

## **Plenary Session 7: Trade and Politics**

### **Patrick MESSERLIN**

Welcome to this seventh session, which is devoted to trade and politics. We have a splendid panel of people who have been involved in officialdom and business, so we have the two sides of the equation. When you think about trade and politics, there are three points to stress. Firstly, many people tend to believe, and yesterday we had this impression, that trade and politics are a source of increasing conflict and interaction, and I would like to know whether the panel shares this view or if there are some nuances. We have to be careful about this impression, because it can be related to from which place you are. For example, if I am a European I can say that the 1980s were pretty quiet, but the Koreans get a set of anti-dumping duties which are really unfriendly and could be really hard on them. The protocol of the accession of China to the WTO was not a very friendly protocol, so tough times were already on in Asia, and we are not accustomed to that, so we need an assessment on whether today is really different from yesterday. Maybe it is for the EU and US, but not necessarily for the rest of the world.

Secondly, there is the relationship between trade and international politics. Everybody has mentioned China, and this is the big change. The conflicts during the 1960s and 1970s were quite different in terms of structure, because the US-Soviet Union conflict was a very static one. China creates a very dynamic source of conflict because it is emerging, so the key question here is what are the main points at which China is now changing, for example, volatile investment treaties; the BIT between China and Canada is very new and there are some non-reciprocal aspects. What does this mean in the long run in terms of changing the regulations?

One thing which is not necessarily understood is the unfortunate coincidence between the emergence of China and the change in the WTO, simply because the WTO is deepening, meaning that we do not just discuss tariffs but also services and norms, which are regulations, and when you negotiate on regulations you have to trust the partner. It is very difficult to trust 150 or 160 partners, so there is a kind of coincidence in the emergence of China and the deep change in the WTO, which could have happened anyway, and then the rise of free trade agreements as a way to solve these difficulties.

Finally, we have trade and domestic politics. I am amazed by what happened in Ukraine and Russia. We created sanctions against Russia, which of course hurt it and create turmoil in Russia and the EU, but no one in Europe mentioned the option of increasing the integration of the European gas market, because that would have eroded Gazprom's monopoly in some member states. That would have been a little unfriendly for China, but good in terms of financing for Europe and probably good in the long run for Gazprom. Gazprom has in fact lodged a complaint through Russia with the WTO.

Regarding domestic politics, an observer always looks at the majority, and what is happening in all the democracies is that majorities are very thin, and it is very difficult to solve trade issues when you have such a thin majority, because the tiny lobbies can really upset the political balance in the capital cities. Therefore, there are plenty of topics, and we have a splendid panel to discuss them. John Manley was Minister of Finance and Minister of Foreign Affairs; he has really looked at all the aspects. He was also Deputy Prime Minister, and he is now the CEO of Canadian CEOs, so he is now on the business side, and the business equation is very important.

The second speaker will be Alejandro Jara, who started his career at the Ministry of Foreign Affairs in Chile, and in fact he has a long connection with Korea, because he was negotiating the first free trade agreement for Korea, and the Koreans were just starting to learn how to do an FTA and had a very good teacher, so they know how to do it. He was Deputy Director General of the WTO, and today is part of the business community, being a senior counsel at King & Spalding law firm.

The third speaker will be Professor Taeho Bark, who is Professor of Economics at Seoul National University Graduate School of International Studies, but he also has good contacts with the business community, because he was the chairman of the anti-dumping committee, the Korea Trade Commission, so he had to be involved in the details of this anti-dumping affair. He was also Minister of Trade for the Republic of Korea, as everybody knows, and was the minister who launched the South Korea-China free trade negotiations which were concluded a few months ago.

Finally, Mr Pascal Lamy was a member of Jacques Delors' cabinet at a time when Europe was undergoing a lot of regulatory reforms in services, so he has a view on internal affairs. He was Trade Commissioner at the EU and Director General of the WTO, and he is now President emeritus of Notre Europe-Jacques Delors Institute, a think tank based in Paris. It is a splendid panel with all the skills needed.

### **John MANLEY**

Let me say to begin with that I am very pleased to be here, and let me make a couple of disclaimers to start. I am the only non-trade specialist on this panel as far as I can tell, which means I come not only with a pure heart but clean hands. Secondly, at this moment it is 1.58 am in my home, and I may feel the waves of fatigue wash over me at any time, which calls to mind when I was Foreign Minister and travelling all the time. One night I dreamt I was on my feet giving a speech in the House of Commons, and I woke up and I was, so we will see what happens.

This is a panel about trade and politics, and Patrick asked us to talk a little about whether politics is a bigger factor in international trading systems and relationships than it once was. I will argue that this may be a time of great challenge, risk, and opportunity, and much of that will be driven by political considerations, but what has changed is not that politics has become more entangled with trade, but that many other factors are straining the model we have become used to and have been evolving since World War Two.

I will try to make five points. First, politics has always been a factor in trade. It is not that long ago, a century ago, when the trans-border passage of goods was for many governments the only source of revenue they actually had, so how they get their revenue is at its core a political decision. Secondly, think about the implications of the Great Depression in the 1930s, and the passage in 1930 of the infamous Smoot-Hawley Act in the US, which was characteristic of the protectionist sentiment that swept the developed world in that era. Governments felt threatened by the economic circumstances they found themselves in, many governments were overthrown, radical governments came to power, conditions were created that led to global conflict, but at its core was the intuitive belief that the political considerations of the day required greater protectionism.

The post-war global trading system, exemplified by the GATT, was also a result of an alignment of political interests. You had at the time, at least in what we then called the First World, a very dominant US economy, and therefore a US that was prepared to champion liberalised trade, when US corporations were ubiquitous, and when US industrial might made it the dominant supplier of almost everything that the world required, so political interests aligned.

Secondly, I am conscious that I am the only North American on the panel, so I will say some things on behalf of the US which others may disclaim later. Thinking about the North American trading bloc, if that is in fact what it is, it was and it is all about politics. It started with the Canada-US Free Trade Agreement that came into effect in 1989 followed by NAFTA in 1994. Believe me, it was all about politics, and what happened, certainly on the Canadian side, because Canadian governments had lost office over previous proposals on free trade agreements with the US, was that Brian Mulroney, who was in office at the time, literally gambled his government on a free trade

agreement with the US. He built a good partnership with President Reagan, they managed to get it done with, I might add, the Trade Promotion Authority, and it came into effect.

It was President Bush who put NAFTA on the agenda, and you will recall that Ross Perot ran in that election in 1992, and some would say literally managed to cause the election of Bill Clinton over President Bush, so in a sense it may have cost him dearly. Remember the allegation that NAFTA was going to create this giant sucking sound of jobs out of the US into Mexico, but it was President Clinton, over the objections of a majority of his senators, that got NAFTA through Congress, and NAFTA was adopted almost simultaneously with the completion of the Uruguay Round and the Maastricht Treaty. Therefore, many things were happening simultaneously at that time, and I would have said, as a member of the Canadian Government at that time, that I believed we had embarked on a process that would keep trade moving forward. Peter Sutherland famously commented that trade negotiations were like riding a bicycle, that if you did not keep moving forward, you could fall off.

Thirdly, regional and bilateral trade negotiations are a rational response to the failure of the Doha Round. Saying that Doha was ambitious would be a bit of an understatement, and my colleagues on this panel, particularly Pascal, probably know how frustrating it was to try to build a consensus around the path that Doha sought to set out, involving developing economies as well as developed ones. Therefore, the rational response has been to develop regional agreements, criticised as a spaghetti bowl, but really it is the only pluri-lateral game in town. The Canada-Korea agreement comes into effect three weeks from now, and Canada-Europe is in the ratification process, the negotiations having been completed, but these agreements are increasingly consuming most of the political and business energy that is devoted to trade, because there is a sense that these discussions might actually lead to outcomes.

Fourthly, this will not get any better, because the world is increasingly complex, and our political economies are all engaged in dealing with a myriad of very deep and difficult issues, some of which we have talked about over the last two days at this conference. The World Economic Forum recently came out with its global trends for 2015, and the trends they pick out are hard to argue with: deepening income inequality, persistent jobless growth brought on by technological progress and automation, lack of leadership, including the international community's failure to address issues like global warming, rising geostrategic competition among key actors, the weakening of representative democracy, rising pollution in the developing world, increasing frequency of severe weather events, intensifying nationalism, increasing water stress, and health as a critical concern in the economy. How is that for a cheery list of issues that leaders have to deal with? Anyone who wants to volunteer for an alcohol-induced coma may go to bar after dinner this evening, but these are the issues that are top of mind in each of our countries.

The common thread is that politics drives the responses to all of these mega-problems, as you might call them, and it is in this context that trade negotiations are carried on. This makes the traditional trade-offs of a traditional trade negotiation much more complex if not entirely impossible. Finally, notwithstanding all of the above, the process of globalisation is irreversible, and there are several reasons it is an increasingly difficult world in which to carry on traditional negotiations. First of all, supply chains are established, and not only supply chains in terms of how goods and services are produced, but the ageing demographics of some economies will need to be offset by the more youthful demographics in others, so quite apart from an arbitrage of labour rates, there will need to be an arbitrage of availability of labour forces.

The second factor is that, in aggregate, the world is awash in energy supply; even if distribution may be an issue in some places, there is a lot of supply. Technology is ubiquitous and available, and capital in search of investment opportunities is not restricted by national borders to any great

extent, nor is it in short supply, so the promise of continuing to raise living standards is, as we have seen over the past 20 or 25 years, is very much alive based on a continuing growth in trade patterns.

Therefore, in answer to your question, politics is indeed alive and well in trade, but it has more or less got us to where we are today. There are no really easy answers to dealing with some of the political conundrums that confront us and create the context for these negotiations, but we need to keep moving forward. Regionalism is here to stay, so our hope is that regional agreements, where they are being negotiated, bring out the greatest possible ambition in their members, and in this way they can spur others to keep up and become building blocks rather than stumbling blocks to greater global integration.

Politicians need to call on trade negotiators to design these regional agreements, whether they are TPP, TTIP or others, in such a way as to make them interoperable with the global trading system. Finally, regional agreements need to continue to inspire global trade rules, or at the very least extend special rules to developing nations. Creating walls rather than bridges within regional agreements risks leaving large parts of the world, such as Africa and the Middle East, behind, and that in a very real way could result in the trade system undermining global security. When you create a system where some groups are outside and feel particularly deprived, that is the key to issues such as regional disparities of income and levels of unemployment that in turn feed regional insecurities and conflict.

### **Patrick MESSERLIN**

What I took from your points, firstly, is that there is a kind of slowdown, that we are trying to do more and more but at the same time are doing less and less. It takes a long time now to negotiate an agreement, even a bilateral one, and it takes an even longer time to vote on an agreement. I am a European and you are a Canadian; we know what happened to the Europe-Canada FTA. It has never been so long between going from a text to something adopted by the parliaments, so there is really a very serious problem here if a machine is slowing down while still trying to make some progress.

The other point I will take from your speech is that we should not keep people outside. You mentioned the developing countries, but with TPP and TPIP we might be trying to keep somebody else outside, which of course is China, and we should be very careful about this kind of situation. Alejandro, it is your turn to make your main points.

### **Alejandro JARA**

It is a pleasure and an honour to be here today. There is no doubt that there is an increased interaction between trade and politics. Trade is very much political, but there is increasing friction. I would say on the domestic side that, as the trade agenda becomes more intrusive, touching on areas which are not part of the traditional agenda of trade, sensitive areas of public opinion and the body politic, there is an increasing concern as to the trade policy of a particular country and its trade relations, for example issues about supply of services and immigration, issues about food safety, questions about public morals, multinational companies that sue governments in international jurisdictions, which also becomes a concern in many jurisdictions, and so on. This is increasing, it is only starting, particularly, to quote my former boss, as we move on from economic systems designed to protect the producer and evolve into systems more designed to protect the consumer, the whole area of regulatory matters and collective preferences becomes more crucial and thus more political.

There are several aspects to this from an international dimension. One that we have seen in the last few years, particularly since the crisis, is more protectionism all around. Countries find it more

expedient to use trade restrictive measures, measures that discriminate against a foreign supplier of goods or services, including, in some countries, anti-dumping measures. These measures are applied on automatic pilot, meaning that the governments have no political control over the application of such measures, and thus they have no consideration about the external relations dimension or of the welfare of the economy as a whole. That is one aspect, and I cannot but underline the degree of concern as the stock of protectionist measures increases. It was about 3% of world trade a few years back, but now it must be around 5% and counting.

Another international dimension is what I would call abuse of power, for lack of a better term, for example, when countries use the WTO dispute settlement system they sometimes do not comply with the rulings or only do so in part, and there are some long-standing disputes which are still pending, some having to do with the US, in terms of anti-dumping, others having to do with intellectual property, such as the Havana Club or more recently paying compensation without removing the offending measure, the US in the case of Upland Cotton and also with Indonesian clove cigarettes. I will not bore you with the details, but the fact is that the system is used, but somehow at the end of the day the offending measure is not reduced and the problem is not solved, even though at the time some form of compensation is made to the other party. That is not good at the end of the day.

You mentioned China, and China's accession is a good example of what I would call a certain abuse of power. I think China was mistreated on its accession by imposing more obligations and conditions on it than with other members of the WTO. This sort of discrimination does not fare well with China, or with any other country, by the way, so it must have a political consequence at the end of the day.

Thirdly, I would also say that there is an increasing inability to solve, for lack of a better word, imbalances in the trading system. Here we have a system that must evolve into 21<sup>st</sup>-century issues, but it still has a backlog of traditional issues which lag behind in terms of the quality of the rules and of liberalisation. I am talking here of domestic support for agriculture, of fishery subsidies and other areas, and inasmuch as regional and bilateral trade agreements can go deeper than the WTO, they do not address these issues, thus these issues are left pending without much multilateral action. It creates irritation, and the interests of a large number of countries, particularly the poorer ones, are left unattended while the rest of the world may try to solve some of its agenda and get better international cooperation on a bilateral basis, thus creating several layers in the system, which is not politically healthy.

Therefore, it is quite clear that we need more and better rules for international cooperation, but here we run into the political question of where the energy to do all this will come from, where the leadership will come from, and an earlier panel used the word 'retrenchment' of the US. Here is an equivalent concept: one traditionally looked at the US for leadership, and this is largely non-existent today in the field of trade, and it is not coming from Europe either, so we have a vacuum of vision with which to contemplate what the field of international economic relations in the field of trade will be in ten or 15 years. That is lacking today, and that is politically unhealthy, to say the least.

### **Patrick MESSERLIN**

You added two extremely important points, the first being the old issues which are still there. It is really dispiriting in Europe. We tried very hard to lobby against the farm subsidies, and today very little has happened; things are in slightly better shape, but the amounts are the same. It is the same situation with fisheries. These small lobbies are still extremely powerful, and when you design a

bilateral trade agreement it is even worse, because the trade negotiators exchange quotas, meaning that the whole thing is frozen forever.

The second point I would like to come back to is the lack of leadership, and I will just give a figure. President Reagan got 90% of the electoral votes for his second term, so if a tony vested interest comes to the White House and wanted some subsidies or opposed some tariff reduction, Reagan could say he had a substantial majority. President Bush, the second, got 50% of the vote, so a tiny vested interest could upset its free trade instincts, and that is not only in the US but everywhere, including the UK, and we can see that now in the UK. The question is whether our domestic or national constitutions are up to the task, because we have to review them in order to know what will happen. Yesterday my counterpart, who is British, told me that we should have something like mandatory voting, because the Scottish referendum shows that when everybody votes things are in much better shape because then you have the pros and the cons, but before this vote everybody was thinking that Scotland could leave the UK. Therefore, there are these small problems in constitutions which are very important for the future of the trade system.

### **BARK Taeho**

Patrick prepared some discussion points at the beginning, but trade and politics is a huge topic. I teach a class on trade and politics, because trade policies are very much related to a political process, we call that the political economy of trade policy. Trade impacts the economy in competing ways, so there is always political discussion on the trade policy area. However, on this occasion I want to pick up on three issues, the first regarding China, the second regarding the multilateral trading system, and finally to give you some Korean experiences.

Let me start with the rise of China in the field of international politics and trade. Looking back some years, for example 2001 when China acceded to the WTO, and at the domestic situation, China's accession was very important for its economic development and also its economic restructuring. The Chinese Government wanted to reduce the inefficiencies of the domestic economy through promoting competition, and this was China's so-called fundamental policy stance at the time of reform through opening up, reflecting the policy guidelines of Premier Deng Xiaoping.

However, as time goes by, especially as regards trade liberalisation, China seems to think it engaged in too much market opening when it acceded to the WTO, and therefore it now takes more passive positions in the recent trade negotiations such as the Doha Round. Chinese leaders now pay more attention to the issues of distribution and employment due to the emergence of income inequality and imbalanced development among different regions in China. Therefore, China now takes a very cautious approach to trade liberalisation; that is how I understand it. The central government is concerned about domestic political resistance from industries, labourers and even from local government officials, so, in other words, a top-down approach is no longer valid in China.

Having said that, I would like to address the suggestion of what we should do with China, and this is based to some extent of my own experience in dealing with China. It is more important to have continuous communication with Chinese leaders and persuade them to participate in the multilateral efforts to achieve a more open world trading environment rather than isolating or containing and marginalising China. That is just a simple suggestion I want to make.

Let me just turn to multilateralism. The multilateral trading system worked better in the past, since its scope of liberalisation was rather low, and also because it was dealing mainly with border measures, but when the multilateral trading system started dealing with services, investment in IPRs and some social issues like the environment, it encountered huge limitations. Furthermore,

we now have emerging large economies that are starting to make their own voices heard, and the expected economic gain through multilateral negotiations differs between countries.

Therefore, with these kinds of development, the consensus-based decision making process or mechanism of the WTO faces serious limitations. Many people say we need political leadership to resolve this, especially at the top level, but if you think about the G20 summits, of which we have had nine, we have observed that even the G20, the premium world economic forum, cannot resolve the problems of the Doha negotiations. Some members simply think that the G20 is a gathering of 20 out of 160 WTO members, so we have to discuss honestly how to save the Doha Round and the multilateral trading system with all options open. This is one thing I really want to emphasise.

Let me quickly turn to the Korean experience. Korea has experience of more than 20 years of market opening on various occasions, including the Uruguay Round, the bilateral FTAs and also bilateral conflict with the US through Super 301, etc. Regarding domestic political resistance to market opening in Korea, it seems, in my personal opinion, that market liberalisation through the multilateral trade negotiations faced relatively less resistance compared to those through bilateral FTAs such as the Korea-US FTA.

Regarding the Korea-US FTA, in addition to the fact that it has very high levels of market opening, there are some further components, such as groups with anti-American sentiment, which is why we have more political resistance against the Korea-US FTA. There are also many domestic concerns about the Korea-China FTA, which was recently completed, but domestic political resistance is not very significant so far. The reason is that the Korea-China FTA has relatively low levels of market opening compared to our FTAs with the US and the EU. Therefore, in sum, as far as domestic political resistance is concerned in Korea, the main factor seems to be the level of market opening. That is a very important factor in determining domestic political resistance.

However, at the same time Korea also has 20 years' experience of providing compensation to the industries which are negatively affected by market openings, and in order to mitigate domestic resistance, it would be extremely important for the government and experts to provide fact-based information to the general public and NGOs as far as possible. What I am saying here is that we cannot avoid domestic political resistance, but we have to ask what we will do about this in the future. We have to provide more accurate information.

We are not talking about PR or advertisement for the government, but we have to provide information based on objective and professional analysis; this is very important. We have so far given a lot of compensation to losing industries, particularly the agriculture and livestock industries, whenever we conducted trade agreements through either multilateral or FTA negotiations. Now it is time to analyse the effects of market openings as well as the various types of compensation, so the government and various research organisations should inform the general public and NGOs of these results, so that in doing so, governments can also make their compensation schemes much more efficient.

Furthermore, consumer groups are now complaining that the prices of imported goods do not go down even after the implementation of the major FTAs with advanced nations like the US and the EU. This may be happening because our distribution services in Korea are not very competitive or even in a monopolistic situation, so government should investigate and also undertake proper reforms of the distribution services industry if necessary.

### **Patrick MESSERLIN**

That is what I call the glass of wine syndrome in Seoul; it is always the same price in all the hotels and did not change very much. There are two very important points. What you have observed is

happening in Europe, there is an increasing resistance to the bilaterals, so the WTO is not alone on the dark side, and in fact I sometimes wonder whether the resistance to the bilateral agreements will not be even stronger than the resistance to the WTO. It is really important, as you mentioned, for the government to provide accurate information; it looks simple, but it is not done. I have just one example on state investment dispute settlement. Everyone in Europe believes that it is an American devil, but in fact we Europeans are the major users, and the member states are the winners in this game, so we are killing ourselves just by total ignorance of this fact, and that is something which really requires a serious effort from both government and business, because business also needs to provide this kind of information.

### **Pascal LAMY**

Trade politics have always been there, as has already been said in the discussion. From the moment the King of Crete signed the first commerce treaty with the Pharaoh Egypt, we entered into trade politics. However, my feeling is that the relationship between trade and politics, whether domestic or international, is fundamentally changing as we are transitioning from an old world of trade into a new one, and we are somewhere in between these two worlds. The old world of trade was one where production was national, and the purpose of obstacles to trade was to protect domestic producers from foreign competition. That was the world of the Mandate of the Doha Round.

The new world of trade is totally different. It is a world where production is transnational, and where obstacles to trade stem not from measures to protect the producer but from measures to protect the consumer, or, more precisely, from differences in measures to protect the consumer. What does not change between the old world and the new world is that trade opening works for growth and welfare under a number of conditions, but that is not the purpose of today's discussion. What does not change either is that trade opening is about levelling the playing field.

However, what changes enormously is the way to level the playing field. Levelling the playing field is one thing if it is about protection, but it is another if it is about precaution. Why is it different? The purpose is different and the politics are different. The purpose is different because in the old world the name of the game was relatively simple: you reduced tariffs or trade-distorting subsidies, and the intellectual horizon was quite simple, with zero tariffs and zero subsidy, and you had finished trade opening in the old world. Getting there is complex, because tariff structures are different, because the capacity of countries to subsidise their producers is different, but you get there by working with trade-offs. I trade off my tariff on bicycles against your tariff on scrap metal, and we both do a good deal.

Looking at the area of consumer protection, such as safety, security, environment, health, car equipment standards, maximum pesticide residues in flowers, prudential regulations in banking and insurance, etc., is a totally different ballgame. The purpose of trade opening and levelling the playing field is not about getting rid of the measures; in the old world you get rid of protection and the job is done, whereas in the new world, there is no question about getting rid of precaution, and if anything precaution will grow. The name of the game is getting rid of what constitutes an obstacle to trade, which is discrepancies in the way precaution levels are set, and sometimes, even more importantly, discrepancies in the way precaution levels are implemented, because if I am a producer of cut flowers, tariffs are not the problem anymore. Let us assume the agreement will cut the costs of crossing borders because of administrative red tape and so on, so I am left with different pesticide residue standards all over the place, which is a problem for me, because I could produce and sell cut flowers much more cheaply if I did not have to adjust to different levels of maximum pesticide standards, and also different levels of tolerance for the machines which measure maximum pesticide levels.



That is where it is very different, and this is where the politics of levelling the playing field also changes a lot - it changes domestic politics and it changes international politics. It changes domestic politics because, if I am a tariff trade negotiator, my politics is that I have producers against me and consumers with me. I have a few loud voices of producers who scream that I am going to increase competition, and I have a vast majority of half-silent consumers who are happy with lower prices. It is the other way around if I am in the business of precaution - I have producers with me, because they are happy with the hope that they will realise economies of scale with a single standard, because of regulatory convergence, harmonisation, mutual recognition, etc., I will have consumers against me, or more precisely, what matters in politics, which is consumer organisations. The voice of consumers in politics is with consumer organisations, and consumer organisations are, shall we say, virtuous paranoiacs, they always recruit their members by saying they will be protected against a risk which they are running if the organisations are not doing this job, and that of course is a totally different game.

It is the same in international politics. The old world of trade was a world where you could have preferences. I would have a tariff on roses of zero percent for Rwanda, 20% for Costa Rica and 40% for Israel, because I want to be pro-development, so I have three levels, because Israel is a developed country, Costa Rica is in the middle, Rwanda is a poor country, and everybody is happy with special and differential treatment, as we call it in the WTO. Preferences disappear if it is about precaution. Special and preferential treatment, pro-trade development policy run this way, is dead in the new world. I would not have different pesticide residue standards for Rwandan, Costa Rica or Israeli roses; I would have one, because it is about health, and my regulation is about protecting health.

It also changes the whole problem of the relationship between multilateral and bilateral systems, about which academics have written tonnes of pages, too many tonnes in my view, because it does not really work that way in reality. What changes is that the criticism of bilateralism, that it is preferential and that it discriminates, is not valid for precaution; by definition, precaution, as I said with my example of roses, does not discriminate anymore. A bilateral regulatory convergence between, let us say, the EU and the US, will not be discriminatory; on the contrary, today the EU and the US are implementing precautionary regulations for exporters into the US or the EU markets. Were they to become the same, exporters in the EU and the US markets would be happy, which, by the way, was what happened when the EU switched from the common market to the internal market in the 1990s.

Therefore, it is a totally different world with totally different politics, and to conclude with an example, it is because they did not get this difference that both the EU Commission and USTR mishandled the start of the so-called negotiation of the TTIP, which by the way should not be called a negotiation; it is a regulatory convergence process. The way you name things matters in politics, and naming this a negotiation gave the impression to public opinion on both sides that it was about negotiating precaution, so Europeans started fearing that they would have to eat chlorinated poultry and Americans started to fear that they would have to eat European cheese full of bacteria. The narrative was wrong, which is why this negotiation, the first of the negotiations in the new world, is in bad shape, and this is one of the reasons why, even more than in the past, it is a question of transparency.

You could handle negotiations on tariff quotas on socks or shirts to some extent, in some secrecy. But if it is about precaution, if it is about harmonisation of regulations, the purpose of which is to establish and administer precaution, you have to be ten times more transparent, and in this area, trade negotiators, unfortunately, also live in the world of 20 years ago instead of 20 years to come.

**Patrick MESSERLIN**

I was very interested by John's point at the beginning that globalisation is irreversible, and you said that after a list of all the problems that we have to face, so I was scratching my head over how to reconcile these two things. Regarding Pascal's comments, I think we have changed the system of negotiations, and the word is a bad one. My question to all of you is whether we are not going to a new kind of unilateral liberalisation, because when you are discussing regulations, you want to have the best regulations for your own sake. You do not want to have the best regulations for the pleasure of your partner, but you want the best regulations from your point of view. I am wondering whether in fact TTIP, TTP and all these mega trade agreements are not missing the main point, that we have to be really innovative in terms of negotiations.

This means that we could do something with China in certain aspects. It has been going on for a very long time, of course, but we could be much more pragmatic, and we could involve business to a much greater degree, because business has an idea about which regulations are the best, as they know both sides. Many firms know very well what the consumers want, and they also the regulatory burden that they need to achieve in the markets. This is a question for all of you. The way to go should not be to abandon the WTO, because it still has tariffs to negotiate, and not necessarily to abandon the bilateral trade agreements, because there are some things we could do in terms of the bilateral aspect. Could we not recognise that now we are in a world where trade negotiators are not only trade people but regulatory people as well? We have tried to do that on the transatlantic discussions between the US and the EU, and maybe we have done that between Canada and the EU. Is that not the way to go for all of you?

**John MANLEY**

Let us not be naïve, because these regulatory measures have at their core a purpose of protecting consumers, but they can also be used to protect producers, and what we face in many of these regulatory negotiations is this tyranny of small differences which actually do not make anybody safer in a practical way, except they may make them feel safer occasionally. You have the virtuous paranoids that Pascal has referred to, and that is fodder for all kinds of argumentation which might be quite spurious.

**Patrick MESSERLIN**

Before the others join in, since you are in the business, when you talk to the independent regulatory bodies, as opposed to the government, they may be on your side and recognise that in fact they would like better regulation. That has happened with the phytosanitary standards; the French regulators would like to have better regulations than the current ones. Are the regulators not good allies in this case? At least they can be.

**John MANLEY**

You can find examples where they can be allies. Some regulators also take great pride in having what they consider to be the best system, whereas you can often make a very strong case that regulation is not efficacious, does not do anything but add cost, or essentially functions as a barrier to access to products that are equally good, equally safe, or equally useful.

**BARK Taeho**

I totally agree with Pascal's discussion on precautionary regulation or trade measures, but this is too complicated. We can talk about this, but how can we resolve this? When you get regulators involved in this kind of situation, maybe advanced countries such as the EU or the US can share

some commonalities, but if you talk about advanced versus developing countries, regulators are more protectionist than trade negotiators. I know this is a good area to handle, but this is a very difficult reality we have to face.

**Patrick MESSERLIN**

Do you put Korea among the developing countries?

**BARK Taeho**

I am saying that Korea will have similar problems. Take safety regulations on auto parts: even through FTAs, we have to open up all the parts and see whether these regulations apply or not, and it is very complicated. This is my first impression.

**Alejandro JARA**

Let me take as an example the experience over 20 years of negotiations on services and investment, bilaterally or even under the WTO. The evidence of actual liberalisation taking place as a consequence of a trade negotiation is very small. Most of the liberalisation is unilateral, and what these agreements do, at least on a bilateral basis, is capture that bilateral liberalisation and do not allow any back-tracking or rollback. It even has the opposite effect, as a matter of fact: if you change an existing restriction, that becomes the new level of liberalisation. Therefore, you can say you are negotiating, but in practice it does not take place. It binds what you have just done, you keep it there, and if you move, you move only in one direction, more opening, and the virtue of these agreements, bilateral or WTO, is that they prevent any discrimination. However, even so, when you apply regulations in the fields of services and investment, it is almost impossible and makes no sense to apply them on a preferential basis, as Pascal has said.

**Pascal LAMY**

John is perfectly right that there remains a grey zone between protection and precaution. If I, as a European, tried to export locomotives to Russia, it would not work, because the Russians have very strict specifications that only Russian producers know how to match; this is a confusion between precaution and protection. However, this issue is under the jurisdiction of the WTO. There is a sanitary and phytosanitary agreement; there is a technical barrier to trade agreement in the WTO that establish a balance between the principles of protection and precaution, so if there is an issue there, you have a system that can deal with it.

Regarding Taeho's point, what matters in this new world, where the issue is about regulatory convergence, is who the standard setter is, where the world standard for car safety equipment is established. There are a few areas in the international system today where there are multilateral standards; take the Codex Alimentarius used for food safety, which is a joint operation between the World Health Organisation and the Food and Agriculture Organisation. You have a multilateral standard in some areas of food safety, which is usually rather low - it is usually the lowest common denominator - and nobody is obliged to remain there, and can go above in a precautionary way.

Taking the example of car safety equipment for example, if Europeans and Americans agree on car crash test parameters, which is one of the purposes of the transatlantic negotiation, so-called, this will become the de facto world standard, and Korea, Japan and China will have to adjust to this standard, because both Europe and the US are big car producers, and both Europe and the US are big car importers. Taking the example of food safety, I have no doubt that China, for instance, will import Euro-US food safety standards, because they need this for political reasons in order to

reassure their consumers, as they have had lots of problems with food safety over the last ten years. But I am not sure that China will accept a Euro-US standard on 7G mobile.

These examples are relatively simple issues, which are technical and rational issues having something to do with science, but if you look at the other end of the spectrum, a lot of these precautionary regulations have to do with culture, not with reason but with passion, like GMOs or data privacy. The US and EU, to take these examples, have fundamentally different views as to whether GMOs are good or bad, and this is a value scale, or whether data privacy should be protected or not, and this is very difficult and probably, by the way, beyond reach for the moment.

Finally, on Alejandro's point, the principle of the WTO is that you cannot discriminate against foreign producers. Precaution works fine with this principle, as long as you do not discriminate between your domestic producers and foreign producers on the grounds of precaution, which you should not do, because it is about precaution, not protection. Therefore, in many ways, the multilateral principles are much easier to implement, like the most favoured nation, which is not a problem in precautionary terms, because you treat everybody the same, so in principle it is easier. The problem, again, is that the machinery to get to regulatory convergence is different, not least because it will not be trade negotiators who will establish pesticide residue standards. These guys know nothing about pesticide residue standards, Ractopamine in pork, or crash tests for cars; this rests with regulators, so this also changes the political economy of the negotiation.

## **Debate**

### **Shotaro OSHIMA**

Thank you so much for this wonderful and informative panel. I have a very simple question. There was a reference to regulation over data privacy. The new trading sphere is, not dominated, but influenced very much, by the Internet, cyberspace. Could each of you say a word about the future of trade politics in the area of cyber trade?

### **Bejamin LANCAR**

My question regards the issue of the French cultural exception. I wanted to know whether you consider this as a sustainable exception or a short-term exception in the ocean of globalisation.

### **Pascal LAMY**

Regarding the second question, I am happy that John is on this panel, because it is not a French issue, but a French and Canadian issue. Canadians in their trade agreements with the US, which as we know are wide-ranging and very deep, have preserved cultural diversity, and for a simple reason. I am not saying this because I am French, but because it is my own experience. The notion that the larger the market the better it is for the consumer does not always work, and probably not in culture, so there are good reasons to believe that trade opening is great for tyres or shirts or socks, but it may not work the same way for cultural goods and services.

Regarding data privacy, we could have lived during different centuries with different views on whether data privacy should be protected or not and how, and it has to do with the perception of individual freedom, the relationship to the rights of the state, etc., but that is over; with data mining and the huge commercial value of data files which are exchanged all over the place, there has to be some sort of common approach, and if you do not have that, some will believe that their data is being poached, and others will believe that this is just blunt protectionism. However, this is terribly difficult, because it is culture, it is even philosophy, it is ideology, and that gets to the fundamental

question of how much convergence on value issues will you need in the future to keep opening trade and benefiting from the efficiencies of globalisation.

We have done the easy job, which is getting rid of measures which are ideologically flat, like tariffs, because bicycles are the same everywhere, cut flowers are the same everywhere, and scrap metal is the same everywhere. We are now entering a phase where, in order to keep benefiting from globalisation, i.e. larger markets and larger economies of scale, we have to look at issues which are much more sensitive. The politics of trade negotiations were complex in the past, and they are now going to be much more complex in the future, but the price of resolving these difficulties is also much higher now than it was before.

### **BARK Taeho**

Regarding the question on e-commerce or cyber-commerce, I am not an expert on this, but I already spoke about the inefficient distribution system for major items in Korea, and we are now allowing our consumers to buy directly from all kinds of global supermarkets and department stores. We designate a total amount – USD 300 or USD 500, I do not know exactly - and for that they can buy directly from abroad. Actually, this is putting a lot of pressure on our department stores and shops that sell luxury items. People are now travelling abroad and compare the prices, and they can come back home and buy directly from foreign shops. Therefore, I think this is making some contribution to benefiting consumers in addition to the FTAs we are putting in place.

### **John MANLEY**

Before I jump into the cultural discussion, one of the interesting things that has evolved in cyberspace is the difference in practices around protection of data which is stored, and this is particularly the case with some of the implications of the Patriot Act in the US, which gives government quite generous access to data storage; I think that may be what Pascal is alluding to in part. What is happening is that this is actually distorting how large data is managed, so that companies that provide software and other services, including data storage and data storage facilities, are increasingly having to contract that in no fashion will data for which they are responsible find its way through their storage facilities into a jurisdiction where governments have access to it. You could say it will increasingly become a trade-distorting reality, but it is rooted in some of those principles that we were talking about.

Regarding culture, I did not particularly want to jump into it, because my view does not necessarily reflect that of the Canadian Government, including that of which I was a member. What happened is that we devised systems that worked very well in a world in which the spectrum for delivery of broadcast, distribution of films, and so on, was limited. We now have a world in which the spectrum is unlimited, in which you have broadcasting or narrowcasting through the Internet, in which any movie anywhere can be available any time without restriction through Internet services. For example, some of the measures in the Canada-US FTA, which were continued in NAFTA, which gave some protection for Canadian cultural industries, were just ineffective. They are still there, but for a small country beside a large market, as Canada is beside the US, if we want our own cultural industries we will have to directly subsidise them, which is entirely permissible but which accounts for the lack of scale in a market that is one-tenth the size.

Good luck on TTIP, but it is something that will have to be looked at from an evolutionary point of view, because the truth is that we have a very dynamic and engaged cultural industry in Canada, and we have a broad appreciation of our stars, especially when they move across the border to the US. However, Canadian consumers buy US productions in much larger numbers, so if you want it, you will have to pay for it in a subsidy process in my view.

**Alejandro JARA**

Regarding the question on the French cultural exception, culture is like agriculture, and the word has the same root. There are very good reasons why agriculture and culture should be protected and promoted; the question is the instrument used to do that. For example, in many places where beneficiaries of cultural special treatment, they love screen quotas and rents, and dislike systems of direct subsidisation, which in my view would be the best way to do it, because it is more direct, more transparent, and at the end of the day more competitive.

For example, in my country, Chile, they just established a norm whereby 20% of the music broadcast must be Chilean, and it really makes no sense, because the definition of domestic music includes a Chilean conductor who has recorded a piece of French music by Debussy with an orchestra in Spain, the whole production taking place in Italy, so the only link to the country is the nationality of the conductor. Therefore, it would be much better if all the promotion and all the protection is done through different instruments. For example, in agriculture it is perfectly permissible, and it should be, for farmers to be subsidised, but not in a way which creates more distortions to trade or becomes more trade-restrictive. Therefore, in France and many other places which deal with this cultural exception, it sometimes comes very close to protectionism of certain cultural industries at the expense of others, whereas there are other instruments which are less trade-restrictive.

Regarding data privacy, by the same token, there are conflicts and problems of different cultural approaches, as Pascal has said, and perhaps we need more international cooperation, but the one thing which I am pretty convinced of is that the answer does not lie in requiring that the data or the servers be localised in a particular jurisdiction, because then what we are really practising is protectionism in the name of data privacy.

**BARK Taeho**

The Korean case could be a good example as far as cultural industries are concerned. We opened up our cultural industries, and now we have young people all over the world promoting so-called K-pop, dramas and all kinds of things, so maybe this could be a good example of successful market opening even for cultural industries.

**Patrick MESSERLIN**

You could not have said it better. A colleague of mine, Dr Park, has written a paper on Korean cinema policy, and you are in the best country to provide a counterexample to France, with almost no subsidies, a screen quota which is totally ineffective, and a thriving industry. We are wondering what is going on, and what we did with Dr Park was try to import the Korean experience into France, because the level of attractiveness of French movies is flat and subsidies have increased by 80% over the last ten years, so something is going wrong. Therefore, trade forced the country to look at its own domestic regulatory reforms.