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## The Global Trade Architecture and the Developing World

***Martin Khor and José Antonio Ocampo***

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# THE GLOBAL TRADE ARCHITECTURE AND THE DEVELOPING WORLD

Martin Khor and José Antonio Ocampo*

The World Trade Organization (WTO) was created in April 1994 by the Marrakesh Agreement, which concluded eight years of negotiations of the Uruguay Round. Since then, the WTO has been widely taken to be the embodiment of the multilateral trading system. In fact the WTO is only a part (though of course, a very significant part) of the global trade architecture. There are also other institutions (especially the United Nations Conference on Trade and Development, UNCTAD) and other agreements (in particular the regional and bilateral trade agreements) that are part of the trade architecture. Although the WTO covers many trade issues, it does not cover some crucial trade areas such as the issue of commodities and their related problems of instability of prices and demand, an issue that has been traditionally covered by UNCTAD and was subject in the past to a series of commodity agreements. Moreover, the mandate of the WTO also covers non-trade subjects such as intellectual property rights and the investment component of services. Thus, it is interesting to note that the WTO is less than the multilateral trade system, and also more than it.

The parts of the international trade architecture that come under the WTO are covered by the organization's principles and legally binding rules, as well as a strong enforcement mechanism through its dispute settlement system. The preamble to the Marrakesh Agreement establishing the WTO does contain the objective that "trade and economic endeavour should be conducted with a view to raising standards of living, ensuring full employment and a large and steadily growing volume of real income and effective demand (…) in accordance with the objective of sustainable development". It equally recognizes the need for positive efforts to "ensure that developing countries, and especially the least developed among them, secure a share in the growth of international trade commensurate with the needs of their economic development". The preamble also states the desire of "contributing to these objectives by entering into reciprocal and

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mutually advantageous arrangements directed to the substantial reduction of tariffs and other barriers to trade and to the eliminations of discriminatory treatment in international trade relations". The principle of "non-discrimination" –based, in turn, on Most-Favored Nation (MFN) and "national treatment" (that imported goods must not be accorded treatment less favorable than that accorded to like domestic products)—together with the principle of Special and Differential Treatment for developing countries (SDT), constitute two pillars of the architecture of rules upon which the multilateral trading system is supposed to be built up.

It can be argued that the main stated objectives of the WTO are therefore those of raising living standards, full employment and growth of real income, as well as ensuring that developing countries secure a fair share in global trade growth, whilst reduction of tariffs and non-tariff barriers and elimination of discriminatory treatment are instruments to achieve them. However, in practice, the means have many times prevailed over the ends and, in particular, insufficient attention has been given to the "development dimensions" of the global trading system, in particular on what trading rules and complementary policies are necessary to maximize the trade-development link.

The principle of SDT –that is, asymmetrical treatment or non-reciprocity in international trading rules when they involve transactions between developed and developing countries—was adopted in the 1960s to underscore the trade-development link and, in this sense, to complement the principle of non-discrimination on which GATT had been built since the late 1940s. It is a major exception to the principle of non-discrimination, to allow for unequal treatment of unequal partners.[1] However, as we will see, SDT has been at best highly insufficient and at worst openly violated. This is even more clearly valid of the free trade agreements that have proliferated in recent years, which have also ended up radically eroding the principle of non-discrimination.

This paper looks at the major aspects of the trading system and its relations to development. It is divided in six parts. The first summarizes the process and outcome of

[1] See, on this, Das (2003).

the Uruguay Round of negotiations that created WTO. The second considers the WTO agenda from the point of view of development. The third analyzes more specifically the proposals on market access that have surrounded the current Doha round. The fourth takes a look at decision making in WTO and its dispute settlement mechanism. The fifth analyzes the proliferation of free trade agreements over recent decades. The sixth draws some brief conclusions.

## I. The background and balance of the Uruguay Round negotiations

### 1. The international trading system in the run up to the Uruguay Round

The reconstruction of international trade after was one of the major successes of the post-Second World War era.[2] Although the Havana Charter that had proposed the creation of the International Trade Organization, one of the major pillars of the envisioned post-war institutional order, was not ratified by US Congress, the General Agreements on Tariffs and Trade (GATT), which had been agreed beforehand as part of the future ITO, became the framework for trade liberalization among Western industrial countries. The Most Favored Nation (MFN) principle made its comeback after the collapse of multilateralism and the rise of managed and highly discriminatory trade in the 1930s. Industrial country tariffs for industrial products came down significantly through seven rounds of GATT negotiations. Interestingly, the growth of trade in the 1950s and 1960s largely concentrated in manufacturing trade within two European blocks –Western and Eastern Europe—, which in the first case included a major exception of the most favored nation principle (an integration agreement adopted in the context of GATT Article XXIV) and in latter full fledged managed trade.

Given their traditional specialization in primary rather than manufacturing exports, developing countries were largely marginalized from the initial reconstruction of

[2] For an analysis of major trends in trade both in the 1930s and in the post-war years, see Findlay and O'Rourke (2007), chapters 8 and 9. See also Ocampo and Martin (2003), chapter 2, about the historical links between trade and growth, and Akyüz (2003) and Ocampo and Vos (2008), chapter III, for more recent trends.

international trade. Under the axis of state-led industrialization strategies[3] and the strengthened nationalism that characterized the decolonization process, their trade policies focused on the domestic markets and heavy state intervention, and thus ran in the opposite direction to the gradual trade liberalization that took place among Western industrial countries. The rise of an export-oriented strategy in East Asia in the 1960s represented the most significant change in this regard. It shared, however, with traditional inward-looking state-led industrialization both significant state intervention and high levels of protection, now mixed with export subsidies. Several Latin American countries also started to mix export promotion strategies with import protection, visualizing these policy instruments as complements rather than substitutes.[4] By the 1970s the rise of manufacturing exports from some Asian and Latin American countries had become a new feature of world trade.

The marginalization of developing countries from international trade had given rise to concerns about the structure of the international trading system. Under the leadership of the recently created United Nations Conference for Trade and Development (UNCTAD), the new principle Special and Differential Treatment for developing countries was born in the 1960s. This principle led to the drafting of Part IV of GATT, on trade and development, and the more comprehensive "Enabling Clause" approved in 1979 during the Tokyo Round. Article XXXVI provided a clear formulation of the principle of special and differential treatment: "The developed contracting parties do not expect reciprocity for commitments made by them in trade negotiations to reduce or remove tariffs and other barriers to the trade of less-developed contracting parties." (…). The understanding of the meaning of this principle was clarified soon after and written into the fifth provision of the Enabling Clause: "Developed contracting parties shall

[3] This concept, proposed by Cardenas et al. (2000) is much better to describe industrialization policies than the usual concept of "import substitution industrialization", which emphasizes one of the specific dimensions of the process, and not necessarily the most important one.

[4] The idea that protection and exports promotion can be complements can be defended when there are under-utilized resources and/or when the domestic market can be used to generate static or dynamic economies of scale that allow a country to become competitive in a set of goods and services. The latter was formalized by Krugman (1990, chapter 12) as the argument for "import protection as export promotion". In contrast, the traditional neo-classical argument of protection as an "anti-export bias", to which we refer below, is based on the assumptions of full employment and absence of scale economies.

therefore not seek, neither shall less-developed contracting parties be required to make, concessions that are inconsistent with the latter's development, financial and trade needs."

The main development of this principle was the creation of the General System of Preferences (GSP) in 1968 and its implementation by major industrial countries since the early 1970s, based on the waiver to the MFN principle for the Generalized System of Preferences approved in 1971. However, GSP never became what it was expected to be, a *generalized* (as its name indicates) system of preferences subject to multilateral notification. Several studies soon indicated that its effects were rather frustrating.[5]

Perhaps more importantly, SDT was reflected up to the Uruguay Round in the fact that those developing countries that were GATT members kept most of the tariffs unbound, made an extensive use of quantitative import restrictions (QRs) and other mechanisms of trade intervention (such as the rules on domestic contents in assembly operations and export targeting commitments for foreign firms that were baptized during the Uruguay Round as "Trade-Related Investment Measures", TRIMS). Only a few of them signed the codes of conduct on subsidies, import licenses and others approved during the Tokyo Round (see Table 1). On intellectual property, which was in any case considered to be outside the domain of the trade system, the developing countries had wide flexibility to adopt their own national approaches.

Trends in policy in both developed and developing countries experienced significant changes in the 1970s and, particularly, in the 1980s. In the case of industrial countries, exceptions to trade liberalization and multilateral rules had been taking place for some time in "sensitive" sectors. Since the mid-1950s, under pressure from the US but also of the European Economic Community, agriculture had been accepted as a major exception to GATT's principles and rules of gradual trade liberalization, non-subsidization and exceptional use of QRs. Since the latter part of the 1950s, industrial countries also began to use import quotas to protect themselves against textile imports,

[5] Thus, for example, Karensky and Laird (1987) showed that in 1983 the GSP had increased developing country exports by only 2%, with half of those benefits going to the Asian Tigers and Brazil. See also Whalley (1990).

one of the most dynamic manufacturing exports form developing countries. Whereas textiles were explicitly excluded from the agendas of both the Kennedy (1963-1967) and Tokyo (1973-1979) Rounds, the attempt to bring agriculture to both Rounds ended up in major deadlocks on both occasions.

**Table 1**
**Scope of Tariff Bindings and Coverage of Tokyo Round Codes**

| | Developed Countries | Developing Countries | | | | |
|---|---|---|---|---|---|---|
| | | Total | Africa | America | Asia | Europe |
| GATT Membership (December 1990) | 23 | 77 | 33 | 21 | 16 | 7 |
| Percentage of import bound | 95% | 21% | 31% | 46% | 10% | 55% |
| Signatories of Tokyo Round Codes | | | | | | |
| Technical Barriers | 21 | 18 | 3 | 4 | 7 | 4 |
| Government procurement | 20 | 3 | 0 | 0 | 3 | 0 |
| Subsidies | 22 | 14 | 1 | 4 | 8 | 1 |
| Customs valuation | 22 | 15 | 4 | 3 | 4 | 4 |
| Import licences | 22 | 17 | 4 | 3 | 5 | 5 |
| Anti-dumping | 22 | 13 | 1 | 2 | 5 | 5 |

Source: Ocampo (1992), Table 2

The growing use of selective forms of protectionism in the late 1970s and 1980s –Voluntary Export Restraints (VERs) and Orderly Market Agreements (OMAs)—also implied an extensive use of QRs and a violation to the principle of non-discrimination. They were generally aimed at Japan but also at exports from successful developing country manufacturing exporters. As they were adopted outside the framework for safeguards provided by GATT, they came to be known as "gray area" measures. In turn, the provisions of GATT for contingency protection –antidumping and countervailing duties— were increasingly used in 1970s and 1980s with what was perceived to be a protectionist bias.

These trends were part of a broader weakening of the commitment to gradual trade liberalization and multilateralism by Western industrial countries. In the case of the US, a factor that aggravated protectionist trends was the sharp appreciation of the US dollar in the first half of the 1980s. This reflected a significant paradox of the international order in recent decades, which may be seen as a major contradiction

between the dominant views of trade and exchange rate policies. Whereas in the European Community (later Union), exchange rate stability was seen as a *sine-qua-non* of growing market integration, no similar commitment was adopted at the global level. Rather, the principle of flexible exchange rates among major countries and, more broadly, the autonomy of countries to adopt any exchange rate regime they found best suited to their conditions, was firmly established after the collapse of the original Bretton Woods arrangements in the early 1970s. This is paradoxical because exchange rate fluctuations can generate stronger effects on import prices than industrial country tariff levels, and greater incentives to export than export subsidies.

Growing protectionism was one of the major reasons why developing countries came to increasingly distrust the commitment of industrial countries to a more liberal multilateral trading order. Major reasons were the exclusion of agriculture from the normal multilateral trade rules and formulation of special ad hoc restrictive arrangement for textiles, the high tariffs and extensive use of QRs that characterized those sectors, and tariff escalation according to the processing of raw materials, which generated constraints to industrialization based on forward linkages of traditional raw material exports. This implied that, in sharp contrast to the acceptance of the principle of SDT in the 1960s, industrial countries tended to discriminate against potential exports from developing countries.

From the perspective of industrialized countries, rising exports from some rapidly industrializing developing countries were increasingly seen as a growing threat. For them, the lack of graduation rules from SDT implied that rapidly industrializing developing countries were in fact free riding on the benefits of a multilateral trading order. Given that industrial countries perceived technological innovation to be one of their sources of comparative advantage, the lack of strict intellectual property rights protection in some developing countries was seen as a major threat. They also saw some services as areas of comparative advantage, and thus the need to extend trade disciplines in that direction. These perceptions became the basis for use by the United States of the 301 provisions of the 1984 and 1988 Trade Acts to press some Latin American and Asian

countries to dismantle export subsidies and adopt intellectual property regimes more similar to those of the US. They also pressed them to offer significant tariff and non-tariff concessions as a condition to enter GATT.

There was also a change of perception in the development debates about the virtues of state-led industrialization vs. export-led growth. In the orthodox interpretation that gradually gained ground, protection was increasingly viewed not only as leading to inefficient allocation of resources but also as a source of "anti-export biases" that blocked the opportunities for export-led growth. This interpretation was fully articulated by Krueger (1978) and became the official World Bank doctrine in the 1980s. This implied a view of protection and export promotion as alternative rather than complementary strategies, and was based on a biased interpretation of East Asian success with export-led growth, which emphasized "neutral incentives" rather than state intervention This ran in sharp contrast the interpretations by Amsden (2001), Chang (2002) and Wade (2003) of such success, among others, for whom state intervention was a crucial ingredient. The World Bank (1993) tried, rather unsuccessfully, to draw an eclectic view of the East Asian success, based on a mix of both stories. The debt crisis faced by many countries in Latin America and Africa provided the leverage of the World Bank to diffuse and even impose its views through policy conditionality in structural adjustment programs.

Those developing countries that relied on export-led growth now also had a growing interest in a better multilateral trading order *per se* while t industrial countries increasingly saw them as competitors, and were thus reluctant to grant them special and differential treatment. Rather, in a sharp reversal of the principle of asymmetric treatment for developing countries, they called for a "level playing field" in international trade.

## 2. The outcome of the Uruguay Round negotiations

This is the complex background to the debates that surrounded the Uruguay Round negotiations. In the 1982 Ministerial meeting and in 1986, in Punta del Este, where the Round was launched, the consensus was to put most of these issues –and associated grievances— on the agenda. Several developing countries strongly resisted the

inclusion of services and, even more, of intellectual property in the negotiations, as they felt this would detract from the backlog issues in the trade of goods –particularly agriculture, textiles and tariff escalation—, the elimination of the "gray areas", and the additional discipline required for the use of mechanisms of contingency protection. However, the inclusion of the new topics demanded by industrial countries seemed to be the price that developing countries were asked to pay, in exchange for developed countries agreeing to negotiate the issues of interest to the developing world.

In the context of the fact that the Round agreement would eventually be adopted as "a single undertaking", and that developing countries had few prior disciplines in the context of GATT, the acceptance of a comprehensive agenda was likely to lead to significant additional commitments for them. Most early evaluations of the Round (Agosin et al., 1995; Ocampo, 1992; Rodrik, 1995) came indeed to the conclusion that the Round had led to a sharp increase in the range of obligations and responsibilities adopted by developing countries and a loss of what came to be later called the "policy space" they had enjoyed in the past, including to adopt the aggressive East Asian export-led strategies that had been widely praised in previous decades. The SDT principle was significantly eroded, particularly for middle-income developing countries. In these cases, SDT was confined to longer transition periods, lower tariff cuts, and somewhat greater freedom to apply special provisions (e.g., in relation to subsidies). In contrast, the additional responsibilities adopted by industrial countries were limited, and they were left with significant room to continue using their traditional instruments of state intervention.

A basic feature of the disciplines introduced by the Uruguay Round was the adoption of a strong dispute settlement mechanism, perhaps the strongest of its kind in the current multilateral order. The old GATT mechanism allowed rulings that could be ignored by affected countries (in fact, affected countries could veto the decision, a practice which was, in any case, generally avoided). In the new WTO rules, panel rulings could not be vetoed and were only subject to an appellate body, the decisions of which were binding. However, some important problems remained in this area, associated with the high costs of using the mechanism and the asymmetric power of potential retaliation

by different countries. The system also included the possibility of "cross-sectoral retaliation", which potentially made the effects of non-compliance more painful. For example, if a developing country did not comply with its obligations in the TRIPS agreement, a complaining party that succeeds in a dispute could retaliate through actions in the area of trade in goods.

Gains for developing countries included the prohibition of gray area measures as well as the dismantling of the Multi-Fiber Agreement, though with a long transition (ten years, the longest transition agreed) that also allowed affected countries to postpone until the very end the lifting of their most restrictive policies on textile imports. There were also increased disciplines in the use of the instruments of contingency protection. Industrial country tariffs for industrial goods were further reduced, though from already low levels and maintaining the tariff peaks and escalation that had been criticized by developing countries since the 1960s (Table 2).

**Table 2**
**Major characteristics of tariff regimes**

| | Pre-UR | Post-UR |
|---|---|---|
| A. Percentage of tariff lines bound | | |
| Developed countries | 78 | 99 |
| Developing countries | 22 | 72 |
| B. Percentage of imports under bound rates | | |
| Developed countries | 94 | 99 |
| Developing countries | 14 | 59 |
| C. Import-weighted tariff rates | Applied | Bound |
| Developed countries | 4.0 | 4.7 |
| Developing countries | 13.1 | 20.8 |
| Latin America and the Caribbean | 10.1 | 18.6 |
| East Asia and the Pacific | 9.8 | 16.6 |
| South Asia | 27.7 | 56.1 |
| Europe and Central Asia | 9.6 | 14.9 |
| Middle East and North Africa | 14.4 | 26.8 |
| Sub-Saharan Africa | 16.5 | 19.8 |
| D. Bound rates of industrial countries | | |
| (all industrial products, excluding petroleum) | | 4.3 |
| Raw material | | 0.8 |
| Semi-manufactures | | 2.8 |
| Finished products | | 6.2 |
| Natural-resource based | | 5.9 |
| Textiles and clothing | | 11.0 |

Sources: A and B: Rodrik (1995), Table 4.
C and D: Laird (2002), Tables 11.1, 11.2 and 11.3

In the case of agriculture, negotiations had, in contrast, a deeply frustrating outcome. The only breakthrough was the formal inclusion of the issue in WTO, as the agreement allowed a large number of subsidies to be maintained, even on a permanent basis (what came to be known as the "Green" and "Blue Boxes"), whereas commitments on the reduction of restricted subsidies (export subsidies and domestic subsidies that are classified under the "Amber Box") did not represent an improvement over what countries, particularly European countries, had already done on an unilateral basis. Indeed, as the estimates by the World Bank (2008, Figure 4.3) for the post-war period now make clear, the reference period adopted was that with highest proportional level of agricultural subsidies in the industrial countries. Indeed, deep frustration by many actors with this outcome, led to the only other meaningful decision that was adopted together with the inclusion of agriculture in WTO: that the agricultural agreement would have to be renegotiated after five years (in the year 2000).

The counterpart of these advances was a significant set of new commitments by developing countries, which are further analyzed below. Most stringent, according to all evaluations, were the new disciplines in intellectual property rights, which generated a constraint that had not been present in prior development experiences, including those of industrial countries. QRs were forbidden, except as emergency measures during balance of payments crises (under stricter disciplines, in any case) and tariff bindings increased substantially, indeed to cover the whole tariff schedule for many middle-income countries. Another instrument that had been actively used by developing countries in the past, both as a protection devise and as an export promotion instrument, the so-called TRIMS, was prohibited. Nonetheless, many developing countries were able to keep bound tariffs at levels that were substantially higher that those effectively applied after their own unilateral liberalization processes.

Some of the greatest contrasts between the degrees of additional commitments made by industrial vs. developing countries lay in the area of subsidies. In practice, the major subsidy instrument used by developing countries, export subsidies, was prohibited for countries with a per capita GDP above $1000, except in the case of agriculture, where

industrial countries staunchly defended their traditional forms of state intervention. This exception was part of a broader acceptance at Marrakesh of all major instruments of intervention used by industrial countries, with some restrictions. This included export and production subsidies in agriculture, but also technological, regional and horizontal subsidies in the general agreement on subsidies. This asymmetry was also present in the case of QRs, which were generally prohibited and made more stringent in the case of balance of payments crises, the typical clause used by developing countries, but were given greater room in textiles (during the transition period), in the general safeguards agreement and, as we have seen, de facto in the case of agriculture. Both in relation to subsidies and QRs, as well as in the transitional provisions for textiles, the principle of special and differential treatment was not only ignored: it was actually turned upside down.

Many developing countries initially fought against the inclusion of services in the Uruguay Round, arguing that the principles and rules applying to trade in goods are not necessarily appropriate for trade in services, and moreover there was a strong "investment" (as contrasted to trade) component in services. The services negotiations was conducted through most of the Round on a separate track with no prior agreement that it would merge with the negotiating track on trade in goods, but ultimately this merging of tracks took place. In the negotiations, the developing countries attempted to soften the new obligations on them by establishing a number of development principles and safeguards.

The new General Agreement on Trade in Services (GATS) represented basically a framework for future negotiations. It included the basic principles of GATT –gradual trade liberalization, reciprocity, MFN— and added new ones –the transparency of domestic regulations and the need to negotiate commercial presence. However, in practice, countries maintained significant discretion as to what to liberalize (or even totally exclude certain sectors or activities from liberalization) and what form (or "mode", according to GATS terminology) it would take. They also maintained a

significant degree of freedom to regulate the sector, including establishing restrictions on maximum foreign ownership of firms in specific activities.

The sense that the outcome of the Uruguay Round negotiations had been imbalanced weighted heavily in the succeeding history of WTO. Whether a new "Round" was the best way to correct these imbalances is, of course, quite controversial. In this regard, it is important to recall that the possibility of conducting regular negotiations in WTO rather than through the sequence of special rounds used by GATT has been regarded as one of the major institutional innovations of the Marrakesh Agreement. For the purpose of correcting imbalances, a new round of negotiations was not the best alternative, as it brought with it the emphasis on reciprocity vis-à-vis developing countries. However, rather than negotiate first the pending issues (the so-called "built-in agenda"), particularly agriculture, European countries also advocated the idea of a new comprehensive deal to manage concessions in agriculture, rather than negotiate this issue by itself, as it had been agreed in Marrakesh. It was evident that they wanted to be "paid" by other countries for undertaking the agriculture commitments that they were already obliged to do. The consequence of all this is that, rather than correcting the imbalances, reciprocity ended up dominating the Doha Round negotiations.

## II. WTO's Rules and the Problems faced by Developing Countries

The scope of the WTO covers three main areas: trade in goods, services, and intellectual property. Rules for these are established respectively in the General Agreement on Tariffs and Trade (GATT 1994, which incorporated GATT 1947 and its revisions, including Part IV on trade and development), the General Agreement on Trade in Services (GATS) and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). The GATT and TRIPS agreements contain the two dimensions of non-discrimination –i.e. most-favored nation (MFN) and national treatment—, whilst GATS follows the MFN principle but allows significant departures from national treatment.

WTO rules on goods provide a framework within which member countries conduct trade. This has contributed to a measure of stability and predictability as contrasted to an alternative scenario in which arrangements are dominated by unilateral policies and bilateral arrangements. In this context, developing countries have been able to gain a rising share in world trade: from under a fourth of world exports when WTO was created to over a third today (Table 3). However, this process had started before the creation of WTO and been largely uneven across countries.[6] China is responsible for most of the rising share of developing countries in world trade since 1995, particularly in low and high-tech manufactures, with the rest of developing countries increasing their share in world exports by only about one percentage point. Some regions, and particularly least developed countries, have continued to lose shares in world trade.

Furthermore, since the end of the Uruguay Round, developing countries have complained that the benefits they anticipated have not materialized. The expansion of the agenda under the Uruguay Round, through the introduction of the then new issues, made the system even more imbalanced, as well as constraining of the domestic policy space –as the system moved from its traditional concern with trade barriers at the border, to issues involving domestic economic and development strategies and policies. Moreover, developing countries have faced multiple problems when they implement their own obligations.

Also, the developing countries have come under pressure to negotiate the introduction of still new agreements or rules in the WTO, firstly on labor standards and secondly on the "Singapore issues". The latter is a set of issues (investment, competition policy, transparency in government procurement and trade facilitation) that the developed countries introduced at the WTO's first Ministerial meeting held in Singapore in 1996. If accepted as the subject of new rules, these issues would have greatly expanded the mandate of the WTO. Since 1996, there has been a zig-zag course of these issues through the WTO's negotiating process (see below).

[6] See also, in this regard, Lall (2001), chapter 4, Akyüz (2003), chapter I, and Ocampo and Vos (2008), chapter III.

**Table 3**
**Share of developing countries in world exports**

| | 1962 | 1980 | 1995 | 2006 |
|---|---|---|---|---|
| A. China | | | | |
| Primary commodities | 1.1% | 1.5% | 3.1% | 4.7% |
| Natural resource based manufactures | 0.4% | 0.7% | 2.3% | 5.9% |
| Low Tech manufactures | 0.9% | 2.4% | 15.5% | 32.3% |
| Medium Tech manufactures | 0.1% | 0.3% | 2.7% | 9.6% |
| High Tech manufactures | 0.0% | 0.2% | 3.6% | 22.0% |
| Total | 0.5% | 0.9% | 5.2% | 15.8% |
| B. NICs w/out Taiwan | | | | |
| Primary commodities | 0.9% | 1.3% | 1.4% | 1.5% |
| Natural resource based manufactures | 0.6% | 1.6% | 2.3% | 3.2% |
| Low Tech manufactures | 3.1% | 8.7% | 6.9% | 4.0% |
| Medium Tech manufactures | 0.3% | 1.8% | 4.3% | 5.2% |
| High Tech manufactures | 0.4% | 3.5% | 11.2% | 10.5% |
| Total | 1.0% | 3.0% | 5.6% | 5.7% |
| C. South East Asia | | | | |
| Primary commodities | 6.8% | 5.8% | 5.8% | 4.8% |
| Natural resource based manufactures | 4.0% | 4.9% | 5.3% | 5.6% |
| Low Tech manufactures | 0.3% | 1.1% | 5.1% | 3.6% |
| Medium Tech manufactures | 0.1% | 0.3% | 2.0% | 2.4% |
| High Tech manufactures | 0.1% | 1.9% | 6.9% | 7.2% |
| Total | 2.8% | 2.5% | 4.5% | 4.5% |
| D. Latin America and the Caribbean | | | | |
| Primary commodities | 16.5% | 13.1% | 12.8% | 16.7% |
| Natural resource based manufactures | 7.3% | 8.0% | 5.9% | 8.2% |
| Low Tech manufactures | 0.6% | 2.5% | 3.9% | 3.6% |
| Medium Tech manufactures | 0.3% | 1.4% | 3.5% | 4.4% |
| High Tech manufactures | 0.4% | 2.0% | 1.9% | 2.8% |
| Total | 6.3% | 5.0% | 4.6% | 5.4% |
| E. Turkey and South Africa | | | | |
| Primary commodities | 3.2% | 2.7% | 2.1% | 5.0% |
| Natural resource based manufactures | 1.9% | 1.6% | 1.3% | 1.4% |
| Low Tech manufactures | 0.2% | 0.6% | 1.6% | 1.8% |
| Medium Tech manufactures | 0.1% | 0.2% | 0.5% | 0.7% |
| High Tech manufactures | 0.0% | 0.3% | 0.1% | 0.1% |
| Total | 1.4% | 1.0% | 0.9% | 1.2% |
| F. Middle East and North Africa | | | | |
| Primary commodities | 3.0% | 2.4% | 2.1% | 1.7% |
| Natural resource based manufactures | 2.7% | 1.5% | 2.0% | 2.3% |
| Low Tech manufactures | 0.8% | 1.5% | 1.7% | 1.2% |
| Medium Tech manufactures | 0.2% | 0.6% | 0.8% | 1.0% |
| High Tech manufactures | 0.2% | 0.4% | 0.6% | 0.6% |
| Total | 1.6% | 1.2% | 1.3% | 1.2% |
| G. South Asia | | | | |
| Primary commodities | 3.9% | 1.6% | 1.8% | 2.1% |
| Natural resource based manufactures | 1.8% | 0.7% | 1.4% | 3.4% |
| Low Tech manufactures | 3.8% | 1.9% | 3.2% | 2.5% |
| Medium Tech manufactures | 0.1% | 0.1% | 0.3% | 0.5% |
| High Tech manufactures | 0.1% | 0.1% | 0.2% | 0.2% |
| Total | 2.1% | 0.8% | 1.1% | 1.3% |
| H. Sub Saharan Africa and other LDCs 1/ | | | | |
| Primary commodities | 8.6% | 4.8% | 3.0% | 1.7% |
| Natural resource based manufactures | 3.4% | 1.9% | 1.2% | 0.5% |
| Low Tech manufactures | 0.1% | 0.3% | 0.3% | 0.1% |
| Medium Tech manufactures | 0.2% | 0.1% | 0.0% | 0.0% |
| High Tech manufactures | 0.1% | 0.5% | 0.0% | 0.0% |
| Total | 3.2% | 1.3% | 0.6% | 0.2% |
| I. Developing countries total | | | | |
| Primary commodities | 44.0% | 33.1% | 32.0% | 38.2% |
| Natural resource based manufactures | 22.0% | 20.9% | 21.7% | 30.4% |
| Low Tech manufactures | 9.9% | 19.0% | 38.3% | 49.1% |
| Medium Tech manufactures | 1.4% | 4.9% | 14.2% | 23.8% |
| High Tech manufactures | 1.3% | 8.8% | 24.5% | 43.5% |
| Total | 19.0% | 15.8% | 23.7% | 35.4% |

1/ Excludes Bangladesh, which is included in South Asia

Source: Author's calculations based on UN-COMTRADE data.

Finally, as we will see in part IV, although WTO governance has certain advantages, particularly its formal democratic structure and its dispute settlement mechanism, its decision-making process has not been transparent and has not allowed in practice the full participation of developing countries. This was especially so in the earlier years of the WTO, during which the major developed countries were able to make the main decisions and the developing countries complained strongly at the manipulative methods employed, especially during Ministerial conferences. In recent years, developing countries have made greater inroads. However, the decision-making process is still generally dominated by major developed countries, with only a few developing countries being admitted into the innermost circle.

1. Imbalances in WTO Rules

The imbalances in WTO rules relate both to the non-realization of anticipated benefits, and to the problems faced by developing countries in implementing their own obligations.

On the first set of imbalances, developing countries had expected to benefit significantly from the Uruguay Round through increased access to the markets of developed countries for products. This was especially in agriculture and textiles, sectors in which developing countries have a comparative advantage. However, as Tables 2 and 4 indicate, these two sectors remained those subject to the highest levels of protection in industrial countries. Tariff peaks continued to be an embedded feature of the system, particularly in these two sectors, and continued to affect in particular developing country exports. About three-fifths of total imports into industrial economies with tariffs that exceed 15% (which represent slightly less than 8% of these countries' tariff schedules) came from developing countries (Olarreaga and Ng, 2002). Natural-resource intensive manufactures have also continued to be constrained by tariff escalation (Table 2). Non-tariff barriers, particularly antidumping rules and technical standards have also continued to constrain exports from developing countries.

**Table 4**
**Major characteristics of applied protection, 2006**

| | Total trade | Agriculture | Manufacturing |
|---|---|---|---|
| A. Tariffs | | | |
| High-Income Countries | 2.1 | 12.1 | 1.4 |
| East Asia and Pacific | 5.0 | 8.7 | 4.8 |
| Europe and Central Asia | 4.5 | 10.3 | 4.0 |
| Latin America and the Caribbean | 5.4 | 6.6 | 5.3 |
| Middle East and North Africa | 11.9 | 12.1 | 11.8 |
| South Asia | 14.0 | 31.4 | 13.2 |
| Sub-Saharan Africa | 8.4 | 13.8 | 7.6 |
| B. Overall trade restrictiveness | | | |
| High-Income Countries | 7.0 | 43.1 | 4.3 |
| East Asia and Pacific | 11.3 | 28.6 | 10.4 |
| Europe and Central Asia | 10.1 | 25.9 | 9.0 |
| Latin America and the Caribbean | 15.0 | 28.1 | 13.8 |
| Middle East and North Africa | 21.6 | 32.3 | 19.4 |
| South Asia | 19.5 | 46.4 | 18.2 |
| Sub-Saharan Africa | 14.4 | 24.9 | 12.9 |

Source: Global Monitoring Report 2008, Tables 4.1 and 4.2

In textiles, developing countries had for decades made a major concession by agreeing that their textiles and clothing exports to developed countries be curtailed through a quota system. In the Uruguay Round, developed countries agreed to progressively phase out their quotas over ten years to January 2005, but they in fact retained protection in most sensitive areas up to very near the end of the transition period. After liberalization, some additional protections were put in place, which in some cases implied a temporary return of the "gray areas" prohibited by the Marrakesh Agreement.

Agriculture remained the sector subject to both the highest level of tariff protection and, in particular, non-tariff protection in industrial countries –and, it could be added, this is also true of the developing world (Table 4). In the case of agriculture, and despite the 36% reduction in tariffs agreed to in the Uruguay Round, many items of interest to developing countries remained high –even prohibitively so— beyond certain moderate level of access. Indeed, conscious that the so-called "tariffication" of non-tariff restrictions would lead to high levels of tariffs for several products, the Uruguay Round

agreement on agriculture set minimum market access commitments, according to which the share of imports in domestic consumption for products subject to high import restrictions would have to increase in the case of industrial countries at least five percent by 2000, at a lower tariff rate than the level of the quota of minimum market access. But this made the "tariff rate quota" effectively a quota with the semblance of a tariff.

Not surprisingly, all estimates of static benefits from liberalization of the trade in goods indicate that agriculture concentrates by far the largest benefits. The estimates by Anderson et al. (2006), based on a computable general equilibrium model, indicate that out of $287 billion of potential static gains from goods trade liberalization, 63% would come from agriculture; an additional 14% would come from textiles and clothing. There is a copious literature of simulations based on computable general equilibrium models with fairly similar results.[7]

The WTO's Agreement on Agriculture also comprised rules in the areas of export subsidies and domestic support. In the first case, subsidies were to be reduced in 2000 by 36% in value terms and 21% in volume terms vs. the base period (1986-90). In turn, the Aggregate Measure of Support (AMS), which includes the trade-distorting subsidies, was to be reduced 20% by 2000 for the agricultural sector as a whole. This commitment was extremely weak, both because the reference period (1986-88) was that when domestic subsidies to agriculture in industrial countries were at a historical peak (see part I) but also because of the way subsidies were classified, giving developed countries significant room of maneuver to redistribute rather than reduce the level of agricultural subsidies.[8]

The agreement divided subsidies in three categories. The first, which are classified under the so-called Amber Box, includes subsidies that are clearly trade distorting, as they generate incentives to produce specific commodities or subsidize the use of certain inputs. The second, classified under the Blue Box, includes direct payments

[7] See, for example, Dimaranan et al, (2003), Hertel and Keeney (2006), and World Bank (2004, ch. 10, and 2008, ch. 4), and the review of literature of Stiglitz and Charlton (2005), Appendix 1. The latter provide also a criticism of this methodology.

[8] See an excellent summary of the Uruguay Round agreement in agriculture in Hoekman and Kostecki (2001), ch. 6, and a critical view from the developing country perspective in Das (2003).

under production-limiting programs, which include the "compensation payments" of the EU and the "deficiency payments" of the US. The third are the very long list of Green Box subsidies set in Annex 2 of the agreement, which have to meet the criteria that "have no, or at most minimal, trade-distorting effects or effects on production". Only Amber Box subsidies are subject to reduction commitments.

The Agreement has therefore huge loopholes in the form of subsidies that are not subject to reduction commitments: the Green and Blue boxes as well as *de minimis* support for otherwise Amber Box subsidies.[9] This has allowed industrial countries to redistribute their support to agriculture, while actually *increasing* the amount of support in dollar terms in relation to the reference period in dollar terms (less so when valued in euros). This is reflected in Table 5, which summarizes the evolution of agricultural subsidies according to the OECD (2008) data. Whereas support based on commodity output (Amber Box) has declined, Blue Box (included as part of OECD estimates of product support) as well as Green Box subsidies have increased. Interestingly, whereas transfers from consumers have declined, as domestic prices paid to producers have gradually approach international prices, fiscal transfers have sharply increased. Furthermore, although as a proportion of farm gate income, support has declined relative to the peak levels of the reference years, they have declined only minimally with respect to the levels of the late 1980s. Subsidies are, however, very unequal among different countries and commodities.

World Bank data also indicate that subsidies have not only increased but have actually remained higher in relation to the value of production to the levels that were characteristic up to the mid-1980s (World Bank, 2008, Figure 4.3 and Table 4.4). In some cases, the redistribution has actually broken with even the generous WTO rules. Thus, in a dispute settlement case on cotton, it was found that the US had been wrongly shielding some trade-distorting subsidies within the Green Box, and was asked to change its policies accordingly.

[9] The *de minimis* provision applies for subsidies that represent less than 5% of the value of production of the specific commodity involved (10% in the case of developing countries)

**Table 5**
**OECD: Support to agriculture (US$million)**

| | OECE: Estimat | | | | | | |
|---|---|---|---|---|---|---|---|
| | 1986-88 | 1989-91 | 1991-94 | 1995-97 | 1998-00 | 2001-03 | 2004-06 |
| Producer Support Estimate (PSE) | 241,932 | 249,390 | 268,866 | 254,510 | 257,435 | 238,555 | 280,247 |
| Support based on commodity output | 199,357 | 203,604 | 207,458 | 177,979 | 182,508 | 154,067 | 168,322 |
| Payments based on input use | 20,265 | 22,968 | 23,745 | 24,145 | 21,576 | 23,055 | 28,574 |
| Payments based on current A/An/R/I, production required 1/ | 18,905 | 17,759 | 31,425 | 41,862 | 38,886 | 45,474 | 42,325 |
| Payments based on non-current A/An/R/I, prod. required 1/ | 533 | 90 | 241 | 459 | 185 | 286 | 732 |
| Payments based on non-current A/An/R/I, prod. not required 1/ | 1,742 | 1,824 | 2,598 | 6,584 | 12,265 | 12,571 | 36,920 |
| Payments based on non-commodity criteria | 920 | 2,497 | 3,224 | 3,270 | 2,587 | 3,035 | 3,699 |
| Miscellaneous payments | 210 | 647 | 175 | 211 | -571 | 67 | -324 |
| | | | | | | | |
| General Services Support Estimate (GSSE) | 39,484 | 53,658 | 62,650 | 64,032 | 55,580 | 56,761 | 66,624 |
| Research and development | 3,555 | 4,242 | 5,005 | 5,407 | 5,187 | 5,508 | 6,627 |
| Agricultural schools | 886 | 988 | 1,060 | 1,697 | 1,694 | 1,547 | 1,734 |
| Inspection services | 1,092 | 1,313 | 1,451 | 1,507 | 1,764 | 2,048 | 3,033 |
| Infrastructure | 13,878 | 17,937 | 24,143 | 25,920 | 20,249 | 20,111 | 21,441 |
| Marketing and promotion | 11,895 | 15,847 | 22,332 | 23,992 | 21,928 | 22,521 | 29,261 |
| Public stockholding | 6,561 | 11,220 | 5,897 | 3,192 | 2,313 | 2,381 | 2,064 |
| Miscellaneous | 1,617 | 2,112 | 2,761 | 2,315 | 2,444 | 2,645 | 2,464 |
| | | | | | | | |
| Total transfers to producers | 281,416 | 303,049 | 331,515 | 318,542 | 313,014 | 295,316 | 346,871 |
| Net transfers to consumers | 17,258 | 19,617 | 25,343 | 28,169 | 25,938 | 27,555 | 33,903 |
| Total Support Estimate (TSE) | 298,674 | 322,666 | 356,858 | 346,712 | 338,952 | 322,871 | 380,774 |
| Transfers from consumers | 194,882 | 193,724 | 214,244 | 196,588 | 192,240 | 162,106 | 171,477 |
| Transfers from taxpayers | 129,856 | 156,365 | 178,977 | 180,439 | 172,540 | 182,959 | 230,651 |
| Budget revenues | -22,272 | -23,293 | -33,352 | -30,315 | -25,829 | -22,194 | -21,354 |
| | | | | | | | |
| Percentage PSE 2/ | 37.5% | 32.8% | 34.2% | 29.9% | 33.6% | 30.6% | 28.9% |
| TSE as % of value of production at farm gate | 41.0% | 35.6% | 37.5% | 33.2% | 38.1% | 34.9% | 33.2% |
| TSE+GSEE as % of value of production at farm gate | 47.7% | 43.2% | 46.2% | 41.5% | 46.3% | 43.2% | 41.1% |

PSE: Producer Support Estimate. NPC: Nominal Protection Coefficient.
1/ A (Area planted), An (animal numbers), R (receipts), I (Income)
2/ Producer support as proportion of total income (market income plus producer support)
Source: OECD, PSE/CSE database

The debate that has taken place since the Uruguay Round indicates that the division between trade and non-trade distorting subsidies is artificial. Blue Box subsidies are now clearly recognized as trade distorting. As a result, they have been included for reduction commitments in the Doha negotiations. But Green Box subsidies can also generate trade distortions. As the World Bank (2007, pp. 97-98) has argued, even decoupled payments can influence production by making farmers less averse to risk or reducing the variability of farm income and thus making banks more willing to lend to farmers. This is particularly true if farmers are potentially credit constrained: in this case, reducing the risk they face will allow them to access finance and expand production (Stiglitz and Charlton, 2005, p. 124). This is particularly so as Green subsidies include some income and crop insurance mechanisms. By allowing farmers to obtain parts of their income from different sources, even decoupled income support allows them to remain in business, which otherwise they might not.

Developing countries are affected by subsidies in two ways. First, they have to compete with subsidized agricultural goods in their own markets. This problem is

particularly critical for those countries that have signed free trade agreement with industrial countries. In this regard, even the full elimination of export subsidies, as already proposed during the Doha Round of negotiations, may not solve the problem, so long as production subsidies equally allow producers to sell below production costs. Second, developing countries lose export opportunities in third markets, as the estimates of gains in developing countries' market shares with liberalization indicate. This is particularly true of cotton, where world market distortions are essentially generated by production subsidies in the US.

Trade liberalization of agriculture would have, however, unequal effect on different countries. By far the most important gains in terms of additional output would accrue to Latin America, and particularly to Brazil and Argentina, followed by Australia and New Zealand; the US would also have some gains, which are nonetheless insignificant relative to its own production. The most important losses would be those experienced by European countries and Japan. However, in the developing world, South Asia, the Middle East and North Africa region, the transition economies of Europe and Central Asia and most of sub-Saharan Africa would also lose, and some even lose in terms of reduced consumption generated by the higher international prices generated by reforms (Anderson et al, 2006, Table 6).

For this reason, agricultural liberalization must be selective, emphasizing in particular goods in which developing countries can potentially increase exports and those goods that are mainly consumed in industrial countries, whereas major food staples of developing countries must be subject to a more gradual liberalization, probably redirecting the subsidy budgets in industrial countries to ameliorate the adjustment costs in those developing countries which may lose from reforms (Stiglitz and Charlton, 2005, ch. 8). For the same reason, protection mechanisms for agriculture have to be maintained in developing countries that are likely to lose from reforms, particularly food importing countries, an issue that has been at the center of discussions during the Doha Round (see below).

In the area of services, the General Agreement on Trade in Services (GATS) has a number of development flexibilities built into its provisions. In the present GATS architecture, a developing country can decide whether to enter any service sector in its schedules of commitments. Thus, sectors can be excluded. And if a sector is included in the schedule, the country can decide the extent of liberalization to commit in that sector, in each of the four modes of service delivery, including restrictions and limits on foreign equity ownership in Mode 3 on "commercial presence."

Negotiations are based on the bilateral request-offer modality. Countries can make requests for liberalization in certain sectors. However, it is up to each developing country to decide how to respond to these requests. The country can make as much or as little in its offers as it deems appropriate to its interests. Furthermore, developing countries can liberalize less than developed countries and to choose their own pace of liberalization.

In practice, however, the freedom that this flexible framework provides could be used against developing countries, by pressuring them to adopt commitments in areas that are of interest of industrial countries while limiting liberalization in sectors that are deemed "sensitive" or in forms of provision that which could be of special interest of developing countries (particularly Mode 4, which allows the free mobility of labor).

Developing countries have been increasing their market share in world exports of services to about one-fourth, but this share remains significantly below that for goods (on the latter, see Table 3). Developing countries and, particularly, least developed countries have used the flexibility that GATS offers, and have made fewer commitments than industrial countries, but this is not true of acceding developing countries, which have had to accept substantial commitments in this area. Most liberalization has taken place in modes 1 (cross-border supply) and 2 (consumption abroad); in contrast, liberalization has been more limited under mode 3 (commercial presence) and particularly 4 (movement of natural persons) (Marchetti, 2004; World Bank, 2005, pp. 136-8).

The WTO data base on service commitments indicates that out of 55 sectors, a majority of member countries participate only in eight: hotels and restaurants, travel agencies and tour operators, professional services, computer and related services, other business services, telecommunications, insurance and banking. Developing countries have gained as exporters from those associated with tourism and business services that have facilitated offshore supply of certain tasks, whereas liberalization in telecommunications and finance, as well as other forms of business services are mainly in the interest of industrial countries.

In Mode 4, commitments have been minimal, and have been made largely to facilitate intra-corporate transfers and mobility of executives, managers and specialists (Marchetti, 2004, Chart 5). The opportunities for developing countries under Mode 4 are potentially very broad, and are closely interconnected with the benefits from partial liberalization of temporary migration, or migration in general. Indeed, according to general equilibrium estimates, the benefits in this area largely exceed those associated with the liberalization of trade in goods. Thus, for example, additional temporary access to foreign service providers equal to just 3% of the OECD labor force, would generate gains that exceed $150 billion (Brown et al., 2002; World Bank, 2004, ch. 10; Stiglitz and Charlton, 2005, Appendix 1).

In relation to the second set of imbalances faced by developing countries, those associated with implementing their own Uruguay Round obligations, the most important issue are the constraints imposed on their policy space to implement development-oriented measures such as promotion of local industries or adoption of new technologies. In the WTO's subsidies agreement, there is a built-in imbalance in that the subsidies mostly used by developed countries (for research and development, regional development and environmental adaptation) were made non-actionable (immune from counter-action) for a period of five years, while subsidies normally used by developing countries (for export diversification) came under actionable disciplines, and thus potentially subject to countervailing duties. In turn, the TRIMS Agreement prohibits developing countries from making use of local-content policy (which developing

countries had used to increase the use of local materials and improve linkages to the local economy) and some aspects of foreign exchange balancing (export targets aimed at correcting balance-of-payments problems). This prevents developing countries from taking policy measures which promote domestic industrial development, and which had been used by the present industrial countries and by several developing countries previously.

The Agreement on Trade Related Intellectual Property Rights (TRIPS) for the first time set minimal standards for the whole range of intellectual property. Developing countries, which had previously enjoyed the ability to set their own IPR policies, are now constrained by having to adhere to IPR standards that are high compared not only to what they previously had, but also what the developed countries had when they were at their initial stages of industrialization. Prior to the TRIPS agreement, several developing countries exempted pharmaceutical drugs and food from patentability, and had an active policy of promoting generic medicines. However, this policy of exemption can no longer be maintained, as the agreement prohibits exemptions on the basis of sectors. The implementation of the TRIPS agreement has therefore increased the costs for local firms in developing countries to access technology.

Furthermore, in contrast to the strict protection of the rights of the innovator, there is no comparable protection of the rights of countries over their natural resources or traditional communities over their ancestral knowledge. In this sense, TRIPS facilitates “biopiracy” or the misappropriation of biological resources and traditional knowledge over the use of natural resources originating from developing countries.

The services agreement has also increased pressures on developing countries to open up their services sectors to foreign participation in particular areas of interest of industrial countries, such as finance, business services and telecommunications, which could result in placing local service providers at a disadvantage vis-à-vis multinationals should liberalization proceed too fast. In the traditional area of goods, several developing countries have also faced problems from rapid tariff cuts, sometimes the result of national decisions to bring tariffs below WTO bound levels, commitments

made in free trade agreements with industrial countries and, in many low-income counties, conditions placed on financial support from international financial institutions. In the industrial sector, many African countries, and most Latin American countries, have experienced "de-industrialization". In turn, as pointed out, in agriculture, liberalization has reduced the capacity of developing countries to compete against subsidized goods from industrial countries.

2. The attempt to further broaden the scope of WTO

Even as the developing countries were trying to digest the Uruguay Round outcome, the developed countries launched an initiative to further expand the remit of the WTO by attempting to introduce new treaties on four issues –investment rules, trade and competition policy, transparency in government procurement and trade facilitation—into the WTO in the first WTO Ministerial Conference in Singapore in 1996.

The developing countries were opposed to even discussing these issues at the Ministerial, but they became the main subjects of a "Green Room" meeting of about 30 members, that was dominated by the major developed countries. It was eventually decided that the four issues would be the subjects of an "educational process", rather than negotiations towards binding rules.

At the Doha Ministerial meeting in 2001, through the use of unorthodox methods (including convening an all-night "Green Room" meeting of some 30 Ministers one day after the scheduled end of the conference), a decision was made to deal with the four issues in working groups with a view to launching negotiations for new treaties at the next ministerial meeting in 2003. This was followed by two years of often acrimonious discussions during which it became increasingly clear that the developing countries were generally against new treaties inside WTO. Considerable opposition had also built up among civil society, with development NGOs combining with trade unions and environment groups to urge governments to abandon these issues from the WTO agenda. At the Cancun Ministerial meeting in October 2003, many developing countries

opposed the launching of negotiations. Eventually the Cancun meeting collapsed on the last day without any outcome. In August 2004 the WTO's General Council decided to drop three of the Singapore issues (with the exception of trade facilitation) from the Doha Work Programme's agenda.

The issues of investment, competition and government procurement have a similar theme: to expand the rights and access of foreign firms and their products in developing countries' markets, and to curb or prohibit government policies that encourage or favor local firms. The proposed investment rules would place governments under greater pressure to grant the right of establishment to foreign investors; prohibit or otherwise discipline "performance requirements" imposed on investors; allow free inflows and outflows of funds; and protect investors' rights, including through strict standards on compensation for "expropriation". The rules would also grant "national treatment" to foreign firms, thus extending this GATT principle (which applies to goods) to the whole new domain of investment.

The proposed rules on competition would require members to establish national competition law and policy. Within that framework, it is proposed that the WTO non-discrimination principles be applied, so that foreign products and firms can compete freely in the local market on the basis of "effective equality of opportunity". Thus, policies and practices that give an advantage to local firms and products could be prohibited or otherwise disciplined.

Developed countries have also been advocating for government procurement policies (presently exempt from the WTO's multilateral disciplines) to be brought under the system, whereby the non-discrimination principles would apply with the effect that governments would have to open their procurement business to foreigners and the current practice of favoring locals would be curbed or prohibited.

Many developing countries objected to these new issues. Their concerns include that the new obligations would further curtail their development options and prospects,

and that these are non-trade issues and bringing them into the WTO would be inappropriate and distort and overload the trading system.

The developed countries also attempted, before the 1996 WTO Ministerial in Singapore, to bring labor standards and environmental standards into WTO. This attempt was also strongly resisted by developing countries, which feared they are likely to be used as protectionist devices. The argument of proponents of these standards is that countries that have low social and environmental standards (or that do not adhere to some minimum standards) are practicing "social dumping" or "eco-dumping", as their production costs are said to be artificially low. A countervailing duty should thus be placed on the products of these countries as an action against such "dumping." The developing countries fear that they would not be able to meet the standards that could be set, due to their lack of financial and technical resources, and would thus be punished. They have therefore opposed a linkage between trade rules and these standards.

These issues figured prominently in 1995-1996, in the early years of the WTO. The issue of labor standards became very prominent during the Singapore Ministerial, where it became the subject of intense negotiations in the "Green Room" meeting. The developing countries succeeded in rejecting the proposals of major developed countries to tie the trade rules to adherence to minimum labor standards Before the Seattle Ministerial of 1999, the United States tried to revive the issue, but this attempt also failed with the collapse of the Seattle conference.

The issue of environmental standards had been prominent since the mid-1990s. One of the key issues was whether countries could take trade measures (such as imposing higher import duties) on environmental grounds, by taking account of "processes and production methods" (PPMs), or the way in which a product is made, when making decisions on the level of duties. Developing countries argued that this would be against the rules of GATT, and would also be to their disadvantage as the trade measures would discriminate against their products, since they lack the technology and finance to adopt more environmentally friendly production processes. Although this issue has lain dormant for several years, it has recently re-emerged, as developed

country members of the WTO like the US and EU are contemplating the use of tariffs or "border tax adjustment" measures as part of their domestic policies to address climate change.

### 3. The "Development Issues": Implementation Problems and Special and Differential Treatment

Almost immediately after the establishment of the WTO, the developing countries found three types of problems with the implementation of the agreements: first, the lack of benefits to developing countries due to the way the developed countries were implementing their obligations; secondly, the problems encountered by developing countries in having to implement their own obligations; and thirdly, since the SDT provisions in various agreements were non-operational and non-binding in nature, they were proving to be of little practical use (Raghavan, 2003, p. 7).

The developing countries first formally raised the implementation issue in the Singapore Ministerial of 1996. The 1997 Geneva Ministerial Declaration made a lengthier reference to the need for evaluating the implementation of individual agreements and the realization of their objectives. From October 1998 to October 1999, developing countries tabled papers on the implementation problems, and a group of them prepared a list of implementation issues that they wanted resolved. They made the negotiations on resolving implementation issues their top priority between the failed Seattle Conference to the Doha Conference. They asked for the prior solution to these concerns, but the developed countries resisted these calls.

At the Doha Ministerial meeting, the developing countries finally succeeded in placing implementation-related concerns in four areas of the Ministerial Declaration that launched the Doha Work Programme. First, a separate Doha Ministerial decision on implementation-related issues and concerns was adopted. Secondly, a full section, Paragraph 12 of the Doha Declaration, dealt with implementation issues, with an early deadline for concluding its negotiation. Thirdly, a list of over a hundred outstanding implementation issues was referred to, in a footnote, as the subject of negotiations.

Fourthly, SDT was also a part of the Doha Ministerial Declaration. In Paragraph 44 on this topic, the Ministers agreed that all SDT provisions shall be reviewed with a view to strengthening them and making them more precise, effective and operational. It also endorsed the work programme on SDT set out in the Decision on Implementation Issues.

Despite the prominence given to the implementation and SDT issues in the Declaration, they were given less and less attention after the Doha Ministerial Conference until they have now been marginalized. After the failed Ministerial Conference in Cancun in October 2003, implementation issues were put on the back-burner, and during the Hong Kong Ministerial Conference in December 2005, they issues were again pushed into the background.

According to Narayanan (2008): "No tangible progress has been achieved in respect of any issue being dealt with in terms of paragraph 12b of the Doha Declaration (on outstanding implementation issues). In brief it can be said that there has been no meaningful resolution of even a single implementation issue."

On the related issue of strengthening SDT provisions, there has similarly also been little progress.[10] The Doha Ministerial decided that the work on SDT should: (i) make clear recommendations on converting SDT into mandatory provisions; (ii) make clear recommendations on how developing countries, especially LDCs, can be assisted in making the best use of SDT provisions; and (iii) consider how SDT may be incorporated into the architecture of WTO rules.

Developing countries prepared and submitted several proposals on these three matters. By April 2003, the Chair of the General Council proposed an approach to SDT in which he compiled 88 agreement-specific proposals. At the Cancun Ministerial in October 2003, a list of 28 proposals was compiled for approval, but many developing countries maintained that all 88 proposals should be treated as a package. Due to the collapse of the Cancun meeting, this set of 28 proposals was also not adopted. At the

[10] A good account of the progress (or lack of it) in the negotiations on special and differential treatment and other "development issues" in the Doha Work Programme is in Bonapas Onguglo (2005).

Hong Kong Ministerial in 2005, there was also little progress, except for a decision relating to duty free and quota free market access for LDC products.

As Onguglo (2005) has pointed out, the development issues have been the most difficult to address in the Doha negotiations. The missed deadlines in addressing them has disturbed the balance of interests attained in Doha, when developing countries agreed to launch a new round as long as their development issues were addressed on a priority basis before entering new market access commitments or negotiations on new rules. While developing countries have made proposals on SDT and implementation issues, "very limited progress forward in terms of concrete, substantive outcomes has been achieved" (Onguglo 2005: p. 59).

## III. Market Access Negotiations in the Doha Agenda

The Doha negotiations started with the promise to "place the needs and interests of developing countries at the heart of the Work Programme"[11] but, as we have seen, the "development issues" of implementation and SDT have been progressively marginalized. As the importance of these aspects has dwindled, the market access elements of the Doha agenda have claimed centre stage.

A blow to the proponents of an extreme market access agenda came, of course, with the withdrawal of the three main Singapore issues after the incapacity to reach agreement in Cancun in 2003. However, the developed countries have made up for that loss by aggressively pushing negotiations on NAMA (non agricultural market access) and services, without a clear guarantee that they will undertake commitments that significantly reduce their agricultural subsidies or open up their markets to developing countries.

An assessment of the market access elements of the Doha negotiations, and the major proposals on the table, would show that there is little development content.[12] On

[11] As stated in Paragraph 2 of the Doha Ministerial declaration.
[12] See for example, Das (2005 and 2008), Khor (2007 and 2008a), Onguglo (2005) and Raghavan (2008).

the contrary, there would be few benefits for most developing countries and serious risks of further loss of policy space.

Given the strong frustration generated by the agricultural agreement of the Uruguay Round, this issue has been central to the Doha negotiations. The major advance has been in the area of export subsidies, where the WTO's Hong Kong Ministerial conference agreed in 2005 that export subsidies of the developed countries would be eliminated by the end of 2013. In contrast, the question of domestic subsidies has been the most controversial issue. As we have seen, the major problems of the current agreement are the loopholes that allow developed countries to increase their total domestic support by shifting from one type of subsidy to others, while maintaining or even increasing the total amount of support.

The basic framework for establishing the negotiating modalities was agreed to in July 2004. The key concept that has emerged is the overall trade-distorting domestic support (OTDS), comprising the AMS or amber box, the blue box and the *de minimis* support, but excluding the Green Box. Much of the Doha discussion since then has been on the maximum OTDS that the developed countries should be allowed.

As under the current system, however, this framework would give the EU and US considerable leeway to move subsidies around without reducing the total amount of support. This is reinforced by the fact that the actual OTDS is far below the level of total allowed support for the US and the EU. Therefore, the developed countries can afford to reduce the level of allowed OTDS significantly before the cut reaches the level where the actual support is affected (Das, 2006; Khor, 2007). In the informal language of WTO negotiations, this means that the US and EU would only cut "water" (i.e. the difference between allowed and actual subsidies) and not their actual subsidies. This is the reason why the EU and US have been able to announce offers to cut their AMS and their total allowed OTDS by a seemingly large degree, while in reality these offers do not require real cuts in the applied level of support.

For example, the December 2008 paper of the Chairman of the agriculture negotiations obliges the US to have a bound OTDS of $14.5 billion, which is above the $11 billion that the US is estimated to have spent in 2007. Moreover, the developed countries can continue to use the Green Box subsidies without limit. As Das (2006) has pointed out, the really significant escape route is the Green Box which will continue to give farmers large amounts as subsidies.

On market access, proposals on the table would require developed countries to cut tariffs according to a "tiered formula", but they are allowed the flexibility of more lenient cuts for "sensitive products", thus enabling considerable protection to be maintained. Except for LDCs and small and vulnerable economies, developing countries also have to cut tariffs by the tiered formula, and up to an average maximum of 36%, which is higher than their commitment of 24% in the Uruguay Round.

Many developing countries, concerned about import surges that will arise from further liberalization, have also been fighting to establish two "special and differential treatment" elements in market access: "special products" (SPs) and a special safeguard mechanism (SSM). The first proposal implies that developing countries could designate a certain percentage of their agricultural products as special products which would be subjected to either no tariff reduction or very low rates of tariff reduction.

On SSM, the developing countries would be allowed a special safeguard which does not need to follow the procedures in the WTO's existing safeguard agreement. Under the SSM, action in the form of imposing an additional tariff can be triggered when either the price of the import goes below a certain threshold, or the volume of import increases above an additional threshold. However, due to the pressures exerted by agricultural-exporting countries, the main proposal (in the Chairman's text of December 2008) imposes stringent conditions on when the SSM can be used and limited benefits (in terms of additional duty) that even if adopted this instrument will not be effective.

The negotiations and the major proposals on the table have been least development-friendly to developing countries in the area of NAMA. If adopted, the

August 2004 NAMA Framework would remove or significantly reduce the present development flexibilities in the General Agreement on Tariffs and Trade (GATT). There are five problematic features.

First, members are asked to bind all or most (or at least 95%) of their industrial (or non-agricultural) tariffs. This provision would remove the flexibility that countries have to choose how many of their tariff lines they want to bind.

Secondly, unbound tariffs will have to be bound at much lower levels, as the applied rates of unbound tariff lines will be multiplied by two and then a formula will be used to reduce the tariff rates to the new bound levels. In contrast, up to now, each country is allowed to choose at which level to bind their previously unbound tariffs.

Thirdly, also for the first time, developing countries (except LDCs and others that are exempted) will be subjected to a "Swiss formula" to reduce tariffs. According to this formula, higher tariffs would be cut more deeply than lower tariffs. Since most developing countries have higher industrial tariffs, these tariffs will be cut more steeply than those of developed countries.

The negotiating draft, of December 2008 proposed by the Chair of the NAMA group, fixes coefficients for developed and developing countries affected by the formula. This proposal implies that the average bound tariff of the major developed countries (EU, US, Japan) would be reduced by about 28% while the average tariff of some developing countries affected by the formula like India, Brazil, Indonesia, and Venezuela would be reduced by about 60%. This would turn the less than full reciprocity principle on its head.

The majority of NAMA tariff lines for developing countries having to apply the formula would be less than 12-14 per cent, which might not be able to support future development of local industries. The Chair's draft also asks developing countries to accept two more restrictions. It has an "anti-concentration clause" which is designed to prevent developing countries from excluding an entire sector, or close to an entire sector, from full formula tariff cuts.

Fourthly, the cuts are to be done on a line-by-line basis. This means that every product will have to be cut. In the Uruguay Round, the developing countries had to cut their tariffs by an overall target of 30%, but they could choose at which rate to cut which product's tariffs, so long as the overall average came to 30%. This flexibility would be removed.

Fifthly, there is a "sectoral approach" in which tariffs will be eliminated in products belonging to certain selected sectors. Although participation is supposed to be on a voluntary basis, some developed countries, especially the US, have insisted that some developing countries (starting with China, India, Brazil) must take part in tariff elimination or drastic reductions in three major sectors (chemicals, industrial machinery and electronics). This has not been acceptable to the developing countries.

The implications of the NAMA proposals are serious as their adoption is likely to exacerbate the de-industrialization that has already taken place as a result of rapid liberalization.[13] It must be recalled in this regard that today's developed countries made use of high tariffs to protect their industries during their industrialization phase, and successful East Asian economies of Taiwan, South Korea and Japan resorted to tariff measures to pursue their industrial development (Chang, 2005; Akyuz 2005, p. 14).

The ability to use tariffs for industrialization is all the more important since the use of other tools has now been constrained by WTO rules, particularly TRIMs and subsidies. Also, for many developing countries, customs revenues constitute 20 to 30% or more of government revenue. Cutbacks on tariffs could generate, therefore, serious fiscal problems.

In the area of services, it should be recalled that the General Agreement on Trade in Services (GATS) has many flexibilities built into its provisions. These flexibilities came under threat in 2005 from developed countries' proposals for "benchmarking", under which countries would be required to liberalize in a certain minimum number of sectors (for example 57% of the service sub-sectors). Other proposals are that developing

[13] See in this regard Buffie (2001) and Khor and Yen (2006).

countries would be required to bind in the GATS their present level of liberalization in the various sectors, and then to extend the level of liberalization through new GATS commitments. Particularly targeted was the liberalization of "commercial presence", or Mode 3 of the GATS. In contrast, developed countries themselves have moved very slowly, if at all, in the only area where most developing countries could benefit from the GATS, which is in Mode 4 on labor mobility. If accepted, these proposed changes would affect the present architecture of the GATS and contradict the bottom-up and positive-list approach, thereby removing much of its present development flexibilities.

At the Hong Kong Ministerial Conference in December 2005, the "benchmarking" or "numerical targeting" approach was rejected by a large number of developing countries, and thus it has been left out of the negotiating agenda, at least for now. However the "plurilateral" modality of negotiations –in which a set of countries that demand wider and more rapid opening in a service sub-sector can formulate their demands and requests to a set of countries for negotiations on these demands—was adopted despite the opposition and reservations of many developing countries.

## IV. WTO Governance

### 1. Functioning of the WTO Decision-Making System

The WTO was designed as an institution in which all members are formally equal in terms of decision-making rights. This contrasts favorably with the system in the International Monetary Fund and the World Bank, in which the voting rights of members are based on the allocation of quotas, which are skewed in favor of the developed countries. This is also reflected in the naming of the Director-General. Whereas the process of election of the heads of both IMF and the World Bank lacks transparency and has always led to the election of an European and a US citizen, respectively, WTO has a more open and competitive system.

In reality, some developing countries have been unable to realize their participation rights because some do not even have a Mission in Geneva. Moreover,

many Missions of developing countries are understaffed and thus have been unable to adequately follow the discussions and negotiations. Unequal capacity thus leads to unequal degrees of participation.

This problem is made more acute by the relative lack of transparency in some key aspects of WTO operations. The main reason for this is its working methods and system of decision-making. In practice, as in GATT, a few major industrial countries often negotiate and decide among themselves, and embark on an exercise of winning over a selected number of more important or influential developing countries in "informal meetings". When agreement is reached among a relatively small group, the decisions are rather easier to pass through. The meeting of a limited number of countries to work out an agreement among themselves is referred to in WTO jargon as the "Green Room" process.

In GATT and in the first decade of WTO, the most powerful members by far were the so-called "Quad" (comprising the US, EU, Japan and Canada), which had the practice of formulating a common position among themselves, and then seeking to influence more and more countries around that position, until a "consensus" is said to have been formed. The informal "Quad-led system" operated until a few years ago, when it was realized that developing countries could not be "rolled over" in the same way as before. In 2004, a new informal "Group of 6" emerged in the agriculture negotiations, comprising the US, EU, Japan, Australia, Brazil and India. Members of this group negotiated among themselves during a mini-Ministerial meeting in July 2004, and again at Ministerial level at various stages of the Doha negotiations in 2006 to 2008, while at the mini-Ministerial meeting in July 2008, China was included in this small-group negotiation.

The inclusion of Brazil, India and now China in this small-group configuration has widened the role of developing countries in the "core" of the informal circle of decision-making, with this "core" functioning at critical moments. However, the reality remains that for the majority of developing countries, participation in real decision-making remains out of reach. The developing countries in this innermost circle have also made it clear that they do not "represent" the developing countries (nor have they been mandated to do so) inside the Group of 6 and only carry their own views.

The most positive trend in recent years has been the formation of various groupings of developing countries which have been actively participating in the debates and negotiations. They include the G20, G33, Africa Group, LDC group and ACP group, the group of "small and vulnerable economies" and the group of four African cotton producers. The participation of these groups in WTO negotiations has built up gradually through the years. Nevertheless, as described above, the real fulcrum of decision-making power lies not in the democratic and equal exercise of the groupings, but in the small grouping of six or seven countries which have undertaken the "real negotiations" at critical moments.

Ever since the WTO was established, the Ministerial Conferences have become controversial and unpredictable events. In most of the conferences, several delegations, especially those from developing countries, have complained about how they and their Ministers have been denied participation in the important meetings where the real decisions are taken. Due to the dissatisfaction of the majority which are kept out, sometimes also due to the inability of the minority in the inner circle to agree, and often also due to the methods used, which leads to unhappiness and even outrage, these WTO Ministerial meetings are usually fraught with uncertainty and have more often than not failed in spectacular fashion.

In 1999, before the Seattle Ministerial Conference, the Green Room process was put into effect by the WTO Director-General. Several small negotiating groups were set up to discuss various issues of contention, but most developing countries were not invited to participate. At Seattle itself, small negotiating groups were set up to negotiate selected topics. Many developing countries were not invited to be in any of the groups. Eventually, many developing countries made clear that they would not agree to any Declaration since they did not participate in its drafting. The Seattle meeting collapsed at the end, without any decision taken.

In November 2001, the Doha Ministerial conference did end with a Ministerial Declaration that launched a "work programme". However this outcome was achieved through a non-transparent process in which the views of a large number of developing countries on some of the most important aspects were not reflected in the various drafts

of the Ministerial Declaration. This gave rise to perceptions of manipulation and of bias of the system towards the major developed countries.

The most contentious aspect of the Doha process involved the Singapore issues. During the preparatory process, a large number of developing countries opposed the commencement of "negotiations" on these issues. However, a draft Ministerial Declaration that was transmitted to the Doha Ministerial Conference committed the members to negotiations on all four issues. Moreover, the least developed countries group and several non-LDC African countries had presented views that negotiations should not begin on industrial tariffs (or non-agriculture market access) but instead a study process be initiated to take account of their concerns that previous industrial tariff cuts had resulted in de-industrialization and closure of local firms. Nevertheless, the draft committed members to immediate negotiations.

At Doha many developing countries again stated their opposition to the draft but a new draft near the end of the Conference still contained the controversial text on the Singapore issues. This caused widespread dissatisfaction and it was clear that there could not be a consensus. Then the Conference was extended by an extra day, but many Ministers were already leaving or had left. An all-night "Green Room" meeting involving about 24 Ministers was convened. On the last morning of the Conference, the secretariat released a final draft in which Ministers agreed that negotiations would take place on all four issues after the Fifth Ministerial Conference (scheduled in 2003). In a final consultation meeting on the same afternoon, more than ten developing countries suggested that the text be changed, to remove the commitment to negotiations on the four issues. Eventually these countries were asked to accept a compromise, in which at the formal closing ceremony the Conference Chairman read out a clarification that in relation to the four issues, a decision would indeed need to be taken at the Fifth Ministerial Conference by explicit consensus, before negotiations could proceed on the four issues. The manner in which the Doha Work Programme was launched, amidst such controversial and non-transparent processes, did not augur well for its future course.

At the Ministerial Conference in Cancun in 2003, there was again a controversial process. Although many developing countries made clear that they did not want to launch negotiations on the Singapore issues, this position was ignored by the "facilitator" appointed by the Chair of the conference to formulate a text on these issues. An informal "Green Room" of 25-30 Ministers was again convened, while the majority of members waited. Eventually, a meeting of Ministers of Africa, LDC and ACP groups conveyed the message that they would not agree to a compromise sought at the Green Room on the Singapore issues, and a decision was made by the Chair of the Ministerial meeting to end the Conference without a decision. This was portrayed as a collapse of the Conference by the media. Thus, the decision taken at Doha that this Cancun meeting would launch negotiations towards treaties could not be fulfilled and eventually the General Council of WTO in August 2004 decided to drop three of the Singapore issues from the Doha agenda.

The Ministerial Conference in Hong Kong in 2005 was rather tame by comparison. The reason is that major decisions had already been taken at the General Council on 1 August 2004, following a "mini-Ministerial" of about 25 Ministers at the end of July, held at the WTO building in Geneva (the first time that an event was held at WTO). The July mini-Ministerial had generated its own controversies. For example, the key decisions in the agriculture modalities framework were made by a meeting of Ministers of six members of WTO and then were endorsed by the mini-Ministerial of some 30 Ministers. The framework of modalities on NAMA was not properly discussed even at the mini-Ministerial. Despite strong objections from many developing countries, including through the position taken at a full meeting of African Trade Ministers just a fortnight before the Geneva meeting, the key elements of NAMA modalities proposed by the Chair of the NAMA negotiating groups remained the same, and these were eventually adopted.

The Hong Kong full Ministerial in December 2005 also had its share of contention, as the Chair of the services negotiations also maintained many of the elements of his draft on the modalities of negotiations, even though there had been

strenuous objections from several developing country members. The most contentious aspect was the introduction of "plurilateral negotiations" for several sectors.

Following the 2005 Ministerial, the WTO failed to hold another full Ministerial in 2007 or 2008, although there is a mandate to hold a Ministerial every two years. It would appear that the Director General and the members were reluctant to hold a formal Ministerial conference unless there is a possibility for "negotiations" in terms of making decisions on new rules or new market access outcomes. In December 2009, a full Ministerial was finally held in Geneva, and it dealt with more routine matters, without there being a negotiating component.

Meanwhile, the "mini-Ministerial", with 30 or so invited Ministers, and with a small group of six or seven Ministers holding their own meeting within this mini-Ministerial, has become the new practice at WTO. As noted above, this began with the July 2004 mini-Ministerial, whose decisions were immediately endorsed by a General Council meeting that was convened at the closing of the mini-Ministerial. Since this new model of decision-making seemed to have succeeded, the same model was tried again in July 2006 and in July 2008. But these two mini-Ministerials ended in failure.

The above account shows that the processes of decision-making in the negotiations have serious flaws. Although there is "formal democracy", WTO in fact operates as an "informal oligarchy", to borrow Evan's appropriate characterization (Evans, 2003). In this system, representatives of many of developing country groupings are invited to some of the Green Room meetings. However, it is still a smaller grouping, or groupings, that makes the key decisions, and when agreement is reached among them, the other WTO members are expected to follow. There are no formal announcements that the meetings would be held, nor formal reports or minutes of the meetings. Neither are there reports or minutes of the meetings of the mini-Ministerial meetings, nor of the "Green Room meetings" held during the formal Ministerial conferences.

There are divergent views on whether and how to reform the decision-making system in the WTO, which is widely perceived to be non-transparent and non-inclusive.

Those who advocate the retention of the status quo may even agree that the system is exclusionary but claim that for the sake of "efficiency" in coming up with an outcome, the decision-making system has to be confined to a relatively few delegations, while the other members not in the inner circle can also make their views heard through their representatives in the "Green Room." On the other hand, those who are critical of the non-transparent and non-participatory nature of decision-making argue that the exclusionary system and the manipulations that often characterize the operations of meetings and production of drafts do not guarantee that an outcome will be obtained, as seen by the conferences and mini-Ministerials ending more times in failure and collapses than in success. And even in the case of one of the few "successes", the Doha Conference of 2001, the decisions concerning some of the most controversial elements could not be sustained and were overthrown by another decision subsequently.

This indicates that it is essential to make the system more open, democratic and inclusive. This implies, foremost, that that the consensus system should be applied in a manner that fully respects the views of developing country members –including by developing countries not being subjected to economic and political pressure during negotiations. WTO practice indicates that this implies that there should be agreed procedures for smaller, issue-based meetings, with authorization coming from all members and the meetings being governed by transparent rules. It also implies that there should be agreed terms of reference for the roles of chairs of formal and informal groups, as well as agreed procedures for drafting of texts, which should fairly reflect the divergence of views, if any, among members. If "Green Room" or "Mini Ministerials" are to be held to speed up negotiations, they should be called by members, who should also determine the system of representation. All meetings should be inclusive and transparent, minutes should be kept and subject to members' approval. Finally, the neutrality and impartiality of the Secretariat should be observed at all times, and particularly during Ministerials.

## 2. Surveillance and Dispute Settlement

Among the novelties of WTO was the establishment of a surveillance instrument and an improved dispute settlement mechanism. The first of these, the Trade Policy Review, involves both a document prepared by the WTO Secretariat, reviewing developments and the state of trade policy of a country, and a document prepared by the country itself. They are presented to the Trade Policy Review Body for peer review deliberations. The four largest trading members –the EU, the US, Japan and China—are reviewed every two years, the next 16 every four years, and the rest of the members every six years or more.

The WTO's dispute settlement mechanism is a strengthened version of the one previously used in GATT. The new mechanism established a more rigorous process, which involves, sequentially and with a strict timetable: (i) a phase of consultations; (ii) if it failed to lead to agreement, the convening of a panel; (iii) an eventual appeal to an Appellate Body; and (iv) adoption of corrective measures by the party that incurred in violations of commitments. As the decisions of the panel and the Appellate Body can only be rejected by consensus, they are in practice binding. If corrective measures are not adopted, the affected party (or parties) can adopt retaliatory measures. More than half of the disputes are settled during consultations and few decisions of panels of the Appellate Body have not been complied with and thus led to counter-measures. This is, no doubt, the most effective enforcement mechanism of its kind in global economic institutions, but there is a consensus on the need to make improvements in certain areas. [14]

Table 6 summarizes the history of the utilization of this mechanism. About two-fifths of the cases have been complaints among developed countries. However, the WTO mechanism has been more actively used by developing countries than the previous GATT one. Developing countries also became subject to complaints by other WTO members. About one-fifth of the cases have been complaints of developing countries against developed countries, and a fairly similar amount has been complaints by developed

[14] See, for example, Hoekman and Kostecki (2001), ch. 3; Das (2003), pp. 61-64, 96-104 and 226-8; Srinivasan (2007) and the Sutherland Report, published as WTO (2004), ch. VI.

against developing countries. A slightly smaller number have been disputes among developing countries.

Of the nearly 400 cases dealt with in 1995-2008, slightly less than half relate to market access issues in the area of goods, with agricultural issues (including fishing) being by far the most common. Several of the disputes in this area involved domestic taxation rules that are seen by the demanding party as being inconsistent with national treatment of imported goods. The second set of complaints –slightly less than a third through the history of the mechanism—relate to antidumping provisions, countervailing duties and safeguards. More interestingly perhaps, the relative importance of disputes in the three areas of contingency protection has increased through time. Export and production subsidies come a distant third. The fear that TRIPS could lead to many disputes has not been confirmed. TRIMS generated a small number of disputes in the 1990s but not in the 2000s, whereas a few disputes in the area of services and government procurement (among countries who are signatories of the associated plurilateral agreement) complete the inventory of controversies.

**Table 6**
**Dispute-Settlement Cases**

| Complaints against: | Developed | | | Developing | | | Total |
|---|---|---|---|---|---|---|---|
| by: | Developed | Developing | Mixed | Developed | Developing | Mixed | |
| 1995 | 13 | 7 | 1 | 1 | 3 | 0 | 25 |
| 1996 | 15 | 4 | 2 | 12 | 4 | 2 | 39 |
| 1997 | 25 | 7 | 0 | 17 | 1 | 0 | 50 |
| 1998 | 21 | 5 | 0 | 12 | 3 | 0 | 41 |
| 1999 | 18 | 0 | 1 | 6 | 5 | 0 | 30 |
| 2000 | 8 | 5 | 1 | 10 | 10 | 0 | 34 |
| 2001 | 4 | 5 | 1 | 0 | 13 | 0 | 23 |
| 2002 | 17 | 13 | 0 | 2 | 5 | 0 | 37 |
| 2003 | 8 | 8 | 0 | 3 | 7 | 0 | 26 |
| 2004 | 11 | 3 | 0 | 3 | 2 | 0 | 19 |
| 2005 | 2 | 3 | 0 | 3 | 4 | 0 | 12 |
| 2006 | 6 | 5 | 0 | 5 | 4 | 0 | 20 |
| 2007 | 3 | 4 | 0 | 4 | 2 | 0 | 13 |
| 2008 | 3 | 7 | 0 | 6 | 3 | 0 | 19 |
| Total | 154 | 76 | 6 | 84 | 66 | 2 | 388 |
| | 39.7% | 19.6% | 1.5% | 21.6% | 17.0% | 0.5% | 100.0% |

Source: WTO, Dispute Settlement Database

One of the most common criticisms of the mechanism is the fact that the retaliatory measures of last resort generate a significant asymmetry between developed and developing countries –particularly the weakest among the latter— as the costs of measures that they can adopt are unlikely to affect much the developed countries that violated WTO rules. In recent negotiations, there have therefore been proposals by developing countries to introduce monetary compensation of damages or to allow the possibility of tradable remedies or collective action against violators of the rules.

The costs of using the system are also high, potentially limiting the use of the mechanism by poor and small countries. To reduce the costs of using the mechanism, 29 countries agreed in Seattle to create an Advisory Centre on WTO Law, an independent legal aid intergovernmental organization which provides subsidized legal assistance to developing countries.

Equally important are the issue that relates to conflicts regarding the areas of competence of institutions of the WTO. In this regard, there have been complaints that some jurisprudence of the Appellate Body may have intruded into areas that belong to the mandate or competence of some of the political bodies of the WTO, and that in such cases the former should refrain from doing so, and instead allow the political bodies be in charge of the issues involved. Equally important, and again to avoid a collision of competences, there have been proposals to guarantee a total separation of the Appellate Body from the WTO Secretariat.[15]

## V. The Proliferation of Free Trade Agreements

The greatest challenge to the multilateral trading system has come over the past two decades not through the complex negotiations taking place in WTO but through the proliferation of free trade agreements. This process has ended up eroding more than anything the two fundamental principles of the WTO: the general principle of non-discrimination and its major exception, special and differential treatment.

[15] See, on both issues, Das (2003).

GATT and now the WTO allow two exceptions to the MFN principle (there was actually a third, preexisting colonial preferences, which is now in the process of being dismantled). The first exception is in Article XXIV, which was created to allow for the formation of customs unions and the subscription of free trade agreements. The exception had two major conditions: that the agreement should involve "substantially all trade" (or, in the case of the parallel provision of Article V of GATS, that it should have "substantial sector coverage"), and that it should not increase trade barriers for other WTO contracting parties.

The second exception was non-reciprocity associated to special and preferential treatment (SDT) for developing countries, when it was accepted as an essential principle of GATT in the 1960s and the 1979 "Enabling Clause". As in Article XXIV, the exception was made on the basis that these preferences should not increase protection vis-à-vis third parties. The Enabling Clause also allowed for mutual trade liberalization among developing countries without the proviso of Article XXIV that it should involve "substantially all trade", and could thus involve partial scope agreements.

Interestingly, there was never any attempt to design specific rules for non-reciprocal trade agreements between industrial and developing countries. The most important were the former colonial (in the case of the US, neocolonial) preferences, which were also originally accepted as an exception to the MFN principle in Article I of GATT –and thus as a third exception to the general rule. These preferences were harmonized and consolidated by the European Economic Community in the 1972 Lomé Convention but, as indicated, are now being dismantled. The major reason for this was that preferences agreed to in the context of SDT were supposed to be, in principle, *general* preferences for developing countries, as the name of GSP implied, which now are understood to include general preferences vis-à-vis least developed countries. A 2003 Appellate Panel ruling determined, however, that there could be discrimination among different beneficiaries of GSP program, so long as a program for a specific group of

beneficiaries was available to *all* developing countries in similar conditions (Hoekman and Mavroidis, 2007, ch. 6).[16]

The history of customs unions and free trade agreements notified to GATT/WTO is summarized in Table 7. Most of the exceptions prior to 1990 were integration processes involving several member countries, both in Europe and among developing countries. In the developing world, the most active regions were Latin America and the Caribbean, and Africa, but there were also some agreements in the Middle East (the Gulf Cooperation Council), East Asia (ASEAN) and the Pacific. They also include the 1971 Protocol on Trade Negotiations among Developing Countries and the 1988 Global System of Trade Preferences among Developing Countries (GSTP). Most agreements among developing countries were covered by the Enabling Clause and were partial in scope. Also, with the exception of the broader frameworks of negotiations among developing countries, the agreements were essentially regional in character.

**Table 7**
**Active Customs Unions and Free Trade Agreements Announced to GATT/WTO**

| | pre-1990 | 1990s | 2000s | Early announc. | Total | Enabling Clause |
|---|---|---|---|---|---|---|
| Europe | 5 | 5 | 9 | | 19 | |
| Europe-extraregional | 2 | 7 | 21 | 8 | 38 | |
| Ex-USSR | | 7 | 21 | | 28 | |
| North America-centered | 1 | 3 | 10 | 9 | 23 | |
| Intra-LAC | 4 | 1 | 10 | | 15 | 3 |
| LA-Asia | | | 8 | 1 | 9 | 1 |
| East Asia and Pacific-centered | 5 | 2 | 24 | 12 | 43 | 10 |
| South Asia | | | 3 | | 3 | 3 |
| Western Asia | 1 | | | | 1 | 1 |
| Turkey-centered | | | 11 | | 11 | 1 |
| Africa | 5 | 2 | | | 7 | 5 |
| Interegional developing | 3 | 1 | | | 4 | 3 |
| Total | 26 | 28 | 117 | 30 | 201 | |
| Using Enabling Clause | 12 | 7 | 8 | | | 27 |

Source: Authors' estimates based on WTO database. Excludes accessions, enlargements and extension of agreements into new areas (generally services). In the case of Europe, includes agreements with Faroe Islands.

[16] The ruling related to special benefits given to Pakistan as part of special program for developing countries involved in combating drug production and trafficking. The decision of the Appellate Body implied that it was consistent with WTO rules if similar trade preferences were given to other developing countries that were combating drug trafficking. It overruled the panel decision that GSP had to be made available to *all* developing countries without differentiation.

These initial exceptions made sense from the point of view of the emerging trade order and thus as exceptions to the general MFN principle, as they involved "deep integration" processes, in which a region became the unit of trade that negotiated with the rest of the world (with the EU being the most remarkable example), and the promotion of South-South trade through the "Enabling Clause". However, the agreements that came later ended up destroying the two fundamental principles of such a multilateral order. The new trend had some precedents in the 1980s (such as the 1985 United States Israel Free Trade Area and the 1988 Canada-United States Free Trade Agreement, which was superseded by the 1993 NAFTA) but took off in the 1990s and let to a veritable proliferation of free trade agreements over the past decade. As Table 7 indicates, of the 2001 agreements notified or announced by April 2009 (eliminating double counting[17]), three-fourths were signed in the 2000s. They generally include goods and service, but also intellectual property provisions and the "Singapore issues" as well as labor and environmental standards. The enabling clause continues to be also a framework for some deals among developing countries, particularly those of partial scope.

These agreements came in waves and increasingly went beyond their regional character to cover interregional agreements. This is a reason why the concept of "regional trade agreements" (RTAs) and "regionalism" commonly used to refer to them is increasingly inappropriate. The term "preferential trade agreements" (PTAs), increasingly used to refer to them, is also inappropriate, as it does not differentiate those preferences that are associated with Article XXIV and those that derive from SDT.

The major clusters that are identified in Table 7 indicate that the largest number of these agreements center in Europe and increasingly involve deals between the EU or EFTA and extra-regional partners. The Americas are also very active early on, both the United States and Canada as well as some Latin American countries –Chile and Mexico, in particular—and in all cases involve an increasing number of interregional agreements. To this we must add the agreements among Latin American countries that are done in the

[17] The number of agreements is actually larger, 228 excluding accessions, but there is some double counting associated with the expansion of existing agreements which were already notified.

context of the Latin American Integration Association (LAIA), which is in fact a flexible framework for partial or full scope agreements among its members. The former members of the USSR also became active in the late 1990s, essentially replacing the old trade arrangements of the Soviet era with free trade agreements among themselves, with Ukraine being the most active country and also involved in FTAs with other regions (such as countries that made up former Yugoslavia).

In the 2000s, the East Asian region became the most dynamic region in the subscription of FTAs, again led by a few countries, particularly Singapore and, increasingly, Japan. Turkey also became an active member of the FTA club over the past decade. Outside Latin America and East Asia, other developing country regions were much less active, particularly South and Western Asia (with the exception of Turkey). In Africa, the old integration agreements of the 1960s, 1970s and early 1980s remained the essential frameworks for intraregional trade. Some of these countries have also been involved in negotiating Economic Partnership Agreements (EPAs) with the EU, with great reluctance in several cases.

Viewed as a whole, the process has been uneven across the world. The EU, EFTA, three industrial countries (Canada, Japan and the US), four developing countries (Chile, Mexico, Turkey and Singapore) and a transition economy (Ukraine) have been most active in these negotiations. The unevenness of the process is also true within some regions. In Latin America, for example, the activism of Chile and Mexico is in sharp contrast with the reluctance of Argentina and Brazil to enter into this race.

The consequence of this trend for the MFN principle was ably summarized in the report on the "Future of WTO" led by Peter Sutherland: "MFN is no longer the rule; it is almost the exception (…) Certainly the term might now be better defined as LFN, Least-Favoured-Nation Treatment" (WTO, 2004, p. 19). The "spaghetti" or "noodle" bowl of rules that this implies is extremely problematic, not only in relation to tariffs but also non-tariff rules and, particularly, rules of origin. Indeed, managing the complexity of rules has become an additional trade restriction. Even if, on balance, trade creation rather than trade diversion has prevailed, the basic idea that was embedded in the reconstruction

of a multilateral trading system in the post-war years is now essentially moribund. We are essentially back to the complexity of bilateral rules that characterized the 1930s, curiously for the opposite reason: competitive liberalization rather than competitive protectionism. The attempt to be ahead of others to access markets –which can be properly called "beggar-thy-neighbor" liberalization— may in the end be largely futile if others follow in the competitive race and sign FTAs to avoid being displaced from those markets. Curiously enough, the major way to block this process, by not accepting their compatibility with multilateralism through a rejection of these agreements in WTO, has been totally dysfunctional, as there is an implicit agreement not to step on each other's toes.

Equally problematic is the fact that the very uneven negotiating power between developed and developing countries in these deals has brought into the agreements the non-trade issues that developing countries have refused to negotiate in the WTO.[18] As Bhagwati (2008, pp. 70-71) has concluded: "Because of the spaghetti bowl, and because hegemonic powers use PTAs to impose a host of expensive trade-unrelated demands on the poor country partners in PTS, that reflect lobbying demands in the hegemon, PTAs are a particularly unattractive trade option for the poor countries relative to multilateralism".[19]

Equally problematic is the fact that these agreements have also dealt a hard, even a death blow to SDT. The reason is that, although the agreements may include some provisions that allow a more gradual liberalization of trade or broader exceptions for rules for developing countries, the double condition of liberalization of "substantially all trade" ("substantial sector coverage" in services) and reciprocity imply that only very weak forms of SDT can be incorporated into the agreements. Given the greater fiscal capacity that industrial countries have to use the subsidy schemes that are allowed by these arrangements, SDT may actually be turned upside down, with the special treatment enjoyed by the developed and not developing countries. Particularly, in the area of

[18] See Khor (2008b) for a critique of North-South FTAs, especially the implications of the non-trade issues in these FTAs.
[19] See a broader analysis of this issue in Bhagwati (1991 and 2008) and WTO (2004, p. 23, paragraph 87).

agriculture, developing countries may end up competing with subsidized goods from industrial countries, without having the possibility of protecting .their own local goods. Similarly, under the FTAs, the developing countries' higher technology infant industries are given no protection and must compete with the science and technology subsidies of industrial countries.

Furthermore, the excessive expansion of these agreements into non-trade areas constrains the policy space that developing countries have to a much larger extent than WTO rules do. The ongoing debates on the EPAs of developing countries with the EU reflect this fact, as the debate on FTAs of the US with Latin American has done for several years. In fact, the experiences of the FTA that has been applied for a longer time period, NAFTA, indicates that it helps to generate foreign investment and export growth, but it does not necessarily help accelerate economic growth (see, for example the analysis on Mexico by UNCTAD, 2007).

The new rules represent also a challenge for the promotion of South-South trade, as envisioned in the Enabling Clause which permits developing countries to promote such trade by given each other preferences that are not extended to industrial countries. Indeed, to the extent that FTAs include a MFN clause among contracting parties, South-South agreements signed by any of its developing country parties of the FTA would have to be extended to the industrial country partners of the FTA. So, for example, given the rules of the EPA signed between the EU and the Caribbean countries, preferences extended by Brazil to the Caribbean countries would be automatically extended to the EU. This fact by itself reduces the room for South-South trade negotiations.

Crucial in this regard is, of course, the fact that the negotiating capacity that developing countries have in WTO, and which has been more actively used in recent years, is entirely lost in the wave of FTAs. Indeed, industrial countries have forced into these agreements issues and provisions that developing countries have refused to negotiate in WTO.

## VI. Concluding Remarks

The multilateral trading system is in an unsatisfactory condition and some critics describe it as being in a crisis. To its credit, it has established a stable legal framework that accompanied a substantial growth of international trade and a significant though very uneven diversification of exports in the developing countries. Despite the formal democratic character of WTO, its decision making process in WTO has several flaws. The Doha Work Programme launched in 2001 is now in an impasse. It had pledged to put the interests of the developing countries at the centre of the Programme but the developed countries have whittled away the development elements and instead placed market access issues at the center of the negotiations. Although developing countries have been able to use their negotiating power to block some unfavorable deals, they have not been able to advance their interests in the WTO.

Despite their many attempts to correct the inadequacies of the system, there has been only very limited advance on the issues of agriculture, tariff peaks and tariff escalation that developing countries have put on the table since the 1960s, or on more recent issues, such as the Mode 4 liberalization in services. The Uruguay Round added an additional series of imbalances, including the inclusion in the WTO of a non-trade issue, intellectual property rights, and there have been additional pressures since then to include further non-trade issues, the so-called Singapore issues. Following the establishment of the WTO, the developing countries made a great though so far unsuccessful effort to have the WTO membership re-examine the rules and to re-balance the system in the initiative known as “implementation issues” as well as to strengthen SDT. The Doha Round was born as an uneasy North-South compromise, but as the negotiations developed, the “development aspects” disappeared and it has become almost a pure market-access Round.

It is thus time to undertake a fundamental review of the international trading order that has emerged in recent decades and to re-think what a better order would be like in the future. A major part of such a review would have to include a deep consideration of what has happened to the two basic principles that were formulated in the post-war

period: non-discrimination (and, particularly, the Most-Favored Nation principle) and Special and Differential Treatment, two principles for which the bells are now tolling. The second principle is, of course, an exception to the first, but it is an appropriate one, as it recognizes that the world economy is still a highly unlevel playing field, and that equal rules for unequal players and circumstances will worsen inequalities.

Thus the present impasse in the Doha Round should provide the opportunity for initiating reforms to the international trade architecture. Such a reform should include the following:

1. Standstill on FTAs until clear rules can be agreed on how to reestablish the primacy of global over bilateral or plurilateral rules.

2. A review of the existing WTO rules with the view to orient them to be in line with development principles. This would take into account the emerging consensus that for developing countries trade liberalization is neither an end nor a goal in itself, but has to be calibrated to align with their industrial, growth and employment policies.

3. The review should include whether it is appropriate for existing non-trade issues (especially intellectual property) to be included in the mandate and legal framework of the GATT/WTO system. There should be a standstill for further introduction of new non-trade issues such as investment, competition policy, labor standards, environment standards, into the WTO. Criteria should be developed on the issues for which it is appropriate to apply the principles of the WTO-GATT system, before further initiatives to inject such new issues.

4. A proper process to consider the “implementation issues” and the proposals to strengthen SDT provisions, as well as to establish a “SDT architecture” as envisaged in the Doha Declaration).

5. Review the rules in agriculture to ensure that there will be really substantial reduction or elimination of domestic support in developed countries, and not

merely a shifting between types of subsidies, and ensure the promotion of developing countries' food security and farmers' livelihoods through an effective special safeguard mechanism.

6. Align the trade rules to the industrial development needs of developing countries by ensuring sufficient policy space for the growth of existing and new industries. Consideration of what types of development policies are essential to build *production* (or supply) capacities in the development world, and what international transfers of resources and technology are essential to support, in particular, the development of such capacities in least developed countries.

7. Measures and institutional mechanisms to address the commodity issues, including instability of commodity prices, fluctuations in demand, processing and diversification.

8. Advance in Mode 4 of service liberalization, where very limited advance has been made.

Another major aspect of reconsidering the international trade architecture is the allocation of roles and mandates to different organizations. It is a mistake to identify the WTO as the multilateral trading system. It a treaty-based organization that deals with certain aspects of trade as well as certain non-trade issues. There are other aspects of trade that the WTO's rules do not cover and that the WTO is not equipped to deal with, such as boosting the production capacity of developing countries so that they can engage better in trade, or addressing the wide range of commodity issues. The roles of other organizations should be remembered and strengthened as part of the reform process. For example, the commodities issue is best dealt with by UNCTAD, and intellectual property issues by WIPO, CBD and FAO, while improving the production capacity of developing countries is an issue that is addressed by many departments and agencies of the United Nations.

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