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Interests and Options of Developing and Least-developed Countries in a New Round of Multilateral Trade Negotiations

T. Ademola Oyejide

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PREFACE

The *G-24 Discussion Paper Series* is a collection of research papers prepared under the UNCTAD Project of Technical Support to the Intergovernmental Group of Twenty-Four on International Monetary Affairs (G-24). The G-24 was established in 1971 with a view to increasing the analytical capacity and the negotiating strength of the developing countries in discussions and negotiations in the international financial institutions. The G-24 is the only formal developing-country grouping within the IMF and the World Bank. Its meetings are open to all developing countries.

The G-24 Project, which is administered by UNCTAD's Macroeconomic and Development Policies Branch, aims at enhancing the understanding of policy makers in developing countries of the complex issues in the international monetary and financial system, and at raising the awareness outside developing countries of the need to introduce a development dimension into the discussion of international financial and institutional reform.

The research carried out under the project is coordinated by Professor Dani Rodrik, John F. Kennedy School of Government, Harvard University. The research papers are discussed among experts and policy makers at the meetings of the G-24 Technical Group, and provide inputs to the meetings of the G-24 Ministers and Deputies in their preparations for negotiations and discussions in the framework of the IMF's International Monetary and Financial Committee (formerly Interim Committee) and the Joint IMF/IBRD Development Committee, as well as in other forums. Previously, the research papers for the G-24 were published by UNCTAD in the collection *International Monetary and Financial Issues for the 1990s*. Between 1992 and 1999 more than 80 papers were published in 11 volumes of this collection, covering a wide range of monetary and financial issues of major interest to developing countries. Since the beginning of 2000 the studies are published jointly by UNCTAD and the Center for International Development at Harvard University in the *G-24 Discussion Paper Series*.

The Project of Technical Support to the G-24 receives generous financial support from the International Development Research Centre of Canada and the Governments of Denmark and the Netherlands, as well as contributions from the countries participating in the meetings of the G-24.

**INTERESTS AND OPTIONS OF DEVELOPING AND
LEAST-DEVELOPED COUNTRIES IN A
NEW ROUND OF MULTILATERAL
TRADE NEGOTIATIONS**

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Abstract

Negotiating interests and options have to be identified against the background of the possible agenda of a new round. Several important elements of this agenda are codified in what is referred to as the “built-in agenda”, including: (i) an assessment of the implementation of Uruguay Round Agreements (URAs); (ii) specific reviews of particular agreements that were mandated by the Uruguay Round; and, as the core of a new round, (iii) new negotiations on agriculture, GATS, and TRIPs. Possible further components of the agenda could be negotiations on trade and investment, competition policy, trade facilitation, transparency in government procurement, environmental and labour standards, and further liberalization of industrial tariffs, and textiles and clothing.

Many developing and least-developed countries are reluctant to support such a comprehensive agenda, because they are still pre-occupied with difficult administrative, institutional and financial problems arising from the implementation of various URAs. They also have difficulties in articulating the strategies that could underpin the identification of their negotiating interests and options. Their preparation for a new round is likely to be mostly inadequate owing to a lack of human knowledge and institutional capacity that an effective participation in the WTO process requires. They will thus have to take decisions on complex issues that they may not have adequately analysed and understood. But a new trade round will also present an important opportunity for developing countries to press for enhanced market access and to undo some of the damages imposed by the URAs dealing with rules and standards. They have taken on many mandatory obligations in exchange for non-binding and “best endeavour” concessions from the developed countries. Rebalancing this situation should be a major concern for both the developing and the least-developed countries. The new round should also offer the low-income countries an opportunity to be more pro-active in terms of defining its agenda, for instance in proposing multilaterally negotiated decisions regarding the criteria for categorizing WTO member countries, as well as the form and context of “special and differential treatment” for the developing and least-developed countries.

This paper discusses the trade-strategy options of low-income countries, the areas of greatest interest to developing countries, as well as those that are to pose the greatest difficulties, the question of how developing countries can enhance the effectiveness of their participation in the new Round of Multilateral Trade Negotiations, and also makes some suggestions on how to change WTO governance and management structures in order to ensure that the concerns of low-income members are given greater prominence in the organization’s activities.

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INTERESTS AND OPTIONS OF DEVELOPING AND LEAST-DEVELOPED COUNTRIES IN A NEW ROUND OF MULTILATERAL TRADE NEGOTIATIONS*

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I. Introduction

An important component of the preparation process leading to the launch of a new round of multilateral trade negotiations is the identification and analysis of negotiating interests and options by the various categories of the membership of the WTO. This should be attempted against the background of an understanding of what the agenda of the negotiations will look like. Important elements of the agenda have been pre-determined and are codified in what is referred to as the "built-in agenda". This includes three key components. First is an assessment of the implementation of existing Uruguay Round Agreements (URAs). This embraces a review of the implementation experience and its primary purpose would be to identify areas where difficulties have been encountered and, hence, where appropriate changes may need to be made so as to facilitate enhanced adherence to rules and commitments as well as the realization of the benefits which the URAs were intended to yield to the participating countries. The envisaged review and assessment is, in principle, quite comprehensive as it should cover all articles of GATT 1994, the Marrakesh Protocol to the General Agreement, the General Agreement on Trade in Services (GATS), each of the other individual agreements (such as agriculture, textiles and clothing, intellectual property protection, etc.), as well as the Understanding on Dispute Settlement, Trade Policy Review Mechanism, and the Ministerial Decisions and Declarations, including those issued at Marrakesh.

Second are the specific reviews of particular agreements that were mandated by the UR and stipulated in each of the affected agreements. Under this heading, specific reviews are due by early 2000 with respect to various elements of the agreements on agriculture, anti-dumping, customs valuation, dispute settlement, rules of origin, sanitary and phytosanitary (SPS) measures, trade-related aspects of intellectual property rights (TRIPs), trade-related investment measures (TRIMs), and GATS, among others.

The third key component of the negotiating agenda is, perhaps, even more pre-determined than the earlier two. While these call for assessment and reviews which may lead to changes that will then have to be negotiated, the third agenda item more specifically mandates new negotiations on agriculture, GATS, and TRIPs. The negotiations on these items can be regarded as the core of a new trade round.

There is a possible fourth component. At the Singapore Ministerial Conference, a work programme was adopted which included the establishment of working groups around a number of issues. Based on the reports of the working groups, further steps with respect to these issues are to be decided, in particular whether or not each of the issues should be included in the negotiating agenda of the Millennium Round, although the work of the working groups was not meant to pre-commit members to a decision to negotiate on any of these issues. At least four of these issues will be discussed at the Third

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Ministerial Conference (TMC). These are trade and investment, trade and competition policy, trade facilitation, and transparency in government procurement. In addition, there at least two other issues that continue to be debated in and around the WTO; i.e. environmental and labour standards. Although they are not part of the WTO work programme that is meant to feed into the TMC and possible future negotiations, it would not be surprising if they are pushed into the negotiating agenda.

Furthermore, there could well be a fifth component to the negotiating agenda. Discussions within and outside the WTO suggest that multilateral negotiations based on all or a subset of the first four components identified above would not reflect a sufficient "balance of interests" among WTO members. In other words, many countries are apparently lukewarm to the idea of a new round of multilateral trade negotiations which focuses primarily on a limited number of sectoral areas (i.e. agriculture, services, and intellectual property rights). To eliminate this reluctance, it has been suggested that the agenda of negotiations should be broadened to include further liberalization of industrial tariffs and in textiles and clothing.

Many developing and least-developed countries are, apparently, reluctant to support a new round of multilateral trade negotiations with such a comprehensive agenda. The basis of their reluctance is well founded. Many of them are still pre-occupied with dealing with the problems arising from and getting their economies to adjust the changes imposed by the implementation of various UR agreements. They are confronted with difficult administrative, institutional and financial problems in meeting the obligations that constitute integral parts of these agreements. Many of them face similar problems in the process of internalizing the implications of the UR agreements and trying to realize the benefits that the agreements promised. Their fundamental disabilities in these two broad areas (i.e. fulfilling obligations and actualizing benefits) are clearly related to the difficulties being experienced in identifying specific negotiating interests and options in the context of a future round of negotiations, whether narrowly defined (as in the built-in agenda) or more broadly conceived to include additional "balancing" items. Perhaps more significantly, many developing and least-developed countries are experiencing some difficulty in articulating the trade and development strategies that should underpin and guide the identification of their negotiating interests and options in the context of a new round.

These difficulties notwithstanding, the developing and least-developed countries cannot afford to de-link themselves from the globalizing trends in the world economy. Their continued, more active and effective participation in the WTO process should therefore be regarded as an unavoidable imperative. These countries need to preserve and enhance market access for their exports of goods and services. Hence, their negotiating interests are more likely to be more fully covered in a broadly defined agenda of multilateral trade negotiations than in a narrow one. But their negotiating interests go well beyond the issue of enhanced market access with respect to such broad sectors as agriculture, industry and services. Many developing and least-developed countries have significant concerns about the general rules that govern the WTO process which, in turn, conditions the extent of their meaningful participation in the process, including the actualization of the potential market access benefits that they are entitled to. Their interests and options should therefore be identified and analysed not only with respect to market access conditions but also in relation to the WTO rules. Finally, since these negotiating interests are more likely to be growth-enhancing if they are chosen and pursued in the context of an appropriate trade and development strategy, relating these interests to the underlying strategy becomes an important analytical and policy challenge.

Therefore, this paper offers a broadly analytical but policy-relevant perspective on the interests and options of the developing and least-developed countries in a future round of multilateral trade negotiations. The paper's primary thrust is built around four questions. First, the paper discusses the development-oriented trade strategy options of low-income countries and relates these to the multilateral trade negotiation process (in section II). It explores the considerable tension that continues to exist between, on the one hand, what the initial conditions and the development needs of the low-income countries appear to require in the area of trade policy and, on the other hand, the trends towards a global convergence of trade and trade-related policies implicit in the increasingly globalization-driven multilateral trading system. This section of the paper also examines what mechanisms exist in the multilateral trading system for protecting the development dimension of trade policy and for ensuring that countries at different levels of development can effectively pursue their interests within the WTO framework. In particular, it reviews the concept and operationalization of the principle of "special and differential treatment" (SDT) as a viable vehicle through which the multi-

lateral trading system can accommodate the development needs of the low-income countries.

Section III identifies and discusses the areas of possible negotiation that are of greatest interest to the developing and least-developed countries. The preservation and enhancement of market access for their exports of goods and services constitute the areas of greatest interests for these countries in the context of the Millennium Round. The key market access questions are therefore identified and discussed in relation to agriculture, manufactures, textile and clothing as well as services. In particular, the major market access issues in the area of goods relate to tariff peaks and tariff escalation; while in the area of services, the primary focus is on the movement of natural persons – the key services supply mode in which the exploitation of the comparative advantage of low-income countries appears to be quite substantial and most heavily hampered. Market access negotiations have two sides, of course. Therefore, this section not only discusses market access for the exports of the developing and least-developed countries but also suggests what “concessions” they can (and should) offer in return. In other words, this section is explicit about reciprocity.

In section IV, the paper’s focus shifts to a consideration of the areas likely to be included in future multilateral trade negotiations that pose the greatest difficulty for the developing and least-developed countries. These areas are associated, in this paper, with the increasing intrusiveness of multilateral trade disciplines that is particularly evident in the reduction of the domestic policy autonomy of low-income countries in the broadly defined domain of domestic regulatory systems. This section makes the following points. The low-income countries are unlikely to be able to fully realize their potential market access benefits if the use of a range of capacity-building and development-enhancing trade-related policy measures, which remain important for their capacity building and development, is further constrained in the forthcoming negotiations. The evolution and increasing sophistication of certain regulations and standards constitute an integral part – and are therefore not independent of – the development process. Attempts to impose “policy convergence” in these areas on the low-income countries in the context of future trade negotiations will cause severe implementation and compliance problems. In particular, changes that require substantial, time-consuming and resource-intensive human and institutional capacity-building efforts may need to be accompanied with mandatory financial and technical assistance, since

UR-type “transitional periods” will be largely inappropriate and probably impossible to pre-determine with a reasonable degree of accuracy. In any case, to the extent that the capacity to take on some of the full obligation in these areas is largely determined by a country’s wealth, appropriate development-related thresholds may be preferred to rather arbitrary time limits.

Section V takes up the paper’s last question i.e. what are the ways in which developing and least developed countries can enhance the effectiveness of their participation in the new round of multilateral trade negotiations? Actually, this section expands the question in two directions: it discusses participation in the WTO process generally; and it explores how the WTO system can (and should) help the developing and least-developed countries to help themselves. Identification and analysis of the key competencies required for effective participation in the WTO process as well as the key mechanisms through which they are exercised set the stage for articulating how these countries can enhance the effectiveness of their participation. Certain changes with respect to the WTO governance and management structures are suggested as ways of ensuring that the concerns of low-income members are given greater prominence in the organization’s activities. The paper concludes in section VI.

II. Trade policy and strategy for development

Much of the analysis of trade policy and strategy for development from the perspective of low-income countries appears to be motivated largely by two basic concerns. These relate to how their trade policies can be used to promote their economic growth and development, and how the global economy and developments therein impinge on their prospects for growth and development. These concerns have become even more pressing in today’s rapidly globalizing world economy in which integration into international markets is increasingly held out as an important and indispensable growth vehicle which cannot be ignored by the low-income countries. It is regularly cited, in this context, that virtually all the countries that have been successful in achieving significant rates of economic growth since the 1960s are the ones that have utilized available trade opportunities, while those countries that have erected barriers against trade appear to have fallen behind in terms of economic growth and de-

velopment (see, for example, Krueger, 1995). A strand of the mainstream literature pushes this point further to suggest that the developing countries that achieved spectacular growth over this period are those that adopted outward-oriented development strategies focusing specifically on the promotion of exports.

The lesson drawn from this is that open economies grow more rapidly than closed ones and, hence, that all low-income countries need to open up to world trade in order to stimulate their economic growth. In other words, if these countries open up to international trade by substantially reducing their domestic trade barriers, this would contribute significantly to their overall economic growth performance. Central to this strategy are two basic propositions. First is that a robust, diversified and rapidly growing external sector is generally associated with rapid overall economic growth. Second is the argument that trade liberalization which generates a neutral or outward-oriented trade regime confers certain productivity-enhancing and growth-promoting features on the liberalized economy (World Bank, 1991). These derive from several sources; including improvement in the efficiency with which resources are allocated, increase in competition and product specification, enhanced ability of the economy to stimulate domestic and attract foreign investments, and enhancement of the technology transfer environment whether this occurs through the import of capital goods that embody current technology, as an integral part of foreign direct investment, or through increased competition that induces exporters to operate at or close to the frontiers of "best practice" management and technology.

Analyses relating these ideas to the African experience have typically concluded that greater "openness" would be necessary before a regime of more rapid economic growth could be established and sustained in the region. Several points are made to justify this conclusion. First, although African countries have made considerable progress in reducing their average effective tariffs, especially during the last 15 years or so (World Bank, 1994; Oyejide et al., 1999), this region continues to maintain the most restrictive trade regime in the world. Similarly, Ng and Yeats (1996: 25) conclude that African "trade barriers are far more restrictive than" elsewhere in the world; noting, in particular, that Africa's average tariff of 26.8 per cent (in 1995) was more than three times higher than those of a selected set of "fast growing exporters" and, in addition, that the difference between African trade barriers and those of other

regions has widened considerably since the Uruguay Round of Multilateral Trade Negotiations. Second there seems to be some support from empirical evidence to the effect that Africa's lack of openness is the largest contributor to the region's dismal economic growth performance, especially since the mid-1970s (Sachs and Warner, 1997). Third, Collier and Gunning (1999) argue that the same level of trade restrictions has done more damage in Africa than elsewhere, primarily because of the relatively small size of most African economies.

If openness (defined broadly as the freer and more rapid flow of goods, people, capital and knowledge across national borders) does generate economic growth world-wide, then a key rationale for the multilateral trading system, as an arrangement through which enhanced openness is ensured, would be to promote the growth of the economies of all participating countries. In this sense, it would be legitimate to think of the multilateral trading system as a partnership for development through trade implicit in which is the expectation that participation will be mutually rewarding to all parties.

But, as it turns out, things are not necessarily quite so straightforward and clear cut. In other words, the postulated relationship between openness and economic growth remains subject to debate. In particular, the conventional claim that Africa's lack of openness is primarily responsible for the region's marginalization in the world market (Amjadi, Reinke and Yeats, 1996) has been challenged. For instance, Rodrik (1997) and Coe and Hoffmaister (1998) show that Africa's relatively low level of bilateral trade with other regions mainly is due to the relatively small size of the average African economy and the relatively low rates of their economic growth over the last two to three decades. According to Ndulu and Ndung'u (1997: 21), an analysis of the African experience suggests that "trade and trade policies affect growth and growth in turn affects trade performance"; but "growth performance is key to successful link between export and growth". More generally, Rodrik (1999) finds no convincing evidence to suggest that a country's economic performance is strongly and systematically enhanced by its openness to trade, when that is indicated by low barriers to trade and capital flows; he indicates more specifically that the relationship between growth rates and various indicators of openness, such as controls on capital flows and levels of tariff and non-tariff barriers, is weak, at best. Along the same lines, Stiglitz (1999: 36) affirms that "trade liberalisation, while necessary, is not sufficient for developing countries to reap the full

benefits from integration with the world economy". Put slightly differently, a liberalized trade regime would not, on its own, place an economy on a self-sustained growth path.

Furthermore, it remains unclear how far a country must open up if it wishes to grow rapidly and at what level of development would a particular degree of openness yield the desired result in terms of export expansion and overall economic growth. In summarizing the debate on this point, Collier and Gunning (1999:14) offer the following conclusion: "the international growth literature has reached a consensus that ... tight trade restrictions are damaging, but controversy continues over the effects of more moderate trade restrictions". There is, however, much more robust evidence that the composition of exports matters in relation to growth. More specifically, experience shows that developing countries with greater manufactured exports growth tend to grow faster than those relying primarily on exports of primary commodities, regardless of the stance of their trade regime. A plausible explanation for this may be that openness to trade is relatively more growth inducing for the developing countries that have already succeeded in establishing an efficient and competitive manufacture base prior to a deeper liberalization of their trade regimes.

The degree of openness that may be desired for the purpose of achieving full integration into the global economy, for whatever reason, is one thing while the extent of liberalization of the trade regime that may be feasible, given an economy's basic characteristics is quite another. Given the current level of development of many low-income countries, there are, at least, two important considerations that could limit the extent of trade liberalization. One reason emanates from the use of import protection as a means of establishing an industrial base and the other relates to revenue generation. The first remains controversial, after much debate. The point of view that appears to broadly reflect developing country perspectives is articulated by Rodrik (1992: 312) as follows: "the case for import protection on industrialisation grounds rests on a number of ill-fitting, second-best rationales. On balance, the arguments weigh in favour of import protection... Moreover, the arguments are strongest for the poorest countries with least access to direct tax/subsidy instruments".

Furthermore, given the existence a certain level of import protection, a rapid and radical reduction of tariff rates could be problematic, since the resulting loss of output generated by tariff reduction may

not be immediately compensated for by comparable surge in the output of the non-protected sectors of the economy. Mussa (1997) suggests that this could well be the case in many African (and, presumably, other low-income) countries where the industrial sector is not only narrow but also highly dependent on tariff protection.

The revenue objective of trade taxes constitutes, perhaps, an even more binding constraint on the extent of realistic trade liberalization in many low-income countries. This constraint is clearly more serious in the case of the least developed countries. Africa, which contains the largest proportion of least-developed countries, depends more heavily on trade taxes for fiscal revenues than any other region of the world. Although trade taxes as a proportion of total tax revenue declined in Africa from over 40 per cent in the mid-1970s to just over 30 per cent in the mid-1990s, Africa's relative dependence has remained much higher than that of the Asia-Pacific region (24 per cent) and Latin America and the Caribbean region (21 per cent); while the dependence of developing countries is several multiples of the 2 per cent for the OECD countries (IMF, 1997). Both the structure of a country's economy and its level of economic development are major determinants of the country's degree of reliance on international trade taxes; this largely explains why developing and least – developed countries often find themselves obliged to depend on trade taxes as an important source of revenue. In these circumstances, "it will be only over the long term, as domestic productive capacity (and hence the domestic tax base) grows and broadens and as administrative capacities improve that a major shift from reliance on international trade taxation to a reliance on domestic taxation would be expected to occur" (IMF, 1997: 2).

Broadly consistent with the discussion above, Mussa (1997: 10) concludes that "for practical reasons, it may be assumed that tariff rates will be positive for purposes of domestic protection and to generate revenue" in many African and other low – income countries. In addition, it is reasonable to expect that the average tariff rates in these countries will be higher than those of the high-income countries. While economic theory does not directly provide a magic formula for determining the appropriate degree of trade restrictions that would achieve both protection and revenue objectives in the context of medium-term growth strategies for the low-income countries, there are interesting proposals in the literature. One which seems to be more directly rooted in the prevailing conditions in many low-income

countries suggests that “a range of 10–50 percent for average protection is not unreasonable”, and that “poor countries (especially those in Africa) should probably go to the high end of this range”, although countries susceptible to smuggling should have lower rates (Rodrik, 1992: 313). It is interesting to note that the indicators of “openness” used in Sachs and Warner (1997) include a 40 per cent tariff rate threshold and 40 per cent non-tariff barriers coverage. Thus, the strict trade policy component of “openness” seems consistent with fairly reasonable industrial protection and revenue generation tariff levels that may be appropriate for low-income countries.

The broad contours of a development-oriented trade policy for low-income countries can be sketched in terms of the consensus which Rodrik (1998: 12) expresses as follows: “de-monopolize trade; streamline the import regime, reduce red tape and implement transparent customs procedures; replace quantitative restrictions with tariffs; avoid extreme variation in tariff rates and excessively high rates of effective protection, allow exporters duty-free access to imported inputs; refrain from large doses of anti-export bias; do not tax exports too highly”. Further elaboration may be useful with regard to some elements of this consensus. First, the reduction of tariffs to modest levels (such as the range of 10–30 per cent) appear to be within easy reach of achievement for virtually all low-income countries. This range of tariffs should enable the typical low-income country to satisfy both its revenue raising and industrial protection objectives while, at the same time, limiting the relative price distortions that trade restrictions can create and hence the damage they can do to the overall economy. In addition, the import protection component should be strictly limited, time-bound and related to some clearly understood and measurable performance standard (Stiglitz, 1996). The entire tariff structure should be fairly simple, reflecting a limited number of tariff rates to ensure greater transparency.

Second, the export component of trade policy deserves special attention. Good export performance is not just a desirable goal in its own right, it is also a critical means to other important ends such as deeper import liberalization and more robust economic growth. A successful and sustainable import liberalization programme requires successful exports. As Michaely (1991: 123) points out, “the survival of trade liberalization attempts tend strongly to be related to a favourable export performance, whereas the collapse of trade liberalization is overwhelmingly connected with a dismal export performance”. The policy measures that endow a trade regime with an

element of import protectiveness inevitably also impose an anti-export bias. It is well established that import restrictions effectively translate into a tax on exports which, in turn, has the effect of reducing the international competitiveness of the export sector. To promote exports, this anti-export bias must be neutralized by implementing schemes that grant exporters and their suppliers unrestricted access to inputs at internationally competitive prices that are free of import duty and other indirect taxes.

Third, mechanisms must be devised that would endow the trade policy and strategy of low-income countries with greater predictability and credibility, and thus ensure that whatever policy changes are implemented are perceived as being credible by private agents. Given the largely irreversible nature of investment decisions, it is critically important for the trade regime to be predictable and stable if appropriate investment and export supply responses are to be elicited from private agents. This issue is of particular importance in Africa where trade reform attempts have suffered from lack of credibility due to frequent policy reversals (Oyejide et al., 1999). This phenomenon seems to be largely explained by lack of effective restraints on governmental policy discretion which, in turn, gives room for frequent changes in trade policy. In the absence of an effective mechanism for locking in reform, trade policy reversals may be largely unavoidable. Yet, many low-income countries may face considerable difficulty in establishing viable and effective domestic agencies of restraint, given the fragile nature of their governance institutions. Hence, the search for an effective mechanism for ensuring the credibility of trade policy in low-income countries could inevitably extend to external institutions such as the WTO. In the WTO framework, tariff bindings help to lock-in progress on the domestic front and are useful in warding off local lobbies that may be seeking further protection. These internationally registered tariff bindings then become an important mechanism for imparting credibility to a country’s trade regime.

In addition to its use as an agency of trade policy restraint, the analysis of trade policy and strategy for the development of low-income countries suggest other important implications for the WTO as a framework within which rules are established for mediating multilateral trade relations. First, it is clear that the low-income developing countries will maintain trade restrictions as well as industrial and export support measures that are likely to be higher and exhibit wider sectoral dispersion than those prevailing in the developed countries. Since these features are inherent

elements of the development strategy of low-income countries the rule and norms of the multilateral trading system should explicitly recognize and permit the consequent asymmetry of obligations, within the WTO framework, between the low-income and developed countries. What this asymmetry reflects is essentially the higher costs to developing countries than the developed countries – in terms of adjustment and capacity building – of trade liberalization (Stiglitz, 1999). Second, the low-income countries cannot optimize their benefits from the multilateral trading system as “free riders”. They can and should accept greater and more transparent multilateral discipline on their trade policies and other capacity building support measures in the context of the asymmetry of obligations noted above. This can be associated with at least three advantages. It could provide the basis for using the WTO as an effective agency of restraint for enhancing the credibility of their trade policy, as discussed above. It could protect individual low-income countries from “unbound” unilateral actions of more powerful trading partners. It should also encourage low-income countries to pursue more growth-enhancing trade and trade-related policies.

The multilateral trading system is made up of countries at markedly different levels of development. The analysis above suggests that the development-oriented trade policy and strategy that may be regarded as appropriate for the low-income countries are also markedly different from those of the developed countries and that the multilateral trading system would need to recognize the consequent asymmetry of obligations within the WTO framework and, hence, create a mechanism for this purpose. All of this is not new, of course. A number of inter-related ideas and pressures, some dating back to the early 1950s, gave birth to the concept of “special and differential treatment” (SDT) of developing countries in the global trading system (Hudec, 1987, Wolf, 1987, Oyejide, 1998). Prominent among these were the recognition by the developed country members of GATT that the trade and development problems of their developing country counterparts were, in certain ways, fundamentally different from their own; the widening gap (as measured by standard indicators such as income per capita) between the developed and developing countries; and the continuing desire on the part of the developed countries to keep the developing countries within the framework of multilateral trade rules.

The framework for SDT was formally set out during the Tokyo Round of multilateral trade negotiations. In principle, SDT provisions were meant to

take account of the diversity of conditions and capacities in various member countries. In explicitly acknowledging the disparities among members and the growing divergence in the economic situation and capacities of different countries SDT provisions sought to relate them to the benefits that different countries could reap from the multilateral trading system and the obligations and commitments that they would be expected to undertake. Basically and in their original forms, SDT provisions were designed to enhance market access conditions of beneficiary countries and permit them derogation from certain multilateral trade disciplines. Thus, in addition to granting certain trade preferences, some SDT provisions allowed the beneficiary countries some flexibility in the use of various trade and trade-related measures. This derogation from rules was to ensure that the beneficiary countries were not deprived of the essential tools for strengthening their competitive supply capacity without which they would not be able to take full advantage of the preferential market access granted to them. Hence, the two key elements of SDT provisions are essentially complementary; special capacity-building measures would, to the extent that they enhance output and export supply response, enable beneficiary countries take fuller advantage of special market access preferences.

The UR agreements have radically changed both the form and content of most of the key SDT provisions. Many post-UR SDT provisions are expressed in terms of transitional periods, differences in threshold levels and non-mandatory offers of technical assistance to fulfil specific obligations rather than in the form of substantive exemptions from specific rules, as in the pre-UR era. Furthermore, the length of transitional periods and the level at which thresholds have been set appear, for the most part, to have been selected in an ad hoc and haphazard way. In particular, they do not appear to be closely linked to or explicable in terms of any objectively determined set of criteria reflecting differences in levels of development or country institutional and human capacities. The specified transitional periods appear to be excessively optimistic in many cases.

Policy and rule changes can impose different types of costs on an economy. One of these is the cost of adjustment, others include costs of implementation and compliance. A change in the tariff rate, for example, should be associated with minimal implementation and compliance costs; although the adjustment cost could be high if it is a large change which is carried out over a relatively short time pe-

riod. A long transitional (implementation) period could be a way of reducing (or perhaps spreading out) the cost of adjustment. By comparison, a change which mandates increased protection of intellectual property rights could impose high costs of implementation, compliance and adjustment, since it would involve human and institutional capacity-building for implementation and compliance in addition to the cost of adjustment. In such a case, the use of transitional period is, by itself, neither fully appropriate nor adequate for taking account of the full costs involved. These considerations suggest that the limited duration of many of the transitional periods used to reflect some SDT "concessions" in the UR agreements renders them inadequate and inappropriate as a basis for capacity creation for enhanced trade and production. Contrary to the realities on the ground in many low-income countries, both the use of and the limited duration of the transitional periods appear to assume the existence of the appropriate human, institutional and resource capacities required to enable these countries carry out their WTO obligations and take maximum advantage of the potential opportunities provided by the multilateral trading system.

The deficiencies of the post-UR SDT provisions point to the need for a careful re-thinking of the original concept, its form and content, prior to the negotiations on specific sectors and rules during the Millennium Round. This is an issue of significant strategic importance whose neglect during the UR may be largely responsible for the patch-work nature of the resulting post-UR SDT provisions. Better informed and multilaterally negotiated decisions regarding SDT forms and contents taken before the sectoral and rules negotiations begin could more appropriately guide these negotiations and ensure that the previously agreed SDT guidelines are subsequently reflected both in the reviews of existing agreements, negotiation of new agreements and articulation of new rules. It is necessary, in particular, to negotiate and reach multilateral agreement regarding the classification of WTO members, the measurable development, trade and other parameters to be used in classifying countries, and the rules for which full or partial derogation might be granted as a means of enhancing the supply capacity of beneficiary countries.

The WTO recognizes three categories of members, i.e. developed, developing, and least-developed. However, while it indirectly defines one category (i.e. the least-developed countries) the criteria for separating members into the different categories remain

controversial and not fully transparent. While the WTO seems to have adopted the United Nations' definition of the least-developed country, it fails to acknowledge the deficiencies (including the political nature) of the UN definition. In particular, the UN definition is not designed to reflect trade competitiveness which is or should be an important concern of the WTO. But even on the basis of its largely income-based definition, the UN's list of least-developed countries excludes several low-income countries that should have been included. In an attempt, perhaps, to remedy the inherent deficiency of the UN list, the UR agreement on subsidies actually expanded the UN's list of least-developed countries to include several other countries with per capita income of up to US\$1000. This was, however, an ad hoc solution that was not extended to other UR agreements in which specific SDT provisions referred to least-developed countries.

An even greater ambiguity exists over the question of which of the WTO members are the developing countries. In the absence of a specific definition or an agreed set of criteria for identifying this group, the WTO appears to operate under an implicit self-designation arrangement which allows countries to describe themselves as developing countries. However, the increasing references in WTO discussions to the so-called "more advanced" developing countries may signal the beginnings of possible contention in future trade disputes. In addition, the unilateral decision by certain developed countries to "graduate" some developing countries out of trade preferences points in the same direction. It seems clear, therefore that the WTO cannot for too long continue to dodge the issue of negotiating an appropriate set of criteria for categorizing its member countries for the purpose of determining their eligibility for certain SDT "concessions".

An explicit categorization of WTO member countries based on a set of measurable criteria could also address a second problem i.e. how countries are graduated out of particular SDT provisions. The UR agreement on subsidies provides an example. By categorizing beneficiary countries in terms of per capita income, that agreement was able to express "graduation" in terms of measurable economic indicators (i.e. exceeding a specified per capita income over three consecutive years or achieving a specified export market share) rather than in terms of transitional period as in other agreements. In other words, when country classifications are based on measurable economic criteria, a country's graduation from SDT provisions that are applicable to a

particular category becomes automatic when the country's indicators exceed those of that category.

There are clearly many different economic (income, trade, etc.) indicators that can be used for dividing WTO members into the three explicitly recognized categories of developed, developing, and least-developed countries. These indicators can obviously be used singly or in some combination. For example, if a simple, income-based indicator is considered adequate, the World Bank's classification of countries into low-income, middle-income, and high-income countries would be an obvious choice; it appears to be determined in a transparent way and seems to enjoy wide acceptability. It may be useful, in addition to include a measure of trade competitiveness. For this purpose, manufactured exports share of total exports of 20 per cent may be suggested as the dividing line between the least-developed and the developing countries.

It may be, perhaps, more contentious to identify and negotiate the rules for which full or partial derogation should be granted to the least-developed and developing country categories. But the pre-UR situation provides a useful starting point, just as does the idea that the least-developed countries should be granted complete derogation. However, even the least developed countries can and should take on some obligations (such as tariff binding and reduction) which would commit them to rational and sound trade policy conducive to their own economic development.

Special market access, through trade preferences, has been an important component of SDT. While its actual benefits have fallen far short of the potential due to its many limitations (UNCTAD, 1995) and while further negotiated tariff reductions on a most-favoured-nation (mfn) basis will continue to erode preferential trade margins, its continued importance should not be under-estimated. In particular, it could provide an important boost to the exports of the least-developed countries if current limitations regarding product coverage and rules of origin could be eliminated. The proposal to grant duty and quota-free and bound access for all exports of the least-developed countries to the developed country markets would amount to an elimination of these limitations; it would substantially enhance the export prospects of the least-developed countries without imposing any significant "cost" to the developed countries, given the rather low share of the total export market accounted for by the least-developed countries.

This proposal should be taken a little further. One way of doing this is for the developing countries to also offer special market access to the least-developed countries, not necessarily on the same duty-and-quota-free basis as the developed countries but perhaps at up to 50 per cent of the applied tariff rates of the developing countries. Again, the "cost" to the developing countries is unlikely to be particularly burdensome. Yet, the gesture could be a valuable way not only for demonstrating "South solidarity" but also to dilute the impression that it is only the developed countries that are always being asked to carry the "burden" of all special arrangements required to enable the multilateral trading system accommodate the needs of its different categories of members.

III. Market access interests and options

Multilateral negotiations concerning market access issues in the next round will probably focus on the key sectors of agriculture, industry and services. This sectoral focus will occur in spite of the fact that there may well be trade-offs across sectors. The inclusion of the industrial sector presumes that, although it is not specified in the "build-in agenda", the sector should, eventually find its way into the negotiations. The other two key sectors, i.e. agriculture and services are prominent in the "built-in agenda" and can therefore be regarded as predetermined candidates for the forthcoming negotiations. This section briefly reviews the UR agreements on these sectors, examines their implementation experience and identifies what the broad negotiating interests of the developing and least-developed countries are likely to be with respect to each of these three sectors. An analysis of the negotiating options of these countries should go beyond identification of their interests, of course. It should, in addition cover strategies issues relating to what they may wish to offer during the negotiations as well as what kinds of coalitions may need to be built around the issues that they consider to be particularly important.

A. *Agriculture*

The Uruguay Round Agreement on Agriculture (AoA) focuses essentially on several key features of agricultural policy in the developed countries, which have constituted problems for world trade in agricultural products. To the extent that the AoA

addresses itself to such features as high levels of protection and export subsidy, it can be said that its primary concern relates to agricultural policy reforms viewed from the perspective of the developed countries whose agricultural policies are characterized by these features. By implication, it seems clear that AoA does not directly address the agricultural policy reform issues in the developing and least-developed countries. In the case of the developed countries, high levels of protection and subsidy have typically generated excess production from a decreasing number of farm units. But in the case of many developing and least-developed countries, both macroeconomic and sectoral policies have typically discouraged agriculture as a whole and agricultural exports, in particular (Krueger et al., 1988). In the low-income countries, the primary goal of policy reform (articulated and implemented largely through structural adjustment programmes) tends to be the elimination of bias against agriculture with a view to achieving a number of goals, including raising agricultural productivity, raising the level of domestic food production, and diversifying agricultural output and export by promoting new crops and processing primary commodities. In other words, the basic goals of agricultural policy reform in the low-income countries are to increase and diversify agricultural production and exports; goals which compare rather sharply with the implicit goal of AoA, which is to curb excess agricultural production and export by eliminating the policy distortions which generate this excess.

To make these distinctions is not necessarily to imply that AoA has no or little relevance for the developing and least-developed countries. In fact, high levels of agricultural support, protection and subsidy in the developed countries affect the low-income countries in several ways, not all of them negatively. First, these agricultural policies of the developed countries increase supplies to the world market and, hence, depress world market prices. This is not a bad result, of course, for the food-deficit low-income countries. But low world market prices generally make it more difficult for agricultural producers in many developing and least-developed countries to compete internationally and even in their own home markets. As a result, their agricultural production incentives are reduced which could, in turn, have the effect of slowing the development of their agricultural sector. Clearly, both categories of low-income countries have a stake in the reduction of domestic agricultural support and export subsidies in the developed countries, but for quite different reasons. Such a reduction is likely to raise the food import bill for the low-income food deficit countries; at the same

time; it will enhance the market access of the second category of developing and least-developed countries both internationally and in the developed country markets.

The AoA not only laid the foundations for the reduction of agricultural production and export subsidies but it has also achieved some significant results. Perhaps the most important of these is the firm subjection of domestic agricultural policies to multilateral discipline for the first time and the establishment of the basic principle that agricultural commodities can (and should) be treated like manufactured products under the rules of the multilateral trading system. In addition, the AoA mandated the tariffication of all non-tariff barriers on agriculture, committed all WTO members to 100 per cent binding of agricultural tariffs as well as a phased reduction of bound tariffs on agricultural products, agricultural production support and export subsidies.

These achievements notwithstanding, what the AoA accomplished is essentially the beginnings of a process of improving multilateral discipline on and liberalizing world agricultural trade which clearly has a long way to go. As a recent study (Anderson et al., 1999) shows, beyond 2005, the developed countries will continue to subsidize agricultural production and exports while the developing and least-developed countries will continue to tax both. More specifically, at the end of the implementation period of the AoA, average tariff on agricultural products in the developed countries will still be as high as 36 per cent, compared to 20 per cent in the developing countries; while agricultural production subsidy in developed countries will average 7 per cent compared to an average production tax of 2 per cent in the developing countries. With respect to agricultural exports, the tax imposed by the developing countries will average 2 per cent, while the developed countries will provide subsidies averaging as much as 7 per cent. This establishes the point that the full implementation of AoA will not result in the elimination of significant distortions to agricultural production and trade. The recognition that more needs to be done constitutes the justification for further negotiations.

Article XX of AoA reflects this recognition by mandating that new negotiations be initiated by 1 January 2000. The new negotiations are to seek further commitments, from WTO members, necessary for achieving the long-term objective of substantial progressive reduction in agricultural support and protection with a view to the establishment of "a fair and market-oriented agricultural trading

system". In addition, the new negotiations are to take into account the experience with the implementation of the reduction commitments mandated by the AoA, the effects of the implemented reduction commitments on world trade in agriculture, as well as the non-trade concerns and special and differential treatment for developing and least-developed countries.

The discussions preceding the new negotiations on agriculture have thrown up a number of issues. First is what to do about tariffs. Questions relate to the ways and means of reducing the existing tariff peaks and eliminating tariff escalation. In addition, there are concerns about the tariff quota system and its administration. Second is what to do about agricultural production support. In particular, discussions point to the need to eliminate "blue box" measures and revise the criteria for the "green box" measures. Third is what to do about agricultural export subsidies.

The fourth broad area of concern relates to the incorporation of the special needs and conditions of developing countries in market access disciplines, including the fullest liberalization of trade in tropical agricultural products and the food security concerns of the low-income food-deficit countries. Also included in this broad area is the question of the concrete follow-up actions on the Ministerial Decision on Measures Concerning the Possible Negative Effects of the Reform Programme on Least-Developed and Net Food-Importing Developing Countries. Finally, there is a range of other issues, which will be negotiated. Included in these are the disciplines on state trading enterprises; export credits export credit guarantees or export insurance programmes (which could be used to circumvent any agricultural export subsidy commitments).

From the perspectives of many low-income countries, the primary objectives to aim for in the new negotiations on agriculture should include the following:

- Substantial reduction in agricultural tariff protection in the developed countries, possibly to the levels applied to manufactures;
- Achievement of this reduction in agricultural protection in such a way that tariff peaks are substantially reduced and tariff escalation eliminated;
- Elimination of agricultural production support and agricultural export subsidies in the developed countries;

- Application of SDT provisions for least-developed and developed countries with respect to tariff reduction and the use of agricultural production and export support measures; and
- Concrete operationalization of the special assistance programme for the least-developed and net food-importing developing countries negatively affected by the global liberalization of agriculture.

The specific proposals meant to address these negotiating objectives deserve some elaboration. Above quota bound tariffs are very high in all countries (Ingco, 1996). This results from a combination of two factors; i.e. dirty tariffication by developed countries and the adoption of very high ceiling bindings by developing and least-developed countries. Thus, bound tariffs are as high as 50 to 250 per cent. It is clear that achieving the objective of increased market access will require substantial tariff reductions. In doing this, however, it is in the interest of low-income countries to ensure that not only is there a sharp reduction in overall tariff rates, the liberalization process also carries with it a reduction in peak tariffs and an elimination of tariff escalation. To achieve these latter two elements of the objective, it is necessary to adopt a tariff cutting formula in which the rate of reduction for each product is higher the greater is the product's tariff level. This is the "Swiss Formula". In other words, there should be a fairly large across-the-board reduction in tariffs, while the Swiss Formula should be used to implement the agreed tariff reductions.

The second element of market access relates to in-quota tariffs. The negotiation position that would enhance the objective of increased market access for the low-income countries would be to eliminate tariff rate quotas or substantially expand them and, in addition bind in-quota tariffs at the same rate as the average tariffs applicable to manufactured products. As the above quota tariffs are reduced and compressed and as the tariff rate quotas are expanded, the aggregate tariff level should eventually approximate that applicable to manufactured products.

The ultimate objective of the reform process in agriculture is to at least place it on the same level with the manufacturing sector. This suggests that production support for agriculture in the developed countries should be further constrained and ultimately eliminated. In doing this, at least three proposals need to be negotiated. These include the complete elimination of the "blue box"; further tight-

ening of the “green box” criteria so that they will not provide loopholes for illegal output-increasing support measures; and further reductions (by at least 50 per cent) in aggregate measures of support (AMS). Bringing agriculture in line with the manufacturing sector requires the prohibition of agricultural export subsidies. It also requires tighter disciplines on the use of such measures as export credit guarantees and insurance.

The existing AoA does not, in the view of many developing and least-developed countries, fully reflect their non-trade concerns. Yet, a fairly strong case can be made that the least-developed and developing countries require considerable flexibility to pursue certain non-trade objectives, given the multi-functionality of agriculture. Many of these countries may need some flexibility to provide appropriate agricultural support needed to alleviate poverty, maintain the standard of living of the rural population, sustain rural employment, improve national food security, and preserve the environment (FAO, 1997).

In this context and in its sectoral application to agriculture, the broad SDT provisions articulated in section II above should be adequate to provide the domestic policy flexibility needed by the least-developed and developing countries for addressing their non-trade concerns. Under these provisions, the least-developed countries (which will constitute a larger group than before if the suggested new eligibility criteria are adopted) will not have to make any reduction commitments with respect to market access, production support, and export subsidies; while the reduction commitments of developing countries will be 50 per cent of those applicable to developed countries and these will be phased-out over twice the implementation period allowed for developed countries. In addition, the least-developed countries should receive bound duty-free and quota-free access for their processed and unprocessed agricultural products into the markets of developed countries as well as preferential access into the markets of developing countries.

The AoA makes explicit provisions for assisting the least-developed and net food-importing developing countries to cope with the effects of implementing the agreement on international food prices and the effects of reduced subsidies on the export of food from the developed countries. This assistance was to take three different forms; i.e. increased food aid, short-term financial assistance to import food, and technical assistance to improve agricultural productivity and infrastructure. Neither

the first two short-term assistance measures nor the third longer term assistance measure are within the preview of the WTO and the decision that contains the explicit offer of assistance does not indicate what operational modalities would be used to believe its promise.

Meanwhile, the post-UR experience shows three trends: food aid has fallen rather than increased, food import bills of the least-developed and net food-importing countries African have risen, and technical assistance to improve their agricultural productivity and infrastructure has declined (Anderson et al., 1999). It is not necessarily the case that all of the trends are due entirely to the implementation of AoA, but a significant part of at least the first two (i.e. falling food aid and increasing food import bills) is traceable to it. In particular, there is evidence that some of the observed increases in food prices derives from the reduction of export subsidies which has also generated reduced intervention stocks and, hence, lower food aid volumes. In addition, the erosion suffered by preference receiving countries (most of which are least-developed and net food-importing developing countries) has worsened ability to cover their food import bills through increased export earnings (FAO, 1997). In short, many vulnerable low-income countries have faced precisely the kind of difficulties foreseen as a short-term consequence of the implementation of AoA, but there is no evidence that they have been significantly assisted as promised.

Africa carries the major burden of these difficulties. As many as 43 of the region's 52 countries fall in the category of low-income food-deficit countries that have also suffered from significant preference erosion. Unless the short-term needs for assistance of these countries can be met, it is likely that their food consumption will be compromised by the global agricultural liberalization process. African countries should therefore insist that the WTO establish the operational modalities of implementing the Marrakesh Decision on Measures Concerning the Possible Negative Effects of the Reform Programme on Least-Developed and Net Food-Importing Developing Countries.

It is universally recognized that agricultural markets are inherently volatile. While the consequences of this volatility are not unique to least-developed and developing countries, it is clear that the consequences are typically much more serious for this category of countries. Several factors account for their greater vulnerability. First, their economies

are more prone to external shocks that usually amplify the inherent volatility of their agricultural markets. Second, the agricultural sector plays an overriding role in their economies, given its close links with the livelihood of a large segment of the population.

Safeguard measures could be important in the context of volatile agriculture and in relation to food security concerns, particularly when bound tariffs are quite low. Hence, developing countries may need to have appropriate safeguard measures written into a new agreement on agriculture, although this is probably justifiable with respect to only a limited number of basic food commodities.

The review of the AoA and the further negotiations it mandates in the context of a new round provide the opportunity for the developing and least-developed countries to make demands from the developed countries regarding the market access “concessions” itemized above. As indicated earlier, because the focus of the AoA rests primarily on the kinds of policy distortions that are prevalent in the developed countries, it makes very little demand, in principle, on the developing and least-developed countries. This is particularly the case with respect to the two key areas of domestic support for agriculture and agricultural export subsidy. However, in the process of implementing AoA in the areas of tariffication of non-tariff barriers on agricultural products and meeting the tariff binding commitments, the developing and least-developed countries ended up with very high bound ceiling tariff rates. The resulting situation is not unlike that of the developed countries whose “dirty” tariffication process also produced unusually high tariff rates on most agricultural products. In any case, the point is that the bound tariffs of developing and least-developed countries on agricultural products are much higher than the range that may be considered appropriate to enable them meet their import protection and revenue-generation objectives. Hence, it may be presumed that these countries can afford to offer substantial reduction in their agricultural tariff levels. Such an offer would enable them provide a degree of reciprocity for their demands on the developed countries, create an opportunity for rationalizing their own agricultural trade policy, and establish a closer relationship between the applied and bound tariffs as a means of enhancing the credibility of their trade policy. In more specific terms, and as suggested in section II above, it would not be unreasonable for the developing and least-developed countries to bind their tariffs at rates not more than 50 per cent. Viewed

as an average, this is still generally higher than the applied rates in many developing and least-developed countries and it permits sufficient flexibility for generating revenue, stabilizing domestic markets and protecting producers.

B. Services

One of the major results of the UR negotiations is the General Agreement on Trade in Services (GATS). This was the product of a process whose primary goal was to obtain some degree of market access commitments from as many countries and in as many of the identified service sectors as possible (Feketekuty, 1998). In the end, while the UR established the basic architecture and structure of GATS and completed several of its key components, negotiations on a number of sectors and cross-sectoral issues continued beyond the UR. Included among these were such sectors as basic telecommunications, financial services, professional services, and air and sea transportation; and cross-sectoral issues such as transparency in government procurement, subsidies, safeguards, and labour mobility. With particular reference to the important cross-sectoral issue of labour mobility, negotiators failed to make substantive progress on a comprehensive agreement on the temporary entry of service providers during the UR. Subsequent efforts, after the UR, also failed. Hence, this and other outstanding questions were pushed to the new round.

This future round is provided for in Article XIX of GATS whose broad focus will be to achieve a progressively higher level of liberalization in all areas of services. More specifically, the new round of trade negotiations in services will attempt to eliminate or reduce all adverse measures which affect trade in services as a means of providing effective market access, and complete the unfinished agenda on GATS rules covering key rule-making areas such as emergency safeguards, government procurement, and subsidies. In addition, the new round of negotiations is intended to increase the general level of specific commitments while promoting the interest of all participants on a mutually advantageous basis and securing an overall balance of rights and obligations. Furthermore, the specified goals of the proposed new negotiations will include paying particular attention to the identification of sectors of export interest to developing and least-developed countries for which liberalization could be negotiated. In this context, the new negotiations will attempt to find ways of

facilitating further liberalization commitments on services through the movement of natural persons.

As in the case of agriculture, the new round of negotiations on trade in services will be preceded by an assessment of the implementation of GATS. From the perspective of the low-income countries, this implementation review is likely to confirm that these countries continue to be penalized by undue restrictions of the movement of suppliers of services and by a series of other barriers, including anti-competitive practices, particularly in air and sea transportation as well as in professional and business services (Mashayekhi, 1998). The movement of natural persons faces many barriers and barrier-like formalities (including visa requirements). Countries tend to impose a wide variety of conditions on the movement of services providers. These can be broadly categorized into quotas, economic needs test (ENT), and qualification requirements. ENT involves a services supplier's entry into the country where the services are to be provided being conditioned upon a determination that no resident or national of the country is available and qualified to carry out the assignment, that the job has been advertised, and that the employment level, wages and other working conditions are the same as for nationals of the country. In addition, qualifications and licensing requirements, as well as the regulations of professional bodies (such as lawyers, accountants, architects, engineers, medical practitioners, etc.) impede the entry of foreign services suppliers due to the non-recognition of their professional qualifications, burdensome licensing requirements and imposition of discriminatory standards. These problems point in the direction of two broad conclusions that a review of the implementation experience of GATS is likely to confirm.

First, the special GATS provisions (i.e. Articles IV and XIX: 2)) which are meant to promote the increased participation of developing and least-developed countries have not been fully operationalized and implemented. There is, in general, no clear mechanism for implementing the GATS provisions directed at addressing the specific needs of the low-income countries with particular reference to flexibility in the liberalization process and offer to them of enhanced access to technology, distribution channels, and information networks. Second, commensurate market access has not been provided to the low-income countries in the services sectors and modes of supply that are of particular export interest to them. This is typified by the lack of meaningful liberalization with regard to the movement of natural persons in the absence of commercial presence.

Article IV recognizes the basic asymmetry, in the area of trade in services, between the high-income and low-income countries. Based on this recognition, it establishes a number of obligations on the part of developed countries to extend benefits to developing and least-developed countries, particularly in three key areas. First, it calls upon the developed countries to assist the strengthening of the domestic services capacity of developing and least-developed countries and its efficiency and competitiveness through access to technology. Second, it provides for the improvement of the access of developing and least-developed countries to information networks. Third, it obligates developed countries to liberalize access to markets in sectors of export interest to the low-income countries. This applies, in particular to implementing and enhancing the commitments of developed countries with respect to the movement of natural persons. These three areas are, in a sense, closely interrelated. Making GATS Article IV effective through enhanced technology transfers would also require complementary measures involving significant improvements in the commitments by developed countries relating to the movement of natural persons, especially contract personnel and independent professionals through whom key technology transfer components would occur.

Developing and least-developed countries could justifiably point to the existing imbalance and asymmetry in the treatment of the four modes of supply of services and how this negatively affects their export interests. It could be noted, more specifically, that after concluding agreements in such services sectors such as basic telecommunications and financial services – areas in which the developed countries have clear comparative advantage and hence are primarily of export interest to them – attention should turn to sectors and modes of supply in which the low-income countries may be presumed to have an advantage. To redress this imbalance, the new round of negotiations should focus on eliminating a range of barriers against the movement of natural persons. There are two broad categories of the barriers that need to be addressed. One relates to economic needs tests (ENTs) and the other has to do with professional qualifications. Both are widely used by many countries, to qualify their commitments regarding the movement of natural persons.

Commitments could be enhanced by establishing an ENT Exemption List to cover services sectors and/or categories of professions for which ENT would not be used as a barrier against the movement of natural persons. This list could also contain short-

term exemptions from visa requirements for service providers in certain occupations. In the alternative, countries could create "GATS-visas" to provide automatic multiple-entry visas for services providers in certain services sectors and/or categories of occupations. The establishment and progressive expansion of an ENT Exemption List should ensure greater predictability of a country's policy regarding trade in services through this mode of supply. A similar result could be obtained through mutual recognition of certain categories of professional qualifications and the non-discriminatory application of internationally established standards.

The WTO negotiating process rests, ultimately, on the principle of reciprocity. It is to be expected, therefore, that the low-income countries will be required to offer some commitments in the new round of negotiations on trade in services. The challenge that faces them in this content is to ensure coherence between their own national development policy objectives and the new commitments they should offer in terms of market access and national treatment (UNCTAD, 1999). In particular, it would make sense for developing and least-developed countries to offer commitments in those sectors and modes of supply that could assist in enhancing the efficiency and competitiveness of their domestic services capacity. Key among these are the services that are critical inputs into production whose inefficient provision constitutes a tax on the production of the associated goods. Therefore, services sectors whose efficiency will improve the infrastructure and means of services delivery, such as basic telecommunications, energy supply, and air and maritime transportation deserve special consideration. In making commitments in these areas, however, developing and least-developed countries should bear in mind that attaining efficiency is not just a matter of liberalizing international trade barriers but also of instituting an appropriate domestic regulatory framework; without the latter, the efficiency benefits of the former may not be (fully) realized (Mattoo, 1999).

Market access negotiations on trade in services may be facilitated by the adoption a "formula" approach through which countries would agree to eliminate or reduce by a given percentage certain types of market access restrictions, such as quotas, citizenship requirements, limitations on the activities of locally established foreign-owned enterprises, etc. (Feketekuty, 1998). But the establishment of separate targets, through this "formula" for developed, developing, and least-developed countries would probably not be necessary. This is because

the GATS has established a built-in approach to SDT that is unique and quite different from the one (which is essentially "add on") used in other UR agreements. In particular, the GATS structure provides for the integration of the development dimension into virtually all elements of the agreement through three innovative mechanisms. First, market access and national treatment are negotiated concessions relating to specific services sector or subsector. Second, the negotiated commitments are based on a positive-list approach which allows for a more gradual liberalization and the possibility of trade-offs and obtaining reciprocal benefits. Third, under Article XIX:2, the low-income countries have the flexibility to open fewer sectors, liberalize fewer types of transactions and progressively expand market access to foreign services suppliers in line with their level of development. In addition, when making access to their markets available, developing and least-developed countries also have the right to attach to such access specific conditions relating, for example, to technology transfer, training, local content requirements, etc.

C. *Manufactures*

While agriculture and international trade in services are pre-determined components of the market access negotiations in the Millennium Round, the inclusion of trade in manufactured products does not enjoy this status. Hence, there is considerable debate about whether the new round should include negotiations leading to further liberalization of trade in manufactures. The existence of continuing debate indicates that support for the inclusion of this issue in the negotiating agenda is not unanimous. Some developing and least-developed countries regard talk of negotiation on industrial tariffs as "premature", citing in support the need for them to "digest" the impact of their UR tariff reduction commitments. There are other countries, however, who view the inclusion of industrial tariff negotiations as a way of ensuring a more "balanced" and comprehensive round; according to this perspective, negotiations on industrial tariffs would complement those mandated in the built-in agenda on agriculture and services.

The debate suggests at least three reasons why the inclusion of industrial tariff negotiations could be important from the perspectives of the low-income countries. First, the proposal for bound quota-and-duty free market access for all exports of the least-developed countries in the developed-country

markets needs to be formally negotiated and agreed in both the agricultural and manufactured goods sectors. Hence, it would be in the interest of the least-developed countries to have industrial tariff negotiations placed explicitly on the agenda of the Millennium Round. Second, the developing countries have an obvious interest in the reduction of industrial tariff peaks and elimination of tariff escalation in the markets of developed countries. These are also problems that can be properly addressed only if negotiations on industrial tariffs are part of the new round. Third, it appears that the low-income countries could derive substantial benefits from further liberalization of trade in manufactured products and hence, for this reason, industrial tariff negotiations should be admitted into the agenda.

Each of the last two reasons deserves further elaboration. To begin with, it is well established that, although the UR reduced the overall degree of tariff escalation in developed countries, a considerable amount of it continues to exist in respect of products of export interest to the low-income countries. In addition, post-UR tariff escalation in the developed countries shows a significant bias against imports from the low-income countries; this being a specific manifestation of the observed fact that “the trade-weighted aggregate manufacture applied tariffs facing developing country exports of manufactures to high-income countries are almost four times higher than the same tariffs facing industrial country exporters to the same markets” (Hertel and Martin, 1999: 4). In principle, not only the level of a tariff but also the structure of the tariffs can create distortions in international production and trading systems. In particular, tariff escalation can be a major obstacle against the promotion of local processing in exporting countries. To the extent that it creates a bias towards trade in primary products, tariff escalation tends to have a negative effect on the industrialization efforts of low-income countries (UNCTAD, 1998). Tariff escalation occurs when tariffs rise with the stages of further processing. Escalating tariffs provide added protection to domestic processing industries while reducing the access of exporters to the market for processed products. In this sense, tariff escalation may constitute a significant problem for the diversification of the exports of low-income countries. A recent study (FAO, 1997) shows that while food processing constitutes a major export industry of low-income countries, their exports are largely concentrated in the first stage of processing; more advanced food industry products make up only 5 per cent of the food-industry exports of least-developed countries and about 17 per cent

of that of developing countries compared to almost 33 per cent for the developed countries.

Post-UR tariff peaks also constitute a significant market access barrier for the low-income countries. UNCTAD (1998) shows that large proportions of clothing and textile imports from the low-income countries (in the US, the EU, Canada, and Japan) are subject to high tariffs which are typically combined with quantitative import restrictions. The same problem extends to such products of strong export interest for the low-income countries as footwear, leather and travel goods. Furthermore, it is claimed that processed food products account for about 30 per cent of all tariff peaks in the EU, about 17 per cent in the US and as much as 40 per cent in Japan. It seems that the problems of tariff peaks and tariff escalation are attributable, at least partly, to the linear tariff reduction approach that was utilized in the UR negotiations which resulted in larger reductions in lower tariffs and hence accentuated tariff peaks and tariff escalation. Thus, dealing with these problems requires not only having negotiations on industrial tariffs on the agenda of the new round but also adopting the “Swiss formula” approach as a means of generating a liberalization process that could reduce tariff peaks and eliminate tariff escalation.

Hertel and Martin (1999) provide strong support for the final reason why the low-income countries should ensure that industrial tariff negotiations are included on the agenda of the Millennium Round. The argument, in a nutshell, is that further multilateral liberalization of trade in manufactured products would not only yield significant export gains for the low-income countries, these countries also stand to make substantially larger gains than the developed countries. This argument is built around several stylized facts: the share manufactures in the merchandise exports of developing countries is around 75 per cent and will increase further; almost 40 per cent (and rising) of developing country exports of manufactures go to other developing countries; exports of manufactures from developing countries face an average tariff of about 13 per cent in other developing countries and roughly 11 per cent in the developed countries. Hence, a significant across-the-board reduction in the tariff on manufactures will stimulate demand for developing country exports relatively more than they do for developed country manufactured exports. As a result, the “biggest gainers from manufactures tariff cuts would be the developing countries as opposed to the high-income economies” (Hertel and Martin, 1999, 12). It

is important to note that this result reflects a combination of the increased market access enjoyed by the developing countries (in their own markets as well as in those of the developed countries) and the increased efficiency gains to be derived from reducing their own protective barriers.

On balance, the developing and least-developed countries could find it beneficial to include industrial tariff negotiations in the agenda of the new round if doing so would lead to the following: (i) enable the least-developed countries to receive a multilaterally bound duty-free and quota-free access for all their exports to the developed countries as well as substantial preferential access (up to 50 per cent of the applied manufacture tariffs) for all their exports to the developing countries; (ii) substantially reduce tariff peaks and eliminate the tariff escalation that confront the exports of manufactures from the developing countries to the developed countries; and (iii) reduce the tariff barrier on manufactured products between developing countries. The market access obligation on the part of the least-developed countries should include an agreement to accept 100 per cent binding of their industrial tariffs and at a bound rate of not more than 50 per cent. This obligation is not just a quid pro quo for the special market access benefits they will receive from the developed and developing countries but, perhaps more importantly, as a means of ensuring that they do not have room to exercise more flexibility than they require to maintain modest protection and generate adequate fiscal revenue and to ensure that their trade policy becomes more stable, reliable and credible.

IV. Multilateral rules and domestic regulatory systems

The increasing integration and globalization of the world economy appear to be associated with greater concerns with national domestic policies in so far as they may be perceived to affect international competitiveness. These perceptions have, in the last two decades or so, often been translated into pressures to reduce differences in domestic policies at the national level that are thought to have significant consequences for trade. In addition, the globalization of production and markets appears to focus greater attention on large differences in national regulatory systems and their cost implications. As a result of these recognition and pressures, an increasing component of the multilateral trade agenda “now goes beyond the border into areas such as domestic

regulation” (Stiglitz, 1999: 36). The recent coverage of international trade in services in multilateral trade agreements has moved this process forward because of the close relationship between domestic regulatory reform and the liberalization of international trade in services (Feketekuty, 1998). Since many services sectors are heavily regulated by national governments, effective liberalization of trade in services often requires simultaneous reform of domestic regulatory systems, at least to reduce or eliminate elements of discriminatory bias against foreign service providers.

Blackhurst (1998) traces how the GATT/WTO mandate has evolved to reflect this movement of the multilateral trade agenda from basic concern with border measures into the arena of domestic policies and associated regulatory systems. As he notes, the GATT system originally covered trade in goods and its policy coverage was limited to measures applied at the border, specifically tariffs and quantitative restrictions. But during the Tokyo Round (1973–1979), the GATT made its first significant move inside the border as multilateral rules were negotiated to cover technical standards, production subsidies, and government procurement. However, the new set of rules took the form of “codes” to which only a sub-group of the GATT contracting parties subscribed. All this changed more dramatically as a result of the Uruguay Round when the GATT/WTO mandate was expanded even further. In particular, a new trade policy review mechanism was established in the context of which the trade regimes of individual members are collectively reviewed and evaluated by other WTO members, and the list of national policies covered by multilateral rules was further expanded to include investment policies in the services area, national laws for intellectual property protection, sanitary and phytosanitary regulations, regulations for pre-shipment inspection, and customs valuation. In addition, the Tokyo Round “codes” were fully multilateralized; while cooperation was established between the WTO, the World Bank and the International Monetary Fund with view to achieving “greater coherence in global economic policymaking”. Finally ongoing discussions within and outside the WTO suggest that its mandate may be further expanded to cover additional issues in the traditional domain of domestic policy such as investment policy, competition policy, transparency in government procurement, labour standards, and environmental standards.

The increasing intrusion of WTO rules into the national domestic policy space has been driven by at least two factors (Baldwin, 1999; Blackhurst, 1998).

First, the success of the GATT/WTO system in reducing conventional border protection measures, especially among the major trading countries, makes non-border restrictions on market access more visible to trading partners. Second, a desire to gain access to the dispute settlement and enforcement mechanism of the WTO appears to have become a strong motivation for some of the new and proposed multilateral rules that intrude into the domestic policy space. In other words, the perceived effectiveness of trade sanctions seems to attract those who wish to tie their pet causes to the mast of the WTO, even when these may have very little to do directly with trade and trade policy.

It is clear, of course, that the influence of policy on trade flows is not necessarily limited to the impact of border measures but can, in principle, extend to any policy interactions that indirectly affect trade through their impact on domestic production and consumption (Peroni and Whalley, 1998). To this extent, therefore, a wide variety of domestic policies can be drawn into the debate regarding the restrictiveness or otherwise of a country's trade and trade-related policy regime. Similarly, a large number of domestic policies can be viewed as possible substitutes for traditional border measures for the purposes of restraining or promoting trade. It is in this context that a strong case can be made that national standards and domestic regulations could create significant barriers to trade over and beyond the explicit trade barriers at national borders. It is important to note, however, that the indirect impact of domestic policies on international trade flows is more likely to become significant only after border measures have been sufficiently reduced. In other words, such domestic policies may become "binding constraints" on trade flows when border measures have fallen to, perhaps, the current level among the developed countries; they are therefore unlikely to have the same significance in the developing and least-developed countries where traditional border trade barriers are still quite high.

Where a range of domestic policies and regulations is considered to have significant impact on international trade flows, it could become a legitimate candidate for multilateral rules. The multilateral agreement that codifies such rule can be justified to the extent that it helps to offset an externality imposed by policies of other countries and it helps governments to overcome domestic political economy constraints that impede the adoption of appropriate domestic regulatory reforms (Hoeckman and Holmes, 1998). But the articulation and negotiation of such

common sets of multilateral rules pose difficult problems, given that such agreements would involve a large number of countries at different levels of development and with different cultural, social and political systems (Cable, 1996). The process must confront the fundamental question of how far national policies and domestic regulatory systems should be harmonized globally and how much domestic policy space should be left to national governments. While a convergence of national policies and regulatory standards could facilitate international trade in goods and services, the process faces significant operationalization problems. In any case, as Mussa (1997: 7) argues, "there is no presumption that harmonization of all domestic policies and business practices is necessary for trade to be mutually beneficial... if it were, should we also demand the harmonization of climate?" Much more importantly, there is danger that the current trend risks overloading the multilateral trading system with too many objectives.

Where they are particularly significant, the trade-inhibiting impact of national policies and domestic regulations may need to be harmonized. This can be accomplished in one of two ways (Baldwin, 1999). Total harmonization can be achieved via a process of multilateral negotiations in which differences between national rules are narrowed. The same result can be achieved through the "hegemonic route" in which other countries adopt the national standards of the hegemony. Even in the negotiation route, harmonization implies the imposition of a uniform set of rules and the rules that are likely to form the core around which the harmonized norms are constructed are likely to be those of the developed countries. Put more directly, Baldwin (1999: 24–25) asserts that "hegemonic harmonization is the default option for many small nations that are heavily dependent on a large trading partner such as the US, the EU or Japan ... the ongoing mutual recognition agreements and hegemonic harmonization will tend to systematically discriminate against industrial goods produced in developing nations".

An important way to protect the developing and least-developed countries from this danger is to insist that the WTO should reduce the degree of intrusion of its rule-making mandate to the bare minimum which is necessary to provide a viable framework for open cross-border competition and trade flows (Feketekuty, 1998). Since multilateral trade rules are basically designed to ensure market access rather than to directly promote economic efficiency and social welfare, these rules should be limited to general principles and procedures that en-

sure the non-discriminatory design and application of national policies and domestic regulatory standards whose primary aims would be to enhance economic efficiency and promote social welfare. These are aims requiring policies and regulations that must be addressed at the national level.

The discussion above suggests that the current trend towards the harmonization of national policies and domestic regulations through the articulation and negotiation of multilateral rules is largely inappropriate for many low-income countries and is, in any case, likely to force them into arrangements that are inherently likely to systematically discriminate against their exports. It may be useful to explore further whether or not and the extent to which this general conclusion may be confirmed in the case of some of the existing or proposed multilateral rules. For analytical convenience, it is useful to attempt to classify these rules into a few broad groups, based largely on what appears to be their predominant objectives. While no claim can be made regarding their universal acceptance, the groupings indicated below offers a rough indication of shared features within each category. The existing multilateral rules that can be described as primarily *trade-facilitating* include those on anti-dumping, pre-shipment inspection, customs valuation, subsidies, and TRIMS. Proposed new rules under the same group include those on competition policy, investment policy, and transparency in government procurement. These existing and proposed rules are aimed at facilitating trade through increased efficiency and competition. There is a *special property protection* multilateral agreement that appears to stand all on its own. This is the TRIPs agreement. Within the category of *health and safety protection* rules are the SPS and TBT agreements while under *social standards* can be classified the proposed multilateral rules relating to labour and environmental standards. Each of these broad categories is discussed in what follows.

A. Trade facilitation rules

In broad terms, existing and proposed multilateral rules aimed at facilitating trade flows either by increasing the efficiency of the trade-flow process or enhancing competition cover a wide variety of measures and agreements. Several UR agreements (customs valuation, import licensing procedures and pre-shipment inspection) have direct implications for customs procedures and the efficiency with which trade moves across national borders. The primary aim

of these multilateral agreements is to harmonize and simplify customs procedures around the world as a cost-effective way of reducing non-tariff barriers associated with trade (Messerlin and Zarrouk, 1999). They have been motivated largely by the high administrative and compliance costs (estimated at 7 to 10 per cent of global trade) imposed by the customs procedures. These costs are, in turn, traced to excessive documentation requirements, lack of automation, lack of transparency in import and export requirements, and corruption among customs officials induced, partly, by over-regulation. However, there exists the World Customs Organisation (WCO) whose mandate it is to harmonize and simplify customs procedures worldwide. The WCO has indeed established the basic principles involved in the context of its Kyoto Convention. This provides a comprehensive articulation of trade facilitation objectives, mechanisms and “best practices”. It envisions a technology-based customs administration system featuring electronic reporting of trade transactions, risk assessment based on selective checking, and periodic declaration and payment. Obvious difficulties arise for low-income countries with inadequate infrastructure. For the developing and least-developed countries, compliance with the Kyoto Convention will require human and institutional capacity building involving valuation and enforcement training and the establishment of the necessary infrastructure.

Those who see a WCO/WTO cooperation essentially in terms of lending the WTO dispute settlement mechanism to enforce WCO’s Kyoto convention must recognize that the low-income countries will face huge implementation and compliance costs. These create huddles that cannot be overcome through “time-phased concessions”. It is unlikely that implementation and compliance can be fully achieved as quickly as the time-phased concessions imply in the absence of substantial technical and financial support. Finger and Schuler (1999: 10) argue that the valuation process prescribed by the multilateral rules “presumes an administrative environment that does not exist in many of the least developed countries”. This is clearly an example of the “hegemonic route” to harmonization of national standards that inherently penalizes the low-income countries.

The implementation of the TRIMs agreement does not involve the same kind of resources in building up human and institutional capacity in the developing and least-developed countries. But it does affect their capacity building effort in another way. By prohibiting or stringently restricting the use of

certain traditional tools of industrialization and development, such as local content requirements, the agreement may constrain the production and export supply response of many low-income countries whose "initial conditions" do not include a virile industrial base. Article 5.3 of the TRIMS agreement recognizes the importance of taking account of the development, financial and trade needs of the least developed and developing countries in dealing with TRIMs. Its operationalization could provide a mechanism through which a more careful and analytically based differentiation might be made between the various measures whose use is constrained or prohibited by the agreement to determine what their adverse effects on trade are, and how significant are the adverse trade effects. This process could produce a more reasonable classification of measures whose permissible use, constrained use or prohibition would be related to different levels of development or country category (least-developed, developing or developed) rather than to "transitional periods" that do not capture each country's initial conditions and capacity-building needs.

Competition policy was introduced as a possible subject of multilateral negotiations in the context of a review of the TRIMs agreement. Its subsequent discussion has focused on three possible end-results: a stand-alone multilateral agreement on competition policy, strengthening of the competition policy aspects of existing UR agreements, and no WTO rules at all on competition policy.

Clearly, competition policy has an important role to play, in all countries, in promoting a competitive environment in which enterprises are not permitted to behave collusively and market power is not exploited to the detriment of societal welfare. But all this refers to the responsibility of national competition policy. There may, of course, be particular reasons for needing some international cooperation in competition policy. Differences in national competition regimes might result in important omission that could be eliminated through international rules. Such multilateral arrangements may also protect low-income countries from the abuse of market power by transnational companies whose activities they may lack the power to control on their own.

There are some preliminary estimates (see Peroni and Whalley, 1998) which show that the potential gains to developing countries from effective competition policy could be as large as 5 to 6 per cent of national income. But most of these gains are expected to result from two major sources; i.e. re-

duction of mark-ups by foreign suppliers to developing country markets, and reduced concentration in the domestic markets of the developing countries associated with competition policy. Both of these are achievable through liberalization, deregulation and enhanced competition measures in the developing countries themselves and they are thus not necessarily attributable to multilateral competition rules. This suggests the interest that the low-income countries may have in pursuing an active competition can and should be pursued through domestic initiatives and independently of the WTO's (Hoekman and Holmes, 1998). Many of these countries do not have national competition laws, and those that have them on paper are often severely constrained by limited ability to implement due to lack of appropriate human and institutional capacity. While the existence of some multilateral rules and surveillance mechanism could conceivably assist the process of establishing national competence in implementing competition rules in the low-income countries, this "assistance" is likely to come at a very stiff price, in terms of harmonized rules and implementation infrastructure, that most of them can ill afford.

Investment is the second major issue suggested as the basis for establishing multilateral discipline as part of the review of the TRIMs agreement. Some of the discussion has gone even further than this to argue in favour of a comprehensive set of multilateral principles and rules on investment developed and integrated into the WTO framework. But, as in the case of competition policy, there does not appear to be a convincing case to justify the support of the low-income countries for moving in this direction. These countries must be wary of an uncritical and undifferentiated approach to foreign investment that a multilateral agreement might directly or indirectly endorse. In any case, some existing agreements (such as TRIMs and particularly GATS) do provide ample scope for pursuing further liberalization in the area of investment. As Hoekman and Saggi (1999) suggest, by including "commercial presence" as one of the four modes of supply of services, GATS offers an opportunity to liberalize foreign direct investment in services, where it matters most.

B. Special property protection rules

The TRIPs agreement stands out as a clear case of unambiguous loss for many developing and least-developed countries. It is, perhaps, the clearest case of a multilateral agreement that has been smuggled

into the WTO framework and away from the legitimate mandate of another international organization (WIPO) simply to take advantage of what is perceived to be the more effective enforcement mechanism of the WTO. As Primo Braga et al. (1999) demonstrate, the standard of intellectual property protection in a given country is largely explained by its level of economic development. Hence, for poor countries that have limited ability to create much intellectual property and thus little to gain from its protection, maintaining a strong intellectual property protection regime amounts to granting “monopolies” to foreign patentees at considerable cost to themselves. In addition, strong intellectual property protection rights tend to restrict the diffusion of knowledge and information so badly needed for the development of low-income countries; it is also associated with price increases (e.g. for pharmaceutical products) which have adverse distributive implications.

In their attempts to implement the TRIPs agreement, many low-income countries have been making massive changes to their legislative and enforcement institutions. The enforcement related problems are particularly serious as they involve, in many cases, wholesale training or retraining of administrative, judicial, police and customs personnel. The negotiations leading to the TRIPs agreement did not “deal with the costs of the investments the agreement mandated - not even how much the costs would be, much less with the return in that application versus in some alternative use” (Finger and Schuler, 1999: 25). Although Article 67 of the agreement makes provision for technical assistance, while Article 6.2 obligates developed country members to provide incentives to enterprises and institution in their territories for the purpose of promoting and encouraging technology transfer no operational modalities have been established for actualizing any of them. To the extent that the new round presents the developing and least-developed countries with an opportunity to make changes in the TRIPs agreement, concerted efforts aimed at establishing these modalities and making these provisions obligatory should probably receive priority.

C. *Health and safety protection rules*

The main multilateral rules for protecting health and safety in the context of international trade are codified in the WTO agreements on sanitary and phytosanitary (SPS) measures and the technical barriers to trade (TBT). In principle these agreements seek to maintain food product quality and safety with-

out unduly restricting cross-border trade. While both are expected to reflect standards established by the appropriate and widely recognized international standard setting bodies, it is recognized that rising consumer concerns in developed countries over food quality and safety may induce these countries to set increasingly higher standards, based on their own assessment of risk.

In the cases of SPS and TBT, it is not particularly useful for the low-income countries to seek exemption from or a weakening of the multilateral discipline since this would simply erode consumer confidence in their exports. Yet, they face major challenges in implementing these agreements, given the often large gap between the current standards of their exports and the levels of the internationally recognized standards, and their limited technical and financial ability to bridge the gap as quickly as the agreements provide for. Both agreements articulate SDT provisions for the developing and least developed countries primarily in terms of offer of financial and technical assistance. But, again, as Finger and Schuler (1999: 5) observe, “this provision is not a binding commitment; in effect, the developing countries have taken on bound commitments to implement in exchange for unbound commitments of assistance to implement”. The new round of multilateral trade negotiations may provide the opportunity to demonstrate the fundamental unfairness of this and to press for a rebalancing of the rights and obligations implicit in these two agreements.

D. *Social standards*

The proposal to negotiate multilateral WTO rules relating to labour and environmental standards is, in many ways, not unlike what the developed countries apparently succeeded in doing with respect to the TRIPs agreement. In particular, this proposal seeks multilateral agreements in the context of WTO essentially to benefit from the effective enforcement mechanism of the WTO which appears lacking in the International Labour Organization (with respect to labour standards) and in the various fora for the multilateral environmental agreements (MEAs). Also, like intellectual property protection, both labour and environmental standards tend to be related to a country’s level of development, and hence attempts to impose standards that are based on some harmonized higher levels on the low-income countries are likely to be unsustainably costly for them and hence, in the end, counter-productive.

Along these lines, Krueger (1999) likens the demand for labour standards to that of normal goods which tends to rise with income and argues that if trade agreements lead to increase in national income, the beneficiary countries are likely to choose on their own to strengthen and enforce appropriate labour standards. Anderson (1996: 318) makes roughly the same point with respect to environmental standards i.e. “differences in per capita income matter because as countries become richer, they increase their demand for normal goods, including environmental standards”.

In addition, both of these analysts offer some benchmarks with respect to the relationship between income and the standards. Anderson (1996: 324) asserts that “once middle-income status is reached, people tend to alter their behaviour in ways that reduce pressures on the environment”. On his part, Krueger (1996: 295) offers more specific numbers: “in countries where GDP per capita exceeds \$5000 (in 1996 prices) ... employment of young children is negligible”.

There are, at least, two other arguments against developing multilateral agreements on labour and environmental standards in the context of the WTO. First is that attempts to impose unnecessarily high labour and environmental standards on the low-income countries will amount to depriving them of important elements of their comparative advantage in international trade Krueger (1995). Secondly, the development of WTO rules for enforcing labour and environmental standards would explicitly invite the use of trade policy for dealing with problems that are not caused by international trade. These are problems of development that cannot be solved in an effective and sustainable ways using trade policy measures. It should not be surprising, of course, that in spite of the fairly strong arguments against the proposal, attempts will continue to be made to pursue it further during the forthcoming negotiations. The developing and least-developed countries therefore need to be particularly alert to avoid having a new set of TRIPs – like multilateral agreements imposed on them again, perhaps via the omnibus “single undertaking” approach.

V. Participation in the WTO process

Since the Tokyo Round and particularly in the build-up leading to the launch of the Uruguay round, the developed countries have called for greater integration of the developing and least-developed

countries into the global economy and their fuller participation in the WTO process. The UR agreements, the problems associated with their implementation and recent decisions of the WTO show increasing appreciation of the fact that many of the low-income countries are not able to participate fully and effectively in the WTO process due to acute limitations arising from inadequate human and institutional capacity, sub-optimal allocation of that capacity in some cases, as well as the management structure and the decision-making processes of the WTO itself.

There are at least, three distinct but inter-related dimensions to participation in the WTO process (Oyejide, 1999). First is the active involvement in designing the rules governing multilateral trade and trade-related interactions. Second is the “give-and-take” involved in the process of trade negotiations through which interests are identified, articulated and “concessions” constructed around these interests are exchanged. The third dimension of participation consists of the effective use of the established rules and institutional mechanisms to ensure that each member country’s rights are enforced and its obligations are met.

Taken together, these three dimensions of participation in the WTO process pose significant challenges for the low-income countries. Their active participation is an important way of ensuring that their particular concerns and interests are adequately reflected in the agreements that define the rules of the world trading system as well as the compliance and enforcement mechanisms for implementing the agreements. To do this effectively, they must be able to articulate their interests and effectively define their rights in the WTO framework. As the WTO process becomes increasingly more complex and technical, this challenge becomes even more critical.

The extent and quality of a country’s participation in the WTO process are largely determined by its capacity to deploy a number of competencies (UNCTAD, 1996). One set of these competencies involves the capacity to fully understand and internalize the contents, implications and constraints of various WTO agreements; to identify and take advantage of the trade and trade-related opportunities made available under these agreements; and to fulfil the obligations that they impose. A second set of competencies relates to the country’s capacity to articulate trade objectives and effectively pursue them in the context of multilateral negotiations and to formulate and pursue trade and development strategies

that are, consistent with the country's WTO obligations. A final set of competencies is associated with the country's capacity to assert and defend its acquired trade and trade related rights against potential and actual infringement and other challenges.

These three sets of core competencies are typically channelled through three mechanisms (Blackhurst, 1999). A country's resident delegation in Geneva, skilled in negotiation and diplomacy, serves as the arrowhead. Key staff in home capitals, with analytical and policy-making skills, provide direct operational support and guidance to the resident delegation. Finally, the more general personnel requirement, with the requisite technical, legal, political and legislative skills, which is distributed among the various trade policy institutions in the country contributes to effective participation in the WTO process by interfacing with the private sector and implementing the country's commitments and defending its rights.

The special significance of the two home-based mechanisms is strongly stressed in the literature. Thus, Yeo (1998: 27) asserts that the "most important initiatives must be taken at the national level". Along the same lines, Michalopoulos (1998: 18) argues that strengthening the institutional capacity at home for policy-making and implementation is critical for effective participation in the WTO process; and concludes that "the increased range and complexity of technical issues handled by the WTO implies that the capacity of developing countries to participate effectively in the work of the WTO will depend very heavily on the analytical capacity and strength of the governmental and other institutions handling the range of WTO issues in the capitals".

Establishing an adequate and skilled professional home-based support staff has turned out to be quite difficult in many low-income countries, especially in Africa (Oyejide, 1999; Ogunkola, 1999). Two major parts of the explanation for this appear to be the diffused nature of the trade policy-making process in many of these countries and the lack of coordination among the institutions involved in the articulation and implementation of trade policy. In the typical African country, trade policy-making involves a number of government ministries, departments and related institutions. At the centre of these agencies is the Cabinet; this is the highest policy making body which is chaired by the President and in which all ministries are represented. While major trade policy decisions are conducted through the Cabinet, the key policy implementation roles are

performed by the Ministry of Finance (trade taxes and revenue), the Ministry of Trade and Industry (trade and industrial policy), and the Ministry of Foreign Affairs (commercial diplomacy and international agreements.)

Coordination problems arise from various sources, including differences regarding the location of real compared to nominal authority with respect to the articulation and implementation of trade policy as well as differences in terms of which institution has the responsibility for trade policy and which government agency has the power to negotiate and sign international (including trade) agreements) In many cases, the role of the Ministry of Finance looms quite large in the articulation and implementation of trade policy even though nominal authority typically lies with the Trade Ministry. Similarly, and as Ohiorhenuan (1998) suggests, in African countries where the Ministry of Foreign Affairs has primary responsibility for negotiating international trade agreements, not only is the country's participation driven by foreign policy rather than economic considerations, the lead agency in multilateral trade negotiations is incapacitated by its limited understanding of economic issues and its little substantive interaction with the major domestic trade policy stakeholders.

The multiplicity of institutions involved in trade policy make coordination an important issue. Coordination is necessary not only among governmental agencies but also between them and the private sector. Virtually all African countries have established some form of coordination for dealing with WTO matters. But in virtually all cases, these coordination vehicles are creatures of recent vintage (around the mid-1990s) where track record and sustainability remain suspect. In practice, coordination appears to occur primarily among institutions within the highest level of government while the involvement of the private sector is largely ad hoc and limited.

Because the smallness and low income of many developing and least developed countries may be expected to adversely affect their ability to harness the human materials and institutional capacity required for effective participation in the WTO process on an individual basis, the possibility of some regional or sub-regional coordination of trade policy has received attention. For instance, Michalopoulos (1998) argues that it may not necessarily be an optimal use of their scarce resources to seek individual representation in the context of the WTO process; it is recommended that these countries should, instead,

establish a process of consultation with “like-minded” countries in the context of which their interests can be reflected in the WTO.

The “member-driven” nature of the WTO; its wide and growing mandate, and its unusually large number of meetings and consultations (Blackhurst, 1998) demand the active daily participation of national delegates as an essential part of its activities. This places considerable premium on a country’s capacity to maintain in Geneva a large, skilled and versatile delegation which can engage in the daily meetings and consultations that ultimately move the WTO process. Many of the developing and least-developed countries face severe difficulties in this respect. In particular, most of the least-developed countries are either not represented at all or inadequately represented in Geneva; their delegates often lack technical expertise and negotiating experience; lack access to in-depth analysis of the implications of the proposal they are required to negotiate and receive inadequate support and guidance from their home capitals (Oyejide, 1990, 1997; Michalopoulos, 1998). A recent survey of African delegations in Geneva shows that virtually all of them are staffed by officials from the Ministry of Foreign Affairs rather than from the Ministry of Trade; i.e. people who have had little or nothing to do with WTO matters prior to their arrival in Geneva and whose experience is very likely not to be put to use on the same matters when they return home (Blackhurst et al., 1999).

It appears that the question of inadequate representation in Geneva is not explicable solely in terms of inadequate resources on the part of many low-income countries. These same countries are, apparently, able to maintain sizable permanent delegations in Brussels and New York; a change of priorities from political to commercial diplomacy could generate a re-allocation of an appropriate number of staff from Brussels and New York to Geneva and thus ensure a more effective representation, in most cases, at the WTO (Blackhurst et al., 1999).

But the WTO itself could be more to enhance the participation of its low-income members. One way is to substantially expand its technical assistance and another is to reach out to these countries more effectively than it has done so far. The need for technical assistance has grown rapidly since the mid-1980s as the number of low-income WTO members has increased (by over 50 per cent). However, neither the technical assistance budget nor the staffing of

the WTO Secretariat has experienced a corresponding growth. While a limited number of generous donors have provided some funding for technical assistance, this option does not offer a sustainable solution to what has emerged as a long term problem. What is needed is a decision to use technical assistance more aggressively as an instrument for enhancing the participation of low-income countries by providing adequate funding from the regular budget of the WTO and by focusing this assistance on the key human, knowledge and institutional capacity-building needs of the low-income members of the WTO.

A decision by the WTO to provide more effective out-reach services to these members would complement and enhance the provision of technical assistance (Blackhurst and Lyakurwa, 1998). The opening of WTO regional offices in Africa, Asia and Latin America should assist in providing demand-driven technical assistance more effectively and help facilitate the education of both public and private sector stakeholders in these countries regarding the WTO and its activities.

VI. Conclusion

A new round of multilateral trade negotiations will present many developing and least-developed countries with considerable challenges but also significant opportunities. They will be challenged by the fact that many of them are still struggling with the implementation of the UR agreements, their obligations under which have not been fully digested. Their preparation for a new round is likely to be mostly inadequate because many of them have not succeeded in fully building up the human, knowledge and institutional capacity that an active and effective participation in the WTO process requires. In spite of these inadequacies, a new round of negotiations will confront them with the need to take decisions on complex issues that they may not have adequately analysed and understood. As in previous negotiations, the negotiators of many low-income countries will probably not receive adequate support and timely instruction from their home capitals; and unlike their developed country counterparts who can count on the active support and assistance of the private sector, they may have to do without this important input.

But they will also be presented with significant opportunities in the new round, not only to press for

enhanced and more secure market access but also to attempt to undo some of the damages imposed by the Uruguay Round agreements dealing with rules and standards. It is clear that the low-income countries have taken on many mandatory obligations in exchange for non-binding and "best endeavour" concessions from the developed countries. Whether and how this fundamentally unfair "exchange" can be rebalanced should be a major concern for the developing and least-developed countries in the new round.

The new round should also offer the low-income countries an opportunity to be more pro-active in terms of defining its agenda. They could, for instance, take the lead by proposing multilaterally negotiated decisions regarding the criteria for categorizing WTO member countries as well as the form and context of SDT for the developing and least-developed countries. In making demands on the developed countries, in this context, it would be politically appealing of the developing countries could offer to share the "burden" of such demand by providing significant trade preferences to the least developed countries.

A fuller recognition of the significance of the WTO, by the low-income countries, for their development should be increasingly reflected in the attention and resources that they devote to the WTO process. A more active and effective participation is required if the low-income countries hope to use their WTO membership to craft a partnership for development through trade and to use its process as a means of more fully integrating into the global economy on their own terms. These countries could do more to enhance their participation by re-allocating more of their "negotiating" staff away from Brussels and New York to Geneva; the WTO could assist further by substantially expanding its technical assistance and establishing regional offices in the low-income regions.

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