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North-South Imbalances in the International Trade Regime: Why the WTO Does Not Benefit Developing Countries as Much as it Could

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Abstract

Participation in international trade potentially brings huge benefits to developing countries. However, the design and setup of the international trade regime, most importantly the rules and regulations stipulated in the agreements of the World Trade Organization (WTO), often make it difficult for developing countries to fully tap this potential. As will be argued in this paper using descriptive statistics, some of these agreements lead to imbalanced consequences for developing vs. developed countries. First, one of the key objectives of WTO agreements, namely to enhance member states' access to other members' markets, has so far been realized in a rather imbalanced fashion, to the detriment of developing countries. Second, various WTO stipulations contribute to reducing the "policy space" of developing countries, thereby hampering their ability to pursue national policies aimed at fostering economic development. A lot of this can be related to asymmetries in the governance structure of the WTO which help explain why international trade negotiations have preserved such imbalanced outcomes. Against this backdrop, this paper advocates for a pro-development international trade regime that facilitates a more sustainable integration of developing countries into the world economy and that supports their efforts to fully reap the benefits that participating in the international division of labor offers to them.

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1. Introduction

Participation in international trade offers an enormous opportunity for low-income countries to contribute to their economic and social development. However, this development potential is undermined by some of the rules and regulations of the international trade regime. The World Trade Organization (WTO) is the most visible and influential pillar of this regime. It was established in 1995 as the institutionalized

successor of the General Agreement on Tariffs and Trade (GATT) after the “Uruguay Round” of multilateral trade negotiations, often referred to as the “Great Bargain.” The developing-country perspective on the “Great Bargain” was that they gained access to developed countries’ markets in exchange for agreeing to include services and miscellaneous “trade-related aspects” in the WTO’s agenda. This great bargain, however, did little to remove existing North-South imbalances in the world trading system and even introduced some new ones. Many of these imbalances reflect the reality of asymmetrical power relations in the global, political, and economic arena, which, in turn, lead to global economic governance outcomes that, in some cases, are to the detriment of developing countries.

This paper intends to highlight and analyze the asymmetries that characterize the current international trade regime as reflected in WTO agreements. It first argues that one of the key objectives of international trade negotiations (under the auspices of both GATT and WTO), namely to create access to other countries’ markets, has so far been realized in a rather imbalanced fashion. The second section then explores how different WTO agreements contribute to reducing the “policy space” of developing countries, thereby limiting their ability to pursue national policies that would foster their economic development. The third section, spotlights on asymmetries in the governance structure of the WTO to try to explain why international trade negotiations have preserved such imbalanced outcomes. The paper concludes with some final remarks.

2. Imbalances in Market Access

Access to the markets of advanced economies is important for developing countries so they can expand their exports and thereby earn the foreign exchange they need to pay for their imports (e.g. capital goods). In the short run, therefore, they seek market access to sectors where they currently have a comparative advantage – such as agriculture or textiles.¹ However, as developing countries had not participated very actively in earlier rounds of multilateral trade negotiations under the GATT, trade in sectors of interest to them was not greatly liberalized at the time the Uruguay Round started in 1986 – while trade barriers in sectors of interest to advanced economies had already been brought down considerably (Stiglitz/Charlton 2005: 42-45). Yet the Uruguay Round agenda reflected, in large part, the priorities of developed countries, so that these asymmetries were addressed only half-heartedly. As a result, WTO agreements perpetuate several of these imbalances.

2.1 Northern protectionism in sectors of interest to the South

Developing countries had expected that the Uruguay Round would help facilitate access to Northern markets, particularly in agriculture and textiles. These were sectors that had long been highly protected (through the Multi-Fiber Arrangement, or MFA) and exempt from multilateral trade negotiations but in which developing countries had a comparative advantage. In fact, the very inclusion of

¹ The longer-term perspective, which implies a move from *static* to *dynamic* comparative advantage, will be treated in the next section.

agriculture into the agenda of the WTO was initially considered a success for the South, as was the agreement to dismantle the MFA, albeit with a long transition period of ten years. In reality, however, both agriculture and textiles & clothing remained among the sectors subject to the highest levels of protection in the North (Khor/Ocampo 2010: 8).² In other words, the tariff structure of industrial countries is still significantly biased against imports that typically come from developing countries, with average applied “Most Favored Nation” (MFN) duties on agricultural products, textiles and clothing far exceeding average duties on non-agricultural products in general (see Table 1).

Table 1 also gives some indication of the *tariff peaks* that characterize the tariff profiles of advanced economies, especially the European Union (EU) and Japan, where only a tiny fraction of non-agricultural products but more than a fifth of agricultural imports are subject to duties exceeding 15%. Another feature of rich countries’ tariff structures that harms developing countries and that was not adequately addressed in the Uruguay Round is a phenomenon known as *tariff escalation*. For agricultural countries, processing the fruits and vegetables they grow would represent an almost natural comparative advantage and an opportunity to create higher earnings than from exporting merely the raw produce. But industrial countries often design their tariffs so that tariffs increase parallel to the degree of processing – i.e. the more manufacturing involved, the higher the import duty. Canada, the EU, and Japan, for example, charge tariffs of 42, 24, and 65%, respectively, on fully processed food items but only 3, 15, and 35%, respectively, on the least processed products in this sector (World Bank 2002: 45).³ Such tariff escalation discourages industrialization based on forward linkages of traditional raw material exports, thereby stifling industrial diversification in developing countries (Stiglitz 2006: 87).

In agriculture, trade is additionally distorted by the enormous financial support that Northern economies continue to provide their farmers. The Uruguay Round brought little progress in this area, as the Agreement on Subsidies and Countervailing Measures (SCM) allowed various exemptions to reduction commitments, thus permitting a considerable number of agricultural subsidies to be maintained, even on a permanent basis. These loopholes have allowed Northern countries to re-structure (or simply re-label) their support for agriculture. Whereas support for outlawing trade-distortion has shrunk, more acceptable subsidies have increased.⁴ Consequently, in Canada and the U.S., producer support as a share of total agricultural production value has remained basically the same since 1995, the

² The Uruguay Round Agreement on Textiles and Clothing set a long transition period that allowed affected (mainly developed) countries to progressively phase out their import quotas and other restrictions. Yet few countries actually took a gradual approach but rather retained protection in most sensitive areas until the very end. Several countries even introduced some additional protections after liberalization (Khor/Ocampo 2010: 8).

³ As an example, the U.S. Harmonized Tariff Schedule specifies that the general tariff on imported oranges is 1.9 cents/kg, on citrus fruit preserved in sugar 6 cents/kg, and on frozen orange juice 7.85 cents/liter (U.S. ITC 2010).

⁴ However, the distinction between subsidies that are trade-distorting and those that are not is questionable. By making farmers less risk-averse and/or increasing their creditworthiness and thus also their access to bank lending, even non-production-based support (like income support payments decoupled from production) can have an impact on output and prices and thereby generate trade distortions (World Bank 2007: 97-98).

Country/Territory	Simple average of MFN applied duties on				MFN applied duties > 15% *		Agriculture SSG in %
	Non-Ag. products	Agric. products	Textiles	Clothing	Non-Ag. products	Agric. products	
Canada	3.7	11.5	6.6	16.9	6.7	6.1	5.9
European Communities	4.0	16.0	6.6	11.5	1.1	27.8	23.8
Japan	2.6	23.6	5.5	9.2	0.7	22.8	8.3
United States	3.3	5.3	8.0	11.7	2.4	6.0	2.9

Table 1: Tariff profiles of selected advanced economies (in 2008)

* Share of HS 6-digit subheadings in %

Note: MFN = Most Favored Nation, Non-Ag. = Non-Agricultural, Agric. = Agricultural, SSG = Special Safeguards Duties > 15% = Share of HS 6-digit subheadings subject to ad valorem duties greater than 15%.

Agriculture SSG in % = Percent of HS 6-digit subheadings in the schedule of agricultural concessions with at least one tariff line subject to Special Safeguards (SSG).

Source: Author's compilation, data from WTO/ITC/UNCTAD (2009)

	1990	1995	2000	2005	2006	2007	2008	2009
Canada	37.6%	22.2%	22.1%	25.2%	24.2%	20.8%	13.9%	22.1%
EU-27	35.8%	40.6%	39.1%	36.7%	35.5%	28.6%	26.7%	28.6%
Japan	54.5%	65.9%	63.9%	57.5%	55.0%	49.8%	51.2%	51.7%
USA	18.4%	10.7%	27.6%	17.3%	12.4%	10.7%	8.6%	10.7%

Table 2: Agricultural Producer Support Estimate as share of total production value.

Source: Author's compilation, data from OECD PSE Database

founding year of the WTO, while in the EU and Japan it went down quite a bit, though still remaining at very high level (see Table 2). In 2009, OECD countries still spent about U.S.\$253 billion (corresponding to 22% of aggregate gross farm receipts) in support of their agricultural producers. Even worse, more than half of these subsidies belong to perhaps the most distorting forms of support, i.e. support based on output (including border protection) and support based on unconstrained use of variable inputs (OECD 2010: 5).

The problem is that these subsidies make it hard for developing-country producers to compete with those of industrial countries. They not only displace agricultural exports from the South but also suppress world prices⁵, with both effects directly impairing farm incomes in poor countries⁶. To conclude, as long as producers in developed countries receive subsidies of such a magnitude, there is no real market access for farmers from the developing world.

2.2 Services

That trade in services was included in the WTO framework (in the General Agreement on Trade in Services, GATS) was due to the pressure from developed countries and part of the "Grand Bargain". The GATS is one of the most flexible WTO agreements as it is based on a "positive list" approach where nations only liberalize those sectors that they want. Yet, strengths and interests differ a lot between the North and the South. Developing countries typically have abundant

⁵ Dimaranan, Hertel, and Keeney (2003) estimate that OECD domestic support causes a downward pressure on world prices for many agricultural commodities of between 3.5 and 5%.

⁶ According to some estimations, developing countries lose about U.S.\$24 billion annually in agricultural and agro-industrial income due to protectionism and subsidies by the North (Stiglitz/Charlton 2005: 50).

unskilled labor and thus have a comparative advantage in less skill-intensive products while developed countries are rich in skilled labor. Overall, actual outcomes of negotiations under GATS have been biased in favor of the latter (Stiglitz/Charlton 2005: 111).

More specifically, advanced economies have pressured for liberalization in service sectors of their interest – particularly financial, information and telecommunications services – while trying to keep unskilled-labor intensive services (such as shipping and construction) off the agenda (Stiglitz 2006: 88). Moreover, they have been reluctant to liberalize under Mode 4 of GATS⁷ (“movement of natural persons”), which would allow the international movement of service providers and probably benefit Southern countries significantly. Yet, liberalization under Mode 4 has advanced by far the least in terms of volume of scheduled commitments. In fact, the limited progress in this area has mainly involved the intra-corporate movement of skilled personnel (Marchetti 2004: 28) – an issue of interest to the North. Increasing labor mobility in a fashion beneficial to developing countries, particularly through facilitating temporary migration for workers from the South, on the other hand, has seen very little progress. Not allowing developing countries to use their comparative advantage in low- and medium-skill labor-intensive services comes at an immense cost in the form of foregone benefits especially to developing countries but also to global efficiency. Indeed, empirical studies have estimated the potential annual benefits of liberalization under Mode 4 to range between U.S.\$150 and over U.S.\$300 billion (Hertel et al. 1999: 17, Winters et al. 2003: 1159).

2.3 Non-tariff trade barriers

Market access for developing countries is additionally constrained by the use of non-tariff trade barriers by industrial countries. Although WTO agreements also address these sorts of barriers, progress has been limited. As a consequence, Southern countries making inroads into Northern markets have repeatedly found themselves facing non-tariff trade barriers, particularly dumping duties and technical standards (Khor/Ocampo 2010: 8).

Non-tariff trade barriers can take different forms. *Anti-dumping rules* are a particularly popular barrier designed to stop the trade practice of selling goods below cost. Part of the problem with such schemes is how they are applied, as each country can set its own standard and have its own cost calculation method to determine whether imports are sold below costs. The current system thereby encourages the use of cost calculation formulas that make a finding of dumping very likely. In any case, the number of anti-dumping claims has grown significantly. In 1998, the U.S., the EU, Canada, and Australia together accounted for one third and thus an over-proportional share of all anti-dumping cases (Amsden 2003: 85). Between 1995 and 2002, 2,063 dumping cases were initiated, with the U.S. (279) and the EU (255) among the largest initiators. “It does not seem sensible,” Joseph Stiglitz and Andrew Charlton argue, “that the countries with the largest capacity to absorb shocks and

⁷ The GATS identifies four modes of service delivery, all potentially open to liberalization. However, liberalization has been uneven: Modes 1 (“cross-border supply”) and 2 (“consumption abroad”) have seen more liberalization than Modes 3 (“commercial presence”) and, particularly, 4 (Marchetti, 2004: 28; World Bank 2005: 136-138).

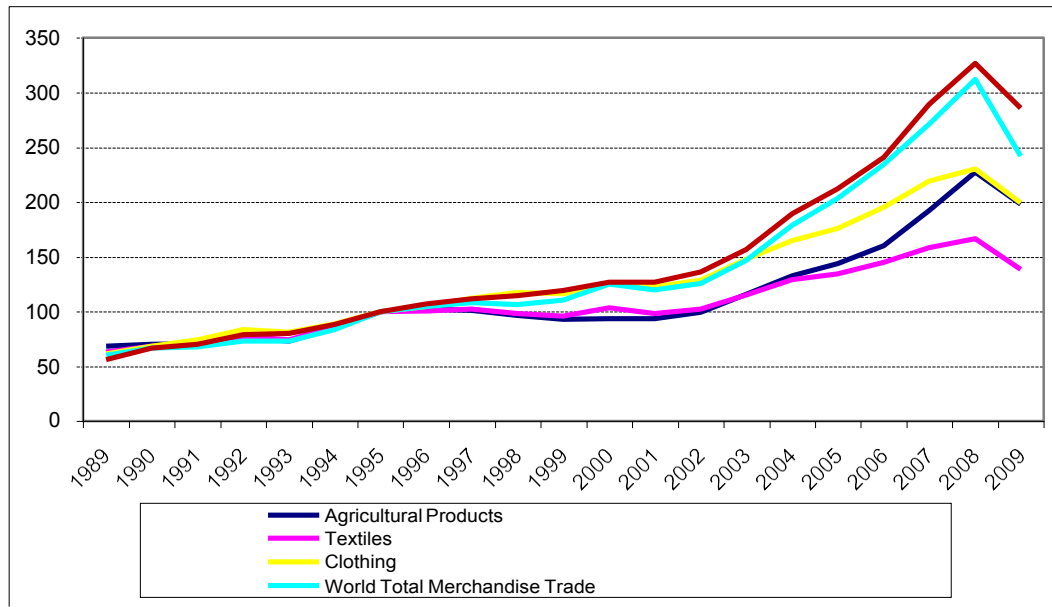


Figure 1: World exports in selected sectors (1989-2009, Index: 1995 = 100).

Source: Author's illustration, data from WTO Statistics Database

compensate import-competing interests should be the most common users of anti-dumping laws.” (Stiglitz/Charlton 2005: 127) To put it another way, instead of protecting industries that suffer from intensified foreign competition by resorting to anti-dumping laws, these countries would have other economic and social policies at their disposal to deal with the consequences of competitive imports that make inroads into their markets.

Yet, dumping duties have been the type of non-tariff trade barrier most utilized by industrial countries, the main reason being that they can provide longer-term or even permanent protection. This distinguishes them from *safeguards*, another type of non-tariff trade barrier, which may be applied only temporarily to help a country or industry adjust to an unanticipated large increase (“surge”) of imports. Still, the use of safeguards has risen dramatically, from two cases in 1995 to 132 in 2002 (Stiglitz/Charlton 2005: 128). There are indications that Southern countries have made too little use of this option⁸ whereas some Northern countries, most

⁸ The reasons for this differ between trade in manufacturing goods and trade in agricultural goods. As for manufacturing goods, the WTO Safeguards Agreement requires that the member country that activates a safeguard measure (and thereby curtails trade) must give something in return, for example by lowering the tariffs in another sector. In fact, the exporting country (or countries) affected by the imposition of a safeguard measure can seek compensation through consultations. If these consultations do not lead to an agreement, the exporting country/countries may retaliate by taking equivalent action (e.g. raising tariffs on exports originating from the country that took safeguard action). This threat of retaliation (especially from richer countries) might discourage developing countries from considering the use of safeguards. By contrast, the special safeguards provisions (SSG) for agriculture (as defined in the Agreement on Agriculture) differ from normal safeguards. More precisely, SSG are only applicable to those products that were included in the Uruguay Round “tariffication process” (i.e. the effort to convert all agricultural non-tariff trade barriers into bound tariffs) and which were designated by a member country as eligible for the SSG in its Schedule of Commitments. Most developing countries cannot use these SSG simply because they set their bound agricultural tariffs outside the tariffication mechanism.

notably the U.S., have repeatedly abused safeguard measures, often employing them to protect an industry in decline even when the underlying problem cannot be causally traced back to a surge of imports. For example, as the last column in Table 1 shows, a non-negligible percentage of agricultural goods in the EU and Japan is protected by Special Safeguard (SSG) provisions.

Other forms of non-tariff trade barriers are *technical standards* and *quantitative restrictions* (QRs). Technical laws (e.g. sanitary and phytosanitary standards) can be complex and opaque and often constitute an important barrier to trade – in some cases deliberately so (Stiglitz 2006: 95). QRs were actually prohibited during the Uruguay Round, except as emergency tools in the case of balance of payments crises – the clause typically relevant for the South. Yet, while their use as emergency measures was put under stricter disciplines, QRs were given greater room in textiles during the phasing out of the MFA, in the general safeguards agreement, and *de facto* also in agriculture, thereby creating another North-South asymmetry (Khor/Ocampo 2010: 6).

So, as this section showed, facilitation of access to Northern markets did not keep up with the expectations that Southern countries had after the Uruguay Round. Rather, different trade barriers and restrictions remained in place, perpetuating North-South imbalances in market access. Consequently, after the implementation of Uruguay Round commitments, trade-weighted developed-country tariffs against imports from developing countries are on average more than four times higher than against goods produced by other developed countries (3.4% vs. 0.8%) (Hertel/Martin 2000: 464). This is reflected in Figure 1 which shows that trade in agricultural products, textiles and clothing has developed much more slowly since 1995 than world merchandise trade in general.⁹ A closer look reveals that world trade in agricultural products (in value terms) accelerated from 2003 on – though largely due to a boom in commodity prices¹⁰ – while textiles and clothing exports somewhat picked up only around the same year, when the expiration date of the MFA became increasingly tangible. On the other hand, trade in services, where it is overwhelmingly rich countries that have a comparative advantage, grew impressively (and faster than world merchandise trade) over the last 20 years, and considerably so after the WTO (including GATS) was set up in 1995.

3. The Reduction of Policy Space

Many sectors where developing countries currently have a *static* comparative advantage (like agricultural commodities) may prove to be, in a sense, dead ends with regard longer-term economic development. Loosely speaking, economic development requires Southern countries to move into sectors with higher rates of potential productivity improvements, higher skill and/or technology content, and higher growth prospects.

⁹ This is not to deny that factors other than tariff and non-tariff trade barriers determine international trade flows. However, the fact that trade in sectors of importance to developing countries has continuously underperformed services and overall merchandise trade is striking.

¹⁰ On this issue, see UNCTAD (2009) or World Bank (2009), for example.

Increased access to markets where they currently have a static comparative advantage is therefore not the only thing that the multilateral trading system should offer to developing countries in order to support development. It also has to grant developing countries sufficient room to maneuver (“policy space”) and pursue national development strategies that aim at promoting the development of *dynamic* comparative advantage in higher value-added economic activity. In other words, Southern countries need a certain autonomy in policy-making to be able to manage their integration into the world economy in a way that promotes economic development (Kumar/Gallagher 2006).¹¹ Yet, various aspects of the new trade rules and domestic disciplines agreed upon in the Uruguay Round actually constrain this crucial policy space for developing countries. Some of them prohibit the use of instruments that had been freely deployed by the East Asian tigers as well as by today’s industrialized nations at comparable stages of their development, most notably – as will be shown below – in the areas of intellectual property rights, subsidies, and investment.

3.1 Intellectual property rights (IPRs)

Among the Uruguay Round agreements signed was the agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). This happened on the initiative of the advanced economies who sought to force other countries to recognize their intellectual property.¹² The TRIPS Agreement requires WTO member states to set minimal standards for the protection of the full range of intellectual property. From a North-South perspectives, it features certain imbalances. First, it aims at a global uniformization of IPR regimes according to *Northern* standards which burdens Southern countries with adjustment costs. More precisely, TRIPS requires the extension of IPR protection to typically 20 years in all fields of technology – whereas many developing countries previously had no or only very lax IPRs. Moreover, TRIPS obliged many countries to broaden the scope of what is patentable. Stricter IPRs clearly entail economic costs for developing countries. In the short term, not only implementation and adjustment costs but also welfare costs have arisen in the South for firms using foreign patented or newly patentable knowledge and for consumers who subsequently have to pay higher prices for patented products. As Figure 2 reveals, international payments for royalties and

¹¹ The theoretical underpinning of the need for policy space, particularly in the presence of market imperfections (which, in fact, are quite common in developing countries), has been provided by the “theory of second-best” which states that government policy can offset market failures (Lipsey/Lancaster 1956; see also Rodrik 2008). The empirical relevance of these theoretical insights, in turn, has been demonstrated vigorously by the development experience of the East Asian “tiger economies” in the second half of the 20th century, almost all of which relied on a wide range of government interventions (including trade, technology, and industrial policies) to spur development (Amsden 2001, 2003, Chang 2002, 2007, Rodrik 2001, Wade 2004). That trade can play an important role in the industrialization (and diversification) process that characterizes a country’s structural transformation during the economic development process has been shown by structuralist development economists (see, for example, Chenery 1960, 1980, but also Gibbs 2008). These insights are highly relevant for the argument laid out here but treating them in detail would go beyond the scope of this paper.

¹² Yet, whether IPRs belong in a trade agreement at all is a topic of intense debate (Bhagwati 2008).

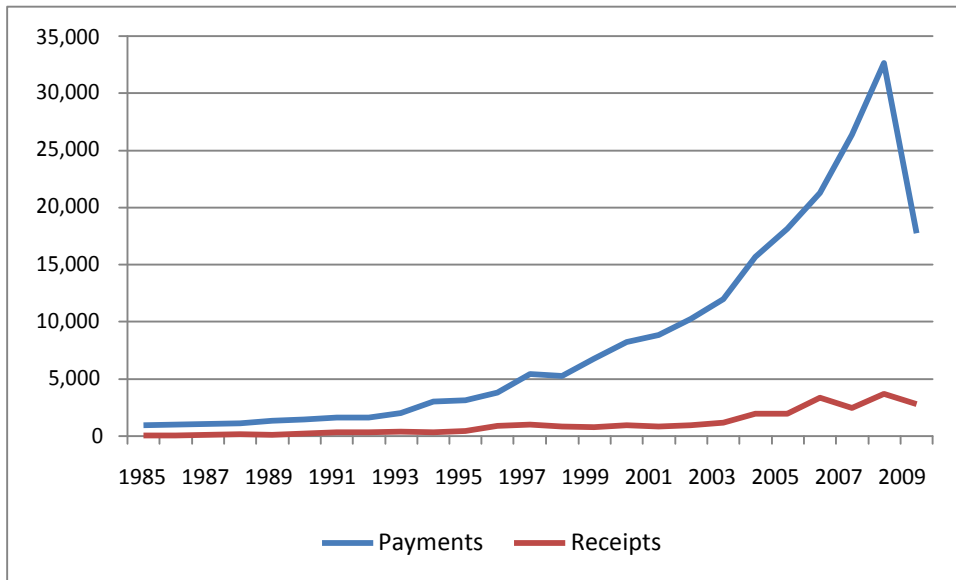


Figure 2: Low & middle income countries, flows of royalty and license fees in the BoP (million U.S.\$, 1985-2009).

Source: Author's illustration, data from the World Bank's World Development Indicators Database

licenses from low- and middle-income countries went up significantly since the inception of TRIPS in 1995. Northern countries hold 86% of all patents worldwide and receive 97% of all patent royalties. This makes it difficult for Southern countries to access technology and to enter the innovation process – or at least very expensive in terms of licensing such patents (UNDP 2003: 207).

From a longer-term perspective, the TRIPS Agreement has significant repercussions for Southern countries' ability to deploy technology and industrial policy. Before TRIPS, developing countries could set their own IPR policies. With the aim of facilitating domestic firms' capabilities for responding to foreign innovations, many late industrializers relied on maintained loose intellectual property rules, limited the duration of patents and often simply refused to grant patents for key products. Moreover, their governments tried to push technological progress by encouraging learning from foreign firms (often through public R&D efforts) and allowing different methods of imitative innovation (such as reverse-engineering of foreign patented products or simply copying existing foreign knowledge and techniques) (Gallagher 2008: 65; Stiglitz/Charlton 2005: 103). Under the TRIPS Agreement, developing countries now are "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" (Khor/Ocampo 2010: 13). That, in a sense, represents a historical asymmetry as many tools and policies commonly used by today's advanced economies during their development process are no longer available to the South (Chang 2001).

3.2 Investment policies

The agreement on Trade-Related Investment Measures (TRIMs) was newly introduced along with TRIPS to the global trade regime during the Uruguay Round.

Like TRIPS, it reduces WTO member states' policy space by prohibiting the use of a number of investment-performance-related measures that allegedly distort trade but that have, however, been successfully deployed both by early Northern and late East Asian industrializers.

For example, as part of targeted industrial policies, several East Asian countries actively encouraged foreign investment in certain sectors but stipulated that the majority of the firm be owned by national citizens, that certain local content and sourcing requirements were met, that technology was transferred, and that some R&D was conducted in the host country, with a certain percentage of local staff being employed in such processes (Gallagher 2008). Moreover, they often imposed certain performance requirements such as export-import balancing requirements (which make foreign firms use domestic rather than imported inputs) which, together with domestic content requirements, played an important role in forging linkages to the local economy and thereby generating spillover effects. All these policies are now considerably restricted under TRIMs, making it more difficult for developing countries to be selective about foreign investment (Khor/Ocampo 2010: 12, Rodrik 2001).

3.3 Subsidies

Further restrictions are imposed on a country's policy space by the WTO's Agreement on Subsidies and Countervailing Measures (SCM) which prohibits, for countries with a per capita GDP exceeding U.S.\$1,000, all forms of export subsidies. Yet, export subsidies are among the major subsidy instruments used by developing countries and were deployed successfully by South Korea and Taiwan, for example (Amsden 2001). Now, with all forms of export subsidies being forbidden under the SCM, Southern countries' ability to diversify their exports and to help their firms break into global markets is severely constrained (Khor/Ocampo 2010: 6).

At the same time, as detailed above, rich countries continue to heavily subsidize their agricultural sectors. Here, the SCM agreement only had the effect of making Northern countries re-structure their support from export to domestic subsidies.¹³ Yet, the distinction between export and domestic subsidies is somewhat artificial, and the trade effects of domestic subsidies are often understated. Apart from agricultural subsidies, three other types of subsidies are explicitly permitted in Article 8 of the SCM, namely for R&D, regional development, and environmental adaptation – all three being important instruments of intervention used by Northern countries (Aguayo/Gallagher 2005). There is, therefore, a pronounced North-South imbalance in the treatment of subsidies. As a result, while a mere 4% of developed-country exports are subsidized by another WTO member, this share is much larger for middle-income countries (6.4%) and low-income countries (29.4%; not including China and India) (Stiglitz/Charlton 2005: 48).

¹³ For example, between 1990 and 1998-9, the U.S. and the EU reduced their annual *export* subsidies for cereals and beef by U.S.\$4.1 billion. In the same period, annual *domestic* support for these goods, which is treated more permissively in the WTO, grew by about U.S.\$18.9 billion in the EU alone (ABARE 2001: 3).

3.4 Erosion of “Special and Differential Treatment” (SDT)

In theory, the WTO recognizes the particular needs of developing countries via the principle of “Special and Differential Treatment” (SDT). Prior to the Uruguay Round, the GATT provided developing countries with differential treatment and thus additional policy space. For instance, it allowed them to keep most tariffs unbound, make use of quantitative import restrictions, and maintain domestic content requirements on foreign firms. In the Uruguay Round, however, “[a]lthough not entirely eliminated, the SDT principle was significantly eroded, particularly for middle-income developing countries” (Khor/Ocampo 2010: 4).

In fact, there are now three forms of SDT in the WTO agreements that resulted from the Uruguay Round: trade preferences, modulation of commitments, and declarations of support. In its first form, SDT allows industrial countries to deviate from the principles of reciprocity and MFN by according differential and more favorable treatment to developing countries (e.g. by giving them preferential market access in the form of lower tariffs on their exports).¹⁴ The problem is that the current system makes preferential treatment entirely voluntary, i.e. the legal enforceability of these provisions is questionable (IISD 2003: 2).¹⁵ By contrast, SDT provisions that permit a modulation of commitments according to the member country’s level of development are legally enforceable and, hence, are currently the most substantial form of SDT.¹⁶ The third area of SDT, essentially the declarations of support for Southern countries, is entirely unenforceable. Against this backdrop, there are two principal problems with the status quo of SDT: First, those SDT provisions that are legally enforceable amount to eroding assets. The implementation delays granted by the TRIPS, SCM, and Agriculture Agreements, for instance, ceased to provide differential treatment once the extended transition period expired. Second, large parts of the new “trade-related aspects” agenda are without any legally enforceable SDT. Overall, many developing countries are unhappy about “the lack of „hard law□ SDT provisions in the Uruguay Round results” (IISD 2003: 2).

To conclude, it is of course true, as Amsden (2003) and Gallagher (2008) argue, that the policy space for developing countries has not vanished altogether as a result of WTO agreements. However, the point here is that the expansion of the scope of the multilateral trading regime has clearly *reduced* the policy space for developing countries, especially as compared to the pre-WTO era.

¹⁴ Two examples of such preferential schemes are the EU’s “Everything But Arms” initiative and the U.S.’s “African Growth and Opportunity Act”, which non-reciprocally remove tariffs on a wide range of products imported from the poorest countries. However, the World Bank (2004: 154) found that the overall impact of these schemes has been fairly limited, with complicated rules of origin provisions seeming to be at least partially responsible.

¹⁵ Preferences are not binding on grantor countries and can be changed to exclude certain products or withdrawn entirely at the grantor nation’s discretion, creating uncertainty for grantee countries. (Keck/Low 2004, Hoekman 2004: 3-4, WTO 2004: 25).

¹⁶ Examples include the Agreement on Agriculture (which required developed countries to cut their tariffs by 36% over six years whereas developing countries were given 10 years to lower their tariffs by only 24% while LDCs were exempted from tariff reductions altogether), the TRIPS Agreement (which gave industrial countries one year to implement its provisions, but developing countries five and LDCs eleven years), and the Agreement on SCM (which has implementation provisions similar to TRIPS).

4. Asymmetries in WTO Governance

Formally, the WTO is a democratic institution with its governance structure based on the “one country, one vote” principle and its decision-making requiring consensus. In practice, however, not all WTO member countries have an equal say in the institution’s agenda-setting and decision-making, so “informal oligarchy” (Evans 2003) seems to be a more accurate description.

One core problem in governance is the way in which negotiations occur. In fact, in what is commonly referred to as the “Green Room” process, many initial trade negotiations (both under GATT and WTO auspices) have taken place and still occur in informal meetings among a limited number of countries dominated by the Northern WTO members. Typically, the major advanced economies negotiate among themselves to come up with a common position. They then select a few (influential) developing countries to negotiate within another round of informal meetings with the aim of winning them over, often by putting pressure on them to break ranks with other developing countries (Stiglitz 2006: 98). Most WTO members are not informed about or even invited to these meetings and often do not know what is negotiated there. The purpose of such meetings is to shape the agenda of negotiations and to reach agreements within a relatively small group which are then easier to translate into the “consensus” required for the formal decision-making (Dervis 2005: 170, TWN et al. 2003).

During the initial years of the WTO, this informal system was led by the so-called “Quad” (U.S., EU, Japan and Canada) but became increasingly dysfunctional with the emergence of several dynamic developing countries. Consequently, since 2004, a newly formed “Group of 6” (U.S., EU, Japan, Australia, Brazil, and India) has engaged in small-group, informal agriculture negotiations, at times also including China. The inclusion of Brazil, India and China in this informal circle has, in a sense, enhanced the presence and role of developing countries in key decision-making forums. In reality, however it has done little to remove the North-South asymmetry in participation and decision-making, especially as these three countries explicitly represent only themselves in these meetings and not the developing countries as a group (for which they do not have a mandate anyway) (Khor/Ocampo 2010: 25). This lack of transparency in WTO working methods and decision-making mechanisms is compounded by the fact that various low-income countries cannot afford to have a Mission or a representative at the WTO headquarters in Geneva. This impinges on their ability to follow current discussions and participate in important meetings and negotiations (Stiglitz/Charlton 2005: 82).

Overall, in some contrast to its democratic setup, WTO governance has in practice been riddled with North-South asymmetries in participation and voice. The economic power of the advanced industrial countries has often been felt in the process of setting the agenda (with the focus of envisaged negotiations often put on issues of interest to developed rather than developing countries) and negotiating the rules (Evans 2003: 295). Once rules are agreed upon by WTO member states, states are held accountable for the commitments they made through the WTO’s *dispute settlement mechanism* (DSM). The DSM can be used by any member state who alleges that another member country violates WTO rules. Interestingly, no WTO body has the power to initiate litigation or implement sanctions in case violations of rules are found. Rather, WTO agreements delegate the authority to sanction – via trade

Complaints against: by:	Developed			Developing			Total
	Developed	Developing	Mixed	Developed	Developing	Mixed	
	1995	13	7	1	1	3	
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%

Table 3: WTO Dispute Settlement Cases (1995-2008).

Source: Khor/Ocampo (2010: 22)

retaliations – to the member states themselves. In practice, the DSM has proven to be effective¹⁷: it has been used quite actively and, importantly, it has been applied in all directions, i.e. by both developed and developing countries against both developed and developing countries.

However, there has also been a certain asymmetry in the use of the DSM: While more than two thirds of WTO members are developing countries, over 60% of all complaints have been filed by developed countries (see Table 3). Part of the explanation of this under-proportional use by developing countries lies in the relatively high costs of resorting to the mechanism and in an inherent asymmetry in retaliation between rich and poor countries (Stiglitz/Charlton 2005: 82).¹⁸ Both factors make the use of the DSM less appealing to poorer WTO members and might even defer them from even considering a complaint in the first place (Srinivasan 2007: 1056). Although there have been initiatives and proposals¹⁹, the inescapable reality of disparities in economic strength between different countries will make it difficult to overcome these asymmetries entirely.

5. Concluding Remarks

As we have seen, the current international trade regime as defined by WTO agreements is characterized by various imbalances from a North-South perspective. Somewhat in recognition of these asymmetries, a new round of multilateral trade

¹⁷ For favorable reviews see, for example, Ocampo (2010: 22), Srinivasan (2007) and WTO (2004: 50-51).

¹⁸ The prospect of developing countries imposing retaliatory measures of last resort is not very frightening for violators of WTO rules from the North, given that such measures would most likely have only limited effects on the violator's trade.

¹⁹ To remove the asymmetry in retaliation, it has been suggested that the WTO introduce monetary compensation of damages or to allow the trading of the right to retaliate (WTO 2004: 54-55). In an attempt to counter the asymmetry of the high costs of the legal procedure, in turn, an *Advisory Centre on WTO Law* was set up to offer subsidized legal assistance to developing countries (Khor/Ocampo 2010: 22).

negotiations under WTO auspices was launched in 2001 in Doha with the declared objective to make it a “Development Round.” However, the round is still ongoing and is in fact already the longest in the history of the GATT/WTO – a clear indication of the round’s failure. One of the main reasons for this is that developing countries worry that the potential benefits of what is on the negotiation table are relatively small while the probable costs in terms of further loss of policy space are significant (Gallagher 2008). The negotiations now narrowly focus on core market-access issues, and the Northern economies more or less insist on reciprocity, so the initial developmental focus has essentially disappeared.

In order for the Doha Round to achieve a development-friendly outcome, a certain degree of non-reciprocity in trade liberalization commitments will be necessary, especially in non-agricultural market access (NAMA) negotiations. For example, developing countries should be permitted to identify a limited list of key strategic industries to be exempted (at least for a certain, reasonably long period of time) from tariff reduction commitments in their “schedules of concessions.” This would provide them with valuable space to pursue targeted industrial policies. At the same time, to improve developing countries’ access to their markets, industrial countries should agree to a tariff reduction formula that explicitly tackles tariff peaks and tariff escalation, for example by imposing a cap on their tariff rates. In recognition of their exceptional development needs, the least developed countries (LDCs) should actually be granted duty-free access to Northern markets (at least for their manufactured goods). As an intermediate step, industrial countries could bring down their tariffs on products of interest to developing countries (e.g. textiles & clothing or agricultural products) to a level not exceeding their average level of tariffs on all other commodities. In terms of access to the agricultural markets of the North, the second key issue (besides tariff cuts) will be a reduction of subsidies in advanced economies. To this end, the somewhat artificial distinction between trade-distorting and non-distorting subsidies needs to be re-examined. This should lead to the adoption of more effective rules on the use of permitted subsidies (for example with regard to the eligibility criteria for recipients of subsidies) and the introduction of limits on the amounts receivable per agricultural producer (Khor 2007). Eventually, this would make it more difficult for developed countries to maintain their levels of public support to farmers by simply re-structuring or re-labeling their subsidies. As noted, many of these measures would require unilateral concessions by Northern countries and thus a deviation from the principle of reciprocity that is at the core of WTO agreements. This can be defended on the basis of the concept of “Special and Differential Treatment” (SDT) for developing countries. In fact, one of the objectives of the Doha Round – if it is to be a true development round – should be to strengthen or even expand SDT provisions in WTO agreements. One way to achieve this would be to adopt a Framework Agreement on SDT – as was indeed mentioned in the Doha Declaration. This would help to make SDT provisions more precise and effective and could serve to enhance their legal enforceability. On the whole, such a consolidation of the principle of SDT would positively impact developing countries’ policy space and their access to Northern markets.

For these outcomes of the Doha Round to become more likely, substantive steps must be taken towards institutional and governance reforms of the WTO. Among other things, this should include the abandonment of the practice of negotiating in the “Green Room,” thereby enhancing the transparency of and

participation in decision-making and negotiation processes. At the same time, developing countries ought to try to increase their voice and weight in trade negotiations by coordinating their positions and forming coalitions.²⁰ Such efforts should be supported by institutional enhancement, for example by the establishment of a permanent advisory body (whose task would be to advise developing countries on how to improve the effectiveness of their bargaining) and the installation of an independent evaluation unit (which would conduct studies to objectively assess the impact of possible future liberalization commitments on developing countries and compare and evaluate alternative scenarios) (Stiglitz/Charlton 2004).

Overall, it is extremely important that the Doha Round is revived and turned into a real development round with substantial outcomes meeting the demands and needs of the poorer WTO members. A successful conclusion of the Doha Round could, as an additional benefit, remove the perception among developing countries as well as civil society that the rich countries use the WTO to further their interests and those of their corporate sectors. Eliminating this view would thereby enhance the legitimacy of the WTO as a forum for international trade negotiations. The alternative to a successful Doha Round is an increase in bilateral and regional free trade agreements (FTAs). However, this is an even less appealing outcome from a development perspective, not only because they more often divert rather than create trade (Bhagwati 2008: Ch. 3) but also because developing countries have even less bargaining power in a bilateral setting than in a multilateral setting, where they can, at least in theory, form coalitions. In fact, this fear has already materialized in the inclusion of “WTO plus” stipulations in such FTAs (Evans 2003: 296, Khor/Ocampo 2010: Ch. II).

The potential of the international trade regime to support the development efforts of countries in the global South thus remains considerably unexploited. Unfortunately, the way the current Doha Round of multilateral negotiations has developed so far does not hold great promise.

²⁰ This is of course not an easy task in practice. The developing countries are not a homogeneous group and their interests and objectives can differ substantially, depending, *inter alia*, on their respective productive structures and trade patterns. However, currently even efforts of developing countries that have common interests and shared objectives are highly uncoordinated. It would therefore be a major step forward if developing countries with a common position formed coalitions to get a better hearing in trade negotiations.

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