

The Road Ahead: Responding to Uncertainties in the Multilateral Trading System*

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A. Introduction

The Doha Round of Negotiations, which was aimed at addressing the international economic needs of developing and least developed countries, has reached a critical point. While much optimism enveloped the outcome of the 6th Ministerial Conference at Hong Kong last December, with general commitments made and renewed towards what many observers described as the right direction, pre-agreed guideposts and deadlines in the course of the whole negotiating efforts have now begun to lapse. Many trade practitioners pinpoint divergent negotiating positions and the intransigence displayed by the different member country blocs as the main reason behind the laggard pace at which the negotiations have proceeded. At this particular juncture, several factors have arisen threatening to derail the negotiations.

Presently, any potential outcome to the negotiations could be anyone's guess, as developed, developing, and least developed countries tender positions practically diametrically opposed to each other. The infinite number of permutations and possibilities as to what compromises will be reached, and how these would be of consequence to the economies of the participating member countries are similarly difficult to define. Adding a complication herein is the surprising lack of confidence by trade

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commentators as to whether the negotiating positions purveyed by countries are indeed reflective of the interests of the industries the government negotiators are tasked to represent.

What is of prime importance, of course, is the assessment of what possible outcome would positively affect the bottom line of all this - which is the economic welfare of Filipinos. If there is any word that would best characterize the direction of the talks and the possibility for the country to gain tangible economic benefits by liberalizing further that would be “uncertainty”. If a solution could be proposed that would enable the Philippines to optimize the benefits of its participation in the multilateral trading system it would most likely be linked to domestic reform for more transparent governance and an effective competition policy.

This paper will provide updates and an analysis on the present state of play at the Doha Round considering the outcome of the latest WTO negotiations, present geo-political conditions, and the seeming FTA initiative within the Asian region. It will be shown that in order for the Philippines to respond well to any uncertainty in the direction that the multilateral talks may take and what tangible benefits the economy would derive, it would have to refine its policy making process by reviewing its trade policy legislation, institutionalizing private sector participation in the formulation of positions and conduct of negotiations, institutionalizing public hearings for transparency (such as clarifying “treaties” and “executive agreements”), creating an Office of the Philippine Trade Representative (RPTR), and the enactment of an effective competition policy.

As to how the said benefits from our greater participation in the multilateral system can be obtained, the same is not dependent on how open the economy is, but rather can only be driven by how effectively we are able to refine our domestic policies and institutions to make the country more competitive. Notably, despite the rapid pace at which we have opened our economy, the Philippines remain uncompetitive and unattractive to foreign investments relative to its neighbors. Thus, attaining the benefits of globalization is no longer a matter of opening up the economy but by improving local institutions and governance structures - making them friendly and accommodating to international business.

Verily, an examination of international trade's present state does not bring much confidence in the world trading system. The point, therefore, of this paper is that such confidence cannot be found in the system at present, we should instead ensure that we develop our understanding and capacities vis-à-vis the multilateral trading system and confidence in ourselves by improving governance, refining our laws and processes, and strengthening our institutions.

B. International Trade's State of Play

This section will consist of updates on four areas of the present negotiations that are critical to the interests of the Philippines - that of non-agricultural market access (NAMA), Agriculture, Services and Trade Related Aspects of Intellectual Property Rights (TRIPS). It would also provide quick updates on the FTAs in which the Philippines is currently party or may become a party to. It will be shown herein that issue after issue, a potential stalemate and only an uncertain outcome can be foreseen for the Philippines

In a nutshell, ambiguity still grips the direction of the negotiations due to the divergent interests and negotiating positions propounded by different country members of the WTO. Developed countries have called for movements in Agriculture negotiations only if conditioned on movement in NAMA and Services¹. Developing countries, such as the Philippines on the other hand, are calling for flexibilities in NAMA and services, whilst pushing for the prioritization of agriculture. Corollary to the uncertainty as to the most likely outcome of this hodgepodge of negotiating positions is an even deeper irresolution as to whether the Philippines could gain more from liberalizing further and deepening its involvement in the current world trading system.

¹ See http://www.europa.eu.int/comm/trade/issues/newround/doha_da/pr281005_en.htm

a. NAMA

The current main concern on market access issues relating to non-agricultural products revolve around how much of a cut or ceiling should be imposed on tariffs on industrial products, and whether certain products would be afforded exemption from such cuts.

Developed economies such as the US and the European Communities (EC) hold strong comparative advantage in the production of a myriad of highly specialized and high-value industrial products. It is not surprising therefore that developed countries are the primary advocates for the enforcement of the most substantial tariff cuts on industrial products so as to allow them wider market access for their products in foreign markets – among which are developing and least developed countries (LDCs).

Developing countries such as the Philippines, on the other hand, have taken a strong position to maintain a wider range of flexibility in adjusting their industrial tariffs to shelter selected domestic industries from an influx of importations, in line with their development objectives. It has to be noted that for some developing countries, this position was taken not necessarily due to a perceived threat from the US or the EC, but rather from other developing countries such as China. According to a Report by the International Development Committee of the UK House of Commons: “ We were told by the DFID that the reason that India was so reluctant to lower it [sic] industrial tariffs was not because of the EU but because of Chinese industrial exports.”²

i. Negotiations on the formula

The designated method of tariff reduction for market access is by way of a mathematical formula. At Hong Kong, it was already agreed - as stated in the Hong Kong Ministerial Declaration - that a Swiss formula³

² The House of Commons International Development Committee, *The WTO Hong Kong Ministerial and the Doha Development Agenda*, Third Report of Session 2005-2006, Volume 1 page 21.

³ The principle behind the Swiss formula as opposed to a linear formula is that the former imposes “the highest cuts on the highest tariffs”, whereas the linear formula will effect a uniform cut across all tariff lines.

be used as the basis of determining the extent of tariff disciplines for non-agricultural goods. The said formula makes use of a coefficient that will determine the new set of maximum tariff rates. A modified Swiss formula is also on the negotiating table which allows for more than one coefficient.⁴ Argentina, Brazil and India have proposed a modified Swiss formula that would consider a country's average tariff rate and have the same multiplied with the set coefficient(s). The value of the coefficient(s), however, as well as the question as to whether more than one coefficient should be used, remains to be resolved at the negotiations.

Even prior to Hong Kong, the Philippines, as well as many other developing countries, was already agreeable to the use of the Swiss-type formula saying that the same "was equitable and had flexibility, meeting the principles of SDT [special and differential treatment] and less than full reciprocity".⁵ This however will still be driven by the value of the coefficients to be agreed upon.

Developing countries are inclined to negotiate for a higher coefficient or multiple coefficients for themselves as this would produce shallower cuts on their industrial tariffs (which on the average are higher than those of developed countries). Conversely, developing countries have also taken the position for developed countries to adopt a lower coefficient which will effect a much higher cut on their tariffs and thus allow greater access for industrial exports from developing countries.

Some developing countries have proposed a coefficient of at least 30. Developed countries, such as the US, however, are insisting on a coefficient of 10, with a maximum of 15 for developing countries. Another group of developing countries on the other hand, called the

The Swiss Formula is expressed algebraically as follows: $Z = AX/(A+X)$ where: X = initial tariff rate, A = coefficient and maximum tariff rate, Z = resulting lower tariff rate (end of period) (from <http://www.wto.org>)

⁴ This alternative formula is expressed as follows:
"T1= (BxX)xT/(BxX)+T, where T1 is the final tariff rate, T is the initial tariff rate, B and X are coefficients. The difference between the modified Swiss formula and the Swiss formula is the presence of the additional coefficient X." (See Ranjan Pranhsh, Choosing the Appropriate Tariff Reduction Formula in NAMA, Economic and Political Weekly April 22, 2006)

⁵ See <http://www.twinside.org.sg/title2/twninfo208.htm>

NAMA-11⁶ (of which the Philippines is part of) argued that even with a coefficient of 40 for developing countries and a coefficient of 10 for developed countries, developing countries will make a 41.57% reduction in their bound tariffs as opposed to only a 25.77% reduction for developed countries.⁷ Furthermore, while some proposals have suggested that the formula be used on the present applied tariffs instead of the maximum tariffs allowed in the commitments schedules (bound rates), the NAMA-11 maintain that the tariffs be reduced from the bound rates.⁸

Due to the sheer number and complexity of the proposals that have been raised for the coefficients alone, the outcome of the negotiations, as well as the accuracy of conjectures identifying which countries would benefit the most from such an outcome, remains hazy at best.

ii. Different interpretations of Paragraph 8 flexibilities

Paragraph 8 of Annex B of the July 2004 Package⁹ provides for flexibilities in tariff cuts for developing countries. The said paragraph is quoted as follows:

“We agree that developing-country participants shall have longer implementation periods for tariff reductions. In addition, they shall be given the following flexibility:

- a) applying less than formula cuts to up to [10] percent of the tariff lines provided that the cuts are no less than half the formula cuts and that these tariff lines do not exceed [10] percent of the total value of a Member's imports; or
- b) keeping, as an exception, tariff lines unbound, or not applying formula cuts for up to [5] percent of tariff lines provided they do not exceed [5] percent of the total value of a Member's imports.

⁶ along with Argentina, Brazil, Egypt, India, Indonesia, Namibia, South Africa, and Venezuela

⁷ See <http://www.twinside.org.sg/title2/twninfo376.htm>

⁸ *ibid*

⁹ Or the WTO General Council Decision adopted in August 1, 2004

We furthermore agree that this flexibility could not be used to exclude entire HS Chapters.”

Foremost, it has to be considered that despite it having already been written down in Paragraph 8(b) of Annex B of the July Package, developed countries continue to express their objection to allowing developing countries to exempt 5 percent of their NAMA tariff lines from cuts.

Whilst practically all of the phrases in the aforementioned paragraph affords for greater discussion and debate, one of the strongest points of contention before, during, and after the Hong Kong meeting was whether the above quoted paragraph should be treated as a “stand-alone” provision, or should be traded-off or linked with the tariff cuts to be implemented according to the agreed Swiss formula coefficient.

The developed countries such as the US and the EC are of the position that there should be a trade-off between the flexibilities provided in paragraph 8 of Annex B and the coefficient of the formula. This would mean “that the deeper the tariff cuts undertaken, the greater the flexibilities that would be available. In other words, according to some members, the percentage thresholds of paragraph 8 are not final and could be revised downwards depending on the level of the coefficient of the formula.”¹⁰

Developing country members, on the other hand, including the NAMA-11 - which the Philippines is a part of, reject this position, asserting that paragraph 8 is a stand-alone provision in the agreed NAMA framework, and that any move to link it, or use it as a trade-off with the tariff reduction formula will create unnecessary difficulties in the negotiations.¹¹ The said group adds that “the two issues are separate and should be treated as such.”¹²

The Philippines for its part issued a pronouncement to the same effect that Paragraph 8 is “a stand-alone provision that cannot and ought not to result in any enhanced or separate coefficient for certain developing countries as a result of their use or non-use of paragraph 8 flexibilities.”¹³

¹⁰ South Centre, NAMA State of Play: Countries Negotiating Positions, Geneva, Switzerland, May 2006

¹¹ See <http://www.twinside.org.sg/title2/twninfo376.htm>

¹² *ibid*

¹³ See <http://www.twinside.org.sg/title2/twninfo381.htm>

It added further that, "to allow, at this late stage of the negotiations, a special coefficient for a certain group of countries would lead to other groups of countries to also seek special coefficients, including those countries with low unbound and applied duties."¹⁴ With the wide rifts in the positions between developed and developing countries, the proposals of the Philippines, and of the NAMA-11 for that matter may give way to further amendment and concessions - the permutations and final effects of which may lead to different conclusions as to how it would affect developing countries.

iii. Divergent views on the Treatment of unbound tariffs

Paragraph 17 of the Hong Kong Declaration provides for the use of a non-linear mark-up approach to determine the base rates on currently unbound tariffs for the negotiations. Research has suggested that this paragraph was not present in previous drafts of the Hong Kong Declaration and was only inserted at the last minute.¹⁵ Nevertheless, this is considered as a major concession on the part of developing countries since it has long been a position of developing countries to retain a certain percentage of their tariff lines unbound, with bound tariff rates pegged at relatively high rates in order to provide developing countries more latitude in setting tariff policy.¹⁶ Following this rule, applied rates - including those of unbound tariff lines - will be increased by a mark-up value still to be determined, after which the formula will be applied. The resulting rates will then constitute the new bound rates. Regarding the value of the mark-up, a range of 5-30 absolute percentage points has already been broached at the negotiations, although no agreement has yet been reached.¹⁷

Developed countries primarily the US and the EC fully support this as it would subject all industrial tariff lines of their potential markets to disciplines. Developing countries on the other hand have expressed strong reservations as to how Paragraph 17 would impact on their unbound tariff lines. The NAMA-11 countries for one, as mentioned earlier, maintain the

¹⁴ *ibid*

¹⁵ See <http://www.fao.org/docs/nems/trade/33541/TWN.doc>

¹⁶ See http://www.focusweb.org/content/index2.php?option=com_content&do_pdf=1&id=866

¹⁷ South Centre, NAMA State of Play: Countries Negotiating Positions, Geneva, Switzerland, May 2006

position that any reductions to tariffs should start not from applied rates but from bound rates.

It must be considered that, even prior to Hong Kong, the Philippines had already articulated its opposition to applying the formula to unbound tariff lines. Moreover, even during meetings in the run-up to Hong Kong, the Philippines was of the position that the “India-Brazil-Argentina [another term for the modified Swiss formula] formula (to be used for unbound tariffs) was only suitable for countries with high unbound tariff rates and not for countries with low applied and unbound rates.”¹⁸ The Philippines also supported a proposal brought forth by Malaysia in 2004 that duties be bound at a target average of 25% with a ceiling of 40% for all newly bound duties.¹⁹

With regard to NAMA, various proposals and suggestions reflective of each country’s interests have been placed on the negotiating table regarding this issue. The current inability of the negotiating body to arrive at a compromise as to a) which formula to adopt, b) what interpretation of paragraph 8 to accept and c) how unbound tariff lines would be treated only casts further uncertainty as to how the WTO talks would turn out.

It may also be uncertain whether the current negotiating positions taken by the Philippines are indeed reflective of and responsive to the interests of Philippine business. Setting aside such relevant questions regarding the sufficiency of manpower and other such resources, there is also a question as to whether the analysis and research regarding NAMA was unnecessarily focused on industrial tariffs. Considering the interlinkages of the negotiations between NAMA, agriculture, and services, and the conditionalities prevailing among them, the current approach may have to be refined to reflect such fact of interlinkages. There is also the question of proper and effective consultation with the private sector for purposes of developing the positions on NAMA.

¹⁸ See <http://www.twinside.org.sg/title2/twninfo208.htm>

¹⁹ South Centre, NAMA State of Play: Countries Negotiating Positions, Geneva, Switzerland, May 2006

b. Agriculture

Agriculture has been the subject of controversy and contention since the onset of multilateral trade negotiations. Generally, the insistence of developing countries to prioritize discussions on a new Agreement on Agriculture and the dogged determination of developed countries to divert discussions elsewhere (such as the effort to push for Singapore Issues²⁰ ahead of agriculture at the 5th Ministerial Conference at Cancun) has left many aspects of and proposals for agriculture trade unresolved.

Developing countries have taken the position that negotiations in market access, domestic support, and export subsidies should be interlinked since any progress in one or two areas will be negated and will be of no bearing to developing country trade interests if a single one is not addressed. Each is discussed in the subsequent portions of this section.

i. Export subsidies

On this subject, divergent positions were taken by two of the largest blocs among the developed countries. On one hand, the US proposed that all export subsidies be eliminated by 2010. The EC proposal, on the other hand, called for an elimination of export subsidies by 2015. Developing countries batted for the soonest end date for the elimination of these subsidies and threw support for the soonest deadline (or even before 2010) for the elimination.

At the conclusion of the Hong Kong talks, a milestone was claimed to have been attained when a compromise was reached for the elimination all trade export subsidies by 2013, except for those on cotton which was marked for earlier elimination within 2006. Nonetheless, this constitutes an agreement on a deadline for only one of the pillars of the negotiations. Furthermore, according to observers, the elimination of export subsidies may not create much of an impact since “the US does not use export subsidies extensively and xxx comprise only 3.6 percent of overall CAP [common agricultural policy] support.”²¹

²⁰ Investment, Government Procurement, Competition Policy and Trade Facilitation

²¹ The House of Commons International Development Committee, *The WTO Hong Kong Ministerial and the Doha Development Agenda*, Third Report of Session 2005-2006, Volume 1 page 19

ii. Domestic support

For domestic support, the only agreement arrived at so far is the classification of countries into three bands depending on the amount of support they provide with the highest band subject to the steepest linear cuts. The topmost band will be composed of the WTO member giving the highest level of domestic support while the second band will hold the two members paying the second and third highest amount of domestic support. All the rest, including developing countries, will be categorized under the lowest band. Interestingly, while NAMA tariffs are to be cut according to a non-linear approach across all countries (meaning the steepest cuts for the highest tariffs), domestic support will only be reduced on a linear basis albeit dependent on which band a country belongs. It is worth noting in this regard that the domestic support provided by developing countries is utterly insignificant as compared to those granted by developed countries.

The US proposed to cut its financial support to farmers by 60%. This was rejected by developing countries and non-government groups, such as Oxfam, saying that the bottom line of such a proposal would be limited to the US government reducing its spending on agriculture by only 2% once the implementation period of the Doha Round ends.²² The EC, on the other hand, again took a contingent stand, offering to cut its payments to farmers by 70% provided that other countries providing heavy subsidies likewise undertook proportionate actions. It also offered to reduce its present *de minimis* allowance by at least 65 %²³.

²² *ibid* page 21

²³ *ibid* page 9

iii. Market Access

It is in market access negotiations where various proposals are currently being debated. As early as October last year, the US and the EC stated their respective offers in agriculture.

Unlike in the case of NAMA in which a formula for tariff reductions has already been adopted, no such means has yet been agreed upon for market access for agricultural products. Instead, on the table are unilateral proposals from various member countries as to how they would be willing to effect disciplines in their tariff rates and extend special and differential treatment to poorer countries. Nonetheless, in the Hong Kong Declaration, all members agreed to establish 4 bands for the structuring of tariff reductions - although the thresholds are still to be deliberated on.

In its offer, the US proposed to reduce its tariffs on farm products by a range of 55 and 90%, and provide duty free access on LDC exports for at least 97% of all tariff lines. The remaining tariff lines would be reserved for products the US would choose to protect such as sugar.²⁴

The EC for its part proposed an average cut of 46% on all tariff lines (60% on the highest and 35% on the lowest tariffs), imposing a maximum agricultural tariff of 100%, a reduction in the number of designated sensitive products to 8%, wider tariff rate quotas (TRQs), a 70% reduction in trade distorting agricultural subsidies and tighter disciplines on Blue Box spending, and more special and differential treatment for developing countries.²⁵ The EC still made it clear, however, that their proposal was still conditioned on further movement in other sectors.

Developing countries on the other hand led by the G20 demanded the EC to slash its agricultural tariffs by 54-75%. The US, notably in line with the G20 position, called for an even steeper cut of 90%. Also, developing countries dismissed the EC proposal to designate as much as 8% of its tariff lines as sensitive arguing that such should be limited to 1%. A World Bank Report has been cited which states that “if even 2 per cent of products in developed countries, (and 4 percent for developing countries) are deemed special or sensitive products this ‘virtually

²⁴ See http://www.card.iastate.edu/iowa_ag_review/winter_06/article3.aspx

²⁵ See http://ec.europa.eu/comm/trade/issues/newround/doha_da/pr281005_en.htm

eliminates the poverty impacts of a Doha agreement.”²⁶ Up to the present, this remains a hotly contested aspect of the negotiations.

Also on market access, the Philippines has taken a vocal position on the designation of certain tariff lines as Special Products to be given flexibilities in the imposition of tariff cuts. Paragraph 7 of the Hong Kong Declaration states that:

“Developing Countries will have the flexibility to self-designate an appropriate number of tariff lines as Special Products guided by indicators based on the criteria of food security, livelihood security and rural development.”

In this connection, the Philippines, which aligns itself with the G-33 position has issued a proposal allowing developing countries to designate, at the very least, 20% of their agricultural tariff lines as Special Products. The Philippines in its submission acknowledges that some countries may consider the said proposal as ambitious. It, however, cites a study attesting that Special Products are “essential to lessening the diverse impact of the Doha Round cuts on developing countries”, and that “little losses would result in, in any event [sic], to Members with offensive interests, even if full flexibilities for SPs and SSM were granted to developing countries.”²⁷

To note, negotiations on Agriculture have been ongoing for several decades already. Unlike in NAMA, however, an agreement on a negotiating component as rudimentary as the formula to be used in the tariff cuts, has remained elusive. Divergent interests are likely to lead to a further distilling of positions and a seeking of compromises whose extent and consequences to the Philippines and developing country economies can not yet be ascertained. Again, for the Philippines, agriculture

²⁶ The House of Commons International Development Committee, The WTO Hong Kong Ministerial and the Doha Development Agenda, Third Report of Session 2005-2006, Volume 1 page 20

²⁷ Statement by the Delegation of the Philippines on Special Products Informal Open-ended Consultations, 27 April 2006 [JOB(06)/131]

negotiations seemingly is approached without a practical level of consideration of its linkage to NAMA and services negotiations. It must be emphasized that either of the three areas of the negotiations could be used or treated by other countries as negotiating levers for compromises in the other remaining areas.

c. Services

The Services negotiations have moved at a relatively sluggish pace since the beginning of the Doha Round. Many attribute this to the cumbersome bilateral request-offer approach adopted in the previous discussions. Different positions and varying degrees of ambition taken by countries on different modes have taken its toll on the speed of the talks, which has particularly concerned developed countries - principally the EC. To address this, a plurilateral method was agreed upon, with no prejudice to the bilateral approach favored by developing countries. However, the need for members of one common interest group to agree among themselves prior to the arrival at a formal offer for each sector under the said approach, as well the high level of ambition contained therein, have presented additional challenges in determining how the negotiations would proceed.

i. The plurilateral approach

In order to expedite the progress of the negotiations, a more inclusive plurilateral approach was adopted, as agreed in Paragraph 7 of Annex C of the Hong Kong Declaration which states that:

“In addition to bilateral negotiations, we agree that the request-offer negotiations should also be pursued on a plurilateral basis in accordance with the principles of the GATS and the Guidelines and Procedures for the Negotiations on Trade in Services. The results of such negotiations shall be extended on an MFN basis.”

The incorporation of the plurilateral approach into the Hong Kong Declaration is said to have been an outcome favorable to developed countries intent on fast-tracking the liberalization process in key sub

sectors of services in foreign markets. Among these sectors are banking, transport and communications - where the EC claims that investments are necessary for fragile economies to grow.²⁸ The EC was even pushing for a benchmarking approach wherein all member countries will be required to make a specified number of offers. This offer was rejected, and interestingly beamed upon by the UK as a positive outcome for developing countries.²⁹

Unlike in bilateral negotiations wherein a requesting country can ask for far reaching commitments from other countries in areas of interest to them, plurilateral negotiations would require requestors to first agree amongst themselves before they can tender an official request to a target country.³⁰ The EC has been fully supportive of this move, although the US appeared more inclined to giving preference for the bilateral request approach³¹.

Developing countries on the other hand have been relatively cautious in liberalizing certain sectors for reasons of national interest. Following this reasoning, the Philippines is even advocating for the establishment of emergency safeguards measures in the services sector.³²

Representatives from developing countries were not very comfortable with accepting the plurilateral method, as they were concerned that such may deprive them of leeway and flexibilities which were afforded by the bilateral approach.³³ Concerns were also raised that differences among members of a negotiating group may force the undertaking of internal compromises that may lead to a less favored "least common denominator" position. In these respects, the Philippines, along with other developing countries, was quick to reiterate during the negotiations that the plurilateral approach should not supersede the

²⁸ See http://trade.ec.europa.eu/doclib/docs/2006/january/tradoc_125708.pdf

²⁹ The House of Commons International Development Committee, The WTO Hong Kong Ministerial and the Doha Development Agenda, Third Report of Session 2005-2006, Volume 1 page 22

³⁰ Alexandra Strickner and Carin Smaller, *Geneva Update*, Heading Towards an Iceberg: is it too late to steer the ship? Institute for Agriculture and Trade Policy, Trade Observatory, Geneva 24 February 2006.

³¹ See <http://www.globalpolicy.org/socecon/bwi-wto/wto/2006/0309mini.htm>

³² See Philippine Statement, Council for Trade in Services/Special Session 16 February 2006

³³ See <http://www.fao.org/docs/nems/trade/33541/TWN.doc>

bilateral-request offer approach.³⁴ It was also emphasized by developing countries that their participation in making plurilateral requests was done on a purely voluntary basis and that such would not constitute any binding obligation to make any definite commitments in the sectors being discussed.³⁵

Once the initial sessions using the plurilateral approach were completed, many observers came out with the opinion that a reversion to the bilateral request-offer approach may be in order for the next negotiations. This possibility could be tied to the difficulty experienced by developing countries in pushing for the far reaching commitments they sought due to certain political sensitivities.³⁶ During the sessions, it was also noted on number of occasions that certain requests by some countries exceeded what they were willing to offer and/or their present state of liberalization in that sector. It is of interest to note that in those negotiations, the EC advised developing countries to consider their own request as an offer, when in fact it became evident that the EC itself was unwilling to liberalize as much as, or beyond, what they were demanding other countries to do.³⁷ This, according to commentators, may cast further doubt on the future of the plurilateral process and the general outcome of the negotiations. The next round of revised offers will have to be submitted by 31 July 2006 and the final draft schedules of commitments have to be turned in by 31 October 2006.

ii. The Modes

Notably, most of the plurilateral requests from the demandeurs so far have focused on modal schedules – modes 1-3 and especially in mode 3 (commercial presence).³⁸ Developed countries, however, even amongst themselves have divergent interests on certain sensitive sectors such as Audiovisual; Maritime; Education; Air Transport; and Postal services, for

³⁴ See Philippine Statement, Council for Trade in Services/Special Session 16 February 2006

³⁵ Carin Smaller, *Geneva Update*, Lamy Takes the Reigns of the Doha Round: when will he make his mark?, Institute for Agriculture and Trade Policy, Trade Observatory, Geneva 20 April 2006

³⁶ Carin Smaller, *Geneva Update*, Lamy Takes the Reigns of the Doha Round: when will he make his mark?, Institute for Agriculture and Trade Policy, Trade Observatory, Geneva 20 April 2006

³⁷ See <http://www.globalpolicy.org/socecon/bwi-wto/wto/2006/0309mini.htm>

³⁸ *ibid*

which an impasse is foreseen.³⁹ Nevertheless, developed countries have been cohesively demanding developing countries to allow greater access for Telecommunications; Financial Services; Energy; Environmental Services; Logistics; Distribution; Construction and Computer Related Services⁴⁰.

Developing countries on the other hand, have been particularly outspoken in their request for increased market access through Mode 4 or the movement of natural persons. The Philippines has plenty to gain from further liberalization under Mode 4 considering the vast pool of skilled labor and knowledge workers it is capable of exporting, and the large percentage share of foreign remittances to its economy. Opening up offshore markets for foreign labor will provide better opportunities for doctors, nurses, engineers, lawyers, and other professionals from developing countries to work in developed countries to earn the much needed foreign exchange to strengthen their home economies. However, it is to be expected that the willingness of developed countries to open up their labor markets will be driven mainly by how much developing countries can offer similar concessions either in the same or other modes (such as Mode 3). Some developing countries, such as the Philippines, limit the practice of professions to nationals of their countries due to deep rooted economic and political considerations.

Another area of importance for some developing countries, especially the Philippines and India, are Modes 1 (cross-border supply) and 2 (consumption abroad) - mainly in cognizance of their comparative advantage in business process outsourcing (BPO). India and the Philippines have recently made wide strides in proving their growing competitiveness as investment areas for call-centers and other BPO activities. India is already in the process of preparing requests on Modes 1, 2 and 4, along with Argentina which is preparing requests for agricultural services⁴¹.

Despite its recent introduction to the multilateral negotiating agenda, approaches to the discussion of trade in the services have taken varied turns as a consequence again of diverging positions and priorities from a diversity of member country stake holders participating in the

³⁹ *ibid*

⁴⁰ *ibid*

⁴¹ *ibid*

process. The Philippine agency in charge of Services negotiations is the National Economic and Development Authority (NEDA). Again the said agency specializes exclusively on Services negotiations and may not be privy to Agriculture and NAMA technicalities where offers may be made by other countries as concessions for movements in other sectors.

d. TRIPs (Parallel Importations)

The Trade Related Aspects of Intellectual Property Rights (TRIPs) is one discussion item in the multilateral trading system where the division of interests between the developed and developing countries may be readily perceived. Developing countries have argued for concessions to enable the affordable reproduction of patented or copyrighted products and materials or less prohibitive fees to gain access to certain patented technologies from developed countries. High costs of medicines due to intangible costs arising from exclusive distributorship arrangements has been a perennial issue particularly when alternative “parallel import” routes (as will be discussed below) are tapped by sellers to developing countries.

Parallel importations are also known as gray-market importations. These are goods that are manufactured under the protection of trademarks, patents and copyrights, which are then placed into circulation in a particular market and then the second market would import it without the authorization of the local owner of the intellectual property right. The products obtained through parallel importations are exactly the same with products authorized to be sold domestically with the only differences to be noted mostly in packaging and the absence of the original manufacturer’s warranty.

The Philippines has been pushing for parallel importation. The Philippine International Trading Corporation (PITC), in particular, has been asking the Bureau of Food and Drugs (BFAD) to start processing documents which will allow the parallel importation of certain medicines as soon as its patent expires.

One article ⁴² published by the PITC commented that developing countries like the Philippines that are unable to develop their own R&D

⁴² Affordable drugs, <http://www.pitc.gov.ph/newsletter/newsletter.htm#breaktime>

would have to resort to other options like parallel importation, targeted consumer subsidies, and other programs to lower the prices of essential medicines. PITC has pushed for amendments to the intellectual property code for it to complement the governments' program on parallel importation. Developing countries have expressed the same public concern on the lack of access to affordable medicines, amid pressures from developed countries for developing countries to sell only products authorized for distribution therein. It was not until after the Doha Conference in 2001 and also with the help of the Special declaration on Public Health that an exception was made allowing developing countries to make parallel imports in the case of public health crisis.

Pharmaceutical industries mostly based in developed countries argue that they need strong patent protection to secure revenue from their market and to make up for their costs on R&D. The world's pharmaceutical market is dominated by US, EC, and Japan. Developing countries believed that providing patent protection will increase prices of medicines and this will eventually have a significant impact on the public's access to drugs.⁴³ At present, developing countries with the capacity of producing drugs such as India and Brazil have liberalized or at least loosen up their patent laws to produce low priced drugs.⁴⁴

Some developed countries and pharmaceutical companies have sought to restrict the use by developing countries of compulsory licensing and parallel importing measures. Two examples of this are the drug companies' court case against South Africa, and the US case against Brazil in the WTO.⁴⁵ Developed nations have been aggressively pushing developing nations to provide patent protection for their medicines.⁴⁶

While the position and intention of developing countries are clear in this issue, the willingness of the developed world to further relax their position against parallel importations is still very much uncertain.

⁴³ Parallel imports in Pharmaceuticals: Increase access to HIV drugs, www.thailawforum.com/articles/hivdrugs1.html

⁴⁴ www.thailawforum.com/articles/hivdrugs3.html

⁴⁵ Patents and Medicines: The WTO must act now!, <http://www.twinside.org.sg/title/joint4.htm>

⁴⁶ Parallel imports in Pharmaceuticals: Increase access to HIV drugs, www.thailawforum.com/articles/hivdrugs1.html

e. FTA Updates

While only a few developments have taken place at the multilateral scene, the same could not be said of the bilateral/regional negotiating arena. Since the aftermath of the 5th Ministerial Conference in Cancun, several countries have signified their intention and/or launched negotiations with their trading partners to establish FTAs. The Philippine experience was not an exception to this growing trend. Apart from being a member of the AFTA, the Philippines is now party to two other regional FTAs, namely the ASEAN-China FTA and the ASEAN-Korea FTA. It is currently engaged in negotiations with Japan and feasibility studies have been commissioned for a prospective Philippines-US FTA. Note that the economic and industrial impact of these FTAs, most of which were entered into through Executive Agreements, would be no less extensive and significant as those effected by multilateral agreements, which required Congressional concurrence. Also, it is important to note that FTAs now include provisions that cover a broader and deeper dimension of trade - e.g. trade in goods, dispute settlement, intellectual property, trade facilitation, services - all of which are already akin to the WTO (which required treaty concurrence). This section explores updates on FTAs of which the Philippines is currently party to.

i. AFTA

The main feature of the AFTA is its accelerated reduction of tariffs for intra-ASEAN trade. As of 2003, tariffs on all products designated in the “inclusion list” of the original members of ASEAN were lowered to a range of 0-5% (except for petrochemicals which was granted 7% exemption). Some products were designated as sensitive but a gradual phase-out for these products commenced in 2003. Presently, updates on the AFTA pertain more to administrative and implementation matters - particularly the reformulation and enforcement of new rules of origin (which are used to determine whether a product is of ASEAN origin or not - as opposed to mere transshipments). A new set of rules of origin was released in 2005 allowing for cumulations of the 40% value-added criteria. The impact of AFTA cuts across all industry sectors and opens a number of Philippine industries such as petrochemicals, cement, plastics, chemicals and automobile parts to foreign competition (albeit limited to ASEAN countries).

ii. ASEAN-China

The ASEAN-China FTA was initially propounded by China with a willingness to undertake unilateral tariff reductions through an “Early Harvest Program” (EHP) that would serve as a dowry to solidify its intentions. Just as many twists take place during negotiations, the unilateral offering made by China eventually evolved into a reciprocal arrangement covering all raw agricultural products formalized in 2004. The Philippines refused to participate in the EHP without the inclusion of certain processed agricultural products and some manufactured products. Concessions were reached and the Philippines finally agreed in 2006. Similarly, a Trade in Goods Agreement and a Dispute Settlement Agreement had already been signed. The most affected sector in this FTA are the vegetable growers in the Philippines who, since the inception of the EHP, have aired concerns that the influx of cheap vegetable imports from China after tariff cuts are implemented.

iii. Japan-Philippines Economic Partnership Agreement (JPEPA)

The JPEPA was initially envisioned to take effect last year. However due to complications in the negotiations pertaining to the proposed unrestricted entry of Philippine health workers to Japan, the talks stalled momentarily. As of May this year, however, the Japanese government has conceded not to impose any quota restrictions on Filipino health workers – although conditionalities that standards be based on Japanese rules and that access will depend on the availability of facilities to train them in Japan are still to be put into effect. JPEPA would potentially impact on the Philippine automotive industry. As a matter of fact, non-Japanese automobile firms in the Philippines initially expressed serious reservations on this proposal.

iv. ASEAN-Korea

Just signed this May, the ASEAN-Korea FTA is the latest preferential trading arrangement the Philippines has involved itself in along with its ASEAN neighbors. At this stage, however, the products to

be covered by this FTA have yet to be determined. What is clear however is that Korea and each ASEAN country will be allowed to exclude as many as 40 tariff lines from duty cuts for an unspecified period of time. To the dismay of Thailand however, which opted out of the deal, Korea sought to exclude rice from the FTA coverage. As the final product lists are still to be released, it is difficult to assess the general effect that this FTA would have in the Philippines. Since Korea harbors highly competitive manufacturers of chemicals (especially resins) and automobiles, then an impact would be felt by competing industries here in the Philippines.

The current FTA engagements of the Philippines are meant to bolster the pace of liberalization with its trading partners in the region, the biggest of which are China and Japan. Although this is anticipated to improve regional trade and investment, the question of whether the Philippines has the full capacity to benefit from these at the point of full optimization remains. While the Philippines has opened up and reduced its tariffs faster and to a more significant degree, its gains from liberalization would not seem to be at par with the leaps and bounds experienced by its ASEAN neighbors such as Malaysia and Thailand. Thus, a closer look may have to be taken at the Philippines' domestic, institutional, and structural readiness to further open up its markets.

C. End game or where to?

In view of the mounting stumbling blocks in various sectors that still remain to be hurdled in the coming months, many thinkers already predict that no new substantial Agreements will be reached before the 2006 deadline expires. Adding fuel to this assertion and spewing more pessimism and uncertainty on the prospect of having a new deal by 2006 are the shifting political priorities of key players in the negotiations from an outward economic policy making mindset towards a focus on domestic policy issues.

As a key example of this, the US - a prime mover in the present Doha Round - would have to deal with its mid-term elections late this year. It would be a logical assumption, as experience would tell us, that during election periods, any government's attention would shift from external to domestic issues in order to attend to the needs of its electorate.

Furthermore, the US Trade Promotion Authority (TPA) is set to expire in by the end of June 2007. Thus, as Jeffrey Schott of the Institute of International Economics in Washington DC said in a speech last February, “WTO negotiators must operate under the assumption that the Doha Round can be successfully concluded before the expiration of the trade promotion authority.”⁴⁷ He adds that “there is no assurance that TPA would be extended – given how sharply divided Congress is on trade issues - - and much evidence that extending the horizon of the talks will undermine negotiating momentum.”⁴⁸ Even assuming that the TPA is even extended, the external priorities of the US may still have to be subordinated to yet another significant inward-looking political event - the 2008 presidential elections.

The UK which recently concluded elections last year, still grapples with domestic issues as reports have circulated regarding the incumbent Prime Minister announcing his plans to step down from office in 2007 to give time for his successor to settle down prior to the next UK general elections.⁴⁹ It must be considered however that the UK House of Commons released a report on how it perceived the current state of play at the Doha Round. The said report, which has been quoted a number of times in the paper, critiques some of the positions taken by the EC. It concedes that “the Commission has been inconsistent in its advice to the developing countries...[and that]...[T]he Commission’s refusal to practice what it preaches in respect of liberalisation threatens the EU negotiating position.”⁵⁰

France, a highly influential member of the EC, will likewise be going to the polls next year. Notably, two of the main contenders in the elections, Nicolas Sarkozy and Dominique de Villepin have taken positions not very divergent from the present policy stance of the country – both being staunch supporters of the CAP. Villepin, in a meeting with EC Trade Commissioner Peter Mandelson, “expressed concern about the lack of progress in the opening up of the industrial and service markets in the major emerging economies... [and]... reiterated his great vigilance

⁴⁷ www.usda.gov/oc/forum/2006%20Speeches/PDF%20speech%20docs/Schott_jeff.pdf

⁴⁸ *ibid*

⁴⁹ See <http://cnews.canoe.ca/CNEWS/World/2006/05/14/1579791-ap.html>

⁵⁰ The House of Commons International Development Committee, *The WTO Hong Kong Ministerial and the Doha Development Agenda*, Third Report of Session 2005-2006, Volume 1 page 30.

vis-à-vis the agricultural issues and strict respect for the integrity of the Common Agricultural Policy as reformed in 2003.”⁵¹ On the other hand, according to the IHT, Sarkozy said in an article published in a French newspaper that further reductions in farm subsidies were “not acceptable” and that dismantling the CAP would put “an end to Europe’s status as an agricultural power.”⁵²

Germany just came through a tumultuous election with Angela Merkel winning the Chancellorship following disputes on the election results. Merkel is known to be more market inclined in terms of economic policy relative to her own party - as can be seen in her moves to reform labor laws allowing companies to have a freer hand in controlling labor costs by relaxing restrictions on firing employees and increasing the number of work hours in a week.⁵³ Merkel has also indicated her support for the WTO talks in her policy statements. In one, she said “Commerce and free trade are one of the major prerequisites for enabling all players to participate in equal terms. In Germany, too, many people fear that free trade could disadvantage certain parties. Yet any introduction of more freedom in Germany has generally propelled the country forward. Here, too, we must overcome our fears.”⁵⁴ Presently, the leadership of Chancellor Merkel has been well received as shown by her high approval ratings which figured at levels unprecedented since 1949.

Japan, has promised compliance with its WTO commitment to put negotiations back on track. It has disclosed its position to lower its Minimum Access commitment for rice. In addition to that, last December 2005, Japan partially re-opened its market to US beef after much pushing and almost getting banned from the US. However, last January 2006, a reversal took place when Japan again closed its market following a determination that one shipment from the US did not meet the requirements of its export verification program.⁵⁵ Notably, Japan has

⁵¹ See <http://www.diplomatie.gouv.fr/actu/bulletin.gb.asp?liste=20060425.gb.html#Chapitre2>

⁵² See <http://www.iht.com/articles/2005/10/21/business/wto.php>

⁵³ http://en.wikipedia.org/wiki/Angela_Merkel

⁵⁴ Merkel’s Speech at the World Economic Forum 2006 Davos, Switzerland 25 January, 2006

See http://www.globalmarshallplan.org/e5095/e6262/e6768/index_eng.html

⁵⁵ See

www.ustr.gov/assets/Document_Library/Reports_Publications/2006/2006_NTE_Report/asset_upload_file339_9185.pdf

pursued bilateral trade negotiations with a number of countries (e.g. Mexico, Philippines, Thailand etc.) and regions (ASEAN).

China, which joined the WTO only in 2001, has emerged to become the world's fastest growing economy and largest trader. However, many have observed that China has placed too much attention in boosting export growth and developing its local industries, causing it to compromise efforts to meet its commitment to market access, implementation of labor rights, and the protection on intellectual property rights. Moreover, it remains a general perception that China continues to maintain prohibitive trade barriers. These trade barriers are said to have contributed significantly to the growing US trade deficit.⁵⁶ Apart from this, non tariff, administrative and language barriers continue to hinder trade from fully flourishing in China. Like Japan, it has also pursued bilateral trade negotiations with other countries (India, Thailand) and regions (ASEAN).

Russia has yet to become a member of the WTO. Last 29 March 2006, Russian President Vladimir Putin complained that accession negotiations for Russia to join the WTO were being delayed by questions from the US negotiators.⁵⁷ It is worthy to note, however, that when re-elected in 2004, Putin set as one of his priorities the rebuilding of a central government to keep the autonomy of its outer regions in check - in response to the Chechen uprising. Thus domestic issues continue to take hold in Russia.

The indicators above point at a higher likelihood for the Doha Round to miss its pre-agreed end-2006 deadline and continuous doubts as to how the talks may turn out after. However, the lapse of 2006 should not be instantly construed as a failure of the Doha Round. It would be equally baseless to consider the Doha Round talks dead if no new set of agreements is reached. Some thinkers even consider this as a natural and normal part of the negotiation process.⁵⁸ It may be remembered that the

⁵⁶ www.ustr.gov/assets/Document_Library/Reports_Publications/2006/asset_upload_file_921_8938.pdf

⁵⁷ Russia, <http://www.fas.org/sgp/crs/row/RL33407.pdf>

⁵⁸ Charles Finny, CEO of the Wellington Regional Chamber of Commerce: “[t]he missing of a deadline does not mean that the Round is dead. Likewise, there is a long way to go this year before anyone should be taking odds that the Round will fail. WTO rounds, like the rounds of international trade negotiations that were the precursors to the WTO, frequently miss deadlines; but they are yet to fail. I think that

Uruguay Round of Negotiations took 8 years to complete on a range of issues far less diverse than those being tackled under the ambit of the Doha Round. It should therefore no longer come as a surprise if the 5 year Doha timeline is breached.

A deadlock at Doha, the retardation of multilateral talks, and the prevailing uncertainty should however not haphazardly be taken by the Philippines, or any country for that matter, as reason to either close up or impulsively engage its trading partners bilaterally for the sake of liberalization. Now could be the time to reassess and recalibrate the country's liberalization policy as well as the readiness of its domestic institutions to accommodate deeper global engagement - in view of the ongoing debates on the limits of the benefits of liberalization. As will be discussed more in the recommendations portion, there is a subtle creeping shift from an absolutist belief among supporters of trade liberalization to a more cautious and conditional stance. Thus, as one longtime advocate of free trade has put it:

“The countries that have succeeded in raising living standards rapidly, over long periods, have followed many varieties of economic policy and have lived under many different forms of government...Not fully or even nearly so...They adopted liberal trade partially, selectively and mostly gradually. But the important thing was that they adopted it”⁵⁹ (underscoring supplied)

“It is true that the poorest countries often face the biggest obstacles to reaping the gains from trade and that economists' models often assume these obstacles away. Many rely on tariffs as a source of government revenue. Weak infrastructure and underdeveloped credit markets can make economic restructuring difficult. These problems underline why trade liberalization is no substitute for either more domestic reform or foreign aid. They also suggest that some of the poorest countries need more time to open their markets than others.”⁶⁰ (underscoring supplied)

this Round is likely to continue this record” taken from <http://www.tcsdaily.com/article.aspx?id=051006A>

⁵⁹ Liberty's Great Advance, The Economist, 28 June 2003

⁶⁰ Weighed in the Balance, The Economist, 08 December 2005

As uncertainties likewise surround the debate on how much liberalization would be needed and what benefits could be had, the foreseen slowdown should be construed as an opportune breather for the country to introspect, contemplate, and reassess its capacities to compete more effectively in international trade. The convoluted uncertainties in the present state of negotiations, affords the Philippines the time and opportunity to take stock of where it is, where its strengths and weaknesses lie, and how to better manage future negotiations once they recommence. Now is the time to look the uncertainties in the eye and make for an effective way to respond positively to them.

D. Recommendations Moving Forward

In view of the previous discussions, it is a given that the uncertainties facing the Philippines come in three forms: first is the overall direction of the multilateral talks, second is what benefits that we stand to gain from further liberalization and, third, how such benefits can be attained. The first two can be readily addressed by improving the country's monitoring, consultative and policy formulation process - making it more effective and responsive to the needs and interests of domestic businesses vis-à-vis the present state of negotiations. As for the third, such can only be determined by improving the domestic governance structure to make it more transparent, open to competition, business friendly, and focused on domestic reforms.

a. The “how” as to the benefits of trade

Focusing initially on the third uncertainty, it is not a new observation that the bulk of the country's economic problems lie on its Philippine domestic policy environment and not its participation in the multilateral trading system. The inadequacy of local infrastructure (particularly farm to market roads), high costs of doing business, a lack of transparency, high transaction costs, perceptions of corruption, and the absence of clear competition rules has made businesses and foreign investors averse to setting foot in the Philippines. Liberalization has already done its part but its benefits can only go so far without the proper domestic response. This has been affirmed by EC Trade Commissioner Peter Mandelson during his visit to the Philippines last May when he

commented that “Free trade spreads prosperity but it is not a magic wand. It does not automatically lead to greater economic growth. For this countries need high standards of governance and to invest effectively in their productive capacity and human resources in order to benefit from trade, and to deliver a better life for people.”⁶¹ Although the Philippines has already opened up, unless its internal ills are corrected, it risks the danger of stagnating. It has been mentioned by a representative of UNCTAD in a symposium hosted by the Philippine Council for Foreign Relations⁶² that the contribution of value-added by Philippine manufacturers in its exports has declined in the past few years, despite the openness of our economy. The necessity to clean our own backyard is even made more imperative by our lack luster performance relative to our neighbors. One may ask, why is it that Thailand and Malaysia outpaced us when they did not unilaterally open up as quickly as we did⁶³? Economists now are even concerned about Vietnam overtaking us if we do not shape up.

To rectify our domestic problems, the first step is to create a sound and level domestic playing field for business. The suggestions that have been made here are so commonplace as to be a cliché: transparency, reduce corruption, better governance, credible judicial system, stability of contracts and property rights, better business infrastructure, education, and improvement of the peace and order situation.

i. Competition policy

However, one suggestion that we do make in this paper is the enactment of an effective competition policy law. Competition policy, in its simplest form, primarily deals with the state of competition internally, that is, with regard to the state of competition within a country’s borders and seeks to rid it of harmful monopolies, cartels and other anti-competitive practices. In a country where it is commonly acknowledged that the nation’s wealth is concentrated only in the hands of a very few, a robust competition policy would be one way of ensuring a more equitable

⁶¹ Delivered at the Shangri-la Makati Hotel Manila 15 May 2006

⁶² Held at the Department of Foreign Affairs 24 May 2006

⁶³ According to the World Bank, as of 2003, the average weighted tariff rates for the three countries are as follows: Philippines – 2.6% , Malaysia – 4.2%, and Thailand – 8.3% (See <http://www.heritage.org>)

distribution of wealth and, perhaps, a more meritocratic society. Competition policy can help in ensuring greater competition, efficient market conditions, more adaptable industries, promote the easier and more effective entry of new players in the market, greater goods entering that market, and price stability.⁶⁴

ii. Refine Philippine laws on trade

Also, Philippine trade related legislation has to be revisited, particularly to remove any ambiguities in them and ensure that they serve national interest. Among such laws suggested to be reviewed are: RA 8752 (the antidumping law), RA 8800 (the safeguards law), Section 304 of the Tariff and Customs Code of the Philippines (TCCP), Sections 401/402 of the TCCP, and RA 9135 (the customs valuation law). These provide the legal trade based framework on the conduct of trade, and should therefore be completely at par with international standards and clearly attuned to the need of business for transparency and consistency.

b. The direction of trade and identifying its benefits

While domestic policies should be reformed for the benefits of globalization and liberalization to be fully realized, the process for the formulation of external trade policy and negotiating positions would likewise have to be reassessed and improved. This is to be able to have a focused approach that accurately takes the interests of local business into consideration in order to respond positively to the uncertainty gripping the multilateral system and clearly identify the benefits that could be derived, if any. Indeed, it may be worthwhile to remember the famous New York Times editorial that said:

“Put simply, the Philippines got taken. A charter member of the World Trade Organization in 1995, the former American colony dutifully embraced globalization's free-market gospel over the last decade, opening its economy to foreign trade and investment. Despite widespread worries about their ability to compete, Filipinos

⁶⁴ Competition Policy, Jeremy I. Gatdula, Businessworld, 2005

bought the theory that their farmers' lack of good transportation and high technology would be balanced out by their cheap labor. The government predicted that access to world markets would create a net gain of a half-million farming jobs a year, and improve the country's trade balance. It didn't happen."⁶⁵

The following, therefore, are our recommendations with regard to meeting the first two uncertainties mentioned above, particularly providing suggestions as to determining our trade direction and the determination of any trade-related benefits.

Consultative mechanism

Private sector participation in the formulation of positions and the conduct of negotiations still appears to be limited. To address the need for increased participation, hearings and proceedings would have to be institutionalized so as to lead to greater transparency and accountability in the conduct of trade negotiations. Among such would be the conduct of periodic and regular hearings in Congress to determine the state of our trade activities. This would have to involve greater private sector consultation and, as much as possible, participation during negotiations, as is practiced by many other countries. This is only fair considering that it is the very interests of the private sector which will be at stake.

The appointment of a Special Envoy for Trade Negotiations, the expanded inclusion of private sector parties into trade delegations, and getting the formal cooperation of privately established think tanks (with its appreciably defined objectives) are good first steps in this direction.

Congressional review of trade agreements

In connection with the point above is the refinement of our rules to remove any ambiguity as to the need for our elected representatives to have a say in our entry into any trade agreement. This is especially with regard to the ongoing confusion regarding the classification of trade

⁶⁵ The Rigged Trade Game, New York Times, 20 July 2003)

agreements into “treaties (which need Senate concurrence) and “executive agreements” (which do not).

The impact of trade agreements on the country can never be underestimated, with effects definitely trickling down to the smallest Filipino business. Due to the mass of details and technical information contained in such agreements, it is important that ordinary Filipinos and their elected representatives have a say regarding the matter. Unfortunately, international trade is presently a mystery to most and one interesting question still needing resolution is as to whether trade agreements could indeed be considered as treaties (which need Senate concurrence) or executive agreements (that do not). A reading of present laws and rulings relating to this matter apparently indicate the latter to be true, to the detriment of our policy making process.⁶⁶ Considering, however, the incredible impact that trade agreements have on the lives of ordinary Filipinos, such agreements must simply be made under conditions of full and public scrutiny and debate.

Thus, new rules could be issued clarifying this matter so that any substantive agreement (and most trade agreements are substantive) will have to be submitted to the Senate for its concurrence. This is but right as our elected representatives need to have a say as to whatever trade commitment the Philippines is entering into. Suffice it to say that all the FTAs mentioned earlier to which the Philippines has committed itself to have far reaching implications on all sectors of the Philippine economy and society. It appears only appropriate to set in place a system that will enable elected representatives to have their say on behalf of their constituencies before any decision to make an international commitment is made.

It would therefore be advisable for laws to be legislated directly dealing with the matter, expressly classifying trade agreements as treaties needing Senate concurrence (or making distinctions among the different trade agreements as are appropriate). A process clearly needs to be established whereby trade agreements being entered into are reviewed and discussed publicly. If such review be not practically possible during the negotiations stage so as not to undermine the strategies being employed, then an oversight committee (perhaps by Congress) should be established, with powers to conduct public hearings on the propriety (or not) of such

⁶⁶ Monitoring Trade Agreements, Jeremy I. Gatdula, *Businessworld*, 2005

agreements on a regular or periodic basis. It is necessary that a government official or officials be clearly designated as responsible or accountable for such trade agreements. The purpose of course is not to lay blame but to ensure a system of accountability that will result in the imposition of restraint, intellectual rigidity, and openness when dealing in such matters.

It should be pointed out that trade agreements are meant to foster competition. If - as most government economists believe - that competition redounds to the good of all, then there is no reason why an environment that draws out competition in ideas wouldn't be to our benefit as well.

Caution on FTAs

In the meantime, it may perhaps be prudent to suggest restraint with regard to Philippine intentions or activities pertaining to regional trade agreements or free trade agreements. While not commenting on the direction of the RTA negotiations and focusing instead on RTA's itself, it must be stated that for all their supposed benefits, they are simply tricky propositions. The very existence and potential number of the same provides an increasingly complex international trading system. Even the governments' own research arm, the Philippine Institute for Development Studies, expressed doubt as to the benefits that could be derived from FTAs.⁶⁷ Dr. Josef Yap, President of the PIDS, suggested that instead of rushing into FTAs, the government should instead be channeling resources to agricultural productivity, improving governance, and strengthening institutions⁶⁸.

Furthermore, considering that there have been concerns raised regarding the capacity of the Philippines to keep up with its multilateral trading commitments, this obviously would be multiplied in view of the

⁶⁷ "The Boom in FTAs: Let Prudence Reign", Dr. Josef Yap, Philippine Institute for Development Studies, 2006

⁶⁸ It was reported (No Benefit From Free Trade Deals, Daily Tribune, 05 February 2006) that the PIDS study was "conducted in response to the government's initiative to negotiate FTAs, most of which ... are knee jerk reactions to the initiatives of other countries. This "reaction", in fact, had been anticipated and warned against as early as 2003 (see After Cancun: Now What?, Jeremy I. Gatdula, Businessworld, 2003)

proliferation of RTAs because not only would the Philippines need to keep track of its own membership commitments but also, for purposes of keeping Philippine competitiveness, keep track of the arrangements of which the Philippines is not a part of but has been entered into by other countries.

Also, by relying on the benefits of RTAs, certain rules would be needed and these are inevitably complex. Most significant among these rules would be that pertaining to the rules of origin, the overlapping jurisdictions by the different dispute settlement systems in place between the multilateral trading system and the different RTAs, the non-tariff subjects (such as customs procedures, sanitary and phytosanitary measures, technical barriers to trade, and - perhaps - the issue of smuggling).

It is to be noted that if various Philippine stakeholders are disturbed by the complexity of the subjects involved in multilateral negotiations, these subjects (such as the Singapore issues, agriculture, non-agricultural market access, etc.) will be no less complex in bilateral and regional discussions. If these stakeholders are lamenting the muscular negotiating tactics of developed countries, these tactics will be no less demanding and aggressive in bilateral or regional talks. It must be emphasized that the safety mechanisms that multilateralism brings (i.e., the comfort of numbers, transparency, and an established dispute settlement system) are not present to the same degree in bilateral or regional negotiations.⁶⁹

More tellingly, even *The Economist*, a staunch advocate of liberalized trade, (in its 18 November 2004 issue; *Trade Policy: Not All Trade Agreements Are Good*) has the following interesting things to say regarding FTAs:

“Alas, the passion for such agreements may be misguided. Economists have long pointed out that the gains from multilateral trade liberalisation are far greater than those from bilateral or regional deals. At best, regional deals offer smaller benefits. At worst, they do damage, artificially diverting trade away from excluded countries or clogging up commerce with fiendishly complicated ‘rules

⁶⁹ Going FTA, Jeremy I. Gatlula, *Businessworld*, 2004

of origin'. These are needed to define whether imported goods, which may consist of inputs from many different countries, qualify for favoured treatment.

x x x

Most bilateral agreements are far from ideal. Those between poor countries often exist more on paper than in practice. Bilateral deals between rich and poor tend to be better implemented, but are marred by restrictive rules of origin and by the routine exclusion of important agricultural products.

In fact, the [World] Bank's boffins point out that most poor countries would be worse off in a world of rampant bilateral deals than they are today. x x x If developing countries all had bilateral agreements with big rich trading partners (the European Union, the United States, Canada and Japan), global income would rise by much less: \$112 billion. The rich would scoop all this, and more: \$133 billion. Although a handful of developing countries, such as Brazil and China, would gain a bit, poor nations as a group would be worse off than they are today.

While the Bank's exact numbers should be taken with a pinch of salt, the broad lesson is clear. Bilateralism may be a route to freer global trade, but it is, at best, a risky one."

This is not to say that RTAs are destructive. Benefits certainly there may be and there is no dearth of economists who would point to such expected benefits. The point simply is that with regard to formulating a policy or view with regard to RTA's, there is always the need for greater information regarding the environment that surrounds it. For the moment, a certain degree of caution would perhaps be justifiable under the circumstances when even exploring the idea of possible bilateral or regional trading arrangements precisely because there are no categorical indications regarding the direction, benefits, and risks that are concomitant with RTAs.

In any event, the foregoing discussion on FTAs highlights what could perhaps be the theme of this paper, which is the issue that pervades

overall Philippine trade policy and that is the seeming need for a re-evaluation of the way we engage the international trading system.

Establishment of formal written trade policy

Another is for the government to lay down publicly, in writing, a detailed draft of what our trade policy actually is. The USTR for instance regularly publishes a white paper containing its trade policy objectives for all to comment - thereby allowing the USTR to refine its approach and make it more responsive to the national interest. Adopting a similar practice in the Philippines would not only better inform the public as to where the government intends to bring us in terms of trade, but would also give the most affected stakeholders (which is us, the private citizens) the opportunity to speak out on the wisdom of such policy.

RPTR

Apart from being limited, the current consultative mechanism is also ostensibly uncoordinated. It would actually appear that each individual agency (DTI, DA, NEDA, etc.) consults private sector groups independently of each other, with varying degrees of effectiveness, regularity, and scope. Continuing under this process may run the danger of formulating incomplete and incoherent negotiating positions at the multilateral table. Also, as has been observed, negotiations for agriculture, NAMA, and services may actually cross boundaries through trade-offs and concessions at the negotiating table, and, verily, the need for better coordination would always be there to improve Philippine negotiating positions.

Put another way, trade negotiations in the Philippines are entrusted to several agencies, among which are the DTI, DA and NEDA, which handle different aspects of the negotiations and also attend extensively to various economic issues remotely related to international trade negotiations. It is precisely the possibility for conflicts of interests (which seem to be high in the present set-up) that the creation of an RPTR would address, in order to have a single accountable office to have a focused handle on the negotiations.

The trade negotiations of today are highly different from the trade negotiations of the past. Ten years ago, our prime trade activities circled around two or three countries. Now our partners are becoming more varied and, incidentally, Asian-centric. The inter-relatedness of the matters under trade discussions are greater. Just last week, USTR nominee Susan Schwab was asked regarding China's financial services liberalization record, as well as on currency movements and how the latter affects the US trade deficit. There is, obviously, a need for greater coordination between the different government agencies that deal in trade. Finally, and most interestingly, considering that it is a well accepted fact that today's multilateral trading system has definitely moved away from the previous negotiation's based system to a rules based system, there seems to be a dearth of lawyers working within government that focus on trade. The multidisciplinary approach to our trade activities needs to be recognized and developed.

Thus, the creation of the Office of the Philippine Trade Representative (RPTR) is recommended. This should not necessarily be a huge bureaucratic creation, at least at the outset. When the USTR was created in 1962, its legal counsel's office was composed only of two men (one of whom happened to be Robert Hudec, one of the acknowledged fathers of international economic law). Incidentally, when the Office of the US Trade Representative (USTR) was created, the reasoning of the US Congress that created it in 1962 was that trade policy should not be entrusted to the State Department (which it is said looked out for the interests of foreigners or broad foreign policy goals) or the Commerce Department (which always looked out for narrow domestic political interests) but rather to have an office that would take the objective position and have trade as its only mission. This was reiterated by Andreas F. Lowenfield in the *Journal of International Economic Law*.

“The idea was that the new emphasis on international trade as an important element of American foreign policy should not be entrusted to the State Department which, it was said, always looked out for the interests of the foreigners or for broader foreign policy goals, nor to the Commerce Department, which always looked out for narrow domestic political interests which tended to favor protectionism. STR would stand in the middle, not as an umpire but as an office with trade as its

only mission, not weighed down by the traditional bureaucracies and persistent constituencies.”⁷⁰

The Office of the USTR was created during the incumbency of President John F. Kennedy (through the Trade Expansion Act of 1962 as implemented by Executive Order [EO] 11075) at a time when US growth rates were on a regression. It was initially named the Office of the Special Trade Representative (STR) with Christian A. Herter being the first designated to serve as America’s chief negotiator in trade agreements programs under the General Agreement on Tariffs and Trade (GATT). In 1974, the STR became part of the Office of the President. President Ford later elevated the STR to a cabinet level position and was renamed the USTR in 1980 by President Carter. The EO signed by President Carter expanded the role of the USTR, granting it authority within the jurisdiction of the Department of Commerce.

For the RPTR, it is ideal that the same be peopled with professionals of diverse backgrounds: diplomacy, law, economics, finance, etc. Such an office would have the function of taking the lead in dealing in matters involving Philippine engagement in the WTO, AFTA, APEC, and UNCTAD, as well as dealing with issues brought about by prospective or probably bilateral or regional trading arrangements. It has to be the primary source of information on matters dealing with international trade and, at least with regard to issues arising principally from trade negotiations, be responsible directly to the President.

The office must be given the responsibility of organizing an inter-agency committee that will effect closer coordination among the different affected or involved agencies of government. There should also be a mechanism set up that will result in the constant and consistent consultation with the Philippine Congress. There should also be a process formulated that will provide Congress the avenue with which to exercise “oversight” functions over the office of the trade negotiator (i.e., annual briefings, etc.)

Finally, the office of the trade representative should be handed the responsibility - through a formalized process - of consulting directly and

⁷⁰ Journal of International Economic Law 6(3), 729-72 Oxford University Press 2003

constantly with the members of the private sector. This should include consumers, manufacturers, members of the academe, and civil society groups. The office of the trade representative should also take it upon itself to conduct its affairs in utter transparency, and in a manner that will inform and educate all Filipinos on issues pertaining to trade. It must be noted, however, that the right to be consulted is not synonymous to the right to decide. In the end, the government would and should still have the responsibility to weigh the competing concerns of the private sector vis-à-vis the country's interests.⁷¹

In conclusion - -

Considering the present state of the multilateral trading system, there is clearly a need to move the debate away from the narrow free trade versus protectionist confines that has constricted previous analysis on our trade policy. This paper definitely is not a call for us to be isolationists or protectionists. Nevertheless, if anything, if experience and history could be taken as a guide, there is nothing absolutely certain about trade and no one size fits all formula that we could or should want to duplicate en toto.

It is already a currently accepted view that free trade should not be considered a panacea for our nation's ills. As mentioned above, attention must also be given to infrastructure development, education, governance, peace and order, transportation, energy, a responsible workforce, contractual stability, and judicial reliability. Otherwise, any benefits that we could or may garner out of international trade may be of no use or, worse, be enjoyed only by an elite few.

Indeed, a simple fact that is sometimes overlooked when discussions come around regarding the WTO and that is that "free trade" is not the end all and be all of the WTO nor of the present multilateral trading system. What is sought rather is simply to raise standards of living, ensure full employment, increase income, expand trade in goods and services, and optimize use of the world's resources in accordance with the objective of sustainable development.

⁷¹ Time for a Philippine Trade Representative, Jeremy I. Gatdula, Businessworld, 2003

In fact, a reading of the text of the World Trade Organization Agreements reveals that not once in its 492 pages - starting with the Marrakesh Agreement creating the WTO up to the Ad Articles of the GATT - do the words “free trade” appear.⁷²

Trade is merely a means to an end⁷³ and what worked for other countries may not necessarily work for us. Though reliance on the preponderance of evidence regarding the benefits of trade is good, one must be cautious that such reliance does not translate to ideological devotion. The opposing extreme, protectionism, has been proven to be no good either and this is admitted even by the critics of globalization and liberalized trade. Put simply, what we need is to find the right trade “mix” that is necessarily unique but appropriate for the Philippines.⁷⁴ It is an utterly complex matter and for which the Philippines need a strong and deliberate foundation from which to move out and confidently engage our trading partners.

Thus, for the present, rather than burdening ourselves with further international obligations or seeking to do so, it is suggested instead that that we prioritize reorganizing and making our house in order: improving governance, refining our laws and processes, and strengthening our institutions.

⁷² The Practice of International Law, Jeremy I. Gattula, 2003

⁷³ An idea echoed by former British Prime Minister Benjamin Disraeli when he said the “free trade is an expediency”

⁷⁴ On this, we refer to Philippe Legrain’s *Open World* (2002) where he wrote “It is time to move the debate about globalization forward. The important question is what kind of globalization we want. This presupposes two things: first, that we are still free to determine our future – as individuals, as groups of like-minded people and through the power of our elected governments; and second, that we can to a large extent pick and choose between the bits of globalization we like and those we don’t ... Our challenge is to grasp the opportunities that globalization offers while taking the sting out of its threats.”