



UNU-CRIS Working Papers

W-2007/10

Regional and Issue Specific Coalitions in the WTO:

The contribution of ASEAN to legitimizing decision-making

Charles Tsai*

* Charles Tsai is Research Assistant at the International Institute for Sustainable Development in Geneva. E-mail: charles.tsai@gmx.co.uk

The World Trade Organization (WTO) has undertaken systemic reforms since its establishment following the conclusion of the Uruguay Round in 1994. Indeed, the very dynamics of the WTO negotiating processes have undergone transformations nearly unimaginable in the era of the General Agreement on Tariffs and Trade (GATT). Among the most important changes are those addressing the topic of legitimacy.

Sweeping improvements in transparency have led to the declassification of essentially all WTO documents to the general public at the same time of their circulation to WTO Member Governments. Of course a subset of sensitive negotiating proposals often known as “JOB” documents and “Room Documents”, which are normally circulated only at formal and informal WTO meetings, remain restricted and are not available on the public version of the WTO website. Such documents are, however, nevertheless often available on various internet websites of non-governmental organisations (NGOs) covering WTO issues. The current state of transparency on WTO documentation compares favourably with the practice of the 1990s when only selective WTO documents were made available to the general public following mandatory eight-month embargos, and then only when requested from the WTO Secretariat. It is important to recognise the significant improvements in the transparency of WTO processes both in terms of its relatively recent establishment, and its implications for the legitimacy of the WTO.

NGOs have also entered the arena of WTO trade negotiations as influential actors and altered the process of those negotiations at the operational and technical levels. The diversity of NGOs have made unconstructive contributions (particularly in the early years of the WTO), but have in recent years played an increasingly positive role within WTO negotiations¹. Indeed, progress in the transparency of WTO documents described above would itself have been unlikely without the sustained and public effort of NGOs. While debate continues to exist about the democratic accountability of NGOs themselves², it is clear that they serve a useful function in drawing the general public’s attention to WTO trade issues on which they would likely have an interest, but which they would otherwise be unaware of. Although NGOs sometimes present information in a less than neutral format, it is arguable that electorates are overall better informed about WTO issues due to their efforts. If so, NGOs have then also contributed, however indirectly, to the legitimacy of WTO negotiations conducted by elected governments.

Among WTO Member governments, the emergence of complex and overlapping regional and issue specific coalitions has emerged with unprecedented vigour within WTO negotiations (see Table 1). It is important to recognise from the onset that this paper addresses regional *and* issue specific coalitions (RISCs) together due to the fact that whereas regional groupings such as the European Union adopt unified positions across the catalogue of WTO negotiation issues, others such as ASEAN and MERCOSUR seldom — if ever — do so. Individual members of regional groupings often take positions with issue specific coalitions in various permutations. For instance, among the ASEAN member countries, only Malaysia and Thailand are part of the Cairns Group, which adopts positions on agriculture in the WTO negotiations that differ from that of non-Cairns Group ASEAN members. Although RISCs such as the Quad³ have existed throughout the GATT period, the sheer diversity and specialisations of the myriad RISCs that have come onto existence since the launch of the Doha Round, can hardly represent anything less

¹ This perspective comes from informal conversations with a selection of WTO staff.

² Keohane (2002), pp 19-22.

³ United States, EU, Canada and Japan.

than revolution on the canvas of WTO negotiations. Addressing RISCs has become an indispensable element of any inquiry into the legitimacy of WTO processes and outcomes.

Table 1. An illustrative table of regional and issue specific collations (RISCs)

Regional groupings	Issue specific coalitions			
	Common characteristics groups	Doha Negotiating Areas		
		Agriculture	Non-agricultural market access	Rules
The Africa Caribbean and Pacific (ACP) group of countries African Group Association of Southeast Asia Nations (ASEAN) Caribbean Community (CARICOM)	European Union	European Union	European Union	European Union
	G-90 - ACP - Least Developed Countries (LDCs) - African Group LDCs Recently Acceded Members (RAMs)	Offensive coalitions: - Cotton-4 - Tropical and Alternative Products Group - Cairns Group - G-20 Defensive coalitions: - G-10 - G-33 - RAMs - SVEs	NAMA-11 Friends of MFN Friends of Ambition in NAMA Hotel d'Angleterre RAMs SVEs	SCVS Friends of Fish Friends of Anti-dumping Negotiations (FANs)
European Union (EU) MERCOSUR	Small and Vulnerable Coastal States (SVCS) Small and Vulnerable Economies (SVEs)	Environment European Union Friends of Environmental Goods Friends of the Environment and Sustainable Development	Services European Union G-25 ASEAN - 1 African Group, ACP, LDCs, SVEs Real Good Friends of GATS/Friends of Friends Plurilateral "friends" groups focused on the liberalisation of specific services sectors and modes of delivery	TRIPS European Union African Group Disclosure Group of Developing Countries Friends of Geographical Indications Friends against Extension of Geographical Indications

Source: Adapted from Wolf (2007), p. 21.

The central topic explored in this paper is whether ASEAN as a component in the new topography of RISCs that crisscross WTO negotiations, has contributed to the legitimacy of the "Green Room" decision-making process specifically and the WTO negotiations generally. In addressing this topic, this paper is divided into several sections. The first will provide a historical explanation of why the few developing country RISCs existing during the GATT period did not actively engage in multilateral trade negotiations, and highlight how this changed after the Uruguay Round. The second will recount how the changes occurring in the Uruguay Round not only strengthened existing developing country RISCs, but led to the establishment of new RISCs. To illustrate, an overview of how ASEAN members have engaged in the current round of WTO negotiations is provided. The third section will review two themes emerging within the literature addressing RISCs, and discuss their significance in relation to this inquiry on the relationship between RISCs and legitimacy of Green Room processes. The conclusion will stress that although questions surrounding legitimacy in WTO negotiation outcomes remain, the example of ASEAN, and the issue specific coalitions to which its members belong, suggests that the *process* of contemporary multilateral trade negotiations may be more legitimate than commonly thought.

I. Trade negotiations under the GATT: explaining the absence of participation by developing country RISCs

Developing countries and the regions in which they are embedded did not devote significant energy and resources to the multilateral trade negotiations during the GATT period for a variety of reasons. Factors such as resource constraints and technical capacity notwithstanding, they were generally able to benefit from liberalisations negotiated among the developed countries once the results of these negotiations were “multilateralized”. That is to say, in accordance with the most favoured national (MFN) principle, all tariff cuts were applied equally among all participants following the end of each round. The situation was however different in the case of new trade disciplines which were at the time negotiated “plurilaterally” (*ie* among subsets of parties to multilateral trade negotiations). The benefits of such new rules — including the obligation to implement them — were only legally enforceable among signatories to such agreements. This state of affairs changed dramatically during the Uruguay Round, which was the last round of GATT negotiations.

Understanding developing country participation in multilateral trade negotiations during the GATT era

The reasons for the dynamism and vigour of RISCs throughout the current Doha Round of negotiations in comparison to previous rounds of GATT negotiations requires an appreciation of key changes that have occurred in the relationship between developing countries and multilateral trade negotiations since the GATT period. Prior to the Uruguay Round of trade negotiations leading to the formation of the WTO, developing countries were basically exempted from making significant liberalisation commitments, or from negotiating or taking on obligations to implement additional trade related disciplines beyond those already agreed to in the GATT 1947. In 1979, the principle that full reciprocity should not be expected of developing countries during the course of multilateral trade negotiations was codified in the Enabling Clause⁴.

Despite exemption from the requirement for reciprocity and the ability to benefit from trade liberalisation negotiated at the multilateral level *via* the MFN principle, lack of participation in multilateral trade negotiations held important disadvantages for developing countries. Developing countries had significant economic interests in addressing the various trade arrangements concluded during the GATT period that were biased against their exports. Restrictions on imports of agricultural products into developed country markets disproportionately and negatively impacted export opportunities for developing economies, which often have a comparative advantage in the agriculture sector. Particularly in developed economies, the prevalence of tariff escalation in national tariff structures under which levies against imports are lower for commodities but increase as the level of industrial value added grows, retarded incentives for manufacturers in developing countries to add value to commodities before export. An important example of GATT era trading arrangements that were biased against developing country exports was the Multi-Fiber Arrangement (MFA), which significantly curtailed developing country export opportunities in the textiles and clothing sector.

Director General of the WTO Pascal Lamy indicated during a speech delivered at New York University in 2006 that “while the political decolonization took place more than 50 years

⁴ See *Decision on Differential and More Favourable Treatment Reciprocity and Fuller Participation of Developing Countries* GATT, L/4903, 28 November 1979

ago, we have not yet completed the economic decolonization. It is therefore one of the purposes of the current multilateral negotiations to continue the rebalancing of our rules in favour of developing countries”.

Lack of participation by developing countries in multilateral trade negotiations could also be disadvantageous in the area of new trade rules. For instance, developing countries were not required to participate in negotiations for (or to implement) new rules on subsidies contained in the Subsidies Code, which was a plurilateral agreement implemented by advanced GATT Contracting Parties⁵ following the conclusion of the Tokyo Round in 1979. Unlike the case of multilateral negotiations for trade liberalisation where all Contracting Parties would benefit from the results of negotiations for trade liberalisation on an MFN basis, only signatories to plurilateral trade agreements for new trade disciplines such as the Subsidies Code would acquire enforceable rights to benefit from them. Developing countries were not obliged to participate in the negotiations for the Subsidy Codes and, consequently, did not become signatories or implement them. They also did not receive benefits from these new plurilateral trade disciplines to address imports of subsidised imports *via* the MFN principle, as a result⁶.

Because developing countries were able to benefit from liberalisations negotiated and implemented by the developed countries without themselves being obligated to make them on a reciprocal basis, they had fewer incentives to devote resources to GATT trade negotiations, lack of capacity notwithstanding. Although developing countries had obvious trade negotiation interests during the GATT era, it is clear that their exemption from reciprocity impaired their negotiating leverage. The relative insignificance of developing economy markets during that period also suggests that even a willingness to make concessions would have carried less negotiating weight than it does today. Thus, even a willingness to engage in reciprocal trade concessions would not have afforded the negotiating leverage that some developing countries enjoy in multilateral trade negotiations today. To a large extent, the exception from reciprocity, together with the negotiating resource constraints faced by developing countries, resulted in their lack of effective engagement within (or simply absence from) multilateral trade negotiations throughout the GATT era.

Unprecedented changes during the Uruguay Round

The nine-year span of the Uruguay Round of trade negotiations beginning in 1985 and ending in 1994 encompassed an uncommon confluence of historical and ideological transformations. Key among these changes was the apparent bankruptcy of communism as an approach to running economies. While China had significant advances economic growth under a communist government during that period, much of the more spectacular economic performances were to come after the conclusion of the Uruguay Round. The vast majority of developing countries, many of which had applied traditional import substitution policies, had failed to achieve similar results. Such policies had been put into place to support the growth of infant industries able to compete with efficiently produced imports: but had failed to do so in the vast majority of cases. The historic events of the Uruguay Round likely influenced the willingness of developing countries to accept significant modifications to their relationship with multilateral trade negotiations during that final round of multilateral trade negotiations in the GATT era.

⁵ During the GATT period, members to the agreement were termed “Contracting Parties” whereas during the WTO period, the term “Members” became the standard.

⁶ The Subsidy Codes eventually formed the basis for the Agreement on Subsidies and Countervailing Duties, which all WTO Members including developing ones are obligated to observe today

It was within the unprecedented context of the Uruguay Round that two departures from the previous GATT practice of exempting developing countries from undertaking new obligations took place. Under the first departure, a significant number of developing countries implemented (often unilaterally — although frequently with pressure from the IMF and the World Bank), significant tariff cuts on their imports of industrial products and bound them⁷. Second, the round adopted a “Single Undertaking” approach which meant that following the conclusion of the round, all GATT Contracting Parties would be obligated to apply the entire constellation of trade related disciplines that had been negotiated during, and previous to, that round. These new disciplines spanned subjects as varied as trade in services and agriculture, intellectual property, subsidies and countervailing duties, and others.

These two changes in the manner that developing countries interacted with the multilateral trade negotiations fundamentally altered the incentives for developing countries to effectively participate in multilateral trade negotiations from the Uruguay Round onwards. During the Uruguay Round, developing countries changed from being relatively passive stakeholders in trade negotiations able to benefit from liberalisations by advanced Contracting Parties, to participants with much more substantial offensive and defensive interests to pursue and protect. The agreement to phase out the MFA as part of the Uruguay Round agreement marked an important effort by developing countries to advance their interests during that round. However, many developing countries were not aware of the “costs” that they had accepted as part of the Single Undertaking. They became obligated to carry out the domestic implementation of all new disciplines negotiated during ensuing rounds of trade negotiations — many of which they simply did not have the national resources or capacity to implement.

II. The Doha Round — The ASEAN reaction both collectively and individually

The significant change in the stake the developing countries now have in multilateral trade negotiations greatly enhanced the role of established, and facilitated the creation of entirely new, RISCs⁸. These RISCs are vehicles for coordinating and consolidating negotiation positions among like-minded WTO Members in order to enhance the pursuit of their national economic interests within the Doha Round negotiations. The following will describe the manner in which ASEAN members have collectively, and individually as members of various other RISCs, adapted to the new rules of interaction between developing countries and the multilateral trade negotiations. This section will also argue that the various RISCs to which the differing ASEAN countries are members, while detracting from the coherence of a single ASEAN negotiating position within the Doha Round, in fact enhance the legitimacy of the negotiations themselves when the impact of the RISCs are considered in aggregate.

Malaysia has often played the role of representing ASEAN as a group within the informal Green Room processes under which select countries seek to develop negotiating frameworks acceptable by the WTO Membership as a whole, whether on specific issues or on the overall round of trade negotiations. To facilitate the coordination of ASEAN member positions on the various Doha Round negotiating topics, ASEAN members began even prior to the Doha Round to hold weekly coordination meetings in which an overall coordinator presided over sub-

⁷ One World Bank study suggests that up to two thirds of total tariff reductions by developing countries between 1983 and 2003 occurred unilaterally. Martin (2007), p 9.

⁸ A table of RISCs acting within the Doha Round negotiations can be found in Wolf (2007).

coordinators responsible for each of the various Doha Round negotiation areas. These sub-coordinators were normally the more experienced of the trade negotiators from among the Geneva based representations of ASEAN countries to the WTO, on the topics over which they presided. This weekly process of coordination meetings had the added benefit of allowing newly arrived ASEAN trade diplomats to receive technical support from more experienced negotiators⁹, thus addressing (to an extent) a significant source of capacity constraints faced by developing countries with small representations to the WTO. These meetings also fostered systematic exchanges and better mutual understandings of each ASEAN member's negotiation preferences and facilitated the development of unified negotiating positions where the economic interests of ASEAN members were aligned.

The results of the ASEAN coordination meetings had at least one important success but also reflected the inadequacies of a purely regional approach to collective representation, particularly when they include economies having differing economic structures and resting at differing levels of development. Among its successes was the establishment of a strong position within negotiations under the General Agreement on Trade in Services (GATS) that the development and implementation of an emergency safeguard mechanism (ESM) for services would be a prerequisite for significant new liberalisation commitments on trade in services. The ESM would allow WTO Members to take measures to block imports of services in instances of large and unpredictable surges. The ASEAN members had collectively tabled a proposal for the ESM, at a very early stage in the Doha Round negotiations, in the face of strong opposition from large developed WTO Members¹⁰. The complexities involved in negotiating precisely how such a safeguard mechanism would operate in practice have not to date been resolved. However, it remains equally clear that any Doha Round outcome will need to address the ASEAN position for an ESM to accompany any significant liberalisations commitments under trade in services¹¹. Solidarity among ASEAN members (with one exception discussed below) has allowed for the maintenance of this difficult negotiation position in the face of strong opposition from key developed WTO Members, and has served to enhance the collective interests of the ASEAN members. This position has positive still-over effects beyond the ASEAN group as an ESM for services is also likely advantageous of the majority of developing countries.

The inadequacies of ASEAN as a monolithic and coherent negotiation entity within the Doha Round are also apparent and due mainly to differing economic structures of its members. It should be acknowledged from the onset that ASEAN members do not have an integrated ASEAN position across the WTO negotiation issues. Indeed, even within the context of the ASEAN position for the ESM, Singapore represents an example of tensions existing within regional groupings where more advanced members face difficult choices between regional solidarity and national economic interests. Although one of the most vocal of the early supporters for an ESM early in the Doha Round negotiations, Singapore later became reticent on the issue¹². With significant interests as a regional financial centre, it is possible that Singapore saw an advantage in not having an ESM which might one day hamper its exports particularly of financial services. Some speculation suggests that Singapore's change in position coincided with the conclusion of the United States-Singapore Free Trade Agreement. Still further speculation suggests that it was a

⁹ This information comes from interviews with ASEAN diplomats.

¹⁰ 03/30/2000 ASEAN Group Advances Proposal For WTO Services Sector Safeguards.

¹¹ 03/09/2007 ASEAN Countries Renew Call For WTO Services Safeguard Rules.

¹² *Ibid.*

change in the Singapore's trade negotiator handling services negotiations that precipitated the change in stance.

Speculation aside, the shift in position by Singapore on the issues of the ESM, which is probably the single issue on which ASEAN members had the strongest solidarity (largely due to the collective trauma of the East Asian Financial Crisis in 1997), highlights the limitations of a purely regional approach to assessing changes to the Green Room process within the Doha Round. It is for this reason that this paper adopts the approach of assessing ASEAN within the theoretical context of RISCs (*ie* regional *and* issue specific coalitions), which are as a whole affecting the development of multilateral trade negotiations under the Doha Round.

Below, a selection of ASEAN relationships with other RISCs is described in order to highlight the usefulness of not limiting an analytical strategy to regional groupings as the sole conceptual point of inquiry in assessing the legitimacy of the current Doha Round negotiations. The following will seek to assess the legitimacy of Green Room processes in light of RISCs by relying on the example of ASEAN and the various issue specific coalitions its members have joined in pursuit of their respective trade objectives. First, among the ten ASEAN countries¹³, Laos and Myanmar are not yet WTO Members and thus ostensibly can rely only on ASEAN or the least developed country (LDC) group to address their interests within the Green Room process. Second, Cambodia largely aligns itself with the LDC group of WTO Members in the current Doha Round of negotiations, which espouses positions that differ from that of other ASEAN members. Similarly, Malaysia and Thailand are the only ASEAN members that are part of the influential Cairns Group of agricultural exporting countries¹⁴, which seeks greater liberalisations of trade in agricultural products. In contrast, Indonesia and the Philippines are the only ASEAN members of the G33¹⁵, which supports special safeguards allowing developing countries to block imports of sensitive agricultural products under specified circumstances.

It should come as no surprise that during the recent period of the Doha Round ASEAN members have, over time, met less frequently to coordinate positions within the current trade negotiations. They still come together according to the former ASEAN delegate interviewed for this paper, particularly when significant movements occur in the negotiations, but overall cohesion among ASEAN trade diplomats has waned since the early period of the Doha Round.

It should also be born in mind that, from the perspective of a RISC based framework of analysis, the decline in the frequency of coordinating meetings and solidarity among the ASEAN members may actually be a positive indication for the legitimacy of Green Room processes. Indeed, it likely that the ASEAN members have simply become familiar with the areas in which their various national economic interests converge and diverge such that meetings are no longer necessary to coordinate positions, absent dramatic shifts in the Doha Round negotiations. The

¹³ Brunei Darussalam, Cambodia, Indonesia, Laos, Malaysia, Myanmar, Philippines, Singapore, Thailand and Vietnam.

¹⁴ Argentina, Australia, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Guatemala, Indonesia, Malaysia, New Zealand, Pakistan, Paraguay, Peru, Philippines, South Africa, Thailand and Uruguay.

¹⁵ Antigua and Barbuda, Barbados, Belize, Benin, Botswana, China, Democratic Republic of Congo, Cote d'Ivoire, Cuba, Democratic Republic of the Congo, Dominican Republic, Grenada, Guyana, Haiti, Honduras, India, Indonesia, Jamaica, Kenya, Laos, Mauritius, Madagascar, Mongolia, Mozambique, Nicaragua, Nigeria, Pakistan, Panama, Peru, Philippines, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Senegal, South Korea, Sri Lanka, Suriname, Tanzania, Trinidad and Tobago, Turkey, Uganda, Zambia and Zimbabwe.

fact that the most recent period of the Doha Round negotiations have been marked essentially by stalemate between the well know positions of various RISCs, appears only to augment the perspective that WTO Members have simply become more sophisticated in selecting between regional and issue specific coalitions in pursuing their national economic interests within the Doha Round of negotiations. The participation of ASEAN members in both the Cairns Group and the G33 suggests that where ASEAN members have not found common positions on specific trade issues, they have found support for their national economic interests in issue specific RISCs. The result should be increased legitimacy of the negotiations themselves as the interests are the WTO Members large and small become subsumed and yet reflected within the landscape of RISCs making up current state of play in the Doha Round negotiations.

III. The impact of RISCs on the legitimacy of the WTO

The previous two sections suggest reasons why developing countries, and the RISCs to which they are now part, have historically not been active within the GATT negotiations. They have also articulated the significant changes that have occurred in manner that developing countries interact with multilateral trade negotiations, which took place during the Uruguay Round. These changes have given them a new and considerable stake in multilateral trade negotiations today. Many developing countries undertook obligations as a result of the Uruguay Round that they were simply unprepared for and technically incapable of meeting. This situation is the root of much controversy concerning the legitimacy of multilateral trade negotiations, and the constraints they place on the “policy space” developing countries have to implement domestic policies to support economic development. Due to the sobering experience of the Uruguay Round, ASEAN has as a regional coalition — and individually as members of various issue specific coalitions — actively engaged the rapid evolution of the complex ecosystem of RISCs, which today constitute the current Doha Round of multilateral trade negotiations.

A number of studies are relevant to the discussion of how RISCs impact the legitimacy of multilateral trade negotiations. Some focus on assessing how closely the national economic structures of members within various RISCs are aligned in order to determine the degree to which common positions adopted by RISCs can be representative of their individual members’ trade interests, with implications for the legitimacy of their contributions to the multilateral trade negotiations. Others focus on the legitimacy of multilateral trade negotiations under the WTO from a legal perspective focusing on the degree to which they reflect procedural norms consistent with democratic institutions. In the following, an article reflecting each of these two perspectives is described and then discussed within the context of RISC based analysis.

The regional perspective

Of the studies seeking to assess the potential contribution that regional trade groupings (in distinction from RISCs) are likely to contribute to legitimacy of multilateral trade negotiation outcomes, Jones (2006:8) forwards a lukewarm assessment. In assessing a series of trade related indicators related to individual members of various regional groupings, his analysis highlights significant variations which call into question the ability of regional groupings to develop collective trade negotiation positions. In short, regional groupings are in isolation unlikely to be able to forge integrated trade negotiation positions that convincingly meet economic constitution of each individual member, whether collectively or individually. His conclusion, however, suggests that dynamic coalitions supporting common platforms are a constructive approach for

developing multilateral trade negotiations, which may enhance the legitimacy of WTO trade negotiations.

This analysis of ASEAN from the trade negotiations perspective supports Jones's conclusion that regional groupings are not in isolation likely to bridge the legitimacy gap. However, the participation of individual ASEAN members within issue specific coalitions suggests that the scenario alluded to by Jones may be closer at hand than at the time his article was being prepared. Clearly, the departure of Singapore from the ASEAN group in supporting the ESM in the GATS negotiations supports the perspective that regional groupings are not enough. And, the limited agenda attributed to ASEAN (Jones, 2006:9) as a single trade negotiation entity within the Doha Round can be considered, under the RISC based analysis, a simple reflection of the limited issues (*eg* the ESM under services) over which most ASEAN members have aligned trade negotiation objectives. By broadening the scope of analysis to include issue specific coalitions *in tandem with* regional groupings, the fact that the ASEAN members are not precluded by regional affiliation from joining issue specific coalitions, where they feel their individual trade interests are better reflected, allows for the regional groupings to represent only one of many instruments by which ASEAN members are able to employ in pursuit of their specific national economic objectives within multilateral trade negotiations.

Thus, the (nearly) unanimous support of ASEAN for an ESM in the GATS negotiations should be considered together with Malaysia and Thailand's membership to the Cairns Group, and Indonesia and the Philippines membership to the G33, as indications that particular trade interests of individual ASEAN members (and hopefully that of the developing members in other regional groupings), are being enhanced *via* the diversity RISCs now acting within multilateral trade negotiations. From this perspective, the departure of Singapore from supporting the ESM can itself be considered a positive index of legitimacy. The practice of ASEAN members in joining issue specific coalitions outside of their regional affiliation, or even opting out of regional positions, can theoretically meet the gaps in legitimacy which analysis based purely regional groupings highlight. Indeed, the limited agenda of ASEAN in isolation appears to support a RISC based analytical approach as ASEAN countries thus act together only on issues where their national trade objects are aligned, and are free to seek out alternative issue specific coalitions (*eg* Cambodia's membership to the LDC group) where they consider their national economic interests are better represented.

The legal perspective

Among the studies seeking to assess the legitimacy of multilateral trade negotiations from a legal perspective, Krajewski (2001) questions seriously whether WTO rules could be considered legitimate due to the traditional manner in which GATT negotiations have taken place. Acknowledging that the consensus based decision making process of the WTO allows *de jure* even the weakest of WTO Members to veto the outcomes of negotiations, and thus theoretically protect its national interests within WTO negotiations, he argues that in reality key decisions within the multilateral trade negotiation processes are often made *de facto* by a select number of WTO Members, and normally within un-transparent Green Room processes. This situation creates a significant gap in democratic accountability because when consensus among trade majors for a specific negotiation outcome has been achieved, it is in fact very difficult for small WTO Members to resist joining the agreement, even where they may have legitimate and economically significant reservations. The result is that the legitimacy of rules agreed within the multilateral negotiations, which have considerable implications for sovereignty of the smaller WTO Members on their domestic economic policies, can be called into question as the

democratic input of their national governments into WTO rulemaking process have often not been adequately addressed within the negotiations. In short, the degree of separation between the Green Room process and the inability of smaller WTO Members to have their concerns and perspectives reflected in its results, calls into question of the legitimacy WTO rules which, in theory, supersede domestic law making processes.

To a large extent, the history of the GATT era multilateral trade negotiations reviewed in this paper, under which developing countries were essentially exempted from liberalisation commitments or obligations to implement new rules established under multiple rounds of GATT negotiations prior to the Uruguay Round, explains how developing countries most likely did not appreciate fully the binding commitments they had undertaken at the time the WTO was established. It is not difficult to make the case that the obligations of developing countries under the current constellation of WTO rules can be considered illegitimate from the perspective of a constitutional democratic accountability forwarded by Krajewski.

A final assessment of the degree to which the new negotiating variable represented by the RISCs will in fact contribute to the legitimacy of the Doha Round “outcome” as opposed to the Doha Round negotiations “process”, which has been the main focus of analysis of this paper, will remain unknown until the conclusion of the current round of multilateral trade negotiations. If the outcome of the current Doha round of negotiations is able to reasonably rectify the obvious imbalances existing in the obligations that developing countries have undertaken, but are technically unable to fulfil, the argument presented in this paper that RISCs have so far contributed to the legitimacy of the process of multilateral trade negotiations under the Doha Round could be broadened to include their contribution to the legitimacy of the Doha Round outcome itself and not just its process to date.

Conclusion

This paper has sought to shed light on the degree to which the emergence of RISCs in the WTO have contributed to the legitimacy of multilateral trade negotiations, which often rely on the Green Room to facilitate progress. It has sought to explain — but not to justify — how developing countries have found themselves in a position of having agreed to a binding compendium of WTO rules, which many are under-equipped to implement effectively and some, not at all. Shortcomings in the legitimacy existing between the obligations that developing countries have undertaken, and the degree to which their electorates can be considered to have agreed to them, is clear.

The “explosion” of developing country RISCs within the current Doha Round of multilateral negotiations is a reaction to the fact that developing countries undertook a multitude of obligations under the Uruguay Round, in comparison to most of the GATT era when they were largely exempted from undertaking liberalisation commitments or implementing new rules throughout multiple rounds of multilateral negotiations. While the Green Room process has come to symbolise a process under which a handful of developed countries disproportionately influenced the outcome of multilateral rounds of trade negotiations, it should also be acknowledged that the Uruguay Round outcome (to which Green Room process is often linked), was produced by the atypical historic circumstances framing the ultimate trade round of the GATT era.

This study agrees with others¹⁶ which highlight that where regional groupings include members with diverging national economic structures and thus differing trade negotiation priorities, it is hard to imagine that regional positions could be legitimate *vis-à-vis* each member individually, much less the multilateral outcomes that they collectively generate within trade multilateral rounds of trade negotiations.

Indeed, this study highlights that ASEAN began coordination meetings even before the inception of the Doha Round negotiations. During the current round, ASEAN negotiators have collectively formulated and implemented effective negotiating positions where the national economic interests of the ASEAN group coincided, and individual ASEAN members have joined other WTO Members in issue specific coalitions where their national economic objectives did not coincide with the ASEAN membership as a whole. This study argues that by pursuing national trade negotiation objectives, both in regional groupings *and* issue specific coalitions (*ie* RISCs), today's "process" of multilateral trade negotiations can be considered more legitimate than in the GATT era, when several key developed country RISCs essentially steered multilateral trade negotiations from the Green Room.

Although this paper is optimistic that RISCs can, and already have, contributed to the procedural legitimacy of WTO negotiations, it also agrees with legally oriented analysis¹⁷ that the current relationship between developing countries and the complicated topography of WTO rules is an issue that the Doha Round must convincingly address to in order to restore legitimacy in the "outcomes" of multilateral trade negotiations. Clearly, developing country trade officials pursuing national interests — even supported by the diversity of RISCs — will find bridging the gap between the legitimacy of the WTO rules, and the limitations they place on domestic economic policymaking in support of development, a daunting undertaking.

RISCs have arguably made significant contributions to the procedural legitimacy of multilateral trade negotiations under the WTO. It is, however, too early to judge their capacity to effect legitimacy in the contemporary outcomes of such negotiations. It is in this light useful to recall the wisdom of Keohane (2006:13) that "[t]he relevant question is whether, *in light of feasible alternatives*, existing or attainable forms of multilateralism are legitimate *relative to these alternatives*." Indeed, in reflecting on the legitimacy of the WTO, it is useful to bear in mind the maxim "order does not guarantee justice, but there can be no justice without order"¹⁸.

¹⁶ Jones (2006) and Constantini *et al.* (2007).

¹⁷ Krajewski (2001) and (2000).

¹⁸ The author of this quote is possibly Otto von Bismarck, but this author is unable to confirm despite numerous attempts *via* Google.

References

- Constantini, Valeria, Ricardo Crescenzi, Farbrizio De Filippis and Luca Salvatici (2007), "Bargaining Coalitions in WTO Agricultural Negotiations", *The World Economy*, Vol 30, No 5, Oxford, pp 863-891.
- Fратиanni, Michael and John Paulson (2001), "International Organizations in a World of Regional Trade Agreements: Lessons from Club Theory", *The World Economy*, Vol 24, No 3, Oxford, pp 333-358.
- Jones, Kent (2006), "Regionalism and the Problem of Representation on the WTO", Paper prepared for the *Centre for the Study of International Institutions*, Innsbruck.
- Keohane, Robert O. (2002), "Global Governance and Democratic Accountability", Chapter prepared for a volume to be edited by David Held and Mathias Koenig-Archibugi from the *Miliband Lectures*, London School of Economics, Spring 2002, London.
- Keohane, Robert O. (2006), "The Contingent Legitimacy of Multilateralism", *GARNET Working Paper: No: 09/06*, Princeton.
- Krajewski, Markus (2000), "From the *Green Room* to the *Glass Room*: Participation of Developing countries and International Transparency in the WTO Decision Making Process", *GERMANWATCH, A Trade Watch Paper*.
- Krajewski, Markus (2001), "Democratic Legitimacy and Constitutional Perspectives of WTO Law", *Journal of World Trade*, Vol 35 No 1, Netherlands, pp 167-186.
- Lamy, P. (2006), "It is time for a new 'Geneva consensus' or making trade work for development". *Emil Noel Lecture*, New York University law School.
- Martin, Will and Patrick Messerlin (2007), "Why is it so Difficult? Trade Liberalisation Under the Doha Agenda", *World Bank*, Washington DC and *Sciences-Po*, Paris.
- Pedersmann, Ernst-Ulrich (2007), "Multilevel Judicial Governance of International Trade Requires a Common Conception of rule of Law and Justice", Paper presented for discussion at the WTO on 18 July.
- Ruland Jurgen (2001), "ASEAN and the European Union: A Bumpy Inter-regional Relationship", ZEI Discussion Paper C 95 2001, *Center for European Integration Studies*, Bonn.
- Wolfe, Robert (2007), "Adventures in WTO Clubland", *Bridges*, No. 4, International Centre for Sustainable Development, Geneva, pp 21-22.
- Yoshimatsu, Hidetaka (2006), "Collective Action Problems and Regional Integration in ASEAN", *Contemporary Southeast Asia*, Vol 20, No 1, pp 115-40.

Official document:

Decision on Differential and More Favourable Treatment Reciprocity and Fuller Participation of Developing Countries, GATT, L/4903, 28 November 1979.

Articles from the WTO Reporter:

05/07/2007	U.S. Alters Services Schedule to Avoid Ruling On Gambling, Refuses Antigua Compensation
03/09/2007	ASEAN Countries Renew Call For WTO Services Safeguard Rules
01/17/2007	ASEAN Advances Date for Economic Union, As Leaders Push for Break in Doha Impasse
01/12/2007	ASEAN Set to Expand Trade With China in Services Sector
08/28/2006	ASEAN, U.S. Ink Trade, Investment Pact; Pledge to Work for Breakthrough on Doha
08/28/2006	ASEAN, Australia, New Zealand, Aim To Wrap Up FTA by 2007, Officials Say
08/24/2006	ASEAN Ministers Pledge Further Services Liberalization, Urge Return to Doha Round
03/01/2006	WTO Circulates Plurilateral Requests; EU Participates in 11 Services Initiatives
02/28/2006	WTO Plurilateral Services Talks To Begin as Requests Are Submitted
03/16/2004	WTO Members OK Indefinite Extension In Negotiations on Services Safeguards
09/05/2003	Southeast Asian Trade Ministers Support Australia in Agriculture Reform Talks at WTO
03/18/2003	WTO Chairman Declares 'Stalemate' In Emergency Safeguards Services Talks
12/11/2001	WTO Talks on Service Safeguards Stall; Dwindling Support by Old Advocates Cited
10/04/2001	U.S. Questions Developing Nations' Efforts to Win New WTO GATS Provisions
09/13/2001	Momentum Toward New WTO Round Emerges From EU, ASEAN Meetings
12/04/2000	WTO Members Will Extend Deadline For Reaching Service Safeguards Agreement
07/27/2000	Asian Countries Blast EU Directive On Electronic Waste Disposal
07/10/2000	Officials Near Agreement in WTO On Deadline Extensions for TRIMS
05/30/2000	WTO Members Outline Plans For Accelerating Services Talks
04/17/2000	WTO Members Agree on Schedule For Services Negotiations
03/30/2000	ASEAN Group Advances Proposal For WTO Services Sector Safeguards