters would not get what they wanted. Rich nations already had laws that assured intellectual property protection for foreigners, so the expected gains was to come from getting developing nations to adopt first-world standards on patents, copyrights and the like. A codes approach just wouldn't do; the developing nations to be would be those that would opt out.

To solve the free-rider problem, the Uruguay Round's endgame included a feature called the Single Undertaking. All members, developed and developing alike – even those that had not participated actively in the negotiations – were obliged to accept all the Uruguay Round agreements as one package. As Stoler (2008) explains it, the Quad used the creation of a new institution – the WTO – as a vehicle for facing all GATT members with a take-it-or-leave it proposition: sign the Single Undertaking at

Marrakesh and join the WTO, or remain in the old 1947 GATT which might be abandoned as nations accounting for the lion's share of global trade joined the WTO.¹⁷

Moreover, since the new areas involved a great deal of ambiguity and waded into untested waters, members participating in the Uruguay Round negotiations decided it was necessary to greatly reduce the dispute procedure's wiggle room. Both North and South feared that exporters' gains in the new areas might be offset by murky forms of protection or slippery national interpretations of the rules. With this in mind, they eliminated the possibility of blocking the initiation of a panel or adoption of a ruling and applied this to all the areas in the Single Undertaking.¹⁸ In other words, the new adjudication procedure – known as the Dispute Settlement Understanding (DSU) – welded shut the escape hatch.

17 The basic outlines of the package-deal approach had been discussed in December 1991 (Croome 1995 pages 320-324). Nevertheless, it clearly came as a surprise to many developing country members, especially those that did not follow the Uruguay Round through its eight years of twists and turns.

18 Many observers also mention nations' desire to curb US unilateral enforcement stemming from US laws referred to as 301 and Special 301 (Keohane and Nye 2001).

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