

EU–USA Trade Relations in the Doha Development Round: Market Access versus a Post-modern Trade Policy Agenda

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I Introduction

Multilateral trade negotiations have never been a smooth affair. Trade rounds under the GATT have always dragged on longer than anticipated by the negotiating parties and the public. The Uruguay Round was characterized by major breakdowns, such as the mid-term suspension in Montreal in 1988, and the walkout by the major agricultural exporters at the Brussels ministerial in 1990. In both instances, the press and the public perceived each impasse as a ‘collapse’, although they were labelled merely a ‘suspension’ by the chief negotiators. The stumbling block in both cases was agriculture, specifically the inability of the USA and the European Union to agree on liberalizing trade in agricultural products.¹ In September 2003, history repeated itself, and the WTO ministerial in Cancun collapsed to great fanfare. But the context was quite different.

The meeting apparently failed because of the intransigence of developing countries, organized as the Group of Twenty (G-20), which wanted to assure their status as new major agenda-setters in WTO negotiations in a round that was dubbed the Doha Development Round (DDR). They were cheered on by the obstructionist activists of numerous non-governmental organizations (NGOs), many of which wanted to deal a deadly blow to the WTO system as a whole. While it is difficult to identify one single cause for the breakdown in the round, it was not discord and trade tensions between the USA and the EU that accounted for the failure.² Rather than squabbling as usual, the two trade-

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¹ For a history of the Uruguay Round and the Montreal and Brussels breakdowns see E. Preeg, *Traders in a Brave New World: The Uruguay-Round and the Future of the International Trading System* (University of Chicago Press, Chicago, 1995), pp. 84–99, 116–122.

² Some observers see US protectionism as the root cause of the failure. See H. Dieter, ‘Die Welthandelsorganisation nach Cancun. Hält die neue Macht des Südens an?’ (2003) 34 *SWP Aktuell*, p. 1–2. However, the safeguard steel tariffs that the USA had imposed in 2002 and

policy principals of the EU and the USA, Pascal Lamy and Robert Zoellick, had since the Doha meeting gone out their way to bury their differences and establish a climate of multilateral cooperation despite a number of bilateral trade disputes.

In this paper I argue, however, that the breakdown of Cancun reflects deeper changes in the world trading system that have less to do with a new assertiveness by developing countries such as Brazil, India and China than with the emergence of what can be labelled a ‘post-modern trade policy agenda’. The breakdown at Cancun, it is argued, must be seen in the context of different reactions on part of the EU, the USA and the developing countries to this agenda. Although they did not clash directly on their own trade policies, the USA and EU disagreed at a deeper level on how to react to challenges of a post-modern trade agenda, how to square this agenda with the challenges of the developing countries, and last but not least how to liberalize agriculture. After Cancun, there was a tacit convergence of the EU agenda with the USA market-access approach, as the EU had decided to discard its post-modern aspirations.

The remainder of this article analyses how the EU and USA reacted to these new developments in the world trading system and how they developed their strategy for a new multilateral trade round after the failure of Seattle. This is done also with reference to EU–US trade relations, as the EU and the USA have been the agenda-setters for multilateral trade rounds. The article will then look at the Cancun conference to determine what led to its failure, arguing that it can be attributed to many factors, not simply to the EU alone. However, even though the EU’s approach to a new WTO round was only one factor responsible for the collapse, Cancun marks the failure of the EU’s attempt to shift to a post-modern trade strategy. It revealed the flaws in EU trade strategy and its inability to find common ground with the USA, whose market-access approach prevailed.

II The Emergence of a Post-modern Trade Policy Agenda.

William Dymond and Michael Hart have first coined the term ‘post-modern trade policy’ to capture the shift from negative prescription with regard to restrictive border measures to positive rule-making. Under positive rule-making, governments are not only obliged to remove border trade barriers and discrimination, but adopt specific policies and regulations that may only indirectly be relevant to market access, encroach deeply on national regulatory regimes and institutions and thus interfere with domestic political

the increased levels of subsidies for American agriculture did not figure prominently in the discussions in Cancun.

arrangements and the different legal orders of the negotiating parties.³ Robert Cooper has identified a shift to a post-modern paradigm in EU foreign policy in general. The characteristics are a blurring of the lines between foreign and domestic policy, a diminished role for traditional sovereignty, the reliance on multilateral institutions and obligations to intervene in the internal affairs of states.⁴ In addition there is a proliferation of objectives in traditional policy agenda, allowing for the introduction of non-germane goals. The ‘anything goes’ of the post-modernism can also be found in trade policy. Trade policy can be used for manifold goals (animal welfare, environmental or social concerns such workplace improvements). Values, not economic interest, predominate. The rationality of economic interests is relegated to second rank, and identity issues (maintenance of culturally ingrained practices with regard to culinary habits or work place norms) are being pursued in trade policy. There is also a heavy emphasis on rule-making for its own sake (*Regelsetzung als Selbstzweck*), regardless whether the rules help to achieve market access. In post-modern trade policy, rules do not have instrumental uses, but rules are part of an aesthetic design of global governance. In Kantian terms, one could call it *interesseloses Wohlgefallen am Regelwerk*. Robert Cooper had pointed out that the post-modern paradigm reigns supreme in EU policy-making, while the USA clings to a more traditional interest-based agenda with an emphasis on power and sovereignty.⁵

And indeed, some of the above characteristics can be found in trade policy;⁶ more than ever before, behind-the-border measures have become the object of trade negotiations, a trend that gained full force with the Uruguay Round, when services, intellectual property rights, trade-related investment measures, technical barriers to trade and sanitary standards were included in multilateral trading rules.⁷ In the run-up to the Seattle ministerial in 1999, trade and investment, trade and competition, trade and environment, and trade and labour standards were proposed as possible new areas of rule-making within the WTO context. The most urgent (imminent in terms of negotiation) of these issues are the so-called Singapore issues which include investment, competition policy, government procurement and trade facilitation.

³ W. Dymond and R. Hart, ‘Post-Modern Trade Policy: Reflections on the Challenges to Multilateral Trade Negotiation after Seattle’ (2001) 34/3 *Journal of World Trade*, pp. 21–38; T. Stoll and F. Schorkopf, *WTO. Welthandelsordnung und Welthandelsrecht* (Carl Heymanns Verlag, Köln, 2002), pp. 227–238.

⁴ See Robert Cooper, *The Breaking of Nations. Order and Chaos in the Twenty-first Century* (Atlantic Monthly Press, New York 2003), pp 26–54.

⁵ *Ibid.*, pp. 42–50.

⁶ Dymond and Hart, note 3 above, pp. 21–38; Stoll and Schorkopf, note 3 above, pp. 227–238.

⁷ Dymond and Hart, note 3 above, pp. 24–26.

Pushed to its extremes, such agenda would imply an overarching framework of global regulations covering major areas of domestic economic and social regulations and asserted with the force of trade sanction under the WTO dispute-settlement understanding.⁸ If fully implemented, such a framework would come close to the realization of a regime of global governance. While market access may be facilitated by positive rule-making, it is by no means its principal goal. For the proponents of a global governance agenda, the goal is rather the consistency and coherence of international legal structures and their implementation. In the case of environmental and labour standards, their application may even make market access more difficult, if market access is conditioned on implementing such standards.

Technically, this envisaged inclusion of the new areas means the application of central WTO/GATT principles such as most-favoured-nation treatment and national treatment to national regulatory regimes in these areas. The maintenance of specific national regulatory regimes would be much more difficult under the pressures of multilateral harmonization. It would amount to massive interference in areas that hitherto were the domain of national policy-makers. However, if domestic regulatory regimes are threatened under multilateral harmonization, this would raise the prospect of mobilizing domestic groups attached to the regulatory status quo in its defense. This shift clearly signals a politicization of trade policy as groups with a primarily domestic focus are drawn into the trade policy process. The expansion of the trade agenda is closely connected with the rise of new actors in the domestic trade policy decision systems, particularly in developed countries.

The most prominent and salient among these new actors are non-governmental organizations (NGOs). Critical of the potential impact of the globalization process on national sovereignty, they have identified trade liberalization as a threat to national environmental and social policy regimes. Historically, their rise is closely connected with the debate about the Canada–USA Free Trade Agreement and even more of the North American Free Trade Agreement (NAFTA), but has since spread to all developed countries.⁹ A second group of NGOs, representing the altruistic camp, are organizations that primarily deal with development issues, and have incorporated the trade concerns of poorer countries into their strategies. They have not only stressed the need for developed countries to open their markets and reduce subsidies harmful to developing countries, but have highlighted the possible drawbacks to developing countries of markets opening. NGOs are an enormously heterogeneous group of organizations, ranging from groups with high technical

⁸ Dymond and Hart, note 3 above, pp. 24–26.

⁹ For an analysis with regard to the USA see A. Falke, ‘The USA: Why fundamentals do not always matter, or: It’s politics, stupid!’ in K. Deutsch and B. Speyer (eds), *The World Trade Organization Millennium Round: Freer Trade in the Next Century* (Routledge, Abingdon, 2001), pp. 18–33.

expertise to highly politicized advocacy groups that pursue objectives that go beyond trade issues. The latter frequently want to challenge the dominance of corporate interests in trade policy-making as part of a strategy against globalization and the march of global capital.

Despite of the heterogeneity of goals and approaches of NGOs, their intervention in the trade policy process of industrialized countries has introduced a much more moralistic tone in the trade policy debate and has highlighted the importance of media strategies. Trade policy in most developed nations is no longer dominated by producer interests on the private sector side or by a closed club of experts on the government side, but is a highly politicized and participatory field of policy. It has ceased to be restricted to a closed circle of bureaucrats, industry representatives and academic experts.¹⁰ In addition, NGOs have questioned the legitimacy of the institutions and processes of trade policy-making on the national and international level and strongly pushed for a voice and representation in trade policy-making.¹¹ This push affected multilateral institutions such as the WTO, the European Union and the trade policy process of national governments. NGOs posited themselves as the crucial force whose input would compensate for the perceived lack of democratic legitimacy of trade policy-making. However, concepts of democracy, developed with reference to the territorially based nation state are notoriously difficult to transfer to international organizations, where sovereign nation states are the principals.¹² Left-of-centre governments such as the Clinton administration in the USA and the Social Democratic and Green governments in Europe have been accommodating to these demands to varying degrees.¹³

Trade policy is now open to issues that have very little to do with classic issues of market access (or its denial). The new actors push an agenda where trade policy becomes merely instrumental to other goals (social and environmental policy) or where trade liberalization as such in a wider attempt to harness globalization has to be restricted. The label ‘post-modern’ trade policy may be warranted by the fact that trade policy is increasingly based on abstract or aesthetic¹⁴ rules of equity and global governance instead of material interests and their exchange through bargaining.

¹⁰ R. Keohane and Joseph Nye, ‘The Club Model of Multilateral Cooperation and the WTO: Problems of Democratic Legitimacy’, Center for Business and Government at Harvard University, June 2000, <www.ksg.harvard.edu/cbg/trade/keohane.htm>, 23 August 2003.

¹¹ C. Barfield, *Free Trade, Sovereignty, Democracy. The Future of the World Trade Organization* (The AEI Press, Washington D.C., 2001), pp. 97–110.

¹² B. May, ‘Globalisation, democracy and trade policy’, Deutsch and Speyer, note 9 above, pp. 73–81. May, however, points out rightly, that NGOs would need a democratic mandate themselves to fulfil that role. See p. 75.

¹³ I.M. Destler and P.J. Balint, *The New Politics of American Trade: Trade, Labour and the Environment* (Institute for International Economics, Washington D.C., 1999).

¹⁴ On the close relationship of the post-modern movement to aesthetic concerns see C.

The post-modern agenda of global rule-making does not only affect the domestic line-up of developed countries, but directly encroaches on the interests of developing countries at a time when they are becoming more assertive in pushing their concerns and raising expectations with regard to the benefits of a future multilateral trade round. Developing countries have argued that the Uruguay Round did not bring them the promised benefits, but burdened them instead with costly requirements and obligations to implement regulations on customs valuation, sanitary and phytosanitary standards, and intellectual property rights such as patents. All these obligations carry deadlines and are subject to sanctions under the dispute-settlement mechanism, but carry only spurious and uncertain benefits for countries that may choose to spend their scarce budgets on more urgent development needs.¹⁵ The same can be said of the emerging issues of the post-modern trade policy agenda, namely competition and investment issues and, even more so, social and environmental standards. For developing countries, positive rule-making on these issues amounts to forcing them to observe Western standards of domestic regulation as a condition to reap the benefits of trade liberalization.¹⁶ They view positive rule-making based on Western standards not only as interference in domestic affairs; but perceive this agenda to be a thinly disguised attempt at protectionism, a new line of defence, after tariff walls and other protective measures have come down.

Because developing countries come to the negotiating table with stronger substantive claims and a stronger voice and representation in WTO negotiations, compared to the Uruguay round, we would expect that developed countries would have difficulty advancing the post-modern agenda. The rise of developing countries already presented a special challenge to the EU in particular with agricultural trade policy and the protection of the Common Agricultural Policy (CAP). Food-exporting developing countries oppose the EU's concept of multifunctionality – that concerns of social and environmental issues have to be taken into account in agricultural trade policy – and they support the opening of heavily protected markets in Europe and the dismantling of export and production subsidies. Food-importing countries may be closer to the EU position in terms of preservation of rural incomes and the security of food supplies, but they have very little interest in issues such as food safety and biotechnology.¹⁷ In general, developing countries view

Jencks, 'The Post-modern Agenda', in idem (ed.), *The Post-Modern Reader* (St. Martin's Press, London/New York, 1992), pp. 9–39.

¹⁵ J.M. Finger and Philip Schuler, 'Developing Countries and the Millennium Round', Deutsch and Speyer, note 9 above, pp. 58–71.

¹⁶ Dymond and Hart, note 3 above, p. 26.

¹⁷ Ibid., pp. 63–64.

with suspicion concepts such as the precautionary principle¹⁸ and new themes such as trade and labour and trade and environment, which could be used as a pretext to block market access. The introduction of these new ‘and’ themes has in fact deepened the divide between developed and developing countries.

Nor are developing countries generally supportive of the inclusion of NGOs advocating the post-modernist themes.¹⁹ Except for development NGOs, who have managed to build an alliance with least developed countries with a lack of political capacity, developing countries are reluctant to seek a close association with NGOs. The common ground that industrial countries have been trying to construct to comply with development claims of a new WTO round may be an effective way to placate domestic NGO proponents of a development-oriented trade policy, but may only constitute a tenuous link with developing countries. Interests between developing and developed countries simply do not overlap sufficiently on core issues.

This dramatically changed context sets the failure of Cancun apart from earlier failures during the Uruguay Round. Trade policy and multilateral trade negotiations have become immeasurably more complex in terms of the proliferation of issues and of actors and their relative influence. In previous trade rounds, the EU–USA axis was crucial in terms of agenda setting and determining the final outcome, with agriculture usually being the sticking point. This is not the case anymore. Agriculture remains as contentious as ever, but possible solutions have to satisfy a wider range of actors. The vanguard of developing countries measures much more carefully the costs of incurring multilateral commitments and remains generally opposed to the imposition of Western-style regulatory requirements, be it in competition and investment policy. They also oppose any demands for the introduction of environmental and social standards in the WTO regime as a badly disguised attempt at protectionism, while environmentalists and labour unions in the developed countries strongly favour the inclusion of such standards to level the playing field. The anti-globalization movement has thrown the merits of trade liberalization into doubt, and more moderate critics of globalization aim to subject the world trading system to an intricate global governance agenda. Development and aid policy-makers and activists judge trade policy solely in terms what contribution it can make toward development goals. It is clear that the present situation does not bear any semblance to the situation of roughly twenty years ago. It is in this new context that the EU and the USA had to formulate their approach to a new WTO round.

¹⁸ The ‘precautionary principle’ is a notion which supports taking protective action before there is complete scientific proof of a risk. See World Trade Organization, ‘SPS Agreement Training Module’, chapter 8.2, <www.wto.org/english/tratop_e/sps_e/sps_agreement_cbt_e/c8s2p1_e.htm>, 5 December 2004.

¹⁹ Ibid., p. 67.

III The Development of EU Trade Strategy in the Doha Development Round.

In the run-up to a new multilateral trade round for the Seattle ministerial, the EU developed a highly ambitious multi-faceted agenda. It included the following issue areas:²⁰

- Market access for industrial goods
- Negotiations on Agriculture (in-built agenda)
- Liberalizations of services
- Investment
- Competition
- Public procurement
- Trade facilitation
- Electronic commerce
- Reform of trade-remedy procedures (anti-dumping)
- Technical barriers to trade
- Environment and Trade (including the precautionary principle)
- Social/labour standards and Trade
- Reform of trade-related intellectual property rights (TRIPS) (with particular emphasis on the concerns of developing countries)
- An accelerated phasing out of the multi-fibre agreement

The EU also affirmed its willingness to start negotiations on agriculture, which were mandated under the ‘in-built agenda’ of the Uruguay Round, by 2000, although its enthusiasm was probably muted given its need to reform the CAP during the run-up to Eastern enlargement. This ambition to tackle a jumbo program clashed with the wish expressed by the EU to bring the negotiations to a finish within three years. Its approach appeared like a laundry list to many critics, but at least on the surface this ambitious program mirrored the shift of EU trade policy from a market-access-driven agenda to post-modern approach that gives primacy to comprehensive rule-making.

Central in the EU’s agenda were the Singapore issues, particularly rule-making on competition policy and investment, which were the most ambitious ones. In general, trade and competition and trade and investment had been candidates for negotiations ever since the conclusion of the Uruguay Round, although the drive for them had experienced serious setbacks after the collapse of talks to create a Multilateral Agreement on Investment (MAI) within the OECD. On investment, the EU argued that the WTO would be a better place to establish a general regime than the OECD, and the EU was even willing to lower standards. The EU argued that a WTO approach could rationalize

²⁰ K. Deutsch, ‘The EU: Contending for Leadership’ in Deutsch and Speyer, note 9 above, pp. 34–57. For the EU’s negotiating agenda see pp. 34–35.

the manifold bilateral investment treaties, a position that was driven by the Commission's internal agenda to pre-empt Member States' competences in this area. And there was a tendency to have general principles on investment enshrined in the WTO with little reference to the effectiveness of such a regime. On competition, the EU's own regime served as a model, but with little attention to the question as to whether this form of deep integration would be appropriate on a worldwide scale.²¹ On a more critical note, however, the inclusion of these issues could also be viewed as a stalling tactic that could be used by the EU to avoid greater concessions on agriculture.²² But overall, the EU saw the Singapore issues, particularly investment and competition, as something to which it was entitled in exchange for concessions in other areas, including agriculture. The EU stance in reality was highly ambiguous and subject to differing interpretations.

It can be argued legitimately that market-access concerns took second place in the deliberations of the Commission. European businesses, not in the technological vanguard, were not pressing for market access. Some umbrella groups such as the BDI in Germany supported the inclusion of issues of competition and investment,²³ but on the grass-roots level, business support remained lukewarm, even if acquiescent. Business groups in the EU, while generally supportive of trade liberalization, remained passive, thus leaving the Commission great leeway in formulating an agenda. The adoption of new issues such as trade and environment and trade and labour reflected the responsiveness of the Commission to new social forces on the left of the political spectrum that claimed that trade policy did not integrate sufficiently the concerns of 'civil society'.

In 1998, the Commission, in the wake of the failed talks on the MAI, launched an extensive dialogue with civil society groups, leading to a systematic consultation and inclusion process. The Commission saw this as a prop to the trade policy's legitimacy, but it never thoroughly discussed what the legitimacy of 'civil society' groups were and why they warranted a privileged position.²⁴ The move presented a new social corporatism in European trade policy. It reflected the growing influence of centre-left governments in Europe, and probably was eased by the accession of a left/

²¹ See S. Woolcock, 'The Singapore Issues in Cancún: A Failed Negotiation Ploy or a Litmus Test for Global Governance?' (2003) September/October *Intereconomics*, pp. 249–255, at p. 251.

²² For this interpretation see M. Finger, *The Doha Agenda and Development: A View from the Uruguay Round* (Asian Development Bank, Manila: 2002), p. 35.

²³ A. Böhmer and G. Glania, 'The Doha Development Round: Reintegrating Business Interests into the Agenda – WTO Negotiations from a German Industry Perspective' (2003) 15 *Beiträge zum Transnationalen Wirtschaftsrecht*, available at <www.telc.uni-halle.de>.

²⁴ S. Meunier, 'Trade Policy and Political Legitimacy in the European Union' (2003) 1 *Comparative European Politics*, pp. 83–84.

green government in Germany, the EU's traditional stalwart of a liberal trade policy.²⁵ In a way, the Commission was ratifying processes that had been going on in Member States to varying degrees. In the end, the EU created new processes of policy-making and accountability. NGOs pushing the concern of civil society became new stakeholders in trade policy. Issues of environment, labour and social standards and the link between trade policy and development became new planks of the Commission. Market access was no longer the dominant interest.

With the inclusion of the new issues, rule-making could be expanded to a global-governance agenda harnessing globalization. Even the Singapore issues of investment and competition could be fitted into that framework, if they were interpreted in a defensive manner and if their market-opening potential would be de-emphasized.²⁶ Rule-making coincided with the urge to respond to the anti-globalization agenda of 'civil-society' forces. Market-access concerns would be pushed back even further. Theoretically the comprehensiveness of the agenda also afforded the EU an opportunity for multiple trade-offs with its WTO partners. But the prospect of trade-offs did not make the overall EU agenda acceptable to the trading partners, especially the developing countries.

This highly ambitious approach, referred to by the Commission as a 'comprehensive approach', was a clear sign, as Klaus Günter Deutsch has argued, that the EU was contending for leadership in multilateral trade negotiations.²⁷ It was clearly designed to challenge the USA, which did not pursue an activist role in trade policy in the 1990s, despite its impressive economic dynamism under the 'New Economy'. American negotiators presented only a minimalist agenda for the new trade round, which tried to avoid any costs to domestic interest – a strategy that was labelled a 'no-body-bags trade policy'.²⁸ The US strategy for a new WTO round reflected the correct perception that trade policy, at the end of the Clinton administration, did not have a lot manoeuvring room.

The paralysis of US trade policy did not open up new opportunities for pushing EU objectives. It rather constrained the EU in asserting its new comprehensive strategy. The EU strategy was opposed by leading developing

²⁵ See A. Falke, 'German Trade Policy: An Oxymoron?' in Wyn Grant and Dominic Kelly (eds), *The Politics of International Trade in the 21st Century: Actors, Issues, Regions* (Routledge, London, 2004).

²⁶ It is no surprise that the EU fully endorsed 'the right to regulate in the public interest' in the context of a WTO investment regime. See Woolcock, note 21 above, p. 251.

²⁷ Deutsch, note 20 above, pp. 34–57.

²⁸ Kinka Gerke and Monika Medick-Krakau, 'Wandel in der amerikanischen Außenhandelspolitik' in Monika Medick-Krakau (ed.), *Außenpolitischer Wandel in theoretischer und vergleichender Perspektive: Die USA und die Bundesrepublik Deutschland* (Baden-Baden, 1999), pp. 227 ff.

countries, the agricultural exporters, as well as the USA. The EU removed one contentious point from its negotiating agenda early on – the trade-and-labour-standards nexus – which developing countries resisted fiercely as a new kind of industrial countries’ protectionism. Even without its insistence on labour standards, the EU was largely isolated with its comprehensive agenda. It was not supported by any of the major players. The EU, however, was not forced to take stock of its approach after the collapse of the Seattle ministerial, which could easily be blamed on the inept handling of the Clinton administration, especially the President’s off-the-cuff call for using trade sanctions to assert labour standards. The President’s remark to a reporter – that at some point the WTO needed to incorporate labour standards subject to trade sanction – probably contributed to the failure of the meeting. Some observers have speculated that the USA let the ministerial deliberately fail as it lacked domestic consensus for a new round before the 2000 election and wanted keep its powder dry for the vote on permanent normal trade relations with China.²⁹ Despite Clinton’s statement, social and labour standards never were part of the official negotiating position of the USA and therefore could never serve as a basis for a joint US-EU approach.

IV The Development of the US Agenda for the Doha Development Round.

After the failure of the Seattle ministerial, the USA was in a much less comfortable position than the EU. The Clinton administration was forced to respond to strong social movements, connected with the left wing of the Democratic Party in Congress, which were pushing a post-modern agenda with an emphasis on social and environmental standards. American trade policy appeared paralysed, and was extremely timid in articulating an ambitious agenda. The Clinton administration tried to avoid antagonizing any societal or interest groups that might be harmed by market-opening concessions in view of the up-coming 2000 elections. It pushed for more market access in agriculture and services, but even on market access for goods, the USA remained reticent, due to the impact of the enormous import surge following the Asian financial crisis and the appreciation of the dollar since 1997. A reform of the so-called ‘trade-remedy’ laws concerning anti-dumping, countervailing duties and safeguard actions was out of the question politically. The USA gave the impression that it was under so much import and anti-globalization pressure that it had little to concede, but would also be modest in its demands. The term ‘no-body-bags trade policy’ was a fitting

²⁹ G. Hufbauer, ‘World Trade After Seattle: Implications for the United States’, *Policy Brief 99–10*, Institute for International Economics, Washington D.C., December 1999.

description for the American approach in Seattle.³⁰ The USA agenda was truly minimalist, a fact that was surprising given that the American economy in the 1990s was most vibrant and innovative. With all its apparent economic strengths, the USA made only a timid appearance on the world stage of multilateral trade negotiations. The USA gave the impression that it was not ready for a new round – primarily for domestic reasons.

With the election of the Bush administration, the politics of trade changed. The Bush administration was less beholden to those domestic interest groups that were critical of trade liberalization and the globalization of American business, such as unions and environmental groups. The new trade representative, Robert Zoellick, indicated early that the administration planned to return to a purely market-access-based agenda that would eschew the new issues such as trade and labour and trade and the environment. These issues were to be handled on separate tracks or other international organizations than the WTO.³¹ On investment and competition, the USA remained indifferent, for tactical and political reasons. However, the agenda did not imply that the administration would be immune to protectionist pressures, as the safeguard tariffs for the American steel industry illustrated, and to a certain extent the increase in subsidies in the 2002 Farm Bill. The administration was careful however that these actions did not damage its WTO strategy. As a matter of fact, the increase in domestic farm support brought the USA closer to the European Union's farm policies. The terrorist attacks of 11 September 2001 were another factor that encouraged the administration to seek a positive outcome in the 2001 Doha meeting. The administration believed that a successful conclusion of the Doha talks would send a strong signal of cooperation within the international community, and thus bolster a fragile world economy. The outlook for Doha was good.

In the run-up to Doha, in terms of agenda setting, the USA increasingly departed from the post-modern agenda, and signalled that market access would be its prime goal in multilateral negotiations.³² It also left behind the 'nobody-bags' stance of the Clinton administration, indicating that it would offer concessions that may be difficult to sell at home. The Bush administration also began a serious attempt to attain Trade Promotion Authority (TPA, formerly

³⁰ Falke, note 9 above, pp. 23–25; A. Falke, 'New Thinking? Außenhandelspolitik der USA im Licht der neuen Bedrohung' in W. Kremp and Jürgen Wilzewski (eds), *Weltmacht vor neuer Bedrohung. Die Bush-Administration und die US-Außenpolitik nach dem Angriff auf Amerika* (Wissenschaftlicher Verlag, Trier, 2003), pp. 161–64.

³¹ United States Trade Representative, *The President's Trade Policy Agenda 2001*, Washington 2001.

³² This was not necessarily true for regional and bilateral deals with Chile and Jordan, where the administration was willing to accommodate requests for labour and environmental clauses, based on the NAFTA model. It even agreed to make these clauses part of the core trade agreement and not relegate them to side agreements as in NAFTA.

called fast-track), the procedure that facilitates the passage of trade agreements by the US Congress and is the basis for a credible US negotiating position. (Consider placing the following phrase in the Clinton paragraphs above, a process that the Clinton administration pursued only reluctantly given the overwhelming opposition to it by Democrats in the US Congress.) However, TPA was not granted until 2002 and required protectionist concessions on steel in the run-up to the 2002 congressional elections to squeeze out a narrow vote of 215:214 in the House of Representatives. While the closeness of the vote indicated the continuing strength of the anti-globalization forces inside and outside the US Congress, the Bush administration clearly re-established its ability to move and the credibility of American trade negotiators.

V The EU and the USA at Doha and Cancun: The Fading of the Post-modern Trade Policy Agenda.

In the Doha meeting in November 2001, agreement was greatly facilitated by a commonly perceived need to send a signal of confidence after the terrorist attacks in the preceding September. The spirit of compromise was palpable among all delegations and made the launch of a new WTO round possible. Negotiations on market access in agriculture (including domestic and export subsidies), industrial goods and services proved largely uncontroversial; even on the thorny issue of agricultural export subsidies, negotiators were able to come up with a compromise formula. The USA dropped its resistance to negotiations on trade-remedy laws (anti-dumping, countervailing duties), and was also willing to negotiate on trade and environment. This move helped to bring reluctant developing countries along, apparently a clear victory for the post-modern trade policy agenda as pursued by the EU. The EU also successfully prodded the USA to agree to relaxation of patent protection for pharmaceuticals in public health crises under the TRIPS agreement, a victory for developing countries, although a solution to the problem of third-country providers was deferred to negotiations in the TRIPS council in Geneva. On competition and investment, negotiations could proceed, although binding modalities would have to be settled in two years at the next ministerial at Cancun, a concession to developing countries.

Everybody could claim victory at Doha, particularly the EU. The EU could point to victories on trade and environment, TRIPs and on the preservation of the Singapore agenda (competition and investment), and to the ambiguity in the language on the elimination of agricultural export subsidies. The development aspect, greatly supported by the Commission and European NGOs, was firmly established in naming the new round the ‘Doha Development Round’. The main concessions evidently were made by the USA on trade and environment,

anti-dumping, and the relaxation intellectual property rights protection for pharmaceuticals. Accordingly, the reactions of American domestic actors were highly negative: Members of Congress declared the concessions on anti-dumping as off limits, and the powerful US pharmaceutical industry vowed to fight a limit of the further relaxations of patent protection. The developing countries scored victories on the relaxation of patent protection, and preserved an effective veto over the nature of negotiations on the Singapore issues, and could look forward to the eventual elimination of agricultural export subsidies. However, a close reading of the results reveals that the EU's victory was shallow and the result of the Doha meeting was a face-saving exercise for the EU.

The mandate for negotiations on trade and environment was extremely narrow, and restricted to the issue of compatibility of WTO rules with international environmental agreements, an issue which the dispute settlement panels in the WTO successfully had already begun to work on. The EU's cherished 'precautionary principle' fell silently by the wayside. Competition and investment were only provisionally on the agenda, and no meaningful negotiations could proceed, given the potential veto of the developing countries over modalities, i.e the concrete mandate for the negotiations in this technically complex area. The post-modern trade policy agenda was only alive on the surface. Its shrinkage had already begun, its eventual elimination, particularly with regard to the Singapore issues was on the horizon, given the lack of support for competition and investment on the US side.

The USA in turn was less of a loser than it appeared. The only real concession was opening negotiations on anti-dumping, an inevitable concession if the USA wanted to remain a credible negotiating partner and one that would be fully compatible with a market-access-based agenda. The concession on environment was minimal; it would not allow the introduction of new trade restriction on the basis of environmental concerns, the reason why the developing countries were able to agree to this point. On investment and competition, the reluctance of the USA, derived for tactical as well as principal reasons, was fully vindicated by the decision to delay a final inclusion of these issues in the negotiating agenda. In truth, the Doha outcome was much closer to the market-access agenda, formulated by the Bush administration, than to the European post-modern agenda. Doha was a tacit victory for American strategy and, above all, tactics. The actual burial of European post-modernism had to wait until Cancun.

Cancun was overshadowed by the upheavals of NGOs, the rise of the G-20 block of leading developing countries as a counterweight to EU-USA dominance, and the smaller developing countries making their claims for concrete benefits under the development label. Of the small states, the African, Caribbean and Pacific (ACP) countries were the most vocal. The

chaotic nature of the Cancun meeting, the multiple divisions and cross-cutting coalition between countries, and the fact that there was no outcome – the meeting was terminated prematurely – make it very difficult to give a definitive evaluation of the outcome. There was also plenty of tactical manoeuvring among all blocks, clouding the true motives of countries.³³ Thus it was difficult to attribute failure to any of the warring factions. It was equally clear this time that it was not a conflict between the USA and EU that brought the meeting to collapse. As a matter of fact, the two major powers had come up with a joint, albeit somewhat non-committal, paper on agriculture.³⁴

Despite of all the confusion and the lack of clear responsibilities, for most observers the impression prevailed that Cancun meeting was a watershed in modern trade negotiations. The collapse of the Cancun ministerial represented a major power shift in the WTO system with emerging market-developing countries (Brazil, India, China) claiming equal standing. While this was undoubtedly true, it was overlooked that most of the G-20 countries, particularly Brazil, played a much more constructive role and were willing, through compromises on agriculture, to bring the meeting to a successful conclusion.³⁵ The G-20 wanted to be taken seriously and were willing to keep the system alive, precisely because they have a concrete stake in reducing agricultural subsidies.

Others saw the triumph of NGOs as the real story of Cancun.³⁶ According to this interpretation, activists hijacked the negotiations by leveraging their influence on smaller underdeveloped countries, particularly in Sub-Saharan Africa, and thus established themselves as veto-players. While the activities of NGOs, and certainly their influence over some developing countries, were one of the most conspicuous features of Cancun, it can be argued that Cancun represents the beginning of the demise of NGOs as a force in WTO negotiations. Many civil society groups, particularly the ideologically charged anti-globalization groups, but also some of the development groups, pursued a purely destructive strategy. Many senior policy-makers, who thus got a first-hand experience of NGO behaviour, came to the conclusion that it is time

³³ For a first interpretation see ‘The Doha round: The WTO under fire’, *The Economist*, 20 September 2003, pp. 29–32; ‘Crushed at Cancun: failure leaves a divided WTO facing marginalization as countries turn to bilateral deals’, *Financial Times*, 16 September 2003, p. 15. The most sophisticated analysis is by the law firm Case & White. See David Hartridge, ‘WTO Talks Collapse in Cancun: A Splash of Cold Water, or Dead in the Water?’, Special Report on the WTO Cancun Ministerial, No. 6.

³⁴ Particularly the commitments on market access were deliberately kept vague. ‘U.S.–EU Framework on Agriculture Seen as Way Out of WTO Impasse’, *Washington File*, 13 August 2003, <usinfo.state.gov/usinfo/Archive/2003/Aug/13-975681.html>.

³⁵ *Ibid.*, p. 6.

³⁶ This for instance was the position of German economics minister Wolfgang Clement, who attributed failure to the ideologically driven agenda of NGOs opposed to liberalization. See ‘Welthandel auf der Intensivstation’, *FAZ.Net*, 15 September 2003, <www.faz.net>.

to rein in some of the more abusive NGOs and contain the influence of the civil society sector. This was very much in evidence at the Geneva meeting in July 2004, where the negotiations assumed again a much more sober intergovernmental character. The need to contain NGOs was also reflected in the decision to hold the next ministerial in 2005 in Hong Kong.³⁷

It is argued here that the real story of Cancun was the eventual demise of the EU's post-modern foreign policy agenda. The bone of contention in Cancun was not agriculture, although it always loomed in the background, but the Singapore issues, above all competition rules and investment. The developing countries opposed the inclusion of these subjects for negotiation, causing the EU to retreat.³⁸ But the retreat was too little, too late. Particularly the ACP countries were adamant in their call to scrap all four of the Singapore issues, including the least controversial one, trade facilitation, which convinced Mexican chairman Derbez to end the talks abruptly. The four Singapore issues – investment, competition, trade facilitation and transparency in government procurement – proved to be the stumbling blocks that caused the collapse of talks in Cancun.³⁹ Agriculture, too, played a role in the background as was evident by the behaviour of the agricultural protectionists, South Korea, Norway, Switzerland and Japan, who insisted on the inclusion of the Singapore issues, however, primarily in order to stall any progress on agriculture

The 2004 July meeting in Geneva then ratified the demise of the post-modern agenda: the EU gave up on investment and competition policy, as Lamy had already indicated in the fall of 2003, a position that was eventually embraced by all EU Member States.⁴⁰ In Geneva, only trade facilitation remained on the negotiating agenda. The ambitious, comprehensive post-modern agenda of the EU had unravelled. The WTO negotiation under the Doha development round had returned to classical market access issues, with agriculture at its core. In the end, there was no demand in the global trading system for global governance or for a set of rules that would lay a foundation for a system of global governance.

VI The Future of the Post-modern Trade Agenda

The post-modern trade agenda may be dead in multilateral trade negotiations. This clearly is a reflection of the new assertiveness of developing countries,

³⁷ 'Trade deal marks end to talks about talks but the real negotiations lie ahead', *Financial Times*, 2 August 2004, p. 3.

³⁸ However, it was unclear whether Commissioner Pascal Lamy had a negotiating mandate from the 133 Committee and the most powerful Member States. Hartridge, note 33 above, p. 2.

³⁹ *Ibid.*, p. 4.

⁴⁰ 'EU may be more flexible on global trade talks agenda', *Financial Times*, 20 November 2003, p. 6.

which adamantly oppose most of these issues, as well as the indifference of the USA regarding issues investment and competition issues. This means that the EU is isolated on this agenda, a fact the EU effectively acknowledged by adjusting its strategy after the Cancun meeting.

However, failure of the post-modern agenda in the WTO does not mean that the agenda is dead in other fora. On labour and environmental issues, there is some support on the Democratic side of the US Congress that even a Republican administration has to take into account, when pursuing regional liberalization. The USA, for example, is pushing them in (regional) free trade agreements recently concluded with Chile, Singapore and Jordan. These agreements all contain clauses relating to social and environmental standards. Such inclusion is at least significant on a symbolic level. These clauses do not attempt to harmonize standards but simply urge the enforcement of existing national standards, and rather serve as an instrument to placate domestic critics of trade liberalization. Thus, they leave the choice of the standard of social and environmental protection in practice to the addressee countries. The USA has also been actively pushing investment issues in free trade agreements, starting with the North American Free Trade Agreement (NAFTA). However, the focus in the NAFTA investment chapters has been clearly on enhancing market access for American firms and thereby helping to increase trade. Including these issues is, of course, easier for the USA in bilateral negotiations, which are highly asymmetric nature and where the USA is thus able to control the agenda and tailor agreements to its preferences.

The pursuit by the USA of themes like trade and investment gives us clues about their potential reappearance on the multilateral level. Issues such as trade and investment and trade and competition policy are not dead as such; they are simply not ripe for their inclusion in multilateral agreements for conceptual as well as political reasons. Stripped of their post-modern thrust, geared towards abstract rule-making, they could emerge again in later rounds with a clear market-access focus. This would require the consent of the leading developing countries, which could be forthcoming if, for instance, direct foreign investment between developing countries increases and gives them a stake in a liberal investment regime. Competition is more complicated, as existing competition regimes in developed countries as well as between the USA and the EU are hard to reconcile.

The EU, however, is reluctant to discard its post-modern pretensions, at least as long as outgoing Trade Commissioner Pascal Lamy was in charge as the debate about the emergence of collective preferences in international trade as a way ‘to regulate globalisation’ shows. The EU is seeking to legitimize trade restrictions on the basis of deeply held collective values and preferences,

possibly in a safeguard framework.⁴¹ The EU argues that if a society expresses strong preferences in their dislike of products (genetic modification) or the way they have been produced (child labour or sweat shops), it should be entitled to exclude them from its market. These considerations echo the beef hormones case that the EU lost under the dispute settlement procedure in the WTO. The EU does not indicate how such preferences could be validly established or how marginal, but vocal interest groups or protectionists could be prevented from hijacking the process. And what if there is a strong collective preference for protectionism, as India came close to arguing at Cancun? It seems clear that such a procedure would be open to protectionist abuse and could easily lead to a spiral of protectionism if other countries resort to similar countermeasures. It should be noted that support for such concepts could be found in the USA, not only in the anti-globalization movement but also among mainstream politicians on the state level.⁴² Although the introduction of post-modern concepts as a basis for legitimate trade restrictions stands little chance in the WTO, given the current balance of power, bilateral agreements of the USA and the underlying preferences of the European Union suggest that the post-modernists will continue to assert their trade agenda.

This may be encouraged by the changes regarding trade policy in new EU Constitution.⁴³ The Constitution goes beyond the Nice Treaty in giving exclusive supranational competence to the Union on matters such as services, intellectual property rights and foreign direct investment. At French insistence, it makes an exception on audio-visual and cultural services, relevant primarily for foreign access for TV and film programs. The greatest change, however, is an enhanced role for the European Parliament. According to the new Article 217, the European Parliament is given the co-decision competence for all trade policy measures or all measures that require a legislative act. This relates to anti-dumping orders as well as to trade agreements, multilateral and otherwise. If the new Constitution takes effect, the Parliament will have to approve the conclusion of all trade agreements and will in the implementation on the basis of co-decision procedure. However, the initiation of negotiations remains with the Commission and the Council of Ministers. The Council is still responsible for giving the mandate and specifying the terms of negotiations.

The Parliament, in turn, is making the final call. It is likely that it will try to assert its influence from the beginning, and it may be wise to introduce a procedure such as the American fast-track mechanism, whereby the US

⁴¹ See speech by Pascal Lamy, 'The Emergence of collective preferences in international trade: implications for regulating globalization', conference on Collective Preferences and Global Governance: What Future for the Multilateral Trading System, Brussels, 15 September 2004.

⁴² B. Stokes, 'New Trade Barriers: National Preferences', *National Journal*, 24 April 2004, pp. 1276 f.

⁴³ See Constitution for Europe, Art. I, 12.

Congress authorizes negotiations and their terms, but pledges not to change any outcome, but just vote it up or down. There is very little question that an increased role of the European Parliament will increase the post-modern bent. The Parliament has always been very supportive of post-modern themes such as food-safety and environmental and social issues and has only few members that back a free trade agenda.⁴⁴ Through the European Constitution, the European Parliament will be transformed from a ‘privileged lobbyist’⁴⁵ to an equal partner of the Commission and the Council, and will thus try to have its concerns included in the negotiating strategy. In the future, it may just not be single Member States that have the capacity to block or impede negotiations, but the Parliament itself. With the failure of the ratification of the Constitution in the Dutch and French referenda, the process has come to a halt. On the Nice Treaty terms, ratification of trade agreements will be more difficult because of the unanimity rule for services, intellectual property rights and investment. Under Nice, Parliament does not have any blocking powers yet. Should the Constitution be passed as whole or in those parts that relate to trade policy, the powers of the European Parliament will be enhanced, and given the preferences of European parliamentarians, the post-modern agenda is likely to be strengthened.

⁴⁴ F. Erikson and N. Roszbach, *Shining City upon a Hill: How Members of the European Parliament have Voted on Free Trade* (Timbro, Stockholm, 2004), pp. 19–23.

⁴⁵ I take this phrase from a speech by Reinhard Quick, the office head of Brussels Bureau of the German Chemical Association, see his ‘Die Rolle des Europäischen Parlaments bei der Gestaltung der Handelspolitik’, seminar of the European Parliament on the role of the EP in shaping trade policy, Brussels, 18 March 2004, (mimeographed).

