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THE WORLD TRADE ORGANIZATION AND THE DEVELOPING COUNTRIES

by

Rasheed Khalid, Philip Levy
and Mohammad Saleem

Pamphlet Series 31

Vienna, Austria
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ABSTRACT

The primary objective of this study is to highlight, analyze, and discuss fundamental features of the World Trade Organization (WTO) that directly affect OPEC member countries and other developing countries.

The study is organized in three main parts:

- Part I describes the origins, underlying economic philosophy, and basic principles of the WTO, with particular reference to the formal and informal "rules of the game" set out for the new organization. It also provides a critical review of the procedures and decision-making process of the WTO.

- Part II examines key issues that are particularly relevant to OPEC member countries and other developing countries. These include the built-in agenda of the WTO; special and differential treatment in favor of the least developed countries; and the accession of OPEC member countries and other developing countries to the WTO.

- In Part III, the study concludes by highlighting the key findings and recommendations that OPEC and other developing countries might consider with a view to maximizing their gains from integration into the world trading system.

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I. HISTORY AND BACKGROUND

1.
The World Trade Organization: Its Origin, Basic Principles, and Main Rules

Introduction

The World Trade Organization (WTO) is new as well as old. It is new in the sense that the Marrakesh Agreement Establishing the World Trade Organization only entered into force in January 1995. However, the WTO is the continuation of an old idea that originated in the 1940s and was formalized in 1947 in the form of the General Agreement on Tariffs and Trade, the GATT.

The WTO provides a framework of rules for the conduct of world trade in goods and services, and the trade-related aspects of intellectual property rights and investment measures. These rules, which embody the multilateral trading system, will have a profound impact on international trade and on the world economy well into the twenty-first century. The WTO also provides a forum for trade negotiations and an institutional mechanism for the implementation of some 20 agreements and legal texts negotiated in the Uruguay Round.

The Origins of the WTO

The underlying idea and the conceptual origin of the WTO goes back to World War II. The leaders of the allied powers were of the view that one of the main causes of the war was the failure of the open world trading system in the 1930s. They agreed that the enduring peace and welfare of nations were inextricably connected with mutual friendly relations, fairness, equality, and the maximum predictable degree of freedom in international trade.

Soon after the war ended, preparations for creating a new international economic order commenced. One of the important pillars of this new order, embodied in the Bretton Woods Institutions, was the establishment of the International Trade Organization (ITO), along with the International Monetary Fund, and the International Bank for Reconstruction and Development (The World Bank).

The United Nations Economic and Social Council decided in early 1946 to hold an international conference to draft the charter of the ITO. It established for that purpose a preparatory committee that held its first meeting in London in October of the same year. After further preparatory meetings, the UN Conference on Trade and Employment was held in Havana, from November 1947 to March 1948. The end result of this conference was the Havana Charter, which contained the objectives, principles, rules, and institutional setup of an International Trade Organization. The Havana Charter was signed on March 24, 1948 by representatives of 54 countries.

In tandem with the preparations for the ITO charter, some 23 members of the preparatory committee carried out negotiations for the reduction of tariffs, which at that time were the main obstacle to international trade. In order to implement and secure the results of tariff reductions in advance of the ITO, it was decided by the 23 countries to establish an interim agreement. Accordingly, they agreed on a General Agreement on Tariffs and Trade that was based on the chapters on trade policy in the draft charter of the ITO.[1] The results of tariff negotiations were inscribed in country schedules annexed to the text of the GATT and became an integral part of it.

The General Agreement on Tariffs and Trade was signed by 23 countries on October 30, 1947 and entered into force on January 1, 1948. It was a provisional agreement without an institutional setup because it was envisaged that it would be taken over by the ITO.

The Havana Charter never entered into force because it was not ratified by the US Congress. Thus, the GATT remained the only legal framework of rules for the conduct of world trade for almost half a century. However, the GATT regulated only trade in goods. It did not cover services or investments.

Over the years, the GATT ensured liberalization of world trade through the elimination or reduction of tariffs and other barriers to merchandise trade. It was responsible for the manifold expansion of international trade. The greatest achievement of the GATT was establishing its role as a rules-based system for the conduct of trade relations among nations, which averted further 1930s-like economic depressions.

However, the GATT also had its failings. GATT rules never fully applied to agriculture, and its basic principles and some of its main rules were rendered largely inoperative in the case of textiles and clothing. The GATT also lagged behind new developments in international trade. Initially, its rules applied to trade in goods only. Trade in services, which had grown rapidly and had become an important and dynamic element of international trade, was not subject to GATT rules.

When the Uruguay Round negotiations started in 1986, it was not envisaged that a new organization would be established to implement the results of the negotiations. However, as the negotiations developed and growth in

1 The Havana Charter also had other chapters on employment, economic development, commodities, competition and restrictive business practices.

two new areas, services and intellectual property, became increasingly visible, the countries taking part in the Uruguay Round started focusing on the need for establishing a permanent institutional setup to implement and jadminister the results of the negotiations. It was agreed that an umbrella organization was needed to house the outcome of negotiations in goods, services, and trade-related aspects of intellectual property rights, and to implement the 20 or so agreements and legal texts negotiated and accepted as a single undertaking.

The charter of the World Trade Organization was elaborated during the last several years of the Uruguay Round negotiations. It was formalized in the Marrakesh Agreement Establishing the World Trade Organization, signed in Marrakesh on April 15, 1994. After necessary ratification, the agreement entered into force on January 1, 1995.

Economic Philosophy of the WTO

The WTO and its predecessor, the GATT, which is now subsumed in the WTO and represents one of its important pillars, are based on the rationale that an open and liberal trading system, underpinned by mutually agreed and legally binding rules, is a sure recipe for growth of the world economy. An open and liberal trading system is the foundation of economic development, ensuring expansion of world trade, expansion of investment and production, job creation and, consequently, of an increase in global living standards and greater prosperity.

Realization of these objectives depends on the stability and predictability of the trading environment, conditions pursued by the WTO through its various built-in mechanisms. In such an environment, businesses, investors, traders, importers and exporters can plan their activities on a long-term basis safe in the knowledge that conditions governing competition and access to markets will not change suddenly.

An open trading system is based on free market philosophy. Government intervention in trade is considered undesirable. However, economic theory has to face practical realities. Thus, while the WTO system basically frowns upon government intervention, it does not totally disallow it. Government intervention is normally to be avoided but, where considered essential to national economic interest, it has to be subject to certain agreed disciplines. The WTO rules constrain the freedom of governments to use specific trade policy instruments.

Whereas liberal and open trade is good for different countries, the realization of this objective is beset with difficulties. One major problem is the opposition of domestic interest groups. The WTO provides a shield for governments to ward off such interest groups seeking special favors. Governments can maintain that they have legally binding obligations under WTO rules that make it impossible to accept the demands of the special interest groups. Another difficulty is the conflicting perceptions of developed and

developing countries in achieving this objective. Developed nations generally want developing countries to adopt open and liberal trade policies in a short time frame, while the latter favor a more gradual, measured approach, which allows time for adjustment.

The WTO is often referred to as an organization for free trade. That is not true. While the WTO does favor an open and liberal trading system and stands for trade liberalization, it is not a temple of free trade. Although WTO rules do allow reasonable protection to both goods and services, the organization does not call for the abolition of tariffs on imported goods, removal of all restrictions on trade in services, or the elimination of all subsidies and support to domestic industries and agriculture. It does, however, call for reduction and discipline in the use of these measures. But WTO principles and rules do not proclaim free trade as the objective.

Objectives and Functions of the WTO

a. Objectives

The objectives of the WTO, as enshrined in the preamble of the Marrakesh Agreement, are as follows:

> raising standards of living, ensuring full employment and a large and steadily growing volume of real income and effective demand, and expanding the production of, and trade in, goods and services, while allowing for the optimal use of the world's resources in accordance with the objective of sustained development, seeking both to protect and preserve the environment.

A supplementary objective of the WTO is to ensure that developing countries, and especially the least developed among them, secure a share in the growth in international trade commensurate with the needs of their economic development."

These objectives are sought "by entering into reciprocal and mutually advantageous arrangements directed to the substantial reduction of tariffs and other barriers to trade and to the elimination of discriminatory treatment in international trade relations."

b. Functions

The WTO is the legal and institutional foundation of the multilateral trading system. It provides the contractual obligations determining how governments frame and implement trade legislation and regulations. And it is the platform on which trade relations among countries evolve through collective debate, consultations, and negotiations.

The three main pillars of the WTO are the GATT and its associated agreements on trade in goods, the General Agreement on Trade in Services (GATS), and the Agreement on Trade-Related Intellectual Property Rights (TRIPs). These are reinforced by subsidiary bodies and agreements, the most important of which are the Dispute Settlement Rules and Procedures and the Trade Policy Review Mechanism.

The principal functions of the WTO are:

- to implement and administer the multilateral and plurilateral trade agreements that together make up the WTO;
- to act as a forum for multilateral trade negotiations and a framework for implementing the results of such negotiations;
- to seek to resolve trade disputes by administering the Understanding on Rules and Procedures Governing the Settlement of Disputes;
- to oversee national trade policies through the Trade Policy Review Mechanism; and
- to cooperate with other international institutions involved in global economic policy making.

Basic Principles of the WTO

The basic principles of the WTO are built on those of the GATT. Relatively few and simple, they are far reaching in importance, and have been the guiding light for the past 50 years and should continue to illuminate the path of the multilateral trading system well into the new millennium. These basic principles are discussed below.

a. Non-discriminatoryory most-favored-nation treatment

The most important and fundamental principle of the WTO is non-discriminatory treatment or, to be legally precise, most favored nation (MFN) treatment. What it means is simply that any advantage, favor, privilege, or immunity granted by one WTO member to another has to be granted immediately and unconditionally to all other members.

In the case of goods, MFN treatment applies to customs duties, other border duties and charges, rules and regulations relating to imports and exports, methods of levying customs duties, and international transfers of payments for imports or exports. If, for example, a WTO member reduces the customs duty on a particular product imported from a specific country, it has to reduce the duty to the same extent for imports of that product from all WTO members.

MFN treatment also applies to trade in services. A WTO member is under the obligation to give the same treatment immediately and unconditionally to all WTO members that it gives to any specific country in respect to any measure applicable to services. Similarly, for intellectual property rights, any advantage, favor, privilege, or immunity granted by a WTO member to the nationals of one country has to be granted immediately and unconditionally to the nationals of all WTO members.

There are, however, some exceptions to the MFN rule. For example, WTO member countries may grant more favorable treatment to countries with whom they have customs unions, free-trade areas, or economic integration arrangements. Such favorable treatment need not be extended to all other WTO members. In the case of services, member countries may make exceptions for some

measures applicable to particular sectors for a limited period not exceeding 10 years.

b. National treatment

The principle of national treatment implies that imported goods and services and foreign service suppliers will be given treatment that is no less favorable than that given to domestic goods and services and to domestic service suppliers. The principle is observed by giving either the same treatment or more favorable treatment to imported goods and services and to foreign service suppliers as that given to domestic goods and services and to domestic service suppliers.

In addition, whereas national treatment is unqualified in the case of goods, for services it is applicable to those service sectors and sub-sectors on which a WTO member has made specific commitments that are recorded in its schedule of commitments.

The TRIPs Agreement obliges each WTO member to accord the nationals of other WTO members no less favorable treatment than that it accords to its own nationals with regard to the protection of intellectual property rights. There is, however, an exception to national treatment as provided in the Paris, Bern and Rome Conventions.

c. Stability and predictability

The stability and predictability of trading conditions is another basic principle of the WTO. Stable and predictable conditions of access to markets promote confidence because investors and traders can plan their investments secure in the knowledge that market access conditions will not change for the worse. This is achieved through the binding of tariffs and conditions of market access for services.

Tariffs on different products that are reduced or agreed to in trade negotiations are bound; that is, a country agrees that it will not levy tariffs at rates higher than those agreed to. Tariffs on all agricultural products have been bound by each WTO member, both developed and developing. As for industrial products, developed countries have bound tariffs on practically all products, while developing countries have bound them for more than 70 percent of their products. Bound rates of tariffs for different products are recorded by each country in its schedule of tariff concessions and commitments. Every WTO member is required, as a necessary condition of membership, to have a schedule of tariff concessions and commitments.

A similar devise applies to services. Each WTO member is obliged to have a schedule of specific commitments on services that lists the service sectors and sub-sectors for which a country agrees to provide market access and national treatment in its market. Members are permitted to place any limitations or conditions on market access and national treatment. The sectors and sub-sectors of services included in a schedule, and the limitations and conditions on market access and national treatment are bound; that is, they cannot be

changed to make them less advantageous. WTO rules do provide the possibility, in exceptional cases, to change the bindings on goods and services, but this can only be done after negotiations with affected countries and after compensating them. Under normal circumstances, bindings cannot be altered adversely.

d. Transparency

WTO rules oblige member countries to ensure transparency in their foreign trade regimes by requiring them to publish all laws, regulations, measures, and administrative decisions affecting trade. The publication of laws has to be done in a manner that allows importers, exporters, consumers and investors to be aware of them. Transparency is also ensured by requiring member countries to submit periodic notification to the WTO Secretariat on different aspects of the trade regime.

e. Trade liberalization

As mentioned earlier, the WTO is not an organization for free trade, since it does allow protection. However, one of the principles of the WTO is progressive liberalization of trade in goods and services. This principle is rooted in the belief that the removal or reduction of trade barriers results in an expansion of international trade that is to the benefit of all countries. To achieve progressive liberalization, the WTO provides a forum for trade negotiations and a framework for implementing the results of such negotiations.

f. Fair competition

One of the basic principles of the WTO is fair competition in international trade. The rules on MFN treatment and national treatment are designed to promote fair competition. WTO rules also contain disincentives or remedies against unfair competition, such as dumping or subsidization that causes injury to domestic industries.

g. Economic development

Last, but not least, is the principle of economic development of developing countries. There are many provisions in different WTO agreements designed to promote economic development of developing countries and to encourage economic reforms both in developing countries and in transition economies.

Formal and Informal Rules of the Game

The WTO provides a rules-based system for the conduct of world trade. It lays down a binding code of conduct for member countries to formulate and implement their trade policies. The code of conduct contains the rights and obligations of member countries. Most of the WTO rules are formal written rules, but like any body of rules, there are also conventions or informal rules.

The rules of the WTO developed over a period of some 50 years, beginning with the GATT in 1947. The GATT evolved over the years, at times through

revision or amendments but more often through decisions, side agreements, conventions, or generally accepted practices. The GATT also initiated the process of codifying customary practices. The prime example of that was the Tokyo Round Understanding on Dispute Settlement Procedures.

a. Formal rules

WTO rules for the most part are formal written rules. They encompass all areas of the WTO's competence and are spread over some 550 pages. They apply to all merchandise trade, agricultural and industrial products, and services and trade-related aspects of intellectual property rights.

These rules are designed to ensure the achievement of the objectives of the WTO, as discussed above, and to codify the rights and obligations of members. Furthermore, the rules cater for the specific situations of the different areas and sectors of international trade, and regulate the use or rein in the abuses of different trade policy instruments.

WTO rules are organized in three sets of multilateral trade agreements, an understanding, a mechanism, and two plurilateral agreements. The first is the set of multilateral agreements on trade in goods, of which there are 13. The most important of these is the GATT 1994, supplemented by six understandings that interpret or clarify some articles of the GATT. GATT 1994 is legally distinct from GATT 1947. GATT 1994 consists of GATT 1947, as amended and modified since 1947, but excluding the Protocol of Provisional Application; Protocols of Tariff Concessions; Protocols of Accession; and Decisions of the GATT Contracting Parties taken between 1948 and 1993. The other 12 agreements are:

- Agreement on Agriculture
- Agreement on Textiles and Clothing
- Agreement on Subsidies and Countervailing Measures
- Agreement on Anti-dumping
- Agreement on Safeguards
- Agreement on Trade-Related Investment Measures
- Agreement on Technical Barriers to Trade
- Agreement on Sanitary and Phytosanitary Measures
- Agreement on Customs Valuation
- Agreement on Import-Licensing Procedures
- Agreement on Rules of Origin
- Agreement on Preshipment Inspection
- General Agreement on Trade in Services
- Agreement on Trade-Related Intellectual Property Rights
- Understanding on Rules and Procedures Governing Settlement of Disputes
- Trade Policy Review Mechanism
- Plurilateral Agreements on Government Procurement and Trade in Civil Aircraft.

It should be clarified that all the agreements listed in the previous paragraph must be accepted and implemented by WTO members countries, with the exception of the two plurilateral agreements on Government Procurement and Trade in Civil Aircraft, whose acceptance is not obligatory. The rights and obligations in these agreements are applicable only to those countries that accept and are signatories to each of them.

b. Informal rules

As stated earlier, the trend over the past 50 years of the GATT and then the WTO has been to formalize most of the rules of the game. However, there are still some unwritten rules that are, nevertheless, equally important.

The most significant of these relate to the reduction and binding of tariffs. Not only are there no written rules governing the proper level and extent of reduction of import tariffs but, more importantly, there are no rules on the extent and level of bindings of tariffs. Article XI of the Agreement Establishing the WTO does provide that a WTO member must have a schedule of tariff concessions and commitments. However, neither this article nor any other article of the GATT or the WTO specifies what percentage of the total number of items, or on what percentage of total import trade, tariffs should be bound. Since the Uruguay Round negotiations, the informal rule is that tariffs on all agricultural products should be bound. And all WTO members have, in fact, done just that. As for non-agricultural products, the informal rule for developed countries is that tariffs on practically all products should be bound. Some developed states have bound tariffs on all industrial products, while others, including the United States, Japan, and Canada have not bound tariffs on a few items, especially crude oil.

The informal rule on binding tariffs on all agricultural products also applies to developing countries, including the least developed among them. For industrial products, the informal rule is rather diluted. Some developing countries that have bound tariffs on all industrial products, while others have bound tariffs on very few. There are also some countries that have bound industrial tariffs on just 60 to 70 percent of the items.

According to the informal rule tariffs on all industrial products need not be bound and developing countries may bind tariffs on fewer items than developed countries, this rule has been superseded by another informal rule relating to countries that accede to the WTO after its establishment. Acceding countries, whether developed or developing, are required to bind tariffs on all industrial products.

A somewhat similar situation exists in regard to binding commitments on services. The formal rule says that all WTO members must make commitments on services, but does not specify the number of service sectors and sub-sectors, or the level of commitment. The informal rule requires developed countries to make commitments on a larger number of sectors and subsectors while developing countries depending upon their level of development, may make commitments, on a smaller number. The informal rule for acceding countries, especially developing ones, requires them to make commitments on a relatively large number

of sectors and sub-sectors, compared to existing developing country members.

The WTO has no written rules on multilateral trade negotiations. In practice, the basic rules are decided at the beginning of each round of trade negotiations. However, no attempt has been made to agree on detailed rules for trade negotiations that evolve as informal rules during each round of multilateral negotiations. Since the informal rules have an important bearing on the conduct of negotiations, it is important that OPEC members and other developing countries get involved from the beginning of a trade negotiation round in framing and agreeing on the rules for that round. Acting together, they should influence the development of such rules, which would serve to protect their interests during the negotiations.

There are many references to developing countries in the various WTO agreements. But what is a developing country? There is no definition of a developing country in WTO rules. This is yet another area of informal rules, but a rather hazy one. Thus far, in practice – according to an informal rule – the question of developing country status has been decided on the basis of self-election. A country that considered itself a developing country would avail itself of the provisions in WTO agreements relating to developing countries. Developed states would extend special privileges or preferences to developing countries, but only to those countries they classified as developing. This informal arrangement worked reasonably well until recent years. In the case of recent accessions to the WTO, however, difficulties have arisen. Major developed countries have been reluctant to agree to developing country status for acceding countries. They have also tended to refuse to grant acceding developing countries the same special treatment already enjoyed by existing members at similar stages of economic development.

An Overview of the Uruguay Round Agreements

The Uruguay Round negotiations culminated in the Marrakesh Agreement Establishing the World Trade Organization, to which are annexed 13 multilateral trade agreements, an Understanding on Dispute Settlement, and a Trade Policy Review mechanism. A brief overview of the Uruguay Round agreements is given in the following paragraphs.

a. Agreement on Agriculture

The Uruguay Round Agreement on Agriculture sets in motion a reform program aimed at subjecting trade in agricultural products to the market mechanism and at progressively eliminating interventionist policies. The agreement provides for the elimination of all quantitative restrictions and other non-tariff measures, conversion of these to tariffs, and the lowering and binding of all import tariffs. The agreement also provides for disciplines on domestic support and export subsidies to agriculture, and the reduction of these by agreed margins.

b. Agreement on Textiles and Clothing

The Agreement on Textiles and Clothing aims at the progressive phase-out of the multifibre arrangement (MFA) restrictions on textiles and clothing over a 10-year period starting from the beginning of 1995. During that time, textiles and clothing products will be progressively integrated into the GATT, and existing quotas will be automatically increased by agreed-upon percentages. At the end of the phase-out period, trade in textiles and clothing will be governed once again by the normal rules of the GATT, as applicable to all other products.

c. Agreement on Subsidies and Countervailing Measures

The Uruguay Round Agreement on Subsidies and Countervailing Measures lays down rules on the subsidies for industrial products and on countervailing duties to counteract the effects of subsidies. Subsidies are divided into three categories: prohibited subsidies, actionable subsidies, and non-actionable subsidies. Export subsidies and those contingent on the use of domestic over imported products are categorized as prohibited subsidies. However, least developed countries and developing countries whose *per capita* income is less than US$1,000 are exempt from this restriction and may use prohibited subsidies. Non-actionable subsidies include those for research and development for backward regions, and for environmental reasons. All remaining subsidies are actionable subsidies.

The rules and procedures on the use of countervailing measures to offset the injurious effects of subsidized imports have been given precision and clarity in the Agreement on Subsidies and Countervailing Measures.

d. Agreement on Anti-dumping

The Agreement on Anti-dumping elaborates the provisions of Article VI of GATT 1994. It defines dumping and contains rules for the use of anti-dumping measures if dumped imports cause or threaten injury to domestic producers. The agreement also contains detailed rules and procedures on the investigation of dumping cases, on the calculation of dumping margins, on the determination of injury, and on other related aspects.

e. Agreement on Safeguards

Whereas the agreements on Anti-dumping and on Subsidies and Countervailing Measures provide remedies for domestic producers if they are hurt by unfair imports, the Agreement on Safeguards provides remedies for domestic producers injured by fairly traded imports. It allows the use of temporary protective measures but sets rules to guard against the abuse of such measures.

f. Agreement on Trade-Related Invesment Measures (TRIMs)

The TRIMs Agreement identifies trade-related investment measures that are against the provisions of the GATT, especially Articles III and XI of the GATT, and prohibits the use of such measures.

g. Agreement on Customs Valuation

The Agreement on Customs Valuation aims at providing greater uniformity and certainty in the application of customs valuation rules and procedures. It provides for a fair, uniform, and neutral system for the valuation of goods for customs purposes, and precludes the use of arbitrary or fictitious customs values. Transaction value is the principle basis and method of value. If transaction value is neither nor available nor reliable, five other methods of valuation can be used, but these must be used in sequential order.

h. Agreements on Technical Barriers to Trade (TBT) and on Sanitary and Phytosanitary Measures (SPS)

The TBT and SPS Agreements do not question the right of governments to use technical regulations, standards, and sanitary and phytosanitary measures for health and safety reasons. However, the agreements make provisions prohibiting the use of such measures to create unnecessary obstacles to trade. Accordingly, the agreements contain provisions to regulate the use of standards and SPS measures, and to ensure transparency. The SPS Agreement also requires that SPS measures be based on scientific justification.

i. General Agreement on Trade in Services (GATS)

The General Agreement on Trade in Services establishes rules of conduct governments must follow in their laws and regulations relating to services. It contains general obligations applicable to all WTO members and all service sectors. These include non-discriminatory treatment, transparency, rules relating to monopolies, and fair and equitable procedures for the recognition of qualifications of service providers.

This agreement also provides for specific commitments by member countries to open up certain sectors of services to import competition. Thus, member countries have made commitments, with regard to specific sectors on market access and national treatment, whereby the service suppliers of one country may supply services to another, and foreign and domestic service suppliers may be treated on an equal basis. This is a first, but significant step. Negotiations will continue in the future for greater liberalization of services trade.

j. Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs)

The TRIPs Agreement establishes multilateral obligations to provide and enforce intellectual property rights in the area of patents, copyrights, trademarks and industrial designs.

The agreement sets minimum standards of protection for different types of rights; it also improves the coverage of certain rights. More importantly, it establishes detailed obligations for governments to provide effective means of action that enable affected persons to secure the enforcement of their rights. The procedures and remedies include criminal penalties for willful acts of counterfeiting and piracy on a commercial scale.

k. Understanding on Dispute Settlement

The Uruguay Round Understanding on Rules and Procedures Governing the Settlement of Disputes improves upon the GATT rules and procedures, and is the cornerstone of the multilateral trading system. The new system is designed to work efficiently and effectively: There is a guaranteed right to a panel, and the panel process is subject to strict time limits for each step. Panel reports are adopted unless there is a consensus to reject a report, and a country can request an appellate review of the legal aspects of a report.

After a panel report has been adopted, a member country must bring its laws, regulations, or practice into conformity with panel rulings and recommendations within a certain time limit, and retaliation is authorized in the event a member does not bring its laws into conformity with its obligations within that period.

The automatic nature of the new procedures will vastly improve the enforcement of the substantive provisions in each of the agreements. Members will not be able to block the adoption of panel reports and will have to implement obligations promptly. Aggrieved members will be able to obtain compensation or take retaliatory action if the member in violation fails to comply. Retaliatory action may consist of increases in bound tariffs or other actions. These actions may also be authorized when the TRIPs or services agreements are violated.

2.
A Critical Review of the Decision-Making Process and Procedures of the World Trade Organization

Introduction

The decision-making process and procedures of the WTO are a significant improvement over those of the GATT, which were not codified. In the case of the WTO, most of the procedures are codified in the Marrakesh Agreement Establishing the WTO or in the Multilateral Trade Agreements annexed to the Marrakesh Agreement.

Article IX of the Agreement Establishing the WTO is the main article on decision-making. In addition, Article X deals with procedures for amendments to the WTO Agreement and to the multilateral trade agreements. Another relevant article is Article XII that deals with accession procedures.

Consensus as the Basis of Decision-Making

Paragraph 1 of Article IX of the Agreement Establishing the WTO says that "The WTO shall continue the practice of decision-making by consensus followed under GATT 1947." Thus decision-making by consensus has been formalized under the WTO. The GATT 1947 had no written rule about consensus. In fact, Article XXV of GATT 1947 provided that decisions be taken by a majority of votes cast, except as otherwise provided; that is, except where more than a simple majority was required. The practice of decision-making by consensus developed over the life of the GATT and had become well established, but it was not based on any written rule. The WTO rules are therefore an improvement over the GATT.

What is consensus? Though the GATT practiced consensus as the basis of decision-making, no GATT decision or resolution defined consensus. The WTO rules rectify this situation. A footnote to paragraph 1 of Article IX of the Marrakesh Agreement defines consensus as follows: "The body concerned shall be deemed to have decided by consensus on a matter submitted for its consideration, if no Member, present at the meeting when the decision is taken, objects to the proposed decision."

The rule of consensus, however, is not absolute. Article IX of the Marrakesh Agreement provides that, where a decision cannot be arrived at by consensus, the matter shall be decided by voting. However, voting as an alternative to consensus is frowned upon in the WTO and has not been resorted to since the organization was established. In the entire history of GATT 1947, voting was resorted to on very few occasions.

Voting, however, is obligatory under the WTO rules in some situations. There are four such situations identified in the agreement. These are: (i) interpretations of the Marrakesh Agreement and of the multilateral trade agreements, (ii) waiver of obligations under the Marrakesh Agreement or under any of the multilateral trade agreements, (iii) amendments to the agreements, and (iv) accession to the WTO.

Consensus as the basis of decision-making has certain advantages, and experience over the past 50 years under both the GATT and the WTO confirms this. Decisions arrived at in this way are acceptable to all member countries. Though some members may have reservations, they do not object to and do not block the adoption of decisions. Decisions of this nature have a greater chance of acceptance and implementation, unlike decisions forced on unwilling members by a majority vote. Consensus is thus the preferable mode of decision-making. Only where consensus cannot be achieved, may members resort to voting.

Consensus as a basis for decision-making can be criticized from two opposing angles. First, some argue that in a large organization (currently 132 members, but with an eventual increase to over 160), it may be a difficult, slow, and painful process to arrive at consensus. Consensus may unduly delay decision-making and rob the WTO of dynamism. Some have suggested that the decision-making process may be streamlined by creating a small executive board or management group that would discuss and debate issues and arrive at decisions which may then be referred to larger bodies either for information or for approval.

A second argument against consensus is that it tilts towards serving the interests of highly developed and industrialized countries. If a developing country is not in favor of a proposed decision, it may, nevertheless, acquiesce, if only because political and other costs may otherwise be too high. The same cannot be said of a developed country. If a developed country is opposed to a decision, there is no way of arriving at a consensus. The GATT experience lends some support to this argument.

What are the areas of decision-making to which the rule of consensus applies? Although not clearly spelled out in the WTO rules, it is apparently applicable to all substantive decisions, and may also apply to procedural decisions. For example, decisions on the adoption of agendas of different WTO bodies are made by consensus. Even the drawing up of the provisional agendas of WTO bodies is sometimes subject to consensus. There is, for example, the case of an OPEC member's application to the WTO that was not placed on the provisional agenda of the General Council of the WTO because – according to rumors – one important WTO member was opposed to it.

The consensus rule may also tend to nullify or impair other decision-making provisions of the WTO. Two instances may be quoted to illustrate the point. First, the Ministerial Confer-

ence may grant a waiver to a WTO member on some of its obligations on the basis of a decision taken by three-fourths of WTO members. However, the proposal for a waiver decision concerning goods, services, or intellectual property has first to be submitted to the appropriate council which then submits a report to the Ministerial Conference. The council report is supposed to be based on consensus. Second, decisions on accession to the WTO are arrived at by a two-thirds majority of members. However, the Working Party on Accession submits the draft decision to the Ministerial Conference only when there is consensus in the Working Party.

Interpretation of the Agreements

The GATT 1947 had no provisions on the interpretation of GATT articles. The informal rule was that only contracting parties, that is, all GATT members acting jointly, had the authority to interpret GATT articles. The Agreement Establishing the WTO codifies the GATT practice and has a specific provision on the interpretation of agreements.

Paragraph 2 of Article IX of the Marrakesh Agreement lays down the rules on interpretation. Interpretations of the Agreement Establishing the WTO and of the multilateral trade agreements annexed to it are the prerogative of the Ministerial Conference and the General Council of the WTO. Decisions on interpretation can be taken only by a three-fourths majority of WTO members. The Ministerial Conference and the General Council will take decisions on the interpretation of the multilateral trade agreements on goods, services, and intellectual property on the basis of a recommendation by the Council on Goods, the Council on Services, or the Council on TRIPs, respectively. It is not expressly stated, but it may be inferred that the respective councils will make their recommendations on the basis of consensus. Thus, consensus, in a sense, may be superseded by the three-fourths rule.

The experience of GATT 1947 was that, at least during the last 25 years of its history, there was no formal interpretation of GATT articles. The same would be true of the WTO. There has been no formal interpretation of the Marrakesh Agreement and of the agreements annexed to it since 1995. The reason is the difficulty of the decision-making process on interpretation. It may be hard to achieve consensus and three-fourths of the votes.

Though formal interpretations of the agreements may be difficult and may seldom be made, informal, *de facto* interpretations are frequently made through the reports and conclusions of dispute settlement panels, and through the adoption of panel reports or reports of the appellate body by the dispute settlement body (DSB). The reports and conclusions of the panels and of the appellate body are specific to the facts of a case and not of general application. However, in practice, panels and the appellate body do make interpretations of many articles of the agreements, which are quoted as precedents in subsequent cases. Over the years, the GATT panels have developed a body of case law on the GATT, a practice which has continued with the WTO. Thus, there is a gulf between theory and practice. According to theory, interpretations can only be made by the Ministerial Conference, but, in practice, many articles are indeed interpreted by the panels and the dispute settlement body.

Decision on Waiver of Obligations

Paragraphs 3 and 4 of Article IX of the Marrakesh Agreement deal with the subject of waivers from obligations under the WTO Agreements. Member countries of the WTO can be released from their obligations in exceptional cases by a three-fourths majority of the Ministerial Conference or the General Council. In case of a request for release from an obligation that remains unfulfilled at the end of a transitional period, unanimity is required for the granting of a waiver.

A decision on waiver shall state the exceptional circumstances justifying the waiver, the terms and conditions governing its application, and the date of termination of the waiver. Waivers of more than one year are to be reviewed annually.

The decision-making process on waivers is an improvement over the GATT procedures in the sense that waivers can be granted only in exceptional cases for reasons to be recorded; the waivers are time bound, and they have to be reviewed annually. Though the GATT Article XXV did not include these details, GATT practice had developed along the lines now formalized by the WTO.

The WTO process of decision-making on waivers has been made more difficult compared with that of GATT 1947. Decisions on waivers under GATT 1947 could be made by a two-thirds majority of votes while, under WTO rules, waiver decisions can only be made by a three-fourths majority of members. Developing countries, the source of most waiver requests, are therefore at a distinct disadvantage.

Amendments to the WTO Agreements

Article X in the Marrakesh Agreement is a long and detailed article on amendments, a procedure quite complex compared to that of GATT 1947.

Proposals for amendments can be submitted to the Ministerial Conference either by a member or by one of the councils on goods, services, or intellectual property. The Ministerial Conference is required to submit the proposals to WTO members for consideration and approval. Within a period of 90 days of the tabling of a proposed amendment, the Ministerial Conference must decide by consensus whether or not to submit the proposal to members. If consensus is not reached within 90 days, the Ministerial Conference must decide by a two-thirds majority to submit the proposed amendment.

Amendments become effective upon acceptance by WTO members on the following basis:

- unanimous decision by all WTO members for amendments to Articles X and XI of the Marrakesh Agreement; Articles I and II of GATT 1994 (dealing with MFN treatment and schedules of concessions); Article II.1 of the GATS (dealing with MFN treatment); and Article IV of the TRIP Agreement (dealing with MFN treatment);
- decision by two-thirds majority for amendments that alter the rights and obligations of members. Such amendments become applicable to those members that have accepted them; and
- decision by two-thirds majority of the members for those amendments that do not alter the rights and obligations of members, but such decisions become effective for all WTO members.

A unique feature of the WTO procedures on amendments is that those members who do not accept amendments that alter the rights and obligations of members may continue to remain WTO members only with the consent of the Ministerial Conference. There was no such provision in GATT 1947.

The GATT 1947 amendments procedure was relatively less complex than that of the WTO, although GATT 1947 also required unanimity for the amendment of core provisions and a two-thirds majority for other provisions. One of the criticisms of the GATT was that it was difficult to amend; and it was for that reason, that GATT lagged behind developments in international trade. Indeed, the last time the GATT was amended was in 1965. One of the reasons for establishing the WTO was because of the difficulties involved in amending the GATT in order to extend its competence to services and trade-related aspects of intellectual property rights.

The decision-making process of the WTO in connection with amendments is more complex than that of the GATT, and it could be argued that, like the GATT, it is difficult to amend the WTO. This may, in time, make the WTO less flexible and less responsive to changing circumstances.

Decisions on Accession to the WTO

Decisions on the accession of new members to the WTO can be taken by a two-thirds majority of existing members. Members approve the terms and conditions of the new membership as proposed by a Working Party. The Working Party approves such terms by consensus. Thus, if one or two members of the Working Party are not satisfied with the terms and conditions, they can block the recommendation for accession. In such a case, the decision is blocked in the Working Party; it cannot submit a recommendation to the General Council or Ministerial Conference, which, in turn, cannot put the proposal to members for a vote. Therefore, even though two-thirds of members may be in favor of the terms and conditions of accession of an applicant country, they cannot exercise their right to vote because the decision was blocked in the Working Party.

This tends to give a virtual veto power to one or two countries, allowing them to dictate the terms of accession. The decision-making procedure may, therefore, work against the interests of the developing countries in the process of accession to the WTO.

Decision-Making in Dispute Settlement Cases

The WTO decision-making procedures in dispute settlement cases are a distinct improvement over those of GATT because they make the adoption of panel reports more automatic and less cumbersome.

Under the old GATT procedures, the adoption of panel reports required consensus. If a party to a dispute objected to the adoption of the report, lack of consensus blocked the dispute settlement procedures.

The WTO Understanding on Rules and Procedures Governing the Settlement of Disputes provides that, after a panel report has been circulated to members, the report shall be adopted by the DSB unless a party to the dispute notifies the DSB that it is going to appeal to the appellate body, or the DSB decides by consensus not to adopt the report. Under the old rules, the decision to adopt the report had to be reached by consensus. Under the new rules, consensus applies only to a decision not to adopt the report. If there is no consensus, the decision is considered to be adopted.

If one of the parties to a dispute makes an appeal, the decision of the appellate body is adopted and unconditionally accepted by the parties to the dispute unless the DSB decides by consensus not to adopt the appellate body report.

Summing Up

The decision-making procedures of the WTO are detailed and elaborate. They are laid down in the articles of the Marrakesh Agreement Establishing the WTO. All possible situations of decision-making are spelled out in the agreement. Clear, written procedures are useful for a smoother functioning of the WTO.

Decision-making is based on consensus as has been defined. Where decisions cannot be made by consensus, voting procedure is used. Each WTO member has one vote, and decisions are taken by a majority vote. The rule of consensus has certain advantages, but there are also some disadvantages. Decision-making in dispute cases has become automatic.

In certain specific situations, decisions can be taken either by a two-thirds majority of members or by a three-fourths majority. These procedures provide safeguards against hasty, inappropriate decisions, but in some cases they can act as roadblocks to decision-making.

II. EXAMINING THE ISSUES

3.
Implementation of Selected Uruguay Round Agreements

Introduction

This chapter describes the trade liberalization and trade rules agreements emerging from the Uruguay Round. Each of the most important sectors will be discussed in turn: agriculture, textiles and clothing, subsidies and countervailing duties (CVDs), and anti-dumping and safeguards. Then there will be a brief discussion of the implementation of the accord.

An assessment of the overall liberalization embodied in the Uruguay Round agreement poses some real challenges. Aside from the standard difficulties of assessing the effects of policy changes on trade flows and countries' welfare, there is the additional question of how one should value some seemingly cosmetic changes. A prime example of this, discussed further below, is the agreement on "tariffication" in agriculture. Under this agreement, countries that had explicitly or de facto banned the import of sensitive agricultural products (such as rice in Japan) agreed to replace the non-tariff barrier (NTB) with a tariff. If the initial policy was a ban, then the replacement, with even a prohibitive tariff, could not make exporters hoping to break into the country's markets any worse off. However, in those cases where a small amount of imports was allowed under the NTB, but fewer imports would be allowed under a tariff, one may ask whether anything useful was achieved. There is certainly some value to exporters in facing a transparent protection regime rather than an opaque one, and the intent of the change was to facilitate liberalization in future rounds. However, it is hard to put a value on transparency, and it is not clear if countries with protection would be willing to liberalize further in forthcoming negotiations, even if it is technically easier to do so.

A second recurrent question is how to consider the value of promises that are to be fulfilled several years hence. In textiles and apparel, for example, significant market openings were promised that would allow for important increases in exports from developing countries. However, much of the liberalization was scheduled for the end of long phase-in periods. Some doubts have been expressed about whether countries such as the United States will have the political willpower to implement the most painful of the reforms. Were the United States to fail to do this, of course, the developing countries could press a case under the new dispute resolution mechanism (discussed above). However, the worst punishment that the United States could face would be the authorized reciprocal withdrawal of concessions by the objecting countries. One may then wonder whether bold promises that have not yet been fulfilled should be discounted when the Round is assessed.

Finally, there is the difficult question of trade liberalization arithmetic. Traditionally, countries have claimed success at negotiations when they achieve access to the markets of trading partners without having to grant too much access to their own markets. This kind of arithmetic makes limited economic sense. A country cannot export without importing (sooner or later), and recent history has shown substantial benefits from integration with the world trading system. In the GATT rounds leading up to the Uruguay Round, developing countries managed to make few concessions, but achieved even fewer from developed countries in return. One of the notable changes that occurred in the world trading system during the negotiation of the Uruguay Round was the increased interest on the part of major developing countries in unilateral trade liberalization and therefore greater willingness to lock in those reforms through commitments under the World Trade Organization (WTO).[1] Again, it is difficult to know how one should value this facet of the Uruguay Round. However, it is valuable for developing nations to have a healthy multilateral system under which they can credibly commit to reforms.

On the whole, the rules and sectoral agreements of the Uruguay Round were a *qualified* success for developing nations. While there were numerous areas in which little progress was made (or even in which there were steps backward), there were also some dramatic achievements. Most importantly, the multilateral trading system was preserved, and there is substantial potential for future progress, as will be discussed below.

Agriculture

Agriculture, along with textiles and apparel, is the sector in which developing countries achieved the greatest improvement in market access, although most of the gains were promised for some point in the future. This was the most contentious negotiating area; an impasse between the European Union and the United States delayed the conclusion of the entire Uruguay Round from its scheduled finish in Brussels in December of 1990 to April 1994 in Marrakesh, Morocco.[2] To a large extent, the agreement that

1 On the question of how to weigh developing country concessions, see Rodrik (1994). For a survey on the broader question of economic reforms in developing countries and the value of locking in those reforms, see Rodrik (1995).

2 Preeg (1995) provides an account of the negotiations.

was reached was a temporary settlement. Limited gains were agreed upon, and agriculture was fully incorporated for the first time into the disciplines of the GATT.[3] Most of the liberalization, however, was postponed for negotiations that are to begin by January 1, 2000. The prospects for such negotiations are discussed in a later section.

There were several components to the Uruguay Round agreement on agriculture, each of which is addressed in turn below. First, a significant portion of world barriers to agricultural trade was not tariffs but rather quantitative restrictions or other non-tariff measures. Perhaps the major achievement in this sector was the conversion of these into tariffs. Second, the agreement called for the reduction of these new tariffs over time. Third, the agreement addressed the distortions introduced through domestic subsidies to farmers. Fourth, restrictions were imposed on the use of export subsidies.

a. Market access

The most notable market access outcome of the agricultural negotiations was the agreement on "tariffication." This is the process whereby barriers such as outright bans or quotas are transformed into duties. The agreement required countries to replace virtually all non-tariff barriers and unbound duties in this sector with tariffs, which would then be added to any existing tariff to create a single bound tariff.[4] Developed countries were supposed to lower these new aggregate tariffs by 36 percent over a six-year phase-in period (to conclude in 2000). The agreement required less of developing countries: a 24 percent cut to be implemented over 10 years. However, no cut was required of developing countries if they resorted to ceiling bindings of previously unbound tariffs.

A pure policy of tariffication would calculate the percentage of a tariff that would raise the price of imported rice to a level where consumers would not want to buy any more or less than they had prior to the conversion. On the face of it, this would seem to offer little benefit to consumers or to exporters trying to access these markets. In general, there is an equivalence between a quota and a tariff that allows in an identical quantity of imports. However, there are some reasons to value the replacement of non-tariff barriers with tariffs. A principal benefit is transparency. When the barriers are not simple quotas but rather more intricate regimes, such as variable levies to discourage imports, the effects of a tariff may be significantly clearer. Not only is a more transparent regime easier for exporters to deal with, it also facilitates liberalization agreements in the future. One could argue that the lack of transparency of more intricate schemes precludes public opposition and correspondingly provides opportunities for governments to provide rents discreetly to favored groups within a country. The tariffication under the agreement on agriculture should expose the costs of protectionist policies and make these transfers to favored groups more difficult.

Aside from transparency, the GATT has discouraged the use of quantitative restrictions since its inception, so the change brings agriculture into conformity with other areas. This policy was in part an effort to discourage countries from undoing commitments on tariffs through the introduction of quotas and in part a response to the extensive and damaging use of quotas in the 1930s.[5] Whether or not this was the intent of the founders of the GATT, tariffs also offer more opportunity for expansion of trade when there is growth in national economies or fluctuations in international prices.[6]

A number of factors in the Uruguay Round agreement modified the impact of this tariffication process for better or for worse. The process of replacing one type of barrier with another allowed some scope for increasing the level of protection. This fell into two categories. There was the permissible increase in protection that was explicitly built into the agreement. This was primarily due to the choice of the 1986-1988 base years. These were chosen for their unusually low agricultural prices. Thus, when current high domestic prices are compared with the unusually low base-year prices, it appears that a high tariff is required to bridge the difference.[7] In addition to this, there was the less legitimate process of "dirty tariffication" under which countries take advantage of the absence of any procedure for verifying the new tariff levels and simply set higher tariffs.[8]

Once the new aggregate tariffs were in place, the 36 percent cuts in protection for developed countries and 24 percent cuts for developing countries were to take place over the phase-in period. Here, too, there was room for countries to maintain protection on sensitive products. The reduction in protection was for an unweighted average of tariff levels. This allowed countries to make greater cuts in less sensitive products (or in products in which there was relatively little trade) and make lesser cuts in more sensitive or heavily traded products. To combat this, minimum cuts of 15 percent were required for developed countries and 10 percent for developing countries. However, a special safeguard procedure was adopted whereby a country could raise tariffs in response to a surge in imports. The increase in the tariff expanded with the threat of imports. Such a provision – similar to a variable levy – seems to undercut the economic benefits of tariffication described above.

Finally, in an effort to guarantee that some liberalization takes place, minimum market access requirements were adopted. These were targets for imports set by countries undertaking tariffication. This again offered less liberalization than at first apparent.

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3 Agriculture had been mostly outside of GATT's purview since the United States achieved a waiver of GATT obligations in 1955. See Jackson (1997, p. 314).

4 Josling (1998, Ch. 3). A tariff "binding" is a ceiling above which a country may not raise its tariff.

5 Jackson (1997, Ch. 5).

6 For a thorough theoretical comparison of different trade instruments, see Bhagwati and Srinivasan (1983, Ch. 10).

7 Hathaway and Ingco (1996, p. 42).

8 Schott (1994, p. 50).

In practice, imports have fallen short of the minimum access quotas[9], and the very mechanism for implementing these quotas – a tariff-rate quota (TRQ) – threatens to create a constituency for continued protection![10]

b. Domestic supports and export subsidies

The other major achievement of the agreement on agriculture was to impose limits on the extent to which signatories could subsidize the production and export of their agricultural products. Developed countries are to reduce budgetary outlays on export subsidies by 36 percent over a period of six years and volume of subsidized exports by 24 percent over six years. Developing countries have to reduce export subsidies by 24 percent and 14 percent, respectively, over a period of ten years. Domestic subsidies have to be reduced by developed countries by 20 percent over six years, and by developing countries by 13 percent over ten years. Special exemptions were also included for the least developed countries; those countries with a per-capita GNP below US$1000 are not subject to the same export subsidy restrictions until they achieve a sufficiently high share of world exports in a product.[11] These least developed countries are also protected against countervailing duties for small subsidies.

One principal reason that agriculture was given such a prominent place in the Uruguay Round agreement was the history of conflict between the United States and the European Union over subsidies in the 1980s. When agriculture prices faltered in the 1980s, the price support programs in place in both the US and the EU generated large commodity surpluses, and both used export subsidies to sell these surpluses in third markets. Aside from the disputes this caused between the EU and the US, the subsidized exports disrupted world markets, artificially driving down prices received by other producers.

While export subsidies have the clearest disruptive effect on world markets, purely domestic subsidies can have qualitatively similar effects by encouraging domestic production. This, in turn, increases a country's net supply of the good on world markets (or reduces net demand) and thereby drives down world prices. Thus, in the Uruguay Round, distinctions were drawn between those subsidies that had relatively little effect on the level of production (green box subsidies) and those that distorted production and trade (amber box subsidies). Whereas amber box subsidies are to be reduced, no such reduction is required for green box subsidies.

Again, there were qualifications, which limited the effectiveness of these agreements. The percentage

9 Josling (1998, Ch. 3).

10 This danger is described by Hathaway and Ingco (1996, p. 48). The TRQ works by granting a low tariff to a set quantity of imports and then applying a high tariff to any further imports. If imports exceed the set quantity, those exporters who hold the rights to bring their goods in at the lower tariff rate will earn additional rents and have an incentive to work against additional market access.

11 See United Nations Department of Economic and Social Information Policy Analysis (1996, p. 44).

cuts in domestic subsidies described above applied to an Aggregate Measure of Support (AMS). This measure, detailed in the agreement, quantifies the total effects of the broad range of producer-subsidy programs a country may employ. However, a number of exemptions were written into the agreement. The United States and the EU created a third category of subsidy for programs that were distortionary but which were to be retained nevertheless (blue box subsidies). These were not to be counted in the AMS. There were also rules allowing countries to omit from the calculation support programs that were sufficiently small. These opportunities for exclusion were even greater for developing countries. The net effect of the exclusions, of course, is to make the liberalization less dramatic than it first appears.

c. Assessment and implementation

It is fair to say that the major accomplishments of the Uruguay Round agreement on agriculture were symbolic rather than substantive. On substantive grounds, relatively little liberalization appears to have taken place. This was due to the opportunities for enhanced protection available through the tariffication process and to exceptions that were written into the agreement.

The limits on subsidies were not very severe, and they were adopted at the same time that many countries were reforming their agricultural support programs.[12] Furthermore, until most recently, agriculture prices in the post-Uruguay Round years have been relatively high. This means that support levels would have been low with or without an agreement, since they were usually tied to price supports.

Despite these objections, the agreement did mark an important symbolic advance by incorporating this important sector into world trade disciplines. During the 1980s, agriculture had been the source of frequent disputes. These always pose some danger of undermining trade relations more broadly. Not only did the agreement settle many existing disputes, but it also contained a "peace clause" provision stating that any policies that met the new rules could not be challenged at the WTO.

To a large extent, the Uruguay Round agreement on agriculture will be judged a success if, and only if, it lays the groundwork for true liberalization in ensuing discussions. Such discussions are scheduled to start by the year 2000 at the latest. The prospects are discussed in Chapter 5.

Textiles and Clothing

The second most grievous example of rampant protection in international trade, behind agriculture, has been textiles and apparel. This sector has been protected for decades under a series of agreements that were initially described as temporary but most

12 For example, the United States adopted the FAIR Act in 1996 reforming its farm programs. The discussion of the implementation of the agriculture agreement draws on Josling (1998). Hathaway and Ingco (1996) provide estimates showing why little liberalization was to be expected from the agreement.

recently fell under the title Multifibre Arrangement (MFA). Like agriculture, this sector is particularly important to developing countries because major sub-sectors are labor intensive in production, thus offering developing nations a comparative advantage.

Also, like agriculture, the protection rarely takes the form of simple tariffs, although tariffs are also used. Instead, the MFA consists of a network of bilateral quotas, whereby exporting nations agree to enforce a quota on their own exports. Perhaps the greatest market access achievement of the Uruguay Round was the promise to eliminate the MFA over a period of 10 years by expansion of countries' quotas, and by progressive integration of textile and clothing items into the GATT.

The agreement called for some quotas to be eliminated immediately, although these were generally on the least-restricted goods. Even on these goods, textile and apparel producers were afforded some protection against increases in imports through special sectoral safeguards. These safeguards may be implemented for up to three years in case there is a surge in imports.

For the rest of the sector, the MFA is to be eliminated through an acceleration of the rates of growth of countries' quotas.[13] The MFA, from its beginnings in the 1970s, was supposed to increase quotas by 6 percent annually.[14] Whether this annual growth would constitute liberalization or not (as measured by a tariff equivalent) would depend on changes in the supply and demand of textiles as countries grew. In practice, growth rates have been less in some sectors. The Uruguay Round agreement calls for growth to accelerate steadily from its 1994 levels under the MFA in three phases. If growth had initially been 6 percent per year, under the agreement it would be 6.96 percent in 1995-1997, 8.70 percent in 1998-2001, and 11.05 percent in 2001-2004. If growth were initially less, the Uruguay Round increases would be correspondingly lower.

The difficulty with this approach is that it leaves the bulk of sensitive liberalization to the year 2005 when the MFA is to disappear completely. It has been calculated that, under the slow expansion of quotas, almost half of the trade under the MFA will not be liberalized by the end of 2004.[15] This poses several problems. First, distortions in world trade continue until 2005 and may actually worsen in the interim. This worsening would occur if the demand for textile and apparel exports grew more quickly than the quotas.

Second, by preserving a scheme of bilateral quotas, the agreement makes possible drastic changes in production among countries at the end of the phase-in period. For example, Latin American quotas for export to the United States may become nonbinding before the end of the phase-in period,

13 For a concise summary of the terms of the agreement, see Schott (1994).

14 Hertel et al. (1996).

15 Schott (1994, pp. 56-59). Sixteen percent of textile and clothing items were integrated on January 1, 1995, another 17 percent on January 1, 1998, and yet another 18 percent will be integrated into the GATT on January 1, 2002. That would leave 49 percent to be integrated on January 1, 2005. Thus, the bulk of the liberalization has been postponed to the end of the ten-year period.

while Indonesian quotas continue to bind. This would encourage expanded production in Latin America, which might then be unable to compete once Indonesian quotas are removed. This situation would not be so bad if all the major parties to the MFA were also members of the WTO. However, the absence of China and Taiwan means that their quotas will grow at the old MFA rates while other countries' quotas expand more rapidly. Thus, there could be drastic relocations upon these countries' entry into the WTO.[16] It is interesting to note here the contrast in style with the liberalization of agriculture. The agriculture agreement replaced non-tariff barriers with non-discriminatory tariff equivalents. In the textiles and apparel negotiations, such an option was considered and rejected along with the less drastic possibility of quota options, under which production could be allocated to the lowest-cost producers. The most conservative and distortionary approach was chosen instead.[17]

Third, given the history of protection in this sector, there is reason to question whether the MFA will be allowed to expire in 2005. As noted above, the MFA is only the latest incarnation of a long line of "temporary" protective measures.[18] In each case, at the intended date of expiration, it has been politically impossible to deny protection to the producers. Given the slow rate of phase-in, there is little reason to think that the shock that developed country producers will be seeking to avoid in 2005 will be any less drastic than in previous cases, nor is there much reason to think that those countries will be less politically powerful.

In sum, if the MFA does expire as promised, it will mark a significant move toward rationalization of world production. Given the slow rate of phase-in, it is far too soon to judge whether the implementation will be successful. In fact, such a judgment will be very difficult before 2005. The Uruguay Round agreement does not promise complete liberalization of the sector, since substantial tariffs would remain, but it would at least eliminate the diversion of production from low-cost to high-cost producers. Specifically, among developing country producers, it is likely that Asia will gain at the expense of Latin America and sub-Saharan Africa.

This move toward rationalization, if it succeeds, will leave the textiles and apparel sector in the same position as other manufacturing sectors – subject to the use of anti-dumping duties and safeguards that may be used to prevent increased trade even without a replacement for the MFA. These instruments are discussed next.

16 In fact, Indonesia is predicted to experience a drastic increase in market share at the end of the 10-year period and Latin America is to experience a reduction. See Hertel et al. (1996). As for China and Taiwan Province of China, continuing restrictions could be placed on their textiles and apparel exports in the accession negotiations. This, however, would run counter to the MFA principle.

17 Abreu (1996, p. 70).

18 Kirmani, Chanda and Shiells (1996, pp. 134-139) recount the progression from the Short-Term Arrangement (1961-1962) to the Long-Term Arrangement (1962-1973), to MFA I, MFA II, MFA III, MFA IV, and its extensions.

Anti-dumping

Anti-dumping (AD) measures have become increasingly prevalent tools of protection since the 1970s. While heavy use began in the United States and the EU, this policy has recently become more popular in the developing world. A desire to curb anti-dumping use and abuse by developed countries was a major goal of developing nations in the Uruguay Round. This effort met very stiff resistance and ultimately failed. While the final agreement contained some minor improvements in the rules governing anti-dumping policy, the policy emerged largely unscathed as a relatively easy tool for protecting domestic producers.

Before assessing the effectiveness of the Uruguay Round agreement, it is worth considering the definition and legitimate uses for an anti-dumping policy.[19] Most definitions of dumping concern the sale of products abroad at an unfairly low price. The intricacies revolve around the definition of "unfair." Among the common approaches are to define a price as unfair if it is below a producer's cost or if it is below the price that a producer charges in his domestic market. The conditions under which such practices *should* be of concern to a government, however, are much more restrictive. Specifically, dumping should only be a concern if it is an example of "predatory pricing," whereby an exporter tries to drive an import-competing firm out of business with the intention of exploiting a monopoly position once the import-competing firm has gone. In such a case, the importing country could be worse off than if it had blocked the dumped sales.[20] In domestic settings, such practices fall under the purview of anti-trust policy. In the absence of an international competition policy, they fall under the purview of anti-dumping.

The reason anti-dumping policy is the subject of concern is that in practice it has little to do with the prevention of predatory pricing. Instead, the GATT-sanctioned rules that exist are substantially looser than a pure competition policy would be. There are two broad criteria, dating to the original GATT Article VI, that must be met to determine whether dumping has occurred: have export sales occurred at unfairly low prices compared with domestic sales, and has a domestic industry been injured or threatened with injury? If these criteria are met, then the importing nation is authorized to apply a duty equal to the "dumping margin," the difference between the actual price and a "fair" price. These duties need not meet any MFA requirement; they are targeted at specific exporters. A key feature that survives under the Uruguay Round agreement is that the processes to determine injury and dumping are conducted by national administrative bodies rather than by the WTO. These agencies do not consider the broader question of whether dumping duties would serve the national interest, only the narrower questions of dumping and injury.

19 For a detailed discussion on this point, see Hoekman and Kostecki (1995, pp. 171-184).

20 Note, however, that for this to be a concern, not only would the import-competing firm have to be driven out of business, but there would have to be some means of preventing a new entrant into the industry once the exporter attempted to raise prices.

Even if applied without malice, this policy would be economically flawed. There are a number of legitimate reasons why an exporter might set different prices in different markets or might appear to be selling below cost, and any trade liberalization has the potential to cause injury to an inefficient import-competing industry. However, the loose requirements of the GATT allowed for additional abuse. Among the objectionable features of the regime were:

- comparison of average foreign prices with specific domestic sales. If an exporter had a range of sales prices in his home country and an identical range of prices in his export market, a comparison of the low price in the export market with the average in his home market would appear to indicate sales below a fair price;
- creative use of information in constructing costs. Since the appropriate economic cost of a good is rarely observable, agencies operated with broad discretion in constructing a cost estimate. To directly observable costs would be added generous allowances for profits and for administrative costs; and
- the high cost of answering an anti-dumping complaint. This worked particularly against small developing countries. The adjudication of a complaint generally required domestic legal representation and substantial paperwork. This meant that the mere threat of a complaint could induce an exporter to cooperate with the potential plaintiff.

The anti-dumping regime was the subject of GATT negotiations in the Kennedy Round in the 1960s and the Tokyo Round in the 1970s. The result was an Anti-dumping Code that did little to inhibit the use of the policy. From 1985-1992 there were 1,040 cases, over 90 percent of which were filed in industrialized countries. Of these cases, 55 percent were targeted at developing nations.[21]

The Uruguay Round agreement did little to restrict the use of anti-dumping policy. In almost every area, new restrictions were accompanied by caveats that could render them ineffective. For example, countries are now required to compare average prices with average prices. However, the authorities are allowed to use the old method if they can argue that the average-to-average comparison is inappropriate. A new rule requires a *de minimis* dumping margin of 2 percent, but this is not substantially different from existing practice. Another celebrated clause, a "sunset" provision, requires any dumping duties to expire automatically after five years, unless there is a review and a deliberate decision to continue the duty. However, there is no limit imposed on the number of times a case may be reviewed and extended.[22] In the recent past, there have been cases where anti-dumping investigation on a product

21 Hoekman and Kostecki (1995, Table 7.2, p. 172).

22 Schott (1994, pp. 79-85). One provision that may be useful for developing and least developed countries precludes anti-dumping investigations when the volume of imports from a country accounts for less than three percent of total imports. See Stephens (1996, p. 76).

was dropped for lack of evidence, but was re-instituted on the same product after a few months.

In addition, the Uruguay Round agreement effectively removed the findings of national agencies in anti-dumping cases from the jurisdiction of the new WTO dispute settlement process. Dispute settlement panels may only consider whether the procedures of the national bodies were consistent with GATT rules, not whether findings were correct or incorrect. In cases where multiple interpretations of rules are possible, the national agency may adopt any legitimate interpretation it wishes.

The agreement does little more than codify existing practices. This leaves anti-dumping policy intact as a ready measure to provide protection upon request. The policy, which has largely replaced the use of explicit tariffs, is in many ways more pernicious. It is less transparent than the direct application of tariffs, provides little opportunity for balancing the interests of consumers and exporters against those of import-competing interests, and individual cases are largely insulated from attempts at reciprocal liberalization. Its ease of use casts doubt on the true extent of liberalization achieved in other sectors, such as textiles, since the old protectionist measures may simply be replaced with new ones.

We conclude with the blunt assessment of a World Bank authority on anti-dumping policy: "In short, the protectionists won the Uruguay Round. The agreement will not interfere with anti-dumping, which will continue to be the major instrument of ordinary protection."[23] If there were to be a thorough and effective competition policy adopted under WTO auspices, such a policy could replace anti-dumping (this possibility is discussed in Chapter 5). However, such hopes would rest on the assumption that the objectives of the United States and the EU are to prevent monopoly rather than to provide protection and that the present policy resulted simply from sloppy legal draftsmanship. In addition to the fierce fight over anti-dumping policy in the Uruguay Round negotiations, there is more explicit evidence that the ease of abuse of anti-dumping policy is intentional.[24] If one accepts that powerful protectionist groups are driving the continuance of anti-dumping policies, it may be that any serious resolution will have to follow a deterioration of trade relations. If all nations adopt anti-dumping policies and use them as frequently as the United States and the EU, export interests in these countries may press for serious reform.

23 Finger (1996, p. 334).

24 Consider the following from a GATT report: "In the negotiations leading to the US-Canada (Free Trade Agreement), Canadian negotiators sought to replace anti-dumping policies by anti-trust law, in particular provisions on predatory pricing and price discrimination. A harmonized anti-trust regime common to the members of the FTA was put forward as the appropriate dumping remedy. The US Administration considers that this would not be appropriate in the current context. "According to the US Administration, the main purpose of anti-dumping law is to neutralize unfair trade practices by foreign exporters. While both anti-dumping and anti-trust laws penalize price discrimination and predatory pricing, their objectives are different. The latter generally do not penalize those practices unless they lessen competition; the former apply to exporters whenever a domestic producer suffers material injury. It is thus likely that use of anti-trust legislation instead of anti-dumping measures would considerably reduce the scope for domestic protection." (GATT, 1994, p. 69).

Safeguards, Voluntary Export Restraints, and Balance of Payments

Technically, the anti-dumping provision of GATT Article VI described above is one of a number of safeguard measures permissible under the GATT.[25] These measures are all related in that they permit a country to reimpose protection without an explicit renegotiation with partner countries. More commonly, the term "safeguard" refers to actions taken under GATT Article XIX, which allow a country to impose protection, including the use of import quotas, when faced with "serious injury" from real or threatened import flows. These are also referred to as "escape clause" or "emergency action" measures. This section addresses these along with two other types of measures from the same broad category: voluntary export restraints (VERs) and balance of payments (BOP) measures.

The Uruguay Round agreement placed new limits on the use of all three of these measures. It limited the duration of safeguard actions, it nominally banned the use of VERs, and it cast some doubt on the use of trade restrictions to address balance of payments concerns. However, as with the anti-dumping agreement, there were caveats that may hinder the effectiveness of the new restrictions. Also, the coexistence of these measures with more easily applicable measures, like anti-dumping, may render carefully wrought limitations meaningless.

a. Article XIX safeguards

As with anti-dumping, the right to reinstate protection when threatened by imports was established from the inception of the GATT and has remained ever since. It is worth considering why one would incorporate such a provision into an agreement, since it can allow a country to undo concessions it just agreed to in a negotiating round. There are two explanations commonly put forward.[26] First, if a country is uncertain what effect its liberalization will have and fears serious harm to a key industry, it may be reluctant to offer any concessions in the first place. Thus, the possibility to selectively repeal concessions may make a country bolder during negotiations. Second, if a country is negatively surprised by the effects of liberalization and feels irresistible political pressure to remedy the situation, it will respond. If no legitimate means are available, a country would be compelled to openly violate the GATT or to leave the agreement, since there is no supra-national force that enforces trade accords.[27]

25 This section draws heavily on Finger (1996), who provides a complete list of such provisions on pp. 317-318.

26 Hoekman and Kostecki (1995, p. 161).

27 Although such a crisis was not the origin of the GATT safeguard provisions, it did explain the exclusion of agriculture from GATT disciplines. The US Congress adopted measures in the 1950s that were inconsistent with existing disciplines. The GATT had little alternative but to grant the United States a waiver that was then effectively extended to all other contracting parties.

Of course, if too broad an authority to reimpose protection is granted, the negotiated agreements become meaningless. Thus, the language of Article XIX required that the threat to producers be "unforeseen" and the injury serious. It also required that any protection that was applied be non-discriminatory and that exporting nations be compensated for their loss of market access.

Initially, Article XIX was used fairly frequently, but its popularity fell off in the 1960s. In recent years, its use has been trivial compared to the use of anti-dumping.[28] This decline can be attributed to the ready availability of measures with less onerous requirements. Anti-dumping, for example, has no requirements of compensation, requires only "material injury" – a lower standard – and may be used in a discriminatory fashion. Similarly, demands for protection against imports of textiles generated their own system of remedies, as described above.

The Uruguay Round agreement in some ways made Article XIX easier to use. It allowed countries to apply discriminatory barriers, although they must justify the decision to do so. It also lifted, for the first three years of an action, the requirement that exporters facing Article XIX actions be granted compensation. The agreement also introduced some important restrictions. After one year of implementation, there must be steady liberalization of the action. Actions can only last for four years and may be renewed only once, for a total of eight years.[29] If the action is discriminatory, it cannot be renewed. Furthermore, the agreement imposes new requirements for transparency.

b. Voluntary export restraints

The anti-dumping and escape clause provisions described above share the characteristic that they do not require the consent of the exporter to be used. While it might seem that this would make them significantly easier to use, one of the most popular protectionist measures of the 1970s and 1980s was the voluntary export restraint. Under this procedure, also known as an orderly marketing arrangement, an exporter "voluntarily" agrees to restrict the quantity of exports to another country. The agreement to ban the use of such instruments has been cited as one of the most important achievements of the Uruguay Round.[30]

The term VERs is largely a misnomer because the decision to use one has rarely been voluntary. Instead, it was usually done to avoid the threat of an action more damaging to the exporter, such as an anti-dumping investigation. An exporting country preferred a VER to a duty because it would get to keep the quota rents (what would otherwise be the tariff revenue). The importing country might prefer a VER because it would not

28 Hoekman and Kostecki (1995, p. 163) cite the figure of 26 Article XIX actions during the period 1985-1994. This compares with the hundreds of anti-dumping actions described earlier.

29 Developing countries face a slightly looser limit, with a maximum total time of 10 years, counting extensions. Schott (1994, p. 96).

30 Ibid.

have to go through any of the elaborate procedures required under Article XIX or the anti-dumping process and because the economic costs of the action (distinctly higher than in the case of a tariff) are not very transparent.

To some extent, though, VERs fit the mercantilist spirit of Article XIX, even while circumventing its formalities.[31] Article XIX required countries that reimpose protection to offer compensation to their trading partners. If the trading partner agrees to a VER, this would demonstrate that it has been adequately compensated for the loss of market access by the quota rents. However, these so-called *gray-area* measures clearly violated the spirit, if not the letter, of the pre-Uruguay Round GATT. They were discriminatory in that they did not apply equally to all trading partners; they were quantitative rather than price based; and they circumvented the procedural requirements of other measures, thus offering no protection to target countries.[32] However, the structure of the GATT system of dispute resolution largely prevented a challenge to their use. In the absence of any prosecutorial branch to enforce agreements, dispute settlement bodies rule only on complaints by aggrieved parties. Since both governments party to a VER necessarily agreed on its implementation, there was generally no group with standing to challenge their use.

The Uruguay Round agreement banned the use of any new VER and required that almost all existing VERs be phased out by December 31, 1999. Yet, two causes for concern remain. First, there is a new provision that allows for the equivalent of a VER. Under the new Article XIX agreement, two countries may agree to adopt an import quota that will be administered by the exporting country.[33] Second, the question of who will enforce such an accord remains.[34]

c. Balance of payments measures

A final type of administered protection addressed in the Uruguay Round, and particularly relevant to developing countries, is the use of quantitative restrictions (QRs) to address balance of payments concerns. This practice can fit under a number of categories, but the most prominent is Article XVIIIb. While the practice survived the Uruguay Round, a number of new restrictions were introduced that have allowed developed countries to pressure developing nations to remove or modify their regimes.

The practice of using QRs to address balance of payments problems was introduced under GATT Article XII by European nations when they first acceded. However, as the industrialized world recovered from the

31 This is the argument of Finger (1996, p. 322). The mercantilist philosophy is that the gains from a reciprocal trade agreement lie in market access rather than in the welfare gains that accompany liberalization.

32 Jackson (1997, pp. 203-206) addresses the legality of VERs.

33 Finger (1996, p. 323).

34 Jackson (1997) describes one cause for hope in this regard. Under US law, if there is not an explicit government program to restrict exports, the exporting firms could be prosecuted for illegal restraint of trade. This may at least reduce the prospects for informal attempts to evade the new GATT ban.

Second World War and especially as the Bretton Woods fixed exchange rate system lapsed into a system of floating rates, developed countries abandoned this practice. The primary practitioners in recent years have been developing countries that received special permission to do so under Article XVIIIb.[35]

It is difficult to defend this practice on theoretical grounds. In general, a tariff would be a less distortionary means to the same end. Furthermore, the way in which QRs were applied raised questions about the true intent. Whereas a measure to address balance of payments difficulties should be applied uniformly across categories, and then only temporarily, in practice these measures have been applied unevenly and have lingered.[36]

To a large extent, the use of these measures by developing nations had fallen off by the conclusion of the Uruguay Round, in part as the result of an ideological shift toward freer trade and in part under pressure from other multilateral institutions. The Uruguay Round agreement called for price-based measures to replace QRs and schedules for the phase-out of balance of payments restrictions.[37] Most recently, this agreement has been used to pressure Nigeria and India to remove their restrictions. Nigeria has offered to accelerate its schedule for removal while India's case has led to a dispute settlement panel.[38]

d. Assessment

Overall, the Uruguay Round agreements on safeguards, VERs, and balance of payments restrictions are well-crafted measures that seem designed to encourage countries to resolve trade difficulties through transparent procedures and to apply measures that are more economically sensible than those that have been used in the past. The time limits on safeguards, the ban on gray-area measures, and the discouragement of QRs extend the GATT emphasis on non-discrimination and price-based measures for balance of payments purposes to the realm of administered protection. However, these agreements cannot be judged separately from the agreement on anti-dumping. The reason anti-dumping procedures were used so heavily prior to the Uruguay Round agreement was their ease of use. As described above, anti-dumping did not become appreciably harder to implement as a result of the Uruguay Round. While anti-dumping use by developing nations had been relatively light, it has been increasing more recently. Thus, the limitations on the use of other safeguard measures may simply stoke that of anti-dumping.

It is difficult to assess the magnitude of any such effects so soon after the conclusion of the Uruguay Round. Research on anti-dumping and countervailing duties (addressed below) has shown that their use increases in periods of macroeconomic weakness and decreases in periods of macroeconomic strength.[39] Prior to the Asian crisis in the second half of 1997, post-Uruguay Round macroeconomic conditions had been relatively good.

35 Finger (1996, pp. 325-328).

36 Hoekman and Kostecki, (1995, pp. 187-190).

37 Finger, (1996, p. 328).

38 On Nigeria, see Zaracostas (1998). On India, see Rao (1998).

39 Leidy (1997).

Subsidies and Countervailing Duties

GATT-sanctioned programs to counteract trading partner subsidies share features with anti-dumping measures and with the safeguards regime described in the previous section. Like both of those measures, these programs provided a method of administered protection by which the GATT describes legitimate procedures, but the determinations and implementation of the programs are largely made at the national level. Like both of the measures, this method can be used to provide protection for a domestic industry in distress. It bears more resemblance to the safeguards measures in that it has not been very widely used. The principal user has been the United States, which launched over 440 investigations between 1979 and 1995.[40] As with safeguards, its limited use may be because other policies are easier to use. Or it may be because countries other than the United States have sufficiently extensive subsidy programs to fear retaliation.[41]

The concern over subsidies is more like that over anti-dumping policy in that it seeks to address an "unfair" determinant of trade flows. In the case of anti-dumping, the unfair behavior was on the part of individual firms that were accused of selling at excessively low prices. In the case of subsidies, the "unfair" behavior is on the part of national or local governments that reduce the costs of their producers, thereby granting them an advantage. This similarity makes the case of subsidies particularly interesting. The accusation that other countries, through action or through neglect, have adopted policies that give their producers an unfair advantage is the same one that underlies many of the calls for the introduction of environmental and labor standards into WTO policies.

The Uruguay Round agreement on subsidies and countervailing measures replaced the code that was agreed to in the Tokyo Round. It greatly clarifies the definition of a subsidy, and it describes which types of subsidy may or may not justify the use of a countervailing duty (CVD). It also requires a finding of material injury very similar to that under the anti-dumping agreement as a necessary prerequisite to a CVD. As with the anti-dumping agreement, it also introduces a sunset clause requiring the eventual removal of CVDs as well as a *de minimis* test for their application. Its rules apply only to non-agricultural subsidies, since agriculture is covered by a separate agreement.

Before delving into the details of this agreement, we briefly address the legitimacy of concern about subsidies. The typical objection to subsidies comes from an import-competing producer who complains that it is unfair that the exporter should have an advantage because of government assistance. This is where the similarity to environmental and labor concerns appears. In these latter cases, import-competing producers argue it is unfair that they must compete with exporters who benefit from relatively lax environmental standards or insufficiently compensated workers.

40 Jackson (1997, p. 281).

41 Hoekman and Kostecki (1995, p. 184).

From the standpoint of a producer, any difference that results in a cost advantage to a competitor is undesirable. However, the existence of such cost differences is the principal reason there are gains to be had from trade. Does it matter whether the cost differences arise from natural endowments or from government policy? In a standard case, it does not. If an importing country is offered imports at a lower price because of subsidies, it will be better off. There are exceptions to this general statement, but it is difficult to find instances when those exceptions would apply. In general, the country that chooses to provide the subsidy reduces its own welfare and world welfare, but raises the welfare of the countries receiving the subsidized good.[42] This suggests that concerns over subsidies are overblown.

Furthermore, if one does decide that there is a "natural" trading pattern and that any government policies which alter this pattern should be counteracted, one opens up a tremendous series of complications. A government policy that subsidizes an industry may simply offset a separate tax or regulatory policy, or changes in the price of one of the industry's inputs. To conduct a proper analysis, one should employ a general equilibrium model that would consider the interaction of the entire range of a government's policies.

The Uruguay Round agreement does not require anything of the sort. Instead, it defines a subsidy as any financial contribution from a government or other public body to a domestic industry.[43] Such a contribution could occur directly through a transfer of funds or indirectly through an exemption from taxes, for example. Once subsidies are defined, the agreement classifies them into three categories: prohibited subsidies (red box), actionable subsidies (amber box) and nonactionable subsidies (green box).

The distinction between red box and amber box subsidies lies in whether the effects on trade flows are direct or indirect. Export subsidies are forbidden and are therefore in the red box. Domestic subsidies may or may not be subject to CVDs (actionable) and therefore fall into either the amber or green box.[44] An important distinction between actionable and nonactionable subsidies is whether they are general or specific to a given industry. A general subsidy, for example, might be a reduction in the tax on an input that is used throughout an economy, such as gasoline. A specific subsidy would be a tax rebate on gasoline for one particular sector within the economy. There are also a number of types of subsidy that are explicitly nonactionable. These include support for research and development, regional assistance, and subsidies for industries to meet heightened environmental requirements.[45]

If a subsidy is found to be actionable, the importing country must determine that it has caused material injury to the domestic industry before it can apply a CVD.[46] The new *de minimis* test requires that, for an investigation to proceed, the price change due to the subsidy must be greater than 1 percent of the value of the good, and the volume of subsidized imports must be significant. For developing countries, the *de minimis* cutoff is 2 percent, and the volume requirement is 4 percent of total volume.[47] Once a CVD has been applied, it must be removed within five years, unless the threat of injury remains.

In sum, the agreement marks a significant clarification and strengthening of the GATT rules governing permissible and impermissible subsidies. While there are serious economic questions whether this is a worthy topic of concern, it seems preferable to have clear rules governing countries' responses if such methods are to be used. While there was a subsidy code under the Tokyo Round, the Uruguay Round's single undertaking expanded the range of nations subject to its discipline. It remains to be seen whether the popularity of CVD investigations spreads from the United States in the same way as the use of anti-dumping measures has.

Conclusion

The previous sections outline some of the most significant changes to rules governing the world trading system agreed to in the Uruguay Round. Among the common themes are:

- all members of the WTO will soon be subjected to virtually the same disciplines, be they developed or developing. Developing countries that had not been party to certain Tokyo Round codes are covered by the single undertaking. In a number of cases, developing countries are granted more time to phase in the new requirements, but the goal of uniformity is clear;
- all important areas of commerce should be covered under the WTO. This section described the incorporation of agriculture and textiles and apparel. The incorporation of services was also a major Uruguay Round milestone; and
- whatever trade-restricting measures are applied should be relatively transparent, price based rather than quantitative, and applied in a non-discriminatory fashion. This was the driving force behind the agriculture agreement.

42 Jackson (1997, Ch. 11) provides a thorough discussion of these issues in the context of the Uruguay Round agreement. The examples of when a country can gain from the imposition of a subsidy are the basis for the theory of "strategic trade." Also see Krugman (1986). The general statement about welfare assumes that the subsidies do not correct an existing distortion. Note that this is quite different from the case of tariffs, in which a large country can enhance its own welfare by imposition of a tariff at the expense of trading partners and the world as a whole.

43 This description of the details of the agreement draws on the analysis of Jackson (1997, pp. 290-300).

44 It is not immediately apparent why export subsidies and domestic subsidies should be treated fundamentally differently. Either is capable of distorting the price in an importing country. Presumably, the distinction is that the domestic subsidy will distort the price in the exporting country as well, and this may serve as a deterrent to their use.

45 Schott (1994, p. 89).

46 The original US CVD procedure did not require an injury test. For the most part, one was not necessary even under the Tokyo Round code. Thus, this is a significant strengthening.

47 Schott (1994, p. 92). The volume requirement is slightly more complicated. A developing country's share of total imports by volume must exceed 4 percent, or the cumulative share of all developing country imports must exceed 9 percent of total imports.

Unfortunately, the textiles and apparel and anti-dumping agreements do not meet these standards, although the former may in 2005.

In many ways, it is too early to assess the implementation of the Uruguay Round agreements. In the areas of important sectoral liberalization commitments – agriculture and textile and apparel – the agreements were designed so as to delay the most difficult steps until as late as 2005. In the fall of 1997, for example, developing nations complained about the slow pace of textile liberalization before the WTO. They argued then and since then that the persistence of quotas violated the spirit of the agreement on textiles. The United States contends, however, that it is following the letter of the agreement.[48]

In the areas of procedural reform – anti-dumping, safeguards, and gray-area measures – the true test of the changes will come when there is a major macroeconomic downturn in the developed countries and pressure mounts for protection against imports. In some cases, such as anti-dumping, the meager commitments and generous loopholes in the Uruguay Round agreement give little reason to expect great changes.

Since the conclusion of the Uruguay Round in 1994, there have been reviews of implementation conducted by the relevant WTO committees. However, the attention of the world trade community and the WTO has largely been focused on the new issues that will be discussed in the coming sections. The developing countries' emphasis on the need to focus on the implementation of the Uruguay Round is well founded, although one may consider whether this should be done in conjunction with, or in lieu of, new undertakings. The structure of the Uruguay Round agreement means that in the first years of the next century developed countries will have to liberalize in areas that have been too sensitive to liberalize for the past several decades. This certainly suggests the need for vigilance.

48 Green (1997). The US position is also described in USTR (1998).

4.
The Built-in Agenda of the World Trade Organization

Introduction

The major institutional change emerging from the Uruguay Round was the creation of the WTO, as described earlier. There is some reason to think, however, that this change will have only minor effects on the extent to which trade flows freely. Despite the strengthening of the dispute settlement mechanism, the ability of the trade body to compel a member to take action was not enhanced; so if a country wished to retreat from commitments it had made in negotiations, the punishment would still be a reciprocal withdrawal of concessions.

However, there are several new features of the WTO that may have a more significant impact, and these are addressed in this chapter. First, the stronger institutional structure is more conducive to carrying out the mandate to pursue a built-in agenda. Second, the new organization allows the integration of regimes that were separate from the GATT, most prominent of which was the General Agreement on Trade and Services (GATS). These topics overlap in that some of the key items on the built-in agenda concern extension of the Uruguay Round agreement on services trade.

The idea of a built-in agenda is a break from the pattern of postwar liberalization. Previously, rounds were held regularly, and participants agreed to undertake as much liberalization as they felt to be politically feasible. Of course, there were many occasions when one participant's complaint could not be addressed in a round, and one could presume that it would be a topic of the next round. On such occasions, though, there was no guarantee that a future round would take place or that the complaint would be addressed. Nor was the regularity of rounds guaranteed. Moreover, the frequency decreased substantially as rounds grew more complex and the easier agreements were struck. Sufficient sentiment was necessary to launch a new round of negotiations, and it was entirely possible that such sentiment would be lacking for years.[1]

The post-Uruguay Round era has been different. This Round closed with agreement on a timetable for

1 The most prominent and recent example of this was the failure of the United States to launch a new round in 1982, following the conclusion of the Tokyo Round in 1979. In part, it was frustration with this failure that stoked United States interest in preferential trade agreements, discussed below. For a discussion of the period leading up to the launching of the Uruguay Round, see Srinivasan (1998, Ch. 4).

discussions on a range of unresolved topics: agriculture, financial services, shipping, telecommunications, and the interaction between trade and the environment, among others.[2] It is not clear if this idea of a built-in agenda is useful. While it is much easier than before to bring a trading partner to the negotiating table, there is no reason to believe that it will be any easier to win concessions. If the trading partner is adamant in its refusal to offer concessions, the negotiations will fail. At best, this would mean compulsary attendance at negotiations resulting in a waste of time and resources. At worst, it could undermine the multilateral system.[3]

There is also a danger that the built-in agenda will serve, to some degree, as a substitute for a new round. This raises an important policy question about the desirability of a move away from so-called "grand agreements" toward sectoral negotiations. This chapter will argue that such a shift would be undesirable, both for developed and developing nations, since it would limit the scope of agreements that could be reached and therefore restrict the potential gains from further liberalization. A vastly preferable alternative would be to use the built-in agenda as the basis for a "millennial round" of multilateral negotiations.[4]

The rest of this chapter considers the most prominent agenda items: post-Uruguay Round developments and prospects for the future. First, the prospect for progress in agriculture will be discussed. This was the most prominent and difficult of the Uruguay Round negotiating topics, and talks on further agricultural liberalization are scheduled to be held by 1999. Second, the incorporation of services into the WTO will be addressed, along with a discussion of the talks in the specific areas of financial services and basic telecommunications that have occurred since the conclusion of Uruguay Round. Third, the relationship between trade and the environment in multilateral policy will be considered. Discussions on this relationship began during the Uruguay Round, and a committee was established to continue work beyond the Round. While the commitments to take action on trade and the environment are not as specific as those in agriculture and services, they are on the agenda, and there is strong pressure from the developed countries to include environmental concerns in any upcoming multilateral round.

2 A detailed list of these commitments and their location in the Uruguay Round text can be found in Ostry (1997, pp. 245-256). It should be noted that whereas Ostry uses the term "built-in agenda" to include the monitoring of Uruguay Round commitments as well as efforts at further liberalization, this chapter will use the term to address only the latter.

3 A popular explanation for the importance of momentum in trade negotiations is known as the "bicycle theory." This asserts that trade liberalization is like riding a bicycle – one must keep moving forward or one will fall over. Extending this analogy, when one is facing a wall, it may be just as well to stop moving forward.

4 Among others, Ostry (1997, p. 243) recommends just this.

Further Liberalization of Agriculture

Aside from a general commitment to monitor the implementation of the Uruguay Round agreement on agriculture, Article 20 of that agreement requires new negotiations, beginning no later than 1999, to continue the reform process.[5] There is clearly a need for further progress in agriculture, as relatively little liberalization was achieved in the Uruguay Round itself.

Since the conclusion of the Uruguay Round, not only have the predictable high levels of protection persisted – albeit in somewhat more transparent forms – but a range of new disputes within agriculture has also arisen. During the period 1995 to mid-1997, almost 30 percent of the disputes before the WTO concerned agriculture, a figure disproportionate to agriculture's share in world trade. These disputes generally involved issues of sanitary and phytosanitary standards (SPS), rather than the levels of conventional barriers.[6]

To some extent, it was natural to include a promise for further talks in the Uruguay Round agreement on agriculture, since the principal achievement of that agreement was to set the stage for further liberalization. However, had there been sufficient commitment to liberalization at the time, it would not have been necessary to postpone such discussions for five years. Even if the pain of immediate liberalization would have been too great for some countries to bear, there is ample precedent for long phase-ins. Instead, there was agreement to meet again relatively soon, which is distinctly different from an agreement to agree. It is too soon to tell whether this built-in timing will prove propitious. There have been a number of swings in agricultural prices and in the underlying forces driving protection in the major developed countries. These forces are described next, followed by a discussion of the topics likely to be tabled in a new round of agricultural negotiations. A set of policy considerations for developing countries is also examined.

a. Developments and prospects

To a large extent, the most significant agricultural protection is practiced by the major developed nations – the United States, the EU countries, and Japan. Therefore, the willingness of these countries to undertake further reforms will determine whether the next round will succeed. Prior to the Uruguay Round, a major impetus for the inclusion of agriculture was the low commodity prices crisis of the mid-1980s that made the existing subsidy schemes of the United States and the EU dauntingly expensive. Even so, the EU was reluctant to pursue reforms.

5 Josling (1998, pp. 110). This chapter draws heavily on Josling's thorough analysis of the prospects for further liberalization in agriculture.

6 See Josling (1998, p. 18). The agreement on SPS was technically separate from agriculture within the Uruguay Round, but most of the important SPS issues are agricultural. Another disputed topic of special concern to developing countries concerned preferential access schemes, such as the European Union's banana regime, which favored certain developing nations over others.

Since the conclusion of the Uruguay Round, there have been major changes in the domestic situations in both the United States and the EU that could alter their stances in upcoming talks. Perhaps the most important development has been the EU's decision to expand. The EU has signed association agreements with ten countries and indicated that the Czech Republic, Estonia, Hungary, Poland, and Slovenia could enter the Union as full members as early as 2002.[7] For the most part, the Eastern European candidates for accession are major agricultural producers. Their post-1989 regimes have been relatively unencumbered with distortionary policies, although this has begun to change as they try to prepare themselves for participation in the Common Agricultural Policy (CAP). This poses a major challenge to the European system of agricultural protection. One authority offers the following assessment: "A union of 20 or more will neither be able to afford the expenditure nor be able to justify the economic costs."[8]

It might seem that this post-Uruguay Round development would greatly enhance the prospects for further liberalization. If the EU is unable to afford the preservation of the CAP, it should be eager to offer it as a concession in multilateral talks in exchange for market access or rule changes in another sector. However, this was not the experience in the Uruguay Round. During and prior to those negotiations, burgeoning CAP expenses made reforms inevitable, yet the impasse over agriculture prevented the scheduled conclusion of the Round in 1990. Only after the MacSharry CAP reforms of 1992 could the Round be completed.

Sharp divisions within the EU over agricultural reform clearly persist. In a 1997 speech, the European Commissioner for Agriculture, Franz Fischler, stated: "There will be no revolutionary reform of existing market support instruments. ...(R)adical reform, in my view, could only be a recipe for rural degradation, farmer hardship and diminishing market stability for consumers. ...(R)adical reforms...are not politically viable in Europe."[9] The culmination of internal European discussions on agricultural reform has been the recent plan, *Agenda 2000*. Reforms embraced within this plan have been criticized as being insufficient even to meet the requirements of the Uruguay Round agreement, much less the expected pressures of a forthcoming round. The plan preserves the European program of subsidization and seeks to make extensive use of the exceptions offered in the Uruguay Round agreement for environmental measures. Even without another round, such measures would likely trigger disputes once the "peace clause" of the Uruguay Round agreement on agriculture expires in 2003/2004.[10]

Furthermore, the EU has an alternative to assuming the costs of a full integration of the Eastern European countries: the erection of a "green wall" between Western and Eastern Europe. This would preserve barriers to agricultural trade, at least temporarily, thus limiting the economic costs to the west.[11] The political costs of this approach could be substantial. It would create a two-tier membership structure and would violate the principle of free movement of goods and individuals within the Union.

In sharp contrast to the persistence of distortions in European agriculture, in 1996 the United States implemented strong farm legislation, known as the FAIR Act. This measure removed some of the subsidies linked to production that the United States had been allowed to retain under the so-called blue box classification in the Uruguay Round agreement on agriculture. One implication of this is that the EU is now isolated in its preservation of blue box measures.[12]

Thus, the United States has liberalized but has not bound the changes. This may mean that it would be willing to lock in its reforms through a WTO agreement. However, there are some reasons for caution. The FAIR Act was adopted at a time of comparatively strong agricultural prices, which made the exposure of American farmers to market forces relatively appealing. It was tied to the ideology of the Republican Party, which then and now has control of both houses of the legislature. In the wake of the Asian crisis that began in 1997, demand for agricultural products has weakened and prices have fallen. This has raised objections to the FAIR Act and prompted calls for assistance to farmers. Furthermore, the Act, like most American farm bills, is temporary and requires renewal in 2003.[13] In the absence of such action, US policy would revert to the distortionary legislation of 1949. Thus, the stance of the United States in any future trade negotiation is likely to depend heavily on which political party is in power and on the movements of commodity prices over the next few years.

Meanwhile, among developing nations, particularly those in Latin America, agricultural reform was an important component of broader economic reforms. A developing country goal in a new round could be to lock in these reforms. To date, this need has largely been met through participation in preferential regional trade agreements. Such agreements are inferior to multilateral liberalization because they can introduce their own distortions.[14]

b. Topics for negotiation

The agenda for the next round of agriculture talks is already under discussion. At the Singapore Ministerial Meeting of the WTO in December 1996, an Analysis and Information Exchange Group was established under the auspices of the WTO Committee on Agriculture and charged with shaping the agenda.[15]

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7 Josling (1998, p. 103).

8 Josling (1998, p. 92).

9 Fischler (1997).

10 *Agra Europe* (1998).

11 Josling (1998, p. 104).

12 Josling (1998, p. 94).

13 Josling (1998, p. 91).

14 The topic of preferential regional agreements will be addressed in the next section. The classic example of a distortion introduced by such an agreement is "trade diversion," whereby the lower tariffs induce consumers to buy from relatively expensive regional partners rather than from more efficient producers outside of the bloc.

15 Josling (1998, p. 110).

A number of the topics are easy to predict. One of the great virtues of the transparency measures adopted in the Uruguay Round was the ease with which they can be reduced. Tariffs and explicit market access quotas are measures the GATT has been dealing with since its inception and readily lend themselves to liberalization negotiations. The range of proposals that has emerged draws heavily on GATT experience. Among the major alternative proposals for the reduction of agricultural tariffs are:[16]

- *zero-for-zero liberalization*. Under this approach, certain agricultural sub-sectors that are relatively easy to liberalize would have all protection removed at the end of a phase-in period. This has the disadvantage of preserving or exacerbating distortions in relative prices, so that resources could be drawn into those sectors that retained protection, perhaps making future liberalization more difficult. This criticism would not apply if all of agriculture were to move to free trade, but that seems highly unlikely;
- *across-the-board cuts*. One could adopt a 50 percent cut in all agricultural tariffs. This has the virtue of simplicity, and it would reduce somewhat the differences in protection between tariff categories; and
- *"Swiss formula" cuts*. Such a formula, used in the 1960s on industrial tariffs, has the effect of enacting larger reductions on higher tariffs and smaller reductions on lower tariffs. This is preferable from the viewpoint of distortions but may be the most politically difficult.[17]

Likewise, market access quotas can be expanded by certain percentages per year, and the allowable aggregate measure of support (AMS), which was defined in the Uruguay Round, can be steadily reduced. Export subsidies can be similarly phased out. It is in this sense of using the measures that were constructed in the Uruguay Round that the next round will truly be a continuation.

There are also a number of other issues that would merit inclusion in future talks. The subjects covered in post-Uruguay Round disputes provide a guide. There is a need for further clarification of SPS regulations, for example. Negotiators could also address the issue of labeling agricultural items for their content and their geographic origin. In addition, the development of biotechnology has presented new issues of intellectual property rights on seeds and genetic material.[18] Finally, the removal of preferential access systems, such as the European banana regime, could be dealt with more thoroughly.

16 Such options are widely discussed, but Josling (1998, p. 111) has a more detailed description.

17 It is not immediately obvious why one needs a rule of any sort. A clear alternative is simply to negotiate the reciprocal reduction of barriers item by item. The distinction is between a negative list and a positive list approach. Under the former, which would characterize any of the rules above, the presumption is that liberalization will occur unless an item is specifically excluded. Under the latter, liberalization will only occur if an item is specifically included. Some have argued that the presumption of inclusion embodied in a negative list approach results in greater liberalization.

18 Josling (1998, p. 82).

c. Policy implications for developing nations

Developing nations are major agricultural producers and thus should have a strong interest in liberalization. This interest is not uniform, however, since some developing countries are net importers of agricultural products. The removal of tariff barriers and a reduction in subsidies would raise world agricultural prices, thereby helping net exporters and hurting net importers.[19] From the standpoint of a healthy multilateral trading system and worldwide efficiency, the ideal solution is for developing countries to press for liberalization, with compensation for net importing countries. This could be partially accomplished by pressing for aid to occur in hard currencies rather than in kind.

The Cairns Group, which includes a number of developing countries, has been a major impetus to agricultural liberalization, and its efforts should be supported by developing nations more broadly. However, from a strategic standpoint, agricultural liberalization should not be the top priority of most developing nations. The issue is one that is highly charged in the developed countries and will likely resolve itself. If, on the other hand, the United States continues on its present path, it will press hard for further reforms in Europe and East Asia. If the United States returns to more distortionary agricultural policies, it is relatively unlikely that this is an area in which the developing world could induce reform. To a large extent, agricultural regimes such as the CAP are unsustainable. If they are destined to die of their own accord, great expenditure of political capital on the part of developing countries, would not be worthwhile.

Services

One major reason why the World Trade Organization is more than just a glorified reincarnation of the GATT is the inclusion of the General Agreement on Trade in Services. Services trade, which has grown faster than merchandise trade over the last decade, is thus subject to multilateral disciplines for the first time.[20] The general idea of including services in the same organization as other types of trade is a good one. It permits a broader range of deals between countries in a negotiating round, since service sector liberalization can be traded against reciprocal liberalization in goods sectors, for example. It also provides a single forum and set of procedures for settling disputes.

While the case for gains from trade in services is not drastically different from that for gains from trade in goods, liberalization of the service

19 One caveat is that in cases where the relative prices of industrial goods and agricultural products have been heavily distorted, as in a number of developing countries, it is not immediately apparent how vigorous the agricultural sector might be under a true market system. Note also that the predicted increase in agricultural prices is relative to what those prices would be without these specific policy changes. Concurrent changes in weather, for example, could have countervailing effects on crop prices.

20 Hoekman (1996, p. 89)

sector poses a range of new complications. It is not clear that GATS has met those challenges well. Altough it established a framework that may or may not provide a useful basis for future liberalization; little liberalization seems in fact to have occurred in the Uruguay Round or the ensuing services negotiations. This section discusses the motivation for services liberalization, the general structure of the GATS agreement, the negotiations in sub-sectors that were part of the built-in agenda, and policy considerations for developing countries.

a. GATS agreement under the Uruguay Round

A key question that Uruguay Round services negotiators had to deal with was the extent to which well established lessons and procedures from the GATT could be applied to the GATS. For example, do the principles that argue for free trade in goods also support free trade in services? In general, they do. The basic argument in each case is that if one country, by virtue of its technology, tastes, or its natural endowments, can produce a good or service more cheaply than another in relative terms, both countries will gain from a trade. However, there are some differences between goods and services that merit further consideration. For a variety of reasons, services have been more heavily regulated than goods. This means that liberalization initiatives may not be successful if they only guarantee access to a regulated market.[21] Also, the delivery of a service may require the movement of foreign nationals into the importing country. The treatment of these individuals, and any investment that accompanies them, takes the discussion of services liberalization deeper into areas of governance where countries have traditionally enjoyed sovereignty.

In the search for general principles to govern services trade, a natural starting point was to consider two of the cornerstones of the GATT: most favored nation (MFN) status (non-discrimination between trading partners) and national treatment (equal treatment of domestic and imported goods once the border has been crossed). These principles were adopted in the GATS, but with some important modifications. Whereas MFN status and national treatment are general obligations that countries must apply with few exceptions under the GATT, the GATS allows numerous exceptions.[22]

This leniency, an important structural weakness in the GATS, was motivated by a fear that countries would "free ride" on the liberalization of others (for example, fail to undertake substantial liberalization, but benefit from the automatic extension of the opening of others' markets through MFN status). The concern is curious in that it should apply equally to the GATT, which has nevertheless functioned quite well over the past five decades. In GATT negotiations, the danger of free ridership was overcome through rounds in which a country need not agree to the final accord if it did not judge the balance of other countries' offers to be sufficient. To the extent that there was free ridership in goods trade over the years, the free riders have fared worse than those who made concessions.[23]

The main effect of the leniency of the GATS has been to allow the use of conditional MFN status as a lever to obtain concessions within services negotiations. This has been part of an attempt to achieve a balance of concessions within services alone, rather than as part of a broader package. Such a narrowing of the scope of negotiations undoes the gains available from the inclusion of the GATS in the broader WTO and, predictably, has encountered serious difficulties.

In addition to an adaptation of MFN and national treatment rules to the services sector, the GATS agreement provides four classifications for the delivery of services and then allows countries to undertake different levels of liberalization in different sectors for each of the four classifications. The four modes of delivery are:[24]

1. *Cross border*. This is the closest to traditional trade in goods. It covers situations in which the service is performed in a foreign country and shipped across the border. This could include repair work done abroad, for example;
2. *Commercial presence*. This covers situations in which the service provider opens an office in the importing country to facilitate delivery of the service. This could include consulting or accounting work, which may be done outside the country but might also require representation within the country;
3. *Movement of the consumer*. This covers situations in which the consumer travels to acquire the service. The classic example is tourism; and
4. *Movement of personnel*. This covers situations in which foreign workers enter the country to provide the service.

It is not clear how necessary it was to include all four modes in the GATS agreement. The division significantly increased the complication of the GATS and in some of the cases led it into areas that might have been better dealt with elsewhere. Specifically, types 2 and 4 are generally accompanied by foreign direct investment (FDI) and thus raise all the questions that would need to be addressed in a broader investment agreement. Type 3 would seem to require relatively little international coordination.[25]

In addition to this taxonomy of modes of delivery, the agreement describes a set of restraints on service

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21 Hoekman (1996, p. 113).

22 One of the very few permissible deviations from MFN in the GATT is the Article XXIV provision for preferential trade agreements. Hoekman (1996, p. 93) gives a detailed description of the looser GATS rules on exemptions.

23 The most important example is special and differential treatment of developing countries. Srinivasan (1998) argues that the lack of full participation by developing countries limited the willingness of developed countries to address their concerns. Of course, the developing countries that retained barriers were also subject to the costs of protection.

24 Jackson (1997, p. 308) and Broadman (1994, p. 284).

25 The possibility of an investment agreement is discussed in the next section. This critique of the inclusiveness of the GATS agreement is offered by Snape and Bosworth (1996, p. 202).

provision that are prohibited and defines 155 sectors in which commitments can be made. The United States had originally requested a negative list approach whereby sectors would be included unless countries specifically excluded them. This approach is followed within the EU and in the North American Free Trade Agreement. The proposal faced strong opposition from developing countries, partly on the grounds that the construction of these negative lists would strain their resources.[26] Instead, the GATS features a positive list on sectoral commitments and a negative-list approach within sectors on prohibited actions.

The intricacy of the GATS agreement, combined with the flawed nature of data on services trade, make the impact of the agreement very difficult to assess. One heroic attempt looked at the percentage of possible sector/mode combinations (155 sectors and 4 modes), which made commitments and weighted those commitments by the degree of liberalization. This measure shows high-income countries with 36 percent coverage, low- and middle-income countries with 10 percent coverage and large developing nations with 23 percent coverage. More discouraging yet is the extent to which countries made no commitments whatsoever on a large number of sectors. The author of the study concludes, "The level of specific commitments under GATS suggests that governments did not grasp the opportunity to bind the *status quo*, let alone liberalize access to service markets."[27]

As with the agreement on agriculture, the GATS' major claims to accomplishment were the establishment of a framework under which liberalization could be achieved and the incorporation of services into the WTO. As was the case with agriculture, the agreement called for negotiations to occur on a fixed schedule in the years following the conclusion of the Uruguay Round. Unlike agriculture, however, those negotiations have already commenced and, in some cases, concluded. They offer an opportunity to judge the usefulness of the GATS framework and the prospects for further liberalization.

b. Post-Uruguay Round service negotiations

By December 1993, as Uruguay Round negotiations were drawing to a close, discussions in some of the most important service sectors had still not resolved certain issues. Rather than prolong the Round, it was decided to continue negotiations in these particular areas. The following deadlines were set for the sub-sectoral negotiations:[28]

- Movement of natural persons
  June 30, 1995
- Financial services
  July 1, 1995
- Basic telecommunications
  April 30, 1996
- Maritime services
  June 1, 1996

26 Broadman (1994, p. 286) and Hoekman (1996, p. 113). The strain on resources was a more plausible objection when the end-date for Uruguay Round negotiations was 1990.

27 Hoekman (1996, pp. 105-110).

28 For a more detailed history, see Dobson and Jacquet (1998, pp. 80-85), on which this section draws.

Not a single one of these deadlines was met. The negotiations on the movement of natural persons were delayed, and those on maritime services came to a complete halt, not to resume until the next round of service negotiations in 2000. Of the sectors under discussion, it is worth noting that maritime services is the only one in which the US market is among the more protected in the world. Thus, it is the only one in which serious concessions would be asked of, rather than demanded by, the United States.

With regard to financial services,[29] the United States decided in June of 1995 that the offers other countries had made were inadequate. The US was particularly annoyed by the paucity of liberalization commitments offered by Japan and by developing countrie and, therefore, exercised the broad discretion allowable under the GATT and withdrew its offers. It would allow market access only to those countries that had made reciprocal concessions or that had existing operations in the United States. The EU was less eager to abandon the negotiations and feared the signal an early WTO failure might send. It pressed for and won an interim agreement that lasted until November 1, 1997. This agreement involved 43 countries, including the United States. The participants were not bound beyond the length of the agreement and were free to take the exemptions available under weak GATS rules.

Although negotiations on financial services resumed on April 10, 1997, there was still relatively little change in negotiating offers by early July. Nonetheless, a final agreement was reached on December 13, 1997. A range of explanations are offered for the progress that was made. The most persuasive argument is that the Asian financial crisis commenced that summer.[30] At the heart of the crisis were concerns about the regulation and openness of Asian financial service sectors. By the fall, all participants were eager to avoid the further shocks that would surely have accompanied the failure of the financial services negotiations.

It must also be remembered that the mere conclusion of an agreement does not mean that it was a success. The difficulties of assessing the extent of services liberalization apply to financial services as well. One expert conclusion was grim: "the (Financial Services Agreement), save for actual advances in the field of insurance services, barely goes beyond binding the *status quo*... Remarkable though it was in terms of the negotiating challenge, especially in light of the Asian financial crisis, the FSA does not appear to provide significant new momentum on market opening."[31]

The negotiations on basic telecommunications had a similar history.[32]

29 Financial services include banking, insurance, securities trading and financial information.

30 Dobson and Jacquet (1998, pp. 84-85). They also cite better cooperation between the United States and the European Union and more effective coordination between private lobbying interests.

31 Dobson and Jaquet, 1998, p. 90

32 Among the services included in basic telecommunications are voice and data transmission via telephone, telegraph and facsimile.

In April 1996, the United States judged the package of offers inadequate and walked out of negotiations.[33] By February 15, 1997, an agreement had been reached. It is somewhat less clear in this case what motivated the changes in position. Among the important factors was the United States' unilateral imposition of a rule governing payments for telephone service.[34] Again, it is difficult to assess the extent of market opening and the degree to which the negotiations drove this liberalization.[35]

In both financial services and telecommunications, the markets of the United States and the EU were reasonably open to competition, while those of Japan and the developing nations were more protected. Furthermore, the most competitive firms were based in the United States and the EU. The developing nations had relatively little interest in reciprocal market access. Thus, the difficulty in reaching agreements when these negotiations were carried on in isolation was entirely predictable. Under the GATS, it was possible to sign an agreement without undertaking liberalization or without even locking in the *status quo*. What is more worrisome is the judgment that "some of the built-in features of GATS... suggest that it suffers from architectural limitations that cast a doubt on its ability to create a liberalization-enhancing regime for trade in services, that is, one that exerts continuous pressure toward opening, as does GATT and as do certain regional trade agreements."[36] In this sense, the GATS was less of an achievement than the agreement on agriculture. While neither accomplished a great deal of liberalization, agriculture seems to have done better at laying a groundwork for future progress.

c. Policy implications for developing nations

It is definitely in the interest of developing nations to liberalize trade in services. To the extent that accounting and legal practices are not transparent, telecommunications are expensive or unreliable, and financial transactions are difficult, these will all impede economic development. This is similar to the argument against barriers to imports of goods, though the closest analogy may be to barriers against the import of intermediate products. Thus, developing countries should be willing to participate in a strong GATS. In retrospect, the decision to limit the service negotiations to a positive-list approach was a grievous error. It is one that developing nations should seek to remedy.[37]

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33 Aranson (1998, p. 16).

34 Aranson (1998) also stresses the political pressure and firm negotiating stance of the United States.

35 For a debate about the significance of the Basic Telecommunications Agreement, see Drake and Noam (1998). Noam's skeptical view is that the agreement largely codified liberalization that was occurring anyway. He is also concerned that the pace of liberalization may actually be slowed by the intricate negotiating process.

36 Dobson and Jacquet (1998, p. 100). The built-in features include the positive-list approach and the division into four modes of supply. The more thorough regional agreement they refer to is NAFTA.

37 A more thorough discussion of potential GATS reforms may be found in Snape and Bosworth (1996, pp. 200-203).

Such a remedy should be sought in the next multi-sector round of negotiations. One of the valuable functions the GATT was able to perform for its active participants was political cover for liberalization that was economically desirable but politically difficult. The WTO should be in an even better position to play this role as its broader coverage allows a greater scope for bargaining across issues. More extensive financial services liberalization could be exchanged for reciprocal limits on the use of anti-dumping measures, for example. However, the positive-list approach of the GATS, its weaker implementation of MFN status and national treatment, and the post-Uruguay Round trend toward sectoral and issue-oriented negotiations undermine this potential virtue of the WTO. These flaws weaken the mercantilist but effective argument of reciprocal market access that drove the GATT rounds. The subdivision of negotiations to such an extent that maritime services and financial services are entirely separate makes it extremely difficult to strike bargains that are politically acceptable to all participants. Once the United States' desire for market access in financial services has been met, what incentive does it have to navigate the politically treacherous waters of shipping liberalization?

It is not entirely clear why the United States, the major proponent of sectoral negotiations, found it in its own interest to pursue this course. In part, it can be attributed to the failure of its negotiating partners to adopt the more comprehensive approach advocated by the US Thus, within a weaker framework, it was able to hold out for sectoral balance and it did. Another explanation appears to be concern about the increasing complexity and slow pace of broad multilateral negotiations.[38] This concern has also been cited as a factor driving the pursuit of regional trade agreements. In both cases, the concern is misguided. The complexity inherent in multi-sector negotiations is necessary if one is to craft a package of reciprocal concessions that will balance the interests of all countries.[39]

Fortunately, the built-in agenda calls for another round of service sector talks at the turn of the century, at roughly the same time as the agriculture talks. In May 1998, the United States seemed to relax its opposition to another broader Millennial Round of trade negotiations, although it stopped short of an endorsement.[40] Such a round will provide an opportunity to pursue a services agreement with more complete sectoral coverage and stronger MFN and national treatment applications. Developing nations should stand ready to undertake serious liberalization of their services sectors and

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38 President Clinton made a point of this in his May 1998 comments at the WTO. He said that in a high-tech era the WTO could no longer afford to take years to reach trade accords. *European Report* (1998).

39 The argument is equally weak for regional agreements. These require the same breadth of negotiation but introduce a new level of complexity, since they must coexist with other regional agreements and with the multilateral system.

40 US Trade Representative Charlene Barshefsky has said that the US reluctance to announce a new round stems from the fear that such an announcement would block any further liberalization until the deadline of the next round approached. Also see Holt and Abruzzese (1998).

should make it a top priority to link such measures with developed countries' liberalization in areas such as agriculture or anti-dumping.

Environment

The third major item on the built-in agenda for WTO discussion is the link between international trade and environmental issues. Discussions on this topic began in 1991, and were followed by a decision in 1995 to establish a WTO Committee on Trade and the Environment (CTE) to pursue this issue after the conclusion of the Round.[41] So far, the CTE has done little more than report on inconclusive discussions, to the dismay of those who would like the WTO to play a more vigorous role in promoting environmental measures.[42]

Given the ongoing talks and the strong pressure in developed countries to address this issue, it seems likely that it will be prominent in an upcoming round. This section first describes some of the reasons why environmental issues have burst onto the trade agenda. Then, arguments for and against a linkage are considered. Finally, the policy options available to developing nations are discussed.

a. Entry of the environment onto the agenda

A number of different events have served to promote a linkage between trade and the environment. Here we highlight four: the ineffectiveness of international environmental agreements; GATT and WTO decisions disallowing domestic environmental legislation; the more focused interaction between developed and developing nations through free trade agreements, particularly NAFTA; and the need for a legitimate outlet on the part of those seeking protection.

It is not obvious if international trade is central to environmental concerns. In fact, there have been numerous attempts at international coordination on environmental policy independent of the multilateral trading system. Although these talks have frequently led to agreements, it has proved difficult to enforce compliance. The record has been poor enough to prompt one advocate of international environmental cooperation to write, "There is growing recognition that the international environmental management structure is badly broken."[43] Without an enforcement mechanism, there is a temptation for countries to "free ride" in such agreements. Given the relative effectiveness of the GATT in enforcing its rules, along with the desire to use trade sanctions as a tool for enforcement of the environmental agreements, this suggests a link between the issues. Thus, "in a world where the use of force is increasingly considered inappropriate and where other enforcement mechanisms are limited, trade measures sometimes will be the best available point of leverage."[44]

41 Ostry (1997, p. 227).

42 For a critique of the CTE, see Esty (1996, p. 70).

43 Esty (1996, p. 79). A more detailed history of environmental agreements and the interaction with trade can be found in Esty (1994).

44 Esty (1996, p. 72).

The GATT enforcement mechanism also came into more direct contact with environmental concerns through dispute-settlement panel findings that rejected domestic environmental measures in developed countries. The first prominent case of this sort came in 1991, in what is commonly known as the tuna-dolphin case. The United States had adopted a ban on the import of Mexican tuna caught with nets which posed a particular danger to dolphins. The policy violated the principle that countries may not place restrictions on the processes whereby an imported good is created. Since then, the United States has lost cases concerning the import of "dirty" gasoline and the import of shrimp caught in nets that threaten turtles. The EU has faced a challenge over its ban on beef produced with hormones.[45] In each of these cases, the challenge was either to an extraterritorial measure or to a discriminatory trade policy. However, the impression they gave to environmentalists was that the WTO had obtained a veto over their countries' right to protect the environment.

In the United States, another factor was the decision to include Mexico in the *North Atlantic Free Trade Agreement* (NAFTA). As a developing country, Mexico is less able to devote resources to the enforcement of its environmental regulations. The debate over NAFTA cast a spotlight on the weaknesses of Mexican environmental protection, much of which was readily visible because the pollution occurred near the Mexican-US border. A precedent was established when then-candidate Clinton, in his 1992 presidential campaign, asserted that the NAFTA would only be acceptable if it included protections for labor and the environment. When he won the election, his administration negotiated side agreements that were attached to NAFTA before its passage.

Finally, as noted above, the increasing effectiveness of the GATT and WTO in restricting the use of standard instruments of protection, such as tariffs, has increased the demand for alternative measures. To some extent, administered protection, such as the antidumping regime has met this demand. However, a crusade for the harmonization of labor and environmental standards can also serve as an easy vehicle for such protectionist interests. The standard complaint is that countries with weaker labor or environmental standards benefit from an "unfair" advantage in trade, since their industries' costs will be lower than those of industries operating in countries with higher standards. The frequently expressed concern is that industries will leave high-standards countries or that these countries will be compelled to lower their standards in a "race to the bottom." Since it would be virtually impossible for developing countries to adopt the complete set of developed country labor and environmental standards, the demand for harmonization, as a prerequisite to trade, serves as a less-transparent justification for blocking imports from developing countries.[46]

45 de Jonquières (1998). For a thorough legal analysis, see Farber and Hudec (1996).

46 Bhagwati and Srinivasan (1996). The next section draws heavily on their analysis.

b. Arguments for and against a linkage of trade and the environment

In considerations of international environmental policy, a key distinction must be drawn between purely domestic environmental concerns and those that physically cross international borders (transboundary concerns). It is *only* in the latter case that there is any justification for nations to be concerned with each others' policies.

The issues raised in the disputes over both shrimp and tuna fishing were examples of purely domestic concerns. There was no argument that the United States was physically damaged by the fishing techniques; the policy was motivated by concern that the regulations employed by the producing nations were inadequate. There are two major grounds on which one country could object to the domestic environmental policies of another. First, it could be argued that the preferences of those adopting the regulations are flawed. This could be because the government is deemed unrepresentative of the populace, or it could simply be that the objecting country has different preferences. In either case, attempts to impose one country's environmental preferences on another are unacceptable infringements on sovereignty.

A second argument for concern over environmental policies that have no transboundary element is that there is an indirect effect, through international prices. This is the "unfair" competition argument described above. However, since in an integrated world economy virtually any economic regulation will alter prices, the implication of such reasoning is that the proper scope of concern over other countries' policies is unlimited. Again, this would be an unacceptable threat to sovereignty, even if it were justified by economic theory, which, in fact, it is not.

International cost disparities derived from differences in environmental standards are no more objectionable than those derived from differences in educational achievement or technology. In fact, the basic case for gains from trade relies upon the existence of cost disparities between countries. This case is usually made without reference to environmental problems, but it has been shown that "generally speaking, the optimal pollution taxes (in a globally Pareto optimal solution) will *not* be equal across the countries: *diversity in these tax rates will be both natural and appropriate, hence also 'legitimate'*."[47]

While one can describe a scenario in which there is a "race to the bottom" in environmental standards, a model of a "race to the top" is equally feasible. The question is therefore an empirical one, and there is little evidence that environmentalists' fears have been realized.

When one considers environmental problems that spill across national borders, the case for international coordination is much stronger. Prominent examples of such issues include emissions spurring global warming and the by-product acid rain. Nations, if left to themselves, will not take into proper account the environmental damage they cause to their neighbors; the efficiency argument for self-determination does not apply.

This is an argument for international coordination on transboundary problems. The difficulty is that the remedies called for in such agreements are often inequitable; they call for greater sacrifices from countries with vast rainforests, for example. This would not be an obstacle if those countries of which less was asked were willing to compensate those countries with more difficult obligations. For obvious reasons, this "carrot" approach to inducing operations is less appealing to the demanding countries than the "stick" approach of trade sanctions.

Given the need for international coordination, however, if a multilateral environmental agreement has been reached which participants feel is efficient and equitable, WTO members could allow trade sanctions to be used to enforce the agreement. Although transboundary problems rarely concern trade directly, the inclusion of this issue in a WTO round could broaden the range of mutually beneficial agreements that might be reached.

c. Policy implications for developing nations

Clearly, with the motivations described above, this is an issue that developing nations must continue to approach with extreme caution. Given the potential dangers of this issue being used for protectionist purposes, one could ask if it is necessary to allow it to progress in WTO discourse at all. One expert writes, "Developing countries have a strong interest in preventing developed countries from perceiving that they will not negotiate regarding the environment at all; such a stand could induce environmentalists to push even harder for trade-enforced environmental measures."[48]

Considering the great pressures on developed countries to address this issue and the fact that it is already on the WTO agenda, it may be necessary to reach a substantive agreement on trade and the environment.[49] If so, there are a number of measures that developing countries could take to minimize the potential damage.

The most important would be to ensure that the focus is entirely on transboundary issues. It is not necessarily objectionable to achieve compensation through trade measures in other areas, but it should be made explicit that this is what is occurring. This will help to ensure that the principles of sovereignty over entirely domestic concerns and compensation for transboundary measures remain intact. The potential for the expansion of the WTO agenda into the area of labor standards makes it exceedingly important to be cautious in the establishment of precedents.

47 Bhagwati and Srinivasan (1996, p. 166). Emphasis in the original.

48 Krueger (1998, p. 22). She suggests that developing countries express a willingness to negotiate environmental issues in forums other than the WTO.

49 As evidence of the pressure, recall that one of the reasons President Clinton could not get enough votes for fast-track authority to negotiate the extension of NAFTA to Chile and a Free Trade Agreement of the Americas (FTAA) was the absence of language promising labor and environmental measures, which cost him Democratic votes. New fast-track authority would be necessary for a new WTO round.

Another policy measure is support for the transparency of WTO undertakings. This is virtually costless for developing countries and could help to assuage concerns of environmental groups in some developed countries that contrary rulings are the outcome of a secret and sinister process. In contrast, it would be unwise to open the dispute settlement process to nongovernmental organizations (NGOs). This point is not particular to the topic of trade and the environment but rather concerns the proper functioning of the system and the usefulness of agreements. If the DSM can be bogged down through NGO involvement or, worse, triggered by parties other than member countries, this could limit the appeal of the WTO as a forum for dispute resolution.[50]

Conclusion

The post-Uruguay Round era has been unlike that following any previous round. Negotiations on unresolved issues have continued under the new institutional umbrella of the WTO. This built-in agenda has featured discussions on agriculture, services trade, and trade and the environment. Given the absence of a round or linkage between sectors, each set of negotiations has had to attempt to achieve a deal that would stand on its own.

The only areas in which there have been serious claims of success have been financial services and basic telecommunications. In these areas, after breakdowns and delays, agreements were reached. With the problems inherent in analyzing the service sector, as well as the complexities peculiar to the GATS, it is difficult to tell whether these agreements promise meaningful liberalization.

There are good reasons to think that sectoral negotiations will necessarily be less effective than rounds. Most prominently, such negotiations preclude the kind of bargaining across sectors that have facilitated earlier GATT agreements. One useful idea to accommodate the desire to continue discussions outside of rounds and the need for cross-sectoral linkages is that of replacing a round with a roundup.[51] In such a scheme, negotiations would be ongoing and tentative agreements could be reached, but these agreements would only be finalized when an acceptable package was ready. Effectively, this offers a round without either the stigma or the tight timetable.

In such a framework, developing countries should actively pursue liberalization in both agriculture and services. They should ensure that there are sufficient linkages across sectors and that they receive reciprocal market access in exchange for their liberalization. This will take time and therefore will hit up against a fundamental oddity of reciprocity in trade: a delay hurts one's own interests. However, there are sufficient issues for linkage already on the table for prolonged delay not to be a major concern. In addition, developing nations can liberalize their service sectors without binding those changes until a broader agreement is reached.

50 See Levy and Srinivasan (1996) for a discussion of the effects of allowing parties other than member countries access to the DSM.

51 Schott (1996, p. 41).

The issue of trade and the environment is difficult. Lurking behind justifiable environmental concerns are unjustifiable calls for the harmonization of labor standards. A focus on transboundary issues will help keep the two issues separate. Ideally, labor standards should be kept off the WTO agenda altogether.

A somewhat riskier policy would be to consent to the pressure for the inclusion of new issues on the agenda, but then to remain adamant on language guaranteeing the right of countries to sovereignty over their own internal environmental affairs (i.e., those without direct negative effects on other countries).[52] This strategy – offensive rather than defensive – could be used on labor standards as well as on the environment. It has the virtue of playing upon the concerns in the United States over the WTO and sovereignty and turning those concerns to the developing countries' advantage.

The risk is that this would be completely unacceptable to those groups that have pushed environmental and labor issues onto the agenda. Negotiations could hit an impasse. It is not clear, though, whether it is worse to have an impasse during or before negotiations. Whichever the case, it may be more productive to battle the pressures for heightened standards with a positive statement about the principle of sovereignty rather than with a refusal to engage in negotiations.[53]

52 The distinction between direct and indirect effects is important, since the statement could otherwise be rendered meaningless. A direct effect would be the flow of pollution over a national boundary. An indirect effect would be a change in international prices due to the adoption of lower environmental standards in a production process.

53 Of course, the alternative has not been to refuse to engage in negotiations, but rather to limit negotiations on nontrade issues to a forum such as the International Labor Organization. It is the ineffectiveness of such fora that can lead one to equate this stance with a refusal to negotiate.

5.
Other New Issues Confronting the World Trade Organization

Introduction

Beyond the WTO's built-in agenda lies a range of issues that have a less formal status. All of them have been actively discussed to some degree, but the negotiations were not mandated by any Uruguay Round agreement. They all shed light on future directions the WTO might take and are candidate topics for a subsequent round.

The only one of these topics on which negotiations are even moderately complete is the Information Technology Agreement (ITA). This agreement, reached in 1997, is notable not so much because of the liberalization it brought about, although that was substantial, but because it has been used to argue that sectoral negotiations can work. Unlike the failure of the maritime services negotiations and the limited successes of the financial services and basic telecommunications agreements, the ITA success requires almost no qualification. This section considers whether this agreement can truly serve as an exemplar of future prospects in purely sectoral negotiations.

The relationship between trade and labor standards is not formally on the WTO agenda, but it has been the subject of great interest among key WTO members, particularly the United States. This section draws contrasts between labor and the environment and examines whether the issue is best left under the purview of the International Labor Organization or whether it has a place among the issues covered by the WTO.

Two prominent topics on the cusp of WTO consideration are competition policy and investment. Elements of these issues are already addressed in sections of other WTO agreements, and working groups have been formed to consider whether broader negotiations on these topics would be worthwhile. This section deals with each in turn.

Finally, government procurement already has a place within the WTO, in the form of an agreement negotiated contemporaneously with the Uruguay Round, access to the dispute settlement mechanism, and a committee to monitor developments. However, the agreement was technically separate and has the status of a plurilateral accord so that only a subset of WTO members is bound by it. One goal for future negotiations is to expand the depth and breadth of its coverage.

The Information Technology Agreement

The ITA, which was concluded in March 1997, has been heralded as perhaps a prime example of the worthiness of negotiations outside of the standard round format. Although the discussion were held under the auspices of the WTO, they were concentrated in a single sector and were not part of the Uruguay Round's built-in agenda. United States Trade Representative, Charlene Barshefsky, said of the ITA: "the significance of the agreement is without comparison. At no time in the history of the trading system have so many countries united to open up trade in a single sector by eliminating duties across the board."[1]

There is no doubt that a significant amount of trade liberalization occurred under the ITA and that it represents a major early achievement for the WTO. The prominence of this success suggests that further examination would be worthwhile. On the face of it, the ease with which the ITA was reached seems to contradict claims that broader rounds and linkages between sectors are necessary for significant multilateral liberalization. In fact, the history of the ITA reveals some reasons to doubt that the sectoral approach can provide a worthy substitute for a new round.

a. Background

The ITA originated in an initiative pushed by US information technology producers.[2] The United States requested a lowering of European barriers to goods, such as semiconductors, in 1993 at the conclusion of Uruguay Round negotiations. The issue was raised again in early 1995 in bilateral negotiations between the United States and the EU and was on the agenda of the spring 1996 meeting of the "Quad countries."[3] At this stage, the United States pushed for the agreement to be multilateral. Prospects were bolstered when the ITA was endorsed at the Asia Pacific Economic Cooperation (APEC) summit in November 1996.

Negotiations took place at the WTO Singapore Ministerial Conference in December 1996, and the agreement that was reached was one of the centerpieces of the meeting. It was, however, conditional. As a means of addressing the free-rider problem that had plagued the contemporaneous negotiations in telecommunications and financial services, it had been agreed that the ITA would only be concluded if a sufficient number of countries agreed to participate. The requirement was that countries representing at least 90 percent of the world market in information technology goods join the agreement.[4]

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1 Cited in Wilson (1998, p. 75). The statement was made on February 15, 1997.

2 This history draws on Wilson (1998, pp. 72-76).

3 The Quad comprises the United States, the European Union, Canada, and Japan. Frequently in GATT negotiations, an accord was reached between the Quad countries and then extended to the broader set of contracting parties.

4 This 90 percent target was not met until later, and it was not certain at the time of the ministerial that it would be met. It is clear from negotiators' statements at the time that the United States had demanded a strict limit(in keeping with its concerns about free ridership) and that Europe had tried to soften the requirement. A US spokesman at the time said that if the limit were not reached, the agreement simply would not take effect. *European Report* (1996).

Initially, there was some discontent on the part of developing nations on the grounds that the conference was focusing on issues of importance primarily to developed nations and because the developing countries had played only a small role in the ITA discussion.[5] In Geneva in March 1997, further negotiations did lead to the conclusion of the accord. Eventually, 43 WTO member countries joined the agreement, accounting for approximately 93 percent of world trade in the sector.[6]

As a final procedural note about the ITA negotiations, it should be mentioned that, the only reason the United States was able to participate as it did was because President Clinton retained "tariff proclamation authority" left over from the Uruguay Round negotiations.[7] This seemingly technical point is in fact central to the interpretation of the ITA. The timing of the Uruguay Round and previous GATT rounds was largely driven by the time limits put on the "fast-track" negotiating authority granted by the US Congress to the president. Although the US Constitution grants Congress the power to regulate international trade, in the aftermath of the trade breakdowns of the 1930s, Congress used mechanisms such as fast-track authority to delegate its jurisdiction to the president temporarily. Part of the underlying philosophy was that the president might take a broader view of the national interest compared to the narrow sectoral views prevalent in Congress.

Without fast-track authority, there were no guarantees for US negotiating partners that an agreement would not be reopened when it reached the US Congress. It is conceivable that Congress would grant fast-track authority for future sectoral liberalization, but this would seem to undermine the rationale for delegation.[8] Thus, on a purely procedural level, the success of sectoral liberalization, as represented by the ITA, may prove difficult to repeat.

b. Coverage

The ITA required that tariffs be removed throughout the information technology sector. For developed countries, the liberalization began in 1997 and is to conclude by 2000. Some developing countries have until 2005 to phase out their protection. The value of trade that is subject to liberalization is approximately $600 billion and expected to grow.[9]

The negotiations in Singapore and Geneva concerned the range of products that would be covered in the agreement. The major categories were computers, telecommunications equipment, software, semiconductors, and printed circuit boards. However, certain sensitive products were excluded. Among these, the United States managed to bar certain optical fibers and signal electronics, while Europe kept out music compact discs and

5 Kandiah (1996).

6 WTO (1997, p. 3).

7 Johnstone (1997).

8 Of course, in the fall of 1997, President Clinton was not able to achieve fast-track authority even for broader regional free-trade agreements, and the prospects for passage in 1998 look very dim.

9 WTO (1997, p. 3).

software containing film or sound recordings.[10] The agreement also excluded consumer electronics.

c. Analysis

To assess the implications of the ITA for the future of the WTO, it is important to understand why it succeeded. A number of persuasive explanations have been put forward. The agreement occurred during a boom in the information technology sector, thus making liberalization relatively painless.[11] As it happened, the IT sector was sufficiently broad, and production sufficiently dispersed that most nations were both buyers and sellers of IT products. Thus, it was possible to agree to reciprocal market access even within the sector.[12] Even where nations were not IT producers, these goods were often intermediate products, rather than consumer goods, so producers that used IT could press their governments for liberalization. Evidence for this last point comes from the exclusion of music CDs and consumer electronics, both within the IT sector but not very useful in production.

Finally, despite the various explanations of how a sectoral accord could have overcome the general presumption that such narrow agreements are difficult, it turns out that the agreement was not confined to the IT sector at all. Agreement on the ITA came about only when the United States agreed to lower its barriers to European liquor exports. During the negotiations, the European negotiator insisted on a phase-out of tariffs on brown and white distilled spirits and liqueurs over a time period similar to that for IT products, and the United States agreed. This concession was apparently necessary to overcome French resistance to the ITA.[13]

Thus, while the ITA was a noteworthy achievement for the WTO and contains significant liberalization, it is not the shining example of the virtues of sectoral liberalization that some proponents claim. It had features that would be difficult to replicate in other sectors, and, even with these advantages, it was still necessary to agree to inter-sectoral linkages.

Labor Standards

Unlike the preceding sectoral topics, the linkage between international trade and labor standards is not yet on the WTO agenda. This is not for lack of interest on the part of more powerful members. The United States and France tried in 1986 and again in 1993 to raise the issue in the GATT, presumably to a level similar to that achieved by environmental issues with the Committee on Trade and the Environment.[14] The effort mostly

10 James (1996).

11 Neville, Peterson, and Williams (1997).

12 Johnstone (1997).

13 *European Report* (1996). A European spokesman was quoted as saying, "We're not trying to pretend that whisky and cognac are IT products. We're saying, merely, the more the merrier."

14 Freeman (1996, p. 88). Srinivasan (1998, p. 104) reports that the Uruguay Round almost came apart in December 1993 when the United States and France attempted to introduce a social clause to the recently completed agreement.

failed. There was a further strong push to put labor standards on the WTO agenda at the Singapore Ministerial Conference in December 1996. This, too, was rebuffed by strong opposition from the developing countries. The Conference declaration stated, "The International Labor Organization (ILO) is the competent body to set and deal with these standards, and we affirm our support for work in supporting them."[15]

Since then, the sharp partisan divide in the United States over the appropriate role of labor standards in trade agreements has contributed to the failure of the Clinton Administration to win approval of new fast-track authority for negotiations. The fall 1997 fast-track proposal did not include authority to negotiate labor and environmental agreements along with trade accords, because the linkage was vehemently opposed by the Republican Party which has a majority in both houses of Congress. The absence of such a linkage made the measure unpalatable to large numbers of Democrats whose votes were needed to win a majority.

There are extensive debates about whether the concern over trade and labor standards is motivated by altruism or protectionist sentiment and about the extent to which these concerns are justified. Many in the developing world suspect that advocates of a linkage are mostly interested in removing developing countries' comparative advantage due to low labor costs. The principal arguments for and against a linkage are presented below.

a. Background

There is a long history of countries' taking an interest in each other's treatment of workers.[16] To some extent, this reflects a benevolent concern on the part of citizens for their international brethren. On the face of it, though, there is no reason why such humanitarian concerns should be relevant to the trade agenda. Furthermore, such concern can be addressed through international aid, which has become less, rather than more, popular in recent years, at least in the United States. The interest in the linkage between trade and labor standards arises most frequently when trade issues are prominently discussed and when there are problems in domestic labor markets.[17] The confluence of these factors in the past few years can explain the emergence of the issue on the international agenda.

The recent completion of the Uruguay Round, as well as the flurry of regional integration proposals, has certainly put trade in the news. Furthermore, the increased participation of developing countries has served to juxtapose the disparate levels of standards and enforcement that exist in the developing world with the higher standards in the United States and Europe, the principal advocates of a linkage. At the same time, the domestic labor markets in these developed countries have experienced difficulties. European unemployment has persisted at levels above 10 percent. Unemployment has been quite low in the United States, but the compensation of semi-skilled workers has largely stagnated.

15 Quoted in Srinivasan (1998, p. 115).

16 A common reference is Charnovitz (1986).

17 Anderson (1986, p. 450).

There are extensive debates about whether the concern over trade and labor standards is motivated by altruism or by protectionist sentiment and about the extent to which these concerns are justified. The principal arguments for and against a linkage are presented below.

b. Arguments for a linkage

The range of labor standards advocated by one group or another and the range of justifications for such proposals are quite broad. One useful categorization distinguishes between "core" and "cash" labor standards.[18] Under such a classification, the undisputed core labor standards would include prohibitions on forced labor and discrimination, and guarantees of the freedom of association and the right to collective bargaining. Each of these is covered by a convention of the ILO. A second group of arguable core standards would include a minimum age for child labor, a prohibition of exploitative child labor, and minimum occupational health and safety regulations. The group of cash labor standards includes minimum wages, mandatory vacations, pensions, and specific health and safety standards.

This distinction is offered, in part, as a means whereby advocates with humanitarian concerns can distance themselves from those with protectionist motives. In arguing for the more extreme case of cash labor standards, a common rationale is that trade between a high-standards country and a low-standards country will either force that same country to relax its regulations or hurt citizens in that same country. The most prominent recent argument along these lines was offered by an independent candidate in the 1992 US presidential race, who claimed that if the United States were to conclude a trade agreement with Mexico, there would be "a giant sucking sound" as US industry collectively relocated south of the border. If Mexican wages were a fraction of the American minimum wage, the thinking went, how could US industry hope to compete?

At that level, such an argument is facile and easily discredited. It ignores differences in labor productivity and the other factors that enter into industry location decisions. However, there are more sophisticated arguments which suggest that trade between a country that is relatively abundant in skilled labor (a developed country) and a partner that is relatively abundant in unskilled labor will hurt unskilled labor within the developed country.[19] In principle, if developing nations were to impose a productivity-adjusted minimum wage at the level of developed country wages, this injury to unskilled labor in the developed world would be prevented. Such a remedy is the equivalent of trade protectionism, in that it wipes out the basis for trade, albeit without explicit impo-

18 Freeman (1996, p. 99).

19 This is an implication of the standard Heckscher-Ohlin model of international trade. The effects on unskilled labor in the skill-abundant country are addressed by the Stolper-Samuelson theorem.

sition of barriers. It would come at a heavy cost to both the developed and developing countries involved.

Beyond the cash labor standard arguments, there are those who argue only for the enforcement of core labor standards. One example of such an argument is the scenario in which a developed country consumer cannot in good conscience use a soccer ball that was produced with child labor. The international trade in such soccer balls necessarily links trade and labor standards. A different example would be the citizen of a developed country who objects to the use of child labor in developing countries, whether or not that consumer ever partakes of the fruits of that labor.

Two questions then present themselves: Why should these issues be addressed through the WTO rather than the ILO, and why would developed countries be any better positioned to reach moral judgments than developing countries? To the former question, a common reply is that the ILO is not capable of enforcing standards. It works on the basis of moral suasion and has little with which it could threaten an offender.[20] The WTO, on the other hand, could authorize the use of trade sanctions. To the latter question, it is argued that, while there may be no difference across countries in the ability to make moral judgments, there may be political failures in some countries that prevent its citizens' moral judgments from being enforced. Thus, this argument hinges on the existence of a set of standards on which everyone would agree and on the superior functioning of some political systems in delivering those standards.

c. Arguments against a linkage

We begin again with a useful distinction: Are the labor standards that are being advocated in keeping with or different to, the national interest of the country that is being asked to adopt them? To be more precise, the national interest should be specified both in terms of the content of the policy, for example, the minimum age at which a child may work, and the allocation of resources for enforcement of the policy.

If the measure is in the national interest, then one must ask why it was not undertaken. One possibility is the argument made above concerning political failures. However, such failures are by no means unique to low-standards countries. In the United States, for example, there is an active debate over the reform of campaign finance regulations. Advocates for reform contend that the current system gives disproportionate weight to the opinions of those with money to spend. Thus, it is very difficult to draw distinctions between the national interest and the choices made by the national government. In this case, the primary barrier to the adoption of standards that are in a country's self-interest would likely be informational. The ILO would be the proper organization to provide advice.

If the measure is not in the national interest, we can further differentiate between concerns that stem from

20 Srinivasan (1998, p. 71) on the functioning of the ILO in this context.

trade as a vehicle for the transmission of the effects of standards, and concerns that are independent of the flow of goods. In the former case, which would include the example above where a consumer would not wish to use a soccer ball produced with child labor, labeling of goods can allow consumers to make informed choices. There could be some difficulty verifying the claims of such labels, but this again is an area to which the ILO could contribute.[21] Another example of this would be the transmission of standards through price effects. In the case described above, in which the unskilled worker in the developed country might be hurt by trade, the proper remedy is compensation within the developed country, rather than the imposition of standards on the developing country.[22] In none of these cases is there a physical spillover of the sort that suggests international coordination on environmental issues.

The claim of spillovers has been made in the case of labor concerns that are independent of the flow of goods. This covers the example in which the production of soccer balls with child labor is offensive to a citizen in a developed country, whether or not that citizen consumes the good. In this sense, it has been argued, high labor standards are a kind of public good.[23] International trade is only involved as a potentially potent lever to compel a trading partner to take an action it would otherwise not wish to take.

This is the approach in which developing countries have rightly sensed danger. The peril lies in the all-encompassing nature of the argument. If one country can impose sanctions on another for failure to adopt a policy that might affect trade, few domestic policies would be immune from foreign action. Even if one were to limit sanctions to policies with indirect impacts on trade, this is not much of a restriction. Education policies, food subsidies, and the state of infrastructure all have indirect effects on productivity and, therefore, on trade. Similarly, on the demand side, the distribution of films and literature can affect the demand for products that they feature. Once one drops the pretense of a trade connection, one is simply left with an imposition of one country's standards on another.

This might be acceptable if there were a set of core standards that everyone upheld. However, the set of standards upon which all countries agree is extremely limited.[24] Furthermore, if violations so heinous are occurring that they demand collective action by all civilized nations, trade sanctions would seem to be an insufficient

21 Freeman (1996, p. 92) discusses the limitations on labeling as a solution.

22 In standard cases, one can show that the developed country as a whole will gain from trade with the developing country. Thus, those individuals who gain can afford to compensate those who lose. There is also extensive literature on the question of whether trade has been responsible for labor market problems in developed countries. A leading alternative candidate is technological change. See Cline (1997).

23 Freeman (1996, p. 93).

24 Srinivasan (1996). Note also that the requirement here is weaker than the one used above – agreement only on the nature of the policy. Agreement on resource allocation would be even rarer.

response. Even advocates of the spread of labor standards are dubious about the effectiveness of such sanctions.[25] So who would want to apply ineffective sanctions? Those who were unduly optimistic about their efficacy and those who are just as happy to maintain them despite their inefficacy – in other words, those who want protection.

d. Policy implications

The case against a linkage of trade and labor standards is compelling. However, strong political pressure remains for the inclusion of labor in the WTO agenda. The strength of this pressure has led some analysts to conclude that it may be worthwhile to allow a "social safeguard" under the WTO as a means of preventing a protectionist backlash.[26] The great danger is that once the topic is broached, the ensuing policy instrument could be very difficult to control. One need only consider the misuse of policy instruments, such as anti-dumping or the dirty tariffication under the Uruguay Round Agreement on Agriculture, to recognize that it would be hard for the WTO to limit the use of trade sanctions whenever a complaint could be linked to labor standards.

Instead, there are a range of measures that developing nations could pursue to combat the push for the inclusion of labor standards. One such measure, discussed in the section on the environment, is to make the strong affirmative case for national sovereignty. A second is to participate actively in the ILO and facilitate the labeling of goods. Finally, developing nations should strive to attach price tags to humanitarian measures advocated by developed nations.[27] If a developed country is offended by the conditions forced upon children in poverty, it could provide aid to lift the children out of poverty. Too often in the developed world, the demand for high standards is seen as a costless way of addressing problems that, in fact, require the expenditure of real resources.

Competition Policy

a. Introduction

Competition, or anti-trust, policy generally concerns the private behavior of firms and government regulation of that behavior. It has long been recognized that a competition policy could either amplify or negate the gains achieved through trade liberalization, but the issue has moved closer to the forefront of the WTO agenda more recently. In 1996 at the Singapore Ministerial Conference, a working group on the issue was established with the mandate to determine whether there were sufficient connections between trade and competition policy to merit WTO negotiations. The group is to report this year on its findings.[28]

In general, the EU has been quite supportive of the inclusion of competition policy in the WTO agenda, while

25 Freeman (1996, p. 106).

26 Rodrik (1994) bases his recommendation on the existence of a "potentially legitimate core to the clamor for upward harmonization."

27 This builds on the discussion of distributional questions in Srinivasan (1998, p. 74).

28 de Jonquières (1998).

the United States has been staunchly opposed. To the extent that developing countries have been interested, they have seen such talks as an opportunity to place limits on anti-dumping policies which, at least in principle, could be replaced by anti-trust regulations.

Two events from 1997 highlight the potential interaction of competition policy and trade policy. The first is the recent merger of Boeing and McDonnell Douglas, two aircraft producers based in the United States. Although US companies would normally only be subjected to US law, an active interest was taken by the EU as home to Airbus Industry, principal competitor of the American firms. The EU threatened to impose trade sanctions on Boeing if its concerns about the merger were not addressed.[29] The second major example was the United States' dispute with Japan over access to the Japanese consumer film market. In this case, the US firm Kodak complained that it was unfairly denied access to the Japanese market, not through an explicit trade barrier, but rather through a Japanese domestic distribution system that made it excessively difficult for new firms to compete with the Japanese firm Fuji. The United States claimed that the effect of lax Japanese anti-trust enforcement was to nullify earlier trade concessions that Japan had made granting access to its film market. The United States pressed its case before a WTO Dispute Settlement Panel and lost, largely on the grounds that the WTO does not have a competition policy and therefore cannot intervene on non-trade measures.

Competition policy is a central component of "deeper integration," whereby agreements reach beyond the lowering of barriers at borders. Agreements on competition policy have appeared in a number of regional accords, and the ability to address such issues has been cited as a motivation for pursuing regional rather than multilateral integration. Also, competition issues have already made their way into WTO agreements, specifically the accords on telecommunications services and safeguards.[30] The WTO's annual report contained the following assessment: "The issue is not whether competition policy questions will be dealt with in the WTO context, but how and, in particular, how coherent will the framework be within which this will be done."[31]

b. The need for international cooperation on competition policy

It is a standard argument of neoclassical economics that there may be market failures a government must remedy if the full efficiency gains from production and exchange are to be realized. A classic example is that of a monopoly. The monopolist will restrict the quantity of a good supplied and raise the price of that good above its economic cost of production. While this policy increases the monopolists' profits, the losses incurred by consumers exceed the monopolists' gains. The same analysis would apply if a small number of firms agreed to form a cartel to limit supply. One distinction that

29 de Jonquières (1998).

30 Hoekman (1997, pp. 387-388).

31 WTO (1997, p. 32).

arises frequently in the context of trade is that between horizontal trade restraints, when there is collusion by multiple producers of a given product, and vertical integration questions, when a firm has close ties to its suppliers or to the users of its products.

Most industrialized countries have their own anti-trust policies to address these problems. Beyond the domestic issues, though, there are several reasons why international coordination may be necessary. First, it is frequently not clear which anti-trust policy is optimal. A horizontal merger – such as, that between Boeing and McDonnell Douglas – may well increase the market power of the combined firm, but it is also possible that it could bring about sufficient cost savings to raise world welfare. In assessing the costs and benefits of such a merger, a national authority may discount the gains and losses of foreign firms and consumers. Thus, the optimal national decision may not be the one that maximizes world welfare. This would be an example of a negative spillover, similar to those that could justify coordination on environmental measures. Alternatively, there could be positive spillovers, whereby the national resolution enhances the welfare of other countries. To determine the need for a competition policy under the WTO, it would seem central to know the balance of these effects. Unfortunately, "no empirical information of a systematic nature is available for measuring the size of the problems in practice that remain unresolved through existing laws and mechanisms..."[32]

A second way in which competition and trade policies interact is through the ability of private firms to simulate the effects of trade restrictions. This was the claim in the Kodak-Fuji case: the United States contended that the lowering of Japanese external barriers was rendered meaningless by its policy of allowing Fuji to control distribution channels. Similarly, export and import cartels can simulate the effects of quota regimes that would be forbidden under the GATT.

A third argument for regulating the interaction between competition and trade policy is that the WTO already sanctions anti-dumping policy, which nominally claims to address competition issues. The only legitimate economic concern about dumping, as discussed earlier, is that a foreign firm will temporarily lower its prices to eliminate a domestic competitor and then raise its prices to take advantage of its new monopoly power (predatory pricing). In practice, anti-dumping policies have deviated far from this rationale.[33] Presumably, the protectionist anti-dumping regime could be replaced with a true competition policy.

32 WTO (1997, p. 32).

33 Messerlin (1996) has an extensive discussion of the relationship between antidumping and competition policies. He argues that of the antidumping cases pressed by the United States or the European Union during the 1980s, almost all the practices the proceedings addressed would have been acceptable under a true competition policy. Moreover, the interim arrangements and remedies imposed by these countries under the antidumping process would almost all have violated a true competition policy because they restrained trade.

c. Elements of a competition policy

The WTO considerations are at too early a stage to produce specific proposals. Instead, a broad range of policies have been offered by trade experts, only some of which can be addressed here.[34]

Harmonization of national anti-trust policies and the creation of a supranational authority under the WTO. This would be the most extreme proposal. A lesser version would be to strengthen the WTO's authority to rule on "nonviolation" disputes.

Under the stronger version, international disputes over national anti-trust decisions could be adjudicated by the WTO's dispute settlement mechanism whenever negative spillovers were a potential problem. The weaker version would address cases like the Kodak-Fuji dispute. Japan was not accused of explicitly violating an agreement, but rather of allowing a previous concession to be nullified. This could have been addressed by an existing GATT article, but the article currently recognizes that a violation has occurred only if the government takes a "measure" (the Japanese were accused of neglect) and if the measure was not reasonably foreseeable when the concessions were negotiated. These restrictions could be loosened.

Neither of these policy versions appears to be politically feasible. Competition policy has traditionally been a domestic concern, and it seems very unlikely that bodies such as the US Congress would relinquish their claims to these powers. Furthermore, even among OECD countries, there is a great deal of variation in the nature of anti-trust policies. In part, this reflects different values, and in part, it shows the difficulty of making judgments on such matters. Whatever the reason, it suggests that harmonization would be exceedingly difficult.

Anti-trust considerations to be inserted into the rules governing anti-dumping. This would be the most economically desirable of all the potential policies, but it too seems politically impossible. The United States has made clear that it does not wish to relinquish the right to apply the anti-dumping policy as broadly as it does now and has rejected previous overtures to replace the anti-dumping policy with one of anti-trust.[35]

An agreement to prescribe minimum standards for national competition policies. This could include both substantive and procedural standards which could be enforced by the dispute settlement mechanism. Such a plan would at least promote transparency and the consideration of other countries' interests in domestic deliberations. There is ample precedent for such an approach, because it characterizes that of the GATT to anti-dumping and to safeguards. However, in those agreements it has not been notably successful in limiting objectionable practices. Fur-

34 Hoekman (1997) has a very thorough discussion of the policy options. This section draws heavily on his work and his recommendations.

35 This occurred in negotiations on the United States-Canada Free Trade Agreement in the 1980s.

thermore, even if minimum standards are enforceable, they may achieve relatively little. In those countries that already have well-developed anti-trust laws, minimum standards would be unlikely to bind. In countries without such laws, the effects of an improved competition policy may be masked by remaining trade barriers. It is not clear that the gains would justify the administrative costs to developing countries of meeting such standards.

d. Conclusion

The unfortunate conclusion is that where a competition policy would be most likely to bring about substantial economic gains – by replacing anti-dumping – it is least likely to occur. The economic gains from feasible policies are likely to be minimal; however, there are minor measures that could be useful. For example, the WTO could act as an advocate for open competition, monitor countries' policies through its trade policy review mechanism, and disseminate information and advice to its members. In addition, some competition matters could be addressed in sectoral agreements, as they already have been.

In sum, however, the incorporation of competition policy into the WTO should not be a top priority for developing countries. The principal reason for favoring such an inclusion would be to strengthen the WTO system by removing one of the attractions of regional integration and by encouraging the settlement of disputes in a multilateral forum.

Multilateral Agreement on Investment

The possibility of addressing investment issues in the WTO shares a number of features with that of addressing competition policy. Both policies were assigned working groups at the Singapore Ministerial Conference to explore the issues, but without any promise of future negotiations. Each has a strong proponent among the major developed countries and major countries that are more reticent. In the case of investment, however, the roles are reversed. It is the United States that has been most enthusiastic, while Europe has been more reticent. Most reluctant of all have been the developing countries, who limited the scope of investment negotiations in the Uruguay Round and were sufficiently unenthusiastic to prompt the developed nations to try and reach an agreement outside of the WTO.[36]

There are a number of reasons why investment policy has pushed its way onto the WTO agenda. Although a traditional concern about foreign direct investment (FDI) is that it will serve as a substitute for trade, more recent evidence seems to indicate that the two are complementary.[37] One means by which this linkage can occur is through the behavior of multinational enterprises (MNEs). An oft-cited figure shows that one-third of world trade occurs within such firms, and another third consists of sales by MNEs to others.

36 Low and Subramanian (1996).

37 WTO (1996, pp. 52-54).

Linkages between trade and investment are also more direct. A number of investment restrictions have required firms to take actions that distort trade flows. Additionally, trade restrictions can induce investment as a means to avoid barriers. The ties between trade and investment have already been touched on in the section on services, where the General Agreement on Trade in Services (GATS) included investment restrictions. This is one of several areas in which the WTO has already addressed investment, the most prominent of which is the Agreement on Trade-Related Investment Measures (TRIMs) from the Uruguay Round.

Developing nations have expressed concern about the liberalization of investment for years. To the extent that the desire for investment restrictions was inspired by theories such as import-substitution industrialization, many such policies have been swept away in recent broad reforms. The tumultuousness of the international markets in the wake of the Asian crisis is sure to inspire further doubts about liberalization.[38] Still, over recent decades, countries that have been relatively open to investment have done substantially better than those with restricted markets. In the future, investment is likely to play an increasingly important role in the growth of developing countries. This role could be facilitated by a new WTO agreement.

a. Current WTO coverage

The WTO already covers investment through a number of components in various agreements. The most direct and prominent of these is the agreement on TRIMs. At the beginning of the Uruguay Round, the United States was interested in a broad agreement on investment. This interest met sharp resistance from developing countries and the terms of discussion in the Uruguay Round were limited to those areas in which investment policies directly impinged on central GATT principles.[39] Specifically, the TRIMs Agreement applied the principles of national treatment and its prohibition on quantitative restrictions to investment. The agreement included an illustrative list of measures that would violate these principles. For example, local-content requirements, which require a foreign firm to use a certain percentage of local inputs in production and thus discourage imports, are prohibited. The prohibition extends beyond the mandate of such distortionary measures to their encouragement through inducements such as tax concessions or subsidies.[40] Countries that currently use such policies were required to notify the WTO of them shortly after the agreement was concluded and were then given time to phase them out. Longer time periods were allowed for less developed countries. In this sense, the TRIMs Agreement merely codified one strong interpretation of existing GATT regulations. The agreement has been criticized for failing to address such policies as export-performance requirements, which mandate that a certain

38 Note, however, that most proposals center on FDI, rather than the more volatile portfolio investment. See Graham (1996, p. 209).

39 Low and Subramanian (1996, p. 380).

40 Hoekman and Kostecki (1995, p. 121).

share of a foreign-owned firm's output be exported.[41] This is one illustration of the narrowness of the TRIMs accord.

Beyond TRIMs, investment policies were addressed extensively in the flawed GATS Agreement and were also covered in the Agreements on Trade-Related Aspects of Intellectual Property Rights (TRIPs) and Government Procurement.[42]

b. Multilateral Agreement on Investment

In the immediate aftermath of the Uruguay Round , the developed countries decided that there was need for further progress on investment regulation. They decided to pursue a Multilateral Agreement on Investment (MAI) under the auspices of the Organization for Economic Cooperation and Development (OECD) rather than through the WTO, because they felt that few non-OECD countries were willing to participate in a serious accord.[43] The intention was to settle on a satisfactory agreement and then allow non-members to join if they were willing to endorse the standards.

Talks on the MAI began in 1995, with the original target date for completion in the spring of 1997. By April 1998, the talks had reached an impasse and were adjourned until October that year. In announcing the break in the talks, the OECD declared its willingness to pursue the issue at the WTO. The talks derailed over French and Canadian concerns that an MAI would pose a threat to their cultural institutions.[44]

c. Issues for the WTO

Thus, the WTO now has an opportunity to take the lead in investment discussions. In addition to the "referral" from the OECD, it has the Working Group on Trade and Investment and a requirement under the TRIMs agreement that the subject be reviewed by 2000.

A thorough WTO agreement on investment would ensure that foreign-owned firms are treated no worse than domestically owned firms (national treatment). It would prohibit discrimination on the basis of the investment's source country (most favored nation status (MFN)). These provisions would apply equally to the right to establish firms as well as to practices concerning existing firms. It would provide assurances against direct expropriation without due process and against discriminatory taxation. It would eradicate the remaining distortions of TRIMs, such as export performance requirements.[45] An additional substantive matter in the context of an investment agreement could be limits on the extraterritorial application of laws.[46] Of course, not even the most liberal country has such an open regime, but an investment agreement could attempt to limit the number of exceptions and require that remaining restrictions be transparent. Those exceptions to be undertaken could be done through a positive-list approach, with the presumption of liberalization rather than the distinctly less successful negative-list approach of the GATS.[47]

One great advantage of pursuing such an agreement in the WTO rather than through bilateral or plurilateral agreements is the natural availability of the WTO dispute settlement mechanism. It is a difficult question how disputes over investments would be resolved and who would have standing to bring such cases.[48] The most natural means of enforcement would be to allow the source countries of firms whose investments have been mistreated to reciprocally withdraw concessions from other WTO agreements.

There are still serious obstacles to a new WTO consensus on investment regulation. The disagreements among the OECD members have grown in recent years, and the addition of 100 developing countries with diverse desires could only complicate the process. Furthermore, there has been pressure from labor and environmental groups to incorporate their issues into an investment agreement. Specifically, they want to make sure that countries do not compete to attract investment by lowering their standards. For the reasons discussed in previous sections, the inclusion of these issues would likely complicate negotiations and perhaps impose an undesirable uniformity across countries.

d. Policy implications

With the temporary failure of the MAI negotiations in the OECD, an opportunity exists to cement the WTO's oversight of investment in the trade context. To take full advantage of this opportunity, developing countries will need to be substantially more accommodating than they were in the Uruguay Round. This should be motivated not by a desire to appease developed countries but by a recognition that non-discriminatory and open investment policies are in developing countries' own interests. Almost by definition, developed countries have proportionately more capital and more advanced technology. Attracting such capital and the accompanying

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41 Low and Subramanian (1996, p. 388). They note the anomaly of allowing export-performance requirements while disallowing "their close cousins," export subsidies, in manufacturing.

42 WTO (1996, p. 72).

43 Graham (1996, p. 215). The OECD membership is mostly made up of the more developed countries. Eight non-OECD countries participated in the MAI talks.

44 Swardson (1998).

45 These recommendations draw on Low and Subramanian (1996) and on Graham (1996). Both have more extensive discussions of the policy issues.

46 The most prominent recent example of this is the US Helms-Burton Act, which places restrictions on foreign-owned companies' investments in Cuba. It is not clear if this measure is consistent with existing GATT rules, and the European Union has threatened to press a dispute. The United States has threatened to justify its measure as vital to national security. Presumably, such exemptions would still be allowed under any WTO investment agreement.

47 In fact, were there to be a thorough WTO investment agreement, many of the provisions of the GATS would be superseded.

48 Graham (1996, p. 212). He suggests that source countries may be imperfect advocates for MNE concerns and that the MNEs might be given standing to invoke the dispute settlement mechanism. This could be very dangerous, since there are many groups that would like such access, and it would be difficult to distinguish between their right to standing and that of MNEs.

technology through FDI will help developing nations grow. Developing countries could use a broader WTO accord on investment to lock in their reforms of the last decade and thereby demonstrate to potential investors the permanence of the changes. Since investment is based on expectations of future policies and market conditions, such a demonstration of commitment would be valuable.

It is also in the interest of developing countries to ensure that investment negotiations are undertaken at the WTO, rather than the OECD or through regional agreements. The OECD excludes developing countries, while regional agreements frequently give disproportionate weight to developed country members and threaten to create a web of plurilateral agreements that will not facilitate the free flow of investment. Like competition policy, investment agreements are another element of the "deep integration" that has attracted both developing and developed countries to regional integration because of the perceived inability of the WTO to reach a sufficiently comprehensive agreement.

Government Procurement

The previous sections on competition and investment described the desire for WTO oversight of these areas because governmental regulations could affect the trading behavior of firms. Governments can have a much more direct effect on trade flows through their own purchases of goods and services. These purchases are substantial[49] and are unlikely to be responsive to changes in trade barriers in the same way that consumer and firm behavior would be.

This issue was first addressed by the GATT in the Tokyo Round in the 1970s. At that time, there was no unanimous desire on the part of the contracting parties to adopt the strictures of the Agreement on Government Procurement (GPA), so it was granted plurilateral status whereby countries could choose whether they joined or not. One goal of the creation of the WTO was to incorporate such codes into the main body of agreement. In the Uruguay Round, however, the GPA remained separate as a plurilateral accord, although the new GPA was signed in Morocco along with the rest of the Round.[50] Of the more than 100 WTO members, only 27 countries are full members of the GPA.[51]

The agreement came into force at the beginning of 1996. Whereas the Tokyo Round Agreement covered only purchases by the central government, the Uruguay Round GPA expands coverage to include sub-national governments and other government agencies, such as, public utilities. The principal

[49] Hoekman and Mavroidis (1997, p. 296) estimated the worldwide market for government procurement to be approximately US$3 trillion annually. Roughly one-third of this is now covered by the WTO accord.

[50] Other agreements that only apply to signatories are those on civil aviation, dairy products and bovine meat. Hoekman and Kostecki (1995, p. 122). The best reference on the Uruguay Round Government Procurement Agreement is Hoekman and Mavroidis (1997).

[51] WTO (1997). This includes the members of the European Union as 15 distinct countries.

features of the agreement are requirements that governments grant national treatment and MFN status in their purchases. It also provides detailed rules on the procedures whereby governments take bids for public projects. Such tendering must be transparent, competitive, and open to all firms – or all qualified firms – with restrictions on qualification processes.[52]

While the agreement is admirable in the depth of liberalization it requires, as a practical matter it has not yet succeeded because the number of countries outside the GPA is substantial. The WTO Committee on Government Procurement has met to try to simplify the agreement and attract a broader membership. The GPA itself calls for further negotiations by the end of 1999 to expand membership and improve the agreement.[53]

Developing countries should work to join and improve the GPA for the same reason that they undertake trade and investment liberalization – to reap the efficiency gains and enhance economic growth. However, the GPA touches on a politically sensitive area and offers less in the way of reciprocal market access than standard GATT agreements because developing countries will not usually be contenders for large contracts in their developed counterparts. This suggests that membership in the GPA could be traded against other measures under the WTO in an upcoming round.

One imaginative suggestion that may make such trade-offs more palatable draws a parallel with the Agriculture Agreement. It is suggested that, rather than undertaking complete and difficult liberalization of their government procurement processes, developing countries could bind the maximum level of price preference that they would grant to domestic firms providing goods or services. This would be the government procurement equivalent of tariffication. These preferences could then be negotiated down over time.[54]

Conclusion

The policy areas discussed in this section differ substantially in terms of their status and in terms of the desirability of further action. However, all of them feature prominently in discussions of the WTO agenda.

The ITA was an unusual success, in that it was possible to find sufficient room for reciprocal liberalization, mostly within a single sector, to achieve substantial liberalization. Given the complications of the US fast-track procedure and the asymmetric desires that characterize most sectors, it is relatively unlikely that it will serve as a general model for future liberalization.

While there is substantial pressure to address labor standards in the WTO, the avoidance of this topic should be a top priority of developing countries. Many of the concerns that such negotiations might address have little economic justification and could serve as cover for protectionist motives aimed directly at developing nations. Where

[52] Hoekman and Kostecki (1995, p. 123).

[53] WTO (1997).

[54] Hoekman and Mavroidis (1997, p. 302).

the concerns are legitimate, they can be addressed through the ILO. Developing countries should work hard to facilitate efforts at addressing legitimate concerns as a means of defusing the more serious threat of trade sanctions legitimized under the WTO.

While the issues involved in competition, investment, and government procurement policies may appear similar, there are some important differences. For example, an investment policy would generally remove restrictions, whereas a competition policy would introduce new ones.[55] This is one reason why developing countries should find an investment policy more attractive. A competition policy offers developing countries relatively little, unless it replaces the current anti-dumping regime, and that seems unlikely.

To date, developing countries have been unwilling to liberalize their investment and government procurement regimes. Where they have liberalized, they have been unwilling to lock in those reforms through participation in a GATT agreement. Of the issues discussed in this section, investment and government procurement are the two in which developing countries could gain the most from a multilateral accord and for which they could get the most credit through participation. These are both areas in which regional accords have seemed to offer an advantage, thereby undermining the multilateral system. It is in the interest of developing nations to safeguard the strength of the multilateral system.

In each of these areas, developing nations could work to ensure that the agreement meets their needs. An investment accord could revise or replace a flawed GATS agreement. It could also be a vehicle for addressing such concerns as extraterritorial application of laws by developed countries. The GPA could be simplified and, where complications are necessary, developing nations could push for technical assistance from a strengthened WTO secretariat.

If developing countries are to be full participants in the WTO, they will have to deal with at least some of these new issues. By active involvement with the more desirable of the issues, they may be able to prevent the advancement of the more dangerous ones.

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55 Low and Subramanian (1996, p. 401).

6.
Special and Differential Treatment in Favor of Least Developed Countries

Introduction

The General Agreement on Tariffs and Trade (GATT) contained some provisions for more favorable treatment for developing countries.[1] The GATT 1947 had, for example, Article XVIII and Part IV,[2] which took into account the special situation of these nations. Although these conditions continued to form part of GATT 1994, no provision was made in favor of the least developed countries as they had not yet gained recognition as a separate category.

Tokyo Round

It was the Tokyo Ministerial Declaration,[3] which launched the Tokyo Round of Multilateral Trade Negotiations under the auspices of GATT, that contained the first reference in GATT history to the problems of least developed countries. Paragraph 6 of the Tokyo Declaration[4] reads:

> The Ministers recognize that the particular situation and problems of the least developed among developing countries shall be given special attention, and stress the need to ensure that these countries receive special treatment in the context of any general or special measures taken in favor of the developing countries during the negotiations.

In pursuing this, the Tokyo Round agreements that were settled in the multilateral trade negotiations contained a few provisions in favor of least developed countries. The most important provision relating to the problems of such nations appeared in the GATT Contracting Parties' Decision on "Differential and More Favorable Treatment, Reciprocity and Fuller Participation of Developing Countries," commonly known as the Enabling Clause, which was adopted at the conclusion of the Tokyo Round negotiations.[5] Paragraph 6 of the Enabling Clause reads as follows :

> Having regard to the special economic difficulties and the particular development, financial and

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1 Referred to as less developed contracting (LDC) parties in the text of the GATT.

2 Articles XXXVI, XXXVII, and XXXVIII of the GATT.

3 Adopted by the ministers of more than 100 countries at the Tokyo Ministerial Conference on September 14, 1973.

4 Full text of Tokyo Declaration in GATT Basic Instruments and Selected Documents (BISD) Vol. 20, p. 19.

5 Decision adopted by GATT contracting parties on November 28, 1979. Full text in GATT Basic Instruments and Selected Documents (BISD) Vol. 26, p. 203.

trade needs of the least developed countries, the developed countries shall exercise the utmost restraint in seeking any concessions or contributions for commitments made by them to reduce or remove tariffs and other barriers to the trade of such countries, and the least developed countries shall not be expected to make concessions or contributions that are inconsistent with the recognition of their particular situation and problems.

Notwithstanding the provisions in the Enabling Clause and in the Tokyo Round agreements, few concrete measures were taken in favor of least developed countries.

GATT Ministerial Meeting, 1982

The next important occasion was the GATT Ministerial Meeting of 1982. The Ministerial Declaration and the GATT work program adopted by the meeting made references to the special situation and problems of the least developed countries. Paragraph 7 of the Ministerial Declaration reads:[6]

> In drawing up the work programme and priorities for the 1980s the contracting parties undertake, individually and jointly
>
> (iv)(b) to ensure special treatment for the least developed countries, in the context of differential and more favourable treatment for developing countries, in order to ameliorate the grave economic situation of these countries.

The work program adopted by the 1982 Ministerial Meeting had more extensive and substantive references to the least developed countries. The relevant section of the work program is as follows:[7]

> Invite contracting parties to pursue action as follows towards facilitating the trade of least developed countries and reducing tariff and non-tariff obstacles to their exports:
>
> (a) further improve GSP or MFN treatment for products of particular export interest to least developed countries, with the objective of providing fullest possible duty-free access to such products;
>
> (b) use, upon request and where feasible, of more flexible requirements for rules of origin for products of particular export interest to least developed countries;
>
> (c) eliminate or reduce non-tariff measures affecting products of particular export interest to least developed countries;
>
> (d) facilitate the participation of least developed countries in MTN Agreements and Arrangements;[8]
>
> (e) strengthen the technical assistance facilities of the GATT Secretariat targeted to the special requirements of least developed countries;

6 GATT - BISD, Vol. 29, p. 9.
7 GATT - BISD, Vol. 29, p. 9.
8 Agreements adopted at the conclusion of the Tokyo Round of Multilateral Trade Negotiations.

> (f) strengthen trade promotion activities, through the ITC[9] and other initiatives, such as by encouraging the establishment of import promotion offices in importing countries;
>
> (g) give more emphasis to the discussion and examination of policy issues of interest to least developed countries in the context of further efforts to liberalize trade.

Punta del Este Ministerial Declaration

The Tokyo Round negotiations and the ministerial decisions of 1982, however, did not bring much relief for the least developed countries, despite recognizing their "grave economic situation" and despite taking high-sounding decisions, which were largely in the nature of best endeavors and not binding commitments. The evidence of that is to be found in the Ministerial Declaration launching the Uruguay Round negotiations in September 1986 and in the agreements reached in that Round. Had the earlier ministerial decisions been fully implemented, there would not have been a repetition of more or less the same demands and undertakings.

The Punta del Este Ministerial Declaration[10] adopted on September 20, 1986, launched the Uruguay Round negotiations and contained, *inter alia*, general principles governing those negotiations, one of which was related to the least developed countries and read as follows:

> (vii) Special attention shall be given to the particular situation and problems of the least developed countries and to the need to encourage positive measures to facilitate expansion of their trading opportunities. Expeditious implementation of the relevant provisions of the 1982 Ministerial Declaration concerning the least developed countries shall also be given appropriate attention.

This clearly shows that the Ministerial Declaration of 1982 had not been effectively implemented.

Uruguay Round Results

The Uruguay Round resulted in the establishment of the World Trade Organization along with the conclusion of a number of multilateral trade agreements and liberalization of trade by way of reduction or elimination of tariffs and other barriers to trade. The results embodied the following measures in favor of least developed countries.

a. Ministerial Decision on Measures in Favor of Least Developed Countries

From the perspective of the least developed countries, the most important result of the Uruguay Round was the

9 ITC - International Trade Centre UNCTAD/GATT (now International Trade Centre UNCTAD/WTO).
10 GATT - BISD, Vol. 33, p. 19.

adoption, at Marrakesh, of the Ministerial Decision on Measures in Favor of Least Developed Countries.[11] The operative parts of the decision are the following:

Ministers,

1. *Decide* that, if not already provided for in the instruments negotiated in the course of the Uruguay Round, notwithstanding their acceptance of these instruments, the least developed countries, and for so long as they remain in that category, while complying with the general rules set out in the aforesaid instruments, will only be required to undertake commitments and concessions to the extent consistent with their individual development, financial and trade needs, or their administrative and institutional capabilities. The least developed countries shall be given additional time of one year from 15 April 1994 to submit their schedules as required in Article XI of the Agreement Establishing the World Trade Organization.

2. *Agree* that:

   (i) Expeditious implementation of all special and differential measures taken in favour of least developed countries including those taken within the context of the Uruguay Round shall be ensured, through, *inter alia*, regular reviews.

   (ii) To the extent possible, MFN concessions on tariff and non-tariff measures agreed in the Uruguay Round on products of export interest to the least developed countries may be implemented autonomously, in advance and without staging. Consideration shall be given to further improve GSP and other schemes for products of particular export interest to least developed countries.

   (iii) The rules set out in the various agreements and instruments and the transitional provisions in the Uruguay Round should be applied in a flexible and supportive manner for the least developed countries. To this effect, sympathetic consideration shall be given to specific and motivated concerns raised by the least developed countries in the appropriate Councils and Committees.

   (iv) In the application of import relief measures and other measures referred to in paragraph 3(c) of Article XXXVII of GATT 1947 and the corresponding provision of GATT 1994, special consideration shall be given to the export interests of least developed countries.

   (v) Least developed countries shall be accorded substantially increased technical assistance in the development, strengthening and diversification of their production and export bases including those of services, as well as in trade promotion, to enable them to maximize the benefits from liberalized access to markets.

3. *Agree* to keep under review the specific needs of the least developed countries and to continue to seek the adoption of positive measures which facilitate the expansion of trading opportunities in favor of these countries.

11 *The Results of the Uruguay Round of Multilateral Trade Negotiations - Legal Texts*, published by the GATT Secretariat, p. 440.

A critical analysis of the Ministerial Decision shows that it is short on substance and does not break new ground. Operative paragraph 1 merely states that "least developed countries will only be required to undertake commitments and concessions to an extent consistent with their individual development, financial and trade needs, or their administrative and institutional capabilities." This had already been stated, perhaps even a little more strongly, in paragraph 6 of the Enabling Clause.[12]

The second part of paragraph 1 of the decision (the last sentence) merely gives one year to least developed countries to submit their schedules of concessions and commitments on goods and specific commitments on services. It does not exempt them from making concessions and commitments so long as they remain least developed countries.

The second operative paragraph of the decision does not contain binding commitments; it is in the nature of exhortations and best endeavors. It is laced with phrases such as "to the extent possible," "may be implemented autonomously," "consideration shall be given,"and "sympathetic consideration shall be given."

The third paragraph of the decision is procedural in nature. It does not contain any commitment.

The Ministerial Decision is thus high sounding but of little practical value for least developed countries. Previous pious decisions and declarations in the Tokyo Round and in the GATT Ministerial Meeting of 1982 were not fully implemented and did not result in meaningful, concrete measures in favor of least developed countries. The Uruguay Round Ministerial Decision may not fare any better, as it does not contain legally binding commitments.

b. Uruguay Round agreements

Some of the Uruguay Round agreements do embody provisions for special treatment in favor of least developed countries.[13] It may be noted at the outset that Uruguay Round agreements contain provisions on special and differential treatment for developing countries, which are also applicable to least developed countries. However, it is the additional measures of special treatment specifically destined for least developed countries that are examined in this section.

The Marrakesh Agreement Establishing the World Trade Organization has annexed to it 17 agreements and

12 See section on Tokyo Round, above.

13 For a detailed description of these measures, refer to the texts of the Uruguay Round agreements.

understandings that together make up the WTO. Of these, four contain no provisions for special treatment for least developed countries - the Agreements on Anti-dumping, Customs Valuation, Preshipment Inspection, and Rules of Origin.

The remaining agreements contain four types of special measures: (1) a general recognition of the interests of least developed countries, (2) a lesser level of obligations, (3) longer time periods for assuming certain obligations, and (4) technical assistance. Each of these is discussed below.

1. *General recognition of interest*. Most of the provisions fall into this category and are general in nature with no binding commitments. They are frequently couched in the language of best endeavors and exhortations, and usually qualified by phrases like "to the extent possible," "consideration may be given," and "may take into account." These are fine, but of little practical value.

2. *Lesser level of obligations*. While this category of measures is useful and beneficial for least developed countries, only three agreements/understandings contain provisions of this type in their favor: the Agreement on Agriculture, Agreement on Subsidies and Countervailing Measures, and the Trade Policy Review Mechanism.
   The Agreement on Agriculture provides in Article 15, paragraph 2, that least- developed countries are not required to undertake reduction commitments in market access, domestic support, and export subsidies. It may be noted that developed and developing countries are required to undertake such reductions, with a lesser level of reduction for developing countries over a relatively longer period.

   The Agreement on Subsidies and Countervailing Measures specifies in Article 27, paragraph 2, that least developed countries are not subject to the prohibition on export subsidies (for non-agricultural products), whereas developed countries and developing countries whose per capita income is more than US$1,000 are.

   The Trade Policy Review Mechanism provides for the possibility of a trade policy review of least developed countries at intervals of more than six years, whereas developing countries are subject to review every six years.

   A lesser level of obligations for least developed countries in the Agreements on Agriculture and Subsidies and Countervailing Measures are substantive special measures in favor of least developed countries.

3. *Longer transitional periods*. These are provided for least developed countries in six Uruguay Round agreements: the Agreements on Sanitary and Phytosanitary (SPS) Measures, Textiles and Clothing, Trade-Related Investment Measures (TRIMs), Technical Barriers to Trade (TBT), Subsidies and Countervailing Measures, and Trade-Related Intellectual Property Rights (TRIPs).

The SPS Agreement provides that least developed countries may delay the application of its provisions for a period of five years from the date of establishment of the WTO. Similarly, the TBT Agreement specifies that developing countries and, in particular, least developed countries may be granted, upon request, specified time limit exceptions by the TBT Committee, in whole or in part, from the obligations of the agreement.

The provisions for a longer time period for least developed countries in the Agreement on Textiles and Clothing are more ceremonial and are of little significance for such countries.

Least developed countries have a period of seven years under the TRIMs Agreement to phase out prohibited measures, as compared to five years for developing countries.

The Agreement on Subsidies and Countervailing Measures contains two provisions of special treatment for least developed countries. First, the prohibition of the granting of subsidies on the use of domestic over-imported goods does not apply to least developed countries for a period of eight years. Second, a least developed country that attains export competitiveness – defined in terms of the share of a country's exports in world trade of a given product – has to phase out the export subsidies on such products within a period of eight years, whereas developing countries must do so immediately.

Article 66 of the TRIPs Agreement gives to least developed countries a transitional period of 11 years from the date of establishment of the WTO to apply its provisions. Developed countries had a transitional period of one year, and developing countries have a period of five years.

4. *Technical assistance.* The Decision on Measures in Favor of Least Developed Countries and most of the WTO agreements contain provisions on technical assistance to developing and least developed countries. However, technical assistance is no substitute for substantive measures, and it cannot be considered as special and more favorable treatment for least developed countries.

The foregoing paragraphs show that substantive measures in favor of least developed countries are relatively few. The WTO agreements contain more general, non-binding, non-enforceable measures and few binding commitments. It is the binding commitments, however, that are more useful for least developed countries as they provide substantive special treatment to them.

Singapore Ministerial Conference

The first Ministerial Conference of the WTO was held in Singapore in December 1996. The Singapore Ministerial Declaration was adopted on December 13, 1996, and contained two paragraphs relating to the situation of least developed countries. These are paragraphs 5 and 14, which are reproduced below.

5. We [the *Ministers*] commit ourselves to address the problem of marginalization for least developed countries, and the risk of it for certain developing countries. We will also continue to work for greater coherence of international economic policy making and for improved coordination between the WTO and other agencies in providing technical assistance.

14. We remain concerned by the problems of the least developed countries and have agreed to:

- a Plan of Action, including provision for taking positive measures, for example duty-free access, on an autonomous basis, aimed at improving their overall capacity to respond to the opportunities offered by the trading system;
- seek to give operational content to the Plan of Action, for example, by enhancing conditions for investment and providing predictable and favourable market access conditions for LDCs' products, to foster the expansion and diversification of their exports to the markets of all developed countries; and in the case of relevant developing countries in the context of the Global System of Trade Preferences; and
- organize a meeting with UNCTAD and the International Trade Centre as soon as possible in 1997, with the participation of aid agencies, multilateral financial institutions and least developed countries to foster an integrated approach to assisting these countries in enhancing their trading opportunities.

Plan of Action

The Plan of Action mentioned in the Singapore Ministerial Declaration was adopted on December 13, 1996.[14] It contains a preamble and four sections: (1) Implementation of the Decision on Measures in Favor of Least Developed Countries, (2) Human and Institutional Capacity Building, (3) Market Access, and (4) Other Initiatives.

Sections 1 and 3 of the Plan of Action show that (i) the Ministerial Decision on Measures in Favor of Least Developed Countries, adopted in April 1994, had not been effectively implemented until the end of 1996, thus the need for ensuring its implementation; and (ii) market access initiative was again in the nature of exhortation. It says, for example, that developed country members of the WTO "would explore the possibilities of granting preferential duty-free access for the exports of least developed countries." Again, it goes on to say that "Members may decide to extend unilaterally and on an autonomous basis, certain benefits to least developed countries' suppliers."

The Singapore Ministerial Declaration and the Plan of Action provide ample evidence, if indeed any was needed, that earlier initiatives, declarations, and decisions – including those of the Uruguay Round – had not brought about much relief to the least developed countries, and that the earlier special measures had been either ineffective or had not been implemented.

14 In WTO document No. WT/MIN(96)/14, January 7, 1997.

High Level Meeting

The High Level Meeting announced at the Singapore Ministerial Declaration[15] was held in Geneva on October 27–28, 1997. Apart from the WTO, it included five other intergovernmental agencies: the United Nations Conference on Trade and Development, the International Trade Commission, the International Monetary Fund, the World Bank, and the United Nations Development Program. The meeting adopted an Integrated Framework for Technical Assistance for least developed countries.

The Integrated Framework for Technical Assistance seeks to increase the benefits that least developed countries derive from the trade-related technical assistance available to them from the six intergovernmental agencies involved in designing this framework, as well as from other multilateral, regional, and bilateral sources, with a view to assisting them to enhance their trade opportunities, to respond to market demands, and to integrate into the multilateral trading system.[16] The main elements of the Integrated Framework for Technical Assistance are:[17]

- a provisional program of trade-related technical assistance to be drawn up by the six agencies in consultations with the least developed countries concerned;
- a round table to be organized by the country concerned once the provisional program is in place, to which it can invite, in addition to the six agencies, others such as bilateral development partners and members of the private sector, including nongovernmental organizations. Where possible, the round table meetings will be included in the proceedings of country-specific World Bank consultative meetings or UNDP round tables;
- institution building to handle trade policy issues, for example, building a "core-capacity" to deal with trade issues in relevant institutions;
- fortifying of trade support services, for example, support at the enterprise level, including use of information technology;
- strengthening trade facilitation capabilities, for example, modernization and customs reform;
- training and human resource development; and
- assistance in the creation of a supportive trade-related regulatory and policy framework that will encourage trade and investment.

At the High Level Meeting some countries announced new and improved preferential market access measures for least developed countries. The United States declared that it would provide

15 See section on Singapore Ministerial Conference, above.

16 WTO document No. WT/LDC/HL/1/Rev. 1.

17 *WTO-Focus Newsletter*, No. 24, November 1997.

improved access to its market for sub-Saharan least developed countries. It would also take steps to provide a permanent generalized system of preferences (GSP) for least developed countries. The EU announced that it would end its discrimination among least developed countries by giving all of them equivalent treatment, whether or not they are members of the Lomé Convention. Norway declared that it had revised its GSP to grant duty-free and quota-free access to almost all industrial and agricultural products from least developed countries.

The decisions of the High Level Meeting are regularly followed up through reviews by the WTO Committee on Trade and Development. The Director-General of the WTO also submitted a report on "outcome and follow-up" of the High Level Meeting to the Second WTO Ministerial Conference held in May 1998.

Overview of the WTO and Least Developed Countries

The foregoing paragraphs give a critical account of the evolution and description of special and differential treatment in favor of the least developed countries. The measures taken in the Tokyo Round and by the Ministerial Meeting of 1982 were commendable first steps. But these were more in the nature of exhortations and calls on developed nations to make best endeavors to help least developed countries. These measures counted on the generosity of the former. Although some of the measures requested were adopted, the real goal of providing duty-free and quota-free access for the products of least developed countries was not achieved.

The Punta del Este Ministerial Declaration repeated the call of the Ministerial Declaration of 1982 and specifically called for expeditious implementation of the provisions in the declaration and work program of 1982.

The Uruguay Round Decision on Measures in Favor of Least Developed Countries is couched in general wording, with little specific, binding commitments. Some of the Uruguay Round agreements do contain meaningful measures and commitments for special treatment in favor of least developed countries. Some of these also contain longer transitional periods. After 20 years of discussion and debate, starting in 1973, the least developed countries had obtained some real benefits. However, these fell short of the objectives set forth in the three Ministerial Declarations of 1973, 1982, and 1986.

The Singapore Ministerial Conference did flag the problem of marginalization of the least developed countries, thus acknowledging indirectly that earlier efforts, including those in the Uruguay Round, had not resulted in amelioration of the grave economic situation of these countries.

The Plan of Action adopted in Singapore and the Integrated Framework for Technical Assistance resulting from the High Level Meeting held in October 1997 are commendable steps.

Much will depend on how these are implemented. However, these measures, and especially the Integrated Framework, focus very broadly on technical assistance, which is certainly useful for least developed countries but not a substitute for the special and differential treatment that would result in expanded trading opportunities.

OPEC members, developing and least developed countries should work together closely to ensure effective implementation of the Singapore Plan of Action and the Integrated Framework for Technical Assistance. They should continue pressing this issue at every meeting and at every opportunity. In particular, they should work together to get this item included in the agenda of the Third Ministerial Conference of the WTO to be held in the United States at the end of 1999.

Least developed countries have been asking for duty-free and quota-free access to different markets for their exports. Although steps have been taken in this direction, the goal has not yet been reached. Access under a generalized system of preferences, which is often provided to least developed countries, is not as good as elimination of most-favored-nation tariffs. There are three reasons for that: (i) GSP is neither contractual nor legally binding under WTO rules, whereas MFN tariffs are; (ii) GSP margins have been eroded in multilateral trade negotiations; and (iii) GSP formalities are quite cumbersome for small least developed countries.

In his report to the Second Ministerial Conference,[18] the Director-General of the WTO rightly pointed out that the least developed countries collectively account for only 0.4 percent of world exports, which underscores the insignificance of the threat they pose to established producer interests in most WTO members. He has quite appropriately called on the international community to implement and achieve the objective of elimination of all tariffs and other barriers to the trade of least developed countries. That would be the ultimate special and differential treatment for these nations.

18 WTO document No. WT/MIN(98)2.

7.
Accession to the World Trade Organization of OPEC Members and Developing Countries

Introduction

The World Trade Organization came into existence on January 1, 1995, and has 132 members, more than three-fourths of which are developing countries. Another 32 nations are in the process of accession. Eight OPEC states, namely, Ecuador, Gabon, Indonesia, Kuwait, Nigeria, Qatar, United Arab Emirates and Venezuela, are already members, while another two — Algeria and Saudi Arabia — are in the accession process. Other countries seeking to accede include China, Russia, countries of the former Soviet Union, and developing countries like Cambodia, Jordan, Laos, Nepal, Oman, Sudan, and Vietnam. The text box on page 101 provides a complete list of the 32 members.

The process of accession to the WTO is lengthy, complex, and challenging. Unlike accession to the GATT, which was relatively simple and took about 12 months, accession to the WTO takes on average about five to six years from the time a country submits its application to the date it formally becomes a member.

Membership in the WTO enables acceding countries to integrate into the multilateral trading system and to shape their trade policies in a more predictable and stable trading environment. Since WTO membership involves both the assumption of obligations and the acquisition of rights under WTO agreements, it is important for acceding countries to define their objectives clearly before starting the accession process. Specifically, they must consider questions such as what commitments on goods and services would be appropriate for their existing and future stages of economic development; how much domestic support to agriculture is necessary; and what reductions can be made. These and many similar questions should be thoroughly discussed, examined, and agreed upon at the national level to pursue the process of accession effectively and to negotiate suitable terms and conditions.

Legal Basis of Accession

Article XII of the Marrakesh Agreement Establishing the World Trade Organization (referred to as the WTO Agreement) lays down the rules for accession to the WTO as follows:

1. Any state or separate customs territory possessing full autonomy in the conduct of its external commercial relations and of the other matters provided for in this Agreement and the Multilateral Trade Agreements may accede to this Agreement, on terms to be agreed between it and the WTO. Such accession shall apply to this Agreement and the Multilateral Trade Agreements annexed thereto.

2. Decisions on accession shall be taken by the Ministerial Conference. The Ministerial Conference shall approve the agreement on the terms of accession by a two-thirds majority of the Members of the WTO.

3. Accession to a Plurilateral Trade Agreement[1] shall be governed by the provisions of that Agreement."

The wording of Article XII of the WTO Agreement shows that an acceding country has to agree on the terms of its accession with "the WTO" — that is the collective body of membership of the organization. These terms, however, are not spelled out, leaving scope for negotiation on both sides.

Normally, the terms of accession would include: (i) an acceptance of obligations under the Agreement Establishing the WTO and under the 17 multilateral trade agreements and understandings; (ii) a commitment for the country to bring its legislation and procedures into line with the provisions of the WTO agreements; and (iii) concessions and commitments on goods, specific commitments on services, and commitments on domestic support and export subsidies to agriculture.

The wording of paragraph 3 of Article XII, read with paragraph 1 of the Article, shows that accession to the WTO does not include and does not necessarily require accession to, and acceptance of, the two plurilateral agreements. Nevertheless, some developed countries do ask acceding countries to accept one or both of these accords. Whether they agree to accept or not depends on the negotiating prowess of the acceding countries.

Process and Procedures of Accession

Although, there are no written rules or procedures governing accession to the WTO, the organization's secretariat has issued some documents[2] covering certain aspects of the accession process. There is, however, no single document that lays down all the rules and procedures. Many are, in fact, unwritten and in the nature of customary practice. A description of the accession process is given in the following paragraphs.

a. Application for accession

The government of a country wishing to accede to the WTO writes a letter to the Director-General informing him of its decision and requesting him to circulate the letter to WTO members.

1 Plurilateral agreements are the Agreement on Government Procurement and the Agreement on Trade in Civil Aircraft.

2 Documents No. WT/ACC/1, WT/ACC/4 and WT/ACC/5, in particular.

Some countries seek observer status at the WTO bodies either a few months before applying for accession or at the time of application, with the idea of obtaining access to the meetings and documentation of different councils and committees and becoming better acquainted with the rules and procedures.

b. Establishment of a Working Party

The application of an acceding country is considered by the General Council of the WTO at one of its sessions. After listening to statements from the representative of the acceding country and from those members of the WTO who wish to speak, the General Council establishes a Working Party on the accession of the requesting country. Membership in the Working Party, which is normally chaired by an ambassador from a WTO member country, is open to all WTO members.

c. Memorandum on foreign trade regime

The acceding country is required to submit a detailed memorandum on its economy, economic policies, and particularly on its foreign trade regime relating to goods, services, and trade-related aspects of intellectual property rights. The memorandum must be prepared according to the format contained in WTO document No. WT/ACT/1 of March 24, 1995. There are four questionnaires annexed to that document which must also be completed.

d. Multilateral process of accession negotiations

After submission of this memorandum, the multilateral process of accession negotiations begins. The memorandum is circulated to all WTO members, who are invited to present written questions. The applicant country must, in turn, submit written replies. These questions and replies are then distributed to all WTO members. Thereafter, the first meeting of the Working Party is held for a detailed discussion of the memorandum and of the associated questions and replies.

Depending on the size and importance of the acceding country, and on the quality of the memorandum and replies, three or more rounds of questions and answers may be necessary. Likewise, a number of additional meetings of the Working Party may be held to thoroughly discuss the trade regime of the acceding country. The purpose of Working Party discussion is twofold: first, to get a clear idea of the extent to which the acceding country's trade regime is compatible with the provisions of the WTO agreements and, second, to determine the terms of accession with regard to compliance with the multilateral trade agreements.

e. Bilateral negotiations

When sufficient progress has been made in the multilateral process, bilateral negotiations begin on market access on goods and services. From then on, the multilateral and bilateral processes run parallel and may even overlap at times. There is no set period for the commencement of bilateral negotiations; they may start relatively early, but in most accessions they begin at around the same time as, or shortly after, the second meeting of the Working Party.

There are no defined rules or procedures for bilateral negotiations. These may begin with WTO members making requests for concessions and commitments on goods and services but, more often, an acceding country submits initial offers on goods and services, along with information on domestic support[3] and subsidies to agriculture. These submissions are followed by intensive and difficult rounds of bilateral discussions.

In theory, an acceding country may have to enter into bilateral negotiations with all 132 members of the WTO. In practice, however, discussions are held with the developed states and perhaps a few developing countries.

On completion of negotiations, the agreed concessions and commitments on goods (in the form of binding tariffs on agricultural and industrial products) and specific commitments on services are written into schedules of concessions and commitments (with separate schedules for goods and services) according to the standard format of such documents. Schedules of commitments on export subsidies and domestic support to agriculture also emerge from bilateral negotiations.

f. Terms of accession

As the multilateral and bilateral processes of accession approach their conclusion, the terms of accession (mentioned in paragraph 1 of Article XII of the WTO Agreement) begin to emerge. These can be divided into two parts: first, those relating to compliance with the provisions of the multilateral trade agreements, which may include certain agreed flexibilities within specific agreements or within certain provisions of specific agreements; and second, those concerning the commitments and concessions on goods and services.

The terms relating to the first part are recorded in detail in the report of the Working Party, while those relating to the second part are contained in the schedules of concessions and commitments on goods and services.

Finally, the report and schedules are attached to a draft Protocol of Accession drawn up by the Working Party. A draft Decision on Accession is also prepared. These documents are then approved by consensus and submitted to the General Council.

g. Approval of Protocol of Accession

The General Council approves, also by consensus, the Decision and the Protocol of Accession and forwards these to the Ministerial Conference for formal endorsement. Once the protocol has been approved by two-thirds of WTO members, it is open for acceptance, by signature or otherwise, by the acceding country for 90 days after its approval. The protocol enters into force on the thirtieth day following the date of its acceptance by the acceding country, which then becomes a member of the WTO.

Issues in Accession Negotiations

There are two important conditions for accession. First, an acceding country must accept all obligations contained

3 In the format contained in WTO document No. WT/ACT/4.

in the Agreement Establishing the WTO and in all the multilateral trade agreements annexed to the Agreement, as well as obligations under the Understanding on Dispute Settlement and the Trade Policy Review Mechanism. Second, an acceding country must make concessions and commitments on goods and services and list these in schedules, which become an integral part of the Protocol of Accession.

Issues that commonly arise in the accession process for OPEC members and for developing countries are discussed in the following paragraphs.

a. Negotiations on goods

One of the most important issues in accession negotiations is the commitment on agricultural and industrial goods. Acceding countries are required to bind tariffs on both. As there are no written rules, however, the level of binding and the number of products to be bound are matters open to negotiation.

Although there is no specific provision, either in the GATT 1994 or in the Uruguay Round Agreement on Agriculture, there was an understanding in the Uruguay Round negotiations that duties on all agricultural products (as defined in Annex 1 to the Agreement on Agriculture) should be bound. As all WTO member countries have complied with this understanding,[4] acceding countries are also required to do so.

In the case of non-agricultural products (industrial goods), there is neither a written rule nor an understanding that duties should be bound. In practice, developed country WTO members and some developing countries have bound tariffs on practically all non-agricultural products. Many other developing states, however, have only bound duties on 60 to 70 percent of such commodities.

During the accession negotiations, acceding countries are urged by developed countries to offer "comprehensive bindings," that is, to bind duties on all non-agricultural products. Indeed, developed countries often make this a condition for entering into bilateral negotiations, a situation which presents a dilemma for OPEC member states and other developing countries.

For OPEC member states, this predicament arises from their dependence on the export of a single commodity — crude oil — which, in many cases, constitutes 80 to 90 percent of their total exports. Tariffs on crude oil are not bound in the schedules of developed countries, except in those of the EU states, New Zealand and Norway. Nor are they bound in the schedules of most developing countries. The result is that 80 to 90 percent of the exports of many OPEC states do not receive the benefits of secure and predictable access either to the markets of developed countries (except those mentioned above) or the markets of most developing countries. If OPEC members were to bind tariffs on all imported products, they would provide secure and predictable access to their markets for all products

4 With the exception of some countries that did not bind duties on a few products for religious reasons.

COUNTRIES IN THE PROCESS OF ACCESSION

1. Albania
2. Algeria
3. Andorra
4. Armenia
5. Azerbaijan
6. Belarus
7. Cambodia
8. China
9. Chinese Taipei
10. Croatia
11. Estonia
12 Georgia
13. Jordan
14. Kazakhstan
15. Kyrgyz Republic
16. Laos
17. Latvia
18. Lithuania
19. Macedonia (former Yugoslav Republic of)
20. Moldova
21. Nepal
22. Oman
23. RussianFederation
24. Samoa
25. Saudi Arabia
26. Seychelles
27. Sudan
28. Tonga
29. Ukraine
30. Uzbekistan
31. Vanuatu
32. Vietnam Democratic Rep.

imported from WTO member countries, whereas only 10 to 20 percent of their own exports would benefit from similar treatment in the markets of most WTO members. Obviously, this situation is not in the best interest of OPEC member states, and both acceding OPEC countries and those which are already WTO members should make a united appeal against this asymmetry. Either developed countries should bind their tariffs on crude oil, or they should refrain from asking OPEC members to bind tariffs on all industrial products.

For other developing states seeking accession, the dilemma stems from a different source. The majority of existing developing member countries has not bound tariffs on all non-agricultural products. The extent or coverage of bindings depends mainly, but not always, on a given country's level of development. Acceding developing nations, in preparing for bilateral negotiations on goods, look at the schedules of bindings of developing countries who are already members and are tempted to withhold bindings on certain products, especially sensitive goods. In the accession negotiations, however, developed countries insist that acceding states bind tariffs on all non-agricultural products (except perhaps in the case of least developed countries; but as yet no least developed country has joined the WTO under the full procedures of Article XII).

The level of tariff bindings is another important issue in negotiations on goods, and represents yet another quandary for acceding developing countries, including OPEC member states. Within existing WTO membership, the bound rates of developed countries are very low, while those of developing countries are relatively high. In Working Party accession negotiations, developed states are more active than their developing counterparts and tend to exert a large measure of control over the discussions, often pressuring acceding countries to bind general duties at comparatively low levels. Thus developing countries seeking accession may be forced to bind tariffs that, on average, are lower than those of existing developing country members. This can result in a situation of differential treatment of countries at a similar stage of development. It is important, therefore, that OPEC states and other developing countries which are WTO members participate more actively and effectively in Working Parties on the accession of other OPEC and developing countries and support them against the excessive demands of developed nations. The discussions in the Working Parties would thus become more balanced, while the position of acceding countries would be reinforced.

Another important issue in the negotiations on goods is that acceding countries, particularly OPEC countries, are asked to bind tariffs on industrial products in accordance with the *Chemical Harmonization Initiative* (CHI) and with zero-for-zero sectoral initiatives.[5] They are also asked to join the *Information Technology Agreement* (ITA) by binding duties on ITA products at zero percent. However, within the existing membership, fewer than 30 out of 132 countries have accepted the CHI and zero-for-zero sectoral initiatives.

[5] Zero-for-zero sectoral initiatives include agricultural equipment, construction equipment, medical equipment, paper, steel, furniture, and toys.

b. Negotiations on services

The negotiations on commitments on services are just as important as those on goods. They may also be more complicated because they constitute a completely new area and because, in most acceding countries, information on different service sectors and on the diverse measures applicable to services is not always available. This makes it difficult to assess the implications of the assorted types of commitments required.

Developed country WTO members often ask acceding countries, especially those of OPEC, to make liberal commitments on many service sectors and subsectors, with as few limitations on market access and national treatment as possible.

In the horizontal limitations, divergent wishes often make negotiations prolonged and complex. Developed countries, for instance, request that acceding countries avoid putting limitations on the share of foreign equity and on the type of legal entity. They often insist that foreign service suppliers should have the right to establish a commercial presence in the acceding country in the form of branches or subsidiaries, and do not look favorably upon requirements by host countries for joint ventures. Acceding countries, on the other hand, may want to put limitations on the type of legal entity, the requirements of local incorporation of a company, and the requirements for a joint venture. They may also want to limit foreign equity to 49 or 51 percent.

As for the sectoral coverage of commitments by OPEC states and other acceding developing countries, WTO members, particularly the developed countries, ask for commitments in all 11 sectors and in a majority of sub-sectors. The priority areas for developed WTO members are financial services, including insurance; telecommunications services; business and professional services, in particular legal services and accounting and auditing services; distribution services; transport services; and audio-visual services (especially the US demand). It is highly unlikely that OPEC states and relatively more advanced developing countries will be allowed to join the WTO without making commitments on financial and telecommunications services in particular.

c. Commitments on domestic support and export subsidies to agriculture

As stated earlier, an acceding country is required to submit information on domestic support and export subsidies to agriculture in the format of WTO document No. WT/ACT/4. This information is scrutinized by WTO members to make sure that it is factually correct and that all elements, as stipulated in the Agreement on Agriculture, have been taken into account. The information from acceding countries is required for the most recent three years.

In the Uruguay Round negotiations, it was agreed that developed countries would reduce domestic support to agriculture, excluding green box measures and *de minimis* support, by 20 percent of the 1986-88 level over a period of six years beginning January 1995. Furthermore, developed countries must reduce the value of export subsidies and the volume of subsidized exports by 36 and 21 percent, respectively, from the 1986-90 levels over a period of six years beginning in 1995. Developing countries are required to reduce domestic support, excluding green box measures and *de minimis* support, by 13.3 percent over a period of ten years, and to reduce the value and volume of export subsidization by 24 and 14 percent, respectively, over a period of ten years beginning in 1995.

OPEC members and other acceding developing countries have to negotiate the level of reductions and the time periods over which to make them. They may not automatically receive the same treatment as that given to other developing countries during the Uruguay Round negotiations.

d. Special and differential treatment: developing-country status

Different WTO Agreements (for example, the multilateral trade agreements and the understandings annexed to the Marrakesh Agreement Establishing the WTO) contain provisions on special and differential treatment in favor of developing countries. However, OPEC states and developing countries often find it difficult in accession negotiations to gain recognition of their status as a developing country and thus entitlement to special and differential treatment.

A definition of what constitutes a developing country in the WTO rules. Thus, acquiring developing country status is also a matter which much be negotiated during the accession process. Developed countries often suggest, especially to OPEC states, that the question of developing country status be dealt with on a pragmatic basis; that is, the acceding country should list what particular special and differential treatment it desires and negotiate item by item. Acceding countries, however, may try to get a reference to their developing country status in the Working Party report. If there is no such reference in the report, it may become difficult for them to claim special and differential treatment after membership has been approved.

e. Transitional periods

Closely connected with developing country status is the problem of transitional periods. There are two WTO agreements, the Agreements on Customs Valuation and Trade-Related Intellectual Property Rights (TRIPs), which contain provisions for developing countries to have longer periods to implement these accords. Other agreements, particularly the Agreements on Subsidies and Countervailing Measures and on Trade-Related Investment Measures (TRIMs), contain provisions for developing countries to have more time to phase out prohibited subsidies and prohibited TRIMs. While the latter two agreements do not pose difficult negotiating problems for acceding countries, the first two accords do.

Article 20 of the Agreement on Customs Valuation allows a developing country to delay application of the provisions of this accord for a period of five years from the date it becomes applicable. Article 65 of the TRIPs Agreement entitles a developing country to delay the application of the provisions of the agreement for a period of five years commencing from the entry into force of the WTO, that is, from January 1, 1995.

OPEC members and other developing countries in the process of accession assume that the transitional periods in the Agreements on Customs Valuation and TRIPs will automatically be available to them. However, developed country WTO members seem to be of the view that the relevant provisions in the two agreements were available only to the developing countries that participated in the Uruguay Round negotiations and are not automatically extended to acceding countries.

Developed countries have insisted that acceding countries apply the Customs Valuation and TRIPs Agreements from the date of accession. The four countries that have joined the WTO under Article XII so far[6] have not been granted any transitional period. They were asked to uphold the two agreements from their date of accession.

f. Industrial subsidies

When WTO members, especially developed countries, scrutinize the subsidy programs of acceding countries, they raise many detailed and searching questions to elicit as much information as possible on the subsidy programs' degree of compatibility with the provisions of the Agreement on Subsidies and Countervailing Measures.

This close examination may reveal inconsistencies with the agreement and the acceding country may be asked to remove these by the time of accession. Prohibited subsidies are a particular target, and WTO members insist that these be eliminated or brought into conformity by the date of accession.

g. Accepting plurilateral agreements

As discussed earlier,[7] although it is obligatory for an acceding country to accept and implement the multilateral trade agreements annexed to the Agreement Establishing the WTO, the same requirement does not apply to plurilateral agreements. Despite that legal position, some developed countries try to persuade acceding countries to join one or both of the plurilateral agreements — the Agreements on Government Procurement and Trade in Civil Aircraft. If persuasion is not successful, developed countries may force compliance by making the accession process difficult.

h. Non-application of the WTO

Article XIII of the Marrakesh Agreement Establishing the WTO (and Article XXXV of the GATT) provide that a newly acceding country need not apply the WTO rules to its trade relations with countries with which it has no political relations or which it does

6 Bulgaria, Ecuador, Mongolia and Panama, as of July 31, 1998.

7 See section on Legal Basis of Accession, above.

not recognize. The only procedural requirement is that the acceding country must inform the WTO Ministerial Conference of its invocation of Article XIII (the non-application clause) before that body approves the Protocol of Accession. Clearly, some acceding countries may face problems in invoking that article.

Rights and Obligations of Acceding Countries

The rights and obligations of an acceding country flow from the Agreement Establishing the World Trade Organization and the multilateral trade agreements and understandings annexed to it, as well as from the terms and conditions of accession as recorded in the Protocol of Accession and the report of the Working Party.

The rights and obligations of one acceding state are not necessarily the same as those of another because the terms of accession differ from country to country. For example, if one acceding state has accepted the Agreement on Government Procurement, it derives rights and assumes obligations under that accord. Another acceding country that has not accepted that agreement will have no rights and obligations under it.

Broadly, the rights and obligations of acceding OPEC states and other developing countries (and also of those that are already members of the WTO) are described in the following paragraphs. First, the obligations.

a. Obligations of acceding countries

1. *Formulation and conduct of trade policy*. WTO members and acceding countries have an obligation to formulate, implement, and conduct their trade policies in accordance with the principles, rules and provisions of the WTO.

2. *Implementation of WTO agreements.* Acceding countries are obligated to implement the provisions of the multilateral trade agreements annexed to the WTO Agreement by amending their existing legislation or by enacting new legislation, as necessary, that is compatible with the provisions of the agreements. In some cases, procedures (as distinct from legislation) may have to be revised or devised to ensure compatibility with, and implementation of, the agreements.

3. *Nondiscriminatory, most favored nation (MFN) treatment*. This is the cornerstone of the WTO. All WTO members, including acceding countries, are required to provide MFN treatment to goods and services of other WTO members. They are also obligated to provide MFN treatment to the nationals of all WTO members with regard to the protection of intellectual property rights.

4. *National treatment*. National treatment (that is, the same treatment to imported goods and services as given to domestically produced goods and services and, in any case, no more favorable treatment for domestic goods and services than that for imported ones), is one of the most important obligations of WTO members. In the case of services, this national treatment obligation applies to those service sectors and sub-sectors that are included in a country's schedule, although, it should be noted that limitations or conditions can be applied. With regard to goods, however, national treatment has to be provided without limitations or conditions.

   The national treatment obligation is also applicable in the case of TRIPs. The TRIPs Agreement provides that each WTO member shall accord to the nationals of other member countries treatment no less favorable than that which it accords to its own nationals with regard to protection of intellectual property, subject to the exceptions provided in the Paris, Bern and Rome Conventions.[8]

5. *Transparency and due process.* WTO members are obligated to ensure transparency of their trade laws, regulations, procedures and practices by publishing these promptly in a manner that ensures the information is disseminated to importers, exporters and the general public. Any changes in existing laws or measures must also be published.

   There is also an obligation to provide judicial or administrative procedures for appeal, revision, and review of decisions on customs and trade matters.

6. *Commitments on tariffs.* WTO members are required to avoid the levying of customs duties on products imported from other WTO members in excess of the bound rates, as recorded in their schedules of concessions and commitments on goods.

7. *Specific commitments on services*. WTO members have an obligation to provide treatment to the service suppliers of other countries not inferior to that recorded in their schedules of specific commitments on services.

8. *Domestic support and export subsidies to agriculture.* Acceding countries may not grant domestic support or export subsidies to agriculture in excess of the reduction commitments recorded in their respective schedules.

9. *Elimination of embargoes and quantitative restrictions on imported goods.* Acceding countries and OPEC members must assume the obligation to remove existing embargoes and quantitative restrictions on imported goods, and undertake not to apply any new embargoes and restrictions after joining the WTO, unless such action is justified under the exceptional provisions of GATT 94. Acceding countries must also convert existing embargoes, quantitative restrictions and non-tariff measures on agricultural products to tariffs (tariffication).

10. *Industrial subsidies*. Acceding countries whose *per capita* income is more than US$1,000 may not grant prohibited subsidies to non-agricultural products, for example, export subsidies and subsidies contingent upon the use of domestic rather than

[8] Article 3, paragraph 1 of the TRIPs Agreement.

imported goods. They also have an obligation to phase out any existing prohibited subsidies over a period recorded in the respective working party report or, if not so recorded, over a period of eight years.

11. *TRIMs.* Acceding countries are obligated to refrain from using prohibited TRIMs and to phase out existing prohibited TRIMs over a period agreed to in the terms of their accession.

12. *Anti-dumping, countervailing, and safeguard actions.* WTO members, including acceding countries, assume the obligation not to apply anti-dumping duties, countervailing measures or safeguard measures, except in accordance with the provisions and procedures of the respective WTO agreements. For that purpose, they must have WTO-consistent legislation.

13. *Customs valuation, import licensing, rules of origin, and pre-shipment inspection.* Acceding countries and WTO members are required to value imported goods for customs purposes in accordance with the provisions of the Agreement on Customs Valuation. They are obligated to use transaction value as the principal method of customs valuation. If, for some valid reason, that method cannot be used, then the remaining five methods of valuation prescribed in the agreement must be applied in sequential order. Other supporting provisions of the agreement have to be observed by WTO members. WTO members have an obligation to follow the procedural requirements laid down in the WTO Agreements on Import-Licensing Procedures, Rules of Origin, and Pre-shipment Inspection.

14. *Standards and sanitary and phytosanitary measures.* The Agreement on Technical Barriers to Trade requires WTO members to establish a regulatory system to implement the agreement. Member countries have an obligation to ensure that technical regulations applied to products imported from other WTO member countries are no less favorable than those applied to similar domestic products. Furthermore, WTO members are obliged to ensure that technical regulations are not prepared, adopted, or applied with a view to, or with the effect of, creating unnecessary obstacles to international trade. There are similar obligations for conformity-assessment procedures.

    The main obligation under the Agreement on Sanitary and Phytosanitary Measures is to ensure that any sanitary or phytosanitary measure is applied only to the extent necessary and is based on scientific principles.

15. *TRIPs Agreement*. Acceding countries and WTO members assume the obligation to provide minimum substantive standards of protection for each of the categories of intellectual property rights as laid down in the TRIPs Agreement. They also have an obligation to provide, within national laws, effective procedures and remedies for the enforcement of intellectual property rights.

16. *Notification obligations.* Acceding countries will also have an obligation to effect different types of notification provided for under the multilateral trade agreements.

b. Rights of OPEC members and acceding countries

The rights under WTO rules are the mirror image of the obligations, in that the obligations of one country are the rights of another. The important category of rights accruing to acceding countries and OPEC members consequent to their membership in the WTO are:

1. *Nondiscriminatory, most favored nation treatment*. Exports of goods and services from acceding countries and OPEC states would become entitled to non-discriminatory MFN treatment in the markets of WTO member countries in respect to all laws, regulations, tariffs, and other measures applicable to such exports.

    Nationals of acceding countries and OPEC states would also acquire the right to non-discriminatory MFN treatment in WTO member countries with respect to the protection of intellectual property rights.

2. *Secure and predictable access to the markets of WTO members*. OPEC states and acceding countries would receive secure and predictable access to the markets of WTO members for their exports of goods and services, as these would be entitled to treatment not inferior to that provided in the schedules of commitments of WTO countries on goods and services. OPEC states, in particular, would acquire the assurance that their exports of petrochemicals to WTO members would not be subjected to tariffs higher than those bound in member countries' schedules.

3. *National treatment.* Exports of goods and services of OPEC states and acceding countries to the markets of WTO members would be entitled to receive national treatment. Similarly, nationals of OPEC states and acceding countries would acquire the right to national treatment by WTO members in respect to protection of intellectual property rights.

4. *Domestic support and export subsidies to agriculture*. Acceding countries and OPEC states would have the right to grant export subsidies and domestic support to agriculture within the limits set in their schedules.

5. *Industrial subsidies.* Acceding countries whose *per capita* income is less than US$1,000 would have the right to grant export subsidies and other prohibited subsidies to industrial products.

6. *Anti-dumping duties, countervailing measures, and safeguard measures*. OPEC states and other acceding countries would acquire the assurance that their exports of goods to WTO members would not be subjected to anti-dumping, countervailing or safeguard measures except in accordance with the provisions and procedures of the respective WTO agreements.

7. *TRIPs.* The nationals of OPEC states and acceding countries would acquire the right to receive minimum substantive standards of protection for their intellectual property rights in WTO member countries.
8. *Dispute settlement*. By joining the WTO, OPEC states and acceding countries would have the right to invoke and use the dispute settlement procedures of the WTO.

Conclusion

The process of accession is lengthy, complex and challenging. It requires thorough preparation at the national level and difficult and painstaking negotiations at bilateral and multilateral levels. The end result brings rights and obligations for acceding countries, and integrates them into the multilateral trading system. The degree to which OPEC states and other developing countries benefit from WTO membership depends, to a great extent, on how well they grasp the opportunities presented.

III. CONCLUSION

8. Key Findings and Recommendations

Introduction

The creation of the WTO was a major milestone in international trade. For the first time, the world trading system was covered by a formal organization dedicated to steadily achieving broader and deeper liberalization.

In a number of ways, however, this milestone was more symbolic than substantive. While the GATT had an uncertain formal status, it still provided a secretariat to facilitate negotiations and a forum for such talks. The WTO's rules and status are clearer, but still complex. Furthermore, this clarification in and of itself is unlikely to alter drastically the extent of trade liberalization or the influence of developing countries.

The gap between the promise of a Uruguay Round agreement and its substance can be found throughout our analysis. In key negotiating areas such as agriculture and textiles and apparel, liberalization was either minimal or postponed. This pattern reappears in the consideration of special and differential treatment, where few concrete measures have been implemented to assist the least developed countries.

The true importance of the WTO and the Uruguay Round agreements is that they provide a much firmer foundation for ongoing progress. The existence of a single organization overseeing trade in goods and services, as well as related issues of intellectual property rights and investment measures, will make it easier to strike and enforce bargains across sectors and will solidify the multilateral system. The only area in which the new foundation is notably weak is the GATS, which may fail to provide a ready starting point for further negotiations.

Developing countries are also set to play a more important role in the ongoing process than they ever have before. Although the skepticism about special and differential treatment among developed nations has placed additional burdens on developing countries, it has also transformed them into significant players in the

negotiations. This trend has been reinforced by the steadily growing importance of developing nations in world trade. Through concerted action under the auspices of the WTO, OPEC members and other developing nations have a real opportunity to shape the future path of the world trading system.

This report offers a detailed description and analysis of the WTO as an institution and the nature of the new trading regime over which it presides, with particular attention to their importance for OPEC members and other developing countries. Below, we highlight the key findings and recommendations of the study.

The WTO: Its Rules and the Decision-Making Process

The new WTO continues the principles of the GATT and expands them to cover not only trade in goods, but also services, trade-related investment, and aspects of intellectual property. These principles include non-discrimination among WTO member nations and national treatment of goods within a country's borders (that is, treatment no worse than that accorded domestic producers or service providers). While the WTO is dedicated to the progressive liberalization of international trade and expounds the virtues of an open trading system, it does not require absolute free trade for participation, nor is that even a stated goal. Instead, it provides an effective forum in which members can negotiate mutually beneficial liberalization and resolve any subsequent disputes.

The results of these negotiations constitute the formal rules of the world trading system. These rules have evolved from the initial GATT Agreement of 1947 to those agreed upon in the Uruguay Round. In addition there are also informal rules, such as those relating to concessions and commitments on good and services.

Close study of the Uruguay Round agreements, including the Understanding on Dispute Settlements, and an awareness of the formal and informal rules of the WTO are a must for OPEC members and other developing countries so as to protect and advance their trade interests.

Consensus generally prevails within the WTO, although there are some exceptions. Experience has shown that only the largest developed countries have managed to stand alone against the collective will of the other members. Thus, it remains important for developing nations to communicate among themselves and build coalitions within the WTO to further their interests. To this end, they must also become fully conversant with the new rules, both formal and informal, that govern the organization.

The most significant organizational feature to emerge from the Uruguay Round is the new dispute settlement mechanism, and its extension to the broader range of issues covered by the WTO. Through its requirement that a panel report will be adopted unless it is rejected by consensus, the system is substantially more credible than its predecessor.

Liberalization Achievements of the Uruguay Round

The Uruguay Round negotiations covered a broad range of sectors, including a number that had been largely outside of any multilateral disciplines. In addition to broad sectoral coverage, the round put limitations on the use of a number of trade instruments. The principal results are described below.

Agriculture. Since the 1950s, agriculture had been outside the purview of the GATT. Protection was extensive and nontransparent. The Uruguay Round Agreement's incorporation of agriculture was a major achievement, although it is not certain whether any liberalization occurred. Still, trade regimes become significantly more transparent after non-tariff measures are replaced with tariffs. Tariffs also lend themselves to systematic reduction in any future round. It is not clear if there is sufficient will in Europe to undertake another such round, but further liberalization would be advantageous for many developing countries.

Textiles and clothing. This is another sector that had been subject to rampant protection under the MFA. The liberalization that was agreed upon will be tremendously important, as long as it is carried out. The major reason for scepticism is the deferral of most of the difficult liberalization to the end of the phase-in period and the long history of continuing protectionist regimes in this sector. It is of the utmost importance that developing nations maintain their vigilance. They must ensure that the MFA is eliminated and that it is not replaced with any equivalent regime.

Anti-dumping. This is an area of prime concern, as this instrument has replaced tariff barriers and other more regulated forms of administered protection to become a principal means whereby countries such as the United States and those of the EU can restrict access to their markets. Although a strong push was made to restrain the use of anti-dumping measures, the United States was adamantly opposed to further progress. This could be the single most important reform developing countries could demand in a future round in exchange for the broad range of reforms requested by developed nations.

Voluntary export restraints. This was one type of "gray-area" measure that was banned under the Uruguay Round Agreement. The ban or tightening of restrictions on such forms of administered protection was a laudable outcome of the round. These changes are important advances but may not do much to affect the free flow of goods if easier measures such as anti-dumping are available.

Subsidies. The Uruguay Round Agreement clarified and strengthened GATT rules governing the use of subsidies. The agreement was characterized by an attempt to distinguish between subsidies that distorted trade flows and those that have only minimal effects, with the former being banned and the latter permitted. As the use of trade-distorting subsidies was a growing source of contention, this agreement should ease tensions. It also marks the advance of trade policy into domestic concerns.

New Issues and Ongoing Negotiations

Unlike previous rounds, the Uruguay Round ended with a number of commitments to continue or commence negotiations in specific areas. For the most part, these areas were relatively new topics. Beyond those issues that were explicitly given a place on the WTO agenda lies a range of topics that have been discussed, either formally or informally.

It is not clear whether a built-in agenda of the sort that emerged from the Uruguay Round is valuable. When key participants in negotiations are unwilling to make concessions, discussions can be futile or even damaging. An example was the fruitless negotiations on liberalizing shipping services. Furthermore, the post-Uruguay Round experience with a built-in agenda has been linked to the division of issues into separate negotiations. Thus, while the broad negotiation on the General Agreement on Trade in Services was one of many components of the Uruguay Round, the post-Uruguay Round negotiations on financial services and on basic telecommunications were independent of each other and of other concurrent talks.

In the rare case in which countries' demands for liberalization on the part of trading partners can be balanced within a single sector, it may be possible to reach meaningful agreements in sectoral negotiations. The prime example of this put forward by advocates is the Information Technology Agreement, which, although linked to distilled spirits seems to have played a crucial role in reaching an agreement. In most cases, however, one would expect that demands for liberalization can only be balanced across sectors. Thus, broader rounds or some variant on that approach are preferable to sectoral talks.

Discussions of the topics that might be addressed in an upcoming round have covered a range of new and controversial issues. The United States has been adamant that both environmental and labor standards should be on the agenda. Environmental standards are currently being discussed at the WTO, while labor standards were kept off the agenda at the Singapore Ministerial Conference. The major concern for developing countries is that these issues are being used as a way to justify protectionism or as a way to impose developed countries' values on developing states. These topics are a legitimate subject of discussion only when the policy measures being discussed have direct international repercussions. This criterion can be met in cross-border pollution, but it is not met by labor standards.

A second set of new issues does not pose the same threat of protectionism, but it does hold the possibility of extensive WTO involvement in concerns that are traditionally matters of national sovereignty. The main issues are competition, investment, and government procurement policies. In each of these cases, it can be argued that domestic policies have important effects on trade flows. However, it is not clear whether international standards will do more harm than good. Developing nations need to assess proposals carefully in these areas, giving particular attention to the set of administrative requirements and costs that a new WTO regime would impose.

Special and Differential Treatment

As a matter of principle, developed countries have in the past stated their willingness to require less-than-full reciprocity from developing nations and to make offers of tariff preferences. This approach was known as special and differential treatment. In practice, these statements were generally in the nature of best endeavors and were not binding. For the most part, they were not implemented. More recently, developed countries have become even more reluctant to grant such preferences in GATT negotiations and in accession negotiations. This reluctance is strengthened in part by a change in the prevailing economic philosophy. In other words, it is no longer widely accepted that trade protection facilitates economic development.

A review of the promises of special treatment made to the least developed countries in recent years reveals more rhetoric than practical measures. It is important to provide technical assistance, as has been done, but this is distinctly different from the tariff- and quota-free access to world markets that the least developed nations require. Given their small share of world exports, this would seem to be a minimal concession that developed countries might make to further their progress. The most desirable way to achieve this goal would be through elimination of MFN tariffs.

Accession to the WTO

Under the WTO, the accession process is lengthier and more complex than it was under the GATT. This reflects, in part, the greater breadth of the WTO and the desire for all WTO members to become participants in the full range of agreements under the WTO umbrella. Membership in the WTO is valuable for OPEC members and other developing countries because it offers them the guarantee of MFN access to the markets of other member states and allows them to participate in discussions about changes in trading rules.

In exchange for the privileges associated with WTO membership, the accession process imposes a range of obligations on prospective members. In addition to accepting all of the Uruguay Round agreements, they must make a number of concessions and commitments on goods and services. Recent evidence indicates that the concessions asked of developing countries in accession negotiations exceed the requirements for developing countries that were already members during the Uruguay Round negotiations. To some extent, this reflects the uneven bargaining strength between the country wishing to join and those countries that are active participants in the Working Parties on accession, frequently large developed nations.

Policy Priorities

In light of these findings, we stress the following recommendations as policy priorities for OPEC members and other developing nations:

- *Vigilance with regard to the implementation of the Uruguay Round agreements*. In important sectors such as textiles, the most difficult liberalization was postponed for years. Not only should developing nations watch to ensure that the letter of the agreements are followed, but they should also prevent the old measures from being replaced with new ones.
- *Channeling of negotiations into a new round, rather than sectoral talks*. The successes that have occurred in sectoral negotiations have been limited and the result of special circumstances. Given the power of developed countries to shape the WTO agenda, a series of sectoral negotiations is unlikely to address developing country concerns. The strength of the WTO is in the opportunities it offers for cross-sectoral trade-offs in negotiations.
- *Forming of coalitions with other countries with similar interests*. It is exceedingly difficult for all but the largest developing countries to stand up against the developed countries. A principal advantage of multilateral over regional negotiations is that developing countries can coalesce and promote their common concerns. This proved effective during the Uruguay Round agricultural negotiations when the Cairns group (including developed and developing nations) played a powerful role in promoting liberalization.
- *Limiting discussion of new issues to relevant matters.* The unique success of the GATT regime in enforcing international discipline has encouraged a broad range of groups to try to use the WTO mechanism to enforce their favorite sets of policies. In some areas, such as investment, competition policy, and transboundary environmental effects, there may be some merit to such linkage. In other areas, such as domestic environmental policy and labor standards, there is little or no case for harmonization, and developing countries should vigorously defend their sovereignty.
- *Working to facilitate the entry of new members into the WTO.* This could be enhanced by the active participation of WTO developing countries that are members in Working Parties for accession. In addition, countries that are already members could push for an accession standard that was no more onerous than that applied to existing members at comparable stages of development.
- *Participating as fully as possible in liberalization under the WTO.* Impasses in multilateral talks have helped foster the threat of regionalism and may do harm to the multilateral system. To the extent that developing countries find it in their own interests to pursue liberal economic measures, they should use the WTO as a vehicle to solidify their commitments. In a system based upon consensus, it is important that the ability to block progress not be abused.

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ACRONYMS

AD	Antidumping
AMS	Aggregate measure of support
APEC	Asia Pacific Economic Cooperation
BOP	Balance of payments
CAP	Common agricultural policy
CHI	Chemical Harmonization Initiative
CTE	Committee on Trade and Environment
CVD	Countervailing duties
DSB	Dispute settlement body
DSM	Dispute settlement mechanism
FDI	Foreign direct investment
FSA	Financial Services Agreement
FTAA	Free Trade Agreement of the Americas
GATS	General Agreement on Trade and Services
GATT	General Agreement on Tariffs and Trade
GPA	Government Procurement Agreement
GSP	Generalized system of preferences
ILO	International Labor Organization
IMF	International Monetary Fund
ITA	Information Technology Agreement
ITC	International Trade Centre
ITO	International Trade Organization
MAI	Multilateral Agreement on Investment
MFA	Multifibre arrangement
MFN	Most favored nation
MTN	Multilateral trade negotiations

NAFTA	North American Free Trade Agreement
NGO	Nongovernmental organization
NTB	Nontariff barrier
NTM	Nontariff measure
OECD	Organization for Economic Cooperation and Development
OPEC	Organization of the Petroleum-Exporting Countries
QRs	Quantitative restrictions
SCM	Subsidies and Countervailing Measures Agreement
S&D	Special and differential treatment
SPS	Sanitary and phytosanitary standards
TBT	Technical barriers to trade
TPRM	Trade Policy Review Mechanism
TRIMs	Trade-Related Investment Measures
TRIPs	Trade-Related Intellectual Property Rights
TRQ	Tariff rate quota
UNCTAD	United Nations Conference on Trade and Development
UNDP	United Nations Development Program
VERs	Voluntary export restraint
WTO	World Trade Organization

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