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# CATPRN

Canadian Agricultural Trade Policy And Competitiveness Research Network

## **ENDOGENOUS LEARNING AND CONSENSUAL UNDERSTANDING IN MULTILATERAL NEGOTIATIONS: ARGUING AND BARGAINING IN THE WTO**

**CATPRN Working Paper 2010-02  
May 2010**

**Robert Wolfe**

School of Policy Studies  
Queen's University

<http://www.catrade.org>

I am grateful for the research assistance of Monica Chohan, Nicole Clara and Gillian Webster; and for the comments and suggestions on various points in previous iterations of this story of Rolf Adlung, Lars Brink, Terry Collins-Williams, Mike Finger, Mike Gifford, Matt Hoffmann, Oded Haklai, Audie Klotz, Andrew Lang, Gilles LeBlanc, Rod Macdonald, Alistair Macleod, Scott Matthews, John Odell, Tom Oommen, Greg Shaffer, and Dean Snyder, none of whom bear responsibility for the results. Funding for this project was provided by the Social Sciences and Humanities Research Council of Canada and the Canadian Agricultural Trade Policy and Competitiveness Research Network (CATPRN) which is funded by Agriculture and Agri-Food Canada. The views in paper are those of the authors and should not be attributed to the funding agencies.

## **Abstract**

People at home and trade negotiators in Geneva cannot bargain what they do not understand, and what they bargain must be based on consensual understanding among the relevant actors, whether or not they agree on what to do about it. Consensual understanding is endogenous, arising in an argumentative process of learning structured by constitutive principles of a regime. In a departure from both rationalist and constructivist approaches to negotiation analysis in political science, my goal in this paper is to try to advance analysis of these questions by exploring the contribution that deliberation or arguing makes to learning. My proposition is that something happens at the multilateral negotiation table in addition to bargaining, something that alters either the understanding of themselves and their interests that participants brought to the table, or how they understand the nature of social reality in a domain. Such learning would be endogenous to the negotiations, because it happens through interaction. This approach requires distinguishing simple learning (acquisition of new information about the context, or the preferences of others) from complex learning (new understanding of cause/effect relations in a domain), which also requires distinguishing consensual understanding from a mutual adjustment of positions. I then specify how this model might be susceptible to empirical investigation. I show how individual issues within a negotiation can be treated as cases susceptible to comparative analysis at a moment in time. I explore this possibility in a comparison of the contribution of consensual understanding to the outcome of negotiation of selected issues in the current Doha Round of multilateral trade negotiations in the World Trade Organization. I then infer the results of arguing from the textual deposits left by negotiations in order to assess the presence or absence of consensual understanding. Finally, I attempt to correlate consensual understanding with the negotiation status of the issues as of the end of the failed Doha Round ministerial of July 2008.

## 1.0 Introduction

Negotiations broke down all over the world today, or so said the gloomy broadcaster in an old magazine cartoon. Diplomats laugh at this joke, because in their world news anchors could lead with that item almost any night. Dozens of multilateral negotiations take place every year. None of these negotiations are quick; many face impasses; and yet diplomats rarely give up, especially in the seemingly interminable “rounds” of negotiations in the World Trade Organization (WTO).<sup>1</sup> The thousands and thousands of international meetings that take place every year are not evidence that bureaucrats like to travel. These meetings are instead evidence that state officials talk to each other in attempts to persuade, that through social interaction their understanding of their interests can change.<sup>2</sup> Problems do not emerge fully formed on to a well-defined international agenda. Governments must learn that they have a *public* “problem” susceptible to solution by “policy”. They must identify potential solutions. It was not obvious in the 1980s that the sense of crisis felt by temperate zone grain farmers would require both cuts in “export subsidies” by some countries and reductions in aggregate “domestic support” by others to enable a successful outcome to the Uruguay Round. Nor was it obvious a decade later that the technological convergence between computers and telephones would lead to a recognition that telecommunications was a tradeable service in WTO negotiations on trade in basic telecommunications services.<sup>3</sup> And evidently it was not obvious at Copenhagen in 2009 that the prospect of catastrophic climate change required urgent collective action by all states.

Thinking about these impasses is theoretically interesting in at least three different ways. The first is global governance: is agreement among states possible? The second is negotiation analysis: why do some negotiations succeed? The third is social theory: why do people ever work together? The rationalist logic of consequences and the constructivist logic of appropriateness see “success” in negotiations as a series of discrete choices shaped by exogenous factors, whether material or ideational. For the former, variation within a negotiation is just noise of little analytic significance. For the latter, the focus is on what actors bring to negotiations, rather than what happens while they are engaged. In a departure from both approaches, I explore the contribution that endogenous deliberation or arguing makes to learning, and how such complex learning contributes to consensual understanding and institutional change.

Thinking about impasses in the WTO is also interesting for trade policy. Do the problems of the Doha Round signal weakness in the trading system? I think not: the difficulty of reaching new binding obligations is instead probably an indicator of the seriousness with which states take their existing obligations. I think the results of multilateral trade negotiations are consequential, that states try to live by the rules to which they have agreed. I also think that the process by which they agree is consequential for what is agreed, which is one part of an explanation of why rounds of WTO negotiations now take so long. Analysts often prescribe institutional reform as a solution to the WTO’s negotiating difficulties, but diagnosis ought to come first. The exogenous story is often told, but endogenous factors must surely be part of an explanation.

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<sup>1</sup> After one such impasse, Alan Beattie recalled the perfect catch-all news headline: “WTO: Group mulls action - talks continue” (*Financial Times*, December 2, 2009) <http://blogs.ft.com/rachmanblog/2009/12/wto-group-mulls-action-talks-continue/> retrieved December 13, 2009.

<sup>2</sup> Finnemore 1996, 141.

<sup>3</sup> Wolfe 2002.

In the first section of this paper, I situate my model within theoretical debates in international relations about the nature and significance of multilateral negotiations, stressing the differing emphasis they place on “learning”. In the second section, I clarify what I mean by endogenous learning and consensual understanding. In the third section I explain my approach to trying to observe and understand negotiations in a way that would reveal whether endogenous learning happens, and makes a difference. The fourth section tests my assumptions on a set of cases drawn from the current Doha Round of multilateral trade negotiations in the WTO. I trace variation in a set of issues over time through a series of WTO ministerial meetings. I make two claims: that in multilateral negotiations, consensual understanding precedes bargaining, and that consensual understanding necessarily emerges in an endogenous process.<sup>4</sup> I seek to show that negotiators’ talk matters in trade negotiations, surely the hard case.

### 1.1 What happens in the multilateral fog

A big multilateral negotiation moves from a fog of possible topics for discussion through a loose agenda to a crystallized agenda, to a negotiating text, to an agreed text. Trade negotiations take place in so-called “rounds” that have been getting longer and longer as the number of participants and the complexity of the agenda has increased—see Table 1. The Uruguay Round began to take shape in 1982, and only concluded in 1994. The Doha Round was foreseen by Members as early as 1996, could not be formally launched until 2001, and its possible conclusion keeps receding in the fog. Within the Doha Round (see Table 2), ministerials in Seattle (1999) failed, Doha (2001) succeeded, and Cancún (2003) failed. The round was rescued with a quasi ministerial in 2004, but the ministerial in Hong Kong (2005) was treading water, a quasi ministerial in Geneva (2008) failed, and the 2009 Geneva ministerial merely agreed to hold a stocktaking in 2010, which itself was inconclusive. The “outcome” of these meetings is more frequently deadlock than agreement.

Three sorts of explanation are advanced for these lengthy delays and frequent setbacks. Each understands negotiations differently, and each assigns a different weight to “learning”. The first two attempt to be causal; the third is a “how possible” or constitutive argument about conditions that are necessary but not sufficient for agreement.<sup>5</sup>

In the first set of models are international relations approaches that stress the salience of power or material interests. If multilateral economic negotiations are worthy of any attention, such analysts will look outside the process for an explanation of deadlock or agreement.<sup>6</sup> Negotiations are then explained by such *exogenous* structural factors as the identifiable economic interests of participants or their domestic industries,<sup>7</sup> or by the general political, security, or economic context. If institutions enter at all, they are simply the equilibrium outcome of competing sets of domestic preferences acting as structural constraints on the possibility of agreement. Such

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<sup>4</sup> In this paper I explore the significance of consensual understanding; in a subsequent paper I will consider whether variation in consensual understanding is due to variation in endogenous institutional design.

<sup>5</sup> Constructivists are found on both sides of this fluid distinction—see Klotz and Lynch 2007, 13, as are the varieties of new institutionalist approaches—see Schmidt 2010.

<sup>6</sup> For an excellent survey of the themes in these approaches to negotiations, see Hampson 1995.

<sup>7</sup> Milner 1997.

*Table 1. Rounds of multilateral trade negotiations*

Round	Dates	Parties	Subjects
Geneva (2), Annecy, Torquay, Dillon rounds	1947, 1949, 1951, 1956, 1960-1	~26	tariffs
Kennedy Round	(1962) 1964-67	62	Tariffs and anti-dumping measures
Tokyo Round	1973-79	103	Tariffs, non-tariff measures (“Codes”), “framework” agreements
Uruguay Round	(1982) 1986-94	123	Tariffs, non-tariff measures, rules, services, intellectual property, dispute settlement, textiles, agriculture, creation of WTO, etc
Doha Round	(1996) 2001- ?	153 [2009]	agriculture, goods, services, Rules, development, facilitation, environment, intellectual property, dispute settlement

*Table 2. Doha Round ministerial meetings*

Singapore 1996	Consolidated Uruguay Round “built-in agenda”	Geneva 2004*	“July Framework” completes the work of Cancún
Geneva 1998	began to structure built-in agenda	Hong Kong 2005	successful stocktaking, but fails to agree on modalities
Seattle 1999	failed to launch new round	Geneva 2006*	failure leads to “suspension” of negotiations
Doha 2001	launched the “Doha Development Agenda”	Geneva 2008*	fails to agree on modalities
Cancún 2003	stocktaking on round a gloomy failure	Geneva 2009	regular Ministerial Conference hardly discussed Doha Round

\* meetings of the General Council or Trade Negotiations Committee attended by selected ministers

approaches do not expect WTO procedures to alter the interests of domestic actors, even if change in the decision rule changes how those interests can be mobilized. If the institutions of the trade regime have any role, it would be to allow power to overcome the reality that WTO has 153+ veto points and two or three times that many veto players. The familiar literature on cooperation is similarly interested more in the exogenous factors that affect regime creation or compliance with a regime's injunctions, rather than the process of negotiations.<sup>8</sup> In these models, what happens at the table does not matter much to any agreement. Bargaining is based entirely on information and concepts that the participants brought with them. Indeed the agreement itself could happen elsewhere: participants come to the table merely to record an agreement to which they had been coerced through some form of power. The negotiations that appear to take place at the table are epiphenomenal, and learning is not a factor.

The second sort of explanation attributes negotiation delay to factors inside or *endogenous* to the negotiations. In these *bargaining* models, something about the process is significant to the outcome. Perhaps the agenda is more complex, allowing trade offs between issues. Perhaps participants acquire information about each other at the table that was not available in some other way, for example through voting that reveals their partners' preferences. Perhaps a mediator is able to help them see the possibility of agreement. In these models, apparently autonomous decisions to change national policy could originate in some multilateral process leading to policy learning, policy transfer or policy diffusion.<sup>9</sup> Such *simple learning* might also be motivated by the prospect of a future judicialized dispute.<sup>10</sup> Some arguing models fit here, if they see negotiations as opportunities for reason-giving, attempts to persuade, strategic behaviour or threats.<sup>11</sup>

A third set of models might not see lengthy delays as a problem in the expectation that building sufficient trust and understanding among a diverse group always takes time. In these models, something happens at the table that alters either the understanding of themselves and their interests or preferences that participants brought to the table; or how they understand the nature of social reality in the domain. Such *arguing* models privilege agency over structure and assume that regardless of conditions in the world economy, or the wax and wane of domestic coalitions, the "outcome" of negotiations (whether deadlock or agreement on a text) is neither inevitable nor necessarily as salient as the continuous process of policy and institutional change influenced (if not necessarily determined) by endogenous interaction and deliberation, or *complex learning*.

My approach fits most easily in the third set. While it owes much to historical institutionalism,<sup>12</sup> my focus is not regime creation but endogenous norm-governed change within the regime, which places it closer to an emerging cluster of scholarship that could be called discourse institutionalism.<sup>13</sup> In my model, the trading system changes through the day to day interaction of

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<sup>8</sup> Keohane 1984.

<sup>9</sup> Bennett and Howlett 1992.

<sup>10</sup> WTO Members might learn from watching the dispute settlement system and from their own experience of it—see Fearon 1998; Kay and Ackrill 2009. On learning from experience of and observation of the world, as opposed to social interaction, see Levy 1994.

<sup>11</sup> Grobe 2010; Müller 2004; Risse 2000.

<sup>12</sup> Pierson 2004.

<sup>13</sup> Schmidt 2010. For an example, see Deitelhoff 2009.

participants, which may or may not include attempts at persuasion.<sup>14</sup> That change is recognized or accommodated or encouraged through three explicit processes: discussion in a regular Committee, dispute settlement proceedings, and formal negotiations. Each process can lead to some form of codification in legal texts.<sup>15</sup> What matters to the eventual outcome of each process is the opportunities for the people involved to learn through talking to each other. Outsiders can provide information, or knowledge, but insiders need some process to discuss the information and to come to a shared understanding of what it means. Reality has to be understood in WTO terms, the process of creating the “collective intentionality” of Members of the WTO.<sup>16</sup> Members cannot bargain over the words on a piece of paper until they have re-framed a problem in a language that is tractable in WTO negotiations. This process is path dependent: what has to be learned at one moment becomes constitutive at the next. The WTO table is never a tabula rasa. Past practices shape the future interaction of the parties, helping them to navigate in the fog. These assumptions have a familiar theoretical basis, but empirical investigation requires careful delineation of the concepts.

## **2.0 The Importance of Endogenous Learning and Consensual Understanding**

Many models of negotiations see “learning” as important, but their proponents mean different things. The assumption in the second set of models above is that new information about the environment allows actors to realize their interests more effectively. A different assumption is that new information changes identity and interests. The distinction follows that of Nye, who distinguished between simple and complex learning, and Haas, who distinguished between adaptation and learning.<sup>17</sup>

### *Simple learning*

Learning only matters in models that attribute some significance to endogenous factors in negotiation. The understanding of learning flows from the understanding of what the negotiation process entails or requires. In the negotiation analysis approach, for example, “negotiating” and “bargaining” are interchangeable terms referring to “a sequence of actions in which two or more parties address demands and proposals to each other for the ostensible purposes of reaching an agreement and changing the behavior of at least one actor”.<sup>18</sup> Investigation focuses on the contribution to that outcome of variation in actor strategies whether distributive (value claiming), integrative (value creating), or mixed. The approach is based on the “bounded rationality” assumption that actors pursue their objectives as best they can with the limited information available. The approach necessarily assumes fixed preferences. Analysts see learning as the acquisition of new or better information about the context of negotiations, which allows parties to aggregate their strength with that of other actors in order to affect egocentric “gains” and

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<sup>14</sup> Whether as agents they have much autonomy from their societal principals is not addressed—officials may come to understand the problem in new ways, even if they still try to pursue the interests of domestic actors.

<sup>15</sup> Wolfe 2005.

<sup>16</sup> Cite Mitzen.

<sup>17</sup> On the concepts of Nye 1987 and Haas 1990, see Wendt 1999, 327.

<sup>18</sup> Odell 2000: 4.



“losses” for states or coalitions.<sup>19</sup> Using the terms of a classic in the field, actors know their own Best Alternative to Negotiated Agreement (BATNA) but need information about the BATNA of others.<sup>20</sup> Under a consensus rule, negotiators of leading states need that information about all participants if they are to know how to craft a package.<sup>21</sup> But what if neither actors nor analysts can identify this BATNA?

Many scholars make heroic assumptions about the cognitive capacity of negotiators, imagining that negotiators think like analysts, and that negotiators intended the effects analysts can observe.<sup>22</sup> The dogged persistence of trade negotiators, therefore, can seem perverse. Some economists have wondered about the point of the Doha Round, since it seemed to have little economic merit. Others have always thought that significant trade liberalization might be possible.<sup>23</sup> I flag this debate only to signal that deducing the interests of participants at the outset of the round in order to assess whether the results at the end are surprising would be extremely difficult for analysts and actors alike—and their conclusions are often discordant: when analysts show that Members who thought they were “claiming gains” misidentified their own interests, who is right?<sup>24</sup> The academic predilection for deductive analysis proceeds from a belief that officials act rationally, either in response to analysis of their country's “interests” (as objectively identified in trade theory), or in response to their personal interests or preferences (as described in political economy models). When we peer closely into the fog of negotiations, however, we find that negotiators are more pragmatic, or inductive, responding to the pressures of the day and a sense of what works.

### *Complex learning*

Analysts find it convenient to see negotiations as oriented to the goal of new treaty language, but was the “outcome” of Cold War negotiations on arms control an actual reduction in numbers of missiles, a codified treaty specifying the size of missile inventories, or an understanding about the future relationship of the parties? The Soviets and Americans did not sign many treaties, and the number of missiles kept increasing, yet the relationship changed over time in the direction of stability.<sup>25</sup> One can also see that ultimate outcome of a new treaty being dependent on prior outcomes. The ultimate codification in a treaty is not necessarily the most significant “outcome”—the real outcome is changed expectations of mutual obligations. The point of an agreement, therefore, is not the thing itself but the capacity to generate agreement, to structure the future interaction of the parties.<sup>26</sup> Since the implementation of new rules is based on their being accepted and understood by the responsible national officials, agreement must emerge from the parties coming to a consensual understanding of the nature of their problems.<sup>27</sup> An

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<sup>19</sup> Odell 2006.

<sup>20</sup> Fisher and Ury 1981.

<sup>21</sup> Steinberg 2002, 362.

<sup>22</sup> Finger 2009a.

<sup>23</sup> On the economic benefits of the deal, notably its impact on binding current national policies in new multilateral obligations, see Messerlin 2008; Hoekman, Martin and Mattoo 2009, 25. On the economic costs of not concluding the round, see Bouet and Laborde 2010.

<sup>24</sup> Finger 2009b.

<sup>25</sup> Adler 1992; Nye 1987.

<sup>26</sup> Soltan 1999, 396.

<sup>27</sup> Luban 1999: 205.

agreement based mainly on forced trade-offs would mean that new rules may not be based on sufficient prior understanding to generate the sense of obligation on which implementation depends.<sup>28</sup>

Consider this problem from the Tokyo Round, in which negotiating non-tariff measures was difficult because, as Gilbert Winham reports, “they were largely undefinable, numerous, often concealed, and incomparable, and that their effects were unknown precisely but generally thought to be pernicious. Negotiators had to achieve an intellectual understanding of these measures before they could negotiate their removal.”<sup>29</sup> Yet, in the Tokyo Round, countries could simply ignore issues they did not understand by declining to join the so-called Codes that were placed beside but not under the General Agreement on Tariffs and Trade (GATT). In the Doha Round after the expansion of the regime’s domain in the Uruguay Round and the creation of the WTO, many issues are much more complicated, the many new significant players in the negotiations start with less shared experience and knowledge, and the Single Undertaking requires all 153 Members to accept all new obligations.<sup>30</sup> Since Members cannot ignore issues they do not like, whether or not the issues are understood is likely to have an effect on the outcome.

Learning is needed because the central obstacle to a new agreement may be uncertainty about a Member’s own interests; about the interests of others; or about the current practices of other Members. Negotiations can help with this simple learning. Also important is uncertainty about the nature of reality, of cause and effect relations. Actors can be uncertain about the likely evolution of the trading system; and about the effect of new obligations.<sup>31</sup> Such “model uncertainty” can be debilitating to economic policy coordination, for example,<sup>32</sup> but it has to be overcome somehow if countries are to accept mutual obligations in the trading system.

In contrast to the usual definition, therefore, I think that negotiations comprise both bargaining and arguing, or learning.<sup>33</sup> By “learning,” I mean not only the acquisition of new information stressed in other approaches, but in addition an *argumentative* or *deliberative* process in which an actor’s understanding of self and others can change.<sup>34</sup> (See Box 1) Such public reasoning is fundamental to democracy, and not just in western traditions.<sup>35</sup> *Arguing* is the exchange of reasons by actors who are oriented to reaching consensus and who remain open to changing their minds if faced with better reasons.<sup>36</sup> *Consensus* in WTO explicitly requires only that nobody present objects. Such a consensus is not identical to “compromise” arrived at by concessions on both sides, nor is it necessarily coerced. It is endogenous: although Members bring their exogenous interests and pre-existing identities to a negotiation constituted by the institutions of the regime, until Members talk to each other about a given problem, they cannot know where consensus might lie. This public reasoning requires an engagement with contrary points of view,

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<sup>28</sup> Brunnée and Toope 2000.

<sup>29</sup> Winham 1986, 88.

<sup>30</sup> Wolfe 2009b .

<sup>31</sup> Iida 1993, 433.

<sup>32</sup> Frankel and Rockett 1988.

<sup>33</sup> Checkel 2001.

<sup>34</sup> Müller 2004; Risse 2000; Risse 2005.

<sup>35</sup> Sen 2005, 12-14.

<sup>36</sup> Mitzen 2005, 401.

which may appropriately lead to a plurality of reasons for a partial resolution. The agreed course of action is not based on some objective truth known to experts, but it is one that the participants will accept as just, in the circumstances. It is more likely to be just to the extent that the process of public reasoning is indeed public, allowing many voices to be heard.<sup>37</sup> This arguing view of negotiation is one in which parties gradually articulate shared interpretations of events while developing new consensual understanding of causal relationships.<sup>38</sup> Even the “interests” of the USA can be reconstituted through international interaction.<sup>39</sup> The trade regime is therefore shaped both by material structure and by ideas,<sup>40</sup> and those ideas emerge in deliberation.<sup>41</sup>

*Box 1 Definitions*

simple learning = acquisition of new information

complex learning = argumentative or deliberative process

Arguing = exchange of reasons

Consensus = nobody present objects

Consensual understanding = shared understanding of an issue

When the Uruguay Round began in the mid-1980s, states were at war over farm trade. The agreement ending that war depended on bargaining over who could sell how many tonnes of wheat, but it also depended on a new understanding of the relation between farmers and international markets embodied in the framework for the negotiations. The framework was a major conceptual and political achievement because of the comprehensive way in which it dealt with border measures, export subsidies and domestic policy. It evolved slowly through many years of informal discussion as well as formal negotiation. The process of learning what to bargain about began in the early 1980s with efforts at the OECD to decide what things should be counted, and how. The political challenge was finding a consensus on the extent to which farm policy affected trade.<sup>42</sup> In the middle stages, we see efforts to construct a framework in which to make commensurable the things being counted—how deficiency payments in one country affect exports from another, and how changes in disparate domestic policies can be negotiated on a reciprocal basis. With this “reference principle” established, the later stages involved bargaining about how much to reduce the things that could now be quantified.<sup>43</sup> The bargaining certainly reflected how states understood their interests, but the bargaining was only possible because that understanding changed during the 1980s. The work was highly technical, and clearly was informed by the evolution of the agricultural economics literature, but the concepts about cause and effect relations in this domain emerged through arguing.<sup>44</sup> Negotiators, who are as prone as

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<sup>37</sup> See generally “Justice and the World” in Sen 2009, but especially 398, 409.

<sup>38</sup> Haas 1990: 9, 23.

<sup>39</sup> Klotz 1995.

<sup>40</sup> Ruggie 1982; Ruggie 1998. The origins of this functionalist/constructivist regime theory are in Haas 1980; Haas 1990. Debates on whether ideas or material factors are determinative are not new in social science, going back at least to Emile Durkheim and Max Weber. They are also not new in thinking about interactional law and legal pluralism—see Fuller 1969, Macdonald 1998 and Wolfe 2005.

<sup>41</sup> Lang 2006, 109.

<sup>42</sup> OECD 1987.

<sup>43</sup> In the UN law of the sea negotiations, the idea of a 200-mile economic zone was such a reference principle—see Buzan 1981, 343 who credits the concept to William Zartman.

<sup>44</sup> For a detailed analysis of the ideas in the Agreement on Agriculture, and how they had evolved through the Uruguay Round negotiations, see Chapter 5 in Wolfe 1998.

anyone else to mistaking a symbol for a thing, also need to distinguish between the instrumental position favoured by the interests associated with the objectives they seek to achieve.<sup>45</sup>

This formulation raises an important question about who learns, and what happens to that learning in the course of such extended rounds of negotiations. Some analysts look for evidence of what identified individuals learn at a specific point.<sup>46</sup> Whether or not the underlying preferences or interests of Members change is a separate matter. With societies as with individuals, the values and attitudes that shape responses to everyday events do not change quickly, and indeed may differ considerably among Members. My focus here, however, is on institutional learning, not on the individuals who learn, though that matters, especially if too many key individuals leave a process before an issue is stabilized, or if individuals come to see themselves in regime terms not national terms. The institution is path dependent: what is learned at one moment is constitutive at the next moment.

I therefore define *consensual understanding* as Members sharing an understanding of an issue, whether or not they agree on the implications. Understanding is not the same as knowledge, the focus of the literature on “epistemic communities”. Knowledge implies some sort of basis in expertise, which would be exogenous to the negotiations (and which is hard to relate to the variation in outcomes I observe). Consensual understanding simply implies a shared understanding of cause and effect relations in a given domain. It must be shared; it need not be “true”. Consensual understanding is something that is developed within the community of negotiators. Yes they learn from experts (or fail to learn) but more important is what they learn from each other.

Consensual understanding must (almost) always precede bargaining, although the understanding could be exogenous to any particular negotiation process.<sup>47</sup> It is a truism that trade policy begins at home in learning about a country’s “interests” from economic actors.<sup>48</sup> But things specific to a regime (that therefore have no meaning outside the regime) cannot be bargained until they are understood in the regime. What matters is that at the key point consensual understanding is present, or not. It can evolve over a long time, or short. The social learning may take place only at WTO, but it is more likely to include related international organizations within the regime. Every approach is necessarily parsimonious. Mine obscures variation in bargaining strategy, but a research design aimed at that objective obscures variation in consensual understanding. Consensual understanding is not a “causal mechanism” nor is it a sufficient condition for success. Many factors are involved in a negotiation. But consensual understanding makes agreement possible.

### **3.0 Case Studies and Evidence in Analysis of Multilateral Negotiations**

The phenomenon I set out to investigate is the difficulty of concluding multilateral negotiations. If the explanation depends on exogenous factors, process is irrelevant. If the story is all about

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<sup>45</sup> This distinction between position and interest follows Fisher and Ury 1981.

<sup>46</sup> Checkel 2006.

<sup>47</sup> On the importance of consensual understanding in the “prenegotiation” phase, see Hampson 1995: 37.

<sup>48</sup> Halle and Wolfe 2007.

bargaining interests, analysts look for institutional constraints on actors' strategies. I think that something about endogenous process is part of the explanation; my focus is therefore variation in consensual understanding. The next question is how this insight can be subjected to empirical investigation.

The case study method is a useful approach to analysis of how process affects outcomes.<sup>49</sup> Qualitative case studies can be more useful than large  $n$  statistical studies in answering questions about the circumstance in which an outcome occurs as opposed to the frequency with which conditions are associated with outcomes.<sup>50</sup> So-called rounds of multilateral trade negotiations have only been concluded eight times in more than six decades, and the current round has been staggering along for more than eight years with no end in sight (Tables 1 and 2). Studying the conclusion of rounds as the dependent variable is not feasible, and would not reveal much about the current impasse, but investigation of the circumstances affecting the ministerial meetings that mark the stages of the round is more practical.

Two research strategies seem possible. The first treats paired ministerial meetings as distinct outcomes not iterations of a continuous process, and then treats the declaration from a ministerial meeting as a unitary outcome. Many exogenous factors relevant in international political economy do not necessarily change quickly enough to affect changes observed in WTO negotiations from one meeting to the next, which allows inferences to be drawn from the differing outcomes between the 1999 Seattle ministerial, which failed, and the 2001 Doha ministerial, which succeeded.<sup>51</sup> One difficulty with this strategy is selection bias: it depends on comparing one case of deadlock to one case of agreement. Rather than seeking to explain either the status of any intermediate ministerial, or the final outcome of the Doha round, whatever and whenever it may be, the second strategy, and the one I use, compares outcomes at one moment in time across a range of issues as separate cases within the overall Single Undertaking.

### *Within round analysis*

After nearly seven years, in July 2008 the Doha Round was still not finished. Pascal Lamy, the Director-General, invited selected ministers to come to Geneva for an informal ministerial meeting intended to agree on the core "modalities" or blueprint for finishing the round. Despite trying for nine days, a GATT/WTO record for ministers, the sprint failed.<sup>52</sup> When ministers arrived in Geneva, some issues were closed, some were stabilized, and some were open. When they left, many of the toughest issues were unresolved, even if roughly two dozen issues were either closed, or could have been as part of an overall modalities package.<sup>53</sup> All of those Doha Round issues engage the same Members, in principle, even if in practice the list of active Members will differ at the margins for each issue. All are subject to the rules of procedure for the Doha Round<sup>54</sup> and to general WTO norms and practices, including the constitutive metaphor of the Single Undertaking. All would obviously have been open issues at the launch of the round in

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<sup>49</sup> On constructivist approaches to case studies, see Klotz 2008.

<sup>50</sup> Odell 2001: 170; George and Bennett 2005, 31.

<sup>51</sup> Odell 2009.

<sup>52</sup> For the story of the personalities involved, see Blustein 2009.

<sup>53</sup> For a full explanation, see Wolfe 2010.

<sup>54</sup> WTO 2002a; WTO 2002b.

2001, and some had apparently been stabilized by the end of the July ministerial in 2008. Exogenous factors did not change all that much during the subsequent seven years.

Case studies are at risk of selection bias because the cases may have unobserved common features,<sup>55</sup> or may exclude factors that are relevant. The biggest such risk in this paper is that I am not trying to observe the interaction effects between the cases: deadlock and agreement may be related to the inclusion of issues within the overall package for the round known as the Single Undertaking.<sup>56</sup> The shorthand description of this constitutive metaphor is that nothing is agreed until everything is agreed. Constructing the Single Undertaking will certainly require “tactical linkage”, which refers to independent issues brought together in an explicit trade off or bargain. The Single Undertaking may also require “substantive linkage”, based on consensual understanding of how the issues and parties are connected.<sup>57</sup> Such an analysis of the round as a whole is beyond the ambitions of this paper, but it is fair to observe that the final outcome will require bargaining in the endgame. Consensual understanding is needed for each of the issues before bargaining is possible, but a move towards such consensus on one issue might generate pressure to agree on others. A tendency to rationalize as a moment of decision nears may mask an absence of consensual understanding. The opposite may also occur. In the absence of an imminent decision, canny negotiators may mask their positions in order to maintain bargaining leverage. Some Members have been explicit that they are withholding consensus in one area while waiting for consensus in an area they see as more important. In sum, under circumstances of incomplete bargaining, consensual understanding may be hard to observe. My July 2008 observations might be contaminated in both senses.

A related problem with unobserved factors is inherent in the nature of consensus as a decision tool. Since public reasons are neither required nor given, analysts know more about who was complaining loudly than we do about who by being silent was prepared to agree. Until the package is written down and nobody objects, one cannot be sure whether convergence has been reached or whether some hitherto unmentioned problem remains an obstacle affecting one issue, or the whole package. And even then, nobody knows what is determinative. When a delegation accepts the chairperson’s suggested compromise, is it because they have changed their mind in the direction of a reasoned consensus, or because that is the trade-off required for a bargained consensus? If the European Union (EU) changes its position on income support for farmers, is it because the Commission was persuaded, or were member states moving in that direction anyway? What we can observe is whether the way an issue is described in official texts shows signs of convergence or stabilization. The initial hypothesis is that items that were closed or stabilized in July 2008 were well understood. I have previously shown that the breakdown on the new special safeguard in agriculture (SSM) was due at least in part to the fact that it was poorly understood, and that lack of consensual understanding in turn was due at least in part to inadequate analysis by, and discussion among, the Members. A failure to argue made bargaining impossible.<sup>58</sup>

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<sup>55</sup> Sprinz and Wolinsky-Nahmias 2004, 368.

<sup>56</sup> Wolfe 2009b.

<sup>57</sup> Haas 1980; Haas 1990.

<sup>58</sup> Wolfe 2009a.

### *Interpreting the evidence*

If international regimes are defined by convergent expectations not behaviour, then analysts know a regime by what actors say.<sup>59</sup> In this paper I infer the process of arguing in the emergence of consensual understanding. Looking for consensual understanding among apparently interest-driven trade negotiators is “least likely”. My method is “structured and focused” in the jargon, in that I ask similar sorts of questions about that one aspect of the cases. I look for consensual understanding by trying to understand the process of negotiations in fine-grained detail through the textual deposits arguing generates (WTO press briefings, press reports, WTO documents), supplemented by systematic confidential interviews with a representative set of WTO secretariat officials, and of national Ambassadors, including OECD countries, developing countries, LDCs, many chairpersons, and coordinators of most of the active clubs.<sup>60</sup> These sources are listed in Table 3.

*Table 3. Indicators and evidence of learning*

<b>Indicators</b>	<b>Sources</b>
Acquisition of information	Informal non-papers
Change in interests	Informal submissions (JOB series)
New concepts	Formal (public) submissions
Reframing issues	Chairperson’s reports and draft texts
Consensual understanding of cause and effect relations	Legal texts
	Press reports
	Interviews

Interpreting evidence of learning is challenging. The second set of models described above would expect to see simple learning in the form of the acquisition of information. My approach will be supported if I can see complex learning leading to issues being reframed, the emergence of new concepts, or the reconstitution of “interests”, all part of reaching a shared understanding of cause and effect relations in the domain. My approach will also be supported if variation in consensual understanding is related to variation in outcomes. These criteria are listed in Table 3.

It is not news that ideas and debate matter, and that actors contest how an issue is framed. The broad public policy literature has long known that actors of all sorts have some capacity to frame issues in a way that puts them on an organization’s agenda.<sup>61</sup> Getting on an agenda, however, is preliminary to the endogenous process of arguing through which issues can either drop off an

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<sup>59</sup> Kratochwil and Ruggie 1986.

<sup>60</sup> Interviews in Geneva during the Doha Round with over 50 senior WTO officials and Ambassadors of WTO Members are evaluated in the same way as other primary sources, although the promise of confidentiality makes them impossible to cite. This source is signaled in the text by the term “participants”.

<sup>61</sup> Kingdon 1984.

agenda, or come to have a shared frame.<sup>62</sup> Texts produced by the chairpersons of each negotiating group, or the Ministerial Conference, show us what is on the agenda;<sup>63</sup> but also lead us to ask why a particular choice is made.<sup>64</sup> Frames are templates that contain both a problem and a solution.<sup>65</sup> If I see alternative frames or code words in a text, I infer the absence of consensual understanding. If I observe a change in how an issue is framed, then I can infer that Members have learned something about the interests that are involved in negotiating that particular issue, and about cause and effect relations in that domain.

Texts reflect discussion at a moment in time. When a concept moves from a “proposal” by one or more Members, to placement in a Chairperson’s draft text, and is not subject to challenge (in that it appears from one iteration of the text to the next, without square brackets), one can see the issue moving through the stages of being *open* at the start, to *convergence*, then being *stable*, the stage at which bargaining is possible. The issue is *closed* when further bargaining to arrive at the intended codification is not needed. (See Box 2)

*Box 2 Evolution of texts in a negotiation*

Open	No agreement on objectives
convergence	Terms of debate narrow
stable	Agreement on a range of options
Closed	Agreed codification

Whether or not consensual understanding is evident in the texts in July 2008 is taken to be part of an explanation of whether an outcome was possible. I am interested in whether that consensual understanding emerged in some process within the regime, but not necessarily in when it emerged. Issues come on to the agenda in different ways over time. Some have little history within the regime before being suggested for inclusion in a round. Others have evolved through previous rounds, or through the ongoing operation of the regime. Exogenous changes in the world (e.g. a farm subsidy war), or endogenous change in the nature of the regime, may require new negotiations. Changing patterns of transaction flows create policy challenges as do the evolving practices of economic actors. By tracing the evolution of concepts we can see that what looks like bargaining in one iteration depends on arguing in prior iterations. The claim that the presence of consensual understanding facilitated bargaining at a particular moment does not mean that the process that led to the consensual understanding was immediately antecedent; I claim only that consensual understanding matters, and that the process was endogenous.

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<sup>62</sup> To take one example, efforts of the G-33 and its academic and NGO supporters to get something like the SSM on the agenda are interesting, but merely preliminary to understanding why after a decade the issue was still deadlocked. The G-33 and agricultural exporters have failed to persuade each other of the way each frames the SSM. See Wolfe 2009a.

<sup>63</sup> Dunn 2006.

<sup>64</sup> Checkel 2006.

<sup>65</sup> Klotz and Lynch 2007, 52.



## 4.0 Doha Round Case Studies

Having developed the claim that endogenous learning matters to the outcome of negotiations, I now attempt to delineate a set of outcomes, then subject them to empirical investigation to see if my expectations can be observed. I first explain the cases chosen, and then trace the conceptual evolution of the issue to the extent necessary for an understanding of the dynamic of consensual understanding and to assess whether stabilization, or not, is due to consensual understanding.

### *Case selection*

The 2001 Doha Development Agenda launching the new round contained between 19 and 21 discrete topics, depending on how one counts.<sup>66</sup> After the decisions recorded in the July Framework of 2004, the subjects for negotiations were assigned to one of nine negotiating groups. In July 2008, those issues were divided into three sets, as shown in Table 4. The Director-General's assumption was that stabilization had been or could easily be achieved in Set 3, was problematic in Set 2, and was both essential and achievable in Set 1, although many Members disagreed with this assumption prior to the meeting.

*Table 4. Establishment of modalities: the July 2008 agenda sets*

<b>Negotiating group</b>	<b>Reasons for placement in Sets</b>
1. Agriculture, NAMA	Wide divergences on modalities on these issues had blocked the whole round
2. Services, Intellectual Property, Rules	Insufficient convergence to allow fruitful ministerial discussion, but each issue was thought crucial by some Members
3. Environment, Trade Facilitation, Dispute Settlement, Development	Negotiations were on track for inclusion in eventual Single Undertaking, making ministerial guidance unnecessary

Each negotiating group was responsible for a complicated bundle of issues, many of which were effectively closed, in no longer being under explicit consideration, even if the relevant codification had not yet been formally agreed. Analysis must therefore focus on the issues still under discussion. In order to keep the analysis manageable, only some of these issues can be treated as “cases” for study. My screen for case selection, informed by the discussion in the previous section, had five criteria. I decided to pick: (1) issues from each of the sets in Table 5 to control for factors related to their placement on the July 2008 agenda; (2) sub-issues from within Set 1, thought to be the core impasse in the round; (3) issues that mattered both to developed and developing countries; (4) issues where interaction in other multilateral fora would be unlikely to be an exogenous factor altering the identity of negotiators or their understanding of the issues;

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<sup>66</sup> WTO 2001.

and (5) both market access and subsidies issues from Sets 1 and 2 to control for substantive aspects of these central trade policy concerns. Table 5 is a brief comparison of the status of the selected cases at the end of July 2008 and a judgement of whether or not consensual understanding had been achieved.<sup>67</sup>

*Table 5. Cases and outcomes*

Issues selected as cases	July 08 consensual understanding	July 08 status
<i>Set 1</i>		
Agriculture:		
- Export competition**	YES	STABLE
- OTDS**	YES	CONVERGE
- Market access formula*	YES	STABLE
- Sensitive products*	YES	CONVERGE
- SSM*	NO	OPEN
Non-Agriculture Market Access (NAMA)		
- Formula*	YES	STABLE
- Anti-concentration*	NO	CONVERGE
<i>Set 2</i>		
Services		
- Formula*	NO	OPEN
Rules		
- Fish subsidies**	NO	OPEN
<i>Set 3</i>		
New Issues		
- Trade Facilitation	YES	CONVERGE

\* Market Access \*\*Subsidies

The table shows a mixed pattern. Not one of the selected issues was closed. Issues even within a single negotiating group do not move from consensual understanding to being stable at the same rate, but without consensual understanding even convergence is unlikely. The narrative in the following sub-sections justifies the judgements by looking for evidence of complex learning in the evolution of the cases in the months and years prior to July 2008.

#### *Market Access (Set 1)*

The eventual treaty recording the results of the Doha Round will contain both rules about a Member's trade policy mechanisms, and Schedules with each Members' commitments on the

<sup>67</sup> For a full justification of the assessment of each issue using the indicators and sources identified in Table 3, see Wolfe 2010.

details of specific policies that will apply to commerce that crosses their borders. The modalities (the blueprint) will determine how Members draft the treaty. States have been learning about the nature of barriers to commerce erected at the border, and methods to negotiate about those barriers, since at least the middle of the nineteenth century, but the Doha Round negotiations still proved complicated. Tariffs are well understood, but how to cut them further while balancing commercial and developmental concerns among 153 partners is not.

GATT negotiations on tariff schedules were originally based on a set of bilateral product by product or request and offer negotiations, which was already too cumbersome in the much smaller negotiations of the 1960s (Table 1).<sup>68</sup> Now with the increase in the number of active members, negotiations on thousands of individual tariff lines with two or three dozen significant trading partners is not feasible for any Member, however large their delegation. Given the number of sub headings in the Harmonized System of customs tariffs, and the number of potential bilateral pairs in the Doha Round negotiating group on trade in goods known as Non-Agricultural Market Access (NAMA), request and offer negotiations would result in a total of 562,500 potential requests from the principal suppliers.<sup>69</sup> In a secretariat summary of NAMA negotiation proposals as of 2003, evidence of bargaining between developed countries and developing countries is already obvious in the divergent proposals about product coverage, elimination of tariffs, tariff peaks, binding (the percentage of tariff lines that a Member ought to bind against being raised; and the gap between that rate in the Schedule and the rate actually applied), and the base rate for calculation. The biggest divides were on the core and supplementary modalities for tariff reduction—whether a formula should be used, and whether it would apply line by line or as a general reduction. On supplementary approaches, ideas diverged on the value and nature of possible sectoral approaches to tariff harmonization or elimination—should participation be voluntary, and how many Members would be enough for critical mass?<sup>70</sup>

NAMA negotiations fit a simple developed vs developing narrative in which one side wants the rich countries to make big cuts in their remaining tariffs, while the other wants the large and rapidly growing poor countries to make cuts in their applied tariffs sufficiently large to ensure new market access. The difficulty of reaching consensual understanding in NAMA can be seen in paragraph 16 of the Doha declaration in the commitment that “The [NAMA] negotiations shall take fully into account the special needs and interests of developing and least-developed country participants, including through *less than full reciprocity in reduction commitments*...” The highlighted phrase is recalled constantly by developing country delegates, although it is not at all clear what it means. The GATT had no provisions or procedures setting out how to measure or define reciprocity; instead, it was up to members to agree upon how best to assess the reciprocal balance.<sup>71</sup> The Doha Round struggled with this old debate, which goes back to “non-reciprocity” for developing countries in the Kennedy Round of the 1960s. Does it mean, for example with respect to any possible formula, that the *rate of reduction* in tariffs should be less for developing countries, that the *size of the average cut* should be higher for developed countries, that the *final rates* should be lower for developed countries—or does it describe the value of the NAMA

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<sup>68</sup> Hoda 2001: 27; For a comprehensive account of the history of market access negotiations in the GATT/WTO, see WTO 2007b, 201-260.

<sup>69</sup> Low and Santana 2009, 75.

<sup>70</sup> WTO 2003.

<sup>71</sup> Hoda 2001: 53.

modalities as a whole, including all the flexibilities and exceptions for developing countries? Does the mandate mean that less than full reciprocity is the objective in itself, or only that it could be allowed if necessary to meet the needs of developing countries?

Members have agreed that a “Swiss formula” that produces bigger cuts on higher tariffs would be the basic modality used by each Member to calculate its new tariff levels, if not the only one.<sup>72</sup> In a Swiss formula, the higher the coefficient, the smaller the cut and therefore the higher the final tariff rate. Negotiations focus, therefore, on the value of the coefficient, whether some groups of countries or products should have a higher or lower coefficient than others, and whether further “flexibility” is needed. It took four years, until the Hong Kong ministerial in 2005, to agree on a Swiss formula with more than one coefficient.<sup>73</sup> In 2006 it seemed that consensus was likely to be found on having two coefficients, a low one for developed countries and a high one for developing countries, although Members took extreme positions on how wide the gap ought to be, reflecting divergent and perhaps unexamined assumptions about the value of trade liberalization and the purpose of participation in the WTO.

Reaching agreement on what to include in the formula, who should apply it and what to cut was complicated by the need to acquire information, and bargaining interests. But consensual understanding was also needed on some cause/effect relations: why was a formula legitimate? What principles could be accepted as the basis for any exceptions to general application of the formula? Members agreed to complete exemptions from the NAMA formula for many countries, including all LDCs, so it will only be applied by approximately 40 Members (counting the EU as one), representing about 90% of non-agricultural trade in goods. The host of provisions for various groups of developing country Members applying the formula to take smaller cuts or no cuts at all on various tariff lines also proved complex to define, because Members do not want to have an explicit discussion of “differentiation” among developing countries. Procedures for assimilating unbound tariffs to the formula were equally challenging. Learning how to solve these problems involved hundreds of hours of talk. It also required extensive simulations of the possibilities by the secretariat and some of the larger delegations to help smaller Members understand the proposals. For example, some developing countries (e.g. Philippines and Indonesia) had a small gap (known as “water”) between their unbound and applied rates, but others (e.g. India) had a large gap. Treating all of them the same way would disadvantage the Members with little water in their tariffs. This impasse was obviously created by the divergent economic interests of the Members concerned, but it was defined by how WTO Members understood the nature and importance of binding tariffs and a formula approach. Members with unbound tariffs first had to accept the idea of having to bind, and then apply a formula. What then had to be understood was the effect of a formula on their tariff schedule. This required understanding how a formula would work, even if it did not change their underlying interests in having a certain level of tariff protection in place after the application of the formula. This complex learning was shaped by deeply embedded norms of nondiscrimination. The formula is based on diffuse reciprocity, the principle that everybody must make an appropriate contribution to the overall outcome, even if in the end they must reach a bargained adjustment of their interests.

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<sup>72</sup> For a slightly different organization of the staggeringly different types of modalities that will apply to various categories of Members and situations, see Low and Santana 2009, 90ff.

<sup>73</sup> WTO 2005a.

Developed countries have attempted to maintain a high level of ambition in the NAMA negotiations by limiting the developing country flexibilities and exceptions in three ways. The first is the attempt to ensure the possibility of negotiations that might show substantial elimination of barriers in selected sectors, the so-called sectoral negotiations. The idea of some sort of sectoral negotiation would have been familiar to negotiators at the start of the Doha Round, given the many such large and small deals concluded since the 1960s, including both agreements within the Uruguay Round (notably the Agreement on Agriculture, but also the so-called zero-for-zero agreements) and the later Information Technology Agreement. No simple template for such deals exists, however, meaning that despite the familiarity of the principle, a great deal of work was needed in the Doha Round to find a model that would solve the perceived problem.<sup>74</sup> The contentious question of whether participation in sectorals would be voluntary obscured the lack of agreement on the nature of the problem to be solved, and whether a sectoral was the best modality. The conclusion of any sectoral negotiations now seems unlikely.

The second limitation attempt was the so-called “sliding scale” linking the level of the coefficient in the formula with the extent of flexibilities—a Member could choose to exempt a larger number of tariff lines from the formula in return for accepting a more substantial average reduction in its tariffs. This new concept is stable, but bargaining is still needed on the numbers.<sup>75</sup>

The third is a demand for an “anti-concentration clause” that would ensure that no matter how the flexibilities were applied, no country could completely limit liberalization in an entire sector. A small number of tariff lines with high rates might be excluded from the reduction commitments yet cover the products of most interest to trading partners. Members first needed to understand the technical issue, and then needed a consensual understanding that the problem is real, and one that ought to be addressed in this way, before they could bargain. The concept appears to be stable. The July 2008 language is more detailed than that seen for example at Hong Kong in 2005, and the principle seemed agreed, but bargaining on what to put in the square brackets remained deadlocked: whether application of the concept will amount to anything remains uncertain.

I did not include negotiations on “non-tariff barriers” (NTBs) as a case in Table 5 because the issue was not discussed in July 2008. This too is a familiar term,<sup>76</sup> but the very name shows the conceptual problem. Members are concerned about all policy measures that block access to a market, but they still lack a simple categorization of obstacles that are not tariffs. Members learned a great deal about the problem in the Tokyo Round, and succeeded in introducing new disciplines in the Uruguay Round, but Doha Round negotiations were still difficult. As late as Hong Kong Members were still discussing an identification of the possible issues without addressing negotiation modalities. Proposals on new transparency mechanisms remained contentious.

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<sup>74</sup> WTO 2005b.

<sup>75</sup> Low and Santana 2009, 94.

<sup>76</sup> WTO 2007a.

### *Agriculture market access (Set 1)*

Negotiating tariff reductions in agriculture is just as hard. There too Members knew from the outset that a formula would be needed. A formula approach for liberalizing market access seemed to be a given from the beginning of the round. A Swiss Formula was last mentioned in Cancún 2003; the concept of a tiered formula appeared in the 2004 July Framework. The tiered approach in the agriculture chairperson's July 2008 text has some similarities to a Swiss formula, since both are "harmonizing" in that the formula leads to bigger cuts in higher tariffs. The coefficient in a Swiss formula effectively defines a "cap", however, which proved unacceptable in agriculture for some developed countries.

Application of the formula in agriculture will come with flexibilities for some developed countries ("sensitive" products e.g. dairy products in Canada) and all developing countries ("sensitive" and "special" products). Some products had implicitly been "sensitive" in the Uruguay Round because the modalities allowed Members to take only a 15% cut on some products after "tariffication" as long as the overall cut was 36%. Doha Round negotiators have spent hundreds of hours finding a way to craft a more comprehensive modality.

The formula is said to have a great many "moving parts", each of which had to be defined. This work is so technical that only a few insiders really know what was learned, and by who. For example, a group of senior officials representing proponents of "sensitive products" and their critics spent a great deal of time in the spring of 2008 working on a method to solve the so-called "partial designation" problem. The first partial designation paper from the "Sensitive Six" (the Members who advocated the concept) was so obscure nobody else understood.<sup>77</sup> The Six held workshops where groups of Members asked questions. The results of their efforts are now stabilized as Attachment A1 to the July 2008 text, a 16 page technical description of the necessary modalities.<sup>78</sup> A similar group spent months in 2004-5 developing a method for calculating *ad valorem* equivalents (AVEs) of specific tariffs.<sup>79</sup>

Flexibilities for developing countries proved even more complicated. Developing countries believed that the Uruguay Round Agreement on Agriculture (AoA) was a bad deal. This belief affected how they saw the new negotiations mandated by Article 20 of the AoA. During the preparatory period in the late 1990s, the Like-minded Group (LMG) called for: the elimination of tariff peaks, tariff escalation and export subsidies by developed countries; a lowering of domestic supports in rich countries; and the creation of a "Development Box" that would allow developing countries to deviate from their commitments in order to meet development and food security needs.<sup>80</sup> The notion of a new safeguard mechanism in the case of import or price surges was part of these proposals, but with little specificity.

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<sup>77</sup> A document was first tabled informally on April 4, 2008. After several workshops, it was circulated as Attachment A to WTO 2008d.

<sup>78</sup> WTO 2008b.

<sup>79</sup> An informal document tabled among officials in May 2005 was later stabilized as "Draft Guidelines for the Conversion of final bound non-*ad valorem* duties into *ad valorem* equivalents" in Annex A of WTO 2006a and then carried forward by reference in subsequent revisions of the draft modalities—see paragraph 60 of WTO 2008c.

<sup>80</sup> WTO 1999.

The concept of a new “box” gradually faded from committee discussion. While the underlying idea of special and differential treatment for developing countries in agriculture dominated the rest of the Doha Round, it was addressed through its components: restraint on developed country subsidies and market access flexibilities for developing countries, notably in the concepts of “special products” (SP) and a “special safeguard mechanism” (SSM). Special products and sensitive products are essentially mirror images, both designed to avoid having to change domestic policy. Many participants would say that no learning took place during the negotiations, only bargaining. The effort to create indicators that might allow an analytic rather than a political basis for determining which products might be “special” went nowhere. Members do not have a consensual understanding of causal relations between the exemptions for special and sensitive products and any possible change in domestic or trade policy. Yet the concepts are essentially stable, unlike the SSM on which negotiations broke down completely in July 2008.

#### *Services market access (Set 2)*

The creation of the idea of “services” as something that could be traded and therefore negotiated is one of the canonical stories about the importance of consensual understanding.<sup>81</sup> The creation of the framework that made the General Agreement on Trade In Services (GATS) possible was a magnificent conceptual achievement of the Uruguay Round. Yet one reason that market access for services is not part of Set 1 in the Doha Round modalities phase (Table 4) is that Members cannot find a formula that could work in services negotiations. The GATS contains some 160 sub-sectors, 153 Members, and four modes of supply affecting multiple domestic ministries and agencies that need to be consulted before new obligations can be implemented.<sup>82</sup> In the absence of consensual understanding on how to make services requests and offers somehow commensurable, negotiations struggle. The services signalling conference held in July 2008 was too amorphous to allow simple judgments of issues that were open or closed.<sup>83</sup> If what was signaled was in final offers, participants said, it would be enough to close the Single Undertaking on services. That sense of optimism was based, as many ministers pointed out, on words. Participants observed, moreover, that some of the major issues have never been properly engaged, including services safeguards, subsidies, and the status of health and education services in the GATS.<sup>84</sup> An ambitious outcome may be possible,<sup>85</sup> but a good deal of arguing remains to be done before bargaining can begin.

#### *Subsidies for farmers (Set 1)*

Subsidies are a problem for the trading system. On the one hand, they distort the terms of competition both in the territory of the government that provides them and in markets to which subsidized products are exported. On the other hand, governments use them to accomplish legitimate policy objectives. The motivation for WTO disciplines, therefore, is not abstract efficiency but the perceived fairness of their effects on others. The disciplines have been

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<sup>81</sup> Drake and Nicolaïdis 1992.

<sup>82</sup> Adlung 2006.

<sup>83</sup> WTO 2008e.

<sup>84</sup> on the latter, see VanDuzer 2004; Adlung 2009.

<sup>85</sup> Gootiiz and Mattoo 2009.

evolving through over 60 years of talk among officials, and experience by economic actors; the evolution has also been influenced by GATT/WTO jurisprudence and academic commentary.

Export subsidies in GATT 1947 were illegitimate for “non-primary” products, but Contracting Parties were to “avoid” applying export subsidies to primary products. If export subsidies were applied, they should not result in a Contracting Party having “more than an equitable share of world export trade in that product.” On other subsidies, however, the issue was simply whether they were in some way harmful to trading partners. Countries maintaining any subsidy were required under Article XVI to notify the extent and nature of the subsidization, the estimated effect of the subsidization on the quantity of the affected product or products imported or exported from its territory and the circumstances making the subsidization necessary. Only later did GATT signatories agree to impose substantive constraints on their ability to grant subsidies, beginning with additional provisions governing subsidies agreed to in 1955. During the Tokyo Round negotiations of the 1970s, participants recognized that the GATT notification obligation did not work because it implied an admission of guilt, but the intended improvements in the Tokyo Round subsidies code proved ineffective. The Uruguay Round, launched in the 1980s, marked a far more comprehensive attempt to deal with subsidies issues, including finally agreeing on a definition in the *Agreement on Subsidies and Countervailing Measures* (ASCM). Negotiations on “horizontal subsidies” continue in the Doha Round.

Agriculture subsidies were not mentioned in the Tokyo declaration independent of subsidies in general. At the 1982 GATT ministerial, however, participants agreed to examine all subsidies affecting agriculture, especially export subsidies. The Punta del Este declaration in 1986 showed a more sophisticated grasp of the complexities in the commitment that negotiations should aim at “improving the competitive environment by increasing discipline on the use of all direct and indirect subsidies and other measures affecting directly or indirectly agricultural trade, including the phased reduction of their negative effects and dealing with their causes....” The eventual Uruguay Round *Agreement on Agriculture* (AoA) hived off agriculture subsidies from the ASCM. The agreement divided domestic support into three broad categories subject to varying degrees of discipline depending on the apparent harm to farmers in other states. The AoA still tolerated export subsidies, barely, but with tight restrictions.

At Doha in 2001, Members first committed to “comprehensive negotiations aimed at...reductions of, with a view to phasing out, all forms of export subsidies”. This language required an understanding of all the ways in which state action could encourage agriculture exports from one country to the detriment of its partners, and agreement that this type of subsidy should be eliminated. The Doha language is understood to reflect a divergence of opinion between the European Communities (EC), who were willing to discuss “reduction”, and competitive exporters, who wanted export subsidies eliminated.<sup>86</sup> The EC attempted to change the frame by insisting on “parallelism” between all forms of export support. By July 2008, Members were agreed that well-defined export subsidies would be eliminated by the end of 2013 (2016 for developing countries), with parallel disciplines agreed for export financing support (export credits, export credit guarantees or insurance programmes), export State Trading

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<sup>86</sup> At the time the EC was the formal Member of the WTO. Since the coming into force of the Lisbon Treaty, the Member is the EU.



Enterprises (STEs) and Food Aid. Consensual understanding of cause and effect relations in this domain is the foundation.

The history of trying to deal with the negative aspects of food aid, clearly an export subsidy, goes back to the 1950s and the FAO work on what was then called “surplus disposal”.<sup>87</sup> Attempts to discipline State Trading Enterprises (STEs) also had a long history of talking about why a government guarantee was a subsidy. By Hong Kong in 2005, Members agreed “to ensure the parallel elimination of all forms of export subsidies and disciplines on all export measures with equivalent effect to be completed by the end of 2013”, with convergence on criteria for disciplining export credits. Nevertheless the chairperson’s report notes wide divergence on issues as basic as the definition of STEs and the practices to be addressed. The difficulty for Canada, the last hold out, is the proposed discipline on the Canadian Wheat Board’s monopoly powers under subsidy provisions, especially since a WTO panel confirmed in 2004 that “single desk selling” is consistent with the existing obligations on state-trading enterprises, and never mentioned any problem from a subsidies perspective.<sup>88</sup> Hong Kong was also the first mention of the “safe box” concept for emergency food aid. The chairperson’s report notes consensus that commercial displacement is to be eliminated, along with “fundamentally disparate conceptual premises” – where does emergency food aid end and non-emergency food aid begin?

Members also committed at Doha to “comprehensive negotiations aimed at ... substantial reductions in trade-distorting domestic support.” In the AoA, the words “trade distorting” appear only in Annex 2 (provisions for a Green Box based on Article 7) although the idea was familiar to agriculture economists. By 1999/2000, the words were common enough to have become part of the initial negotiating proposals for the new negotiations submitted by Canada and the United States. The draft rules on domestic support take up the first 52 paragraphs of the chairperson’s December 2008 draft.<sup>89</sup> Agriculture subsidies that are neither permitted by the so-called Green Box nor covered by the export competition provisions are all included under the draft provisions on “overall trade distorting support”, or OTDS. Bargaining the dollar amount of the cut in U.S. OTDS caught the imagination of developing country negotiators and the press, which obscured the underlying agreement on the term, one that did not exist at the start of the round. Members could not have agreed on the formula for reducing OTDS if they had not first come to an understanding on the meaning of each element of this new term. OTDS as agreed incorporates the three concepts of Article 6 of the AoA in one measure. Each of those types of support would be cut or limited to varying degree depending on the country, support to any one product would be limited, and the overall amount of such support would be cut.

In sum, during the Doha Round negotiators made a significant conceptual advance in reframing the definition of subsidies that allows bargaining for a complete elimination of export subsidies and considerable reductions in domestic support. The process is not finished. Participants claim that some observers associated with developing country interests seem to think that trade-distorting means *any* support in developed countries. It will be a long time before the Green Box

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<sup>87</sup> Cardwell and Kerr 2009.

<sup>88</sup> WTO 2004, para 6.149.

<sup>89</sup> WTO 2008c; for an explanation in ordinary language, see WTO 2008f.

is eliminated, however, although new disciplines are needed to prevent support simply being shifted into that box.<sup>90</sup>

### *Subsidies for fishers (Set 2)*

Fisheries subsidies may seem to be an issue new to the WTO, but fisheries is also an instance of well-established debates about subsidies. The issue also allows a simpler test of my main expectations because it is less cluttered with years of WTO practice, making the effects of the Doha Round process easier to observe. In brief, exogenous factors certainly help in understanding the poles of debate, but the current impasse is due neither to exogenous power nor endogenous bargaining: Members have not reached a consensual understanding of the necessary concepts.

Fisheries remains farther from the trade mainstream than farming, which itself was thought to be exempt from GATT rules until the end of the Uruguay Round. In the 1986 Punta del Este declaration, fish was not part of either the agriculture or trade in goods sections, but it was mentioned with the negotiations on Natural Resource-Based Products where the aim was simply trade liberalization. The ASCM applies to fish subsidies, in general, to the extent that the Agreement covers any subsidy that meets its definition.<sup>91</sup> Trade in fish is substantial, but it does not appear to have been a source of conflict under the ASCM even though support to fishers (Government Financial Transfers) in OECD countries at approximately 18% of the value of the total catch from capture fisheries in 2007 was not that far below the highly contentious support to farmers (Producer Subsidy Equivalent), which accounted for 21% of farm receipts in 2008—but farm subsidies demonstrably hurt farmers in other countries, and that support was nearly 40% at the launch of the Uruguay Round in 1986, and just over 30% at the launch of the Doha Round in 2001.<sup>92</sup> Fish subsidies have not figured in any formal WTO dispute, and only two disputes had anything at all to do with fish, one being the famous *Australia—Salmon* case (DS18) that turned on SPS measures, not subsidies.<sup>93</sup>

At Seattle in 1999, the fish problem was characterized for the first time as subsidies that contribute to over-capacity and over-fishing. Reports from the FAO, OECD and World Bank described the extent of subsidization. Despite the linkages between subsidies and environmental concerns in the 2001 Doha declaration, the topic was explicitly assigned to the Rules negotiations with other ASCM issues.

After years of talk, and strong encouragement from conservations and biologists notwithstanding, by July 2008 discussions had broken down. Despite all sorts of opportunities for informal information sharing and learning in workshops outside WTO in international organizations such as UNEP; and in NGOs such as WWF, and ICSTD, and despite the evident fingerprints of NGOs in the draft text,<sup>94</sup> the expert consensus on what needs to be done had not been translated into consensual understanding among negotiators. The Chairperson observed that

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<sup>90</sup> Meléndez-Ortiz, Bellmann and Hepburn 2009.

<sup>91</sup> On how fisheries subsidies fit in WTO, see WTO 2006b, 163ff.

<sup>92</sup> OECD 2007, OECD 2009, Figure 1.3.

<sup>93</sup> WTO 2009b.

<sup>94</sup> Young 2009.

“all participants recognize the global crisis of overcapacity and overfishing”, attributing the negotiation impasse to divergence in understanding of the issue and the rules that should apply, with wide conceptual gaps on such basic factors as which subsidies should and should not be prohibited, the special needs of developing countries, and the criteria for general exceptions.<sup>95</sup> The major concerns would seem to relate the potential for new disciplines to intrude on domestic policy, the need for development exceptions, and the possibility of creating a category of acceptable subsidies.

The principal antagonists in the fisheries negotiations can be grouped at three poles, depending on whether their concerns are development, over-capacity, or the domestic industry. The differing conceptual premises defended by negotiators may simply be a mask for interest-based conflict related to such exogenous factors as the structure of the fisheries industry in each Member and the nature of state support, if any. The first pole is the “Friends of Fish”, represented by the U.S and New Zealand, who want aggressive disciplines on fisheries subsidies.<sup>96</sup> They are resisted most strenuously at the second pole by Korea, Japan, and Taiwan, who oppose a blanket ban on fisheries subsidies. Canada and the EU are sometimes in both camps. At a third pole, represented in Table 6 by India and Brazil, are developing countries who insist that development strategies must not be limited by new disciplines.

Subsidies are not equally problematic either in trade or environmental terms, although all subsidies will have some impact. In trying to understand the evolution of the debate inside the WTO, one academic distinction is helpful. Subsidies that tend to increase fishing effort are bad while good subsidies help to maintain or enhance the growth of fish stocks. Examples of “good” subsidies include fisheries management, monitoring and enforcement programs. “Bad” subsidies include vessel construction and fuel subsidies. “Ugly” subsidies are ambiguous: their effect on fishing effort depends on the context.<sup>97</sup> This distinction is similar to the AoA placement of farm subsidies into an “Amber Box” for those that increase production, and hence distort trade, and a “Green Box” for subsidies that are thought to have little effect on production.

The EC fisheries proposal of 2003 while not using the term “Green Box” proposed a distinction between prohibited “capacity enhancing” subsidies and those that might be permitted.<sup>98</sup> In 2004 Japan proposed a prohibition on “really problematic” subsidies driving illegal, unreported and unregulated (IUU) fishing and leading to overcapacity with a bottom-up approach to defining harmful fisheries subsidies, while still allowing subsidies that promote sustainable development in the fishery sector, claiming that most of its subsidies are not trade distorting.<sup>99</sup> New Zealand is said to have retorted that 90 percent of Japanese fisheries subsidies would be exempt from any reduction commitments under the proposal. By 2007 the U.S. and the Friends of Fish proposed to simply prohibit most government subsidies to commercial fishing. Developing countries emphasize the social and economic importance of fishing for sustenance and livelihood, as opposed to commercial goals in developed countries. They are more interested in crafting

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<sup>95</sup> WTO 2008a.

<sup>96</sup> Argentina, Australia, Chile, Colombia, Iceland, New Zealand, Norway, Pakistan, Peru, United States of America

<sup>97</sup> For the justification of the distinction, see Sumaila, et al. 2007, 2. For a detailed list, with estimates for specific countries, see Sumaila, et al. 2009.

<sup>98</sup> TN/RL/W/82.

<sup>99</sup> TN/RL/W/159.

exemptions for themselves by explicit comparison to the special and differential treatment provisions of the AoA Amber Box based on socio-economic criteria than to the list approach used in the Green Box.

The characteristics of the industry and the nature of state support in the countries at the three poles might explain their positions. I consider three dimensions: the balance of artisanal versus commercial vessels in a country's fleet; the ratio of fisheries subsidies to fisheries output in the country, and the nature of the subsidies in question. Relative to other countries, Japan, like Korea, has less people employed in fisheries, and the bulk of the capacity is commercial rather than artisanal. In India, the fisheries industry employs over 14 million people, and most capacity is artisanal, with 208,000 vessels, compared to only 1350 commercial vessels. Brazil also has many more artisanal than commercial vessels.<sup>100</sup> Table 6 shows that the strongest proponents of new disciplines have the lowest ratios of fisheries subsidies to output. More interesting is that while the Members at the two resistant poles have strikingly different absolute levels of subsidies, with developed countries responsible for a greater volume of subsidies, a large percentage of subsidies at both poles are "bad" or ambiguous, with low shares of "good" subsidies. Close to half of Canada's subsidies are "bad", which might explain why the country is only sometimes a Friend of Fish.

Table 6. Fisheries subsidies

	Brazil	India	Japan	Korea	Canada	USA	NZ
Fish Subsidies (USD '000 2003)	\$413,395	\$1,070,174	\$4,636,022	\$893,936	\$842,301	\$1,812,714	\$47,220
Subsidies as % of Output	28%	22%	37%	20%	56%	4%	4%
Good subsidies	4%	17%	13%	9%	48%	64%	100%
Bad subsidies	50%	80%	73%	89%	28%	24%	0%
Ugly subsidies	7%	3%	14%	2%	24%	12%	0%

Sources: FAO Fish and Aquaculture Country Profiles; Sumaila, et al. 2009

Not surprisingly, perhaps, the leading developing countries argue for "livelihood" protections in fisheries, and believe that subsidies should not be prohibited for artisanal small-scale marine wild capture within territorial waters when the catch is consumed principally by fishers. This position is similar to the one the same Members defend on "special products" in the agriculture negotiations. While it seems sensible, even subsidies to small scale artisanal fishers can still be "bad", with significant environmental consequences.<sup>101</sup>

The poles of the debate may have exogenous material sources, but the result of incomplete arguing is still mutual incomprehension. Moreover, if the motive for negotiations was fish

<sup>100</sup> Source: FAO Fish and Aquaculture Country Profiles

<sup>101</sup> Schorr 2006

conservation, then moving the issue into a subsidies context was problematic. Rules negotiators struggled to reach a consensual understanding on the causal connections between fish subsidies and the trading system. Nothing in the ASCM deals with overcapacity or resource management. Negotiators could not build on existing concepts, since the usual motivation for disciplines in the ASCM is the effects of a measure on trade. Even the analogies drawn between “good” fish subsidies and the agriculture Green Box were misleading, because the former deals with the effects on overcapacity while the latter deals with trade distortions.

### *Trade facilitation (Set 3)*

The importance of consensual understanding can also be seen in the third set of issues in Table 5. The Director-General was able to exclude them from the July 2008 agenda because negotiations were proceeding smoothly. Analysis of the evolution of any of these issues might therefore seem futile, but consider the differences among the four “Singapore issues”, only one of which was still on the table in July 2008.

At the Singapore ministerial in 1996, Members introduced four new issues to the agenda, but negotiations on Investment Policy, Competition Policy, and Transparency in Government Procurement went nowhere. In the aftermath of the collapse at Cancún in 2003, these three issues were explicitly abandoned in the July Framework of 2004. With no consensual understanding in sight, negotiations could not proceed. Members did agree in July 2004, however, to create a formal negotiating group for the fourth Singapore issue, Trade Facilitation.

The core trade facilitation concepts go back to GATT 1947, but repeated discussions of the various proposals over many years were needed during the Doha Round for developing countries to come to see a new agreement as being useful.<sup>102</sup> The 1999 Seattle draft showed wide divergence in potential frames as seen in the persistence of square brackets in the text: “Negotiations shall be directed to [establishing a framework of] [strengthening and further elaborating WTO] rules and disciplines on the procedures and formalities relating to importation, exportation and transit of goods....”

When Trade Facilitation was agreed for inclusion in the 2004 July Framework, the main rationale was strengthening GATT rules, but developing country capacity had been added to the frame: “Negotiations shall aim to clarify and improve relevant aspects of Articles V, VIII and X of the GATT 1994 with a view to further expediting the movement, release and clearance of goods including goods in transit. Negotiations shall also aim at enhancing technical assistance and support for capacity building in this area. The negotiations shall further aim at provisions for effective cooperation between customs or any other appropriate authorities on trade facilitation and customs compliance issues.” The only exogenous material interest any Member would have in these issues, aside from reducing the transactions costs of trade, would be the distribution of the costs and benefits of technical assistance, but that does not appear to have been the focus of much bargaining. These negotiations have been much more about learning what the concepts mean, and what national implementation might entail.

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<sup>102</sup> For the fifteenth compilation of trade facilitation proposals, see WTO 2008g.

By July 2008, Members seemed comfortable with the concepts and the support developing countries would need to be able to implement any new obligations, but they had not yet started codifying such an understanding of causal relations in this area.<sup>103</sup> The negotiations were converging not stable, but this issue did not contribute to the overall impasse in the Doha Round.

## 5.0 Conclusion: Arguing *and* Bargaining

My first goal in this paper was to develop the proposition that something happens at the multilateral negotiation table in addition to bargaining, something that alters either the understanding of themselves and their interests that participants brought to the table; or how they understand the nature of social reality in a domain. Such learning would be endogenous to the negotiations, because it happens through interaction. This approach requires distinguishing simple learning (acquisition of new information about the context, or the preferences of others) from complex learning (new understanding of cause/effect relations in a domain), which also requires distinguishing consensual understanding from a mutual adjustment of positions. My second goal was to specify how this model might be susceptible to empirical investigation. I show how individual issues within a negotiation can be treated as cases susceptible to comparative analysis at a moment in time. I then infer the results of arguing from the textual deposits left by negotiations in order to assess the presence or absence of consensual understanding. Finally, I attempt to correlate consensual understanding with the negotiation status of the issues.

The difference between complex learning leading to consensual understanding, and simple learning leading to mutual accommodation is subtle. Both are prior to bargaining in the sense that negotiators need an agreed definition of terms before they can agree on who gets how many units of the thing in question. A mutual accommodation is a point somewhere on a straight line drawn between two opposed positions. Consensual understanding is a point off the line, a point neither side expected to be at. The parties agree because through the negotiations, especially the most detailed technical work, they have come to a shared understanding of how the world works, of what affects what, allowing them to see their interest/preferences in a new way.<sup>104</sup>

My empirical probe found that after years of arguing in the WTO Doha Round, *subsidies* issues are stabilized. The evolution of consensual understanding of cause and effect relations in this domain has allowed bargaining to proceed—except for fish, which Members have trouble seeing as a subsidies issue. In *market access*, a formula approach is now well understood for trade in goods, including agriculture, even if bargaining remains to be done, but the proposed special safeguard (SSM) is so poorly understood that bargaining was impossible in July 2008.<sup>105</sup> In *services*, even the most sophisticated delegations find it hard to understand what is being negotiated, where the lack of any sort of formula impedes market access negotiations. I also observe a difference from the standpoint of the concepts used between *new issues* that are not all that new (trade facilitation, a new label for established techniques) and ones that are (fish subsidies leading to overcapacity but not trade distortion, which does not fit WTO concepts). The

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<sup>103</sup> Such a text was produced by the end of 2009—see WTO 2009a.

<sup>104</sup> For a survey that situates the constructivist approach to negotiation analysis in the context of more familiar rationalist approaches, see Hopmann 2010.

<sup>105</sup> See Wolfe 2009a.

task for the July 2008 ministerial was stabilizing the modalities so that bargaining could proceed. Where Members had not achieved a consensual understanding, issues were not stabilized, and with enough key issues not stabilized, the ministerial outcome was deadlock.

This basic insight ought to be applicable to other negotiations. For example, the concept of Monitoring, Reporting and Verification (MRV) is emerging as a way to standardize carbon, make it commensurable. Without a consensual understanding on MRV, climate change may not be negotiable.

A focus on endogenous consensual understanding in isolation from the other models of negotiations is artificial. Some of the major exogenous factors, such as the role of domestic coalitions or changes in patterns of transaction flows, not only will affect whether the Doha Round can be completed, but may also be structural factors that affect how agents reach a consensual understanding on a given issue. Explaining something that has not happened is hard, but if we want to understand why agreement was manifestly not possible at a given moment, but was at another, the presence or absence of consensual understanding is part of the story.

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