

**The Unbalanced Uruguay Round Outcome:  
The New Areas In Future WTO Negotiations**

by

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## **ABSTRACT**

The grand North-South bargain of the Uruguay Round was that the North reduced import barriers, particularly in textiles and agriculture – the South adopted new domestic regulations in areas such as services and intellectual property; changes that would lead to increased purchases from the North. In mercantilist economics, apples for apples – imports for imports. In real economics, apples for oranges. Both gain from the North reduction of its import barriers, but the new domestic regulations adopted by the South could prove costly to them: (1) expensive to install, (2) the cost side of their impact is a legal obligation, e.g., in the case of intellectual property higher prices for patented goods, (3) the benefits side is not so secured.

## SUMMARY

The grand North-South bargain of the Uruguay Round was that the North reduced import barriers, particularly in textiles and agriculture – the South adopted new domestic regulations in areas such as services and intellectual property; changes that would lead to increased purchases from the North. In mercantilist economics, apples for apples – imports for imports. In real economics, apples for oranges. In agriculture, the North did not deliver its promised reduction of import barriers.

Agreements to liberalize tariffs and other border restrictions are easy to evaluate. In real economics a tariff cut, etc., advances the national economic interest of the importing (tariff cutting) country as well as the exporting. WTO new area regulations have more complex economics. In significant instances the “reforms” WTO regulations demand are not where developing country problems lie, e.g., useful customs reform has to proceed a ways before the valuation system (the only part the WTO regulates) deserves priority. In other cases, the cost side of their impact is a legal obligation, e.g., higher prices for patented goods. The benefits side is not so secured. Argentina’s experience shows, for example, no difference in the amount of FDI attracted into service sectors where it made Uruguay Round commitments and other sectors. FDI was not attracted by concessions given in the services negotiations but by macroeconomic reforms, and commitments in bilateral investment treaties to settle disputes through the International Center for the Settlement of Investment Disputes.

Mercantilist bargaining proved a useful way to achieve reform of import barriers (i.e., reductions), but in the new areas, it will take real economics. Here you can get it wrong. In significant instances, the GATT/WTO mode of attention only to the “trade-related aspects” of domestic regulation in the new areas did get wrong the impact on the national economic interest of many developing country members.

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by

*J. Michael Finger and Julio J. Nogués<sup>1</sup>*

## **1. INTRODUCTION**

The Uruguay Round produced an outcome unbalanced against the developing countries. We set out in this paper to document that imbalance and to analyze how it came about. The intent of this inquiry is to determine (a) how such a result might be avoided in a new WTO negotiating round, and (b) how the WTO might better incorporate a “development dimension” into what it does.

We find three reasons behind this outcome:

1. The developing countries’ lack of experience in WTO negotiations, particularly their (and everyone else’s) lack of knowledge of how the developing economies would be affected by what the industrial countries wanted in the WTO new areas.
2. An intensified mercantilist (our export interests first) attitude of the GATT/WTO’s major power, the US.
3. Creating the WTO put small countries over a barrel. It made ineffective the GATT tradition of decision by consensus. “No” by one country would not preserve the status quo; it meant that the country was out, stripped of the protection that the old agreement provided.

Argentina’s experience provides a country-specific example of the unbalanced outcome. It also allows us to compare the usefulness of the General Agreement on Trade in Services (GATS) and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) as ways to support development of the relevant sectors of an economy. We conclude that GATS is the better model.

Finally, we conclude that the mercantilist economics that was satisfactory for the GATT is not adequate for the more complex policy instruments that the WTO now regulates. A negotiation, particularly one driven by export sales, is not a forum that accommodates the more complex cost-benefit analysis that is necessary in the new areas. Decisions in the new areas should be structured as development/investment decisions – development issues to which a trade dimension can be fitted, not the other way around. The WTO can be complimentary, but the economics of the new areas is more likely to be identified by the unilateralism of the developing countries’ liberalization of the 1980s and early 1990s.

The structure of the paper is straightforward. We examine the North-South bargain at the Uruguay Round, taking a particular look at the outcome for Argentina in services and in intellectual property rights. We then examine how this outcome came about and proceed to draw our conclusions.

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<sup>1</sup> The authors acknowledge with gratitude comments from L. Alan Winters and from two anonymous referees that prompted us to clarify and to extend our argument in a number of places. The authors alone are responsible for opinions expressed or errors that may remain.

## 2. THE URUGUAY ROUND BARGAIN

The overall North-South bargain struck at the Uruguay Round was that the developing countries would take on significant commitments in “new areas” such as intellectual property and services, where industrial country enterprises saw opportunities for expanding international sales. The industrial countries, in exchange, would open up in areas of particular export interest to developing countries: agriculture and textiles/clothing.

### *a. Market Access– Merchandise*

When the score is totaled, a developing countries’ “surplus” on market access is not apparent. As to NTBs generally, the tariffication of agricultural protection meant that all countries that used NTBs in that sector had to remove them. Apart from agriculture, the best available information shows as significant a reduction of NTBs by developing countries as by industrial countries. (Finger and Schuknecht, 1999).

On tariffs, the developing countries’ reductions covered as large a share of their imports as did those of the developed countries. (Table 1) Their tariff cuts – when measured by how they will affect importers’ expenditure– were deeper than those of the developed countries.<sup>2</sup> If however we take into account the tariff equivalent of the MFA quotas that the industrial countries have committed themselves to remove, the depth of industrial country concessions on merchandise increases to 1.6, still less than the depth of developing country concessions.

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<sup>2</sup> As a part of what the importer pays, a tariff reduction relates to the tariff charge plus the price received by the seller, to  $P_s(1+T)$  rather than simply to  $T$ . Finger, Ingco and Reincke (1996) provide a more detailed explanation.

**TABLE 1**  
**URUGUAY ROUND TARIFF CONCESSIONS**

	<i>Developed Economies</i>		<i>Developing Economies</i>	
	% of imports	Depth of cut $dT/(1+T)$	% of imports	Depth of cut $dT/(1+T)$
<i>Concessions Given:</i>				
<i>All Merchandise</i>	30	1.0	29	2.3
<i>Industrial Goods</i>	32	1.0	33	2.7

Note: Depth of cut is a weighted average across all products, including those on which no reduction was made.

Source: Finger and Schuknecht (1999), Table T-1, based on Finger, Ingco and Reincke (1996)

***b. Smoke and mirrors***

Reductions of “x percent” on “y [share] of imports” are familiar but inexact language to describe trade negotiations. Both the Uruguay Round textiles/clothing and the agriculture negotiations used such description in a manner that distracts attention from what was in fact agreed.

***c. Textiles and clothing***

The central provision of the Uruguay Round Agreement on Textiles and Clothing requires that all textiles and clothing products be “integrated into GATT” in four stages (first day of calendar years 1995, 1998, 2002 and 2005); encompassing 16 percent, 17 percent, 18 percent and 49 percent (by 1990 volume) of imports of all specified textiles and clothing products.

This does not however require that MFA restrictions be eliminated by that schedule. To “integrate into GATT” is essentially to certify that a product is clean of restrictions that would be illegal under GATT. The base to which this integration is to be applied includes virtually the entire schedule of textiles and clothing imports.<sup>3</sup>

This careful wording has allowed the industrial countries to put off much of the market liberalization until the very end of the transition period, until 2005. Through the first two stages, which include notionally 33 percent of textiles and clothing imports, the United States has eliminated only one percent of its MFA restrictions, the EU only seven percent,

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<sup>3</sup> According to the Agreement on Textiles and Clothing, the percentages apply to “the total volume of the Member’s 1990 imports of the products in the Annex.” (ATC, Article 2, paragraph 6.) “The Annex” runs to more than 30 pages of six-digit HS products and includes all textile and clothing products that were subject to MFA or MFA-type restraints in at least one importing country (WTO Secretariat 1999, p. 66).

Canada only 14 percent. “Liberalization” to date under the ATC has been mostly on products that were not under restraint to begin with.<sup>4</sup>

#### *d. Agriculture*

The Agreement on Agriculture, even more than the textiles and clothing agreement, has proven to be much less than it appeared to be. Many industrial countries replaced existing agricultural quotas with tariff rates that minimally reduced and in some instances increased the degree of protection (Ingco, 1995; Hathaway and Ingco, 1996). Significant reduction of trade barriers, domestic support measures and export subsidies is still to be negotiated.

To understand how this outcome came about, consider that the key parts of the negotiation were the following:

- all NTMs would be eliminated and replaced by tariffs (i.e., tariffication),
- tariffs would be reduced: industrial countries by an average of 36 percent over six years, developing countries by 24 percent over 10 years, and
- there would be parallel reductions of export subsidies and of domestic supports.<sup>5</sup>

The first of these is written into the agreement as a legal obligation,<sup>6</sup> the other two are not.

The percentages by which tariffs, export subsidies and domestic supports would be reduced were set out in a document titled “Modalities for the establishment of specific binding commitments under the reform program,” (GATT, 1993) The document also gave formulas for converting non-tariff restrictions to tariff equivalents.

The document did not however have the status of specifying legal obligations. A country’s legal obligation is the tariff rates it posted in its submitted schedule of commitments. Whether or not these rates would meet the strictures of the modalities document, e.g., the extent that such rates are 36 percent below the tariff equivalent of base year protection, was a matter of negotiating politics, not legal obligation. Holding countries to these guidelines depended on negotiators checking each other’s arithmetic – did the numbers a country posted in its schedule follow reasonably from the guidelines’ base years and formulas? Where “errors” were found, a different value in the schedule had to be negotiated. The outcome – the amount of liberalization implied by the rates in the schedules – suggests that a considerable amount of slippage did not raise alarm.<sup>7</sup>

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<sup>4</sup> The ATC allows transitional safeguard measures on any product in the Annex, except for products already integrated into the GATT. There was a flurry of such applications in 1995 and 1996, but these restrictions have been almost entirely removed, there have been few applications since. The number of antidumping cases initiated by the EU against imports of textiles and clothing has been higher since 1994 than it had been before. These actions, on the whole, have not been on products that have been integrated into GATT (Finger and Schuknecht, 1999).

<sup>5</sup> Percentages for reductions in both were stated in the “Modalities” document, (GATT, 1993) .

<sup>6</sup> According to Article 4.2 of the Agreement on Agriculture: “ Members shall not maintain, resort to, or revert to any measures of the kind which have been required to be converted into ordinary customs duties ...” A footnote then states that “These measures include quantitative import restrictions, variable import levies, ...”.

<sup>7</sup> The modalities document gave developing countries the latitude to adopt ceiling bindings rather than to follow the tariff equivalence formulas. The modalities document itself not being binding, the industrial countries were



A result of the complexities of the agreement is that – without violating the Uruguay Round agreement – industrial country support to agriculture increased from 31 percent of gross farm receipts in 1997 to 40 percent in 1999 (OECD, 2000). In many industrial countries, aggregate assistance to agriculture is today higher than it was at the before the Uruguay Round.

***e. Mercantilist Economics vs. Real Economics***

Mercantilist economics is good enough for tariff negotiations. First of all, reducing a tariff or removing a quantitative restriction costs nothing to implement. A lot of money will move in different directions as a result, but putting such policy changes in place takes no more than an Executive or a Legislature signing an order. Second, while the mercantilist economics that underlies negotiations treats a tariff reduction as a “concession”, in real economics such reforms have positive effects on both the “giver” and the “receiver.” There is thus no need for negotiators to do a cost-benefit analysis. Even “concessions” are blessings, negotiators cannot get it wrong.

***f. Concessions in the New Areas are Different***

It is a mistake however to apply the same casual “concessions received vs. concessions given” to the new areas, particularly dangerous to evaluate by this standard concessions on market access vs. concessions in the new areas.

*(i.) Concessions cost money to implement*

New Area obligations likewise will cost considerable money to implement. Finger and Schuler (2000), in a review of World Bank project experience, found that to get up to speed in three areas: customs valuation, TRIPS and sanitary/phytosanitary measures, would cost each country some 150 million dollars, more than a full year’s development budget in many of the least developed countries.

*(i.) Concessions can impose real costs*

Such implementation decisions are, in real economics, investment decisions. Particularly in developing countries, where capital is scarce, it makes sense to ask if the money would be well spent.

Real economics provides no assurance that the concession giver will benefit. Finger and Schuler (2000) found that the standards imposed by the WTO agreements are basically those already in place in the industrial countries.<sup>8</sup> These regulations reflect little awareness of development problems and little appreciation of the capacities of developing countries – particularly the least developed countries – to carry out the functions that the agreements address. Unlike “concessions given” on import restrictions, “concessions given” in the new areas could very likely bring economic costs – real costs, not just the political challenges that a mercantilist perception describes as “concessions given.” For example, Hoekman (1997)

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not bound to use the formulae. This is another instance of substance being less than appearance.

<sup>8</sup> Hence no implementation costs to them.

points out that foreign takeovers are an important means of entering markets. When investment or competition policy – not import tariffs or quotas – is the instrument, increased market share could have an anti-competitive effect, not the gains from trade that reducing tariffs or quotas would bring.

*(ii.) Agriculture Exporters vs. Textiles/Clothing Exporters*

The industrial countries' obligation to remove their MFA quotas is a binding obligation – though one written so that it does not come due until 2005. In agriculture, there is no obligation past what is reflected in existing schedules. Textiles and clothing are better off than exporters of agricultural products. Concessions received by South Asian countries (including India, Pakistan, Bangladesh) cover 50 percent of their merchandise exports, for Latin American only 25 percent, Argentina 22 percent.<sup>9</sup>

***g. The Uruguay Round Bargain – Reprise***

In the Uruguay Round North-South bargain the North's mercantilist sacrifice on tariffs and quotas is, in real economics, a gain for them – even larger because of recovering the substantial MFA quota rents. The South's concessions however involve real costs to the South – significant costs to implement the policy changes, negative impacts in many cases of the changes themselves (we illustrate below this point for Argentina). Counting in MFA elimination, North concessions on merchandise import restrictions still did not equal those by the developing countries. South concessions in the new areas not only brought real costs to the South, they were entirely unrequited.

### **3. ARGENTINA: A CASE STUDY**

At the time the Uruguay Round began, Argentina had maintained inward-oriented policies for several decades. Fiscal deficits and governmental ownership of powerful enterprises producing tradable goods and public services had led the economy down a negative growth path for most of the 1980s. Policy turned almost 180 degrees in the late 1980s and early 1990s when a broad program of stabilization and structural reforms was implemented.

Like other developing countries that had chosen not to participate actively in previous multilateral trade negotiations, Argentina lacked trade negotiators with experience in what was a technically complex set of issues. Another relevant institutional fact is that during the Uruguay Round the government in 1989 shifted responsibility for trade negotiations from the Ministry of Economy to the Ministry of Foreign Affairs.

The program of reform the government was pursuing in the service sector included extensive privatization, opening to international competition and deregulation. Making the sector attractive for foreign investment was an important element. In this section we will contrast the service sector and the pharmaceuticals sector. In the former, the Uruguay Round provided a useful complement to an ongoing program of domestic reform. In the latter, there

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<sup>9</sup> Finger, Ingco and Reincke, (1996).

was no program of domestic reforms and the impact of reforms forced on the Argentine economy by trading partners will be negative.

#### *h. Services*

Previous to the government's decision to modernize the economy, the public service sector had been made up of government-owned, monopoly companies. As the quality of the services they provided deteriorated, these enterprises came under increasing public criticism. When a new government took power in mid 1989, the efficiency of these enterprises had reached such low levels that the proposal of privatizing them enjoyed widespread public support.

Building on this support the government launched in 1989 a sweeping privatization program. Power generation and distribution, communications and telecommunications, gas production and distribution, wholesale and retail trade, banking and insurance, and numerous companies in tradable goods industries such as petroleum, chemicals, iron and steel, have been privatized.<sup>10</sup> Even water companies, port facilities, railroads and roads have been transferred to private operators in long term concessions. Other than minority shares, the national government has now no stake in the numerous enterprises it controlled only a decade ago.<sup>11</sup>

##### *(i.) Service sector performance*

The privatized companies have provided both increased volume and improved quality of services. During the period 1993 to 1998, the contribution to GDP of the services sectors grew by 24 percent, goods producing industries by only 18 percent. In communications, where reform has been extensive and has attracted significant foreign direct investment, the increase in value added during the same period was 46 percent.

Though the overall trade deficit increased over the 1990s, the service sector account performed relatively well. Overall, the rates of growth of service exports and imports were about equal. (Table 3) Travel, the largest sub-sector, shows good export performance, though no subsector stands out as one in which Argentina has begun to develop a strong trade position. The sharpest movements of sub-sector trade balances are the increase of imports of finance and insurance, the increase of exports of personal, cultural services. Over the 1990s exports grew more strongly than imports in half the subsectors (not counting "Other").

Where liberalization resulted in relative growth of imports as well as where export growth has been larger, the liberalization has entailed benefits to the country. For example, the opening of trade in insurance services has meant that consumers face more choice and better services among suppliers that are competing for the market.

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<sup>10</sup> The Provinces implemented important privatization programs, but some of them still have a long way to go.

<sup>11</sup> The major exception is Banco Nación which, by deposits, is the largest bank.

**TABLE 2**  
**RATES OF INCREASE OF SERVICES EXPORTS AND IMPORTS, 1992/3 – 1998/9**

	<i>Annual Rate of Increase, 1992/3 – 1998/9</i>		<i>Comparison</i>
	<i>Exports</i>	<i>Imports</i>	
ALL SERVICE SECTORS	6.5	6.4	X>
Transport	0.3	7.3	M>
Travel	10.8	5.7	X>
Communications	-3.3	0.7	M>
Finance and Insurance	-6.9	17.0	M>
Personal, Cultural etc.	27.1	11.8	X>
Entrepreneurial	0.2	7.0	M>
Royalties	13.8	5.9	X>
Government Services	3.1	-2.0	X>
Others	51.3	0.0	X>

Note: X> (M>) means growth of exports (imports) is greater than growth of imports (exports).  
Source: Calculated from data published by the Ministry of Economy.

*(ii.) Foreign direct investment*

Following the liberalization of trade and capital accounts that was necessary to establish the currency board in 1991, inflows of foreign direct investment grew rapidly, a considerable part of it into the Argentine service sector (Table 3). 1992-98 the stock of foreign capital in the Argentine service sectors where commercial presence was bound more than trebled, to almost \$13 billion. These inflows came under the umbrella of bilateral investment treaties that generally impose no restrictions on sectors, percentage ownership, capital and profit remittances, or employment conditions.

The pattern of investment indicates however that locking in openness through WTO commitments under the GATS was not the key to attracting foreign direct investment. Table 3 shows that the growth of foreign investment was higher in service sectors where commercial presence was not bound at the Uruguay Round than in those in which it was bound. The key factors in attracting foreign investment were macroeconomic stabilization and the guarantee, in bilateral treaties, that investment related disputes would be submitted to the established international procedure through the International Center for the Settlement of Investment Disputes (ICSID).

**TABLE 3**  
**STOCKS AND PROFITS OF FOREIGN DIRECT INVESTMENT IN SECTORS WHERE COMMERCIAL PRESENCE WAS BOUND AT THE WTO,**  
**ARGENTINA 1992, 1995 AND 1998 (U.S. \$ MILLION)**

<i>Type of Service</i>	<i>Stock</i>				<i>Profits</i>			
	1992	1995	1998	% Increase 1992-98*	1992	1995	1998	% Increase 1992-98*
Entrepreneurial	5	6	16	248	1	0	1	37
Post Office Mail	0	0	310	#	0	0	23	#
Telecommunications	1,947	2,619	2,553	31	180	262	343	90
TV and Cable	0	50	1,475	#	0	5	48	#
Construction	171	159	234	36	14	24	39	180
Wholesale Trade	292	350	86	-71	80	50	-32	-140
Retail Trade	146	485	1,690	1,057	35	90	146	322
Banks	1,393	2,528	5,671	307	71	163	229	223
Other Finance	92	156	460	403	34	12	91	164
Hotel and Restaurants	54	93	96	80	7	5	12	68
Other Transport	1	34	83	15,954	0	0	17	15,391
TOTAL – Values	4,100	6,480	12,674	209	422	611	917	117
Memo: Services where commercial presence was not bound								
Electricity, Gas and Water	2,304	4,788	8,231	257	-12	423	568	4,869
Communal Services	9	12	21	132	5	2	7	38
Health	0	35	209	#	0	3	5	#
Transport	46	166	214	365	-72	-46	-42	41
Total	2,359	5,001	8,675	268	-79	381	538	784

Note: \*  $(\text{Value}_{98} - \text{Value}_{92}) / \text{Abs}(\text{Value}_{92}) * 100$   
#  $\text{Value}_{92} = 0$ .

Source: Ministry of Economy (National Directorate of International Accounts kindly elaborated these numbers for this study).

(iii.) *Locked in*

Nevertheless, in some respects, using international commitment to lock in domestic reforms has been helpful. Public misgivings have arisen against the privatization program, criticisms aimed particularly at the pricing of the privatized services and more generally at the extent to which the privatization strategy granted monopoly power and liberal formulas for rate adjustments. This, others argue, was necessary to attract investors. Criticisms have also been raised against regulators who have been weak in defending the public interest against the monopoly power the privatization program sometimes created.

International negotiations had provided however the opportunity to lock in some of these reforms against second thoughts or changing political pressures. According to Hoekman (1996, Table 4.4) Argentina in the Uruguay Round ranked 13th by number of access commitments on services among 77 developing and transition economies. Thus the new government that took over in late 1999 has had breathing space to introduce appropriate remedies. Among changes introduced, entry into the provision of telecommunications services has been opened and new companies have begun to contest the monopoly rights that were granted during the initial years to the privatized enterprises.

One can also argue that binding services concessions at the WTO that were unrequited, weakened the negotiating position of the country in future negotiations. In this regard, Argentina is today less attractive a country to exchange concessions with vis-à-vis other developing countries that at the Uruguay Round services negotiations were less forthcoming. This is a permanent loss.

Overall, we conclude that the Uruguay Round negotiations on services came at a fortunate time for the Argentine economy, as they complemented an ongoing privatization program that the government had initiated. The reforms have provided increased business opportunities for outsiders; for the people of Argentina, a stronger service sector – increased variety of products at lower costs. Relative prices of services should decline as the functioning of regulatory agencies and the administration of the competition law improve.

*i. TRIPS: Pharmaceuticals*

Advocates of the TRIPS agreement accepted that it would cause a significant revenue transfer from developing country consumers to industrial country producers. Indeed, it was such gains that motivated industrial country enterprises to press their governments in the negotiations. In return, TRIPS advocates argued, developing countries would become more attractive sites for foreign investment.

When the Uruguay Round brought pressure to change Argentina's intellectual property regime for pharmaceuticals, there was under way no domestic program of reform of the industry. In the government's judgment, the pharmaceuticals industry was performing well, the level of intellectual property protection struck the appropriate balance between producers and users.

In this instance the changes mandated by the Uruguay Round Agreement have been put into effect without complementary policies as were present in the services sector. Indeed, the most obvious difference between tariff reductions and services liberalization on the one hand,

and TRIPS implementation on the other, is that the former drives prices down to Argentine consumers, the latter drives them up.

*(i.) The cost to Argentina*

In 1999, total sales in Argentina of pharmaceuticals subject to patent outside of Argentina was about \$2.5 billion. Of sales of such pharmaceuticals, Argentine companies accounted for 30 percent, foreign companies for 70 percent. The impact of giving patent protection on these products will have two parts: (a) a transfer of sales from Argentine enterprises to the foreign patent holder, and (b) higher prices, i.e., more intensive exploitation of monopoly power by foreign patent holders. Basing his work on observed differences of prices charged by multinational drug companies in markets with and without relevant patent laws, Nogués (1993) has estimated that the transfer from Argentine consumers to foreign producers will be about \$425 million per year – this based on the size of the market in 1999 and amounting to 17 percent of the value of patented pharmaceuticals sold in Argentina that year.<sup>12</sup> Subramanian (1995) followed several alternative methodologies and came to figures for the cost to Argentina that ranged from 29 to 50 percent of annual sales.

*(ii.) Patents and Foreign Direct Investment*

If patents exist in all countries, an international drug company will be in a position to choose to source from plants in any country, including their home production sites. Chile's experience indicates that foreign investment will be lost. Since Chile expanded and strengthened patent protection for pharmaceuticals in 1991, many foreign subsidiaries have opted to stop production in the country and start sourcing from abroad. According to information provided by the Asociación Industrial de Laboratorios Farmaceuticos Chilenos (ASILFA), the list of companies that have stopped production in Chile includes Bristol Meyers, Rhodia Merieux, Bayer, Pfizer, Schering, Sandoz, Hoechst, Merck, Abbot, Ciba Geigy, SmithklineBeecham, and Warner Lambert. Similarly, several studies of Brazilian, Turkish and Argentine experiences have found that in the past, lack of patent protection for pharmaceutical drugs did not prevent foreign direct investment inflows.<sup>13</sup>

#### **4. WHY WAS AN UNBALANCED OUTCOME OFFERED AND ACCEPTED?<sup>14</sup>**

An outcome as unbalanced as the Uruguay Round's brings forward the obvious question, "Why was such an outcome offered and why was it accepted?" The question is, of course, impossible to answer, we will take it up rhetorically rather than scientifically. It provides us a perspective on how the WTO is different from the GATT, a way to ask if a similar outcome is likely in a next round.

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<sup>12</sup> Patent protection will begin in 2000, but from 1995, Argentina must have in place a mechanism for receiving applications for patents from domestic and foreign inventors.

<sup>13</sup> Frischtak (1989) for Brazil; Kirim (1985) for Turkey; and Nogués (1991) for Argentina.

<sup>14</sup> Many people who might have judged – analysts such as ourselves as well as negotiators – were carried along by the relief of seeing a long round come to a close, the hope that the close was a successful one and the euphoria of creating finally an international trade organization.

**j. The Momentum of Mercantilist Negotiations**

GATT was a success because it provided a means to make tariff decisions by focusing on exporters' interests and ignoring the rest of the underlying economics. Paul Krugman (1997), for example concludes that:

Anyone who has tried to make sense of international trade negotiations eventually realizes that they can only be understood by realizing that they are a game scored according to mercantilist rules, in which an increase in exports ... is a victory, and an increase in imports ... is a defeat (p. 114).

*(i.) Tradition of casual analysis*

Negotiators in practice have made limited attempts to tote up concessions given versus concessions received. A diligent search of US archives from the first GATT round through the Kennedy Round found no such tally,<sup>15</sup> interviews with negotiators after the Uruguay Round found none who had attempted to calculate tariff concessions given versus received at the round.

In the early rounds that took up only restrictions imposed at the border, one can understand a casual approach to evaluation. When GATT began, foreign policy – uniting Europe against further wars and later, containing Soviet communism – was for the leading country, the US, a more significant motive than was economics (Gardner, 1980). Thus it is possible that when GATT “members” arrived at the Uruguay Round, their tradition of casual analysis – no real economics and only notional quantification of the mercantilist exchange of concessions – came with them.

*(ii.) Information was not available*

Even if a developing country delegation had wanted to examine what it was getting into, neither data nor analysis were available. Argentina, one of the most active developing countries in the services negotiations, had limited data on its service sector, and what it had turned out to be inaccurate. The work program leading to the publication in 1999 of revised balance of payments accounts, uncovered serious errors in the old statistics. The old figures underestimated services imports in 1992 by \$893 millions (16 percent), and in 1998, by \$2.3 billions (26 percent). Data for sub-sectors were even farther off. Table 4 reports adjustments for trade in travel services.

**TABLE 4**  
**ADJUSTMENT TO PREVIOUS ESTIMATES OF TRADE IN TRAVEL SERVICES, ARGENTINA 1992-1998 (%)**

	1992	1993	1994	1995	1996	1997	1998
<i>Exports</i>	47	51	52	52	52	47	46
<i>Imports</i>	18	24	24	37	35	32	31

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<sup>15</sup> The search was conducted by Finger while he was an employee of the US government, as part of a study published as Finger (1979).



Source: Ministry of Economy and Public Services and Works

***k. Creating the WTO Changed Developing Country Options***

The Tokyo Round Codes had already in 1979 expanded both the scope and the detail of the GATT system. This expansion however left any country the option to decline the new obligations without giving up the protection provided by the existing GATT rules.<sup>16</sup>

The proposal to create a new organization to contain and administer the Uruguay Round agreements changed the game. The GATT/WTO heavyweights announced that as soon as the new organization existed they would withdraw from the GATT. A country that voted “No” on joining the new organization would leave itself out in the cold – with neither GATT disciplines nor those of the new agreement to protect it.

A related consideration was the indignity of not being a member of the new organization. For fifty years the international community had struggled to create a trade organization, the Uruguay Round finally provided one.

***l. Changing Trade Politics in the US***

Another part of the explanation is the increasing control of US companies over US trade policy, and the increasingly aggressive our-exports-first thrust this has brought with it.

Before the rise of international negotiations as a method for setting policy, US import policy was dominated by import competing interests and the US was a high tariff country. The US Reciprocal Trade Agreements Acts, passed with the support of export interests, gave the President the authority to reduce US tariffs in exchange for negotiated reductions by other countries. “Export politics” was the business of empowering export interests over import-competing interests in a way that delivered to the President the power to set trade policy.<sup>17</sup>

Another part of the authority of the Executive over US trade policy was the discretionary power the Congress gave the Executive over the several “trade remedies” – instruments such as safeguards and antidumping by which – within GATT rules – new import restrictions can be imposed. Over time, the Congress has eliminated much of the Executive’s discretion and has broadened the criteria under which the Executive must grant a petition for protection.<sup>18</sup> A third step, when needed, was to amend the relevant GATT/WTO text. In time, the Executive itself took on a more constituent-oriented attitude toward trade policy. Because of the technical nature of much of this, it took place below public view.

There has been a parallel devolution of power from the US government to export interests. Perhaps the most noticed instrument that empowers export interests is ‘301’. In fact ‘301’ is a trade remedy law for US exporters.<sup>19</sup>

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<sup>16</sup> Indeed, the GATT most favored nation article meant that any country that took on the code obligations had to extend them to all GATT members.

<sup>17</sup> Destler (1986) provides details.

<sup>18</sup> Some of the change-over is described in Finger (1992).

<sup>19</sup> On ‘301’ see Bhagwati and Patrick (1990).

Another part of the empowerment of directly affected commercial interests was the establishment by law of a private sector advisory process for trade policy. The system includes some 35 committees and nearly 1,000 private sector participants. Senior business executives, usually CEOs, make up the policy level committees. At regular meetings (usually four times a year), committee members advise USTR on industry positions, US negotiators brief committee members on pending matters. The two-way information flow is facilitated by regular contact between USTR and the corporate liaison officers appointed by committee members.

The make-up of their membership reveals the political clout of these committees. Of sixteen industry functional committees, thirteen have members who number among the top 100 Political Action Committees (PACs).<sup>20</sup> The services committee has among its members nine of these large PAC contributors, the committee for chemicals and pharmaceuticals has eight.<sup>21</sup>

### *m. Industry Authority Over US Policy – Pharmaceuticals: An Example*

In March of 1987, only a few months after the Uruguay Round was launched, Mr. G. Mossinghoff, then President of the US Pharmaceutical Manufacturers Association (PMA), declared that the industry was working with the US Congress to get it to “strengthen the hand of the US Government in urging all our trading partners to respect our rights in inventions and trademarks”, Mossinghoff (1987).

The Omnibus Trade Act of 1988 amended ‘301’ to include denial of adequate and effective protection of intellectual property rights to the list of actionable unfair foreign practices – even if the foreign country is in compliance with relevant international agreements.<sup>22</sup> Special 301, another part of this trade act, mandates that the USTR make annual determinations to identify foreign countries that “deny adequate and effective protection of intellectual property rights” or “deny fair and equitable market access to U.S. persons that rely upon intellectual property protection”. Again, compliance with TRIPS does shelter the foreign party.

In its 2000 “Special 301 Report”, the USTR stated that ensuring “that developing countries are in full compliance with the agreement now that the transition period has come to an end is one of the Administration’s highest priorities.” The report also announced USTR’s intention to initiate WTO dispute settlement procedures with Argentina and Brazil.

Consequently USTR, on petition from the PMA, has opened ‘301’ investigations against Argentina, Brazil, Chile and Thailand. USTR, acting on its own authority, has opened broader intellectual property rights investigations against nine other developing countries.

In their campaign to have TRIPS approved, a valuable tactical victory for producers was to insinuate into general usage the word “piracy” to describe the situation in any country in which intellectual property rights law is less favorable to producers than the laws in their own countries. This tactic suppressed from the international discourse realization that each nation has the sovereign right to set for itself the balance between the interests of producers and of users of intellectual property. In fact for decades several industrial countries had exempted

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<sup>20</sup> Measured by size of PAC contribution, 1999-2000.

<sup>21</sup> The data are from Kim (2000).

<sup>22</sup> “Section 301” in US trade law provides the mechanics by which a US exporter can petition the US government to investigate and take action against a foreign import restriction that violates an international agreement or that is in certain unilaterally defined ways, “unreasonable.” Bhagwati and Patrick (1990) provide details.

pharmaceutical drugs from the right to patent and during the 70s and 80s several of them were still implementing patents for these products (Nogués, 1991). Patents, industrial countries' experiences clearly show, were not developed at the stroke of a genius pen; they were developed *pari passu* with industrial progress. Likewise, TRIPS pushed out of consideration the strong argument that the balance in the industrial countries has strayed far from the socially optimal there. Lord Templeman, a respected Law Lord in the UK Parliament, argues that "the term 'intellectual property' is a pernicious fiction because it acts to disguise the creation and enforcement of monopolies which are contrary to the public interest." (Templeman, 1998, p. 603).

## 5. CONCLUSIONS

### *n. Mercantilism, GATT and WTO*

The WTO new areas – services, intellectual property rights, etc. – are about the shape of the domestic economy as well as about what will be traded. The trade effect of policy changes will likely be positive – as in the case of reducing border measures. But implementation bears a real cost, and the structural effect may be negative, resulting in a net reduction of the national economic interest.

Lesson 1: Mercantilist economics was good enough for the policy instruments the GATT regulated, it is not good enough for the instruments the WTO has taken on.

### *o. Unbalanced Uruguay Round Outcome*

By mercantilist economics, the North-South bargain of agriculture, textiles and clothing for new areas, might have turned out to be a fair bargain, export dollar for export dollar. By real economics it had no chance to turn out fair. What the North gave up was, in real economics, of benefit to the North as well as to the South. This is the familiar GATT politics of using an international commitment to achieve useful but politically unpopular domestic reforms. What the South gave up was a benefit to the North but in many cases a cost to the South. This is the politics of imperialism, of extracting from a less powerful party. On merchandise trade, the North– even if we include the yet-to-be-delivered elimination of MFA quotas – made "concessions" less than those of the South. The concessions the North gained (the South gave) in the new areas were entirely unrequited.

Lesson 2: The Uruguay Round North-South bargain straddled the divide between mercantilist economics and real economics in a way bad for the South.

Within the market access bargain, some developing countries gained more than others. The agriculture agreement produced minimal liberalization in the North, agricultural exporters received minimal concessions. Asian countries received concessions on about ½ of their exports, Latin American countries on about ¼ of theirs.

Argentina – in real economics – is in a particularly unfortunate position. She is one of the major targets of TRIPS, where the costs will be high, and on the other side of the coin particularly dependent on agricultural exports, where the gains were minimal.

***p. GATS and TRIPS***

Services negotiations were driven in the South as well as in the North by domestic programs of reform. The Argentine experience illustrates this. That experience also suggests that obtaining reciprocal liberalization from trading partners was a minor motive – Argentina still sees none of its services sub-sectors as being major exporters. The possibility of locking in reforms against future backsliding was a consideration, but not one critical to attracting foreign direct investment. The key instrument for attracting investment was the bilateral investment treaties that assured investors that dispute settlement would be through the International Center for the Settlement of Investment Disputes, a recognized, neutral international agency.

The General Agreement on Trade in Services (GATS) provides for step-by-step negotiation of market access commitments to foreign suppliers. It thus allows for continuous pressure from trading partners for opening to international competition, but allows for such opening to be coordinated with domestic reform. This is a central developmental characteristic of the GATS which parallels similar flexibility in the GATT.

Argentina's changes in intellectual property rights were driven strictly by the revenue demands of trading partners. TRIPS, unlike GATS, requires a big bang conversion of intellectual property rights to essentially the standards in place in the most advanced countries. There is no flexibility in it to consider alternative development options.

Lesson 3: GATS is a better model than TRIPS for supporting reform.
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***q. Will it Happen Again?***

With appropriate resources at the command of developing countries, the unbalanced outcome of the Uruguay Round will not likely be repeated in another WTO round. Creating the WTO suspended for one time the GATT/WTO tradition of decision by consensus. If TRIPS (or labor standards) came forward as an addition to the WTO package, a country that chose to block its inclusion would not be doing so at the risk of being left out of everything else.

As to coming up short again on the mercantilist bargain – the developing countries, once burned, will be twice wise. This was the first time for most developing country delegations to negotiate at the WTO as equals over market access. They will certainly know the next time to look behind the smoke and mirrors, to read the fine print more carefully and to tally up more closely. Likewise for the well-intentioned people who advise them. This improved negotiating

capacity of developing countries has to be complemented by a greater adherence to the GATT reciprocity principle by all members and in particular, by industrial countries.

*r. Real Economics in the WTO?*

Put real economics into the WTO? The prospects are not good. To now WTO delegations have limited the debate over implementation to complaints about and defenses of the Uruguay Round bargain. The defense is basically “A deal is a deal,” the criticism no less traditional. Suggestions for implementation have remained within the traditional mercantilist concept of special and differential treatment: exempt developing countries from some obligations, longer implementation periods.

Questions of appropriate “packaging,” have not entered the debate: e.g., *What besides copyright enforcement is necessary to make the music industry viable in a developing country?* or *What is the sense of changing customs valuation systems when it takes 60 days and several bribes to move a container?*

The WTO is perhaps not the best institution to answer such questions. The questions demand one-off answers and are thus not suited to the “one rule for all” approach intrinsic to the GATT/WTO system. Perhaps the developing countries and their well-intentioned advisors must go back to the tough slog of designing and selling at home unilateral reform.

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